breaches in a replication which traverses *a material averment **609** in the plea, see Webb v. James, 8 M. & W. 645, to which it seems the Statute does not extend. It should seem, however, that in all cases, where the defendant does not plead performance, the breaches ought to be assigned by way of suggestion in making up the issue, see State v. Carleton *supra*.

It is also fully settled here that the plaintiff *must* assign or suggest the breaches, either in his pleadings or on the roll, Wilmer v. Harris; Laidler's Adm'x v. State *supra;* Sasscer v. Walker's Ex'rs 5 G. & J. 102; Clammer v. State, 9 Gill, 279, and other cases; and this holds on judgment by verdict, by default, *nil dicit* or on demurrer, on a case stated, or by confession, not ascertaining the sum on payment of which the penalty is to be released. But the defendant cannot suffer judgment by default upon these breaches, Archbp. of Canterbury v. Robertson, 1 Cr. & M. 181. "The only mode," said the Court in Clammer v. the State, "of dispensing with the requirements of the Statute must be by confession of judgment (ascertaining the precise sum). No judgment can be final till damages are assessed, and no foundation is laid for the assessment of damages till breaches are suggested in the pleadings or on the roll," and see Laidler v. State, 2 H. & G. 281. There is, indeed, a case of Owings v. Goodwin, 1 H. & J. 33, in which it was decided that, where an action was brought on a bond with collateral condition, and the defendant pleaded general performance, to which the plaintiff replied, and the defendant being ruled to rejoin made default, judgment might be entered for the penalty of the bond without executing a writ of inquiry, and the only remedy was in equity. In Laidler's Adm'x v. State *supra*, where there were no pleadings but the declaration, the parties filed an agreement intended to supply them, which was defective in form and substance, the jury found for the plaintiff, but the judgment was reversed. However, if there be an agreement waiving errors in pleading, and allowing such evidence to be given as might be admissible in any form of pleading, there seems to be no necessity for assigning breaches or suggesting them on the roll. In Laurenson v. the State, 7 H. & J. 339, such an agreement was filed, which the Court denounced as a very loose mode of proceeding (and regretted it had been introduced), but which they nevertheless upheld as a *waiver of errors*, and the same was held in the State v. Norwood, 12 Md. 177. In the case of public bonds, where the practice with us is to bring a new action for further breaches of the condition, this slovenly mode of pleading may be tolerated, but since, in other cases, the judgment remains as a security for any further breaches, &c., "unless a suggestion is made on the roll, how can it be known that the breaches

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v. State, 94 Md. 70; Commercial Bank v. McCormick, 97 Md. 710.

In an action on an indemnity bond it is not necessary that the declaration should set out in a separate count each breach of the bond, but the assignment of each breach must be perfect in itself and cannot be made by reference to other breaches. The breach must show with certainty and precision that the plaintiff has a cause of action. Canton Bank v. American Bonding Co., 111 Md. 52.