

suit or action, issue, presentment or indictment, to be transmitted to some other court having jurisdiction in such case for trial; but in all other cases of presentment or indictment pending in any of the courts of law in this State having jurisdiction thereof, in addition to the suggestion in writing of either of the parties to such presentment or indictment that such party cannot have a fair and impartial trial in the court in which the same may be pending, it shall be necessary for the party making such suggestion to make it satisfactorily appear to the court that such suggestion is true, or that there is reasonable ground for the same; and thereupon the said court shall order and direct the record of proceedings in such presentment or indictment to be transmitted to some other court having jurisdiction in such cases for trial; and such right of removal shall exist upon suggestion in cases when all the judges of said court may be disqualified, under the provisions of the constitution, to sit in any such case; and said court to which the record of proceedings in such suit or action, issue, presentment or indictment may be so transmitted, shall hear and determine the same in like manner as if such suit or action, issue, presentment or indictment had been originally instituted therein.¹

When right of removal applies.

This section has no application to cases in equity, or in the orphans' court. *Cooke v. Cooke*, 41 Md. 367.

Right of removal can only be exercised in courts having original jurisdiction. *Geekie v. Harboud*, 52 Md. 461; *Cooke v. Cooke*, 41 Md. 367; *Hoshall v. Hoffacker*, 11 Md. 363.

Right of removal does not apply to proceedings instituted under statute for forfeiture of chartered franchises. *Belair Club v. State*, 74 Md. 300.

This section does not apply to issues framed in insolvency proceedings at instance of creditor. *Trayhern v. Hamill*, 53 Md. 91; *Michael v. Schroeder*, 4 H. & J. 227.

Up to what time case may be removed.

Right of removal must be exercised before trial commences, and an amendment of declaration does not affect such right; but fact that one trial has already been had ending in a disagreement by jury, does not defeat right of removal. *Cooke v. Cooke*, 41 Md. 367; *Sittig v. Birkestaek*, 38 Md. 161; *Deford v. State*, 30 Md. 196.

A case may be removed at any time before panel of jurors is completed by being sworn. *McMillan v. State*, 68 Md. 309; *Price v. State*, 8 Gill, 297. *Cf. Griffin v. Leslie*, 20 Md. 19; *Taxicab Co. v. Emanuel*, 125 Md. 265.

Where a judgment by default has been entered, and nothing remains to be done but to assess damages or determine the amount thereof, the case cannot be removed. *Northern Central Ry. Co. v. Rutledge*, 41 Md. 372.

Who may remove.

Right of removal resides in parties plaintiff or defendant, and not in each of several plaintiffs or defendants, the word "parties" being used in a collective sense. *Baltimore County v. United Rys. Co.*, 99 Md. 87; *Cooke v. Cooke*, 41 Md. 369; *State v. Gare*, 32 Md. 499; *Taxicab Co. of Balto. v. Emanuel*, 125 Md. 265.

A "next friend" is a party within the meaning of this section, and capable of making suggestion of removal. *Thomas v. Safe Deposit Co.*, 73 Md. 461; *Deford v. State*, 30 Md. 198.

Criminal cases not punishable by death.

In criminal cases other than those punishable by death, in absence of proof that lower court acted arbitrarily and abused, or refused to exercise the discretion vested in it, its action will not be reversed. Proof held insufficient. Affidavits. Newspaper comments. *Downs v. State*, 111 Md. 246.

Act of 1874, ch. 364 (amending art. 4, sec. 8, of Md. Constitution) held applicable where it was in force when traverser's suggestion of removal was filed, although it was not in force when he was indicted. The requirements of this section not having been complied with, traverser was not entitled to removal. *Smith v. State*, 44 Md. 533. And as to application of act of 1868, ch. 180, see *Price v. Nesbitt*, 29 Md. 266.

¹ This section is identical with art. 4, sec. 8, of Md. Constitution, save that by last clause of constitutional provision power is given general assembly to modify the existing law so as to regulate and give force to such provision.