forthwith return their inquisition under their hands and seals and the court shall order such judgment to be extended in accordance with the terms of such finding of the jury.

Errors and irregularities.

A *fi. fa.* and an attachment held invalid because there was no entry of an interlocutory judgment before the inquisition, nor any final judgment rendered upon the inquisition. Griffith *v.* Lynch, 21 Md. 578.

Where an order under the act of 1794, ch. 46, charges the jury to inquire of the damages, omitting "and costs", and the inquisition is for damages "and about ten dollars for costs", these are mere formal defects which may be cured by amendment. Kiersted *v.* Rogers, 6 H. & J. 287. And see Harris *v.* Jaffray, 3 H. & J. 543.

Where the judge assesses the damages without a jury, the declaration containing the common counts and a special count claiming unliquidated damages, the appellate court will assume in the absence of all proof to the contrary, that the court in assessing damages proceeded under the common counts, and not under the special count. How the question of such irregularity should be raised. Homer *v.* O'Laughlin, 29 Md. 472.

Generally.

The act of 1794, ch. 46, places the inquisition on a judgment by default on the same footing with other jury trials. Parties may pray the opinion of the court, take bills of exception and appeal as in other cases. The inquisition may be set aside for the same grounds as would avail on motion for a new trial. Excessive damages. Evidence. Green *v.* Hamilton, 16 Md. 330.

The act of 1794, ch. 46, assumes, and proceeds on the theory that all interlocutory judgments, where inquisitions are required to give them effect, establish the plaintiff's right to recover without regard to the amount the jury may ascertain to be due. A judgment by default if regularly entered, is as binding as any other as far as respects the power and jurisdiction of the court in declaring the plaintiff entitled to recover. Heffner *v.* Lynch, 21 Md. 555; Green *v.* Hamilton, 16 Md. 329.

Where the parties fix the amount of the recovery by agreement, the inquisition is waived and final judgment may be entered. The final judgment does not relate back and take effect as of the date of judgment by default, and the latter judgment is not a lien on the defendant's property. Davidson *v.* Myers, 24 Md. 554.

Where three years have elapsed since a judgment by default, although there is no change of parties, the judgment should be revived and extended by a *sci. fa.* Bridges *v.* Adams, 32 Md. 580.

This section contains no limitation as to the time in which inquisitions on judgments by default must be had. The act of 1864, ch. 175, applies to judgments entered by default prior to its passage. There is no obligation upon the court to delay entering judgment upon an inquisition, although it may delay where occasion requires. Stansbury *v.* Keady, 29 Md. 367.

The amount of damages assessed by the court without a jury under this section and a practice act of Baltimore city, is not open for revision on appeal when no exception on that ground was taken, unless the damages exceed the amount claimed in the declaration. Morris *v.* Wrenschall, 34 Md. 502.

The act of 1794, ch. 46, is remedial, and does not interfere with the statute of VIII. and IX. William III., ch. 11, providing for the assessment of damages where there is a judgment by default in an action on a bond with collateral conditions. Wilmer *v.* Harris, 5 H. & J. 8.

The act of 1794, ch. 46, did not give the right to an inquiry of damages where none existed before. Hopewell *v.* Price, 2 H. & G. 276.

Cited but not construed in Martindale *v.* Brock, 41 Md. 581.

See art. 26, sec. 18.

1904, art. 75, sec. 90. 1888, art. 75, sec. 87. 1860, art. 75, sec. 63. 1785, ch. 80, sec. 13.

90. In all cases of actions brought for the penalty of any bond, bill, covenant or contract with penalty, the jury may, under the direction