

## 3.

A declaration in trespass sustained under this section and sections 24 and 22—see notes to the latter section. The substance, not the form, of pleading is the controlling consideration. *Lapp v. Stanton*, 116 Md. 199.

This section referred to in upholding a declaration in a suit for personal injuries. *Phelps v. Howard County*, 117 Md. 178.

## 7.

See section 91A.

## 8.

This section referred to in deciding that where a plaintiff files a motion to strike out certain pleas, then demurs to the pleas and then replies, he has waived his motion to strike out and can not have the refusal of such motion reviewed upon appeal, particularly where he reserves no exception. *Wilkin Mnf. Co. v. Melvin*, 116 Md. 107.

## 9.

A judgment will not be arrested on the ground that the jury improperly assessed damages in favor of the defendant against the plaintiff based on unliquidated claims when a bill of particulars might have been required, and the certificate of the trial judge shows that no objection to an affirmative verdict for the defendant on the ground that the claims were unliquidated was raised during the trial, and when counsel for both parties argued for an affirmative verdict for a specific amount, using certain statements of their respective claims, and copies of such statements were taken by consent to the jury room. Effect of a demurrer to the declaration after a bill of particulars has been filed. Object and history of this section. *Noel Construction Co. v. Armored Concrete Co.*, 120 Md. 249.

1914, ch. 68.

10A. In all cases in which a defendant shall plead a dilatory plea, and such dilatory plea shall be overruled or disallowed upon demurrer to or traverse of the same, the defendant who has so pleaded shall thereupon have the right to plead over to the merits of the case without withdrawing his dilatory plea, and upon appeal or writ of error he shall be entitled to have the questions of law arising upon his dilatory plea decided and determined as fully to every intent as if he had not pleaded over to the merits.\*

1914, ch. 108.

11A. In suits brought upon any instrument or writing under seal executed on and after June 1, 1914, any person entitled to sue or liable to be sued thereon but for such seal, shall be entitled to sue and liable to be sued notwithstanding such seal.\*

1904, art. 75, sec. 12. 1888, art. 75, sec. 12. 1860, art. 75, sec. 12. 1785, ch. 46, sec. 7. 1876, ch. 398. 1914, ch. 393.

12. In any suit *ex contractu* or upon any judgment, if the defendant shall have any demand or claim arising *ex contractu* or upon judgment against the plaintiff, the defendant may plead such claim specially, whether such claim of the defendant be for liquidated or unliquidated

\*In effect September 1, 1914.