

direct final judgment as to the remaining parts or items thereof, and may direct a new trial as to the said severable part or item only.

A judgment reversed and a new trial awarded as to the interest item and affirmed as to the remaining amount, under this section. *Bucher v. Federal B. B. Club*, 130 Md. 644.

Judgment reversed without a new trial under this section as to certain items on which the jury found for the plaintiff, and affirmed as to the remainder of the judgment. *Middendorf, etc., Co. v. Milburn Co.*, 137 Md. 600.

Judgment of court of appeals modified so as to comply with this section. *Strathmore Min. Co. v. Bayard Co.*, 139 Md. 375.

This section applied. *Roberts & Co. v. Robinson*, 141 Md. 55.

Cited but not construed in *Powder Co v. Campbell*, 156 Md. 368.

An. Code, 1924, sec. 26. 1920, ch. 229, sec., 22B.

**26.** In all cases in which there are more than one defendant in a Court of Law and judgment has been entered up in favor of all the defendants or against all the defendants or in favor of one or more defendants and against one or more defendants, if on appeal, it shall appear to the Court of Appeals that said judgment should be affirmed as to all said defendants or should be reversed as to all said defendants or should be affirmed as to one or more of said defendants and should be reversed as to one or more of said defendants, then, the said Court of Appeals may so direct.

This section was adopted subsequent to the decisions in *Firor v. Taylor*, 116 Md. 69, and *Ewing v. Rider*, 125 Md. 149. This section applied. *Myers v. Shipley*, 140 Md. 382.

Judgment reversed without a new trial as to one defendant and affirmed as to the other defendants, under this section. *McNamara v. Pabst*, 137 Md. 475; *Polluck v. Watts*, 142 Md. 407; *Canton Co. v. Seal*, 144 Md. 183; *Kvedera v. Mondravisky*, 149 Md. 379.

Art. 50, sec. 13, which provides that defendants in actions *ex delicto* shall be subject to contribution between them, does not affect the power of the court to reverse the judgment as to one defendant and to affirm it as to the other. *Cumberland, etc., Transit Co. v. Metz*, 158 Md. 455, 456.

Cited but not construed in *Rent-A-Car Co. v. Globe, etc., Fire Ins. Co.* 158 Md. 186.

Where judgment against partners as individuals and as partnership on account of assault committed by one partner reversed as to partnership and partner not guilty of assault, held that judgment against guilty partner be reversed as jury might have considered worth of partnership in award of exemplary damages. *Schloss v. Silverman*, 172 Md. 632.

An. Code, 1924, sec. 27. 1912, sec. 23. 1904, sec. 23. 1888, sec. 21. 1819, ch. 149.

**27.** When, on the reversal of a judgment, a new trial shall be awarded, the court of appeals, upon suggestion in writing by either of the parties, supported by affidavits or other proper evidence that a fair and impartial 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. 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.*

Cited but not construed in *Baltimore v. Libowitz*, 159 Md. 29.

An. Code, 1924, sec. 28. 1912, 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