

the same to be struck out on such terms as to costs and otherwise as to such court may seem reasonable.

Held that if plea had been technically good, the court would have been justified in striking it out under this section. *Stump v. Warfield*, 104 Md. 552.

See notes to sec. 91.

Extending Judgments.

An. Code, sec. 89. 1904, sec. 89. 1888, sec. 86. 1794, ch. 46. 1864, ch. 175.

94. In all cases in any action on any promissory note, bill, bond or open account in which an interlocutory judgment or judgment by default has been or shall hereafter be entered in any of the courts of this State whereby the right of the plaintiff is established but the damages sustained by him are not ascertained, the judge of the court where such judgment is, on motion of the plaintiff or of his attorney and the production to him of the promissory note, bill of exchange, bond, record or writing obligatory upon which the suit was brought, or upon legal and satisfactory proof of the correctness and amount of the claim where the suit was brought to recover a debt due upon open account, shall assess the damages and order the judgment to be extended for the amount so found to be due, and interest on the same till paid, and costs of suit. In all other cases in which an interlocutory judgment or judgment by default has been or shall hereafter be entered, the judge of the court where such judgment is, shall, on motion of the plaintiff or his attorney, make an order in the nature of a writ of inquiry, to charge the jury in attendance in such court to inquire of the damages and costs sustained by the plaintiff in such action, which said inquiry shall be made and the evidence given in open court in the same manner and under the same regulations as in other jury trials; and after the said jury, charged as aforesaid, shall have considered thereof, they shall 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 inquisition, nor any final judgment rendered upon inquisition. *Griffith v. Lynch*, 21 Md. 578.

Where an order under act of 1794, ch. 46, charges the jury to inquire of the damages, omitting "and costs," and 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. Jafray*, 3 H. & J. 543.

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

Generally.

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

Act of 1794, ch. 46, assumes and proceeds on the theory that all interlocutory judgments, where inquisitions are required to give them effect, establish plaintiff's