

Questions of law on demurrer to be decided on appeal.

sub-rejoinder, or other plea of any description of the opposite party, and the said demurrer shall be overruled, the party demurring shall have the right to plead over to the facts of the case by way of traverse or otherwise, without withdrawing his demurrer, and upon appeal or writ of error, shall have the questions of law arising upon the demurrer decided and determined, as fully to every intent as if the party demurring, had not pleaded over.

In force from March 12, 1867.

### PRACTICE.

1864, c. 175 amends and re-enacts section 62 as follows :

1864, c. 175. How damages assessed and judgment extended on judgments interlocutory or by default.

62. 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, shall, on motion of the plaintiff, or of his attorney, and the production to him of the promissory note, bill of exchange, bond, 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, 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