again for the Residue of the said Arrears. *Extended to* Wales *and the Counties Palatine by* 19 *Car.* 2, *c.* 5.

II. Plaintiff in Replevin being Nonsuit before Issue joined. How the Defendant may avow. The Plaintiff Nonsuit after Avowry made, &c.

III. Judgment upon Demurrer for the Avowant.

This Statute [1] applies,

1°. Where the plaintiff shall be nonsuit, before issue joined, and before avowry or cognizance.

2°. Where he is nonsuit, after avowry or cognizance.

3°. Where there is a verdict against him.

4°. Where there is judgment on demurrer against him.

It was said in Cooper v. Sherbrooke, 2 Wils. 116, that it was the intention that the proceeding by writ of inquiry and execution should be final, for the avowant to recover his damages, and that the plaintiff was to keep his cattle, notwithstanding the course of awarding a writ *de retorno habendo;* which is a right judgment, for the Statute has not altered the judgment at common law, but only gives a further remedy to the avowant. Hence it was insisted in Turnor v. Turner, 2 Brod. & Bing. 107, that where the defendant proceeded on this Statute for arrearages of rent and costs, he could not have a *retorno habendo,* nor proceed against the pledges, but it was held otherwise, unless execution had been actually levied and satisfied before action brought against the surety, and see Perreau v. Bevan, 5 B. & C. 284. However, it is said *contra* in Tidd Prac. 1081, that a party, having a judgment and writ of inquiry, cannot sue for a breach of the bond in not returning the goods; and this may be so, for he ought not to recover on the bond more than the damages already assessed. But the goods may be better than any judgment for damages. The defendant has his election to proceed on the Statute or not, and may accordingly enter judgment at common law for a return, McElderry v. Flannigain, 1 H. & G. 308; Mounson v. Redshaw, 1 Wms. Saund. 195, n. 3; and this is sometimes necessary; where, for instance, the jury found for the avowant and damages to the amount of the rent claimed in the avowry, but did not find either the amount of the rent in arrear, or the value of the cattle distrained, and judgment was entered for the damages so assessed, it was held that this judgment was erroneous and could not be amended into a judgment under the Statute, because the neglect of such inquiry by the same jury could not be supplied, but the Court after error brought permitted the defendant to amend and enter judgment at common law for a return, Rees v. Morgan, 3 T. R. 349.

In all cases where the plaintiff in replevin is nonsuit before issue joined, except where the nonsuit is after avowry or cognizance, the Statute requires a suggestion in the nature of an avowry or cognizance. It is usual to make this after judgment. *On this judgment and suggestion, a writ of **494** inquiry issues to inquire of the rent in arrear at the time of the distress,

[1] See this Statute explained in Poe's Practice, secs. 454 *et seq.*