

the facts of the case, but nothing herein contained shall render it erroneous or irregular to depart from said forms so long as substance is expressed.

Allegations of declaration held insufficient either in *assumpsit* or covenant; *assumpsit* is not sustainable upon a specialty and covenant will not lie when payments are all due and payable. The suit being in debt on a specialty, general issue pleas in *assumpsit* are improper. The general issue plea in debt is *non est factum*; if other defenses are relied on they must be specially pleaded. *Merryman v. Wheeler*, 130 Md. 569.

This section and secs. 2 and 3 make a plain statement of facts sufficient throughout entire series of pleading. The forms prescribed by this section or any others of like character may be used, substance being considered. *Gott v. State*, 44 Md. 336.

While act of 1852, ch. 112, simplified forms of pleading and practice, it did not abolish the distinctive nature of actions. *Smith v. State*, 66 Md. 218; *Lee v. Rutledge*, 51 Md. 317; *Canton Bldg. Assn. v. Weber*, 34 Md. 670; *Hamilton v. Conine*, 28 Md. 646; *Stirling v. Garritee*, 18 Md. 474.

A declaration in trover or detinue held defective in its conclusion. *Stirling v. Garritee*, 18 Md. 474.

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

Cited but not construed in *Union Bank v. Tillard*, 26 Md. 451.

See notes to secs. 3 and 26.

#### *Commencement of Declarations.*

A. B., by S. T., his attorney (or in person, as the case may be), sues C. D. for (here state the cause of action).

#### *Conclusions of Declarations.*

"And the plaintiff claims therefor" \$—— (or if the action is detinue, brought to recover specific goods), "the plaintiff claims a return of the said goods, or their value, and \$—— for their detention;" (or if the action is replevin), "the plaintiff claims the return of the said goods" (when they have not been replevied and delivered), "and \$—— for their detention;" (or in cases where they have been delivered), "the plaintiff claims said goods and \$—— for their detention."

#### *Statement of Causes of Action on Contracts.*

The following statements of causes of actions for the common counts shall be sufficient, and the plaintiff may include two or more of them in one count, but after the statement of the first cause of action, each subsequent statement should begin with the words "and for:—"

(1) ——— county, ss: A. B., by S. T., his attorney, sues C. D. for money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant, and the plaintiff claims therefor the sum of \$——.

S. T., Plaintiff's Attorney.

Detinue for return of goods is maintainable only against one who has the goods in his possession. *Mylander v. Page*, 162 Md. 260.

(2) Money payable by the defendant to the plaintiff for goods bargained and sold by the plaintiff to the defendant. (These words, "money payable, etc.," should precede money counts like the 1st to the 13th, inclusive, but need only be inserted in the 1st.)

The omission of the words "for money payable by the defendant to the plaintiff" is fatal on demurrer. *Merryman v. Rider*, 34 Md. 99; *Penniman v. Winner*, 54 Md. 137; *Littleton v. Wells, etc.*, Council, 98 Md. 456; *Tradesmen's Bank v. Green*, 57 Md. 605.

A promise by the defendant need not be alleged in the common counts. *Swem v. Sharretts*, 48 Md. 409.

Usurious interest may be recovered in an action upon the common counts. *Scott v. Leary*, 34 Md. 389.