rule of Court permits the plaintiff to reply that he has sustained damages, or that the defendant was and is indebted to him, as the case may be, to a greater amount than the said sum, and in the event of the issue being found for him the defendant will be entitled to judgment and his costs of suit. The English authorities are collected and perspicuously arranged in note *o* to 1 Wms. Saund. 33 g. Birks v. Trippet. It has been decided that the New Rules do not apply to payment of money into Court under this section of the Statute of Anne, England v. Watson *supra*. Nor can money be paid in an action on a bond, setting out breaches, Bp. of London v. McNiel, 9 Exch. 490.

XIV. See Stat. 29, Car. 2, c. 3, secs. 19, 20, 21 and 22.

The 20th section relates to the assignment of bail-bonds and it would no longer be of interest to dwell upon it.

XXI. This is the section abolishing collateral warranties, as to which see 2 Bl. Comm. 301.[34]

XXII. The practice in this State is never to issue the subpœna till the filing of the bill, see Alexander's Chan. Pr. 16; Buckingham v. Peddicord, 2 Bl. 447. It was a rule of the old Chancery Court also, and the same rule prevails, it is supposed, in all the Courts of Equity of the State, that no *subpœna* is to be issued on any bill or petition referring to any deed, writing or paper as an exhibit, and praying that the same may be taken as part of the bill, &c., until such deed, &c., be actually exhibited and filed.[35] See also the 11th rule in Equity, U. S. Courts.

671 *XXIII. Before appearance a plaintiff may dismiss his bill without costs, Thompson v. Thompson, 7 Beav. 350. It was formerly his right to dismiss his bill when the defendant had answered upon payment of 20*s.* costs, Anon. 1 Vern. 116, which was altered by this Statute, and the defendants are entitled to costs whether they have answered or not, White v. Marquis of Westmeath, 2 Moll. 128. And the rule has always been so in Maryland, Alexander's Chan. Pr. 208; 1 Bl. 198 note.[36] In general it is strictly enforced, and so in Fidelle v. Evans, 1 Cox, 27, a positive order for dismissal without costs was refused, though a written agreement had been entered into between the parties to settle the suit, one of the terms of which was that the bill was to be so dismissed, but the plaintiff had an order to dismiss without costs *unless cause should be shown;* and it is laid down in Dixon v. Parks, 1 Ves. Jun. 402, that the Court will in no case after appearance make an order to dismiss a bill on the plaintiff's application without costs, unless on the defendant's consent actually given in Court, see Anon. 1 Ves. Jun. 140. There are however exceptions. In Knox v. Brown, 1 Cox, 359, an order was made on motion of plaintiff to dismiss his bill without costs, the defendant having by his own act rendered the suit useless, the bill being to obtain an assignment of a lease to the plaintiff as surety who had been damnified, and the defendant having surrendered the lease and absconded; but see Langham v. Great Northern

---

[34] See Crisfield v. Storr, 36 Md. 146.

[35] This is so now by the 4th Equity Rule, Code 1911, Art. 16, sec. 142 Chappell v. Clark, 92 Md. 98; Miller's Equity, sec. 115.

[36] See Miller's Equity, sec. 102.