

oath or affirmation that the said plea is true, and that he verily believes that he will be able, at the trial of the cause, to produce sufficient evidence to support the said plea.

Ibid. s. 8.
Plaintiff's affidavit, &c.

168. The plaintiff shall not be entitled to judgment under either of the three preceding sections, unless at the time of bringing his action he shall file with his declaration an affidavit or affirmation, if he is conscientiously scrupulous as to taking an oath, stating the true amount that the defendant is indebted to him, over and above all discounts, and shall also file the bond, bill of exchange, promissory note, or other writing or account by which the defendant is so indebted; and the said affidavit or affirmation, may be made before any of the persons who may take an affidavit or affirmation, to authorize the issuing of a foreign attachment, and may be certified in the same manner.

Ibid. s. 9.
Assessment of damages by court.

169. When any judgment by default shall be entered under the preceding sections, the court may assess the damages on proof thereof, without empanelling a jury to do so.

Ibid. s. 10.
Writs returnable at election of plaintiff.

170. Writs of execution issued out of the superior court of Baltimore, or the court of common pleas, may be made returnable, at the election of the plaintiff, to the next succeeding return day of the court from which said writ was issued, or to the next succeeding term of the said court.

In force from February 4, 1864.

Note—Held that, under the act of 1858, c. 323 a plaintiff could obtain judgment by default on an open account, verified by affidavit, at the term or on the rule day to which the defendant was summoned and failed to appear, but the court could not, at the same term, extend such judgment by assessment of damages and costs and that the plaintiff, in such a case, was entitled to final judgment only in case the defendant failed to appear before the first day of the term or rule day next thereafter, and then the judgment could go only for the amount of the account thus authenticated but that the court has no power to allow interest on the account which should have been ascertained by a jury on a writ of inquiry [But see 1864, c. 175, Public General Laws, Art. LXXV, sec. 02 and 1864, c. 6, s. 9.—sec. 169 of this Article] Held further, that though the final judgment would be struck out because improperly and prematurely extended and because interest was allowed by the court, yet, the judgment by default, for the defendant's failure to appear, would not be disturbed. *Mailhouse v Inloes et al.* 18 Md 328 See *Gardner v Jenkins*, 14 Md 60 The act of 1858, c. 323 did not conflict with the right of removal of causes from one court to another, provided for by the Constitution and Acts of Assembly. *Griffin v Leslie*, 20 Md. 18.