original writ was no further amendable under the Acts of 1785, ch. 80, and 1809, ch. 153, Stoddard v. Newman, 7 H. & J. 251; State v. Green, 4 G. & J. 381; Berry v. Harper, 4 G. & J. 467; Booth v. Hall, 6 Md. 1. But by that Act it is provided that writs may be amended so that the case may be tried on its real merits, (see Wilkin v. Read, 15 C. B. 192) and may be amended from one form of action to another when the purposes of justice require it, and any amendment may be made at any time before the jury retire to make up their verdict, or in cases of demurrer, or trials before the Court, at any time before judgment. Under this Act a writ was amended from covenant to assumpsit in Balt. Fire Ins. Co. v. McGowan, 16 Md. 47, the jury being sworn after the amendment.[10] And it was held in Garrett v. Dickerson, 19 Md. 418, that amendments, which did not change the substance of the issues, might be made after the jury was sworn.[11] But the
238 Act seems confined to *amendments before judgment. Provision is made in the same Article in succeeding sections for the amendment of misnomer of the defendant[12] in the writ or action, and for nonjoinder or

---

when suit was brought. Hamburger v. Paul, 51 Md. 219; Schulze v. Fox, 53 Md. 42. But where the period of limitation has not elapsed before suit brought, a mere amendment of the declaration *when the cause of action remains the same* will not warrant the filing of a plea of limitations, even though the statutory period has intervened between the time the cause of action accrued and the date of amendment. When, however, by amendment the cause of action is changed, a new suit is begun when the amendment is made; and if between the accruing of *that* cause of action and the date of the amendment, which *for the first time* invokes that cause of action, the period of limitation has supervened, then the plea may be interposed to that *new* suit. Catanzaro Co. v. Stock, 115 Md. —; Zier v. Chesapeake Ry. Co., 98 Md. 35; Hamilton v. Thirston, 94 Md. 253; Scaggs v. Reilly, 89 Md. 162; Western Un. Tel. Co. v. State, 82 Md. 293; Wolf v. Bauereis, 72 Md. 481. Cf. Griffee v. Mann, 62 Md. 248; Sittig v. Birkestack, 38 Md. 158; Cooke v. Cooke, 43 Md. 531.

Where an amendment of the declaration makes a plea of limitations allowable, it should be filed immediately after the amendment. Griffin v. Moore, 43 Md. 246.

[10] Where the jury has been sworn and the trial proceeded with, it is not necessary on the amendment of the original writ and the declaration by changing the form of action from assumpsit to covenant, to withdraw a juror or re-swear the jury. The matter of a continuance in such case is exclusively within the discretion of the trial court. Clagett v. Easterday, 42 Md. 617; Miller v. Miller, 41 Md. 623.

[11] Adams Ex. Co. v. Trego, 35 Md. 47; Thillman v. Neal, 88 Md. 525.

[12] The section referred to was amended by the Act of 1880, ch. 135, so as to permit an amendment for the misnomer of the plaintiff. Code 1911, Art. 75, sec. 37. Before that a mistake in the name of the plaintiff could not be remedied. Thanhauser v. Savins, 44 Md. 410. As to misnomer of the defendant, see Rich v. Boyce, 39 Md. 314; Western Un. Tel. Co. v. State, 82 Md. 294.