489 provided, that if one person is in possession of *the whole, and resides in either of the counties where the land lies, the action shall be brought there, and if he resides in neither, the action shall be brought where the greater part of the land lies; and by the succeeding section,[13a] the Court, where the action is so brought, may try the action, and order and award writs of resurvey and possession, &c. The proviso of sec. 46 is, in part, taken from the Act of 1834, ch. 83, sec. 1, the preamble of which Act recites that, under the laws of this State, the citizen can only be sued, in the first instance, in the county in which he resides, but this provision has never been fully applied to the trial of ejectments for lands lying partly in one county and partly in another, and the Act goes on to provide that no Court shall try an ejectment for lands lying in two counties, being entirely in possession of a citizen residing in one of said counties, unless in that county. In Ejectment then, with this exception, and in all actions, the fruit of which is or may be the delivery of the lands themselves, the action must be brought in the county where the lands lie, for the Sheriff of one county cannot deliver possession of lands situate in another, and consequently for a mis-trial in this respect judgment will be arrested after verdict, or be reversed on error. But it would appear from the Mayor, &c. of London v. Cole, 7 T. R. 583, which was covenant against the assignee of the lessee, and therefore, in respect of the privity of estate, local, and in which, after verdict for the plaintiff, it was moved in arrest of judgment that the action, being local, was tried in the wrong county, that in actions where damages only are to be recovered, any defect in this regard is cured under this Act by the verdict; and the same point was ruled in Bailiffs of Litchfield v. Slater, Willes, 431, covenant against assignee of lessee for not repairing, &c., and tried out of the county, and see Lady Calverly v. Leving, 1 Ld. Raym. 330, and N. C. R. R. Co. v. Canton Co. 24 Md. 492. It is with such a reservation that the Court of Appeals ought to be understood when they say, in Patterson v. Wilson *supra*, that all local actions were on the same footing as ejectment and waste, that they were cognizable in the tribunals within whose cognizance the land, the parent of those actions, may lie, and a departure from the principle is only authorized, *ex necessitate rei*, in the two cases mentioned in the Act of 1785, ch. 87, sec. 4, sec. 88, of Art. 75,[14] above cited.

Misnomer of parties—Judgment not arrested where one good count in declaration.—In other respects, it was held on demurrer in Harvey v. Stokes, Willes, 5, which was debt against a surety in a replevin bond given to the plaintiff as Sheriff, and to a plea that A., the party replevying, prosecuted her suit with effect, and no return was adjudged to B., the distrainor, the plaintiff replied that a return was adjudged to B., nevertheless *the said B.* did not make return, that this Statute would not have cured the mistake after verdict, because in this case it was not the name either of the plaintiff or defendant that was mistaken;[15] but in the same

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[13a] See note 13 *supra*.

[14] Code 1911, Art. 75, sec. 148.

[15] See note 12 to 8 Hen. 6, c. 12.