Act of 1825, ch. 65, sec. 2, re-enacted in the Code, Art. 75, sec. 60,[1] it is provided that if a defendant returned summoned do not appear by the fourth day of the succeeding term, the Court shall enter judgment for the plaintiff for the property and nominal damages and costs; and by the latter clause of the same section of the Code it is enacted, that the same proceedings shall be had upon the return of two *non ests* as upon a return of summoned. It is, regularly, the duty of the sheriff to summon the defendant under a writ of replevin, see Swann v. Shemwell, 2 H. & G. 283.

Scope of action of replevin in Maryland—Practice.—Replevin is a much more extensive remedy in this State than in England, where the tortious taking is the gist of the action, and where it is mainly used in cases of distress for rent; and it has been determined to be the proper action in all cases where a plaintiff has a right to the possession of personal property at the time the writ issues.[2] "Most generally it is used for this purpose, and not to determine necessarily the absolute title to the property for all time.[3] If

[1] Code 1911, Art. 75, sec. 117.

[2] "According to the well settled law of this State, the allegation of the wrongful taking is immaterial, and merely fictitious, in an action of replevin, like the present, and need not be proved." Horsey v. Knowles, 74 Md. 604; Lamotte v. Wisner, 51 Md. 543.

Replevin is the appropriate remedy for the vendor of goods purchased by an insolvent vendee who has no expectation of paying for them. Standard Co. v. O'Brien, 88 Md. 335. Cf. Bolton v. Stokes, 82 Md. 50; Herzberg v. Sachse, 60 Md. 426; Dias v. Chickering, 64 Md. 348; McCulloh v. Hellweg, 66 Md. 269, 276. The vendor in such case may even replevy the goods from the vendee's assignee for the benefit of creditors. Benesch v. Weil, 69 Md. 276. It is also the appropriate remedy for the receiver of an insolvent corporation to get possession of goods of the corporation fraudulently disposed of by its president. Mish v. Main, 81 Md. 36, 46.

As to gambling articles, see Police Com'rs. v. Wagner, 93 Md. 182; Wagner v. Upshur, 95 Md. 519.

[3] Anderson v. Stewart, 108 Md. 340.

Conclusiveness of judgment in replevin.—A judgment for defendant which does not order a return of the property replevied does not conclusively determine that the property was owned by the defendant and make that question *res adjudicata* in a subsequent suit relating to the same property, because that judgment could have been rendered on a finding that the property was not then in the possession of the defendant, or that the defendant had not at that time a right to the possession, or that the right of possession was in a third person. Courtney v. Knabe Co., 97 Md. 499.

The assignee of certain promissory notes recovered them from the maker in an action of replevin where the judgment was rendered by confession. It was held, in an action on the notes against the maker, that the record of the replevin suit was not competent evidence to show an admission of the debt evidenced by the notes, since the judgment in replevin determined only the right to the pieces of paper on which the notes were written. Babylon v. Duttera, 89 Md. 444.

But in some circumstances a judgment for defendant may be conclusive as to want of title in plaintiff, as where title to the property replevied was put