

**Generally.**

The act of 1864, ch. 109, held not to apply to any cases "except those of witnesses testifying under oath and subject to the test of cross-examination." In other respects, it did not change the common law rules of evidence. *Romer v. Jaecksch*, 39 Md. 591; *Friend v. Hamill*, 34 Md. 307.

The act of 1864, ch. 109, held not to change the practice whereby, if a plaintiff in an action of tort fails to make out a case against one or more of the defendants, such defendants are entitled to a verdict at once before the defence is gone into. *Brinkley v. Platt*, 40 Md. 531.

A defect in an affidavit made under section 43 of article 37 of the code of 1860—see section 49—held not to be cured by the act of 1864, ch. 109. *Ward v. Leitch*, 30 Md. 334.

This section referred to in construing section 3—see notes thereto. *South Baltimore, etc., Co. v. Muhlbach*, 69 Md. 401; *Bowie v. Bowie*, 77 Md. 312; *Biggs v. McCurley*, 76 Md. 411; *Whitridge v. Whitridge*, 76 Md. 76; *Robertson v. Mowell*, 66 Md. 532; *Hardy v. Chesapeake Bank*, 51 Md. 596; *First National Bank v. Eccleston*, 48 Md. 163 (dissenting opinion); *Graves v. Spedden*, 46 Md. 538; *Sanborn v. Lang*, 41 Md. 115; *Miller v. Motter*, 35 Md. 432; *Johnson v. Heald*, 33 Md. 368; *Schull v. Murray*, 32 Md. 17.

This section referred to in construing section 4—see notes thereto. *Davis v. State*, 38 Md. 45. (And see dissenting opinion, p. 57.)

As to the law prior to the act of 1864, ch. 109 (the evidence act), see *Bowman v. Little*, 101 Md. 319; *Semmes v. Worthington*, 38 Md. 324; *Downes v. Maryland and Delaware R. R. Co.*, 37 Md. 101; *Williams v. Brailsford*, 25 Md. 144; *Cunningham v. Dwyer*, 23 Md. 232.

Cited but not construed in *Gambrill v. Parker*, 31 Md. 5.

See sec. 6.

See art. 23, sec. 139.

1904, art. 35, sec. 2. 1896, ch. 249.

2. No person engaged in, connected with or employed on a newspaper or journal shall be compelled to disclose, in any legal proceeding or trial or before any committee of the legislature or elsewhere, the source of any news or information procured or obtained by him for and published in the newspaper on and in which he is engaged, connected with or employed.

*Ibid.* sec. 3. 1888, art. 35, sec. 2. 1860, art. 37, sec. 2. 1864, ch. 109, sec. 2. 1868, ch. 116. 1876, ch. 222. 1888, ch. 315. 1902, ch. 495. 1904, ch. 661.

3. In actions or proceedings by or against executors, administrators, heirs, devisees, legatees or distributees of a decedent as such, in which judgments or decrees may be rendered for or against them, and in proceedings by or against persons incompetent to testify by reason of mental disability, no party to the cause shall be allowed to testify as to any transaction had with, or statement made by the testator, intestate, ancestor or party so incompetent to testify, either personally or through an agent since dead, lunatic or insane, unless called to testify by the opposite party, or unless the testimony of such testator, intestate, ancestor or party incompetent to testify shall have already given in evidence, concerning the same transaction or statement, in the same cause, on his or her own behalf or on behalf of his or her representative in interest; nor shall it be competent, in any case, for any party to the cause who has been examined therein as a witness, to corroborate his testimony when impeached by proof of his own declaration or statement made to third persons out of the presence and hearing of the adverse