

A case may not be removed after a judgment by default has been entered, or pending the action of the court on a motion for judgment by default. *Schaible v. Home Ins. Co.*, 132 Md. 682.

This section referred to in holding that art. 5, sec. 27 of the Code does not apply to criminal prosecutions, nor does it show an intention to enlarge the right of removal. History of this section; classification of cases therein. *Fountain v. State*, 135 Md. 89.

Where a case is removed from one court of Baltimore city to another, the fact that it may come to trial before the same judge is immaterial, since the object of the constitutional right of removal was to enable parties to get rid of any local prejudice which might affect a jury. *Chappel Chemical, etc., Co. v. Sulphur Mine Co.*, 85 Md. 684.

The jurisdiction of the court is not ousted by the suggestion and affidavit of removal; it may be withdrawn and the case proceeded with at any time before the order of removal is passed. *Manly v. State*, 7 Md. 146.

The right of removal of a case can be surrendered or waived; such right held to have been waived. *Caledonian Fire Co. v. Traub*, 86 Md. 93.

A case pending in the circuit court on appeal from a justice of the peace may not be removed under this section. *Hoshall v. Hoffacker*, 11 Md. 363; *Geekie v. Harbourd*, 52 Md. 461.

Proceedings for the forfeiture of corporate franchises for abuse, etc., held not to be removable under this section—see art. 23, sec. 104, of the An. Code, *et seq.* *Bel Air Social, etc., Club v. State*, 74 Md. 300.

This section does not embrace issues framed at the instance of a creditor in insolvency proceedings. *Trayhern v. Hamill*, 53 Md. 91.

Where a case is removed from Baltimore city to Baltimore county, this section (as it stood in the Constitution of 1851) is complied with. Design of this section; it will be construed liberally. *Wright v. Hammer*, 5 Md. 375. And see *State v. Shillingen*, 6 Md. 450; *Griffin v. Leslie*, 20 Md. 18; *Price v. Nesbit*, 29 Md. 266.

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.

In view of this section, action of lower court in refusing to remove case will be affirmed in absence of evidence of arbitrary action, or abuse of, or refusal to exercise, discretion. *Allers v. State*, 144 Md. 78.

There is no right of removal in a proceeding for a writ of mandamus. *Baltimore v. Libowitz*, 159 Md. 29.

This section cited in *Lee v. State*, 161 Md. 432.

Pleas attacking propriety of proceedings in grand jury room not required to be filed in court before removal of case to another jurisdiction. *Coblentz v. State*, 164 Md. 563.

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.