

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.

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.

This section referred to in construing sec. 9. *Shpritz v. Balto. Trust Co.*, 151 Md. 513.

As to powers of Court of Appeals *re* forms of process, writs, pleadings, etc., see art. 26, sec. 35.

Demurrer to replication upheld under this section and secs. 3 and 8. *Bitting v. Home Ins. Co.*, 161 Md. 56.

As to pleading in equity, see art. 16, sec. 161, *et seq.*

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

An. Code, 1924, sec. 3. 1912, 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.

Declaration alleging negligence by dentist in filling tooth held sufficient under this section. *Fink v. Steele*, 166 Md. 354.

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.