1904, art. 75, sec. 11. 1888, art. 75, sec. 11. 1860, art. 75, sec. 11. 1785, ch. 80, sec. 3.

11. No plea of *"non est factum"* shall be received in any action, unless the party for whom such plea be tendered verify the same by affidavit, or unless the defendant being heir, executor or administrator of the person alleged to have made the deed obtain leave from the court, upon showing just cause, to put in such plea.

The execution of a bond can only be denied by a plea of *non est factum*, which must be verified by oath except as provided in this section. State *v.* Duvall, 83 Md. 124.

It was unnecessary to determine whether a plea of *non est factum* was verified by affidavit, since issue had been joined on it, and certain other pleas were demurred to. Milburn *v.* State, 1 Md. 12.

Ibid. sec. 12. 1888, art. 75, sec. 12. 1860, art. 75, sec. 12. 1785, ch. 46, sec. 7. 1876, ch. 398.

12. In any suit brought on any judgment or bond or other writing sealed by the party, if the defendant shall have any demand or claim against the plaintiff, upon judgment, bond or other instrument under seal, or upon bill of exchange, check, order for payment of money, promissory note, agreement, assumpsit or account proved, he shall be at liberty to file such demand or claim in bar, or plead the same in discount of the plaintiff's claim, and judgment for the excess of the one claim over the other, as each is proved, with costs of suit, shall be given for the plaintiff or the defendant, according as such excess is found in favor of the one or the other of these parties, if such excess be sufficient to support a judgment in the court where the cause is tried according to its established jurisdiction, otherwise the finding of such excess to be due shall be sufficient *prima facie* evidence of the fact of indebtedness for such excess, as upon an award of arbitrators in a suit in a court having jurisdiction to try and determine the same.

Judgment will be given for the defendant where the plaintiff owes him in excess of the amount the defendant owes the plaintiff. Although no judgment can be rendered for the defendant where the set-off arises on account of what is due by a third party, this does not deprive the defendant of his right to file the claim in bar of the plaintiff's recovery. The plaintiff's joint and several liability may be set-off against the defendant's separate liability. The fact that a defendant has instituted suit on his claim against the plaintiff which is still pending, does not defeat the former's set-off. Steele *v.* Sellman, 79 Md. 6.

See notes to sec. 13.

Ibid. sec. 13. 1888, art. 75, sec. 13. 1860, art. 75, sec. 13. 1785, ch. 46, sec. 7. 1876, ch. 398.

13. In any suit upon simple contract the defendant may file in bar, or plead in discount, any claim he may have against the plaintiff, proved according to law, which may be of equal or superior nature to the plaintiff's claim, and judgment shall be given for the difference found, or other consequence follow thereon, as in the preceding section is provided.

When set-off is applicable.

Joint debts can not be set-off against separate debts, nor separate debts against joint debts. To support a plea of set-off, the defendant's claim