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THE MARYLAND SPEEDY JUDGMENT ACTS

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PURPOSE OF THE ACTS

The Act of 1886, Chapter 184,¹ better known as the Speedy Judgment Act or the Practice Act, established for Baltimore City, and various similar acts since passed have established for a great many counties of the State,² a method for the obtention of summary judgments. Its purpose was to furnish an expeditious method of reducing to judgment a valid and uncontested claim in cases where the amount was certain and liquidated, provided the plaintiff in bringing his action had strictly complied with its terms.³

To carry out the purpose of the act and as further assurance to the plaintiff of a speedy judgment, it is provided that the defendant in filing pleas must make oath to the amount admitted or disputed and must be advised by counsel that he has a good legal defense;⁴ and that the plaintiff shall be entitled to a counsel fee if the claim is contested and the plaintiff successfully prosecutes his suit.⁵

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¹ Code, Public Local Laws of Maryland (Flack, 1930) Art. IV, Secs 312-318, referred to herein as Act.

² This article deals primarily with the Speedy Judgment Act for Baltimore City. The various county acts are substantially similar. Citations to them are collected herein in an Appendix which includes a cross-reference table showing, in terms of the divisions of the Baltimore City Act, the comparable sections of the various county Acts. To the extent to which the Act for a given county contains the same terminology as the Baltimore City Act, an interpretation of the latter will be binding for the former.

³ "The object of the Act was, in cases to which it applied, to obtain from both the plaintiff and the defendant a definite and sworn statement of both the claim and the defense (if any), so that the parties might know exactly wherein they differed and shape their action accordingly." *Adler v. Crook*, 63 Md. 494, 498, 13 Atl. 153 (1888).

⁴ Act, Sec. 312.

⁵ Act, Sec. 315.

These subjects will be discussed under appropriate headings.

The Speedy Judgment Act, the Court of Appeals has said, is "designed to expedite the enforcement of valid claims, but not to preclude a meritorious defense reasonably interposed in substantial compliance with its terms".⁶

CONSTRUCTION OF THE ACT

The Act is strictly construed, and requires the plaintiff to file his "cause of action" with the suit. If the cause of action is a bond, promissory note, contract, or something similar, the original or a photostatic copy thereof⁷ must be filed, and if it is a verbal or implied promise to pay, a full, complete and itemized statement of the charges or a full bill of particulars thereof must be filed with the suit at the time of the bringing or institution thereof.⁸ However, the courts will not adopt any construction of the statute which would defeat its purpose,⁹ or prevent the Courts from "serving the obvious ends of Justice".¹⁰

SUITS UNDER THE ACT

The following requirements are essential for suits brought under the Act.

1. The action must be based upon a claim for liquidated damages.

2. The defendant's liability must appear upon the face of the cause of action.

3. The cause of action must be filed with the declaration, and furnish a standard or means of arriving at the defendant's liability, and must be of sufficient particularity to support a summary judgment.

4. The action must be one which can be properly verified by affidavit as to the amount and the correctness thereof.

Liquidated damages are those whose amount has been determined by agreement between the parties.¹¹ "Where a

⁶ Commercial Credit Corp. v. Rozier, 152 Md. 268, 271, 136 Atl. 636 (1927).

⁷ Act, Sec. 313-A, added by Md. Acts, 1931, Ch. 102.

⁸ Act, Sec. 313.

⁹ Gemmell v. Davis, 71 Md. 458, 18 Atl. 455 (1889).

¹⁰ Commercial Credit Corp. v. Rozier, *supra* note 6.

¹¹ Bouvier's Law Dictionary, 2023.

precise sum for damages is not agreed upon, and it is not the essence of the contract between the parties, the *quantum* of damages is unliquidated, and it is for a jury to assess them; but where the precise sum has been fixed and agreed upon by the parties, that sum is ascertained and liquidated."¹²

Damages for services or charges where the valuation depends upon an opinion by the party suing, or where evidence must be taken to prove value are not such as can be claimed under the act. The reasonable value of such service or of such charge is the measure of damages. Thus the claim of a lawyer for professional services where no definite sum has been agreed upon is a claim for unliquidated damages.¹³

THE ACCOUNT OR CAUSE OF ACTION

To obtain the benefit of the statute, the account, if the action is based upon an implied or verbal contract, must be filed with the declaration¹⁴ and must show on its face the liability of the defendant, or must furnish the standard or means of arriving at such liability. The same rule applies when the suit is filed upon a bond, bill of exchange, note or other instrument in writing.¹⁵ Unless the account or other cause of action filed with the declaration conforms to these requirements, the Court has no jurisdiction to enter judgment.¹⁶

The filing of cause of action is required only as a condition to a speedy judgment. The absence of documents, if proper pleas are filed, is without effect; the filing of such pleas avoids judgment.¹⁷ It is not necessary that the cause of action filed with the declaration be annexed thereto, or endorsed by the clerk as filed.¹⁸

Chapter 102 of the Acts of 1931¹⁹ provides that in lieu of filing the original bond, bill of exchange, promissory

¹² *Smithson v. U. S. Telegraph Co.*, 29 Md. 162, 166 (1868); *De Atley v. Senior*, 55 Md. 479 (1880).

¹³ *Stewart v. Chappell*, 98 Md. 527, 57 Atl. 17 (1904).

¹⁴ Act, Sec. 313.

¹⁵ *Ibid.*

¹⁶ *McDonald v. King*, 125 Md. 589, 593, 93 Atl. 979 (1915).

¹⁷ *Slicing Machine Co., Inc. v. Murphy*, 161 Md. 667, 158 Atl. 26 (1931).

¹⁸ *Loney v. Bailey*, 43 Md. 10 (1875).

