

1904, art. 75, sec. 34. 1888, art. 75, sec. 33. 1860, art. 2, sec. 12. 1843, ch. 40.

34. No action in any of the courts of this State, either original or upon appeal, shall abate by reason of the marriage of any of the parties, but on application of any of the parties the court, upon such terms and notice as to it shall seem proper, may allow and order any amendment of the pleadings and the making of any new and additional parties that such marriage may render proper.

The application of this section pointed out. *Rowland v. Prather*, 53 Md. 241.

#### Amendment.

*Ibid.* sec. 35. 1888, art. 75, sec. 34. 1860, art. 75, sec. 23. 1785, ch. 80, sec. 4. 1809, ch. 153. 1852, ch. 177, sec. 1. 1888, ch. 235.

35. In all suits and actions at law, any of the proceedings, including the writ of summons, may be amended so that such case may be tried on its real merits and the purposes of justice subserved; writs may be amended from one form of action to another when the ends of justice require it; and any amendment may be made at any time before the jury retire to make up their verdict in cases of jury trial; and in cases of demurrer and other trials before the court, at any time before judgment is entered. Amendments may in like manner be made before justices of the peace.

#### Particular cases.

This section justifies an amendment of the *narr.* and writ, so as to change them from covenant to *assumpsit*. *Baltimore, etc., Co. v. McGowan*, 16 Md. 53. And see *Kirwan v. Raborg*, 1 H. & J. 296.

Where a suit for negligence causing death is brought by titling in the name of the state for the use of, etc., the declaration may be amended by the insertion of the state as legal plaintiff. Section 41 does not preclude such amendment. *B. & O. R. R. Co. v. State*, 62 Md. 481.

Allowing a plaintiff to withdraw a separate *narr.* against one of the defendants is justified by this section. *Mitchell v. Smith*, 4 Md. 406.

An amendment may be made under this section and sections 39 and 40, by striking out the name of one of two defendants. *Pendergast v. Reed*, 29 Md. 403.

This section applied where a declaration for slander was ruled bad on demurrer. *Terry v. Bright*, 4 Md. 435.

This section applied where there was a motion in arrest of judgment on account of an error in the declaration. *Newcomer v. Kean*, 57 Md. 125 (dissenting opinion).

This section referred to in upholding the action of the court in sending for the declaration after the jury had retired, and having certain blanks therein filled up. *Spencer v. Trafford*, 42 Md. 21.

Where an omission in a *narr.* was evidently accidental, the case was remanded for amendment. *State, use Dodson, v. Baltimore, etc., Co.*, 77 Md. 493.

#### Generally.

This and the ten following sections are but a condensation of the several statutes upon the subject of amendment; whenever they speak affirmatively, they negative the enlargement of the right of amendment to another class of parties, unless a general expression embracing the latter is used. This section is qualified by the following sections. *Thanhauser v. Savins*, 44 Md. 414.

The plaintiff may amend his declaration at any time before the jury retires, or at any time before judgment is entered if trial is had before the court. *Gisriel v. Burrows*, 72 Md. 373; *Scarlett v. Academy of Music*, 43 Md.