read in the statute book, and in the Declaration of Rights of the State, that a salary of *twelve hundred and seventy-five pounds* per annum was

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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 colouring may be given to it by a party who has thus ascertained at what point his proofs were weak or insufficient.

It is universally admitted that the consent of parties cannot give to a court jurisdiction of a case of which it has no cognizance; and yet it seems to have become quite common of late to agree to the passing of a decree *pro forma* merely for the purpose of appealing, and thus in effect transferring the original jurisdiction to the court of appeals and sinking the court of first resort into a mere ministerial agent.

It is obvious then, that *proper* appellate judicial duty must be much less complicated and laborious than that which is original; because after all the circumstances of the controversy have been brought before the first court and the *points* in dispute have been there specially designated, discussed and decided upon, the case must have been considerably reduced in its compass, and the question to be determined in the ultimate tribunal must have been so fully developed that there can be then no very heavy obstacles to remove, nor any great difficulty to encounter in coming to a correct conclusion. Considering these matters, in this point of view, it is perfectly clear, that the judges of the court of last resort with less, or certainly with a no greater requisite degree of skill, have nothing like the same amount of judicial duty to perform as the judges of the courts of original jurisdiction.

It is evident, that a court of ultimate resort constituted, like that of England or of New York, of a great number of members, the majority of whom may not be lawyers by profession, would find it utterly impracticable to deal with, or to endure any thing like the distracting complexity of original jurisdiction, or to exercise any thing more than a simple and proper appellate authority. But it has been found, that an appellate tribunal constituted even of a few members, each of great legal ability, may be crushed, or totally obstructed in its course either by allowing every suitor, at his own pleasure, to crowd into it with his appeal, or by casting into it complicated controversies to be there first dealt with as by a court of original jurisdiction.—(*Tucker's Letter*, 2 *Mun. Rep. intro.* 17; *Debates Virg. Con.* 1829, *page* 760.)

It must have been owing to this comparative view of the nature and amount of the skill and labour which had be in fact, or could only with propriety be required of or assigned to the judges of nate court, that the judicial salaries in Maryland