¹⁹ Act, Sec. 313-A.

note, or other writing or account by which the defendant is indebted, the plaintiff may file a *photostatic copy* thereof, if affidavit is made by the plaintiff or someone on his behalf that such photostatic copy is a true copy of the original cause of action. The court or the defendant may demand the production of the original before the entry of judgment.

Causes of action have been held sufficient in the following cases:

1. Policy of marine insurance²⁰ or fire insurance;²¹
2. An account for the statutory liability of a stockholder when the account stated dates and amounts of all deposits with credit for the money withdrawn;²²
3. A bill of lading that expressly stipulated for the payment of demurrage at a certain rate per day;²³
4. A contract incorporated in the declaration;²⁴
5. An account for "brokers commissions for effecting sale to E. G. G. for \$2,500.00 of a one-half interest in E. Lunchroom, No. 1057 Hillen Street, Baltimore City, \$175.00, with interest from August 1, 1925;²⁵
6. In a suit upon open account, a properly itemized bill of particulars showing the name of the party charged, the date, each purchase and the amount thereof properly itemized, credits, etc., and the total amount due.²⁶

In the following cases the cause of action has been held insufficient:

1. An account for balance due, unless the items comprising such balance are set out in detail.²⁷
2. "To amount of account rendered."²⁸
3. "To cash money received from the plaintiff."²⁹
4. Contents of a paper not produced.³⁰

²⁰ Orient Mutual Ins. Co. v. Andrews and Locke, 66 Md. 371, 7 Atl. 693 (1886).

²¹ Continental Ins. Co. v. Reynolds, 107 Md. 96, 68 Atl. 277 (1907); Girard v. Bankard, 107 Md. 538, 69 Atl. 415 (1908).

²² Coulbourn Bros. v. Boulton, 100 Md. 350, 59 Atl. 711 (1905).

²³ Jones v. Freeman, 29 Md. 273 (1868).

²⁴ Smith v. Hallwood Register Co., 97 Md. 354, 55 Atl. 525 (1903).

²⁵ Lipscomb v. Zink, 151 Md. 430, 435, 135 Atl. 182 (1926).

²⁶ Lansburgh v. Fish & Oyster Co., 153 Md. 312, 138 Atl. 269 (1927).

²⁷ Thillman v. Shadrack, 69 Md. 528, 16 Atl. 138 (1888).

²⁸ Wilhelm v. Mitchell, 131 Md. 358, 101 Atl. 785 (1917).

²⁹ Mueller v. Michaels, 101 Md. 188, 60 Atl. 485 (1905).

³⁰ Hanover Fire Ins. Co. v. Brown, 77 Md. 64, 74, 25 Atl. 989, 27 Atl. 314, 39 Am. St. Rep. 386 (1893); see also Commonwealth v. Kirkland, 102 Md. 662, 62 Atl. 799 (1906).

5. Bonds with collateral conditions on which sureties are responsible only for the default of their principal in the discharge of official duties.³¹

6. Improperly certified copy of judgment.³²

THE AFFIDAVITS

An affidavit is required when filing the declaration, the pleas and demurrers. No affidavit is required to any pleading subsequent to the pleas, as the case then proceeds as any other common law action. Affidavits are not required to demands for particulars.

1. *Affidavit to Declaration*

The plaintiff or someone on his behalf, must, at the time of bringing suit, make oath to, or affirm the true amount of the defendant's indebtedness to the plaintiff over and above all discounts.³³ The true amount is the amount actually due and owing at the time suit is instituted. The affidavit of the plaintiff, or on behalf of the plaintiff must comply strictly with the terms of the act.³⁴

The affidavit can be taken before any one authorized to take affidavits.³⁵ Thus if the affidavit is made outside of the United States, it must be taken before a Consul or Vice-Consul. If it be taken before a Justice of the Peace of another State, a proper certificate must be attached showing that the Justice is a duly commissioned and qualified officer.

The essentials of an affidavit under the act are embodied in the opinion in the case of *DeAtley v. Senior*.³⁶ The affidavit and the bill of particulars filed with the declaration should agree as to amount.³⁷ An individual plaintiff must make the affidavit on his own behalf, unless he be absent from the State, and in such case it can be made by his duly authorized agent.³⁸ When the plaintiff is a corporation the

³¹ State use of *Bouldin v. Steibel*, 31 Md. 34 (1869) ; see also *Keen et al. v. Whittington & Co.*, 40 Md. 489 (1874).

³² *Musher v. Perera*, 162 Md. 44, 158 Atl. 14 (1932).

³³ Act, Sec. 313.

³⁴ *Knickerbocker Life Ins. Co. of New York v. Hoeske*, 32 Md. 317 (1869).

³⁵ Under Md. Code, Art. 9, Sec. 5.

³⁶ *Supra* note 12.

³⁷ *Griffith v. Graham*, 1 B. C. R. 204 (1891).

³⁸ Act, Sec. 313.

affidavit must be made by the proper officer.³⁹ A cashier of a bank is competent to make the affidavit on behalf of the bank.⁴⁰ A bookkeeper is not a proper person to make the affidavit.⁴¹

It is not necessary that the affidavit claim interest when the account or other cause of action shows on its face that interest is due and the date from which it can be calculated, nor to state the amount of protest fees when the protest is filed and shows the amount of such fees.⁴²

Interest should be claimed when the cause of action does not show on its face that interest is due, and such interest should be claimed in the affidavit on the original amount due and should date from the time the right thereto begins.

