On the other hand, in Gordon v. Downey, 1 Gill, 41, where an assignee of a *chose in action,* not assignable under the Act of 1829, ch. 51, had, in one count, averred a promise by the defendant to pay the money due on it, but another count omitted it, on both of which counts the verdict was rendered, the case was held expressly within the Act; and see Terry v. Bright, 4 Md. 430; Gurley v. Lee, 11 G. & J. 295. In Williams v. Bramble, 2 Md. 313, it was held that a count in trover might be joined with a count in trespass *de bonis asportatis,* both relating to the same property, the Court intimating that it was within the spirit, if not the letter, of the Act, though they based their judgment on the ground, that the pleas to both were the same and the judgments the same, the form of entering a *capiatur* on judgments in trespass having fallen into disuse, from our having no such proceeding as formerly prevailed in England, to punish the implied breach of the peace, and judgments in trespass on verdict uniformly concluding like those in case, *quod sit in misericordia.*

Appeal bond.—Art. 5, sec. 31,[19] of the Code, Act of 1826, ch. 200, requires appeal or writ of error bonds in double the sum recovered by the judgment or decree, or in double the value of the matter or thing in controversy, which shall have been recovered or decreed, if a moveable chattel or chattels, &c. This, like the Act of 1713, ch. 4, extends to security only in cases of the recovery of debt or damages or other matter or thing, if a moveable chattel or chattels, and hence the removal of ejectments and cases of dower take place under this Statute.[20] The 4th section of this Statute provided, that the Court wherein such execution ought to be granted, upon such affirmation, discontinuance, or nonsuit, should issue a writ to inquire as well of the mesne profits, as of the damages by any waste committed after the first judgment in dower or *ejectione firmæ,* and upon the return thereof, judgment should be given and execution awarded for such mesne profits and damages, and also for costs of suit. Such writs have been issued and judgments entered on them, although they have now fallen into disuse, and our practice is to bring actions therefor afterwards, Gore's lessee v. Worthington, 3 H. & McH. 96, where the writ was quashed, **491** Kilty, Rep. 239. *But a writ of inquiry on a judgment in ejectment, in which damages were awarded for the *ouster,* has been maintained, Joan v. Shields' lessee, 3 H. & McH. 7; see Cushwa v. Cushwa, 9 Gill, 244. It has been held, however, that bail in error are not chargeable in an action upon the recognizance with mesne profits, where they have not been ascertained by writ of inquiry pursuant to this Statute, Doe v. Reynolds, 1 M. & S. 247. The practice with us is to appeal as in other cases, and to require an appeal bond in such a sum as will cover the whole amount of costs and mesne profits, as well as damages by any waste committed pending the appeal, Ringgold's case, 1 Bl. 5. Although the words of the Statute seem to require in ejectment a recognizance by the plaintiff in error himself, yet as an infant plaintiff, or a plaintiff who had become a *feme covert* after action brought could not enter into such a recognizance, the Court,

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[19] Code 1911, Art. 5, sec. 53; Harris v. Regester, 70 Md. 109; Brendell v. Zion Church, 71 Md. 83.

[20] See Kountze v. Omaha Co., 107 U. S. 378.