

where testimony is excepted to. *Smith v. Humphreys*, 104 Md. 289. And as to the practice in excepting to testimony, see *Russell v. Carman*, 114 Md. 35; *Worthington v. Worthington*, 112 Md. 140; *Brewer v. Bowersox*, 92 Md. 576. As to the history of this section, see also *Robertson v. Mowell*, 66 Md. 533.

The act of 1902, ch. 495 (re-enacting this section), omitted the provision which rendered an original party to a contract an incompetent witness, the other party being dead. Hence, since that act, such disqualification is removed. *Gittings v. Winter*, 101 Md. 205; *Justis v. Justis*, 99 Md. 81; *St. Mark's Church v. Miller*, 99 Md. 29; *Duckworth v. Duckworth*, 98 Md. 98. And see *Eareckson v. Rogers*, 112 Md. 168.

The proviso at the end of this section, applied. Parties held competent under the act of 1902, ch. 495. *Lawson v. Mullinix*, 104 Md. 171.

For cases applying and construing the portion of this section which, prior to the act of 1902, ch. 495, disqualified a party to a contract or cause of action from testifying where the other party was dead, lunatic, or insane, or when an executor or administrator was a party to the suit, unless a nominal party merely, see *Polk v. Clark*, 92 Md. 373; *Wienecke v. Arbin*, 88 Md. 185; *Flach v. Gottschalk Co.*, 88 Md. 377; *Warth v. Brafman*, 85 Md. 675; *Bowie v. Bowie*, 77 Md. 312; *Biggs v. McCurley*, 76 Md. 411; *Webster v. Le Compte*, 74 Md. 261; *Scott v. Amoss*, 73 Md. 83; *Gunther v. Bennett*, 72 Md. 386; *South Baltimore, etc., Co. v. Muhlbach*, 69 Md. 401; *Canton v. McGraw*, 67 Md. 586; *Robertson v. Mowell*, 66 Md. 532; *Grand United Order, etc., v. Merklin*, 65 Md. 583; *Neale v. Hermanns*, 65 Md. 478; *Horner v. Frazier*, 65 Md. 10; *Love v. Dilley*, 64 Md. 242; *Trahern v. Colburn*, 63 Md. 104; *Owens v. Crow*, 62 Md. 497; *Dilley v. Love*, 61 Md. 607; *Diffenbach v. Vogeler*, 61 Md. 378; *Swartz v. Chickering*, 58 Md. 295; *Kerby v. Kerby*, 57 Md. 359; *Simmons v. Haas*, 56 Md. 165; *Spencer v. Almoney*, 56 Md. 561; *Bantz v. Bantz*, 52 Md. 691; *Sangston v. Hack*, 52 Md. 201; *Hardy v. Chesapeake Bank*, 51 Md. 596; *Wright v. Gilbert*, 51 Md. 155; *Standford v. Horwitz*, 49 Md. 529; *First National Bank v. Eccleston*, 48 Md. 157 (*cf. dissenting opinion*, p. 164); *Orendorff v. Utz*, 48 Md. 304; *Graves v. Spedden*, 46 Md. 538; *Lyon v. George*, 44 Md. 299; *Spencer v. Trafford*, 42 Md. 17; *McKaig v. Hebb*, 42 Md. 231; *Sanborn v. Lang*, 41 Md. 115; *Murray v. Cannon*, 41 Md. 475; *Palro v. Vickery*, 37 Md. 488; *Downes v. Maryland and Delaware R. R. Co.*, 37 Md. 104; *Jones v. Jones*, 36 Md. 457; *Leiter v. Grimes*, 35 Md. 438; *Miller v. Motter*, 35 Md. 432; *McKaig v. Piatt*, 34 Md. 259; *Billingslea v. Ward*, 33 Md. 53; *Johnson v. Heald*, 33 Md. 368; *Schull v. Murray*, 32 Md. 17; *Cannon v. Crook*, 32 Md. 486; *Smith v. Wood*, 31 Md. 296; *Williams v. Higgins*, 30 Md. 407; *Cooke v. Cooke*, 29 Md. 550; *Neidig v. Whiteford*, 29 Md. 184.

This section referred to in construing sections 1 and 4—see notes thereto. *Turpin v. State*, 55 Md. 475. And see *Davis v. State*, 38 Md. 57 (*dissenting opinion*).

Cited but not construed in *Schley v. Merritt*, 37 Md. 358; *Taylor v. Hill*, 36 Md. 501.

1904, art. 35, sec. 4. 1888, art. 35, sec. 3. 1860, art. 37, sec. 3. 1864, ch. 109, sec. 3. 1876, ch. 357. 1888, ch. 545.

4. In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes and offenses, and in all proceedings in the nature of criminal proceedings in any court of this State, and before a justice of the peace or other officer acting judicially, the person so charged shall at his own request, but not otherwise, be deemed a competent witness; but the neglect or refusal of any such person to testify shall not create any presumption against him. In all criminal proceedings the husband or wife of the accused party shall be competent to testify; but in no case, civil or criminal, shall any husband or wife be competent to disclose any confidential communication made by the one to the other during the marriage; and in suits, actions, bills or other proceedings instituted in consequence of adultery, or for the purpose of obtaining a divorce, or for damages for