

motion being made on behalf of the State, judgment shall be entered at the first term of the court in which suit may have been brought, in the name of the State against such collector and his sureties; provided, ten days' previous notice in writing be delivered to such collector and his sureties or left at their place of abode, signed by the said attorney, and it shall be the duty of the sheriff to serve such notice, and proof of such service shall be made to the satisfaction of the court before such judgment shall be entered.

A judgment under this section will not be set aside after the term, except upon proof of fraud, surprise or irregularity. This section constitutes an exception to article 75, section 145. The proof of the service of the notice warrants the court in proceeding to summary judgment at the first term, unless the collector or his sureties proceed under section 77. *Sprigg v. State*, 54 Md. 477.

Under the act of 1841, ch. 23, section 48, if instead of a summary judgment the case is controverted, the certificate of the treasurer is admissible in evidence even after the testimony of the clerk of the commissioners, that the commissioners' books did not show that any tax was levied during the years for which the collector was charged with taxes. *Crane v. State*, 1 Md. 29.

The certificate of the treasurer to an account against a collector authorized by the act of 1841, ch. 23, authenticates itself. *Milburn v. State*, 1 Md. 1.

The duty of the treasurer under the act of 1841, ch. 23, devolved under the sixth article of the state constitution, upon the comptroller. *Billingsley v. State*, 14 Md. 376.

1904, art. 81, sec. 75. 1888, art. 81, sec. 72. 1860, art. 81, sec. 81. 1841, ch. 23, sec. 48. 1874, ch. 483, sec. 71.

**77.** If such collector or his sureties shall, in person or by attorney, desire a trial by jury of any matter in controversy in said suit, which shall by them be pleaded, the court shall thereupon direct a jury to be empanelled at the said term to try and determine the matter in controversy.

This section referred to in construing section 76—see notes thereto. *Sprigg v. State*, 54 Md. 479.

*Ibid.* sec. 76. 1888, art. 81, sec. 73. 1860, art. 81, sec. 82. 1847, ch. 261. 1874, ch. 483, sec. 72.

**78.** It shall not be necessary for the State in any suit brought on any bond given by any person who has the collection of any part of the State's revenue in reply to the plea of performance to set out at large in its replication the breaches for which damages are claimed, but may reply generally that the obligor or obligors hath or have not performed the conditions of his or their bond, accompanying the same by a substantial statement of the amount demanded, and give the special matter in evidence, upon which issue the jury shall assess such damages as the State may have sustained, and upon such verdict, if for the State, judgment shall be entered for the penalty of the bond, to be released upon the payment of the damages assessed by the jury, with interest thereon until paid, and costs.

This section applied. *Wilson v. Ridgely*, 46 Md. 244.