taking (*Henderson* v. *Sills*, 8 U. C. C. P. 68; *Haacke* v. *Maror*, 8 U. C. C. P. 461).

In trespass it is sufficient for the defendant to allege in his plea matter of excuse, but in replevin the avowant who is to have a return is in the nature of a plaintiff, and therefore the avowry, which is in the nature of a declaration, must shew a good title in omnibus and contain sufficient matter to entitle defendant to a return. Thus in trespass, if the defendant justify for an amercement in a Court he must set forth a warrant, for he is a wrong-doer unless he acted under a warrant; but it is not necessary to aver the matter of presentment, because as to him it is immaterial whether the offence was committed or not, so there was a presentment, and his plea is only to excuse the wrong. But in an avowry, the defendant ought to aver in fact that the plaintiff committed the offence for which he was amerced, because defendant is an actor, and has to recover, which he can only do upon the merits. It does not, therefore, follow that whatever would be a good plea in trespass, trover or detinue would also be a good plea, or more correctly avowry, in replevin. The avowant, it is apprehended is still an actor, and if successful, is entitled to a return and must therefore show title good in omnibus in order to entitle himself to the return. (See *Haacke* v. *Maror*, 8 U. C. C. P. 441).

The verdict is divisible so that the defendant may have a return of whatever part of the goods he proves himself entitled to. (*Sills* v. *Hunt*, 16 U. C. Q. B. 521; *Haggart* v. *Kernahan*, 17 U. C. Q. B. 341; *Henderson* v. *Sills*, 8 U. C. C. P. 68). If plaintiff obtain a verdict for damages he is entitled under the statute of Gloucester to the general costs of the cause; but where defendant is entitled to a return of part of the goods he is entitled to a proportion of the costs occasioned by that part of the case, and to deduct them from plaintiff's bill (*Caniff* v. *Bogart*, 6 U. C. L. J. 59).

Shortly after the passing of our act of 1851 it was held that goods seized under an attachment from a Division Court might be replevied to a third person not a party to the suit, claiming them as his own. (*Arnold* v. *Higgins*, 11 U. C. Q. B. 491.) But the law in this respect is now changed by act of Parliament (23 Vic. cap. 45, s. 8).

Nor can goods seized under process issued out of a Court of Record for Upper Canada be replevied. (Con. Stat. U. C. cap. 29, s. 2). But the taking of goods under one writ of replevin does not prevent the operation of a second writ in the hands of the same sheriff (*Crawford* v. *Thomas*, 7 U. C. C. P. 63).

When the action is brought for goods, chattels or other personal property distrained, the action is local, but in other cases the venue may be laid in any county. (Con. Stat. U. C. 29, s. 13; *Buffalo and Lake Huron Railway Company* v. *Gordon*, 3 U. C. L. J. 28; *Vance et al.* v. *Wray*, 3 U. C. L. J. 69).

In case the value of the goods or other property or effects distrained, taken, or detained does not exceed the sum of $40 the writ may issue from the Division Court of the division within which the defendant or one of the defendants resides or carries on business, or where the goods or other property or effects have been distrained, taken, or detained. (23 Vic. cap. 45, s. 6). Where the value does not exceed the sum of $200 the writ may issue from the County Court of the county wherein the goods, property, or effects were *distrained, taken, or detained.* (Con. Stat. U. C. cap. 29, s. 3). A certificate is necessary to obtain full costs in replevin, as in other actions (*Ashton* v. *McMillan*, 3 U. C. Pr. 10).

Before any writ of replevin can issue, the person claiming the property, his servant, or agent must make an affidavit entitled and filed in the court out of which the writ is to issue, and sworn before any person entitled to administer an affidavit therein, stating:—

1. That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, describing the property in the affidavit.

2. The value thereof, to the best of his belief, and such description of the property and value shall be stated in the writ (Con. Stat. U. C. cap. 29, s. 4).

No writ of replevin shall issue:—

1. Unless an order is granted for the writ, on an affidavit by the person claiming the property, or some other person, showing to the satisfaction of the court or judge, the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be);

2. Or unless the affidavit for the writ states, in addition to what is required by the fourth section of the Act relating to replevin, that the property was wrongfully taken out of the possession of the claimant, *or was fraudulently got out* of his psssession, within two calendar months next before the making of the affidavit, and that the deponent is advised and believes that the claimant is entitled to an order for the writ, and that there is good reason to apprehend that unless the writ is issued without waiting for an order, the delay would materially prejudice the just rights of the claimant in respect to the property;

3. Or, in case the property was distrained for rent or damage feasant, the writ of replevin may issue without an order, if the affidavit states, in addition to what is required by the fourth section of the Act relating to replevin, that