

In Maryland, a defendant cannot recover an affirmative judgment for unliquidated damages, whether they grow out of the same or a different suit from that on which suit was brought. History of this section and sec. 16. *Norwood Paper Co. v. Columbia Bag Co.*, 185 Fed. 454 (decided prior to act of 1914).

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

This and the preceding section referred to in holding that when landlord sues for rent tenant may recoup any damages he has sustained by landlord's failure to comply with his covenant to repair. *Cramer v. Baugher*, 130 Md. 217.

The object of the law in allowing a plea of set-off is to prevent circuity of action. *Stallings v. Gottschalk*, 77 Md. 433; *Strike v. McDonald*, 2 H. & G., 227. And see *Strike's Case*, 1 Bl. 79.

Set-off must be specially pleaded. *Sangston v. Maitland*, 11 G. & J. 286.

For cases dealing with set-off in equity, see *Wilson v. Williams*, 108 Md. 528; *Penniman v. Loney*, 40 Md. 471; *Smith v. Washington, etc. Co.*, 31 Md. 17; *Scott, v. Scott*, 17 Md. 78.

For an extensive note on set-off and recoupment, see *Milburn v. Guyther*, 8 Gill, 93.

Cited but not construed in *Eschbach v. Bayley*, 28 Md. 495.

See notes to sec. 16. For form of plea of set-off, see sec. 23, sub-sec. 52. As to set-off where an agent or factor has become insolvent, see art. 2, sec. 7, *et seq.* As to the application by the treasurer of the state's right of set-off, see art. 95, secs. 14 and 15.

See sec. 4.

An. Code, sec. 14. 1904, sec. 14. 1888, sec. 14. 1876, ch. 345.

18. No party, otherwise entitled to sue and recover in any suit at law upon or under any promissory note, bill of exchange, bill of lading, warehouse or storage receipt, or other negotiable instrument, shall be precluded from so recovering by reason of his inability from any cause to produce such instrument in evidence at the trial, or surrender the same to the defendant; provided, always, that the absence of such instrument shall be sufficiently accounted for, under the ordinary rules of evidence, to allow the introduction of secondary proof of the contents thereof at the trial, and that no judgment thereupon shall be entered for the plaintiff in such suit until a good and sufficient bond shall have been first filed therein by the plaintiff or on his behalf, in such penalty and with such surety or sureties as the court shall approve, conditioned to hold and keep the defendant harmless, upon satisfaction of the judgment by him, to the same effect and intent as if said missing instrument were then and there produced and surrendered to him, and the costs in all such cases shall be adjudged by the court, in its discretion, as may be equitable.

For a case involving the remedy in equity where coupon bonds are lost see *C. & O. Canal Co. v. Blair*, 45 Md. 102. And see *Fell's Point Institution v. Weedon*, 18 Md. 320.

This section is identical with art. 13, sec. 11—see notes thereto.

An. Code, sec. 15. 1904, sec. 15. 1888, sec. 15. 1803, ch. 54.

19. In case any person shall be prosecuted by indictment or any other criminal prosecution for a libel the party so prosecuted shall be entitled to give the truth of the matter charged in the said indictment or other prosecution, in evidence under the general issue by way of justification.