case, where the replication concluded, "and this he is ready *to certify*," it was held that it would have been expressly within the Statute after verdict. And an illustration of the latter clause of the section is given in Frevin v. Paynton, 1 Lev. 250, where an administrator brought an action in the *debet* and *detinet*, where it ought to have been in the *detinet* only, and it was held to be helped after verdict, as "a defect not against the right of the suit." S. P. as to an executrix, Lee v. Pilmy, 2 Ld. Raym. 1513, and see Sasscer v. Watkins' Admrs. 5 G & J. 102, that under Stat. 4 Ann. c. 16, a writ in the *detinet* only, by one suing in his own right, is bad on special demurrer. The Act of 1809, ch. 153, in its 2nd section, see Code, Art. 75, sec. 8;[16] Art. 29, sec. 37,[17] provided, that after verdict, in any action, suit or demand, in any court of record, the judgment should not be stayed or reversed for, amongst other things, defects in any count in the declaration, so as there be one good count, and it was provided that no judgment should be reversed or dismissed *for want of form, so **490** as sufficient appeared on the record to enable the Court to give judgment thereon. In Wood v. Grundy, 3 H. & J. 13, the power of amendment was expressly restrained to matters of form, and in that case a demise in a declaration in ejectment before the accrual of the title of the lessor of the plaintiff was held matter of substance, which might indeed have been amended under the first section of the Act before verdict, but not after verdict under the second section; and it was held error, and not amendable under the Act, where the term of a demise in the declaration expired before the verdict and judgment below, though the inferior Court might on *procedendo* enlarge the term of the demise, Roseberry v. Seney's lessee, *ibid.* 228. In Wilson v. Mitchell, *ibid.* 91, one of the counts of the declaration averred that the defendant made a voluntary affidavit containing a libel, in which, amongst other things, it was said that a certain quantity of soap was sold by the plaintiff at six dollars, but in the affidavit produced, after the same words, were added the words "per box," and though it was strongly insisted that this was only a clerical error, and reference was given to the affidavit, it was held a fatal variance, and, though there were other good counts in the declaration, the Court said they could never permit the plaintiff to take judgment on a count upon which he had given no evidence. So in Noland v. Ringgold, *ibid.* 216 (in 1811, and before the Act of 1829, ch. 51),[18] where it was held that the assignee of a promissory note, in which the words "or order" "or bearer" were omitted, could not maintain an action thereon in his own name under 3 & 4 Ann. c. 9, though there were other good counts in the declaration, the Court held that the case was not within this Act.

---

[16] Code 1911, Art. 75, sec. 9 (as now amended). See also Dryden v. Barnes, 101 Md. 353; Charles Co. v. Mandanyohl, 93 Md. 150; Huntington v. Emery, 74 Md. 70; Davis v. Carroll, 71 Md. 568; Loney v. Bailey, 43 Md. 10; Spencer v. Trafford, 42 Md. 1; Eakle v. Clark, 30 Md. 322; Baltimore C. P. Ry. Co. v. Wilkinson, 30 Md. 224.

[17] Code 1911, Art. 5, sec. 17; Alvey v. Hartwig, 106 Md. 254; Gunther v. Dranbauer, 86 Md. 1; Avirett v. State, 76 Md. 531.

[18] Code 1911, Art. 8, sec. 1.