

Cited but not construed in *Brehm v. Sperry*, 92 Md. 408.  
As to equitable defenses at law, see sec. 86, *et seq.*  
This section is identical with art. 26, sec. 44.

### Replevin.

1904. art. 75, sec. 114. 1888, art. 75, sec. 108. 1860, art. 75, sec. 59. 1785, ch. 80, sec. 14. 1888, ch. 547.

116. All replevin bonds and *retorno habendo* bonds may be given by the plaintiff or defendant, as the case may be, or on their behalf, and the clerk shall have power to swear all parties executing such bonds, whether as principals or securities, as to their pecuniary sufficiency, and may also interrogate under oath the plaintiff in any replevin touching the value of the goods and chattels proposed to be replevied, in order to determine the proper penalty to be named in the replevin bond. The court, upon return of any writ of replevin, shall have power, upon motion being made by the defendant for a return of the property taken under the writ, to inquire into the circumstances and manner of the defendant's obtaining possession of such property; and if it shall appear that such possession was forcibly or fraudulently obtained, or that the possession being first in the plaintiff was got or retained by the defendant without proper authority or right derived from the plaintiff, the court may refuse to order a return to the defendant until a judgment is given in the action.

On a motion for the return under this section of property replevied, the court does not take into consideration the right of property; motion refused. *Montgomery v. Black*, 4 H. & McH. 391. And see *Glenn v. Fowler*, 8 G. & J. 348.

Under this section, the matter of fraud may be investigated as fully as in a court of chancery, and the relief administered is the award of possession of the property. *Glenn v. Fowler*, 8 G. & J. 348.

This section referred to in deciding that upon a plea of "property in the defendant," the burden of proof is on the plaintiff. *Callum v. Bevans*, 6 H. & J. 471.

As to the conclusion of a declaration in replevin, see sec. 24, sub-sec. 104.

As to replevin before justices of the peace, see art. 52, sec. 50, *et seq.*

*Ibid.* sec. 115. 1888, art. 75, sec. 109. 1860, art. 75, sec. 60. 1825, ch. 65, sec. 2. 1852, ch. 336.

117. If the defendant in replevin shall be returned "summoned," and shall not appear in person or by attorney on or before the fourth day of the term next succeeding that to which such return shall be made, the court shall, on motion, enter judgment for the plaintiff for the property replevied and for nominal damages and costs, and the same proceedings shall be had upon the return of two "*non ests*" as upon a return of "summoned."

*Ibid.* sec. 116. 1888, art. 75, sec. 110. 1888, ch. 417.

118. In all actions of replevin where the defendant shall have been duly summoned and return shall have been made by the sheriff that either all or some portion of the chattels described in the writ have been eligned, the plaintiff, having duly established his right of possession to all or any portion of the chattels described in the writ and the illegal