

Case remanded under this section in order that by proper amendment, it may be tried upon its merits. *McCurdy v. Jessop*, 126 Md. 327.

Case remanded under this section, so that *narr.* may be amended; appellant to pay costs. *Rieger & Co. v. Knight*, 128 Md. 201.

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, sec. 87, 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 *Stewart Taxi Co. v. Getz*, 118 Md. 176; *United Rys Co. v. Corbin*, 109 Md. 56; *State v. B. & O. R. R. Co.*, 48 Md. 81.

An. Code, sec. 22A. 1914, ch. 149. 1914, ch. 248.

25.¹ If it appears to the Court of Appeals that a reversible error affects a severable item or part only of the matters in controversy, the Court may direct final judgment as to the remaining parts or items thereof, and may direct a new trial as to the said severable part or item only.

A judgment reversed and a new trial awarded as to the interest item and affirmed as to the remaining amount, under this section. *Bucher v. Federal B. B. Club*, 130 Md. 644.

Judgment reversed without a new trial under this section as to certain items on which the jury found for the plaintiff, and affirmed as to the remainder of the judgment. *Middendorf, etc., Co. v. Milburn Co.*, 137 Md. 600.

Judgment of court of appeals modified so as to comply with this section. *Strathmore Min. Co. v. Bayard Co.*, 139 Md. 375.

This section applied. *Roberts & Co. v. Robinson*, 141 Md. 55.

1920, ch. 229, sec. 22B.

26. In all cases in which there are more than one defendant in a Court of Law and judgment has been entered up in favor of all the defendants or against all the defendants or in favor of one or more defendants and against one or more defendants, if on appeal, it shall appear to the Court of Appeals that said judgment should be affirmed as to all said defendants or should be reversed as to all said defendants or should be affirmed as to one or more of said defendants and should be reversed as to one or more of said defendants, then, the said Court of Appeals may so direct.

This section was adopted subsequent to the decisions in *Firror v. Taylor*, 116 Md. 69, and *Ewing v. Rider*, 125 Md. 149. This section applied. *Myers v. Shipley*, 140 Md. 382.

Judgment reversed without a new trial as to one defendant and affirmed as to the other defendants, under this section. *McNamara v. Pabst*, 137 Md. 475; *Polluck v. Watts*, 142 Md. 407.

An. Code, sec. 23. 1904, sec. 23. 1888, sec. 21. 1819, ch. 149.

27. 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

¹ The acts of 1914, chs. 149 and 248, enacted sec. 22A in the same language.