Court of Appeals, where it appeared that the plaintiff, before the jury was sworn, moved the Court to direct the Clerk to enter the confession, &c. on the docket, to which the defendant objected, but the Court ordered the entry to be made, the Court of Appeals affirmed the ruling. The present 4th rule provides that upon service or setting up of the declaration, &c. before the term, &c. the Clerk shall, after fifteen days, &c., enter judgment by default against the casual ejector, unless the tenant, &c. shall have appeared to the action, and the defendant shall on his appearance enter on the docket in short a confession of lease, entry, and ouster, and the plea of not guilty, and ascertain his defence during the term, &c. Probably a similar rule is in force throughout the State, for in our practice the consent rule is never drawn up, but every person tendering an appearance in ejectment is considered as bound by such an agreement. Now, however, by the Act of 1870, ch. 420,[11a] all fictions in ejectment are abolished.

713 **Affidavit.**—*With respect to the affidavit in case of judgment, &c. it was held in Walters' lessee v. Alexander, 2 Gill, 204, that it must be filed before the judgment by default is entered, or at some time during the term at which it was rendered, so that, before it becomes absolute, the Court may have an opportunity of inspecting and adopting the affidavit as the basis of its judgment. But, if it is filed in proper time, the Court will be presumed to have discharged their duty in relation to it. Here the judgment by default against the casual ejector[12] having been entered at March term 1823 and the affidavit filed on the 12 Feb. 1824, the Court refused, though the defendants had been in possession seventeen years, to presume the filing of an affidavit pursuant to the Statute, as the proof clearly disproved it, and they distinguished the case from Doe v. Lewis, 1 Burr. 614; though in the same case, in 8 Gill, 239, they held that an adversary possession of twenty years is good ground to presume a regular re-entry at common law for non-payment of the rent. The judgment was attempted to be sustained by proof of a loose practice in Baltimore County Court of filing the affidavit at any time before the issuing of the writ of *hab. fac. poss.* But the Court said that the practice must be the same in every part of the State, and such a practice would *pro tanto* repeal the Statute. It seems, however, that, if the affidavit be apprehended to be defective, the Court will allow the judgment rendered on it to be superseded, and another judgment to be signed on an amended affidavit, Doe *d.* Gretton v. Roe, 4 C. B. 576.

This affidavit may be made by the agent or receiver of the landlord, Doe *d.* Charles v. Roe, 2 Dowl. P. C. 752, but it must be positive in respect of its contents, and not merely to the belief of the deponent and the like, Doe v. Roe, 2 Dowl. P. C. 213; unless where the premises are kept locked and access refused by those in possession, so that it cannot be ascertained whether there is a sufficient distress thereon, when the affidavit is positive

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[11a] See note 11 *supra.*

[12] A judgment by default against the casual ejector, if irregularly obtained, may be set aside if application therefor be made in due time, but not after long delay and especially where the motion to strike out the judgment fails to show a meritorious defence to the action. Amey v. Marshael, 63 Md. 369.