

666 *Art. 75, sec. 22, sub-sec. 106,⁵ provides that it shall not be necessary, in any case, to make *profert* in a declaration or plea, but the opposite party shall be entitled to *oyer* in the same manner as if *profert* were made. As to the subject of *oyer*, see Evans' Pr. 246, 252.⁶ By sub-sec. 107,⁷ it is provided, that either party may use the common law forms or the forms thereinbefore given at his election; and either party may require a bill of particulars, where the pleading is so general as not to give sufficient notice to the opposite party of the evidence to be offered in support of it. This bill of particulars ought to inform the defendant what is claimed under each count in the declaration, whether they be few or many, Carter v. Tuck, 3 Gill, 248, see Evans' Pr. 256.⁸

II. It has been held that defects which are cured by verdict at common law are not aided by this Statute. See Stennel v. Hogg, 1 Wms. Saund. 228, *in notis*.

IV. Sec. 10 of Art. 75 of the Code provides, that the plaintiff and defendant may plead in answer to the declaration, or plea, or the subsequent pleadings on each side respectively, as many several matters as either may think necessary to sustain his action, or necessary for his defence. Provided, that the pleading of the party be consistent with his previous allegation and not a departure therefrom,⁹ and that no one plea contain distinct matters of defence or reply.¹⁰ The body of the section is therefore substantially the same with this section of the Statute of Anne, except that it permits double pleas in pleadings subsequent to the plea. At common law, where one pleaded several things to the declaration, or to the same part of the declaration, or to the same part of the declaration, the one not depending on the other, the plea was considered double and not allowed, although if those things mutually depended on each other, and the party could not have advantage of the last plea with-

⁵ Code 1911, Art. 75, sec. 24, sub-sec. 106; State v. Wilson, 107 Md. 131.

⁶ See Poe's Pleading, secs. 143, 571, 748.

⁷ Code 1911, Art. 75, sec. 24, sub-sec. 107.

⁸ See Poe's Pleading, secs. 136, 465; Poe's Practice, ch. 7 and cases cited.

⁹ As to departure in pleading, see Poe's Pleading, secs. 682, 683, 747; Reid v. Wiessner Co., 88 Md. 234.

¹⁰ **Duplicity in pleading** at common law was a merely formal defect and could only be reached by special demurrer. Poe's Pleading, sec. 734.

But since the enactment of the section quoted above by the Act of 1856, ch. 112, the Court of Appeals seems to have held duplicity to be a defect in substance and open to attack on general demurrer. McCauley v. State, 21 Md. 571; Wilson v. Merryman, 48 Md. 339. The section was repealed and re-enacted by the Act of 1888, ch. 547, which omitted its concluding words, "and that no one plea contain distinct matters of defense or reply." Code 1911, Art. 75, sec. 10. Mr. Poe states that the object of this re-enactment was to leave the vice of duplicity as it was at common law, a formal defect merely and hence not the subject of *general demurrer*. Poe's Pleading, sec. 736. Nevertheless in Stearns v. State, 81 Md. 341, and State v. McNay, 100 Md. 625, it was held that duplicity was still a substantial defect. Both of these, however, were criminal cases.