

an interval in the proceedings by not continuing them by proper process from time to time; in which case the defendant is not bound further to **331** attend, and the plaintiff must begin \*over again. The continuance of a suit by improper process, or by giving an illegal day to the party, is a *miscontinuance*, and in Maryland a judgment by default has been reversed by the Court of Appeals for a *miscontinuance* in the County Court, apparently on the ground that the defendant was given a day to plead in the same term in which the declaration was filed, and judgment entered for his default and extended, *Beane v. Middleton*, 4 H. & McH. 74. In general, the entry of continuance is mere matter of form, and they may be entered at any time; and a *miscontinuance*, and in some cases a *discontinuance*, may be cured by the appearance of the party, see *Tidd Prac.* 162; *Berresford v. Geddes*. In *Shriver v. the State*, 9 G. & J. 1, an omission to enter the continuances under the Act of 1785, ch. 80, sec. 11, Code, Art. 7, sec. 3,<sup>7</sup> requiring a case referred to be continued, was held to be merely a clerical error which could be corrected in the Court of Appeals without sending the record back to the County Court. But the Court of Appeals in the cases of *Munnickhuysen v. Dorsett*, 2 H. & G. 374, and *State v. Cox*, *ibid.* 379, have said, that where the Court strikes out a judgment under the Act of 1787, ch. 9, sec. 6, Code, Art. 75, sec. 38,<sup>8</sup> it is bound to order regular continuances of the cause to be entered on the docket, so that the matters in dispute may be brought to trial, and its failure to do so is an injury to the party for which an appeal will lie. In the latter case the Court observed that, had the continuances been properly entered, the plaintiff might, by an amendment of his pleadings, have recovered, notwithstanding the judgment was stricken out, see *Kemp v. Cook*, 18 Md. 130. In the case of *Bennington v. Dinsmore*, 2 Gill, 348, it was held that if there are more writs than one in a cause, it must appear that they are regular continuances of each other to except the case out of the statute of limitations, and therefore writs issued in the name of A. Adm'r of B. could not be regular continuances of writs issued by C. Adm'r of B., though the authority of the latter had been revoked. As to continuances, see Code, Art. 75, sec. 24 *et seq.*;<sup>9</sup> Art. 29, sec. 28;<sup>10</sup> *Kent v. McElderry*, 9 Gill, 493, and as to issuing a writ with continuances to save the statute of limitation, *Hazlehurst v. Morris*, 28 Md. 67.<sup>11</sup> Discontinuances of both kinds above mentioned and *miscontinuances* are helped by verdict under this Statute. As to misconveying of process see Com. Dig. Amendment, C. 2.

**Appearance of attorney—Entry of judgment to use of attorney.**—It is not the practice in this State to require a warrant of attorney, and the second

<sup>7</sup> Code 1911, Art. 75, sec. 48.

<sup>8</sup> Code 1911, Art. 75, sec. 62; *Craig v. Wroth*, 47 Md. 283.

<sup>9</sup> Code 1911, Art. 75, secs. 36 *et seq.*, 58-70; *Dean v. Turner*, 31 Md. 55; *Young v. Citizens Bank*, 31 Md. 66; *Marsh v. Johns*, 49 Md. 570; *Tise v. Shaw*, 68 Md. 1. The granting or refusing a continuance is entirely within the discretion of the lower court and from its action no appeal lies. *Adams Ex. Co. v. Trego*, 35 Md. 47; *Clagett v. Easterday*, 42 Md. 617; *Miller v. Miller*, 41 Md. 623; *Universal Ins. Co. v. Bachus*, 51 Md. 32; *Hopkins v. State*, 53 Md. 517.

<sup>10</sup> Code 1911, Art. 26, sec. 35.

<sup>11</sup> See note 10 to 13 Ed. 1, St. 1, c. 45.