

assigned in the *scire facias* are the same or different from those on which the judgment was rendered?" *Wilmer v. Harris supra*. So it has been held, that the plaintiff in the *scire facias* to be sued out on the judgment cannot suggest as a breach anything which he might have originally assigned or suggested as a breach, *Harrap v. Armitage*, 12 Price, 441. The defendant cannot pay money into Court in such actions, and if he do pay money into Court as to some of the breaches and aver performance of the rest, the whole plea will be stricken out, and the plaintiff may proceed to assess damages, *Bp. of London v. McNeil*, 9 Exch. 490. The inquiry is not, with us, executed before the Sheriff, but before the Court, and it is held that the Act of 1794, ch. 46 (Code, Art. 75, sec. 62, amended by the Act of 1864, ch. 175),¹² does not interfere with the Statute. See also Code, Art. 75, sec. 63.¹³

If the plaintiff takes out execution without a *scire facias* the Court will set the execution aside, and order the money levied under it to be restored, *Willoughby v. Swinton*, 6 East, 550, where there was a bond conditioned for the payment of a certain sum by instalments, and after judgment obtained upon default of payment of *one of the instalments, it was held that the plaintiff, when a subsequent instalment fell in arrear, could not have execution for it, though within a year after the judgment, without a *scire facias*.

¹² Code 1911, Art. 75, sec. 89.

¹³ Code 1911, Art. 75, sec. 90. In *Orendorff v. Utz*, 48 Md. 298, it was held that while the Statute of William might authorize the entry of a judgment for the penalty of the bond, to stand as security for subsequent breaches, which might be recovered by *scire facias* thereon, it did not, when taken in connection with the above provision of the Code, prevent repeated actions on the bond when breaches thereof might occur; that the Statute of William was modified by the Code provision which treated the sum really due as the true debt secured by the penal bond and so to be pleaded and allowed. The case was affirmed in *Ahl v. Ahl*, 60 Md. 207.

The proper form of judgment is for the penalty of the bond to be released on the payment of such damages as may be assessed in respect of the particular breach assigned. *State v. Wilson*, 38 Md. 344; *State v. Tabler*, 41 Md. 236; *Gott v. State*, 44 Md. 337; *Ruby v. State*, 55 Md. 487; *Warren Bros. Co. v. Kendrick*, 113 Md. 613.