

right to recover without regard to amount jury may ascertain to be due. A judgment by default if regularly entered is as binding as any other as far as respects power and jurisdiction of court in declaring plaintiff entitled to recover. *Heffner v. Lynch*, 21 Md. 555; *Green v. Hamilton*, 46 Md. 329.

Where parties fix amount of recovery by agreement, the inquisition is waived and final judgment may be entered. The final judgment does not relate back and take effect as of date of judgment by default, and latter judgment is not a lien on defendant's property. *Davidson v. Myers*, 24 Md. 554.

Where three years have elapsed since a judgment by default, although there is no change of parties, the judgment should be revived and extended by a *sci. fa.* *Bridges v. Adams*, 32 Md. 580.

This section contains no limitation as to time in which inquisitions on judgments by default must be had. The act of 1864, ch. 175, applies to judgments entered by default prior to its passage. There is no obligation upon court to delay entering judgment upon an inquisition, although it may delay where occasion requires. *Stansbury v. Keady*, 29 Md. 367.

Amount of damages assessed by court without a jury under this section and a practice act of Baltimore city is not open for revision on appeal when no exception on that ground was taken, unless damages exceed the amount claimed in the declaration. *Morris v. Wrenschall*, 34 Md. 502.

Act of 1794, ch. 46, is remedial, and does not interfere with the statute of VIII and IX William III, ch. 11, providing for assessment of damages where there is a judgment by default in action on bond with collateral conditions. *Wilmer v. Harris*, 5 H. & J. 8.

Act of 1794, ch. 46, did not give the right to an inquiry of damages where none existed before. *Hopewell v. Price*, 2 H. & G. 276.

Cited but not construed in *Martindale v. Brock*, 41 Md. 581.

See art. 26, sec. 18.

An. Code, sec. 90. 1904, sec. 90. 1888, sec. 87. 1785, ch. 80, sec. 13.

**95.** In all cases of actions brought for the penalty of any bond, bill, covenant or contract with penalty, the jury may, under the direction 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, sec. 8, when taken in connection with this section, does not prevent repeated actions on a bond as breaches occur. This section treats sum really due as true debt secured by bond, and renders intervention of a court of equity against the recovery of penalty of 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 amount found to be due, does not set forth a good and perfect judgment, since if amount due was ascertained, it should have been set out, and if it was not ascertained, 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.

An. Code, sec. 91. 1904, sec. 91. 1894, ch. 516, sec. 87. 1924, ch. 151.

**96.** If the defendant in the trial of any action in a court of law, including issues from another court, shall, at the close of the plaintiff's evidence