

An Code, sec. 13. 1904, sec. 13. 1888, sec. 13. 1785, ch. 46, sec. 7. 1876, ch. 398.
1914, ch. 393.

17. In every case where a special plea is filed as authorized by the preceding Section, judgment for the excess of the one claim over the other, as each is proved, with costs of suit, shall be given in favor of the plaintiff or the defendant, according as such excess is found in favor of the one or other of the 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 have the same effect as is given to verdicts for amounts below the court's jurisdiction by Article 26, Section 17 of this Code.

When set-off is applicable.

Joint debts cannot be set-off against separate debts, nor separate debts against joint debts. To support a plea of set-off, defendant's claim must be of such a nature that he could sue for it at law. Legal claims only form subjects of set-off in a court of law. *Milburn v. Guyther*, 8 Gill, 92. And see *Tyrrell v. Tyrrell*, 54 Md. 169; *Miller v. Lea*, 35 Md. 396; *Wilson v. Keedy*, 8 Gill, 197; *Annan v. Houck*, 4 Gill, 326; *Hall v. Creswell*, 12 G. & J. 51.

Nature and object of set-off; claim must be suable for in court of law. Joint debt may be set-off against separate debt, or *vice versa*. Separate debt may be set-off against joint and several debt, and *vice versa*; judgment for excess should be for defendant only whose separate claim is set-off. *Cohen v. Karp*, 143 Md. 210.

Set-off is unknown to common law; object thereof. The debts must be mutual between the parties in their own rights, must be the same kind or quality, and be certainly and clearly ascertained or liquidated. Damages held to be unliquidated. (This case was decided before act of 1914, ch. 393, became effective.) *Westminster M. & F. Co. v. Coffman*, 123 Md. 623. And see *Impervious Products Co. v. Gray*, 127 Md. 67.

A defendant held under the pleadings to be entitled to a set-off under this and preceding section, and to a verdict for any amount jury might find to be due him in excess of plaintiff's claim. (The contract in this case was made prior to act of 1914, ch. 393.) *Cowan v. Meyer*, 125 Md. 468.

A promissory note due by plaintiff to defendant may be set-off in an action on an open policy of insurance. When claims are "mutual." This section is to be liberally construed. *Baltimore, etc., Co. v. M'Fadon*, 4 H. & J. 41. And see *Scott v. Scott*, 17 Md. 78.

A liability for the breach of a contract of employment, measure of damages being fixed by contract, is a proper subject of set-off in a suit by employer for money due by employee. *Cumberland, etc., R. R. v. Slack*, 45 Md. 180.

In a suit against a physician for damages growing out of his resuming practice after a sale of his good-will to plaintiff with an agreement not to resume practice, defendant may set-off the balance due by plaintiff under said contract. *Warfield v. Booth*, 33 Md. 74. And see *Dyer v. Dorsey*, 1 G. & J. 440.

The defendant may set-off a note of plaintiff's which former purchased after pendency of suit. *Clarke v. Magruder*, 2 H. & J. 77; *Foley v. Mason*, 6 Md. 51.

Claims for unliquidated damages are not proper subjects of set-off. *Hearn v. Cullin*, 54 Md. 542.

There can be no plea of set-off in actions *ex delicto*. *Lee v. Rutledge*, 51 Md. 317.

There is no right of set-off against the state. *State v. B. & O. R. R. Co.*, 34 Md. 374.

Generally.

If plea of set-off limits defendant's demand to an amount equal to plaintiff's claim, there can be no recovery against plaintiff save by amendment of such plea. The act of 1876, ch. 398, held applicable. *Boor v. Wilson*, 48 Md. 315.

This section contemplates a trial and determination of claims of the respective parties and judgment for the excess of one over other as proved. Under art. 75, sec. 183, plaintiff may dismiss his action before the argument upon facts has begun, so that defendant may not proceed with his claim of set-off. *Gildea v. Lund*, 131 Md. 389 (decided prior to the act of 1920, ch. 661).