

of law. *Brooke v. Widdicombe*, 39 Md. 404; *Weber v. Zimmerman*, 23 Md. 53; *Hardcastle v. Maryland & Delaware R. R. Co.*, 32 Md. 35.

This article referred to in overruling contention that mandamus was improperly directed to be issued after demurrer to answer and without proof to support petition; demurrer to answer in mandamus case is proper. Where there is no answer whatever or an insufficient answer, the proceedings are not conducted as prescribed by this article so as to properly present questions. *Price v. Ashburn*, 122 Md. 521.

The essential nature of mandamus and its force and effect were not changed by act of 1858, ch. 285; purpose of that act. When writ of mandamus issues, it cannot be restrained by injunction. *Weber v. Zimmerman*, 23 Md. 53; *Cf. Weber v. Zimmerman*, 22 Md. 167.

The failure of petitioner to file exhibits is waived by answer not objecting on that score. Petition held sufficient. *Brooke v. Widdicombe*, 39 Md. 399.

As to summons with claim for mandamus, see art. 75, sec. 134, *et seq.*

An. Code, sec. 2. 1904, sec. 2. 1888, sec. 2. 1858, ch. 285, sec. 2.

2. Upon the filing of such petition the court or judge to whom the same is addressed shall lay a rule requiring the defendant therein named to show cause within such time as the court or judge may deem proper why a writ of mandamus should not issue as prayed, a copy of which rule shall be served upon such defendant by a day to be therein limited.

Cited but not construed in *Frederick County v. Fout* 110 Md. 169.

See notes to sec. 5.

An. Code, sec. 3. 1904, sec. 3. 1888, sec. 3. 1858, ch. 285, sec. 3.

3. The defendant, by the day named in such order, shall file an answer to such petition, fully setting forth all the defenses upon which he intends to rely in resisting such application, which shall be verified by his affidavit.

A demurrer to answer does not admit facts set out in petition so as to avoid necessity of proof. *Beasley v. Ridout*, 94 Md. 649; *Sudler v. Lankford*, 82 Md. 148; *contra*, if the facts are admitted, and only matters of law are raised. *Hooper v. New*, 85 Md. 586.

If the answer sets up any good defense, it should not be quashed because it is in other respects evasive or irresponsible. *Legg v. Annapolis*, 42 Md. 222.

An answer held insufficient under this section. *Creager v. Hooper*, 83 Md. 503.

See notes to secs. 5 and 9.

An. Code, sec. 4. 1904, sec. 4. 1888, sec. 4. 1858, ch. 285, sec. 3.

4. No defendant shall be allowed on a second application for a mandamus to rely upon any matter by way of defense thereto which he might have relied on in his answer to a previous application for a mandamus by the same petitioner.

This section held to have no application, because the defense could not have been relied upon in previous case. *Frederick County v. Fout*, 110 Md. 170.

An. Code, sec. 5. 1904, sec. 5. 1888, sec. 5. 1828, ch. 78. 1858, ch. 285, sec. 4.

5. The petitioner may plead to or traverse all and any of the material averments set forth in said answer and the defendant shall take issue or demur to said plea or traverse within five days thereafter; and such further proceedings shall thereupon be had in the premises for the determination thereof as if the petitioner had brought an action on the case for a false return.

The filing of a demurrer to answer to petition for mandamus and entry of final judgment on such demurrer in favor of defendant, without giving petitioner an opportunity to plead over, upheld. Property seized for use as evidence in a criminal case may not be replevied by owners. *Good v. Police Commrs.*, 137 Md. 198.