

Commencements and Conclusions of Declarations by Executors and Administrators against Executors and Administrators.

(103) ——— county, A. B., executor of the last will (or administrator of the goods and chattels, etc.), of W. K., deceased, by S. T., his attorney (or in person), sues T. K., executor of the last will (or administrator of the goods and chattels, etc.), of W. K., deceased, for (here state cause of action).

(104) "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."

(105) Declarations by executors and administrators against executors and administrators may be in the same form as if the parties sued in their own right, if proper words are used to show that the cause of action occurred between the persons they respectively represent.

(106) It shall not be necessary in any case to make profert in a declaration or plea, but the opposite party shall be entitled to oyer in the same manner as if profert were made.

Defendant had no right to crave oyer since deed was public record; common counts not vitiated by profert of deed and agreements. *Rosenthal v. Heft*, 155 Md. 423.

The opposite party is only entitled to oyer in cases in which before adoption of this sub-section, profert was necessary. Oyer cannot properly be craved of a bond which is a public record, but if it is craved, the demand may be complied with by a certified copy. *State v. Wilson*, 107 Md. 131.

(107) Either party may use the common law forms or the forms hereinbefore given, at his election; and either party may require a bill of particulars where the pleading is so general as not to give sufficient notice to the opposite party of the evidence to be offered in support of it; provided that in all jurisdictions where provision has been or shall be made for the obtention of speedy judgments, when the cause of action filed with the declaration shall set forth the plaintiff's claim with the particularity required for a bill of particulars, the said cause of action shall become and be taken and treated as one of the pleadings in the case, and the plaintiff shall be restricted in his evidence to proof of the items so set out.¹

Restricting plaintiff in his evidence to proof of items in bill of particulars does not affect right of amendment of *narr.* *Poland v. Chessler*, 145 Md. 69.

Agreement filed with *narr.* considered part of it. *Rullman v. Rullman*, 148 Md. 143.

Plaintiff restricted in his evidence to proof of items set out in bill of particulars. *Roth v. Baltimore Trust Co.*, 161 Md. 347.

Where suit is brought under speedy judgment act, the plaintiff's cause of action in its affidavit becomes part of each count in its declaration, and the fact that one count is bad in law does not vitiate statement of cause of action contained in affidavit which was clear, distinct and precise. *Power v. Asphalt Products Corp.*, 162 Md. 184.

The bill of particulars which must be furnished when demanded is analogous to the account which must be filed under speedy judgment acts; substantial compliance requires that the precise nature and extent of the claim be given. "For services rendered, hire and use of automobile and gasoline furnished" not sufficient. *OWINGS v. Dayhoff*, 159 Md. 407.

Cited but not construed in *Roth v. Baltimore Trust Co.*, 159 Md. 586.

The action of trial court in refusing a demand for a bill of particulars and for extension of time to plead held prejudicial error. Distinction between incorporating an account in *narr.* and attaching an account to *narr.* Office and effect of bill of particulars. *Newbold v. Green*, 122 Md. 652 (decided prior to act of 1914, ch. 378).

¹ Thus amended by the act of 1914, ch. 378.