

now prescribed by law with respect to any cause of action now existing or hereafter arising shall be altered by this section. And in any such suit at law it shall be sufficient for the defendant to file a general issue plea that the defendant never was indebted as alleged, or that the defendant never promised as alleged, under either of which forms of plea all matters of defence and discharge shall be admissible in evidence, except any matters which could only be availed of by a special plea, or by a more express denial than such general issue plea, in an action of assumpsit prior to the enactment of this section.

And the provisions of this section shall apply, *mutatis mutandis*, to the pleadings when the defendant relies upon matter *ex contractu* in a plea of set-off.

10A.

Reason of this section. In Maryland pleas to the jurisdiction and pleas in law cannot be submitted to the jury at the same time; this section held to have no application. *O'Brien v. State*, 126 Md. 283.

11.

This section requires a plea that the alleged deeds are not the defendant's deeds to be sworn to; as issue was joined on a plea unsworn to, it was treated as sufficient. *Conowingo Land Co. v. McGaw*, 124 Md. 652.
See section 3A.

11A.

Cited but not construed in *Manning v. Embert*, 126 Md. 550.

12.

A defendant held entitled to set up by plea damages arising out of a breach of warranty in the sale of a machine, by virtue of this section, regardless of his right to recoup before the passage of the act of 1914, chapter 393. *International Harvester Co. v. Neuhouser*, 128 Md. 180.

A special plea of set-off held good. *Merryman v. Wheeler*, 130 Md. 569.
Cited but not construed in *Nihiser v. Nihiser*, 127 Md. 458.

See notes to section 13.
See section 3A.

13.

Set-off is unknown to the common law; object thereof. The debts must be mutual between the parties in their own rights, must be the same kind or quality, and be certainly and clearly ascertained or liquidated. Damages held to be unliquidated. (This case was decided before the act of 1914, chapter 393, became effective.) *Westminster M. & F. Co. v. Coffman*, 123 Md. 623. And see *Impervious Products Co. v. Gray*, 127 Md. 67.

Where a defendant has pleaded set-off and proved the items which make up his claim, he may recover a judgment against the plaintiff for such sum as the proof shows the plaintiff is indebted to him over and above the amount of the plaintiff's claim; recoupment contrasted. *Res adjudicata*. *Impervious Products Co. v. Gray*, 127 Md. 67.

A defendant held under the pleadings to be entitled to a set-off under this and the preceding section, and to a verdict for any amount the jury might find to be due him in excess of the plaintiff's claim. (The contract in this case was made prior to the act of 1914, chapter 393.) *Cowan v. Meyer*, 125 Md. 468.