

removed, the court passing the order shall have power to strike out the order of removal, on motion of the party applying for the same, and when so stricken out the cause shall proceed as if no motion for removal had been made; but the motion for removal shall not be renewed by the same party after the expiration of the term at which the order for removal was stricken out; provided, that no such motion to strike out an order for removal shall be entertained, unless the same shall be made in time to admit of the trial of the cause at the same term of the court at which said order for removal was passed.

This section was not intended to be restrictive, but enlarging. It does not mitigate against the right of the court in which the action originated, up to the time the record is actually transmitted, to change the court to which the case is removed. *Atlantic, etc., Co. v. Maryland, etc., Co.*, 64 Md. 305.

This section is merely declaratory of a power which the courts already had. *Seth v. Chamberlain*, 41 Md. 195; *Atlantic, etc., Co. v. Maryland, etc., Co.*, 64 Md. 304. And see *Manly v. State*, 7 Md. 147.

For cases declaring unconstitutional the portion of the act of 1874, ch. 94, providing that no case should be removed unless the applicant paid the costs of the record within sixty days after the passage of the order of removal and caused the record to be transmitted within the same period, see *Hoyer v. Colton*, 43 Md. 423; *Knee v. Baltimore, etc., Ry. Co.*, 87 Md. 632.

Removal of Cases from Courts of Law to Courts of Equity and Vice Versa.

1904, art. 75. sec. 113. 1896, ch. 229.

115. In every case at law or in equity in which it shall appear that the plaintiff is entitled to some relief or to some remedy, but not in the particular court, or on the side of the court in which the suit is brought or the relief is prayed, the plaintiff shall not on that account be non-suited or the case dismissed; but the case may, in the discretion of the judge presiding in the court in which the suit is pending, at any time, in any action at law, before the jury retire to consider their verdict, or in a suit in equity, before the final decree is signed, be removed by an order in writing signed by the judge or judges there presiding, to such proper court or docket, either of equity or law, in the same county or city, as the nature thereof may require, and thereupon such proceedings shall be had, by amendment of the pleadings and otherwise, as shall conform the case to the course of the court to which the same shall have been removed, under such general or special rules as each of such courts may prescribe for the adjustment of costs, the prevention of delay and the promotion of justice.

This section is constitutional. *Insurance Co. of North America v. Schall*, 96 Md. 227.

No appeal lies from the action of the lower court in removing or refusing to remove a case under this section. *Summerson v. Schilling*, 94 Md. 607; *Safe Deposit Co. v. Cahn*, 102 Md. 542.

Where upon appeal it was held that a plaintiff was not entitled to relief in equity, the case was remanded for further proceedings by the lower court under this section. *Maryland Hotel Co. v. Baltimore Engraving Co.*, 92 Md. 725.

The policy of the law as shown by this section pointed out. *Safe Deposit Co. v. Cahn*, 102 Md. 542.