

Generally.

There is no right of removal in a proceeding for a writ of mandamus. *Baltimore v. Libowitz*, 159 Md. 28.

The filing of an affidavit by plaintiff in an action for slander, in support of motion by him for removal, stating that he could not have fair and impartial trial before the judge on the ground that the judge had, in a previous trial, improperly aided his son, as counsel for the son's father-in-law, who was defendant in action for slander, held to constitute contempt of court. Denying intention to commit contempt cannot relieve person of liability therefor. *Ex parte Bowles*, 164 Md. 318.

This section referred to in construing Art. 4, Sec. 8 of Md. Constitution. *State v. Cobourn*, 169 Md. 113.

Where a party complies with the conditions prescribed by this section, the court (in all civil cases and in criminal cases punishable by death), has no discretion in matter of ordering removal, and subsequent proceedings are *coram non judge*. *Griffin v. Leslie*, 20 Md. 18.

An order removing or refusing to remove a case, civil or criminal, if punishable by death, finally adjudicates a constitutional right and an appeal or writ of error may be immediately prosecuted. The state may remove a criminal case upon an affidavit made by state's attorney, and removal may be made at any time before panel of jurors is completed by being sworn. *McMillan v. State*, 68 Md. 309. And see *Griffin v. Leslie*, 20 Md. 19; *Price v. State*, 8 Gill, 297; *Kimball v. Harmon*, 34 Md. 402.

Right of removal should be brought before court of appeals by petition assigning errors, and not by bill of exceptions. *Smith v. State*, 44 Md. 533; *McMillan v. State*, 68 Md. 309.

It is within discretion of court to direct removal of case to another court either within or without the same circuit. Removal of case from court of common pleas to superior court of Baltimore City is a removal "to some other court." *Weiskittle v. State*, 58 Md. 156; *Demurgiondo v. Frazier*, 63 Md. 95. And see *Atlantic, etc., Co. v. Maryland, etc., Co.*, 64 Md. 304.

Right of removal may be waived, and an agreement by a party not to remove a case in consideration of a promise by other party not to press it to trial at a certain term prevents a removal at any subsequent term, unless there should be some new cause for removal. *Caledonian, etc., Co. v. Traub*, 86 Md. 93. And see *Seth v. Chamberlaine*, 41 Md. 194. *Cf. Biscoe v. State*, 68 Md. 294.

The court in which the action was originally instituted retains jurisdiction until that of court to which case is removed attaches upon receipt of transcript, and former court has power to determine what constitutes record and to enforce execution of order of removal. When order of removal need not be signed by judges of court. *Seth v. Chamberlaine*, 41 Md. 194. And see *Manly v. State*, 7 Md. 147. *Cf. Biscoe v. State*, 68 Md. 294.

A case cannot be tried before court without a jury without consent of both parties, and such consent should appear, upon appeal, by the record. A suggestion for removal stating that "the parties believe they cannot have a fair, etc.," not passed upon as to its validity, but criticised. *Desche v. Gies*, 56 Md. 137.

The same party cannot remove a case twice. *Cooke v. Cooke*, 41 Md. 367; *Price v. State*, 8 Gill, 296.

An order for removal of a case to a county which has no existence is void and leaves case pending as if there had been no order of removal. *State v. Manly*, 1 Md. 141. *Cf. Stewart v. State*, 1 Md. 129; *Biscoe v. State*, 68 Md. 294.

Purpose of this section; it has been liberally construed. *Hayer v. Colton*, 43 Md. 422; *Cooke v. Cooke*, 41 Md. 368; *Price v. Nesbitt*, 29 Md. 266; *Gardner v. State*, 25 Md. 152; *Griffin v. Leslie*, 20 Md. 18.

As to the removal of a case from a state court to a United States court, see *Adams Express Co. v. Trego*, 35 Md. 47 and note (b).

For a note reviewing the authorities on the removal of cases, see *Wright v. Hamner*, 5 Md. 370.

For a case dealing with this section as it stood prior to act of 1874, ch. 364, and now apparently inapplicable by reason of said act, see *Kimball v. Harman*, 34 Md. 401.

For cases construing this section as it stood prior to acts of 1874, ch. 364, and 1868, ch. 180, see *Trayhern v. Hamill*, 53 Md. 91; *Gardner v. State*, 25 Md. 146; *Griffin v. Leslie*, 20 Md. 18; *Raab v. State*, 7 Md. 483; *State v. Shillinger*, 6 Md. 449; *Wright v. Hamner*, 5 Md. 370; *Negro Jerry v. Townshend*, 2 Md. 274; *Stewart v. State*, 1 Md. 129; *Price v. State*, 8 Gill, 295; *Peters v. Van Lear*, 4 Gill, 262; *Cromwell v. State*, 12 G. & J. 257; *Oliver v. Palmer*, 11 G. & J. 144; *State v. Dashiell*, 6 H. & J. 269; *Queen v. Neale*, 3 H. & J. 158.

Cited but not construed in *Worman v. Hagan*, 78 Md. 164.

As to removal of cases from courts of law to courts of equity, see sec. 124. As to case removed upon question reserved for court in *banc*, see sec. 132. As to removal of a case ordered by court of appeals, see art. 5, sec. 27. As to costs in removed cases, see art. 24, sec. 1, *et seq.*

See art. 4, sec. 8, Md. Constitution.