

cannot be measured or located on the plats by reason of the same having become inaccessible by falls of earth or otherwise or by the closing or partial closing of the galleries, headings, rooms or other excavations constituting or leading to such trespasses, then and in all such cases it shall be lawful and proper to prove such trespasses by any evidence otherwise competent and admissible, notwithstanding such trespasses cannot be and have not been located on the plats and notwithstanding that the defendant has taken defense on warrant.

This section referred to in construing sec. 85—see notes thereto. *Kelso v. Stigar*, 75 Md. 395.

See notes to sec. 76.

An. Code, sec. 84. 1904, sec. 84. 1888, sec. 81. 1852, ch. 177, sec. 7. 1829, ch. 186.

89. The plats and certificates of survey in every case may be amended at bar; where the locations do not correspond with the variation the same may be amended at bar to correspond therewith; objects to which the proof applies may be placed on the plats and witnesses may be examined who were not sworn on the survey; provided, the court shall be satisfied the ends of justice will be attained by such amendment of plats and admission of witnesses.

The amendments of plats must be made according to law and practice of ejectment, so that something may be supplied which was unknown or overlooked at time of survey. No location may be made by amendment which could not have been permitted at time of survey. *Tome Institute v. Davis*, 87 Md. 608.

This section dispenses with necessity of having a witness *sworn* on survey in order to make him competent at trial, but does not render a witness who was not on survey competent at trial, with regard to location of any object upon plat. Law prior to this section. *Morrison v. Hammond*, 27 Md. 619.

See notes to sec. 76.

An. Code, sec. 85. 1904, sec. 85. 1888, sec. 82. 1852, ch. 177, sec. 8. 1882, ch. 372.

90. In no action shall plats be considered as pleadings or evidence *per se*.

This section referred to in deciding that in an action for flooding land, a witness might testify to existence of other ditches besides those located on a plat used for illustration under sec. 85. *New York, etc., Co. v. Jones*, 94 Md. 33.

For a case dealing with this section as it stood in the Code of 1860, see *Clary v. Kimmel*, 18 Md. 246.

See notes to secs. 76 and 85.

Equitable Defenses.

An. Code, sec. 86. 1904, sec. 86. 1888, sec. 83. 1888, ch. 547.

91. It shall be lawful for the defendant in any action at law (including plaintiff in replevin where avowry or cognizance is made) in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defense, and the court in which said action is pending is hereby empowered to receive such defense by way of plea; provided, that such plea shall begin with the words: "For defense on equitable grounds," or words to that effect.

When plea under this section is good.

A plea under this section is not good unless it sets up such facts as would entitle defendant to relief in equity against judgment if recovered. That conveyance to