

in an action on a bond within 8 & 9 Wm. III, c. 11, may still claim the penalty in his statement of claim without assigning breaches, but the course usually adopted is to set out the condition and allege the breach or breaches upon which the plaintiff intends to rely, and ask for a declaration that the bond has become forfeited and judgment for the whole penalty of the bond so that the judgment may stand as security for future breaches.

No reference is made in the Judicature Act or the Rules to the writ of scire facias, and the writ is probably not abolished. Lord Justice Lindley says the writ is not abolished (*a*), and it has been adopted in several cases since the Judicature Act came into force (*b*). Instead of proceeding by scire facias to assess damages for further breaches, the plaintiff could probably proceed by petition under Rule 642 (1), and instead of directing that the damages for further breaches assigned be assessed by a judge at the sittings, the Court could probably refer it to the Master to assess the damages under Rule 579.

The liability of the obligor on the bond is limited to the amount of the penalty (*c*), but where the condition shows a contract or covenant to do or abstain from doing a particular act, such contract or covenant may be enforceable by injunction (*d*). The penalty of a bond within 8 & 9 Wm. III, c. 11, cannot, of course, be claimed by special endorsement (*e*), but in the case of a common money bond within 4 & 5 Anne, c. 3, the writ may be specially endorsed with a claim for the amount of the bond (*f*).

Interest, when expressly made payable by the bond, might formerly have been claimed by special endorsement (*g*), but now interest may be specially endorsed whether it is expressly made payable or not (*h*).

M. H. LUDWIG.

(a) Lindley's Law of Companies, 5th ed., 281.

(b) *Shaver v. Cotton*, 16 P.R. 278; *Brice v. Munro*, 12 A.R. 453; *Postal v. Emmens*, 1 C.P.D. 201, 664; *Kipling v. Todd*, 3 C.P.D. 350.

(c) *Wilde v. Clarkson*, 6 T.R. 393; *Branscombe v. Scarbrough*, 6 Q.B. 13; *Hutton v. Harris* (1892) A.C. 547; *McMahon v. Ingersoll*, 6 O.S. 301; *Randall et al. v. Burton et al.* 4 P.R. 9.

(d) *London, etc., Bank v. Pritt*, 36 W.R. 135; *National, etc., Bank v. Marshall*, 40 Ch.D. 112.

(e) See *Tutcher v. Curramampi*, 21 Q.B.D. 414.

(f) *Gerrard v. Clowes* (1892) 2 Q.B. 11.

(g) *Steeds v. Steeds*, 22 Q.B.D. 537.

(h) Rule 138.