

by the defendant in excess of the alleged rights, and also in other parts of the said land and on other occasions, and for other purposes than those referred to in the said pleas.

The plea of new assignment is used with especial propriety in cases of trespass, *q. c. f.*, where defendant pleads a right of way, and plaintiff desires to prove that acts complained of were in excess of such right. Plea held sufficient under this and two following sub-sections. *Haines v. Haines*, 104 Md. 213.

(79) And the plaintiff, as to the ——— and ——— pleas, further says, that he sues not only for the trespasses in these pleas admitted, but also for, etc.

(If the plaintiff replies and new assigns to some of the pleas, and new assigns only to the others, the form may be as follows):

See note to sub-sec. 78.

(80) And the plaintiff, as to the ——— and ——— pleas, further says, that he sues not for the trespasses in the ——— pleas (the pleas not replied to) admitted, but for the trespasses in the ——— pleas (the pleas replied to) admitted, and also for, etc.

See note to sub-sec. 78.

#### *Pleas in Abatement.*

(81) That the plaintiff, at the time of issuing the summons in this case was and still is the wife of one R. B.

Pleas in abatement cannot be amended—see sec. 47.

(82) That the plaintiff is within twenty-one years of age; and has declared by attorney, when he should have declared by next friend or guardian.

(83) That the said contract in the declaration mentioned was made by the defendant jointly with one W. P., who is still living, and is residing in the county (or the city) aforesaid; and was not made by the defendant alone.

[This form shall be sufficient, whether the contract be by parol or by deed.]

This sub-section does not affect rule that where a debt is due to a partnership or to several individuals jointly, they must all join as plaintiffs; and if they fail to do so defendant may interpose objection to evidence (on the ground of a variance), under general issue. (See, however, sec. 42, *et seq.*) *Smith v. Crichton*, 33 Md. 107. And see *Kent v. Holliday*, 17 Md. 387.

#### *Forms of Affidavit to Pleas in Abatement.*

(84) ——— county.

M. R. (the defendant in the cause), makes oath and says, that the plea, hereunto annexed, is true in substance and in fact.<sup>1</sup>

Sworn before.

This sub-section referred to in holding an affidavit to plea in abatement under rule day act applicable to Baltimore City, insufficient. *Hyson v. General Supply Co.*, 117 Md. 234.

A plea in abatement may be struck out on motion if not sworn to. *Graham v. Fahnestock*, 5 Gill, 215; *Deheaulme v. Boisneuf*, 4 H. & McH. 413.

<sup>1</sup> The affidavit should also contain the averment in form prescribed by any special law. Such as, *e. g.*, "that the affiant verily believes that the defendant will be able to produce sufficient evidence to support the same, and that he is advised by counsel to file said plea under oath."