NUNN *vs.* GOODLETT ET AL.

It is not necessary to the validity of a bond taken under authority of a Statute, that it should strictly comply, in every respect, to the requirements of the Statue.

Nor is it void for slight departures from the Statute, unless expressly declared by Statute so to be.

Unless the bond so depart from the requisites of the Statute as to defeat the object of the Staute, it may still be a good common law bond.

Sec. 10 *Digest*, 844, requires the sheriff, before he executes a writ of replevin, to take bond of the plaintiff, but a bond executed after the property is replevied and delivered to the plaintiff, is nevertheless valid.

It is the duty of the plaintiff to give the bond before the writ is executed, but if he does it afterwards, he cannot avail himself of his own wrong to avoid the bond.

Where plaintiff fails in an action of replevin, and defendant declares upon such bond, it is not necessary to set out the whole of the record in the replevin suit: it is sufficient to set out the judgment.

Such bond being executed to the sheriff, the defendant in the replevin suit derives his right to sue thereon by the assignment of the sheriff, and it must affirmatively appear from the declaration that the assignment was made before the action was brought, but the date of the assignment need not be averred; nor is it essential to the validity of the assignment that it should be dated.

Nor is it necessary that the assignment should be made under the seal of the sheriff.

Writ of Error to the Ouachita Circuit Court.

DEBT, determined in the Ouachita Circuit Court, at the April term, 1848, before the HON. GEORGE CONWAY, then one of the Circuit judges. Declaration in substance as follows:

"Ira Nunn, by attorney, complains of James H. Sims, Spartan G. Goodlett, Edmond F. Wilson, Theophilus P. Farmer, John Shelton, James R. Shelton, Edward N. Woodland and John A. Pile, of a plea that they render unto him the sum of four thousand dollars, which they owe to, and detain from him.

"For that the said defendants (with one Isaac N. Leggett who has departed this life) on the 11th day of November, A. D. 1846, at &c., executed and delivered to one Hezekiah Dews, as sheriff of the said county, their certain writing obligatory in the words and figures following, *to wit:*

'The State of Arkansas, }
County of Washita, }

We, James H. Sims and Spartan G. Goodlett as principals, and Edward F. Wilson, Theophilus P. Farmer, John Shelton, Jas. R. Shelton, E. Norris Woodland, Isaac N. Leggett and John A. Pile as securities, are held and bound unto Hezekiah Dews as sheriff of the county of Washita in the sum of four thousand dollars lawful money: signed and sealed this 11th day of November, A. D. 1846.

"Conditioned that whereas the said James H. Sims, and Spartan G. Goodlett have sued out of the Circuit Court of said county a writ of replevin against Ira Nunn, returnable to the next term of said court to be held on the first Monday after the fourth Monday in April next; by virtue whereof the said Hezekiah

Dews hath replevied the following described property, negro slaves, found in the possession of said Ira Nunn, *to wit: Sam,* a man about thirty-eight years of age; *Allen,* a man about thirty-eight years of age; *Cinda,* a woman about twenty-five years of age; *Maria,* a girl about sixteen years of age; and *hath delivered the same to the said James H. Sims and Spartan G. Goodlett;* now if the said James H. Sims and Spartan G. Goodlett shall prosecute their said suit to effect, and without delay, and if in case the said Ira Nunn recover judgment against them in said action, they, the said James H. Sims and Spartan G. Goodlett, shall return said property, negro slaves, if return thereof be adjudged, and shall pay said Ira Nunn all such sums of money as may be recovered against them by said Nunn, in said action, for any cause whatever, then this bond to be void.

J. H. SIMS, [Seal.]
S. G. GOODLETT, [Seal.]
E. F. WILSON, [Seal.]
THEOPHILUS P. FARMER, [Seal.]
JOHN SHELTON, [Seal.]
JAMES R. SHELTON, [Seal.]
E. N. WOODLAND, [Seal.]
ISAAC N. LEGGETT, [Seal.]
JOHN A. PILE, [Seal.]

Approved:

H. Dews, She'ff.'

"Which said writing obligatory is now of record in the office of the clerk of the Circuit Court of said county of Washita, and not subject to the control of said plaintiff—a duly authenticated copy whereof is now here to the court shown.

"And the said plaintiff for assigning a breach of the said condition of the said writing obligatory, says that the said Ira Nunn at the March term of our Washita Circuit Court, continued and held in and for the said county of Washita, at the Court House in said county, on the 21st day of April, A. D. 1847, by the consideration and judgment of said Circuit Court, recovered judgment against the said James H. Sims and Spartan G. Goodlett

in the said action of replevin, that he, the said Ira Nunn have and recover from the said James H. Sims and Spartan G. Goodlett, the slaves *Sam, Allen, Cinda* and *Maria,* if the same or either of them can be had and recovered, and in default thereof, it was further by the court considered that the said Ira Nunn have and recover of and from the said James H. Sims and Spartan G. Goodlett the respective value of the said slaves so by the jury aforesaid found, or any or either of them, or the value of any or either of them, *who* shall not be recovered; together with the said sum of one hundred and sixty-five dollars and eighty-three cents damages aforesaid, by the jury aforesaid, in form aforesaid assessed; and also all his costs in and about that suit expended; and the said plaintiff avers that his costs in that suit expended amounted to the sum of one hundred dollars; and that said plaintiff has not had execution or satisfaction of said recovery, which said recovery remains in full force and effect, and not reversed or otherwise vacated.

