

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.

The same rules of evidence apply in inquisition proceedings as in other cases. *Smith v. Dolan*, 170 Md. 655.

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 right to recover without regard to amount jury may ascertain to be due. A judgment by default if regularly entered is as binding as any other as far as respects power and jurisdiction of court in declaring plaintiff entitled to recover. *Heffner v. Lynch*, 21 Md. 555; *Green v. Hamilton*, 16 Md. 329.

Where parties fix amount of recovery by agreement, the inquisition is waived and final judgment may be entered. The final judgment does not relate back and take effect as of date of judgment by default, and latter judgment is not a lien on defendant's property. *Davidson v. Myers*, 24 Md. 554.

Where three years have elapsed since a judgment by default, although there is no change of parties, the judgment should be revived and extended by a *sci. fa.* *Bridges v. Adams*, 32 Md. 580.

This section contains no limitation as to time in which inquisitions on judgments by default must be had. The act of 1864, ch. 175, applies to judgments entered by default prior to its passage. There is no obligation upon court to delay entering judgment upon an inquisition, although it may delay where occasion requires. *Stansbury v. Keady*, 29 Md. 367.

Amount of damages assessed by court without a jury under this section and a practice act of Baltimore City is not open for revision on appeal when no exception on that ground was taken, unless damages exceed the amount claimed in the declaration. *Morris v. Wrenschall*, 34 Md. 502.

Act of 1794, ch. 46, is remedial, and does not interfere with the statute of VIII and IX William III, ch. 11, providing for assessment of damages where there is a judgment by default in action on bond with collateral conditions. *Wilmer v. Harris*, 5 H. & J. 8.

Act of 1794, ch. 46, did not give the right to an inquiry of damages where none existed before. *Hopewell v. Price*, 2 H. & G. 276.

Cited but not construed in *Martindale v. Brock*, 41 Md. 581; *Murray v. Hurst*, 163 Md. 486.

See art. 26, sec. 18.

See art. 50, sec. 13.

Cited in *Fid. & Dep. Co. v. Lumber Co.*, 176 Md. 219.

An. Code, 1924, sec. 95. 1912, sec. 90. 1904, sec. 90. 1888, sec. 87. 1785, ch. 80, sec. 13.

95. In all cases of actions brought for the penalty of any bond, bill, covenant or contract with penalty, the jury may, under the direction of the court, upon the plea of payment or performance of the conditions or terms of the contract, ascertain and by their verdict find what sum of money is really and justly due to the plaintiff; and upon such finding, judgment shall be entered by the court for the penalty, to be released upon payment of the sum of money so found to be due, and interest on the same till paid, and costs of suit; and the sum really due as aforesaid, or in any