

must be of such a nature that he could sue for it at law. Legal claims only form subjects of set-off in a court of law. *Milburn v. Guyther*, 8 Gill, 92. And see *Tyrrell v. Tyrrell*, 54 Md. 169; *Miller v. Lea*, 35 Md. 396; *Wilson v. Keedy*, 8 Gill, 197; *Annan v. Houck*, 4 Gill, 326; *Hall v. Creswell*, 12 G. & J. 51.

A promissory note due by the plaintiff to the defendant may be set-off in an action on an open policy of insurance. When claims are "mutual." This section is to be liberally construed. *Baltimore, etc., Co. v. M'Fadon*, 4 H. & J. 41. And see *Scott v. Scott*, 17 Md. 78.

A liability for the breach of a contract of employment, the measure of damages being fixed by the contract, is a proper subject of set-off in a suit by the employer for money due by the employee. *Cumberland, etc., R. R., v. Slack*, 45 Md. 180.

In a suit against a physician for damages growing out of his resuming practice after a sale of his good-will to the plaintiff with an agreement not to resume practice, the defendant may set-off the balance due by the plaintiff under said contract. *Warfield v. Booth*, 33 Md. 74. And see *Dyer v. Dorsey*, 1 G. & J. 440.

The defendant may set-off a note of the plaintiff's which the former purchased after the pendency of the suit. *Clarke v. Magruder*, 2 H. & J. 77; *Foley v. Mason*, 6 Md. 51.

Claims for unliquidated damages are not proper subjects of set-off. *Hearn v. Cullin*, 54 Md. 542.

There can be no plea of set-off in actions *ex delicto*. *Lee v. Rutledge*, 51 Md. 317.

There is no right of set-off against the state. *State v. B. & O. R. R. Co.*, 34 Md. 374.

Generally.

If the plea of set-off limits the defendant's demand to an amount equal to the plaintiff's claim, there can be no recovery against the plaintiff save by amendment of such plea. The act of 1876, ch. 398, held applicable. *Boor v. Wilson*, 48 Md. 315.

The object of the law in allowing a plea of set-off is to prevent circuitry of action. *Stallings v. Gottschalk*, 77 Md. 438; *Strike v. McDonald*, 2 H. & G. 227. And see *Strike's Case*, 1 Bl. 79.

Set-off must be specially pleaded. *Sangston v. Maitland*, 11 G. & J. 286.

For cases dealing with set-off in equity, see *Wilson v. Williams*, 108 Md. 528; *Penniman v. Loney*, 40 Md. 471; *Smith v. Washington, etc. Co.*, 31 Md. 17; *Scott v. Scott*, 17 Md. 78.

For an extensive note on set-off and recoupment, see *Milburn v. Guyther*, 8 Gill, 93.

Cited but not construed in *Eschbach v. Bayley*, 28 Md. 495.

See notes to sec. 12. For a form of plea of set-off, see sec. 24, sub-sec. 52.

As to set-off where an agent or factor has become insolvent, see art. 2, sec. 7, *et seq.*

As to the application by the treasurer of the state's right of set-off, see art. 95, sections 14 and 15.

1904, art. 75, sec. 14. 1888, art. 75, sec. 14. 1876, ch. 345.

14. No party, otherwise entitled to sue and recover in any suit at law upon or under any promissory note, bill of exchange, bill of lading, warehouse or storage receipt, or other negotiable instrument, shall be precluded from so recovering by reason of his inability from any cause to produce such instrument in evidence at the trial, or surrender the same to the defendant; provided, always, that the absence of such instrument shall be sufficiently accounted for, under the ordinary rules of evidence, to allow the introduction of secondary proof of the contents thereof at the trial, and that no judgment thereupon shall be entered for the plaintiff in such suit until a good and sufficient bond