When a case under the act goes to trial the affidavit for that purpose loses its force and effect, because the affidavit is no part of the pleading, and if the affidavit states that the cause of action is a promissory note, when the cause of action is an open account, this does not preclude the plaintiff from recovery upon trial. The Act of 1914, Chapter 378, restricts a plaintiff to the bill of particulars filed, and makes it a part of the pleading; but the affidavit not being a part of the pleading, the case would proceed as any other case *ex contractu*.⁴³ The affidavit should not be submitted to the jury.⁴⁴

2. *Affidavit to Pleas*

Pleas with an affidavit of defense must be made and filed within fifteen days from the return day to which the defendant is returned summoned, unless the court for good cause shown before the time for pleading has expired, passes its order in writing extending the time in which to file pleas. The affidavit must aver that every plea so pleaded is true, and the amount, if any, that is due and owing, and the amount disputed, and state further that the

³⁹ *Knickerbocker Life Ins. Co. of New York v. Hoeske*, *supra* note 34; *Power v. Asphalt Products Corp.*, 162 Md. 175, 159 Atl. 251 (1932).

⁴⁰ *Parkhurst v. Citizens' Nat. Bank*, 61 Md. 254 (1884).

⁴¹ *De Atley v. Senior*, *supra* note 12.

⁴² *Canton Nat. Building Assn. v. Weber*, 34 Md. 669 (1871).

⁴³ *Councilman v. Towson Bank*, 103 Md. 469, 64 Atl. 358 (1906).

⁴⁴ *Ingalls and Wright v. Couch and Creary*, 35 Md. 296 (1872).

defendant believes that he will be able at the trial thereof to produce sufficient evidence to support said pleas.⁴⁵

The affidavit must state to what part of the plaintiff's claim it applies.⁴⁶ An affidavit that the defendant does not admit any of the plaintiff's claim to be due and owing is not such a denial as required by the act;⁴⁷ but an affidavit stating that all is disputed is good.⁴⁸ Therefore, an affidavit to be proper in form should state that no part of the plaintiff's claim is due and owing, and the whole thereof is disputed, if such be the case. If, however, a part of the claim is admitted, the affidavit must state the exact amount thereof, as well as the exact amount in dispute. The omission to do this will render the pleas fatally defective and a judgment by default for want of sufficient affidavit of defense will be entered upon motion.⁴⁹

If there is more than one defendant, either of the defendants may make the affidavit on behalf of all, being careful to use the plural.⁵⁰

If a partnership or an incorporation of the parties is alleged in the declaration, such allegation is taken as admitted for the purpose of the case, unless the same is denied in the affidavit at the time of filing pleas.⁵¹ The same provision applies to the denial of the signature where any paper purporting to be signed by the defendant is filed with the declaration.⁵² It has been held that an affidavit denying signatures to the note sued on, if broad enough to include all of the defendants, is good, even though it fails to state in terms that none are genuine.⁵³

After the specified time for filing an affidavit has elapsed it cannot be amended to deny the genuineness of a

⁴⁵ Act, Sec. 312. The forms of the various affidavits can be found in 2 Poe, Pleading & Practice (Tiffany's Ed.) 401-4.

⁴⁶ Adler v. Crook, *supra* note 3; Gemmell v. Davis, *supra* note 9.

⁴⁷ Balto. Publishing Co. v. Hooper, 75 Md. 115, 24 Atl. 452 (1892).

⁴⁸ Codd Company v. Parker, 97 Md. 319, 55 Atl. 623 (1903).

⁴⁹ Adler v. Crook, *supra* note 3.

⁵⁰ Deved v. Carrington, 98 Md. 376, 56 Atl. 818 (1904).

⁵¹ Thorne v. Fox, 67 Md. 67, 8 Atl. 667 (1887); National Bldg. Co. v. Gosnell, 116 Md. 640, 82 Atl. 557 (1911).

⁵² Farmers, Etc., Bank v. Hunter, 97 Md. 148, 54 Atl. 650 (1903); Horner v. Plumley, 97 Md. 271, 54 Atl. 971 (1903); Commonwealth Bank v. Kirkland, 102 Md. 662, 62 Atl. 799 (1906); Nicholson v. Snyder, 97 Md. 415, 55 Atl. 484 (1903).

⁵³ Nicholson v. Snyder, *supra* note 52.

signature.⁵⁴ A comparison of the case so holding⁵⁵ with the case of *Commercial Credit Corp. v. Rozier*,⁵⁶ proves to be an interesting study. In the latter case a plea denying signature was filed before the time for pleading had elapsed, but the signature was not denied in the affidavit. The court said: "That drastic result would be produced merely because the defense of forgery, though stated in a plea under oath, was not set forth in the affidavit by which the plea is verified." In that case Chief Judge Bond and Judge Parke dissented.

The two cases are distinctly different, however. In the former case the time for pleading and filing an affidavit had elapsed, and a denial of the signature was not pleaded, nor was such denial made in the affidavit, while in the latter case the plea of forgery was specially pleaded within the time limited by the act, although omitted in the affidavit. Judge Urner's opinion cautions the pleader that such an averment should properly be included in the affidavit.

This opinion modifies the rule as laid down in *Gemell v. Davis*,⁵⁷ "that an affidavit that does not comply with the act will not be a bar to a judgment, although the pleas themselves are good".

If suit is brought under the terms of the act, pleas are absolute nullities unless accompanied by an affidavit and certificate of counsel.⁵⁸ Pleas and affidavit filed after the time for pleading has expired are likewise nullities, unless the court for good cause shown has extended the time in which to file pleas and affidavit.⁵⁹

An affidavit is not required to pleas where the declaration has been substantially amended, as such an amendment takes the case out of the act.⁶⁰ An affidavit is required to a plea in abatement, unless such a plea is inconsistent with other pleas and the affidavit.⁶¹ "If there be any reason why

⁵⁴ *Commercial Credit Corp. v. Schuck*, 151 Md. 367, 134 Atl. 349 (1926).

