

An. Code, 1924, sec. 90. 1912, sec. 85. 1904, sec. 85. 1888, sec. 82. 1852, ch. 177, sec. 8. 1882, ch. 372.

90. In no action shall plats be considered as pleadings or evidence *per se*.

Since act of 1852, ch. 177, location may be controverted without counter-location. *Trespass quare clausum fregit*. *Marvel Package Co. v. Ginther*, 154 Md. 219.

This section referred to in deciding that in an action for flooding land, a witness might testify to existence of other ditches besides those located on a plat used for illustration under sec. 85. *New York, etc., Co. v. Jones*, 94 Md. 33.

For a case dealing with this section as it stood in the Code of 1860, see *Clary v. Kimmel*, 18 Md. 246.

See notes to secs. 76 and 85.

Equitable Defenses.

An. Code, 1924, sec. 91. 1912, sec. 86. 1904, sec. 86. 1888, sec. 83. 1888, ch. 547.

91. It shall be lawful for the defendant in any action at law (including plaintiff in replevin where avowry or cognizance is made) in which, if judgment were obtained, he would be entitled to relief against such judgment on equitable grounds, to plead the facts which entitle him to such relief by way of defense, and the court in which said action is pending is hereby empowered to receive such defense by way of plea; provided, that such plea shall begin with the words: "For defense on equitable grounds," or words to that effect.

When plea under this section is good.

A plea under this section is not good unless it sets up such facts as would entitle defendant to relief in equity against judgment if recovered. That conveyance to plaintiff in action of ejectment was fraudulent as against a creditor of grantor through whom defendant claims is not a good plea under this section. *Williams v. Peters*, 72 Md. 586. And see *Urner v. Sollenberger*, 89 Md. 337.

A defense which is good at law cannot be pleaded under this section. *Falck v. Barlow*, 110 Md. 161; *Albert v. Freas*, 103 Md. 591; *Robey v. State*, 94 Md. 71.

A plea under this section held defective for obscurity and for failing to set out "the facts which entitle the defendant to relief." *Shartzler v. Park Association*, 86 Md. 337.

A tenant who enters into possession under a lease for ten years, not acknowledged or recorded, paying a yearly rent, becomes a tenant by the year, and in an action of ejectment, such tenant has a defense at law which, therefore, cannot be set up under this section. *Falck v. Barlow*, 110 Md. 161.

Estoppel *in pais* is available as a defense at law as well as in equity, and, hence, cannot be pleaded under this section. *Albert v. Freas*, 103 Md. 591.

Plea under this section must begin with words "for defense on equitable grounds," or words to like effect. *Zihlman v. Cumberland Glass Co.*, 74 Md. 311.

For plea under this section in action on sheriff's bond, held defective because it was good at law, see *Robey v. State*, 94 Md. 71. *Cf. Miles v. State*, 73 Md. 400.

Plea to action of ejectment purporting to be under this section held insufficient. Only facts which would lead a court of equity to restrain execution of judgment, which do not constitute a good defense at law and which do not amount to general issue, may be pleaded under this section. Cases reviewed. *Bond v. Murray*, 118 Md. 449.

Demurrer to pleas under this section properly sustained, since everything which could have been proved under such pleas were matters of defense under plea of fraud. A defense which is good at law may not be pleaded on equitable grounds. *McGrath v. Peterson*, 127 Md. 413. And see *Morgan v. Cleaver*, 130 Md. 618.

Plea under this section held bad, since equity would not have granted relief. *Jamesson v. Citizens Bank*, 130 Md. 86.

Generally.

Since forgery is a defense at law, plea of forgery on equitable grounds is defective. Defense eliminated by former decision. *George v. Farmers' & Mchts.' Bank*, 155 Md. 700.

The provisions of secs. 91-93 do not affect the distinction between jurisdictions with respect to replications by plaintiffs. *Nelson v. Chesapeake Constr. Co.*, 159 Md. 24.

Cited but not construed in *Crothers v. National Bank*, 158 Md. 592.

This section does not affect jurisdiction of equity to cancel or reform a contract where a bill alleges that it was procured by fraud and that it does not express real agreement of parties. This section does not confer upon courts of law power of cancellation or reformation. Design of this section. It does not destroy distinctions between law and