

entrance thereto, or access therein to such person shall be by order or on the behalf of such person refused, obstructed or prevented, so that the officer charged with the service of such writ or process shall be unable to serve the same, or can not do so without force, or personal risk, the said officer shall leave a copy of such writ or process, if practicable or permitted, with such person or persons as shall present themselves, where such writ or process is sought to be served, and where or whereabouts the person on whom the same is sought to be served shall be; or shall set up such copy upon the fortress, building or premises aforesaid, or as near thereto as may be practicable; and shall make return of the facts accordingly; which return shall to all legal intents, purposes and effect be equivalent to a return of actual personal service of such writ or process upon the party named therein.

Under this section, it is only where direct service upon defendant is prevented within jurisdiction by "threats, violence, intimidation or superior force," or when defendant is within a fortified place into which the officer cannot enter without force or personal risk, that constructive or substituted service is permitted; otherwise there can be no valid judgment *in personam* unless there is personal service or voluntary appearance. Service held ineffectual. *Wilmer v. Epstein*, 116 Md. 144.

An. Code, 1924, sec. 183. 1912, sec. 173. 1914, ch. 432. 1920, ch. 661.

183. In all trials of actions at law in the Courts of this State, it shall not be necessary to call the plaintiff before the verdict is rendered; nor shall the plaintiff be entitled to dismiss his suit or submit to a voluntary judgment of *non pros* after argument upon the facts has begun in cases tried before a jury or before a Court sitting as a jury; but the plaintiff shall have the same right to dismiss such case or submit to a voluntary judgment of *non pros* thereon, up to the time when such argument on the facts has begun, as before the enactment of this section except as hereinafter provided.

And in all cases where a defendant has specially pleaded set-off, the defendant shall similarly be entitled to dismiss his claim of set-off, or submit to a voluntary judgment of *non pros* thereon, to the same extent and up to the same point of time as the plaintiff shall be entitled to take such action with respect to his claim, and no voluntary dismissal of the suit or submission to voluntary judgment of *non pros* by the plaintiff shall interfere with or affect the right of the defendant to recover in said suit on his plea of set-off.

Plaintiff has right to submit to a voluntary judgment of *non pros* as to one defendant upon the grant of demurrer offered by that defendant. *State v. Lupton*, 163 Md. 180.

The provision of this section as to voluntary *non pros* does not apply to judgment of *non pros* entered on defendant's motion. *Phosphate, etc., Works v. Starler*, 169 Md. 443.

Under this section plaintiff may dismiss his action before argument upon facts is begun, so that defendant may not proceed with his claim of set-off. *Gildea v. Lund*, 131 Md. 388.

A *non-pros* may not be taken after argument on law and facts before judge sitting as jury. *Easter v. Overlea Land Co.*, 128 Md. 102.

See sec. 16.