

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, 1924, sec. 4. 1912, 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 or writing involved in the case, except in so far as the presence or absence of a seal may affect the substantive rights of the parties (such as necessity for a valuable consideration, period of limitation, etc.), as distinct from matters of procedure; and counts for recovery upon sealed instruments may be joined with counts for recovery upon unsealed contracts, express or implied; and there shall be but one form of action for recovery upon any cause of action arising *ex contractu* or *quasi ex contractu*, namely, the action of *assumpsit*, in which it shall be sufficient for the plaintiff to state briefly in his declaration the facts essential to recovery (but nothing hereunder shall be construed as abolishing the use of the common counts). Provided, that no period of limitations now prescribed by law with respect to any cause of action now existing or hereafter arising shall be altered by this section. And in any such suit at law it shall be sufficient for the defendant to file a general issue plea that the defendant never was indebted as alleged, or that the defendant never promised as alleged, under either of which forms of plea all matters of defense and discharge shall be admissible in evidence, except any matters which could only be availed of by a special plea, or by a more express denial than such general issue plea, in an action of *assumpsit* prior to the enactment of this section.

And the provisions of this section shall apply, *mutatis mutandis*, to the pleadings when the defendant relies upon matter *ex contractu* in a plea of set-off.

In action on guaranty expressly described as specialty, general issue pleas appropriate to action in *assumpsit* on simple contract held to be not demurrable. *General Petroleum Corp. v. Seaboard Terminal Corp.*, 19 F. Supp. 882.

So far as procedure is concerned, no distinction in pleadings due to presence or absence of seal upon instrument. See notes to art. 13, sec. 47. *Citizens' Natl. Bank v. Custis*, 153 Md. 242.