

**Who may remove.**

The right of removal resides in the parties plaintiff or defendant, and not in each of several plaintiffs or defendants, the word "parties" being used in a collective sense. *Baltimore County v. United Rys. Co.*, 99 Md. 87; *Cooke v. Cooke*, 41 Md. 369; *State v. Gare*, 32 Md. 499.

A "next friend" is a party within the meaning of this section, and capable of making the suggestion of removal. *Thomas v. Safe Deposit Co.*, 73 Md. 461; *Deford v. State*, 30 Md. 198.

**Criminal cases not punishable by death.**

In criminal cases other than those punishable by death, in the absence of proof that the lower court acted arbitrarily and abused, or refused to exercise the discretion vested in it, its action will not be reversed. Proof held insufficient. Affidavits, Newspaper comments. *Downs v. State*, 111 Md. 246.

The act of 1874, ch. 364 (amending article 4, section 8, of the Maryland constitution) held applicable where it was in force when a traverser's suggestion of removal was filed, although it was not in force when he was indicted. The requirements of this section not having been complied with, the traverser was not entitled to a removal. *Smith v. State*, 44 Md. 533. And as to the application of the act of 1868, ch. 180 see *Price v. Nesbitt*, 29 Md. 266.

**Generally.**

Where a party complies with the conditions prescribed by this section, the court (in all civil cases and in criminal cases punishable by death), has no discretion in the matter of ordering the removal, and subsequent proceedings are *coram non judice*. *Griffin v. Leslie*, 20 Md. 18.

An order removing or refusing to remove a case, civil or criminal, if punishable by death, finally adjudicates a constitutional right and an appeal or writ of error may be immediately prosecuted. The state may remove a criminal case upon an affidavit made by the state's attorney, and the removal may be made at any time before the panel of jurors is completed by being sworn. *McMillan v. State*, 68 Md. 309. And see *Griffin v. Leslie*, 20 Md. 19; *Price v. State*, 8 Gill, 297; *Kimball v. Harmon*, 34 Md. 402.

The right of removal should be brought before the court of appeals by petition assigning errors, and not by bill of exceptions. *Smith v. State*, 44 Md. 533; *McMillan v. State*, 68 Md. 309.

It is within the discretion of the court to direct the removal of a case to another court either within or without the same circuit. The removal of a case from the court of common pleas to the superior court of Baltimore city is a removal "to some other court". *Weiskittle v. State*, 58 Md. 156; *DeMurgiondo v. Frazier*, 63 Md. 95. And see *Atlantic, etc., Co. v. Maryland, etc., Co.*, 64 Md. 304.

The right of removal may be waived, and an agreement by a party not to remove a case in consideration of a promise by the other party not to press it to trial at a certain term, prevents a removal at any subsequent term, unless there should be some new cause for removal. *Caledonian, etc., Co. v. Traub*, 86 Md. 93. And see *Seth v. Chamberlaine*, 41 Md. 194. *Cf.* *Biscoe v. State*, 68 Md. 294.

The court in which the action was originally instituted retains jurisdiction until that of the court to which the case is removed, attaches upon receipt of the transcript, and the former court has power to determine what constitutes the record and to enforce the execution of the order of removal. When the order of removal need not be signed by the judges of the court. *Seth v. Chamberlain*, 41 Md. 194. And see *Manly v. State*, 7 Md. 147. *Cf.* *Biscoe v. State*, 68 Md. 294.

A case can not be tried before the court without a jury without the consent of both parties, and such consent should appear, upon appeal, by the record. A suggestion for removal stating that "the parties believe they can not have a fair, etc.," not passed upon as to its validity, but criticised. *Desche v. Gies*, 56 Md. 137.

The same party can not remove a case twice. *Cooke v. Cooke*, 41 Md. 367; *Price v. State*, 8 Gill, 296.

An order for the removal of a case to a court which has no existence, is void and leaves the case pending as if there had been no order of removal.