

secs. 895, 896,<sup>16</sup> nor indeed can they be recovered from the other side as *damages* in matters arising *ex contractu*, *Wallis v. Dilley*, 7 Md. 237.<sup>17</sup>

Witnesses who are summoned, but not sworn, may be allowed for their attendance by direction of the Court, and if the party summoning them swear that he thought they were material witnesses to prove facts stated in his affidavit, *Hutchins v. Eden*, 3 H. & McH. 101; *Davis' Lessee v. Batty*, 1 H. & J. 270, n. a. It is the right of one defendant, where a *joint defence*

<sup>16</sup> Balto. City Code, secs. 857, 858.

Under the Speedy Judgment Act in Baltimore City (Balto. City Code, secs. 312-315), where the defendant disputes the whole or any part of the plaintiff's demand, and the plaintiff recovers a judgment for any portion of his demand so disputed, he is allowed counsel fees to be fixed by the court, not less than \$25.00 nor more than \$100.00. The Act applies where the defendant disputes the plaintiff's demand as a matter of law on demurrer and allows judgment to go against him on the determination of the demurrer. *Hammond v. Amer. Ex. Co.*, 107 Md. 295. But a fee is not allowed where the contract or obligation on which the defendant is indebted is not itself filed with the declaration. *Mutual Ins. Co. v. Murray*, 111 Md. 600. When the plaintiff is allowed a fee under this act and the case is reversed on appeal without a new trial and the Court of Appeals orders the costs in the trial court to be paid by the defendant, the plaintiff is not entitled to the fee so allowed. The Act of 1908, ch. 644, provides that in cases under the Speedy Judgment Act where the verdict is for the defendant, he shall be allowed counsel fees not less than \$25.00 nor more than \$100.00.

Where judgment is entered for the garnishee in attachment on a plea of *nulla bona*, or where the garnishee confesses assets and the plaintiff does not take judgment of condemnation for the amount so confessed but fails to recover a larger amount, the garnishee is entitled to reasonable counsel fees to be fixed by the court in addition to the taxed costs. Act of 1888, ch. 507 (Code 1911, Art 9, sec. 16).

The Act of 1890, ch. 559 (Code 1911, Art. 81, sec. 174), which provides that a fee shall be allowed an attorney who represents the State in certain suits to collect taxes, in addition to the costs usually taxed, is constitutional, the legislature having the undoubted right to prescribe what costs shall be taxed in a case. *U. S. Elec. Co. v. State*, 79 Md. 63.

<sup>17</sup> Counsel fees paid by plaintiff in procuring the dissolution of an injunction bond against him cannot be recovered in a suit on the injunction bond. *Wood v. State*, 66 Md. 68. Nor, in an action of trespass *de bonis asportatis*, can counsel fees paid by plaintiff in defending the property in the prior attachment suit be allowed as damages. *Corner v. Mackintosh*, 48 Md. 374.

But where defendant's wrongful act has involved plaintiff in litigation with others, or made it necessary for him to incur legal expenses to protect his interests, such expenses are to be regarded as the natural consequences of the wrongful act and may be recovered as part of the damages in an action therefor. *McGaw v. Acker Co.*, 111 Md. 153; *C. & O. Canal Co. v. Alleghany Co.*, 57 Md. 201. Cf. *Svea Ass. Co. v. Packham*, 92 Md. 479. In a contract the word "expenses" sometimes includes attorney's fees. *Cain v. Warford*, 33 Md. 23.