

The purpose of this section is the orderly and prompt dispatch of business. This section referred to in upholding a judgment of *non pros.* for failure to reply to a plea. *Marsh v. Johns*, 49 Md. 570. And see *Kent v. McEldery*, 9 Gill, 496.

No appeal lies from the refusal of the court to grant a continuance. *Hopkins v. State*, 53 Md. 517; *Universal, etc., Co. v. Bachus*, 51 Md. 32; *Miller v. Miller*, 41 Md. 624; *Cumberland, etc., Co. v. McKaig*, 27 Md. 267.

1904, art. 75, sec. 59. 1888, art. 75, sec. 57. 1860, art. 75, sec. 35.
1787, ch. 9, secs. 2, 3, 8.

59. Upon suggestion, supported by the affidavit of the party or some other credible person, that the evidence of a witness who resides in some place beyond the limits of this State, or the evidence of a witness residing within this State is wanting, the court shall continue the cause for such time as may be deemed necessary to enable the party to procure the attendance or obtain the testimony of such absent witness; provided, the party applying for the continuance shall comply with the provisions of the two following sections.

Ibid. sec. 60. 1888, art. 75, sec. 58. 1860, art. 75, sec. 36.
1787, ch. 9, secs. 2, 3.

60. The party applying for a continuance under the preceding section shall prove by his affidavit, or the affidavit of some other credible person to be filed in the cause, that the testimony of the absent witness (naming him) is material, competent and proper in such suit; that he believes that the cause cannot be tried with justice to the party without such evidence; that he has used his proper and reasonable endeavors to procure the same and that he has a reasonable expectation and belief that the same can thereafter be procured in some reasonable time.

Ibid. sec. 61. 1888, art. 75, sec. 59. 1860, art. 75, sec. 37.
1787, ch. 9, secs. 2, 3. 1886, ch. 311.

61. The court may examine on oath a party making the affidavit under the preceding section in regard to the materiality of the testimony, the probability of procuring the attendance of the witness in a reasonable time, and on what information or knowledge he believes the witness will prove what he alleges; and if, on such examination, the court is satisfied of the truth of the affidavit and that the testimony is material and competent, a continuance shall be granted, unless the adverse party will admit the facts which it is so alleged the absent witness will prove to be in evidence to the same effect as if said absent witness had testified thereto, saving, however, to the adverse party the same right to impeach or contradict said testimony as if said witness had been present.

The affidavit should state all the material facts which the absent witness would prove, those unfavorable as well as those favorable, to the affiant's case. Power of the court under this section. Continuance properly refused. *Dean v. Turner*, 31 Md. 57. And see *McMechen v. McLaughlin*, 4 H & McH. 167.

Where the adverse party goes to trial upon an admission of what a witness would prove, he is concluded as to the matter of the affidavit or statement, and can not dispute its truth at the trial. This section does not, however, dispense with the rule that the *allegata* and *probata* must correspond. *Bryan v. Coursey*, 3 Md. 66.