

The allegation of warranty of particular chattel held to be sustained under this and following section, by proof of warranty of several chattels. *McCeney v. Duvall*, 21 Md. 184.

This section referred to in construing sec. 28, sub-secs. 34 and 35—see notes thereto. *Bottomly v. Bottomly*, 80 Md. 162.

As to pleading in equity, see art. 16, sec. 154, *et seq.*

As to forms of pleading, see sec. 28. See notes to sec. 3.

An. Code, sec. 3. 1904, sec. 3. 1888, sec. 3. 1856, ch. 112, secs. 35, 52, 69. 1870, ch. 420. 1872, ch. 346. 1924, ch. 551.

3. Any declaration which contains a plain statement of the facts necessary to constitute a ground of action shall be sufficient, and any plea necessary to form a legal defense shall be sufficient, without reference to mere form; this to apply to replications, rejoinders and all subsequent pleadings; provided, that every action for damages wherein the judgment or any part thereof, which may be recoverable, shall inure to the benefit of any person claiming the same by reason of subrogation, shall be prosecuted in the name or names of the real party or parties in interest so claiming by subrogation; and upon petition of any defendant to said suit or action, the Court shall order any person having such right by subrogation to be made a party plaintiff.

A declaration in trespass sustained under this section and secs. 28 and 26—see notes to the latter section. The substance, not the form, of pleading is the controlling consideration. *Lapp v. Stanton*, 116 Md. 199.

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

Counts of a declaration in assumpsit for breach of several contracts for sale of gasoline held sufficient. *Penn Oil Co. v. Triangle P. & G. Co.*, 136 Md. 565.

The object of all pleading is that parties litigant may be mutually apprised of matters in controversy. Common counts held insufficient and special counts also insufficient either as setting up claim on policy of insurance or an action of deceit. *Pearce v. Watkins*, 68 Md. 538.

Under this section, no more of a contract need be set out than pertains to obligation breach of which is complained of, but if alternative qualifies the obligation, then the whole should be set out according to the legal effect. A variance not made out. *Caledonian Ins. Co. v. Traub*, 80 Md. 220. And see *Crichton v. Smith*, 34 Md. 47.

A declaration alleging a trespass in the erection of a telegraph pole in front of premises of which plaintiff was in possession, and consequent obstruction of use of said premises, though not alleging mode and manner of obstruction, held sufficient under this section. *Chesapeake, etc., Telephone Co. v. MacKenzie*, 74 Md. 42.

A declaration in a suit on an executor's bond which was substantially set out in the *narr.*, held sufficient. *Ruby v. State*, 55 Md. 488.

A declaration in an action on an appeal bond held sufficient under this section. *Everett v. State*, 28 Md. 205.

Averment in action of deceit of loss or damage growing out of false representations, held sufficient under this section and sec. 8. *McAleer v. Horsey*, 35 Md. 458.

A declaration on a guaranty held sufficient under this section and sec. 8. *Mitchell v. McCleary*, 42 Md. 376.

A declaration alleging that plaintiff as possessor of a distillery was entitled to flow of stream of water for working same and that defendant befouled said stream and rendered it unfit for plaintiff's use, held sufficient. *Price v. Lawson*, 74 Md. 507.

This section is applicable to a plea of limitations. *Wallace v. Schaub*, 81 Md. 597.

Pleas of limitation upheld under this section and sec. 28. *Spencer v. B. & O. R. R.*, 126 Md. 202.

See notes to secs. 2 and 5. As to forms of pleading, see sec. 28.

An. Code, sec. 3A. 1918, ch. 392.

4. In all actions *ex contractu* there shall be no distinction in the pleadings by reason of the presence or absence of a seal upon any instrument