

brought against him, he may plead the fact and a trial by jury shall be thereupon had.

As to suits by and against administrators, see art. 93, sec. 104.

As to cases before justices of the peace to which an executor or administrator is a party, see art. 52, sec. 9, *et seq.*

1904, art. 26, sec. 27. 1888, art. 26, sec. 26. 1860, art. 29, sec. 21.
1802, ch. 101, sec. 1.

27. If, on any trial so had against an administrator, the debt or demand of the plaintiff shall be contested, and there be any other issue joined than upon the subject of assets, the jury, if they find for the plaintiff upon the issue so joined, and the amount of assets found by them be less than the debt or demand of the plaintiff, shall declare the amount of the debt or demand, and also the sum to be paid by the defendant to the plaintiff, regard being had to the amount of the assets in hand, and the debts due from the deceased; and the court shall thereupon enter judgment against the defendant for the penalty of the bond or damages laid in the plaintiff's declaration, and costs of suit, if the court shall so direct, to be released upon payment of the sum ascertained to be paid by the verdict of the jury, and interest thereon from the time of rendering the said judgment.

If this section is not followed, and the jury does not pass upon the sufficiency of assets, though the undisputed evidence shows that the assets were insufficient and less than the verdict, the judgment will be arrested upon motion. Where, however, no such motion is made and there is an agreement of record reading "judgment only to bind assets by agreement of counsel in open court," this amounts to a waiver of a defect in the plaintiff's prayers relative to insufficiency of assets. *Gill v. Staylor*, 93 Md. 473.

If the bond is in suit, the judgment is for the penalty of it, and if not, then for the damages laid in the declaration to be released on payment of amount of verdict. *Neale v. Hermanns*, 65 Md. 479.

Ibid. sec. 28. 1888, art. 26, sec. 27. 1860, art. 29, sec. 22.
1802, ch. 101, sec. 1.

28. The sum so ascertained shall be levied of the goods and chattels of the deceased, or of the proper goods and chattels of the defendant, and the residue of the debt or damages so ascertained shall be levied of the goods and chattels of the deceased, which may thereafter come to the hands of the defendant, to be administered with interest as aforesaid, or of the proper goods and chattels of the defendant.

Cited but not construed in *Gill v. Staylor*, 93 Md. 473.

Ibid. sec. 29. 1888, art. 26, sec. 28. 1860, art. 29, sec. 23.
1802, ch. 101, sec. 1.

29. If such goods and chattels shall thereafter come to the hands of the defendant as administrator, or into the hands of any other person who may have authority to administer the goods of the deceased, the plaintiff may issue on the said judgment a writ of *scire facias*, suggesting the coming of assets to the hands of the administrator, liable to the payment of the residue of his debt or demand, with interest as aforesaid, so due, upon which, if the defendant contests the same, there shall be a trial by jury, as provided in section 26.

Cited but not construed in *Gill v. Staylor*, 93 Md. 473.