

on a plat used for illustration under section 80. *New York, etc., Co. v. Jones*, 94 Md. 33.

For a case dealing with this section as it stood in the code of 1860, see *Clary v. Kimmell*, 18 Md. 246.

See notes to sec. 71.

### Equitable Defenses.

1904, art. 75, sec. 86. 1888, art. 75, sec. 83. 1888, ch. 547.

**86.** It shall be lawful for the defendant in any action at law (including plaintiff in replevin where avowry or cognizance is made) in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defense, and the court in which said action is pending is hereby empowered to receive such defense by way of plea; provided, that such plea shall begin with the words: "For defense on equitable grounds," or words to that effect.

#### When plea under this section is good.

A plea under this section is not good unless it sets up such facts as would entitle the defendant to relief in equity against the judgment if recovered. That the conveyance to the plaintiff in an action of ejectment was fraudulent as against a creditor of the grantor through whom the defendant claims, is not a good plea under this section. *Williams v. Peters*, 72 Md. 586. And see *Urner v. Sollenberger*, 89 Md. 337.

A defense which is good at law can not be pleaded under this section. *Falck v. Barlow*, 110 Md. 161; *Albert v. Freas*, 103 Md. 591; *Robey v. State*, 94 Md. 71.

A plea under this section held defective for obscurity, and for failing to set out "the facts which entitle the defendant to relief". *Shartzler v. Park Association*, 86 Md. 337.

A tenant who enters into possession under a lease for ten years, not acknowledged or recorded, paying a yearly rent, becomes a tenant by the year, and in an action of ejectment, such tenant has a defense at law which, therefore, can not be set up under this section. *Falck v. Barlow*, 110 Md. 161.

Estoppel *in pais* is available as a defense at law as well as in equity, and, therefore, can not be pleaded under this section. *Albert v. Freas*, 103 Md. 591.

A plea under this section must begin with the words "For defense on equitable grounds," or words to the like effect. *Zihlman v. Cumberland Glass Co.*, 74 Md. 311.

For a plea under this section in an action on a sheriff's bond, held defective because it was good at law, see *Robey v. State*, 94 Md. 71. *Cf. Miles v. State*, 73 Md. 400.

#### Generally.

This section does not affect the jurisdiction of equity to cancel or reform a contract where a bill alleges that it was procured by fraud and that it does not express the real agreement of the parties. This section does not confer upon courts of law the power of cancellation or reformation. Design of this section. It does not destroy the distinctions between law and equity. *Conner v. Groh*, 90 Md. 682. And see *Whitaker v. McDaniel*, 113 Md. 392; *Pearl Hominy Co. v. Linthicum*, 112 Md. 32; *Urner v. Sollenberger*, 89 Md. 337; *Taylor v. State*, 73 Md. 222; *Williams v. Peters*, 72 Md. 586.

The jurisdiction of equity (to restrain an action of ejectment), denied on the ground that the defendant could assert under this section the same matter set up by the bill in equity. *Park Association v. Shartzler*, 83 Md. 13; *Shartzler v. Park Association*, 86 Md. 337. *Cf. Williams v. Peters*, 72 Md. 586; *Whitaker v. McDaniel*, 113 Md. 392.

A defendant in ejectment is not always precluded from going into equity after judgment, because he did not interpose a plea by way of equitable