

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).

In Maryland, a defendant cannot recover an affirmative judgment for unliquidated damages, whether they grow out of the same or a different suit from that on which suit was brought. History of this section and sec. 16. *Norwood Paper Co. v. Columbia Bag Co.*, 185 Fed. 454 (decided prior to act of 1914).

Where a defendant has pleaded set-off and proved the items which make up his claim, he may recover a judgment against plaintiff for such sum as proof shows plaintiff is indebted to him over and above amount of the plaintiff's claim; recoupment contrasted. *Res adjudicata*. *Impervious Products Co. v. Gray*, 127 Md. 67.

This and the preceding section referred to in holding that when landlord sues for rent tenant may recoup any damages he has sustained by landlord's failure to comply with his covenant to repair. *Cramer v. Baugher*, 130 Md. 217.

The object of the law in allowing a plea of set-off is to prevent circuity of action. *Stallings v. Gottschalk*, 77 Md. 433; *Strike v. McDonald*, 2 H. & G. 227. And see *Strike's Case*, 1 Bl. 79.

Set-off must be specially pleaded. *Sangston v. Maitland*, 11 G. & J. 286.

For cases dealing with set-off in equity, see *Wilson v. Williams*, 108 Md. 528; *Penniman v. Loney*, 40 Md. 471; *Smith v. Washington, etc. Co.*, 31 Md. 17; *Scott v. Scott*, 17 Md. 78.

For an extensive note on set-off and recoupment, see *Milburn v. Guyther*, 8 Gill, 93.

Cited but not construed in *Eschbach v. Bayley*, 28 Md. 495.

See notes to sec. 16. For form of plea of set-off, see sec. 28, sub-sec. 52. As to set-off where an agent or factor has become insolvent, see art. 2, sec. 7, *et seq.* As to the application by the treasurer of the state's right of set-off, see art. 95, secs. 14 and 15.

See sec. 4.

An. Code, 1924, sec. 18. 1912, sec. 14. 1904, sec. 14. 1888, sec. 14. 1876, ch. 345.

18. No party, otherwise entitled to sue and recover in any suit at law upon or under any promissory note, bill of exchange, bill of lading, ware-