

A suit under this section cannot be maintained against a board of county school commissioners. *Weddle v. School Commissioners*, 94 Md. 342.

Where a sheriff is charged with permitting a lynching, his bond cannot be sued under this section. *Cocking v. Wade*, 87 Md. 529.

#### The declaration.

A declaration under this section in a suit growing out of death of an infant child, held to be sufficient under art. 75, secs. 2 and 3, of the Code. *American Exp. Co. v. Denowitch*, 132 Md. 74.

The *narr.* need not allege that defendant's negligence was such that if death had not ensued, deceased would have been entitled to recover. *Philadelphia, etc., R. R. Co. v. State*, use *Bitzer*, 58 Md. 399.

The declaration may be amended by adding the state as legal plaintiff (so as to conform to titling and summons). *B. & O. R. R. Co. v. State*, use *Allison*, 62 Md. 481.

For a form of declaration in a suit for personal injuries caused by negligence, see art. 75, sec. 28, sub-sections 36 and 37.

#### Generally.

The right of action under this section and sec. 2 distinguished from, and compared with, that of personal representative of deceased under art. 93, sec. 106. History and purpose of the two enactments traced. They are entirely separate, independent and exclusive of each other. This section created a new cause of action which deceased never had. Construction of Lord Campbell's Act from which this section was taken. *Stewart v. United, etc., Co.*, 104 Md. 333; *Droneburg v. Harris*, 108 Md. 608; *Melitch v. United Rwys. & Elec. Co.*, 121 Md. 458; *White v. Safe Dep. & Tr. Co.*, 140 Md. 598.

As to the similarity of this section to Lord Campbell's Act, see also *Tucker v. State*, use *Johnson*, 89 Md. 475; *B. & O. R. R. Co. v. State*, use *Hauer*, 60 Md. 466; *Philadelphia, etc., R. R. Co. v. State*, use *Bitzer*, 58 Md. 398; *State*, use *Allen v. Pittsburg, etc., R. R. Co.*, 45 Md. 47; *Melitch v. United Rwys. & Elec. Co.*, 121 Md. 458.

While burden in beginning is on plaintiff to show a *prima facie* wrongful killing, if defendant alleges justification or excuse, burden is on him to prove it. *Tucker v. State*, use *Johnson*, 89 Md. 489. (See dissenting opinion also for discussion of burden of proof.)

This section has no application where injury occurs outside of Maryland, although deceased is a citizen of this state. *State*, use *Allen v. Pittsburg, etc., R. R. Co.*, 45 Md. 45; *Dronenburg v. Harris*, 108 Md. 608.

Where a sheriff is charged with permitting a lynching, his bond cannot be sued under this section. The cause of action depends entirely upon this article and it must be prosecuted in the manner herein prescribed only. It cannot be converted into an *ex contractu* action, as it has no reference to a contract, or a bond, or any responsibility arising therefrom. *Cocking v. Wade*, 87 Md. 545 (concurring opinion).

In order to maintain a suit under this article, equitable plaintiffs must show a pecuniary interest in life of deceased; jury may not consider the pain and suffering of deceased nor mental suffering of equitable plaintiffs. This article contrasted with Lord Campbell's Act. *Elder v. B. & O. R. R. Co.*, 126 Md. 498.

A suit under this and the following sections should have been withdrawn from jury as to one defendant under the doctrine of assumption of risk, and was properly withdrawn as to other defendant because there was no evidence of negligence. *Westinghouse E. & Mfg. Co. v. Monroe*, 129 Md. 61.

The compromise and settlement of a separate suit against a wrongdoer who is severally liable with defendant for a tort, held to bar a suit under this section since there can be but one compensation for same injury. *Cox v. Md. Elec. Rwys. Co.*, 126 Md. 301.

In a suit under this article the evidence of a father as to number and ages of his children when offered for purpose of showing that deceased took care of younger children, thus saving expense of an attendant, and leaving the mother free to aid her husband in his business, is admissible. *U. Rwys. & E. Co. of Balto. v. Mantik*, 127 Md. 205.

Where an injured person dies after having for a valuable consideration executed to party who injured him a release of all claim which he might or could possibly have for or on account of his injuries, no action lies under this and following sections. *Melitch v. United Rwys. & Elec. Co.*, 121 Md. 457.