

several matters as he shall think necessary to sustain his action; and the defendant in any action may plead, in answer to the declaration or other subsequent pleading of the plaintiff, as many several matters as he shall think necessary for his defense; provided, that the pleading of the party be consistent with his previous allegation and not a departure therefrom.

1888, art. 75, sec. 11. 1860, art. 75, sec. 11. 1785, ch. 80, sec. 3.

11. No plea of "*non est factum*" shall be received in any action, unless the party for whom such plea be tendered verify the same by affidavit, or unless the defendant being heir, executor or administrator of the person alleged to have made the deed obtain leave from the court, upon showing just cause, to put in such plea.

State v. Duvall, 83 Md. 124.

Ibid. sec 12. 1860, art. 75, sec. 12. 1785, ch. 46, sec. 7. 1876, ch. 398.

12. In any suit brought on any judgment or bond or other writing sealed by the party, if the defendant shall have any demand or claim against the plaintiff, upon judgment, bond or other instrument under seal, or upon bill of exchange, check, order for payment of money, promissory note, agreement, assumpsit or account proved, he shall be at liberty to file such demand or claim in bar, or plead the same in discount of the plaintiff's claim, and judgment for the excess of the one claim over the other, as each is proved, with costs of suit, shall be given for the plaintiff or the defendant, according as such excess is found in favor of the one or the other of these parties, if such excess be sufficient to support a judgment in the court where the cause is tried according to its established jurisdiction, otherwise the finding of such excess to be due shall be sufficient *prima facie* evidence of the fact of indebtedness for such excess, as upon an award of arbitrators in a suit in a court having jurisdiction to try and determine the same.

Dyer v. Dorsey, 1 G. & J. 440. *Turner v. Plowden*, 2 G. & J. 455. *Burch v. State*, 4 G. & J. 444. *McCreary v. McCreary*, 5 G. & J. 147. *Annan v. Houck*, 4 Gill, 331. *Milburn v. Guyther*, 8 Gill, 93. *Simmons v. Tongue*, 3 Bl. 341. *Lane v. Fallen*, 16 Md. 352. *Scott v. Scott*, 17 Md. 91. *State v. B. & O. R. R. Co.*, 34 Md. 374. *C. & P. R. R. Co. v. Slack*, 45 Md. 161. *Boor v. Wilson*, 48 Md. 315. *Lee v. Rutledge*, 51 Md. 313. *Steele v. Sellman*, 79 Md. 1. *Harrison v. Morton*, 83 Md. 458.

Ibid. sec. 13. 1860, art. 75, sec. 13. 1785, ch. 46, sec. 7. 1876, ch. 398.

13. In any suit upon simple contract the defendant may file in bar, or plead in discount, any claim he may have against