

prayed, he shall thereupon without delay order a peremptory mandamus to issue and shall also adjudge to the petitioner his costs of suit.

When defendant fails to answer, the writ cannot issue without due proof of facts and judge's being satisfied on 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 opinion of 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 sec. 1. *Weber v. Zimmerman*, 23 Md. 53.

An. Code, sec. 10. 1904, sec. 10. 1888, 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.

An. Code, sec. 11. 1904, sec. 11. 1888, 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.

An. Code, sec. 12. 1904, sec. 12. 1888, 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.