State *supra;* State v. Carleton, 1 Gill, 249; Kerr v. State, 3 H. & J. 560, are within the Act, except where suit is brought on the bonds of Clerks or Registers, when it is not necessary to suggest breaches in the replication, but if performance is pleaded the plaintiff may reply non-performance and give the special matter in evidence, Code, Art. 75, sec. 15,[7] and, by sec. 16,[8] no plea of *non damnificatus* shall be received in any such suit.

But the Statute is confined to actions of *debt* on bond, see Lawson v. State *supra,* and therefore does not extend to actions of covenant or *assumpsit,* in which the plaintiff goes for damages, and in which the jury give what damages they see fit, and, even in debt, where the sum mentioned in the bond is to be treated as *liquidated damages,* as this is not a penal sum and Chancery will not interfere, the statute has no application. When such a sum is to be treated as a penalty, and when as liquidated damages, see Sedgwick on Damages, 452.[9] In other respects, the general rule in Maryland is, that the damages cannot exceed the penalty of the bond, State v. Wayman, 2 G. & J. 254, though in some cases interest on the penalty may be recovered by way of damages. Of course each party having a right of action on the bond may recover up to the penalty of the bond, *ibid.*

The method of proceeding on the Statute is fully stated in note 1 to Gainsford v. Griffith, 1 Wms. Saund. 51, and it has always been followed in this State. It is there suggested that the better course is to state the condition of the bond and the breaches in the declaration, and see 2 Wms. Saund. 187, a. *n.* 2, Roberts v. Marriett. As the defendant may now, under the Act of 1829, ch. 220,[10] Code, rejoin as many answers as he pleases to the replication, there seems to be no advantage in reserving the assignment of breaches for the replication, and if they be assigned in the declaration, they need not be assigned again on the writ of inquiry, Wilmer v. Harris, 5 H. & J. 1. But in Scott v. the State, 2 Md. 284, it was observed, that the practice in suits upon bonds with collateral condition to assign the breaches in the replication, and not in the declaration, must now be regarded as settled in the State, and the same decision was made in James v. the State, 3 Md. 211.[11] As to the assignment of

---

[7] Amended by Act 1888, ch. 47, by this addition, "and in this event the defendant shall be entitled to a bill of particulars of the plaintiff's claim." Code 1911, Art. 75, sec. 16. Likewise in suits upon the bond of any state collector no assignment of breaches is necessary. Code 1911, Art. 81, sec. 78; Wilson v. Ridgely, 46 Md. 244.

[8] Code 1911, Art. 75, sec. 17.

[9] See *In re* Newman, 4 Ch. D. 724; Sun Asso. v. Moore, 183 U. S. 642; Watts v. Camors, 115 U. S. 360.

[10] See Code 1911, Art. 75, sec. 10; also note 10 to 4 Anne, c. 16.

[11] But the practice now is to assign breaches in the declaration. See Poe's Pleading, sec. 570, for an explanation of this matter.

Where the declaration assigns breaches, a plea of general performance is bad. Gott v. State, 44 Md. 336; Shriver v. State, 65 Md. 284; Robey