

1904, art. 75, sec. 37. 1888, art. 75, sec. 36. 1860, art. 75, sec. 25. 1828, ch. 199. 1845, ch. 54. 1846, ch. 328. 1880, ch. 135.

37. No writ or action shall abate because of the misnomer of any plaintiff or defendant named therein, but the court, on suggestion, supported by the affidavit of the plaintiff or defendant or other proof to the satisfaction of the court that by mistake the plaintiff has sued in a wrong name or that the party summoned in virtue of said writ or action is, in fact, the party intended to be sued by such writ, or in such action, may at any time before judgment, direct the writ or any of the proceedings to be amended by inserting therein the true name of any plaintiff or defendant, at the discretion of the court; this section to apply to foreign attachments, cases against corporations, and all other suits and actions.

This section applied so as to allow the correction of a defendant corporation's name, there being two corporations of very similar names. *Western Union Tel. Co. v. State*, use *Nelson*, 82 Md. 306.

This section applied to a misnomer of an individual defendant. *Union Bank v. Tillard*, 26 Md. 452.

Prior to the act of 1880, ch. 135, a misnomer of the plaintiff could not be cured by amendment. *Thanhauser v. Savins*, 44 Md. 414.

Ibid. sec. 38. 1888, art. 75, sec. 37. 1860, art. 75, sec. 26. 1856, ch. 112, sec. 27.

38. If there be a non-joinder or misjoinder of plaintiffs, the court may allow an amendment by which a plaintiff may be added or stricken out, as the case may require.

The allowance of an amendment is confided to the discretion of the trial court, provided it be within the power of the court to make it. *Thillman v. Neal*, 88 Md. 529.

This and the two following sections do not affect the rule that where a debt is due to a partnership or to several individuals jointly, they must all join as plaintiffs, and if they fail to do so, the objection may be raised to the proof (on the ground of a variance), under the general issue. *Smith v. Crichton*, 33 Md. 107. And see *Kent v. Holliday*, 17 Md. 387.

Where a suit is brought by H. S., "next friend" of J. S., the declaration may be amended so as to make H. S. and J. S. joint plaintiffs without amending the writ. *Condon v. Sprigg*, 78 Md. 333.

This section referred to in construing section 41—see notes thereto. *Wright v. Gilbert*, 51 Md. 153.

See notes to sections 35 and 37.

Ibid. sec. 39. 1888, art. 75, sec. 38. 1860, art. 75, sec. 27. 1856, ch. 112, sec. 30.

39. If there be a misjoinder or non-joinder of defendants, the court may allow a defendant to be stricken out or added, as the case may require; but if a new defendant be added, he shall be summoned and have the same time to plead as if a new action were brought against him.

Under this and the following section, the plaintiff is entitled in an action of replevin, to strike out a misjoined defendant. *Herzberg v. Sachse*, 60 Md. 434.

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.

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

See notes to sections 35, 37 and 38.