

Id s 35
1789, c 9, ss.
2, 3, 8
Continuance for
absence of
witness
31 Md 52,
35 Md 48

97. Upon suggestion, supported by the affidavit of the party, or some other credible person, that the evidence of a witness is wanting who resides in some place beyond the limits of this State, or the evidence of a witness residing within this State, the court shall continue the cause for such time as may be deemed necessary to enable the party to procure the attendance or obtain the testimony of such absent witness; *provided*, the party applying for the continuance shall comply with the provisions of the two following sections.

Id s 36
1787, c 9, ss 2, 3
Affidavit

98. The party applying for a continuance under the preceding section, shall prove by his affidavit, or the affidavit of some other credible person, to be filed in the cause, that the testimony of the absent witness (naming him) is material, competent, and proper in such suit; that he believes that the cause cannot be tried with justice to the party without such evidence; that he has used his proper and reasonable endeavors to procure the same, and that he has a reasonable expectation and belief that the same can thereafter be procured in some reasonable time.

Id s 37
1787, c 9, ss 2, 3
Court may
examine party
making
affidavit.

99. The court may examine, on oath, a party making the affidavit under the preceding section, as it regards 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, a continuance shall be granted, unless the adverse party will admit the truth of the facts which it is so alleged the absent witness will prove.

Id s 38
1787, c 9, ss 5, 6
In what cases
continuance
discretionary
16 Md 318, 18
Md 130, 19 Md.
580, 82 Md 460,
37 Md 346, 39
Md 258, 47 Md.
282

100. 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.

Id s 39
1787, c 9, s 7
Continuance on
suggestion of
death.
31 Md 66

101. 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 court after the death is suggested, unless by consent of parties, or testimony or plats are wanting.

Id s 40
1785, c 80, s 2
Continuance
during infancy
of new party,
heir

102. Where a party in any action brought to recover lands, or in which the title thereof is involved, shall die, and the proper person to be made a party in the place of the person so dying, shall be an infant, such action shall not be tried during such infancy, unless the guardian or next friend of such infant satisfy the court that it will be for the benefit of the infant to have the action tried during his infancy, but the action may be continued until the infant arrives at age.

Id s 41
1785, c 80, s 2.
Infant entitled
by purchase to
same continu-
ance as heir

103. If any infant is entitled to lands by purchase, he shall not be obliged to answer any suit or action, except in cases where the heir would be bound by law to answer.