An. Code, 1924, sec. 65. 1912, sec. 61. 1904, sec. 61. 1888, sec. 59. 1787, ch. 9, secs. 2, 3. 1886, ch. 311.

65.   The court may examine on oath a party making the affidavit under the preceding section in regard to the materiality of the testimony, the probability of procuring the attendance of the witness in a reasonable time, and on what information or knowledge he believes the witness will prove what he alleges; and if, on such examination, the court is satisfied of the truth of the affidavit and that the testimony is material and competent, a continuance shall be granted, unless the adverse party will admit the facts which it is so alleged the absent witness will prove to be in evidence to the same effect as if said absent witness had testified thereto, saving, however, to the adverse party the same right to impeach or contradict said testimony as if said witness had been present.

The affidavit should state all material facts which absent witness would prove, those unfavorable as well as those favorable, to affiant's case. Power of court under this section. Continuance properly refused. Dean v. Turner, 31 Md. 57. And see McMechen v. McLaughlin, 4 H. & McH. 167.

Where adverse party goes to trial upon an admission of what a witness would prove, he is concluded as to the matter of affidavit or statement, and cannot dispute its truth at trial. This section does not, however, dispense with the rule that *allegata* and *probata* must correspond. Bryan v. Coursey, 3 Md. 66.

See notes to sec. 63.

An. Code, 1924, sec. 66. 1912, sec. 62. 1904, sec. 62. 1888, sec. 60. 1787, ch. 9, secs. 5, 6.

66.   Where a new trial is granted, or a commission shall issue for the taking of testimony, or where a judgment shall be set aside for fraud or irregularity, the court may continue the cause so long, as they shall deem necessary for a trial of the same on its merits.

The power to set aside judgments for fraud, surprise, etc., is a common law power.

This section assumes that such power resides in courts. Craig v. Wroth, 47 Md. 283. And see Johnson v. Lemmon, 37 Md. 345; Taylor v. Sindall, 34 Md. 40; Kemp v. Cook, 18 Md. 137.

In acting upon an application for relief for reasons mentioned in this section, the court exercises a *quasi* equitable power according to facts and circumstances of case. Waters v. Engle, 53 Md. 182; Montgomery v. Murphy, 19 Md. 580.

This section referred to in deciding that during term at which a judgment is rendered, it is under control of court, and may be stricken out for fraud or irregularity. King v. Hicks, 32 Md. 463.

This section shows the power of the court to strike out an interlocutory decree or judgment, on the ground of surprise. Hall v. Sewell, 9 Gill, 155.

Where a judgment is entered on Sunday, procedure should be taken under this section to strike it out for such irregularity. Ecker v. First National Bank, 62 Md. 523; Bridendolph v. Zeller, 5 Md. 63. And see Bridendolph v. Zeller, 3 Md. 334.

This section does not apply where reason for opening a case is that verdict was against evidence or that defendant was not present at inquisition. Green v. Hamilton, 16 Md. 330.

Where a judgment is stricken out, court must order regular continuances under this section, and appeal lies for failure so to do. Munnikhuyson v. Dorsett, 2 H. & G. 379. And see State v. Cox, 2 H. & G. 382.

Where party has the right to proceed under act of 1787, ch. 9, and does so, judgment being against him is conclusive, and an injunction restraining execution of judgment will not be granted. Gardner v. Jenkins, 14 Md. 62.

Held that a decree for the plaintiff should be revoked upon the payment of the costs by the defendant. Burch v. Scott, 1 Bl. 129.

Cited but not construed in Bond v. Citizens' Bank, 65 Md. 499; Raub v. Carpenter, 187 U. S. 162.

An. Code, 1924, sec. 67. 1912, sec. 63. 1904, sec. 63. 1888, sec. 61. 1787, ch. 9, sec. 7.

67.   Where a party to a suit dies and new parties are made or to be made, the court may continue the case so long as may be deemed necessary for the due administration of justice, not exceeding the end of the fourth