Maryland, he read in the statute book, and in the Declaration of Rights of the State, that a salary of twelve hundred and seventy-

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heard; (*In the matter of Lord Portsmouth*, *Coop. Rep.* 106.) yet in all other cases the matters in controversy must be heard in open Court; for, publicity in judicial proceedings is of the very greatest importance; "it is one of the best securities for the honest exercise of a Judge's duty, that he is to exercise that duty in public." (*Wellesley* v. *Beauford*, 2 Russell, 9.) Publicity is also one of the best shields which a skilful and impartial Judge can have against the assaults of party, of prejudice, or of intrigue. It is to the enlightened and powerful public opinion to which the Judges of Westminster Hall are constantly exposed, and by which they are always held responsible and protected, that their great diligence as well as their luminous and impartial judgments are to be ascribed.—(*Debates Virg. Con. of* 1829, *page* 734.)

But whatever may be the composition or structure of a Court of last resort, it is important, that it should have assigned to it no duties but such as are properly appellate, as regards the substance of the case, or the points involving the merits which have been controverted and adjudicated upon by the Court of original jurisdiction. According to a well regulated course of judicial proceeding the parties to a controversy should have the means, and be allowed an opportunity of bringing before the Court of first resort all their allegations and proofs in any way pertinent to the subject in litigation. And, when the case has been so prepared for final decision, the judgment should, as nearly as practicable, be pronounced upon the merits, or upon those points on which the parties themselves have relied as involving the merits.

To allow the revising Court to reverse the judgment of the tribunal of original jurisdiction, because of any mere technical objection; would be, nine times in ten, to put aside the real merits in dispute for the purpose of correcting a mere matter of form which had either been deemed unworthy of attention in the Court below, or which might have been at once amended there had it been noticed in time; or to allow the revising Court to reverse the original judgment on any other ground of merit, than that which had been specially taken in the Court below, would be, in effect, to allow the Appellate Court to assume original jurisdiction by bringing before it a controversy which in truth, never existed; or a new point of controversy which, if it had been presented to the Court below, might have been shewn to have had no just foundation whatever.

The sending of a case back, for amendment and further proceedings thereon, almost always involves a virtual admission, that an appeal had been taken which ought never to have been allowed; either because the objection should have been made and removed in the Court below; or if not there made, should have been treated above as having no just foundation; or because the error was of such a technical nature as not in any way materially to affect the merits. But the greatest evils of an ill defined power in the Appellate Court to remand a case in equity are those which must inevitably arise from having the judgment of that Court sent, without rule or guide, on a rambling excursion through the case in search of those loose conjectures, ambiguous inferences, or latent evidences in relation to some supposed merits, for the purpose of letting in which the case should be sent back for alteration, (*Kemp* v. *Pryor*, 7 Ves. 245,) by which means a controversy, all the facts of which were from the outset fully known to all concerned, may be varied and vexatiously continued to no purpose; or a false