

The meaning of this section (as it stood in the Constitution of 1851) was that a judge who has been counsel for either of the parties is prohibited from trying the case, but not necessarily from authorizing mere matters of form tending to the preparation of the case for trial, such as the issue of commissions, particularly if the judge acts in the last named matters in the absence of all objection. Object of this section. *Buckingham v. Davis*, 9 Md. 328.

This section disqualifies a judge from sitting where his right to the office is involved. *Magruder v. Swann*, 25 Md. 205.

Sec. 8. The parties to any cause may submit the same to the Court for determination without the aid of a Jury and in all suits or actions at law, issues from the Orphans' Court or from any Court sitting in Equity, and in all cases of presentments or indictments for offences which are or may be punishable by death pending in any of the Courts of Law of this State having jurisdiction thereof, upon suggestion in writing under oath of either of the parties to said proceedings, that such party cannot have a fair and impartial trial in the Court in which the same may be pending, the said Court shall order and direct the Record of Proceedings in such Suit or Action, Issue, Presentment or Indictment, to be transmitted to some other Court having jurisdiction in such case, for trial; but in all other cases of Presentment or Indictment pending in any of the Courts of Law in this State having jurisdiction thereof, in addition to the suggestion in writing of either of the parties to such Presentment or Indictment that such party cannot have a fair and impartial trial in the Court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the Court that such suggestion is true, or that there is reasonable ground for the same; and thereupon the said Court shall order and direct the Record of Proceedings in such Presentment or Indictment to be transmitted to some other Court having jurisdiction in such cases for trial; and such right of removal shall exist upon suggestion in cases when all the Judges of said Court may be disqualified, under the provisions of this Constitution to sit in any case; and said Court to which the Record of Proceedings in such Suit or Action, Issue, Presentment or Indictment may be so transmitted, shall hear and determine the same in like manner as if such Suit or Action, Issue, Presentment or Indictment had been originally instituted therein; and the General Assembly shall make such modification of existing law as may be necessary to regulate and give force to this provision.¹

Non-jury cases.

Where a case is submitted to the court without a jury, the plaintiff is entitled to a non-suit as in other cases; hence though a judge, in ruling upon testimony, remarks incidentally that the plaintiffs are not entitled to recover, the plaintiff is still entitled to take a non-suit at any time before verdict. *Hall v. Schuchardt*, 34 Md. 18.

Issues sent by the orphans' court to a court of law constitute a "cause" within the meaning of this section, and hence may be submitted to the court without a jury. *Houston v. Wilcox*, 121 Md. 100.

The first clause of this section can not be regarded as restricting the jurisdiction of the court or as conferring upon it a special jurisdiction; hence the right of appeal is undoubted. *Tinges v. Moale*, 25 Md. 484.

A judgment rendered by a court without a jury, where it does not appear that there was any agreement or assent by both parties waiving a jury trial, should be

¹ Thus amended by act of 1874, ch. 364, ratified November, 1875.