imperishable and immovable; and therefore, in such cases, the practice has been to follow the course pursued at law, in the analogous cases of writs of error in dower and ejectment, and to require an appeal bond in such a sum as will cover the whole amount of the costs and of the mesne profits as well as damages by any waste committed pending the appeal, which the statute authorizes the party to have ascertained at law by a writ of inquiry, and to recover, in case the appellant should fail to sustain his appeal. *Wharod* v. *Smart*, 3 *Burr.* 1823; *Thomas* v. *Goodtitle*, 4 *Burr.* 2501. But where the plaintiff in equity seeks a * specific performance of a contract or the benefit of the decree can only be **24** had by the delivery, preservation, or sale of certain movable and perishable property, then it is clear, that the penalty of the appeal bond should be for a sum at least double the value of such property as well as the costs, and any particular sum of money which such decree may also direct to be paid. There does not appear, however, to have been any rule laid down by which the value of such property is to be ascertained, for the purpose of fixing the penalty of the appeal bond. The extent of the original jurisdiction of the Federal Courts, as well as the extent of the right of appeal from them, has been limited by Act of Congress to cases where the matter in dispute exceeds the sum or value of a certain specified amount. Act Cong. 24 Sept. 1789, ch. 20, s. 22. In regard to which it has been held, that where, from the nature of the action, as in detinue, replevin, ejectment, a writ of right, or admiralty proceeding *in rem* for a forfeiture, the property itself, and not a debt or damages, is the matter in dispute, the value may be ascertained by affidavits taken on reasonable notice to the adverse party, or his counsel; *Williamson* v. *Kincaid*, 4 *Dal.* 20; *Courze* v. *Stead*, 4 *Dal.* 22; *The United States* v. *The Brig Union*, 4 *Cran.* 216; *Cooke* v. *Woodrow*, 5 *Cran.* 14; *Rush* v. *Parker*, 5 *Cran.* 287; *Green* v. *Liter*, 8 *Cran.* 229; and this it is evident, would be the proper course to pursue for the purpose of bringing before this Court the means of making a just estimate of the value of the property, in case its value should be disputed, in order to ascertain what should be the penalty of the appeal bond in appeals from orders or decrees in relation to subjects of this latter description. (*i*)

In England, bail in error is given by a recognizance acknowledged in the Court below; and if the sufficiency of the bail is excepted to, the party is thus called on to justify, or put in better bail. According to the English course in Chancery, where a party is called upon to give an appeal bond, or to enter into a bond, or recognizance, for any other purpose, he is required to do so before

(*i*) Some provision upon this subject has been since made by the Act of 1836, ch. 200.