

original plaintiffs and some one of the original defendants must remain parties to the action; and in no case of amendment can entire new parties, either plaintiffs or defendants, be made.

Where suit brought against three individuals trading under firm name, plaintiff allowed to amend declaration, etc., by striking out one name and describing other two defendants as partners in firm of different name. *Christy v. Hammond*, 161 Md. 139. See notes to sec. 42.

Cited in *Thompson v. Sun Cab Co.*, 170 Md. 303.

Where caption of a petition appealing from award of commissioners for opening streets in a condemnation case is "A. by B. Next Friend *v. The Mayor*," etc., and the name of petitioner as stated in petition is "B.", and affidavit to petition is made by "B. as next friend," lower court may permit an amendment of petition so that it will read "A., Infant, by B., Next Friend." By such amendment this section is not violated. *Baltimore v. Yost*, 121 Md. 375.

Where a suit is brought against a railroad company on a cause of action originating during federal control, the railroad not being a proper party defendant, the declaration may not be amended by making the director general of railroads a party defendant. *Atkinson v. P., B. & W. R. R. Co.*, 137 Md. 636.

No amendment can be made by which a party becomes sole plaintiff in a new and distinct capacity from that in which he appeared as plaintiff prior to amendment. *Wright v. Gilbert*, 51 Md. 153; *Fidelity Co. v. Singer*, 94 Md. 131.

This section construed in connection with sec. 39—see notes thereto. *B. & O. R. R. Co. v. State*, 62 Md. 481.

See notes to secs. 39 and 41.

An. Code, 1924, sec. 46. 1912, sec. 42. 1904, sec. 42. 1888, sec. 41. 1785, ch. 80, sec. 1.

46. Where an heir at law or devisee has been omitted as a defendant, the plaintiff may amend by making such heir or devisee a party and such proceedings shall be had as will produce a fair trial.

See notes to secs. 39 and 41.

An. Code, 1924, sec. 47. 1912, sec. 43. 1904, sec. 43. 1888, sec. 42. 1852, ch. 177, sec. 11.

47. Nothing in the preceding sections of this article relating to amendments shall affect any plea of limitations, in abatement, to the jurisdiction or other dilatory plea.

Leave to amend pleadings by filing a plea in abatement after pleas in bar is properly refused unless matter in abatement has arisen since filing of the plea in bar, and then only if prompt action is taken. *Eschbach v. Bayley*, 28 Md. 495.

Cited but not construed in *Commercial Credit Corp. v. Schuck*, 151 Md. 372 (see notes to sec. 39).

As to pleas in abatement, see sec. 28, sub-sec. 81, *et seq.*

See notes to secs. 39 and 41, and sec. 28, sub-sec. 50.

An. Code, 1924, sec. 48. 1912, sec. 44. 1904, sec. 44. 1888, sec. 43. 1785, ch. 80, sec. 4. 1809, ch. 153, sec. 1.

48. Where an amendment is allowed after the jury is sworn and the court shall consider a continuance necessary to a fair trial for the cause a juror shall be withdrawn, but if the court considers that a continuance is not necessary to a fair administration of justice the jury may proceed and try the case after the amendment.

The matter of granting a continuance is within discretion of trial court, and is not subject of appeal. *Clagett v. Easterday*, 42 Md. 626; *Adams Express Co. v. Trego*, 35 Md. 59.

See notes to secs. 39, 40 and 41.

An. Code, 1924, sec. 49. 1912, sec. 45. 1904, sec. 45. 1888, sec. 44. 1785, ch. 80, sec. 4. 1809, ch. 153, sec. 1.

49. In all cases of amendment the allowance of costs shall be in the discretion of the court.

Cited but not construed in *Lanasa v. Beggs*, 159 Md. 314.

As to costs, see also sec. 44.

See notes to secs. 39 and 41.