

his demurrer. The rule is that where there are double pleas, and each goes to the *whole* declaration, or there is a demurrer to any one plea which goes to the whole, the defendant having judgment will have costs, **607** for *then the plaintiff should not try his issue. As to the second clause, it was held in *Golding v. Dias*, 10 East, 2, that it relates only to judgments given on *demurrer* for defendants below, to whom remedy was intended to be given for these costs, both above and below, on affirmation of their judgments, which they had not before. But the contrary was held in *Ricketts v. Lewis*, 1 B. & Ad. 197, and *Golding v. Dias* overruled on that point.

VI. The judgment upon this Statute is not entered for or against the party himself, but for or against his executors or administrators, *Weston v. James*, 1 Salk. 42, and it is said that no judgment can be entered where the action could not have been originally maintained by the executors, see *Ireland v. Champneys*, 4 Taunt. 884.¹ In *Fort v. Oliver*, 1 M. & S. 242, the plaintiff sued two defendants, against one of whom he proceeded to outlawry (to which in our practice a return of one *non est* in joint actions seems equivalent), and the other died after interlocutory and before final judgment, and it was held that the plaintiff could not proceed on this Act against the executors of the deceased, for notwithstanding the outlawry the action remained joint, and survived against the other defendant. With us, in actions on specialties the remedy survives under Art. 49 of the Code; and by sec. 11² of that Article, in suits on other joint contracts upon the death of a co-defendant, before or after judgment, his executors and heirs shall be bound in the same way as if a separate action had been pending, or a separate judgment rendered against such defendant, though the law was formerly otherwise, see *Osgood v. Spencer*, 1 H. & G. 133; *Pike v. Dashiell*, 7 H. & J. 466. But in Maryland, the cases provided for by this section, as well as the succeeding one, seem to be covered by the provisions of the Code relating to abatement.³

VIII. This Act was made in favour of defendants, against whom the plaintiffs at common law, as now, recovering judgment for the whole penalty of the bond and costs, would take out execution for the whole, when only small damages had been incurred, and the defendant could obtain relief only in a Court of equity, *Wilmer v. Harris*, 5 H. & J. 1.⁴ Accordingly, where the Court can relieve without the defendant being forced to go into equity the Act does not apply, as formerly in the case of bail-bonds, *Moody v. Pheasant*, 2 B. & P. 446; nor to replevin-bonds, at least in cases of distress for rent, *Middleton v. Bryan*, 3 M. & S. 155, and see note to *Westm.* 2 c. 2; nor to common money bonds, for relief against the penalty of these is given by 4 Anne, c. 16, sec. 13, and what is due upon

¹ Cf. *Martin v. R. R. Co.*, 151 U. S. 691; *Moses v. Wooster*, 115 U. S. 287.

² Code 1911, Art. 50, sec. 11.

³ See notes to 17 Car. 2, c. 8.

⁴ See *Sun Asso. v. Moore*, 183 U. S. 660; *Watts v. Camors*, 115 U. S. 360. But our statute, (Code 1911, Art. 75, sec. 90), renders the intervention of a court of equity unnecessary. *Orendorff v. Utz*, 48 Md. 304.