may waive the delivery of possession of the property to him under his replevin, and it may then be taken under a second replevin, though in the hands of the sheriff under the first writ, Powell v. Bradlee, 9 G. & J. 220.

The action of replevin being thus of such general use to try the right to the possession of personal property, the defences to it generally go to disaffirm the plaintiff's title, and hence, except in cases of replevins of distresses for rent, the most common pleas with us are property in the defendant himself, or a stranger, together with what is termed the general issue, *non cepit*, inconsistent though they may seem, Edelin v. Thompson, 2 H. & G. 31, and frequently all three.[6]

It has been determined that the possession of the defendant, admitted by instituting the suit against him, is *prima facie* evidence of ownership, and the plea of property in him throws the whole burden of proof upon the plaintiff; and this is consistent with the rules of pleading adopted here, for the plaintiff's replication to such a plea must set up property in himself, and on this the issue is joined, Cullum v. Bevans *supra;* Warfield v. Walter, 11 G. & J. 80; [7] and the *onus probandi* is equally on the plaintiff, where the defendant pleads property in a third person, to shew a superior title to that third person, McKenzie v. B. & O. R. R. Co. 28 Md. 161.[8]

Upon these pleas of property the defendant, if he succeed, is, it seems, entitled to a return of the property without making avowry or cognizance, because they destroy the plaintiff's title, Crorse v. Bilson, 6 Mod. 102; Butcher v. Porter, 1 Salk. 94; [9] although in the form given in 2 Harr. Ent. 247, a return is prayed in the plea. A verdict on such pleas, finding as to part of the property for the plaintiff and as to the residue for the defendant, is good, Edelin v. Thompson *supra*, and if the issues on such pleas are all found for the defendant, they amount to a general verdict in his favor, Smith v. Morgan, 8 Gill, 138. The allegation of the wrongful taking in the declaration is considered a mere fiction, generally false in point of fact, Cullum v. Bevans *supra*, and hence it is very common that the declaration gives no place where the goods were taken, or if it do so state a place, it is not regarded as material, though the law strictly taken might seem to be otherwise, and in a replevin for a distress the place must be stated, for the

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[6] Lamotte v. Wisner, 51 Md. 543.

[7] Horsey v. Knowles, 74 Md. 602; Puffer Co. v. May, 78 Md. 74.

But where the goods are obtained by the vendee with the fraudulent design of never paying for them and his assignee for the benefit of creditors locks the door of the vendee's store and refuses to admit the sheriff to execute the writ, or the plaintiff to identify the goods, and does not produce evidence at the trial to show that the vendee had sold the goods before the attempted service of the writ, the burden of proof as to whether the goods had come into the vendee's possession is shifted to the defendant. Benesch v. Weil, 69 Md. 276. Cf. Biemuller v. Schneider, 62 Md. 547.

[8] Hopkins v. Cowen, 90 Md. 152. The plea of property in a third person does not involve his title to the goods replevied, but has the effect only of casting on the plaintiff the burden of proving his own title. Smith v. Wood, 31 Md. 293.

[9] Lamotte v. Wisner, 51 Md. 543, 561.