

An. Code, 1924, sec. 3. 1912, sec. 3. 1904, sec. 3. 1888, sec. 3. 1829, ch. 51.
1830, ch. 165, sec. 3.

3. Any defendant may make the same legal or equitable defenses as might or could have been had and maintained against the assignor at the time of such assignment and before notice thereof, and to the same extent.

The assignee of a non-negotiable *chose in action* takes it subject to all legal and equitable defenses which the obligor has, unless the latter refuses to give the assignee information when he requires it. *Harwood v. Jones*, 10 G. & J. 420. See also *Steele v. Sellman*, 79 Md. 6; *Timms v. Shannon*, 19 Md. 314; *Kemp v. McPherson*, 7 H. & J. 336.

If the obligor pays the debt to the assignor without notice of the assignment, he will be protected. *Robinson v. Marshall*, 11 Md. 255.

Only such claims can be set off against the assignee of a *chose in action* as existed at the time of the assignment. *Fusting v. Sullivan*, 51 Md. 496; *Schenuit v. Finance Corp.*, 148 Md. 412.

An assignment may be made not only by the original plaintiff in a judgment, but also by any *bona fide* assignee. *McAleer v. Young*, 40 Md. 445.

This section, as well as the entire act, shows a purpose to extend the right of action free from technical niceties, at the same time preserving the rights of the debtor. *Lucas v. Byrne*, 35 Md. 495.

This section applied. *Goldsborough v. Cradie*, 28 Md. 487; *Job v. Walker*, 3 Md. 132. Cited but not construed in *Hampson v. Owens*, 55 Md. 586.

As to the assignee of a claim against the state, see art. 95, secs. 14 and 15.

An. Code, 1924, sec. 4. 1912, sec. 4. 1904, sec. 4. 1888, sec. 4. 1830, ch. 165, sec. 2.
1880, ch. 161, sec. 4.

4. When the legal plaintiff in any suit entered for the use of any person shall die before or after judgment, the person for whose use the same may be entered, or who may be entitled to the same, or his representative, may prosecute the same to judgment and satisfaction, as if the legal plaintiff had not died.

An assignment may be made not only by the original plaintiff in a judgment, but also by any *bona fide* assignee. *McAleer v. Young*, 40 Md. 445.

An. Code, 1924, sec. 5. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1763, ch. 23, sec. 7.

5. The surety in any bond or other obligation for the payment of money or promissory note, or the endorser of any protested bill of exchange, who shall pay or tender the money due thereon, whether the whole be due or part has been previously paid, shall be entitled to an assignment thereof; and may, by virtue of such assignment, maintain an action in his own name against the principal debtor.

Where contract made in Md., law of Md. governs in determining right of guarantor to subrogation to all creditor's rights against debtor and debtor's collateral. *R. F. C. v. Md. Casualty Co.*, 23 F. Supp. 1008.

This section enlarges the right of the surety; under it, he is entitled to have an assignment of the instrument representing the debt he has paid, and to sue the principal debtor thereon. This special remedy is not available against co-sureties. In view of art. 1, sec. 8, this section applies to all the sureties in any obligation; joint action. None of the sureties may avail of this section without the payment of the entire debt. Accommodation maker of a joint and several note a "surety." *Fuhrman v. Fuhrman*, 115 Md. 441.

The design of this section was to place a surety in the same position as the creditor and to clothe him with the latter's rights. *Colegate v. Frederick Savings Inst.*, 11 G. & J. 122; *Wallace v. Jones*, 110 Md. 147.

The entire debt must be paid, as there can be no *pro tanto* assignment. *Neptune Ins. Co. v. Howard*, 3 Md. Ch. 338.

The remedy of surety under this section, pointed out. *Martindale v. Brock*, 41 Md. 580.

This section has no application to a bond conditioned upon the faithful discharge of the duties of an office. *Crisfield v. State*, 55 Md. 197.

This section does not apply where a surety seeks contribution from his co-surety. *Carroll v. Bowie*, 7 Gill, 41.

This section is declaratory of the common law. *Watkins v. Worthington*, 2 Bl. 529.

Cited but not construed in *Dixon v. Dixon*, 1 Md. ch. 222.

This section not applicable in suit of maker of accommodation note against party accommodated. *Nelson v. Close*, 147 Md. 217.

Cited but not construed in *Md. Tr. Co. v. Poffenberger*, 156 Md. 206.

See notes to sec. 6. As to sureties, see art. 90.