

judgment, he may afterwards resort to the other form of action. *Bolton Mines Co. v. Stokes*, 82 Md. 63.

An amendment of affidavit before a notary, and the warrant of justice to clerk, in attachment cases, are not within purview of this section. (See art. 9, sec. 28.) *Halley v. Jackson*, 48 Md. 260.

The right of sheriff to amend his return and right of interested parties to have it amended is a common law right not dependent upon this section. *Main v. Lynch*, 54 Md. 669; *Berry v. Griffith*, 2 H. & G. 337.

This section referred to in deciding that limitations might be pleaded to an amended declaration. *Schulze v. Fox*, 53 Md. 43. *Cf. Western Union Tel. Co. v. State*, use *Nelson*, 82 Md. 306.

Permission to amend does not *per se* amount to an amendment. *Lohrfink v. Still*, 10 Md. 535.

Where a new trial is granted, the court has power to authorize an amendment of the pleadings. *Gordon v. Downey*, 1 Gill, 53.

This section referred to in deciding that an application for removal was too late *Adams Express Co. v. Trego*, 35 Md. 61.

This section referred to in overruling a motion in arrest of judgment. *Vernon v. Tucker*, 30 Md. 463.

This section is qualified by sec. 45. *Wright v. Gilbert*, 51 Md. 153.

For a case involving the effect of an amendment upon the liability of a bond given to dissolve an attachment, see *Furness v. Read*, 63 Md. 4.

This section referred to in construing sec. 48—see notes thereto. *Clagett v. Easterday*, 42 Md. 626.

This section referred to in construing sec. 153—see notes thereto. *Ritter v. Offutt*, 40 Md. 211.

For a case now apparently inapplicable to this section by reason of changes in the law, see *Stoddert v. Newman*, 7 H. & J. 256.

Cited but not construed in Washington, etc., *Steam Packet Co. v. Sickles*, 24 How. 333; *Lanasa v. Beggs*, 159 Md. 314.

Cited in *Thompson v. Sun Cab Co.*, 170 Md. 303; *Engle v. Fidelity & Guaranty Co.*, 175 Md. 185.

As to amendment of plats and certificates of survey in ejectment, see sec. 89.

As to amendments in equity, see art. 16, secs. 13 and 19.

As to amendments in attachment cases, see art. 9, sec. 28.

As to amendments in mechanics' lien cases, see art. 63, sec. 32.

As to amendments of writs of error, see art. 5, sec. 20. As to amendments in magistrate appeal cases, see art. 5, sec. 105.

See also secs. 34 and 45.

As to amendments in criminal cases, see art. 27, secs. 646 and 647.

An. Code, 1924, sec. 40. 1912, sec. 36. 1904, sec. 36. 1888, sec. 35. 1852, ch. 177, sec. 9.

40. No continuance shall be granted upon amendments of the plots, writs, or any of the proceedings, but the case shall proceed as if no amendment had been made, unless the court shall be satisfied that the ends of justice require a continuance.

Amendments which do not change the substance of issues may be made after jury is sworn, without withdrawing a juror. *Garrett v. Dickerson*, 19 Md. 449.

This section referred to in construing sec. 48—see notes thereto. *Clagett v. Easterday*, 42 Md. 626.

As to continuances, see also sec. 62, *et seq.*

See notes to secs. 39, 41 and 48.

An. Code, 1924, sec. 41. 1912, sec. 37. 1904, sec. 37. 1888, sec. 36. 1828, ch. 199. 1845, ch. 54. 1846, ch. 328. 1880, ch. 135.

41. No writ or action shall abate because of the misnomer of any plaintiff or defendant named therein, but the court, on suggestion, supported by the affidavit of the plaintiff or defendant or other proof to the satisfaction of the court that by mistake the plaintiff has sued in a wrong name or that the party summoned in virtue of said writ or action is, in fact, the party intended to be sued by such writ, or in such action, may at any time before judgment, direct the writ or any of the proceedings to be amended by inserting therein the true name of any plaintiff or defendant, at the discretion of the court; this section to apply to foreign attachments, cases against corporations, and all other suits and actions.