

This section applied. *Canton Bank v. American Bonding Co.*, 111 Md. 53; *State v. Baltimore, etc., R. R. Co.*, 77 Md. 493; *Lucke v. Clothing Cutters, etc.*, 77 Md. 411; *Earnshaw v. Sun Mutual, etc., Society*, 68 Md. 477; *Worthington v. Cooke*, 52 Md. 310; *Farmers' Bank v. Thomas*, 37 Md. 258; *Howard v. Carpenter*, 22 Md. 256; *Richardson v. Hall*, 21 Md. 405; *Beall v. Beall*, 7 Gill, 237; *Parker v. Sedwick*, 4 Gill, 325.

#### Generally.

The propriety of the new trial must appear from the record. *McCann v. Sloan*, 26 Md. 82; *B. & O. R. R. Co. v. Black*, 107 Md. 668.

A demurrer to a plea having been overruled, and the plaintiff having declined to reply after leave, the case will not be remanded. *Wiley v. Heaps*. 89 Md. 47.

Instead of granting a new trial as this section authorizes, the court of appeals may merely grant leave to the appellants to file an application for a new trial. *State v. Wilson*, 107 Md. 137.

Where the lower court has not awarded the writ of mandamus but merely a judgment for costs, the appellate court has the power under this section to award the writ without remanding the case. *Weber v. Zimmerman*, 23 Md. 55.

This section vests the court with discretionary power to remand a case to the lower court for trial upon its merits. *Creager v. Hooper*, 83 Md. 504; *Milske v. Steiner, etc., Co.*, 103 Md. 251.

This section indicates a design to give to the appellate court more extended control. *Lester v. Hardesty*, 29 Md. 57 (dissenting opinion).

This section gives the appellate court no power to modify criminal sentences, or to direct inferior courts to modify them. *McDonald v. State*, 45 Md. 97. (See, however, section 81, passed to give the court such power.)

For a case holding that the defendant had been given ample notice of a trial following the remanding of a case under this section, see *Weber v. Fickey*, 52 Md. 511.

Cited but not construed in *United Rys. Co. v. Corbin*, 109 Md. 56; *State v. B. & O. R. R. Co.*, 48 Md. 81.

1904, art. 5, sec. 23. 1888, art. 5, sec. 21. 1860, art. 5, sec. 17. 1819, ch. 149.

**23.** When, on the reversal of a judgment, a new trial shall be awarded, the court of appeals, upon suggestion in writing by either of the parties, supported by affidavits or other proper evidence that a fair and impartial trial cannot be had in the court where the judgment so reversed shall have been rendered, shall direct their clerk to transmit a copy of the record to the clerk of the court of some other county or city, with an order to such court, directing them to proceed in such action, and to a new trial thereof, in the same manner as if no trial had taken place, and as if such action had been originally instituted in such court.

This section has no application if the party applying for removal has exercised such right already. *State v. B. & O. R. R. Co.*, 69 Md. 348.

Cited but not construed in *United Rys. Co. v. Corbin*, 109 Md. 56.

As to the removal of cases, see art. 75, sec. 102, *et seq.*

*Ibid.* sec. 24. 1888, art. 5, sec. 22. 1860, art. 5, sec. 18. 1831, ch. 203.

**24.** If an appeal or writ of error be dismissed when taken on any order of the court antecedent to final judgment, and no final judgment shall have been rendered, it shall be the duty of the said court, on application of any of the parties, to order continuances in said case to be entered, and the same to be proceeded with in the same manner and with the same effect as if no such appeal or writ of error had been taken or sued out; and either party may make such suggestion and new