103 the property, and no objection was taken that the breach was *double; and in Doogan v. Tyson, the plaintiff in his replication averred that the defendant had not made a return of the goods or any of them, and that he did not prosecute his suit with effect; the defendant rejoined that the goods, &c., mentioned in the replication, were not replevied and deliverd to him under the writ of replevin, and that he did prosecute his writ of replevin with effect, and there was a special demurrer for duplicity amongst other things; the Court held that the rejoinder was not bad on that account, for it only answered the breaches assigned in the replication, whence they must have thought the replication good, or they would otherwise have gone up to the first fault in pleading. In Phillips v. Price, 3 M. & S. 180, the objection of duplicity was also made, but it was overruled; Dampier J. observing that you must negative both parts of the condition; if the party make a return, he need not prosecute his suit with effect; if he prosecute his suit with effect, he need not make a return. See, however, Perreau v. Bevan, 5 B. & C. 300; 1 Wms. Saund. 195 k. where this *dictum* of Dampier J. is said to be incorrect; and, as it seems, with good reason. In the case of Doogan v. Tyson, the Court said that the practice in Maryland was to plead general performance in such an action, and they would not say that it was improper; and in Cumberland C. & I. Co. v. Tilghman, the pleas were general performance and *non damnificatus*, which latter, on the ground as will presently appear that the replevin bond is a *bond of indemnity*, is considered a proper plea. In Mason v. Sumner, 22 Md. 312, besides these two pleas, there was a third *setting up property in the plaintiff in replevin*, upon which issue was joined. In Doogan v. Tyson, one of the causes of demurrer was, that the rejoinder "that the goods mentioned in the replication were not replevied," &c., as above stated, was a departure from the plea of general performance, and that such a defence ought to have been pleaded specially. The Court, however, while seeming to doubt whether such a defence was any bar, decided the case on another ground, namely, that it presented an immaterial issue, for the verdict if found for the defendant would not have been decisive of the action, as a part of the goods might have been replevied and delivered although the whole were not.

In the same case the Court observed that the replevin bond was taken for the security of the defendant in the replevin,[17] and all questions arising on it should be determined with a due regard to that consideration. In Belt v. Worthington, 3 G. & J. 247, they said that the recovery on the replevin bond ought to be moulded in such a manner as will best subserve the principles of justice; and, accordingly, in that case, where a plaintiff in replevin had

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[17] In Fidelity Co. v. Singer, 94 Md. 124, it was held that the surety on a replevin bond was liable only to the named obligee and that when the action on the bond was entered to the use of a third person, he could recover only the damages sustained by the obligee and not the loss suffered by himself.

But now under the Act of 1904, ch. 26, (Code 1911, Art. 75, sec. 120), all bonds in actions of replevin in any of the courts of law are given to the state and are for the use of any person interested in any way in the property taken.