

oath or affirmation, state that the said demurrer is not filed for the purpose of delay, and that he is advised by counsel to file said demurrer, and such demurrer shall be accompanied by a certificate of counsel that he so advised the party filing said demurrer.

Demurrer rejected as not being sufficiently specific. *Shpritz v. Balto. Trust Co.*, 151 Md. 512 (decided prior to act 1927, ch. 525).

An. Code, 1924, sec. 10. 1912, sec. 8. 1904, sec. 8. 1888, sec. 8. 1867, ch. 388.

10. In all cases, civil and criminal, in which any or either party shall demur to any indictment, declaration, plea, replication, rejoinder, sur-rejoinder, or other plea of any description, of the opposite party, and the said demurrer shall be overruled, the party demurring shall have the right to plead over to the facts of the case by way of traverse or otherwise without withdrawing his demurrer, and upon appeal or writ of error shall have the questions of law arising upon the demurrer decided and determined as fully to every intent as if the party demurring had not pleaded over.

Replying to plea, after motion *ne recipiatur* to plea of forgery is overruled, and proceeding with trial does not waive right of review on appeal of overruling of motion. Plea to jurisdiction. *Farmers' & Mchts.' Bank v. Harper*, 153 Md. 139.

Cited but not construed in *Landwehr v. Life Ins. Co.*, 159 Md. 209.

The rights of the defendant on the demurrer, being preserved on appeal, the sufficiency of the declaration will receive first consideration, without regard to the facts presented in evidence, as evidence cannot supply omissions or correct defects in a declaration. *Great A. & P. Tea Co. v. Roch*, 160 Md. 191.

This section referred to in deciding that where plaintiff files motion to strike out certain pleas, then demurs to the pleas and then replies, he has waived motion to strike out and cannot have refusal of such motion reviewed upon appeal, particularly where he reserves no exception. *Wilkin Mngf. Co. v. Melvin*, 116 Md. 107; *Farmers' & Mchts.' Bank v. Harper*, 153 Md. 143.

Purpose and effect of this section; the law prior to its adoption. This section distinguished from sec. 96. *Barabasz v. Kabat*, 91 Md. 55.

This section followed in a criminal case. *Avirett v. State*, 76 Md. 514.

An. Code, 1924, sec. 11. 1912, sec. 9. 1904, sec. 9. 1888, sec. 9. 1809, ch. 153, sec. 2. 1856, ch. 112, sec. 40. 1888, ch. 547.

11. No judgment shall be arrested or set aside for any omission of mere matter of form, nor because one or more of the counts in the declaration may be bad, if there be one count sufficient in substance, nor because of any misjoinder of forms of actions or of counts, nor for any other matter or cause which might have been subject of general demurrer to the declaration or other pleadings.

A judgment will not be arrested on ground that jury improperly assessed damages in favor of defendant against plaintiff based on unliquidated claims when a bill of particulars might have been required, and certificate of trial judge shows that no objection to an affirmative verdict for defendant on ground that claims were unliquidated was raised during trial, and when counsel for both parties argued for an affirmative verdict for a specific amount, using certain statements of their respective claims, and copies of such statements were taken by consent to jury room. Effect of demurrer to declaration after bill of particulars has been filed. Object and history of this section. *Noel Construction Co. v. Armored Concrete Co.*, 120 Md. 249.

A judgment will not be reversed if there is one good count in declaration, though others are insufficient. *Baltimore, etc., Ry. Co. v. Wilkinson*, 30 Md. 230.

Where no demurrer is interposed to declaration, all questions as to sufficiency of the *narr.* with regard to allegations of consideration for the agreement sued on are waived. *Dryden v. Barnes*, 101 Md. 353.

A judgment will not be arrested because while jury was out judge sent for declaration and had certain blanks therein filled up. *Spencer v. Trafford*, 42 Md. 21.

A judgment for plaintiff will not be stricken out or arrested because plaintiff joins issue on defendant's pleas, when a traverse was required. *Huntington v. Emery*, 74 Md. 71.

A failure to join issue upon a plea may be regarded as a matter of form, so as to give rise to application of this section. *Charles County v. Mandanyohl*, 93 Md. 155.