

208; *Ritter v. Offutt*, 40 Md. 211; *Pendergast v. Reed*, 20 Md. 403; *Garrett v. Dickerson*, 19 Md. 448.

The allowance of an amendment, provided it is within the power of the court, is not the subject of appeal. How amendments may be made. *Scarlett v. Academy of Music*, 43 Md. 208. And see *Staley v. Thomas*, 68 Md. 442; *Lohrfink v. Still*, 10 Md. 530; *Thillman v. Neal*, 88 Md. 529; *Mitchell v. Smith*, 4 Md. 406. *Cf.* *Union Bank v. Ridgely*, 1 H. & G. 324; *Schulze v. Fox*, 53 Md. 43.

This section referred to in deciding that where a party has a choice between two alternative forms of action and adopts one of them but dismisses the action before judgment, he may afterwards resort to the other form of action. *Bolton Mines Co. v. Stokes*, 82 Md. 63.

An amendment of the affidavit before a notary, and the warrant of the justice to the clerk, in attachment cases, are not within the purview of this section. (See article 9, section 28). *Halley v. Jackson*, 48 Md. 260.

The right of the sheriff to amend his return and the right of interested parties to have it amended, is a common law right not dependent upon this section. *Main v. Lynch*, 54 Md. 669; *Berry v. Griffith*, 2 H. & G. 337.

This section referred to in deciding that limitations might be pleaded to an amended declaration. *Schulze v. Fox*, 53 Md. 43. *Cf.* *Western Union Tel. Co. v. State*, use *Nelson*, 82 Md. 306.

Permission to amend does not *per se* amount to an amendment. *Lohrfink v. Still*, 10 Md. 535.

Where a new trial is granted, the court has power to authorize an amendment of the pleadings. *Gordon v. Downey*, 1 Gill, 53.

This section referred to in deciding that an application for removal was too late. *Adams Express Co. v. Trego*, 35 Md. 61.

This section referred to in overruling a motion in arrest of judgment. *Vernon v. Tucker*, 30 Md. 463.

This section is qualified by section 41. *Wright v. Gilbert*, 51 Md. 153.

For a case involving the effect of an amendment upon the liability of a bond given to dissolve an attachment, see *Furness v. Read*, 63 Md. 4.

This section referred to in construing section 44—see notes thereto. *Clagett v. Easterday*, 42 Md. 626.

This section referred to in construing section 144—see notes thereto. *Ritter v. Offutt*, 40 Md. 211.

For a case now apparently inapplicable to this section by reason of changes in the law, see *Stoddert v. Newman*, 7 H. & J. 256.

Cited but not construed in Washington, etc.. *Steam Packet Co. v. Sickles*, 24 How. 333.

As to the amendment of plats and certificates of survey in ejectment cases, see sec. 84.

See also, sections 30 and 41.

As to amendments in equity, see art. 16, sections 17 and 18.

As to amendments in attachment cases, see art. 9, sec. 28.

As to amendments in mechanics' lien cases, see art. 63, sec. 41.

As to amendments of writs of error, see art. 5, sec. 18. As to amendments in magistrate appeal cases, see art. 5, sec. 97.

1904, art. 75, sec. 36. 1888, art. 75, sec. 35. 1860, art. 75, sec. 24.

1852, ch. 177, sec. 9.

36. No continuance shall be granted upon amendments of the plots, writs, or any of the proceedings, but the case shall proceed as if no amendment had been made, unless the court shall be satisfied that the ends of justice require a continuance.

Amendments which do not change the substance of the issues may be made after the jury is sworn, without withdrawing a juror. *Garrett v. Dickerson*, 19 Md. 449.

This section referred to in construing section 44—see notes thereto. *Clagett v. Easterday*, 42 Md. 626.

As to continuances, see also, sec. 58, *et seq.*

See notes to sections 35, 37 and 44.