

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.

This section referred to in deciding that where a defendant goes to trial without objecting to certain defects in replevin bond, such defects are waived. See notes to art. 5, secs. 10 and 11. *Burrier v. Cunningham Co.*, 135 Md. 144.

On a motion for the return under this section of property replevied, the court does not take into consideration 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 relief administered is award of possession of property. *Glenn v. Fowler*, 8 G. & J. 348.

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

As to the conclusion of a declaration in replevin, see sec. 28, sub-sec. 104.

As to replevin before justices of the peace, see art. 52, sec. 55, *et seq.*

An. Code, 1924, sec. 126. 1912, sec. 117. 1904, sec. 115. 1888, sec. 109. 1825, ch. 65, sec. 2. 1852, ch. 336.

**126.** 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."

An. Code, 1924, sec. 127. 1912, sec. 118. 1904, sec. 116. 1888, sec. 110. 1888, ch. 417.

**127.** 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 eloigned, the plaintiff, having duly established his right of possession to all or any portion of the chattels described in the writ and the illegal detention of the same from him by the defendant, shall be entitled on verdict to a judgment for the return of such portion of said chattels as may have been eloigned, or for their value as found by the verdict, as well as for any of said chattels actually taken under the writ, together with damages for the detention of all chattels mentioned in the writ which the jury shall have found were unlawfully detained from him by the defendant.

This section referred to in deciding that a judgment for plaintiff should have been for property replevied and damages for its detention with costs, and not for property replevied or its value. Difference between action in the *detinuit* and *detinet*. *Burrier v. Cunningham Co.*, 135 Md. 145.

An. Code, 1924, sec. 128. 1912, sec. 119. 1904, sec. 117. 1888, sec. 111. 1888, ch. 269.

**128.** Whenever in replevin or detinue there shall be a judgment in the alternative for the return of chattels or the payment of their value, the judgment for the return or delivery of the goods may be enforced by a writ in the nature of a writ of *capias in withernam*, and by attachment of the party or parties adjudged to return or deliver the same, or either, unless the court, on good cause shown, shall otherwise order, or unless the party or parties entitled to such return or delivery shall agree of record