

The sufficiency of an affidavit that the "parties believe they can not have a fair, etc., trial," not passed on. *Desche v. Gies*, 56 Md. 137.

There is no right of removal in condemnation proceedings; when application for removal (even if it otherwise could be granted) comes too late. *Baltimore v. Kane*, 125 Md. 136.

Criminal cases.

Since the amendment of 1874, ch. 364, the courts are given the discretion in criminal cases other than those punishable by death, to order the removal of a case; hence in the absence of evidence to show that the court acted arbitrarily and abused or refused to exercise such discretion, the case will not be reversed. The real question is not whether the court of appeals would have been satisfied that a fair trial could not be had in the court of original jurisdiction, but whether there has been an abuse by that court of the discretion given it by the Constitution. Newspaper clippings and affidavits held not to show conclusively or by positive evidence that the lower court abused its discretion. History and purpose of this section. *Downs v. State*, 111 Md. 241.

The portion of this section providing for the removal of criminal cases means that when the case is to be tried on the presentment and there is a suggestion for removal, the record of proceedings in such *presentment* are transmitted, etc. The section referred to in deciding that a valid presentment is the commencement of a prosecution within meaning of our statute of limitations applicable to prosecutions for misdemeanors—see art. 57, sec. 11, of the An. Code. *State v. Kiefer*, 90 Md. 174.

The state may remove a criminal case under this section, and the state's attorney is the proper person to make the affidavit. The removal may be made at any time before the jurors are sworn. An order removing or refusing to remove a case, civil or criminal, finally adjudicates a constitutional right and an appeal or writ of error may be immediately prosecuted; such an order can not be made the subject of a bill of exceptions. *McMillan v. State*, 68 Md. 309. And see *Smith v. State*, 44 Md. 533; *Griffin v. Leslie*, 20 Md. 19.

This section as amended by the act of 1874, ch. 364, held to apply where a traverser was indicted prior to its adoption, the affidavit for removal being made after the amendment went into effect. *Smith v. State*, 44 Md. 533.

The act of 1821, ch. 244, directing the removal of criminal cases from Baltimore city to Baltimore county and from Baltimore county to Baltimore city, held invalid under this section. Intent of this section. *State v. Dashiell*, 6 H. & J. 269.

Where an offence may be punishable by death, either of the parties to the indictment is entitled to a removal as a matter of right; appeal. Where, however, the offence is not punishable by death, the right to a removal only exists where the trial court determines in its discretion that the suggestion is true or that there is reasonable ground for same; appeal; when only action of lower court will be reversed. *Tidewater Port. Cement Co. v. State*, 122 Md. 98

Generally.

An appeal lies from the action of the court in striking out a judgment solely upon the ground that the court had no jurisdiction, although the motion is made during the term at which the judgment was rendered. This section, as it stood before the amendment of 1874, ch. 364, dealt with *Kimball v. Harman*, 34 Md. 403.

The amendment to this section proposed by the act of 1874, ch. 364, and the fact that said act was not set out *verbatim* on the journals, referred to in upholding an amendment to art. 7, sec. 1—see notes thereto and to art. 14, sec. 1. *Worman v. Hagan*, 78 Md. 164

This section referred to in deciding that there was no error in trying a traverser in the petit jury room instead of the court room. *Dutton v. State*, 123 Md. 388.

This section referred to in dealing with art. 4, sec. 39—see notes thereto. *City Passenger Ry. Co. v. Nugent*, 86 Md. 360.

See art. 4, sec. 39; art. 15, sec. 6, and notes to art. 4, sec. 7.

See art. 75, sec. 109, *et seq.*, An. Code.

See arts. 5 and 20 of the Declaration of Rights.

Sec. 9. The Judge or Judges of any Court may appoint such officers for their respective Courts as may be found necessary; and such officers of the Courts in the City of Baltimore shall be appointed by the Judges of the