

stricken out (changed by a local law in Baltimore city). *Desche v. Giles*, 56 Md. 137.

Any party capable of being sued and of appearing in person or by attorney, may assent to the submission of a case to a court without a jury; hence such assent of an attorney for a lunatic is binding. *Cross v. Kent*, 32 Md. 584.

This section referred to in upholding certain rules of the circuit court for Prince George's county dealing with jury and non-jury cases. *Gambrill v. Parker*, 31 Md. 5.

Removal of cases.

The act of 1874, ch. 94, providing that the order of removal might be struck out unless the party making the suggestion pays the cost of the record within sixty days after such order and causes the record to be transmitted within the same period, held unconstitutional under this section. Intent of this section; it has been liberally construed. *Hoyer v. Colton*, 43 Md. 422. And see *Knee v. City Passenger Ry. Co.*, 87 Md. 632.

Where a first trial miscarries because of the failure of the jury to agree, the case may be removed at any time before the jury is sworn at the second trial. Where a case has been removed, it will not be remanded because the affidavit for removal was made by the next friend of the infant suing in the name of the state; a next friend is a "party" within the meaning of this section. *Deford v. State*, use *Keyser*, 30 Md. 196.

Since the amendment of 1874, ch. 364, a party making affidavit of removal has not the right to elect that the case shall be sent to some court in a different circuit; the matter is within the discretion of the court from which the case is removed. 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" within the meaning of this section. *De Murgiondo v. Frazier*, 63 Md. 95; *Weiskittle v. State*, use of *Samuel*, 58 Md. 155.

This section confers a discretion upon the court to which application for removal is made as to the court to which the case shall be sent. Discretion held not to have been abused. *Blick v. Cockins*, 131 Md. 628.

This section gives the circuit court no power to remove causes pending on appeal. *Charles County v. Wilmer*, 131 Md. 181.

An equity cause may not be removed to another equity court under this section. Act of 1920, ch. 425, sec. 322A, directing the removal of equity cases in Baltimore city, is in violation of sec. 32 of this art. 4. *Wilmer v. Savings & Bldg. Assn.*, 141 Md. 241.

A case may not be removed after a judgment by default has been entered, or pending the action of the court on a motion for judgment by default. *Schaible v. Home Ins. Co.*, 132 Md. 682.

This section referred to in holding that art. 5, sec. 27 of the Code does not apply to criminal prosecutions, nor does it show an intention to enlarge the right of removal. History of this section; classification of cases therein. *Fountain v. State*, 135 Md. 89.

Where a case is removed from one court of Baltimore city to another, the fact that it may come to trial before the same judge is immaterial, since the object of the constitutional right of removal was to enable parties to get rid of any local prejudice which might affect a jury. *Chappel Chemical, etc., Co. v. Sulphur Mine Co.*, 85 Md. 684.

The jurisdiction of the court is not ousted by the suggestion and affidavit of removal; it may be withdrawn and the case proceeded with at any time before the order of removal is passed. *Manly v. State*, 7 Md. 146.

The right of removal of a case can be surrendered or waived; such right held to have been waived. *Caledonian Fire Co. v. Traub*, 86 Md. 93.

A case pending in the circuit court on appeal from a justice of the peace may not be removed under this section. *Hoshall v. Hoffacker*, 11 Md. 363; *Geekie v. Harbour*, 52 Md. 461.

Proceedings for the forfeiture of corporate franchises for abuse, etc., held not to be removable under this section—see art. 23, sec. 98, of the An. Code, *et seq.* *Bel Air Social, etc., Club v. State*, 74 Md. 300.

This section does not embrace issues framed at the instance of a creditor in insolvency proceedings. *Trayhern v. Hamill*, 53 Md. 91.

Where a case is removed from Baltimore city to Baltimore county, this section (as it stood in the Constitution of 1851) is compiled with. Design of this section; it will be construed liberally. *Wright v. Hammer*, 5 Md. 375. And see *State v. Shillingen*, 6 Md. 450; *Griffin v. Leslie*, 20 Md. 18; *Price v. Nesbit*, 29 Md. 266.