

In an action on a bail bond to the sheriff, the Court may now give such relief as may be just and reasonable (*a*). A replevin bond is now subject to 8 & 9 Wm. III, c. 11 (*b*).

Bonds for the payment of money by instalments (*c*); or upon a written instrument for the recovery of a penalty though not under seal (*d*); or the payment of an annuity (*e*); or the performance of an award (*f*); or the performance of any other specific act (*g*), are within the Act. The statute also applies to actions for penalties on covenants and agreements in writing, for payment of a penalty on non-performance (*h*). Even though a bond on the face of it be a common money bond, yet if there be a concurrent instrument showing that it is in substance a bond intended to secure the performance of covenants within the meaning of the statute, it falls within the statute, although the bond does not refer to the instrument which explains it (*i*).

It will be noticed that Rule 580 does not provide that all the provisions of 8 & 9 Wm. III, c. 11, shall continue in force, but only such parts of this Act as relate to the assignment and suggestion of breaches and as to judgment. Before the Judicature Act a plaintiff had two courses open to him in suing on a bond within 8 & 9 Wm. III, c. 11. He could frame his declaration claiming the penalty without mentioning the condition in the bond, and without assigning a breach of it, or he could set out the condition and allege breaches. If the breaches were not assigned the defendant could set out the condition in his plea, and plead that he had performed it, or he could plead any answer which would excuse performance of the condition. If the condition and breaches were set out in the declaration, the defendant could plead

(a) Rule 1035.

(b) Rule 1073.

(c) *D'Aranda v. Houston*, 6 C. & P. 511; *Preston v. Dania*, L. R. 8, Ex. 19.

(d) See *Drage v. Brand*, 2 Wils. 377.

(e) *Walcot v. Goulding*, 8 T. R. 126; *Tutcher v. Cavallampi*, 21 Q.B.D. 414.

(f) *Welch v. Ireland*, 6 East. 613; *Hanbury v. Guest*, 14 East. 401.

(g) *Leake*, 122.

(h) 2 Wm. Saunders (1871 ed.), 541; *Betts v. Burch*, 4 H. & N. 506, 510; *Ex p. Capper*, 4 Ch. D. 724.

(i) *Hurst v. Jennings*, 5 B. & C. 650; *Quin v. King*, 1 M. & W. 42.