

any attorney be entitled to demand or receive the appearance fees for defending in criminal cases fixed by law except when such fees are taxed against and paid by the accused as part of the costs of the case.

County commissioners have nothing to do with the amount of fee, and have no discretion as to paying it, provided it does not exceed one hundred dollars. *Worcester County v. Melvin*, 89 Md. 40; *Charles County v. Wilmer*, 131 Md. 178.

See notes to sec. 7.

### Appointment of Auditors.

An. Code, 1924, sec. 9. 1912, sec. 9. 1904, sec. 9. 1888, sec. 9. 1785, ch. 80, sec. 12. 1888, ch. 447.

9. In all actions brought in any court founded on account, or on which it may be necessary to examine and determine on accounts between the parties, the court may order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there shall be the same proceedings thereon as in courts of equity upon bills for an account, reserving to the parties, however, the right to a jury trial if demanded.

Proceedings before auditor must be same as in actions of account after judgment *quod computet*, is rendered. The defendant may plead; issues may be joined or demurrers may be filed, which must be certified to court. Issues of fact must be passed upon by the jury, matters of law, by the court. While auditor may examine the parties, he has no authority to examine other witnesses. This section held to have been misconstrued and misapplied. *Wisner v. Wilhelm*, 48 Md. 10 (decided prior to the act of 1888, ch. 447). See also *Mantz v. Collins*, 4 H. & McH. 65.

This section referred to in holding that constitutional right of jury trial is not infringed by the compulsory appointment of an auditor in an action of law involving intricate accounts, with a view to his making a report which will simplify issues for jury. Power to appoint auditor inherent in district court as a trial court. Limitations on right of jury trial. *Matter of Walter Peterson*, 253 U. S. 308.

Cited but not construed in *Seeley v. Dunlop*, 157 Md. 384; *Johnson and Higgins v. Simpson*, 163 Md. 591; *Johnson and Higgins v. Simpson*, 165 Md. 87.

### Appointment of Surveyor.

An. Code, 1924, sec. 10. 1912, sec. 10. 1904, sec. 10. 1888, sec. 10. 1827, ch. 44, sec. 1. 1900, ch. 581.

10. In any case pending in any court where it is necessary to lay out and locate any lands and where, upon the application of either party to such suit, the court shall be of opinion that the county surveyor is in any manner interested or prejudiced against either of the parties, or is incapacitated by reason of ill-health or from any other cause to perform his official duties in connection with the case then pending, or if either of the parties shall make oath that he believes the county surveyor is interested or prejudiced, or otherwise by affidavit satisfy the court that the county surveyor is not a suitable person to lay out and locate the lands in dispute, the court may appoint some competent person to lay out, locate or survey said lands and plat the same.

This section cited in *Union Trust Co. v. Poor & Alexander*, 168 Md. 410.

See art. 91, "Surveyor," etc.

An. Code, 1924, sec. 11. 1912, sec. 11. 1904, sec. 11. 1888, sec. 11. 1827, ch. 44, sec. 2.

11. The person so appointed, before he proceeds to act, shall take an oath before some justice of the peace that he will faithfully, without favor, affection or prejudice, perform the service for which he was appointed by the court; which oath shall be certified by the justice and shall accompany such return as the surveyor shall make to the court in the case.