⁵⁵ *Ibid.*

⁵⁶ *Supra* note 6, 152 Md. 268, 271.

⁵⁷ *Supra* note 9.

⁵⁸ *Griffith v. Adams*, 95 Md. 170, 52 Atl. 66 (1902); *Waldeck Co. v. Em-mart*, 127 Md. 470, 96 Atl. 634 (1916).

⁵⁹ *Gemmell v. Davis*, *supra* note 9.

⁶⁰ *Mueller v. Michaels*, *supra* note 29.

⁶¹ *Hyson v. Gen. Fireproof Sup. Co.*, 117 Md. 230, 83 Atl. 244 (1912).

the defendant cannot make the required affidavit until after his pleas in abatement are disposed of, or if justice demands that he be not required to file the affidavit until after that time, the statute⁶² furnishes ample protection, by providing that the court for good cause shown, may, by its order in writing passed at any time before judgment, extend the time for filing pleas and affidavit, which extension, shall extend until the expiration thereof the plaintiff's right to enter judgment under this section.'⁶³

If the affidavit denies the genuineness of the signature it is not necessary to specially plead such denial.⁶⁴ Pleas filed by a corporation must be verified under oath by some natural person capable of making an affidavit.⁶⁵ To test the sufficiency of the affidavit to pleas, the plaintiff should refuse to join issue thereon and suffer a judgment.⁶⁶

DEMURRERS AND AFFIDAVITS THERETO

The Act of 1920 required that there should be affidavits to demurrers, and made the demurrer a subject of special pleading.⁶⁷ It was amended in 1927 as follows:

"In all jurisdictions where provision has been made or shall be made for the obtention of speedy judgments, wherever a defendant files a demurrer to the declaration filed under such speedy judgment act, said demurrer shall not be received unless the defendant shall state the specific grounds for the demurrer, and unless the defendant or someone on his behalf shall, under oath or affirmation, state that the said demurrer is not filed for the purpose of delay, and that he is advised by counsel to file said demurrer, and such demurrer shall be accompanied by a certificate of counsel that he so advised the party filing said demurrer.'⁶⁸

This act requires of the defendant the same particularity in demurring as is required of him in pleading. The provisions of the act requiring the specific grounds for the de-

⁶² Act, Sec. 312.

⁶³ *Lipscomb v. Zink*, *supra* note 25, 151 Md. 430, 437.

⁶⁴ *Farmers, Etc., Bank v. Hunter*, *supra* note 52.

⁶⁵ *Knickerbocker Life Ins. Co. of New York v. Hoeske*, *supra* note 34.

⁶⁶ See *Traber v. Traber*, 50 Md. 1 (1878).

⁶⁷ Md. Acts 1920, Ch. 684; Md. Code, Art. 75, Sec. 9.

⁶⁸ Md. Acts 1927, Ch. 525; Md. Code Supp., Art. 75, Sec. 9.

murrer, and the sufficiency of such grounds have been very ably discussed in the case of *Shpritz v. Baltimore Trust Co.*⁶⁹. Inter alia this case holds that a demurrer that states that a particular allegation of the declaration is bad pleading does not satisfy the act.

Judge Frank, before whom the case was tried below, held that a pleading may be bad for a variety of reasons, including duplicity, departure, non-joinder, and misjoinder. Therefore, the assertion that a pleading or a part of it is bad pleading does not state the specific grounds for the demurrer, since the bad pleading may be due to so many different grounds of error, and to fulfill the requirement of the statute, the specific vice which renders the pleading or the portion thereof bad must be indicated. This view was approved on appeal by the Court of Appeals.

The allegation that a declaration "is bad in substance and insufficient in law" is likewise bad in that it gives no special reason for the demurrer, nor does it point out a specific error or vice in the declaration.

Although a demurrer is a pleading, it is not a plea.⁷⁰ Therefore, if a judgment is stricken out and the time is extended for filing of pleas, this does not allow or justify a demurrer, and the court has the right to limit the defenses to such as may be presented by pleas.⁷¹ It is absolutely necessary when filing a demurrer to secure an extension of time in which to plead, otherwise, the demurrer will not prevent a judgment by default.⁷²

When a demurrer is filed to the whole declaration, and one count is good, it is properly overruled, and if a declaration contains a special count and the common counts in proper form, a demurrer to the whole declaration will likewise be overruled.⁷³

In dealing with a demurrer to the nar and each and every count thereof, the Court of Appeals held in *Rosenthal v. Heft*,⁷⁴ that:

⁶⁹ 151 Md. 503, 135 Atl. 369 (1926).

⁷⁰ *Baltimore City v. Thomas*, 115 Md. 212, 80 Atl. 726 (1911).

⁷¹ *Cornblatt v. Block*, 132 Md. 44, 103 Atl. 137 (1918).

⁷² *Ibid.*

⁷³ *Gunther v. Dranbauer*, 86 Md. 1, 38 Atl. 33 (1897); *Mutual Fire Ins. Co. v. Owen*, 148 Md. 257, 129 Atl. 214 (1925).

⁷⁴ 155 Md. 410, 423, 142 Atl. 598 (1928).

"Inasmuch as the six common counts are in the common stereotyped form, the objection to the whole *nar* must necessarily fall, unless they are vitiated by the bill of particulars, or the documents offered in answer to the demand for oyer, or unless, because of the character of the seventh count, there has been a misjoinder of actions. But since the bill of particulars is a mere statement of the items of the plaintiff's claim, while it limited the proof that might be offered under them, it certainly did not make them bad. . . . It is not apparent how the common counts were vitiated by the profert of the deed and agreements. The action was not brought on the deed itself nor upon the agreement, but upon the parol promise, implied from . . . acceptance of the deed."

