tion upon some collateral matter, *ibid.* and Moore v. Bowmaker, 3 Price, 214; 7 Price, 223; Archer v. Hale, 4 Bing. 464.

It may be assumed, perhaps, that the duty and liability of the clerk in all these respects is similar to that of the sheriff as to bonds taken under the Stat. 11 Geo. 2, c. 19, nor is there any hardship in this, for under this Stat. of Westm. 2, the pledge is only taken for a return, whereas the ordinary replevin bond binds the plaintiff in addition to prosecute with effect, and usually to abide by the judgment of the Court in the premises.

Such actions as these are rare in Maryland, and as where goods are replevied and security given they may be sold or otherwise charged or encumbered by the plaintiff, (at least if the possession is not restored to the defendant at the return of the writ,) except in the case of a renting on shares of the crops where the landlord's lien is preserved by the Act of 1868, ch. 292,[15] the sureties in the bond being substituted for the goods, Bradyll v. Ball, 1 Bro. C. C. 427; Gelston v. Rullman, 15 Md. 260, and the defendant may in like manner deal with them if they are restored to his possession, and as on a *retorno habendo* only the identical goods replevied, which remain undisposed of and unencumbered, can be taken by the sheriff, the *withernam* against the general goods of the party issuing only on the return of *eloigned* to the *retorno habendo*, the articles replevied generally disappear before judgment, and both parties therefore usually find it more convenient, according as the one or other succeeds in the action, to proceed upon the replevin or the *retorno habendo* bond. The plaintiff binds himself in the replevin bond to prosecute the suit with effect, and to make return of the goods replevied in case the same shall be adjudged, and he is bound to do both, Doogan v. Tyson, 6 G. & J. 453. The bond therefore is forfeited by a breach in either respect, *ibid.* and to prosecute with effect means to prosecute with success, Karthaus v. Owings, 6 H. & J. 134,[16] and to prosecute in every Court into which the cause may be removed by due course of law, Edmonds v. Challis *supra*, and see also Turnor v. Turner, 2 B. & B. 107, and Perreau v. Bevan *supra*. However, where the plaintiff in replevin levied a plaint against the defendant, who obtained an injunction to stay proceedings until a certain day, on which the plaintiff died, it was decided that he had prosecuted his suit with effect, there not having been either a nonsuit or a verdict against him, Duke of Ormond v. Bierly, Carth. 519. It has been determined that each part of the condition is independent; and with great propriety, for though the goods may have been returned or never taken, yet the defendant is entitled to go on the replevin bond for his costs, and rely on the judgment alone as a breach of the condition to prosecute with effect, see 1 Wms. Saund. 195 k. and Doogan v. Tyson. However, in Cumberland C. & I. Co. v. Tilghman *supra*, the declaration set out that the plaintiff in replevin did not prosecute his suit and did not return

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[15] Code 1911, Art. 53, sec. 22.

[16] Where a judgment in replevin is for the defendant for the return of the property and costs, it is no defence to a suit on the bond that plaintiff returned the property and paid the costs. The failure to prosecute the replevin suit with success renders the obligors liable to at least nominal damages. Crabbs v. Koontz, 69 Md. 59.