defendant shall be named, but a copy of the declaration shall *with the writ* always be served upon the person in actual possession of the land claimed at the time of bringing suit, or if no one be in actual possession the Sheriff shall set up a copy on the premises, &c.; and it is provided that the declaration of the plaintiff shall contain such certain description of the lands claimed as will enable the same to be located, as well as the extent of the interest or estate in the land so claimed. No form of the writ is given, and, as there is none in the Register, one must be invented, in which it should seem that the tenant in possession, who is substituted for the casual ejector, must be named. "Not guilty" cannot be pleaded. The defendant is to answer specially every material fact stated in the declaration, that is, in one plea he must answer the entire declaration, and, in addition, set up his own defences; and he cannot therefore plead specially his defences in distinct pleas. It follows that the judgment upon the issue, whether of law or fact, will be conclusive between the parties.[18] It would seem then from this provision, that the plaintiff makes all persons claiming adversely to him defendants at his peril. But there is no evidence in the Act of an intent on the part of the Legislature to make the judgment operative against strangers.[19] The consequence of a recovery against the tenant in possession may be to oust the landlord, and drive him to his action. The landlord may, it is presumed, come in and defend, if he pleases, and, if made a party to the writ, he must come in and defend. But he is not bound to come in, unless he is regularly served. And it would seem, therefore, that unless made a party by his own act, or by the service of process upon him, he is not to be prejudiced by the judgment. This section of the Statute[20] must be read in connection with the Act of 1870, as obliging the tenant in possession to give notice of the writ immediately to his landlord.

A tenant to a mortgagor, who omits to give notice of an ejectment, brought by the mortgagee to enforce an attornment, is not within the Statute, it applying only to ejectments adverse to the title of the landlord, Buckley v. Buckley, 1 T. R. 647.

In Crocker v. Fothergill, 2 B. & A. 652, it was held that the landlord might maintain an action of debt for three years improved value not only of the lands actually leased to the tenant, but also of mines under the surface of other lands in which the tenant was at liberty to dig for ore, and of which, as well as of the premises demised, the Sheriff, with the concurrence of the tenant, had delivered possession. And in the same case it was determined, that the improved or rack rent is not the rent

---

[18] Brooke v. Gregg, 89 Md. 234.

[19] But as to ejectment by landlord against the original lessee without making his assignee a party, see Abrahams v. Tappe, 60 Md. 317; Link v. MacNabb, 111 Md. 641; and note 10 to 4 Geo. 2, c. 28.

[20] Section 13 of the Statute and the reason for its enactment were explained in Minke v. McNamee, 30 Md. 294. It was there held that under this section parties can be admitted to defend only as landlords of the tenant in possession and that where they do not come in in that character they must be excluded altogether.