A declaration, including the common counts, is tested by the sufficiency of the cause of action if a demurrer is filed to the whole declaration.⁷⁵

AMENDMENTS

Any material or substantial amendment to the cause of action as originally filed will take the case out of the operation of the Speedy Judgment Acts.

If the account or other cause of action filed with the declaration at the time the suit is brought, is not in itself sufficient to satisfy the act in regard to the bill of particulars, the plaintiff is not entitled to a summary judgment by default; and if the suit is later amended by filing a proper bill of particulars after a demand by the defendant, the amendment suspends the operation of the act, and the defendant is no longer required to plead under oath.⁷⁶

The addition of new parties as either plaintiff or defendant, or an amendment to the declaration as originally filed, by adding new counts, or striking out counts embodied in the declaration at the time suit is instituted, will remove the case from the operation of the act. If the amendment is made for some reason other than one involving the cause of action, it is not necessary in filing an amended declaration also to re-file the account, note, bill of particulars or

⁷⁵ *Speed v. Bailey*, 153 Md. 655, 139 Atl. 534 (1927).

⁷⁶ *Mueller v. Michaels*, *supra* note 29.

other evidence of indebtedness. In other words, if the suit be on a contract and the contract is filed at the time of bringing suit, but the declaration is bad for some reason not touching the contract, such as mis-joinder or non-joinder of parties, and the suit is amended for this reason, it is not necessary to re-file the contract with the amended declaration.⁷⁷

The Act of 1914,⁷⁸ requiring a bill of particulars to be treated as a part of the pleading does not affect the right to amend.⁷⁹ The action of the trial court in allowing a defendant to file new pleas and affidavit, and extending the time for filing the same is within its discretion, and if the new pleas and affidavit are filed within the extension of time no appeal will lie therefrom.⁸⁰ Unless the amendment makes some change from the original, the pleas do not have to be re-filed.

THE COMMON COUNTS

The word "common" is far too appropriate in connection with the common counts, because their use, or rather, the use of all of them is entirely too general and frequent. Their use should be restricted to the applicability of the count to the cause of action. When all the counts are used and the cause of action is applicable to only one count, a demand for particulars is usually made and granted, resulting in an amendment which removes the case from the operation of the act. For a number of years the law dockets of the common law courts have been clogged with exceptions to demands for particulars of the common counts and this could be easily avoided by the use of the proper count or counts.

The prefix, "For money payable by the defendant to the plaintiff", is absolutely necessary in the use of the common counts. The lack of such an averment is fatal to the declaration on demurrer.⁸¹

⁷⁷ *Abbott v. Bowers*, 98 Md. 525, 57 Atl. 508 (1904).

⁷⁸ Md. Acts 1914, Ch. 378; Md. Code, Art. 75, Sec. 28 (107).

⁷⁹ *Poland v. Chessler*, 145 Md. 66, 125 Atl. 536 (1923).

⁸⁰ *Horner v. Plumley*, 97 Md. 271, 54 Atl. 971 (1903).

⁸¹ 1 *Poe, Pleading and Practice* (Tiffany's Ed.), Sec. 94; *Merryman v. Rider, Ex'x.*, 34 Md. 98 (1871).

Mr. Poe in his work on pleading has, with the thoroughness characteristic of him, set out in detail each of the counts and what may be recovered under each, and further reference to them is unnecessary here, except to mention their use on a fully performed contract. Where an express contract exists which has been fully performed and nothing remains but to pay the contract price, the common counts or such of them as are applicable may be used instead of a special count on the contract. This is optional with the pleader, and if the counts are used, a fully itemized account must be filed.⁸²

A demurrer to the Common Counts has been permitted when such counts are particularized by the supporting papers required under the Speedy Judgment Act.⁸³

DEMAND FOR PARTICULARS AND ANSWER

It is the right of either party to demand a bill of particulars if the pleading is so general that it does not apprise the opposing party of the claim or defense against him with the particularity required. The claim of the plaintiff must be so particularized as to enable the defendant to intelligently plead. If the pleas of the defendant are the general issue pleas, or a special plea, or both, and do not indicate the evidence to be offered in support of them, then the plaintiff can demand particulars of the defense.

The mere demand for particulars does not enlarge the defendant's time to plead and does not suspend the entry of judgment to which the plaintiff is otherwise entitled.⁸⁴ The defendant, to prevent judgment, must secure from the Court an order in writing enlarging the time in which to file pleas, and notice of such order must be given to the plaintiff.⁸⁵ If, however, the defendant pleads before a rule for a bill of particulars has been complied with, he waives his right to require a compliance with the rule.⁸⁶

⁸² 1 Poe, Pleading and Practice (Tiffany's Ed.), 102; Motoramp Garage v. Booker, Daily Record, June 15, 1937, Op. by Frank, J.

⁸³ Speed v. Bailey, *supra* note 75.

⁸⁴ Lipscomb v. Zink, *supra* note 25.

⁸⁵ Rule No. 49, Baltimore City Common Law Courts.

⁸⁶ Wilkin Mfg. Co. v. Melvin, 116 Md. 97, 81 Atl. 879 (1911).

