

ject to a discharge under the insolvent laws, should be revived subject to the same qualification, that there was thus a variance between the judgment actually rendered and that recited in the *scire facias*, and the defendant should have pleaded *nul tiel record*, for he can never set up again matter which could have been pleaded as a defence to the original judgment, *Kemp v. Cook*, 6 Md. 305, S. P.; and see *Cushwa v. Cushwa*, 5 Md. 55. It has since been decided that a judgment cannot be taken subject to a discharge under the insolvent laws, *State v. Culler*, 18 Md. 418, and it may be questioned whether the discharge was ever part of the judgment.¹⁹ In *Clark v. Digges*, 5 Gill, 109,²⁰ the Court held that a judgment for the penalty of a bond and costs to be released on payment of — was a judgment by confession, but not binding until the sum was ascertained, though final, as merging the cause of action. So in *Young v. Reynolds*, 4 Md. 378, a judgment for \$6,000 to be released on payment of such sum as A. should fix, which was never done, and afterwards revived subject to such credits as counsel should ascertain, (which ascertainment was not made until after the death of the defendant,) was considered a *final* judgment but not effective till the ascertainment was made, for, as explained in *Turner v. Plowden*, 5 G. & J. 52, no further action of the Court was necessary to make the judgment absolute, but only the filing of the certificate of the referee. And the same effect was given in *Huston v. Ditto*, 20 Md. 305, to a judgment by confession for an ascertained sum and costs, where the power of attorney to confess the judgment and a memorandum on the margin of the docket contained an agreement that the defendant should be allowed any further credits shown. In *Young v. Reynolds* the Court held the ascertainment of the sum due by the referees after the decease of the defendant to be irregular and void, and expressly said that a Court of Equity would have enjoined the execution of such a judgment. But in *Huston v. Ditto supra*, the subject underwent revision, and it was held that the remedy of the defendant to a *scire facias* on such a judgment was not by a suit in equity, but by pleading such facts to the *scire facias* as were necessary to establish the credits claimed, or by motion to the Court to have the credits entered upon the return of the *fiere facias* thereon. And now by the Act of 1864, ch. 311,²¹ it is provided that all judgments confessed on terms to be filed, and all judgments confessed without fixing the amount of the same, and where no cause of action is filed by which said amount may be ascertained, shall be considered *interlocutory judgments*, and the Court, on motion, shall at any subsequent term to the entry of such judgment order an inquisition, &c., as in other cases of interlocutory judgments.

Finally, as to this part of the subject, it has been holden that a judgment

¹⁹ But in *Kendrick v. Warren*, 110 Md. 47, it was held that the courts of this state have power under Code 1911, Art. 26, sec. 14, to enter a judgment with a perpetual stay of execution. *Crook Horner Co. v. Gilpin*, 112 Md. 1.

²⁰ *McKnew v. Duvall*, 45 Md. 501, 510.

²¹ Code 1911, Art. 26, sec. 18.

As to *scire facias* to complete an interlocutory judgment, see *Bridges v. Adams*, 32 Md. 577; *Poe's Practice*, sec. 595.