

Where the only election of a jury trial is that immediately following the plaintiff's declaration, these words appear: "The plaintiff prays a jury trial," such election is not sufficient under the rules applicable to common law cases in Baltimore city. The election of a jury trial must be separate and distinct from the declaration. *City Passenger Ry. Co. v. Nugent*, 86 Md. 360. And see *Condon v. Gore*, 89 Md. 231.

Where a *narr.* under the practice act of 1886, was filed in the superior court of Baltimore city on July 1, 1909, and on July 12, 1909, one of the defendants demurred and an order was passed extending the time for filing pleas to fifteen days after a decision on the demurrer; and on October 27, the demurrer was overruled with leave to plead within ten days, and on October 30, each of the defendants filed an election for a jury trial, such election was made in due time under a rule of the supreme bench providing that as to defendants an election of a jury trial shall be made at or before the time of first filing of pleas, but not after the time allowed by law to plead. *Baltimore v. Thomas*, 115 Md. 214.

For cases involving various questions relative to a jury trial arising under rules adopted in pursuance of this section, see *Chappel Chemical, etc., Co. v. Sulphur Mine Co.*, 85 Md. 681-684.

See art. 4, sec. 8; art. 15, sec. 6, and notes to art. 4, sec. 28.

Part V:—Orphans' Courts.

Sec. 40. The qualified voters of the City of Baltimore, and of the several counties, shall on the Tuesday next after the first Monday in November next, and on the same day in every fourth year thereafter, elect three men to be Judges of the Orphans' Courts of said city and counties, respectively, who shall be citizens of the State, and residents for the twelve months preceding, in the city or county, for which they may be elected. They shall have all the powers now vested in the Orphans' Courts of the State, subject to such changes as the Legislature may prescribe. Each of said Judges shall be paid a *per diem* for the time they are actually in session, to be regulated by Law, and to be paid by the said city or counties, respectively. In case of a vacancy in the office of Judge of the Orphans' Court, the Governor shall appoint, subject to confirmation or rejection by the Senate, some suitable person to fill the same for the residue of the term.

Under this section, the legislature may not only make changes in the powers which the orphans' courts had at the time the Constitution of 1867 was adopted, but also may confer additional powers upon them or take away powers which they then possessed. The act of 1908, ch. 125, authorizing orphans' courts to grant letters upon estates of persons supposed to be dead because of absence for more than seven years, upheld. *Savings Bank v. Weeks*, 110 Md. 92.

The "vacancy" referred to in this section is a vacancy occurring after an election by the people; hence where the house of delegates acting under sec. 12 decides that a person other than the incumbent is entitled to an office, there is no vacancy within the meaning of this section which the Governor may fill, but the house must order a new election under sec. 12; the incumbent holds until some other person has been elected by the people and qualified. *Ijams v. Duvall*, 85 Md. 261. And see *Wells v. Munroe*, 86 Md. 448.

Art. 4, sec. 17, of the Constitution of 1851, compared with, and referred to in construing, art. 4, sec. 14, of that Constitution—see notes to sec. 25. *Sansbury v. Middleton*, 11 Md. 317.

Secs. 25 and 26 of art. 4, of the Constitution of 1851, compared with sec. 19 of art. 4, of said Constitution—see notes to art. 4, sec. 43. *Cantwell v. Owens*, 14 Md. 226.

See art. 93, sec. 238, *et seq.*, of the An. Code.

Sec. 41. There shall be a Register of Wills in each county of the State, and the City of Baltimore, to be elected by the legal and qualified voters of