The bill of particulars, whether filed at the time of filing the declaration, or filed in answer to the demand, becomes under the Act of 1914,⁸⁷ a part of the pleadings, and limits the plaintiff in his evidence to the proof of the items set out therein. Before the Act of 1914 the plaintiff could prove anything provable under his declaration and was not restricted to his particulars.⁸⁸ The strictness of this Act is illustrated in the following instances:

In an account that did not contain an item for loss of profits, the plaintiff was not allowed to recover profits.⁸⁹

In the case of *Rullman v. Rullman*,⁹⁰ the seventh count of the declaration alleged that the cause of action was a promise under seal, when the cause of action was an agreement in the nature of an equitable mortgage under seal to secure the payment of a pre-existing debt, but containing no covenant for the payment of such debt. Ignoring the allegation of the seventh count of the declaration, the court looked to the cause of action filed and considered it a part of the pleading for the purpose of determining whether the cause of action was a promise under seal, as alleged, and regarded it as an action on an implied contract.⁹¹

Prior to the case of *Baltimore Trust Co. v. Roth*,⁹² in which general issue pleas were filed, demands for particulars of pleas, particularly general issue pleas, were unheard of. Since this decision it is seldom that particulars of the pleas are not demanded. The Court said, speaking through Judge Parke:

"The cause at bar is an illustration of the necessity for the laying of a rule for a bill of particulars of defense. . . . The furnishing of the particulars of defense does not relieve the plaintiff of the necessity of supporting his demand by proof."

COUNSEL FEE

If an action be brought under the terms of the speedy judgment act and the plaintiff is successful in recovering

⁸⁷ Md. Acts 1914, Ch. 378; Code, Art. 75, Sec. 28 (107).

⁸⁸ See *Newbold v. Green*, 122 Md. 648, 90 Atl. 513 (1914).

⁸⁹ *Aitz Chaim Cong. v. Butterhoff*, 141 Md. 267, 118 Atl. 658 (1922).

⁹⁰ 148 Md. 140, 129 Atl. 7 (1925).

⁹¹ See also *Power v. Asphalt Products Corp.*, 162 Md. 175, 159 Atl. 251 (1932).

⁹² 161 Md. 340, 346, 350, 158 Atl. 32 (1931).

a judgment for any part of his claim that is disputed, he is entitled to a counsel fee of not less than \$25.00 nor more than \$100.00 in the discretion of the court.⁹³

The counsel fee is not imposed as special compensation to the plaintiff, but is a special allowance to discourage bad pleas.⁹⁴ The fee will not be allowed the plaintiff when the obligation on which the defendant was indebted was not filed with the declaration.⁹⁵ A counsel fee is not a part of the judgment, but an incident to it, and if the judgment be stricken out the fee falls with it.⁹⁶ Where a demurrer was filed to the *nar* and heard by the trial court it was held to be a trial of the case such as to justify a counsel fee.⁹⁷

An amendment of 1908⁹⁸ provides that in cases under the act where there shall be a verdict for the defendant, the defendant in addition to his costs shall be allowed a reasonable counsel fee, the amount of which is the same as allowed the plaintiff. It will be noticed that the statute granting a fee to the plaintiff requires a judgment, while the statute allowing a fee to the defendant requires a verdict. Plaintiff cannot deliberately or voluntarily amend to prevent defendant's counsel fee.⁹⁹

RULE SECURITY FOR COSTS

If the plaintiff be a non-resident of the State of Maryland, the defendant may lay a rule security for costs against him, which rule must be complied with by the second day of the next term, or the suit will be subject to a judgment of *non pros* upon motion. The sum of \$25.00 is the usual amount deposited to cover such costs, and this sum is usually accepted unless the defendant has good reason to believe that the costs will be more. This rule cannot be invoked as a ground for having the time in which to plead extended.¹⁰⁰

⁹³ Md. Acts 1890, Ch. 433; Act, Sec. 315.

⁹⁴ *Singer v. Fidelity and Deposit Co.*, 96 Md. 221, 54 Atl. 63 (1903).

⁹⁵ *Mutual Life Ins. Co. v. Murray*, 111 Md. 600, 75 Atl. 348 (1909).

⁹⁶ *Singer v. Fidelity and Deposit Co.*, *supra* note 94.

⁹⁷ *Cornblatt v. Block*, *supra* note 71.

⁹⁸ Md. Acts 1908, Ch. 644, Act, Sec. 315A.

⁹⁹ *Perper v. Schoen*, Baltimore City Court, Daily Record, Apr. 19, 1931.

¹⁰⁰ *Wilkin Mfg. Co. v. Melvin*, *supra* note 86.

JUDGMENTS

The plaintiff is entitled to judgment, unless the defendant within fifteen days from the return day to which he has been summoned files pleas as required by the act supported by affidavit.¹⁰¹

To secure the benefits of this act the plaintiff must do what the act requires of him;¹⁰² but a plaintiff does not have to produce all the evidence by which his claim might be proved to be entitled to a judgment.¹⁰³

The plaintiff has an absolute right to judgment by default when pleas have been filed, if the pleas do not meet the requirements of the act, but this right is waived if the plaintiff files a replication to such pleas.¹⁰⁴ He is likewise entitled to judgment when the affidavit of the defendant does not state what part of the claim is admitted and what part is disputed.¹⁰⁵

A copy of the declaration must be served upon each party defendant or the plaintiff is not entitled to a judgment under the act;¹⁰⁶ but it is not necessary to file a copy of the cause of action for service on the defendant with a copy of the declaration.¹⁰⁷

The plaintiff need not make known to the defendant his intention to take judgment,¹⁰⁸ and the court may assess the damages without the aid of a jury.¹⁰⁹ After a judgment by default is once rendered, all presumptions are in favor of its correctness.¹¹⁰

If a joint judgment is desired where several defendants are sued in the same action, and one of them is returned summoned to one return day, and another to another return

¹⁰¹ *Sanborn and Mann v. Mullen*, 77 Md. 480, 26 Atl. 872 (1893); Act, Sec. 312.

¹⁰² *Lipscomb v. Zink*, *supra* note 25; *Fick v. Towers*, 152 Md. 335, 136 Atl. 648 (1927).

¹⁰³ *Wilhelm v. Mitchell*, *supra* note 28.

