of the court, upon the plea of payment or performance of the conditions or terms of the contract, ascertain and by their verdict find what sum of money is really and justly due to the plaintiff; and upon such finding, judgment shall be entered by the court for the penalty, to be released upon payment of the sum of money so found to be due, and interest on the same till paid, and costs of suit; and the sum really due as aforesaid, or in any other manner ascertained, upon bonds and other instruments of writing, with penalty, shall be considered in law as the true debt and shall be so pleaded by and allowed to administrators and others.

The statute of VIII. and IX. William III., ch. 11, section 8, when taken in connection with this section, does not prevent repeated actions on a bond as breaches thereof may occur. This section treats the sum really due as the true debt secured by the bond, and renders the intervention of a court of equity against the recovery of the penalty of the bond for any breach however small, unnecessary. Orendorff *v.* Utz, 48 Md. 304; Ahl *v.* Ahl, 60 Md. 208.

A *scire facias* on a judgment upon a bond which does not set out the amount found to be due, does not set forth a good and perfect judgment, since if the amount due was ascertained, it should have been set out, and if it was not ascertained, the judgment was merely interlocutory. McKnew *v.* Duvall, 45 Md. 510.

This section applied. Warren *v.* Kendrick, 113 Md. 613; State *v.* Tabler, 41 Md. 239; State *v.* Wilson, 38 Md. 344.

This section referred to in discussing the allowance of interest upon the claim of creditors in equity. Hammond *v.* Hammond, 2 Bl. 370.

Legal Sufficiency of Evidence.

1904, art. 75, sec. 91. 1894, ch. 516, sec. 87.

91. If the defendant in any action at law in contract or in tort shall, at the close of the plaintiff's evidence and before offering any evidence or defense, pray the court to instruct the jury that the plaintiff in such action has offered no evidence legally sufficient to entitle the plaintiff to recover, or a prayer to the same effect, and the court shall reject such prayer, the defendant shall not be precluded from offering evidence of defense, but any defendant in such action may offer evidence of defense as fully and to the same extent as though such prayer had not been offered.

This section has no application where the court grants the defendant's prayer to take the case from the jury at the end of the plaintiff's case. Object of this section. Schwanteck *v.* Berner, 96 Md. 143.

Where a defendant's prayer to take the case from the jury offered at the close of the plaintiff's testimony is refused, and the defendant proceeds to put in his case, the ruling of the court on such prayer is not open for review upon appeal. This section distinguished from section 8. Barabasz *v.* Kabat, 91 Md. 55; New York, etc., Co. *v.* Jones, 94 Md. 35; United Rys. Co. *v.* Deane, 93 Md. 624.

As to the burden of proof in suits against a railroad company for injury to live stock and from fire, see art. 23, sec. 307.

Measure of Damages for Abstracting Minerals from Plaintiff's Land.

Ibid. sec. 92. 1894, ch. 287, sec. 87 A.

92. In the absence of fraud, negligence or wilful trespass, the measure of damages for the wrongful working and abstracting of another's