been nonsuited, and an action was brought on the replevin bond and the defendants suffered judgment to go by default, it was held that on the execution of the writ of inquiry, the defendants might prove that *at the time of issuing the replevin they had title to the goods, in mitigation of damages.*[18] But this question must, the Court said, always depend upon the nature of the rights tried, and upon the pleadings in the action of replevin; and therefore in Cumberland C. & I Co. v. Tilghman *supra*, it was decided that the defendant in an action on the replevin bond could not shew *that the title in the property was in himself*, in mitigation of damages, where that had been settled in the replevin, but he might shew that though the plaintiff had title to the possession of the goods at the time of the judgment in the replevin, yet that title was of short duration, and terminated by contract shortly after the judgment.

And so in Walter v. Warfield, 2 Gill, 216, where the defendant in replevin had judgment for a return on a plea of property in A., the obligors in the bond were allowed to shew, in mitigation of damages, that the property really belonged to A., that the plaintiff had no personal interest in it, and hence he was allowed to recover *only for the damages sustained **104** by him personally, in consequence of being deprived of the possession, and was not permitted to increase the damages to the extent of A.'s right by showing that he was her agent, though the suit had been entered to her use at the trial. In Mason v. Sumner *supra*, where there had been a replevin of a grain rent, (see Code, Art. 53, secs. 10 *et seq.*, and the Act of 1868, ch. 292,[19] giving the landlord a lien upon growing crops of which a share is reserved as rent, which is not to be divested by any sale by the tenant, or assignment of the tenant in bankruptcy or insolvency, or by process of law against the tenant; *quære*, can the landlord now distain at all upon such crop?) Mason in the action of replevin avowed the taking as a distress for rent, and from his recovery in that action, it may be assumed that his distress was regular, and that as a preliminary to the taking, he caused his share of the produce to be appraised; and having distrained, the *property so taken* was apppraised. These two appraisements, see Code, Art. 53, sec. 11,[20] seem to be distinct acts, and are made for distinct purposes. The first is made to ascertain the extent of the landlord's demand in money. The

[18] A replevin bond is one of indemnity only. In an action on the bond defendant has a right to show that the property in question did in fact belong to plaintiff in the replevin and that title thereto was not determined in the replevin suit; and where the evidence shows that the right of the defendant in replevin was possessory only and determinable upon the demand of the plaintiff in replevin for a return of the property, the obligors on the bond are not answerable for damages sustained by the former in consequence of his being deprived of the use of the property. Crabbs v. Koontz, 69 Md. 59.

The surety on a replevin bond is entitled to be subrogated to all the rights of the principal and to avail himself of the same defenses which are open to the latter. Seldner v. Smith, 40 Md. 602, distinguished in Fidelity Co. v. Haines, 78 Md. 454.

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

[20] Code 1911, Art. 53, sec. 11.