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| <p>180. Vacancy to be filled by court.</p> <p>181. Process from counties to be made returnable to superior court of Baltimore city.</p> <p>182. Where service of process is forcibly resisted, how service made.</p> | <p style="text-align: center;"><b>Non-Pros.</b></p> <p>183. Call of plaintiff before verdict, abolished. Plaintiff may take <i>non pros.</i> until argument on facts begins; where "set-off" is pleaded, defendant may take <i>non pros.</i> as to.</p> |
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An. Code, sec. 1. 1904, sec. 1. 1888, sec. 1. 1856, ch. 112.

1. The practice, proceedings and pleadings in the several courts of law shall be the same that were used and practised in the courts of law of this State at the time of the adoption of the constitution of 1851, except so far as the same are altered and changed by this code.

Where a defendant is not summoned, and one or more terms pass without process being renewed, the action is thereby discontinued. *Hazelhurst v. Morris*, 28 Md. 72. As to pleading, practice and process in equity, see art. 16, sec. 154, *et seq.*

## I.

### PLEADINGS.

An. Code, sec. 2. 1904, sec. 2. 1888, sec. 2. 1856, ch. 112, sec. 52.

2. Whatever facts are necessary to constitute the ground of action, defense, or reply, as the case may be, shall be stated in the pleading and nothing more; and facts only shall be stated and not arguments, or inferences, or matter of law or of evidence, or of which the court takes notice *ex officio*.

#### Demurrers dealt with.

Under secs. 2 to 8 a demurrer to entire declaration will be overruled if there is one count sufficient in substance. (See also sec. 11.) *Spencer v. Trafford*, 42 Md. 15.

The statement of a multiplicity of facts constituting the defense and material to its conclusiveness, even if there was surplusage, is no ground of demurrer under this and the following sections. *Deford v. Hewlett*, 49 Md. 62.

In a suit on an executor's bond, the will is a mere matter of evidence which, under this section, need not be set out. *Ruby v. State*, 55 Md. 488.

A declaration in trespass *q. c. f.* alleging opening of plaintiff's mines, held sufficient under this and following section. *Barton Coal Co. v. Cox*, 39 Md. 33.

A declaration held too general and indefinite. *Gent v. Cole*, 38 Md. 113.

Pleas held demurrable under this section, because they stated conclusions or matters of law. *Aetna Indemnity Co. v. Fuller Co.*, 111 Md. 341.

A replication upheld under this section and secs. 3 and 28. *Gott v. State*, 44 Md. 336.

A declaration in a suit under art. 67 of Code growing out of death of infant child, held to be sufficient in view of this and following section. *American Express Co. v. Denowitch*, 132 Md. 74.

Plea in ejectment that defendant is holding and in possession of property under provisions of original lease which is still in force and effect, is bad because it involves conclusion of law. *Feldmeyer v. Werntz*, 119 Md. 290.

#### Generally.

This section is only declaratory of common law, and is based on necessity of informing adverse party of what is to be proved in order to give him opportunity to answer or traverse it. *Mills v. Baltimore, etc., Ry. Co.*, 111 Md. 262; *Pearce v. Watkins*, 68 Md. 538; *Gent v. Cole*, 38 Md. 113.

Secs. 2 to 8 were intended to prevent technical proceedings, and to regard only matters of substance. *Spencer v. Trafford*, 42 Md. 15; *Ordway v. Central Bank*, 47 Md. 261 (concurring opinion); *Cumberland, etc., R. R. Co. v. Slack*, 45 Md. 178; *Blackburn v. Beall*, 21 Md. 229; *Felty v. Young*, 18 Md. 168.