

denying the bond or breaches or both or confessing the bond or breaches or both, and pleading excuse for non-performance (a).

If the plaintiff did not set out the condition and breach in his declaration, and the defendant pleaded performance generally, then under the statute it was necessary for the plaintiff in his reply to assign the breaches upon which he intended to rely (b). If the defendant denied making the bond or pleaded any other plea in excuse, then after issue was joined the plaintiff was obliged, under the statute, to suggest on the record all the breaches which entitled him to have the bond declared forfeited (c). If the defendant allowed judgment to go against him by default or on demurrer, and the breaches had not been assigned in the declaration or reply, the plaintiff was obliged to suggest the breaches on the record in the same way as when the plaintiff joined issue on the defendants denial (d).

The statute made it compulsory to assign or suggest breaches and damages could only be assessed for breaches assigned or suggested (e). A verdict taken without assigning or suggesting breaches, was irregular and could be set aside (f).

In all cases in actions on bonds within 8 & 9 Wm. III, c. 11, whether the defendant appeared or not, the damages should be assessed at the sittings or assizes, and it was irregular to enter up final judgment without assessing damages for the breaches assigned or suggested (g). The defendant could not assign or suggest breaches which occurred after the action was commenced, but he was obliged to proceed by scire facias upon the judgment (h).

Under the practice as laid down in the Rules, a plaintiff

(a) 2 Wm. Saunders (1871 ed.), 544.

(b) 1 Wm. Saunders, 133; 2 ib. 544.

(c) *Honfray v. Rigby*, 5 M. & S. 60; *Arch. of Canterbury v. Robertson*, 1 C. & M. 690; *Wehl v. James*, 8 M. & W. 645.

(d) *Lawes v. Shaw*, 5 Q.B. 322.

(e) *Walcott v. Goulding*, 8 T.R. 126; *Welch v. Ireland*, 6 East, 613.

(f) *McMahon v. Ingersoll*, 6 O. S. 301.

(g) *Douglas v. Powell*, 2 O. S. 87.

(h) *Willoughby v. Swinton*, 6 East, 550. But see *Leach v. Stevenson*, 3 O. S. 310.