

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 this Constitution to sit in any 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; and the General Assembly shall make such modification of existing law as may be necessary to regulate and give force to this provision.<sup>1</sup>

#### Non-jury cases.

Where a case is submitted to the court without a jury, the plaintiff is entitled to a non-suit as in other cases; hence though a judge, in ruling upon testimony, remarks incidentally that the plaintiffs are not entitled to recover, the plaintiff is still entitled to take a non-suit at any time before verdict. *Hall v. Schuchardt*, 34 Md. 18.

Issues sent by the orphans' court to a court of law constitute a "cause" within the meaning of this section, and hence may be submitted to the court without a jury. *Houston v. Wilcox*, 121 Md. 100.

The first clause of this section can not be regarded as restricting the jurisdiction of the court or as conferring upon it a special jurisdiction; hence the right of appeal is undoubted. *Tinges v. Moale*, 25 Md. 484.

A judgment rendered by a court without a jury, where it does not appear that there was any agreement or assent by both parties waiving a jury trial, should be stricken out (changed by a local law in Baltimore city). *Desche v. Giles*, 56 Md. 137.

Any party capable of being sued and of appearing in person or by attorney, may assent to the submission of a case to a court without a jury; hence such assent of an attorney for a lunatic is binding. *Cross v. Kent*, 32 Md. 584.

This section referred to in upholding certain rules of the circuit court for Prince George's county dealing with jury and non-jury cases. *Gambrill v. Parker*, 31 Md. 5.

#### Removal of cases.

Right of removal exists in every action or suit at law that is pending in any court of original jurisdiction if party suggests in writing, under oath, that he cannot get fair trial. *State v. Cobourn*, 169 Md. 111.

The act of 1874, ch. 94, providing that the order of removal might be struck out unless the party making the suggestion pays the cost of the record within sixty days after such order and causes the record to be transmitted within the same period, held unconstitutional under this section. Intent of this section; it has been liberally construed. *Hoyer v. Colton*, 43 Md. 422. And see *Knee v. City Passenger Ry. Co.*, 87 Md. 632.

Where a first trial miscarries because of the failure of the jury to agree, the case may be removed at any time before the jury is sworn at the second trial. Where a case has been removed, it will not be remanded because the affidavit for removal was made by the next friend of the infant suing in the name of the state; a next friend is a "party" within the meaning of this section. *Deford v. State*, use *Keyser*, 30 Md. 190.

Since the amendment of 1874, ch. 364, a party making affidavit of removal has not the right to elect that the case shall be sent to some court in a different circuit; the matter is within the discretion of the court from which the case is removed. The removal of a case from the court of common pleas to the superior court of Baltimore city is a removal "to some other court" within the meaning of this section. *De Muriondo v. Frazier*, 63 Md. 95; *Weiskittle v. State*, use of *Samuel*, 58 Md. 155.

This section confers a discretion upon the court to which application for removal is made as to the court to which the case shall be sent. Discretion held not to have been abused. *Blick v. Cockins*, 131 Md. 628.

This section gives the circuit court no power to remove causes pending on appeal. *Charles County v. Wilmer*, 131 Md. 181.

An equity cause may not be removed to another equity court under this section. Act of 1920, ch. 425, sec. 322A, directing the removal of equity cases in Baltimore city, is in violation of sec. 32 of this art. 4. *Wilmer v. Savings & Bldg. Assn.*, 141 Md. 241.

<sup>1</sup> Thus amended by act of 1874, ch. 364, ratified November, 1875.