¹⁰⁴ *Wilkin Mfg. Co. v. Melvin*, *supra* note 86.

¹⁰⁵ *Baltimore v. Hooper*, 76 Md. 115 (1892); *Codd Company v. Parker*, 97 Md. 319, 55 Atl. 623 (1903).

¹⁰⁶ *Fick v. Towers*, *supra* note 102.

¹⁰⁷ *Commonwealth v. Schwaber*, Superior Court of Baltimore City, Daily Record, May 8th, 1933.

¹⁰⁸ *Gemmell v. Davis*, *supra* note 9.

¹⁰⁹ *Norris v. Wrenschall*, 34 Md. 492 (1871); Act, Sec. 314.

¹¹⁰ *Coulbourn Bros. v. Boulton*, *supra* note 22.

day, and so on, the proper way to secure a joint judgment against all is to take an interlocutory judgment against each defendant as he is brought in and defaulted, and then take one final judgment by inquisition against all.¹¹¹

This practice becomes particularly important when a man and his wife own property as tenants by the entirety and are sued jointly, one of them being summoned to one return day the other to another return day. If the judgment is secured in the manner shown above an execution may issue against property held by the entireties.¹¹²

Judgment for Amount Admitted in Affidavit to Pleas

Under an amendment made in 1894,¹¹³ when an affidavit to the pleas admits part of the plaintiff's claim to be due and owing, the plaintiff must take judgment for such amount, or the defendant is not bound thereby.¹¹⁴

If the amount admitted is insufficient to establish jurisdiction, the plaintiff can take judgment for such amount and await the trial, and if he obtains a judgment upon trial for the balance in dispute, both judgments can be combined for the purpose of an execution.¹¹⁵ If the plaintiff is unsuccessful at the trial for the amount in dispute he still maintains his judgment for the amount admitted and can proceed in accordance with the provisions of the Code.¹¹⁶

Motion to Strike Out Judgments

In Baltimore City it is necessary to make a motion to strike out a judgment within thirty days from the rendition of the judgment, if the grounds for such motion be other

¹¹¹ *Loney v. Bailey*, *supra* note 18.

¹¹² *Frey v. McGaw*, 127 Md. 23, 95 Atl. 969 (1915); See also *Wilmer Trustee v. Gaither*, 68 Md. 342, 349, 12 Atl. 8, 12 Atl. 253 (1887); *Westheimer v. Craig*, 76 Md. 399, 25 Atl. 419 (1892); *Jordan v. Reynolds*, 105 Md. 288, 66 Atl. 37, 121 Am. St. Rep. 578 (1907).

¹¹³ Md. Acts, 1894, Ch. 173; Act, Sec. 312.

¹¹⁴ *Sisters of Notre Dame v. Kusnitt*, 125 Md. 323, 341, 93 Atl. 928 (1915); *National Bldg. Co. v. Gosnell*, 116 Md. 640, 82 Atl. 557 (1911); *Lauchheimer v. Naill*, 88 Md. 174, 40 Atl. 888 (1898); *Smith v. Woman's Medical College*, 110 Md. 441, 72 Atl. 1107 (1909); *Legum v. Blank*, 105 Md. 126, 65 Atl. 1071 (1907); *Standard Mtr. Co. v. Schockey*, 139 Md. 127, 114 Atl. 869 (1921).

¹¹⁵ Act, Sec. 312.

¹¹⁶ Md. Code, Art. 26, Sec. 17.

than fraud, deceit or irregularity.¹¹⁷ The motion rests in the sound discretion of the court, and if the court is of the opinion that the ends of justice will be promoted by striking out such judgment and placing the same on the trial calendar, such a judgment will be stricken out. In such a case the defendant will be granted ten days within which to file his pleas and affidavit of defense; but before striking out the judgment the court can impose upon the defendant the costs to date, or require a bond to satisfy any judgment rendered.¹¹⁸ The practice of opening judgments for the purpose of trial, retaining the lien of the judgment, is an approved and established practice in this State.¹¹⁹ It is improper however, to strike out a judgment on an ex-parte affidavit.¹²⁰

NOTICE TO PLEAD

Every declaration filed under the Speedy Judgment Act should contain a notice to the defendant to plead. Although the Act itself makes no provision for such notice, Judge Stein in a trial court opinion in the case of *Foreman v. Fidelity*,¹²¹ held that such notice was necessary.

SERVICE OF COPIES

Approving the decision in *May v. Wolverington*,¹²² the Court of Appeals held in *Fick v. Towers*¹²³ that "the said act does not provide for a copy of the declaration to be served on the defendant when he is summoned, yet a plaintiff is not entitled to a judgment unless a copy of the declaration is first served on the defendant".

Rule 9 of the Supreme Bench of Baltimore City provides that a copy of the declaration be served on each defendant. If there are seven defendants in a suit, the clerk of the court in which the declaration is filed should be furnished

¹¹⁷ Sec. 315B, City Charter of 1927; *Cornblatt v. Block*, *supra* note 71; Act, Sec. 315B.

¹¹⁸ *Mueller v. Michaels*, *supra* note 29; *Waldeck v. Emmart*, 127 Md. 470, 96 Atl. 634 (1915).

¹¹⁹ *Taylor v. Gorman*, 146 Md. 207, 126 Atl. 897 (1924).

¹²⁰ *Johnson v. Phillips*, 143 Md. 16, 122 Atl. 7 (1923).

¹²¹ Daily Record, June 9, 1925.

¹²² 69 Md. 117, 14 Atl. 706 (1888).

¹²³ *Supra* note 102.

with seven copies thereof so that a copy can be served on each defendant.

