

unless it shall appear by the record that such objection was made in said court.

That the question of jurisdiction was argued will not suffice; it must have been specially taken by exception and passed on by the lower court. *Melvin v. Aldridge*, 81 Md. 657. And see *Hubbard v. Jarrell*, 23 Md. 80.

This section applies only to defendants who have been brought into a regular chancery proceeding and who submit to the jurisdiction without question. *Wicks v. Westcott*, 59 Md. 279. And see *Pierson v. Trall*, 1 Md. 143.

This section applies to defendants only. *Pierson v. Trall*, 1 Md. 143.

The lower Court may *sua sponte* refuse to grant relief on the ground of lack of jurisdiction. This section is confined in its operation to the appellate court. *Dunnock v. Dunnock*, 3 Md. Ch. 149.

If the objection to the jurisdiction is not properly taken, the court will entertain the suit, unless it be in cases in which no circumstances whatever could give the court jurisdiction. *Shryock v. Morris*, 15 Md. 77.

This section applied. *Cherbonnier v. Goodwin*, 79 Md. 61; *Snowden v. Reid*, 67 Md. 135; *Biddinger v. Wiland*, 67 Md. 363; *Estep v. Mackey*, 52 Md. 596; *Williams v. Lee*, 47 Md. 324; *Edes v. Garey*, 46 Md. 36; *Loeber v. Laughar*, 45 Md. 482; *Ashton v. Ashton*, 35 Md. 503; *Gough v. Manning*, 26 Md. 361; *Stallings v. Stallings*, 22 Md. 45; *Bratt v. Bratt*, 21 Md. 583; *Knight v. Brawner*, 14 Md. 6; *Teackle v. Gibson*, 8 Md. 84; *O'Neill v. Cole*, 4 Md. 123; *Farmers, etc., Bank v. Wayman*, 5 Gill, 356.

Influence of this section upon the lower court. *Gough v. Crane*, 3 Md. Ch. 135.

1904, art. 5, sec. 38. 1888, art. 5, sec. 36. 1860, art. 5, sec. 28. 1818, ch. 193, sec. 14. 1832, ch. 302, sec. 6.

38. If it shall appear or be shown to the court of appeals that the substantial merits of a cause will not be determined by the reversing or affirming of any decree or order that may have been passed by a court of equity, or that the purposes of justice will be advanced by permitting further proceedings in the cause, either through amendment of any of the pleadings or the introduction of further evidence, making additional parties, or otherwise, then the court of appeals, instead of passing a final decree or order, shall order the cause to be remanded to the court from whose decision the appeal was taken, and thereupon such further proceedings shall there be had by amendment of pleadings, or further testimony to be taken, or otherwise, as shall be necessary for determining the cause upon its merits, as if no appeal had been taken in the cause, and the decree or order appealed from had not been passed, save only that the order or decree passed by the court of appeals shall be conclusive as to the points finally decided thereby. And it shall be the duty of the court of appeals, in its order remanding the cause, to express the reasons for the remanding, and also to determine and declare the opinion of the court on all points which may have been made before the said court, or which may be presented by the record.

Cases remanded.

Cases remanded that proof may be taken: *Dimpfel v. Wilson*, 107 Md. 341; *Barroll v. Farman*, 88 Md. 201; *Hoffman v. Hoffman*, 66 Md. 575; *Hagerty v. Mann*, 56 Md. 529; *Gechter v. Gechter*, 51 Md. 190; *Brown v. Thomas*, 46 Md. 641; *Bull v. Pyle*, 41 Md. 425; *Johnson v. Robertson*, 31 Md. 492; *Stump v. Henry*, 6 Md. 210; *Winchester v. Baltimore, etc., R. R. Co.*, 4 Md. 242; *Buchanan v. Lorman*, 3 Gill, 82; *Darnall v. Hill*, 12 G. & J. 398; *Harris v. Harris*, 6 G. & J. 115.