

defendant, according as such excess is found in favor of the one or the other of these parties, if such excess be sufficient to support a judgment in the court where the cause is tried according to its established jurisdiction, otherwise the finding of such excess to be due shall be sufficient *prima facie* evidence of the fact of indebtedness for such excess, as upon an award of arbitrators in a suit in a court having jurisdiction to try and determine the same.

Dyer v. Dorsey, 1 G. & J. 440. Turner v. Plowden, 2 G. & J. 455. Burch v. State, 4 G. & J. 444. McCreary v. McCreary, 5 G. & J. 147. Annan v. Houck, 4 Gill, 331. Milburn v. Guyther, 8 Gill, 93. Simmons v. Tongue, 3 Bl. 341. Lane v. Fallen, 16 Md. 352. Scott v. Scott, 17 Md. 91. State v. B. & O. R. R. Co., 34 Md. 374. C. & P. R. R. Co. v. Slack, 45 Md. 161. Boor v. Wilson, 48 Md. 315. Lee v. Rutledge, 51 Md. 313.

P. G. L., (1860,) art. 75, sec. 13. 1785, ch. 46, sec. 7. 1876, ch. 398.

**13.** In any suit upon simple contract the defendant may file in bar, or plead in discount, any claim he may have against the plaintiff, proved according to law, which may be of equal or superior nature to the plaintiff's claim, and judgment shall be given for the difference found, or other consequence follow thereon, as in the preceding section is provided.

Clarke v. Magruder, 2 H. & J. 77. Baltimore Ins. Co. v. McFadon, 4 H. & J. 31. Glenn v. Smith, 2 G. & J. 493. Burch v. State, 4 G. & J. 444. Sangston v. Maitland, 11 G. & J. 297. Hall's Admr. v. Creswell, 12 G. & J. 51. Milburn v. Guyther, 8 Gill, 93. Wilson v. Keedy, 8 Gill, 197. Simmons v. Tongue, 3 Bl. 341. Foley v. Mason, 6 Md. 51. Beall v. Pearre, 12 Md. 550. Abbott v. Gatch, 13 Md. 332. Carroll's Admr. v. Quynn, 13 Md. 390. Lane v. Fallen, 16 Md. 352. Scott v. Scott, 17 Md. 91. Ins. Co. v. Dalrymple, 25 Md. 309. Dowler v. Cushwa, 27 Md. 355. Smith v. Wash. Gas Light Co., 31 Md. 17. Warfield v. Booth, 33 Md. 72. Miller v. Lea, 35 Md. 406. Penniman v. Loney, 40 Md. 475. Rice v. Forsyth, 41 Md. 408. C. & P. R. R. Co. v. Slack, 45 Md. 161. Lee v. Rutledge, 51 Md. 313. Tyrrell v. Tyrrell, 54 Md. 169. Hearn v. Cullin, 54 Md. 542. Simmons v. Haas, 56 Md. 166.

1876, ch. 345.

**14.** No party, otherwise entitled to sue and recover in any suit at law upon or under any promissory note, bill of exchange, bill of lading, warehouse or storage receipt, or other negotiable instrument, shall be precluded from so recovering by reason of his inability from any cause to produce such instrument in evidence at the trial, or surrender the same to the defendant; provided, always, that the absence of such instrument shall be sufficiently