A copy of the affidavit should also be served on the defendant so that he may know that the suit is under the Act. It is not necessary that the copy of the affidavit should be executed. The Act, however, does not require that a copy of the affidavit be served on the defendant,¹²⁴ and the suggestion above is made to promote careful pleading, and is in keeping with the decisions requiring the service of notices and declarations.

PLEAS

The act provides that the plaintiff shall be entitled to a judgment in fifteen days after the return day of the writ unless the defendant shall file pleas under oath stating that the pleas are true, that he is advised by counsel to file pleas, and further, what amount of the plaintiff's claim is due and owing, if any, and what part is disputed.¹²⁵ Pleas in themselves, or pleas without a proper affidavit, do not comply with the act, and will be no bar to a judgment.

A plea filed after the lapse of the fifteen days given to the defendant to plead, without a prior order of court allowing the pleas to be filed, or pleas not under affidavit as the act requires, are mere nullities.¹²⁶ Likewise, a plea is bad when the affidavit attached thereto does not state the amount admitted and the amount disputed. It is not sufficient that the affidavit state that the pleas are true. Such errors in a plea or an affidavit are waived by the filing of a replication, and if the plaintiff files a replication he loses his right to a judgment.¹²⁷

Special pleas, although proper in themselves, if filed after a motion for judgment by default for want of proper pleas, will not defeat the plaintiff's right to judgment if the time for pleading has expired, unless the Court passes an order in writing extending the time in which to file pleas.¹²⁸

¹²⁴ *Greff v. Fickey*, 30 Md. 75 (1868).

¹²⁵ Act, Sec. 312.

¹²⁶ *Griffith v. Adams*, 95 Md. 170, 52 Atl. 66 (1902).

¹²⁷ *Hutton & Co. v. Marx*, 69 Md. 252, 14 Atl. 684 (1888); *Gemmell v. Davis*, *supra* note 9; *Wilkin Mfg. Co. v. Melvin*, *supra* note 86.

¹²⁸ *Waldeck v. Emmart*, 127 Md. 470, 96 Atl. 634 (1915). As to pleas in abatement, see *Hutton & Co. v. Marx*, *supra* note 127; *Hyson v. Gen-*

A plea of *plene administravit*, if true, is complete protection to the defendants against all personal liability.¹²⁹

The Court for good cause shown may at any time before the time for pleading has elapsed extend the time for filing pleas, affidavit and certificate of counsel, or may grant an order allowing the defendant to withdraw pleas already filed and file new pleas and affidavit, and such grant is in the sound discretion of the court and no appeal lies therefrom.¹³⁰

A denial of signature does not have to be the subject of a special plea, if the affidavit attached makes a denial, but the affidavit cannot be amended to deny signature after the specified time for filing an affidavit has expired, as such an amendment would be to withdraw an admission of the signature by the terms of the act.¹³¹

Pleas must be filed under a certificate by counsel stating: "I hereby certify that I advised the Defendant making the above oath and filing said pleas, to do the same". Counsel should not advise the filing of pleas when such pleas will not support a valid defense.¹³² It is not necessary to re-file pleas where the amended declaration is identical with the original.¹³³

RULES OF COURT

The rules of Court affecting the Speedy Judgment Act are rule number 9, regarding the service of copies of the declaration, and rule number 49, providing that, "no order to extend the time for filing pleas and affidavits in actions under the Speedy Judgment Act shall be passed, pursuant to the authority conferred by the act of 1894, ch. 173, except after notice to the plaintiff, or his attorney of record".

eral Fire-Proofing Sup. Co., 117 Md. 230, 183 Atl. 244 (1912); and Lipscomb v. Zink, *supra* note 25. For plea of set-off see Westminster Metal and Foundry Co. v. Coffman, 123 Md. 619, 91 Atl. 716 (1914), and cases cited therein.

¹²⁹ May v. Wolverington, *supra* note 122.

¹³⁰ Horner v. Plumley, 97 Md. 271, 54 Atl. 971 (1903).

¹³¹ Horner v. Plumley, *supra* note 130; Thorne v. Fox, 67 Md. 67, 8 Atl. 667 (1887); Commercial Credit Corp. v. Schuck, *supra* note 54.

¹³² Chief Judge Dennis in Morris v. Reliable, Daily Record, Nov. 5th, 1928, allowed the plaintiff a counsel fee of one hundred dollars instead of the minimum fee of twenty-five dollars, because the Defendant abandoned his defense after filing pleas.

¹³³ Musher v. Perera, *supra* note 32.

APPENDIX

TABLE OF CROSS-REFERENCES FROM THE BALTIMORE CITY ACT TO THE EQUIVALENT SECTIONS
OF THE COUNTY ACTS.

	Art. IV**	312	313	313A	314	315	315A	315B	316	317	318	Provisions not in the Balti- more City Act
Allegany	Art. I	62	63		64							65
Anne Arundel	Art. II*	189A	189B		189C	189D	189E	189F				
Baltimore	Art. III	84	85		87	88		86	94-97		90	89
Calvert	Art. V	69	69		69						69*	
Caroline	Art. VI	79	80						83			
Carroll	Art. VII	23	24		25						27	26
Charles	Art. IX	39	39		39						39*	
Frederick	Art. XI	78	79		80			84-85			82	81
Garrett	Art. XII	53	54		55							56
Harford	Art. XIII	173	174		175					176	177	
Howard	Art. XIV	42	43		44						46	45
Montgomery	Art. XVI	145	146		147						149	148
Prince George's	Art. XVII	197	197		197					199A	197*	
St. Mary's	Art. XIX	42	42		42						42*	
Washington	Art. XXI	102	103		104				106-107			105

** The references are to the Articles and Sections of the Code of Public
Local Laws of Maryland (Flack, 1930).

* Acts of 1935 Ch. 169.

* Acts of 1937 Ch. 53.