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, 1924, sec. 96. 1912, 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 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 a verdict on any one or more counts or issues, or offer 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 such defendant 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 court grants defendant's prayer to take case from the jury at end of plaintiff's case. Object of this section. Schwanteck *v.* Berner, 96 Md. 143.

Where a defendant's prayer to take case from jury offered at close of plaintiff's testimony is refused, and defendant proceeds to put in his case, the ruling of court on such prayer is not open for review upon appeal. This section distinguished from sec. 10. Barabasz *v.* Kabat, 91 Md. 55; New York, etc., Co. *v.* Jones, 94 Md. 35; United Rys. Co. *v.* Deane, 93 Md. 624; Wilkin Mfg. Co. *v.* Melvin, 116 Md. 108.

As to the burden of proof in suits against a railroad company for injury to live stock and from fire, see art. 23, sec. 246.

See art. 5, secs. 10 and 11.

An. Code, 1924, sec. 97. 1912, sec. 91A. 1914, ch. 109.

97. In the trial of all actions at law in the courts of this State no question as to the sufficiency of the pleadings, as stating a cause of action or a defense, as the case may be, which might have been raised by demurrer, shall be raised by prayer or instruction at the trial; provided, however, that nothing in this Section shall be held to prevent the court from passing on the question of the legal sufficiency of the evidence to establish a cause of action or defense, although the determination of such question may involve the decision of questions of law which might be raised by demurrer.

Even if it could be said that a *narr.* in a replevin suit was defective because it was in *detinuit* instead of *detinet,* or on ground of a variance, neither question was presented by defendant's prayers. Burrier *v.* Cunningham Co., 135 Md. 142.

A prayer held not sufficient to raise the question of misjoinder or variance, in view of art. 5, sec. 11. This section does not relieve the defect. Rasst *v.* Morris, 135 Md. 256; Fulton Bldg. Co. *v.* Stichel, 135 Md. 544.

Cited but not construed in Conowingo Land Co. *v.* McGaw, 124 Md. 652; Victory Sparkler Co. *v.* Francks, 147 Md. 372 (see notes to art. 5, sec. 11).

See sec. 7, *et seq.*