When the defendant fails to answer, the writ cannot issue without due proof of the facts and the judge's being satisfied on the law. Sudler *v.* Lankford, 82 Md. 148; Legg *v.* Annapolis, 42 Md. 222; Upshur *v.* Baltimore, 94 Md. 760; Beasley *v.* Ridout, 94 Md. 648.

A statement in the opinion of the lower court that, "at the hearing the questions at issue were waived or admitted," is equivalent to full proof. Beasley *v.* Ridout, 94 Md. 640.

This section does not take away the discretion of the court to refuse the writ—see notes to section 1. Weber *v.* Zimmerman, 23 Md. 53.

1904, art. 60, sec. 10. 1888, art. 60, sec. 10. 1860, art. 59, sec. 10. 1858, ch. 285, sec. 5.

10. If the judge shall, upon such *ex parte* hearing, be of opinion that the facts and law of the case do not authorize the granting of a mandamus, he shall dismiss such petition with costs.

Cited but not construed in Legg *v.* Annapolis, 42 Md. 222.

Ibid. sec. 11. 1888, art. 60, sec. 11. 1860, art. 59, sec. 11. 1858, ch. 285, sec. 6.

11. It shall not be lawful for any judge to order a mandamus to issue in the alternative, but in all cases where a mandamus shall be ordered to issue, it shall be peremptory in form.

Ibid. sec. 12. 1888, art. 60, sec 12. 1888. ch. 388.

12. In case of an appeal by the defendant, the court shall fix the penalty of the appeal bond necessary to be given to stay the execution or enforcement of the order appealed from.