second is made to ascertain appproximately the value of the things taken as a distress. The report does not state whether the distress was made of the crop or of other property, but the law is the same in either case. But in the action on the bond, Mason insisted that he was entitled to recover the value of the property distrained without regard to the amount of rent due. The surety in the bond insisted, on the other hand, that the recovery should be limited to the sum due for rent. The Court showed from the cases that the bond was intended for indemnity merely, and consequently that the plaintiff could ask no more than the rent in arrear. But the difficulty in the case is, that the Court speaks of joint possession of the grain. There never was a joint possession, otherwise the taking would have been unlawful. The grain belonged to the tenant originally, and clearly when the grain rent was commuted into a money rent, as it was as a preliminary to the distress, the plaintiff ceased to have any interest in the crop other than the special property acquired by the distress, and for the purposes of the distress, see 1868, ch. 292,[21] Byre v. Etnyre, 2 Gill, 151. No question could have arisen had the plaintiff taken judgment under 17 Car. 2, c. 7. It has been determined, however, that the assignee of a tenant, renting on shares, cannot maintain replevin against the landlord for the crop left by the tenant in his possession, on account of their interest in the crop being joint, Ferrall v. Kent, 4 Gill, 209, and see also Dailey v. Grimes, 27 Md. 440.

It may be observed, that Stat. 11 Geo. 2, c. 19, s. 23, provides that the Court, in which the action on a replevin bond to be taken under its provisions is brought, may, by rule of the same Court, give such relief to the parties on such bond as may be agreeable to justice, and such rule shall have the nature and effect of a defeasance to such bond. The defendant therefore in Mason v. Sumner might have had relief by a proper application to the Court, *vide supra*. It may be assumed also, that though the plaintiff may, generally, only recover upon the bond against the defendants the quantity of his interest in the chattel replevied, yet cases may arise in which the full value ought to, and would be allowed: as if the chattel be replevied from a tenant for life, who is responsible for it to the remainderman; here it would avoid circuity of action to allow a recovery of the entire value of the article, see Harker v. Dement, 9 Gill, 7; Swire v. Leach, 18 C. B. N. S. 479. Where in an action on a replevin bond, to which performance was pleaded, the plaintiff replied the record of a judgment for a return, &c., and judgment by default was entered, and a writ of inquiry taken out, it was held that the plaintiff need not produce the original bond, but it might be read from the record, 1st, Because it was an office paper, and filed in the County Court, and 2d, Because the plea of performance is like pay-
105 ment *to a money bond, which on a writ of inquiry need not be produced if there is oyer of it in the record, Reed v. Wethered, 1 H. & J. 448.

Writ of second deliverance.—As to the last part of this Statute relating to writs of second deliverance.[22] It is said in Evans' Prac. 112, that this writ is never used in Maryland, and is perhaps not of force here. The Court of Appeals, however, in Belt v. Worthington *supra*, affirmed that a

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

[22] See Poe's Practice, sec. 455.