

There are also one or two instances where the plaintiff's right to costs has been restrained in Maryland.<sup>10</sup> By Art. 49, sec. 2 of the Code,<sup>11</sup> (Acts of 1825, ch. 167, and \*1837, ch. 211,) it is provided that no person shall **81** institute more than one suit on a joint and several bond, penal or single bill, where the persons executing the same are alive and residing in one county, (though the representatives of joint obligors deceased may be sued,) or else judgment of *non pros.* shall be entered against him; but if the obligors, &c. reside in different counties, they may be sued in the counties in which they respectively reside. On this it has been holden that no obligation is imposed on the obligee to sue all the obligors on such a bond; he may sue one only; but if he elect to sue one, he cannot afterwards bring another action without being nonsuited; though if the obligors reside in different counties he is not obliged to sue in every county, but may bring his action against such of the obligors as reside in one county, and he may sue a surviving obligor and also the representative of a deceased obligor, *Blizzard v. Jacobs*, 3 G. & J. 66, and see *Merrick v. Bank of Metropolis*, 8 Gill, 64; *State v. Wheeler*, 14 Md. 108. By sec. 8<sup>12</sup> of the same Article it is provided, that if two or more actions on obligations conditioned for the payment of money, or two or more actions on the case, arising *ex contractu* between the same plaintiff and the same defendant, be brought at the same term, the Court on motion of defendant shall order them to be consolidated, and the costs of but one shall be taxed. It was observed obviously enough in *Mitchell v. Smith*, 4 Md. 403, that these Acts of 1825 and 1837 did not apply to actions *ex delicto*, which still remained as at common law so far as consolidation is concerned; but the Court said that if a party sue two defendants jointly *ex delicto*, and one is summoned and the other brought in afterwards, on the return

<sup>10</sup> Under the Balto. City Code, sec. 389, in actions at law for wrongs independent of contract where the verdict, or inquisition of damages after default, is for a less sum than \$50.00, costs are adjudged to the defendant, unless the court, being satisfied that the plaintiff had good reason for not bringing suit before a justice of the peace, awards them otherwise. In the circuit courts for the counties the rule still is that costs follow the verdict. *Repp v. Berger*, 60 Md. 1. As to verdicts below jurisdiction generally, see Code 1911, Art. 26, sec. 17; *Williams v. Fredlock Co.*, 94 Md. 108; *Berkley v. Wilson*, 82 Md. 223.

As to costs when money is paid into court by defendant, see Code 1911, Art. 75, secs. 20, 21; *Gamble v. Sentman*, 68 Md. 71; *Palatine Ins. Co. v. O'Brien*, 109 Md. 111; *Columbian Asso. v. Crump*, 42 Md. 192.

As to costs on more than one attachment or execution on a judgment or decree, see Code 1911, Art. 26, sec. 20; in cases where property taken in execution on a judgment of a justice of the peace is claimed by any person other than the one against whom the execution issues, see Code 1911, Art. 52, sec. 73; in cases of summons issued in an action at law with claim for injunction or mandamus, see Code 1911, Art. 75, secs. 128, 132; in arbitration cases, see Code 1911, Art. 7, sec. 6.

<sup>11</sup> Code 1911, Art. 50, sec. 2.

<sup>12</sup> Code 1911, Art. 50, sec. 8; *Bakhaus v. Ins. Co.*, 112 Md. 695. This section has no application to suits instituted before a justice of the peace. *Presstman v. Beach*, 61 Md. 203.