

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 was not intended to include criminal prosecutions, nor does it show an intention to enlarge the right of removal. *Fountain v. State*, 135 Md. 88.

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. 109, *et seq.*

An. Code, sec. 24. 1904, sec. 24. 1888, sec. 22. 1831, ch. 203.

28. 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 parties as could have been made if no appeal had been taken in the case; provided, the court shall be satisfied by the certificate of the clerk of the court of appeals, or other proper evidence, that the said appeal or writ of error has been dismissed.

An. Code, sec. 25. 1904, sec. 25. 1888, sec. 23. 1806, ch. 90, sec. 5.

29. Where writs of error *coram vobis* are pending in the court of appeals, and it shall appear to the court necessary to try any matter of fact put in issue by the pleadings in the case, the court may direct a transcript of the record to the court where the defendant named in the original action may reside, or to such other court as the parties in the said cause may agree upon; and the court to which such transcript shall be transmitted, shall proceed in such action, and to a trial of the facts put in issue.

### Appeals from Courts of Equity.

An. Code, sec. 26. 1904, sec. 26. 1888, sec. 24. 1729, ch. 3, sec. 3. 1785, ch. 72, sec. 27. 1814, ch. 94, sec. 5. 1818, ch. 193, sec. 1. 1819, ch. 144, sec. 4. 1826, ch. 200, sec. 14. 1830, ch. 185, sec. 1. 1864, ch. 156.

30. An appeal shall be allowed from any final decree, or order in the nature of a final decree, passed by a court of equity by any one or more of the persons parties to the suit, with or without the assent or joinder of plaintiffs or co-defendants in such appeal; provided that if the court of appeals shall affirm the decree of the court below, they shall not award costs of the appeal against any one except the appellant.

### Matters in discretion of court.

#### *No appeal:*

From an order appointing a trustee, though the court gives an erroneous reason for its action. *Howard v. Waters*, 19 Md. 529.

From an order allowing an amendment of the pleadings. *State v. Brown*, 64 Md. 208.