

unless the debtor or defendant shall make it appear by lawful evidence that such account is false in part or in whole.

Affidavit made in pursuance of art. 37, sec. 43, of the Code of 1860, held not to be evidence, it not appearing that the additional affidavit which that section required when a suit was brought, was made. Such defect was not cured by act, 1864, ch. 109—see sec. 1. *Ward v. Leitch*, 30 Md. 334.

For cases dealing with act of 1729, ch. 20, see *Warner v. Fowler*, 8 Md. 25; *Smoot v. Bunbury*, 1 H. & J. 136; *Sanders v. Leigh*, 2 H. & McH. 380.

See notes to sec. 63.

1937, ch. 523.

65. In any action arising *ex contractu*, brought before any Justice of the Peace of this State, if the plaintiff or his agent shall have filed, at the time of bringing his action, an itemized statement of his account and the original written contract, if any, between the parties, and an affidavit setting out distinctly his cause of action, and the sum he claims to be due, exclusive of all set-offs and just grounds of defense and the defendant shall have been served with a copy of said statement, contract and affidavit, and of the summons, the plaintiff shall be entitled to a judgment for the amount so claimed, with interest and costs, unless the defendant shall file, on or before six days next succeeding the return day of the summons, or such additional time as shall be fixed by said Justice of the Peace, an affidavit of defense, denying the right of the plaintiff as to the whole or some specified part of his claim, and specifically stating also, in precise and distinct terms, the grounds of his defense, which must be such as would, if true, be sufficient to defeat the plaintiff's claim in whole or in part; provided, that the following notice shall be given in the summons issued in such case: "The defendant is hereby notified that judgment by default may be entered against him unless he shall file an affidavit of defense with the Justice of the Peace before whom this summons is returnable within six days next succeeding the return day named herein, or such additional time as may be fixed by said Justice of the Peace." And where the defendant shall have acknowledged in his affidavit of defense his liability for a part of the plaintiff's claim as aforesaid, the plaintiff, if he so elect, may have judgment entered in his favor for the amount so confessed to be due. After taking such final judgment for the amount so confessed, the plaintiff shall have the right to prosecute the remainder of his claim in that suit, and (if he sustains his claim for such remainder or any part thereof) to have a further final judgment therefor. The provisions of this Section shall not apply in Baltimore City.

An. Code, 1924, sec. 53. 1912, sec. 50. 1904, sec. 50. 1888, sec. 45. 1888, ch. 392.

66. In cases where there are two or more plaintiffs any affidavits required under the preceding sections to be made by the party bringing suit or by the creditor may be made by any one of the plaintiffs, or if all the plaintiffs be absent from the State at the time of the bringing of the suit, or if the plaintiff be a corporation, such affidavit may be made by any agent of the plaintiff or plaintiffs, or any of them, who will make further oath that he is such agent and that he has personal knowledge of the matters therein stated; such affidavit, if made on behalf of any firm or copartnership, shall be *prima facie* evidence of said partnership and of the persons composing the same as therein set forth, or if made on behalf of any body corporate by any person therein alleging himself to be a charter officer thereof shall be *prima facie* evidence of the fact of its corporation as therein set forth.