

1904, art. 75, sec. 62. 1888, art. 75, sec. 60. 1860, art. 75, sec. 38.
1787, ch. 9, secs. 5, 6.

62. Where a new trial is granted, or a commission shall issue for the taking of testimony, or where a judgment shall be set aside for fraud or irregularity, the court may continue the cause so long as they shall deem necessary for a trial of the same on its merits.

The power to set aside judgments for fraud, surprise, etc., is a common law power. This section assumes that such power resides in the courts. *Craig v. Wroth*, 47 Md. 283. And see *Johnson v. Lemmon*, 37 Md. 345; *Taylor v. Sindall*, 34 Md. 40; *Kemp v. Cook*, 18 Md. 137.

In acting upon an application for relief for reasons mentioned in this section, the court exercises a *quasi* equitable power according to the facts and circumstances of the case. *Waters v. Engle*, 53 Md. 182; *Montgomery v. Murphy*, 19 Md. 580.

This section referred to in deciding that during the term at which a judgment is rendered, it is under the control of the court, and may be stricken out for fraud or irregularity. *King v. Hicks*, 32 Md. 463.

This section shows the power of the court to strike out an interlocutory decree or judgment, on the ground of surprise. *Hall v. Sewell*, 9 Gill, 155.

Where a judgment is entered on Sunday, procedure should be taken under this section to strike it out for such irregularity. *Ecker v. First National Bank*, 62 Md. 523; *Bridendolph v. Zeller*, 5 Md. 63. And see *Bridendolph v. Zeller*, 3 Md. 334.

This section does not apply where the reason for opening a case is that the verdict was against the evidence or that the defendant was not present at the inquisition. *Green v. Hamilton*, 16 Md. 330.

Where a judgment is stricken out, the court must order regular continuances under this section, and an appeal lies for a failure so to do. *Munikhuyson v. Dorsett*, 2 H. & G. 379. And see *State v. Cox*, 2 H. & G. 382.

Where a party has the right to proceed under the act of 1787, ch. 9, and does so, the judgment being against him, is conclusive, and an injunction restraining the execution of the judgment will not be granted. *Gardner v. Jenkins*, 14 Md. 62.

Held that a decree for the plaintiff should be revoked upon the payment of the costs by the defendant. *Burch v. Scott*, 1 Bl. 129.

Cited but not construed in *Bond v. Citizens' Bank*, 65 Md. 499; *Raub v. Carpenter*, 187 U. S. 162.

Ibid. sec. 63. 1888, art. 75, sec. 61. 1860, art. 75, sec. 39.
1787, ch. 9, sec. 7.

63. Where a party to a suit dies and new parties are made or to be made, the court may continue the case so long as may be deemed necessary for the due administration of justice, not exceeding the end of the fourth term after the death is suggested, unless by consent of parties, or testimony or plats are wanting.

This section referred to in upholding a suit against a party who was at the time deceased, where his administrators appeared to the action. *Young v. Citizens' Bank*, 31 Md. 70.

Ibid. sec. 64. 1888, art. 75, sec. 62. 1860, art. 75, sec. 40.
1785, ch. 80, sec. 2. 1888, ch. 116.

64. Where a party in any action to recover lands, or in which the title thereof is involved, shall die and the proper person to be made a party in place of the person so dying shall be an infant, such action shall not abate or be suspended until the infant or infants attain full age of twenty-one years; but the actual guardian may and shall be made a party to prosecute or defend, and if there be no actual guardian the court, on the motion of any party to the suit, shall appoint a guardian