

damages, and whether it be of such nature as may be availed of by way of recoupment without such special plea or not.*

In view of this and the following section and of article 26, section 17, a verdict in an action *ex contractu* being for the plaintiff for ninety dollars, and a judgment of *non pros.* and for the defendant for costs having been entered, such judgment is a finality since it conclusively establishes the debt, and the defendant may appeal where there is a plea of set-off in the case. *Baer v. Robbins*, 117 Md. 224.

See notes to sections 13 and 173.

See notes to this section (as it stood in 1911) in volume 2 of the Annotated Code.

1904, art. 75, sec. 13. 1888, art. 75, sec. 13. 1860, art. 75, sec. 13. 1785, ch. 46, sec. 7. 1876, ch. 398. 1914, ch. 393.

13. In every case where a special plea is filed as authorized by the preceding Section, judgment for the excess of the one claim over the other, as each is proved, with costs of suit, shall be given in favor of the plaintiff or the defendant, according as such excess is found in favor of the one or other of the parties, if such excess be sufficient to support a judgment in the court where the cause is tried according to its established jurisdiction, otherwise the finding of such excess to be due shall have the same effect as is given to verdicts for amounts below the court's jurisdiction by Article 26, Section 17 of this Code.*

In Maryland, a defendant can not recover an affirmative judgment for unliquidated damages, whether they grow out of the same or a different suit from that on which the suit was brought. History of this section and section 12. *Norwood Paper Co. v. Columbia Bag Co.*, 185 Fed. 454 (decided prior to the act of 1914).

See notes to section 12.

See notes to this section (as it stood in 1911) in volume 2 of the Annotated Code.

22.

A declaration in trespass held to sufficiently identify the premises to which the suit referred. *Lapp v. Stanton*, 116 Md. 200.

Forms of Pleadings.

24.

See notes to sections 3 and 22.

28.

A declaration in trespass upheld under this section and sections 3, 24 and 22—see notes to sections 3 and 22. *Lapp v. Stanton*, 116 Md. 200.

36.

To the first note to sub-section 36 on page 1642 of volume 2 of the Annotated Code, add "And see *Smith v. Northern Central Railway Co.*, 119 Md. 486."

37.

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

*The act of 1914, chapter 393, goes into effect September 1, 1914.