be taken. In Hucker v. Gordon, 1 Cr. & M. 58, it was held to be sufficient if the sheriff take one pledge, on a replevin of a distress *damage feasant:* see the authorities there referred to. And in Austen v. Howard *supra*, a bond executed by one surety was said to be available against him by the sheriff, though perhaps he may plead it was delivered as an *escrow* till sealed by another. It is not necessary, according to the case of Rous v. Pattison, 16 Vin. Abr. 399, 400, cited in 1 Wms. Saund. *supra*, to proceed against the pledges before bringing the action against the sheriff. As upon *nihil* returned on a *scire facias* against the pledges, a *scire facias* formerly went against the sheriff, it might seem that the sheriff is answerable that they should *eventually* prove sufficient, see Bac. Abr. *supra;* Oxley v. Cowperthwaite, 1 Dall. 349. The English cases on this point are mostly upon the Stat. 11 Geo. 2, c. 19, s. 23, which, however, only applies to replevins on distresses for rent, and are to the contrary, i. e. that if at the time of taking the bond, which is made assignable to, and thus enuring directly to the benefit of the defendant, is on the same footing with the bond taken by the Clerk of the County Court, the sureties were *apparently* responsible, the sheriff is not liable to an action for taking insufficient pledges, though he is bound to exercise a reasonable discretion and caution in receiving the sureties, and whether he has done so or not is in each case a question for the jury; he is not, however, bound to go out of his office, though if the parties are unknown to him he ought to require information beyond their sworn statement of their sufficiency, Hindle v. Blades, 5 Taunt. 225; Scott v. Waithman, 3 Stark. 168; Jeffrey v. Bastard, 4 A. & E. 823. In the action some evidence must be given of the insufficiency of the sureties, though slight evidence will suffice to throw the burden on the sheriff, for the sureties are known to him, Saunders v. Darling, Bull. N. P. 60. It appears from Baker v. Garratt, 3 Bing. 56, that he is not liable for the expenses of a fruitless action brought against the sureties, at least in excess of the penalty of the bond taken by him, unless he had notice of the intention to sue them, though within that limit it seems notice is immaterial, and such costs may be recovered, and it is no answer to say that the plaintiff joining in the bond in replevin is sufficient, Plumer v. Brisco, 11 Q. B. 46.

In Perreau v. Bevan, 5 B. & C. 284, an action was held to lie against the sheriff for losing a replevin bond. It appears not to be settled, that the limit of damages in such an action is the penalty of the replevin bond, Paul v. Goodluck, 2 Bing. N. C. 220; Evans v. Brander, 2 H. Black. 547; Brans-
102 comb. v. Scarborough, 6 Q. B. 13; or *the amount of the rent, or the value of the goods according to the appraisement, if less than the rent, and if they have not been restored, and costs, if no bond or an improper bond be taken, for there was a real security lost; see Karthaus v. Owings, 6 H. & J. 134, S. C. 2 G. & J. 430; Mason v. Sumner, 22 Md. 312; Edmonds v. Challis, 7 C. B. 413; Hunt v. Round, 2 Dowl. P. C. 558; Gingell v. Turnbull, 5 Scott, 153; Miers v. Lockwood, 9 Dowl. P. C. 275. As to the sureties, it has been held that the defendant was not bound, if he proceed at common law, to sue out a *retorno habendo* as soon as possible for their benefit, Hefford v. Alger, 1 Taunt. 218; nor *at law* is a plea good in their discharge, that time was given to the principal without their consent, Aldridge v. Harper, 10 Bing. 118, although they may be relieved in equity, or upon an application to the equitable jurisdiction of the Court on a summary applica-