

1904, art. 75, sec. 40. 1888, art. 75, sec. 39. 1860, art. 75, sec. 28.  
1856, ch. 112, secs. 26-30.

40. Amendments for misjoinder or non-joinder of either plaintiffs or defendants may be made at any time before the jury retire to make up their verdict, or before judgment given on demurrer, or other trials before the court, as the case may be; and the court may grant such continuances and may award such costs against the party making the amendment as may be deemed just and reasonable.

As to costs, see also, sec. 45.

See notes to sections 35, 37, 38, 39 and 44.

Ibid. sec. 41. 1888, art. 75, sec. 40. 1860, art. 75, sec. 29.  
1856, ch. 112, secs. 26-30.

41. In amendments for non-joinder or misjoinder entire new parties, either plaintiffs or defendants, can not be introduced, but some one of the original plaintiffs and some one of the original defendants must remain parties to the action; and in no case of amendment can entire new parties, either plaintiffs or defendants, be made.

No amendment can be made by which a party becomes the sole plaintiff in a new and distinct capacity from that in which he appeared as plaintiff prior to the amendment. *Wright v. Gilbert*, 51 Md. 153; *Fidelity Co. v. Singer*, 94 Md. 131.

This section construed in connection with section 35—see notes thereto. *B. & O. R. R. Co. v. State*, 62 Md. 481.

See notes to sections 35 and 37.

Ibid. sec. 42. 1888, art. 75, sec. 41. 1860, art. 75, sec. 30.  
1785, ch. 80, sec. 1.

42. Where an heir at law or devisee has been omitted as a defendant, the plaintiff may amend by making such heir or devisee a party and such proceedings shall be had as will produce a fair trial.

See notes to sections 35 and 37.

Ibid. sec. 43. 1888, art. 75, sec. 42. 1860, art. 75, sec. 31.  
1852, ch. 177, sec. 11.

43. Nothing in the preceding sections of this article relating to amendments shall affect any plea of limitations, in abatement, to the jurisdiction or other dilatory plea.

Leave to amend the pleadings by filing a plea in abatement after pleas in bar, is properly refused unless the matter in abatement has arisen since the filing of the plea in bar, and then only if prompt action is taken. *Eschbach v. Bayley*, 28 Md. 495.

As to pleas in abatement, see sec. 24, sub-sec. 81, *et seq.*

See notes to sections 35 and 37, and sec. 24, sub-sec. 50.

Ibid. sec. 44. 1888, art. 75, sec. 43. 1860, art. 75, sec. 32. 1785, ch. 80,  
sec. 4. 1809, ch. 153, sec. 1.

44. Where an amendment is allowed after the jury is sworn and the court shall consider a continuance necessary to a fair trial of the cause a juror shall be withdrawn, but if the court considers that a continuance is not necessary to a fair administration of justice the jury may proceed and try the case after the amendment.