"And the said plaintiff further avers that the said James H. Sims and Spartan G. Goodlett, have not, nor has either of them, returned and delivered the said slaves *Sam, Allen, Cinda,* and *Maria,* or either of them, to the said plaintiff, nor have they, the said James H. Sims and Spartan G. Goodlett, or either of them, paid to the said plaintiff the respective value of said slaves, or any, or either of them, or any part thereof; and the said plaintiff avers that the said slave *Sam* was of the value of $720; the said slave *Allen* was of the value of $300; the said slave *Cinda* was of the value of $558; and that the said slave *Maria* was of the value of $500.

"And the said plaintiff further avers that the said James H. Sims and the said Spartan G. Goodlett have not, nor has either of them, paid to the said Ira Nunn the said sum of $165.83 the damages in said recovery specified, or any part thereof; and that the said James H. Sims and Spartan G. Goodlett have not, nor has either of them, paid to the said plaintiff his costs by him expended in and about said action of replevin, amounting to the sum of $100, or any part thereof.

"And the said plaintiff further avers that on the 22d day of April, A. D. 1847, he sued out of the office of our Washita Circuit Court here his writ of execution, founded upon said recovery, directed to the sheriff of said county of Washita, which afterwards on the 23d day of April, A. D. 1847, came to the hands of Hezekiah Dews, then sheriff of said county of Washita, to be executed, who from thence until at and after the return day of said execution, was sheriff of said county, who thereafterwards, as such sheriff, returned said execution into our said court here, with his return thereon endorsed, certifying, among other things, that said execution was wholly unsatisfied as to the damages and costs in said execution and recovery specified, as by the record of said execution, and the return of said sheriff thereon endorsed, now remaining of record in the office of the clerk of our Circuit Court here, more fully and at large appears.

"And the said plaintiff further avers that the said Hezekiah Dews, being sheriff of said county of Washita as aforesaid, as such sheriff, upon the request of him the said plaintiff, and by leave of the court, for that purpose first had and obtained, duly assigned and transferred to him the said plaintiff the said writing obligatory of said defendants above specified, according to the form of the statute in such case made and provided, as by the endorsement of the said Hezekiah Dews, as such sheriff, now remaining of record upon the said writing obligatory in the office of the clerk of our Circuit Court here appears, which is not subject to the control of said plaintiff, who brings into, and shows to, the court here a duly authenticated copy of the same.

"And the said plaintiff for assigning a further breach of the said condition of the said writing obligatory, says that he the said Ira Nunn, at the March term of our Washita Circuit Court, continued and held in and for the said county of Washita, at the Court House in said county on the 21st day of April, 1847, by the consideration and judgment of our Circuit Court, recovered judgment against the said James H. Sims and Spartan G. Goodlett, in the said action of replevin that the said Ira Nunn have and recover from the said James H. Sims and Spartan G. Good-

lett, the slaves *Sam, Allen, Cinda* and *Maria,* if the same, or any or either of them, can be had and recovered, and in default thereof, it was further by the court considered that the said Ira Nunn have and recover of and from the said James H. Sims and Spartan G. Goodlett, the respective value of said slaves so by the jury aforesaid found, or any or either of them, or the value of any or either of them, *who* shall not be recovered, together with the said sum of $165.83 damages aforesaid, by the jury aforesaid, in form aforesaid found; and also all his costs in and about that suit expended; and the said plaintiff avers that his costs in that suit expended amounts to the sum of $100. And the said plaintiff has not had execution or satisfaction of said recovery, which said recovery remains in full force and effect, not reversed or otherwise vacated.

"And the said plaintiff further avers that the said James H. Sims and Spartan G. Goodlett have not, nor has either of them, paid to the said Ira Nunn the said sum of $165.83, the damages in said recovery specified, or any part thereof, nor have they, or either of them, paid to the said plaintiff his costs by him expended in and about said action of replevin (amounting to the sum of $100) or any part thereof.

"And the said plaintiff further avers that on the 22d day of April, 1847, he sued out of the office of our Washita Circuit Court here his writ of execution founded upon said recovery, directed to the sheriff of our said county of Washita, which afterwards, on the 23d day of April 1847, came to the hands of Hezekiah Dews, then sheriff of said county, to be executed, who from thence until at and after the return day of said execution was sheriff of said county, and who thereafter, as such sheriff, returned said execution into our said Circuit Court here with his return thereon endorsed, certifying among other things, that said execution was wholly unsatisfied as to the damages and costs in said execution and recovery specified, as by the record of said execution, and the return of said sheriff endorsed, now remaining of record in the office of the clerk of our Circuit Court here more fully and at large appears."

[*Here follows an averment of the assignment of the bond sued on by the sheriff Dews to plaintiff, in substantially the same words used in the first breach in making a similar averment.*]

"By means whereof the plaintiff says he is injured, and has sustained damage in the sum of $3000, whereby an action has accrued," &c. &c. &c.—then follows a general breach, alleging non payment of the penalty of the bond sued on.

The action was discontinued as to James H. Sims and John Shelton, for want of service of process.

Defendants Pile, Farmer and Wilson, craved oyer of the bond and assignment sued on, which was granted. The assignment is in these words:

"I, Hezekiah Dews, sheriff of the county of Washita, in pursuance of the order of the court in this case, and on the request of the within named Ira Nunn, do, by these presents, assign and transfer to the within named Ira Nunn, all my right, title, claim and interest in the within bond, according to the form of the statute in such case made and provided.

H. DEWS, Sheriff of
Washita county, Ark."

Defendants Pile, Farmer and Wilson, by *Strain & Bearden*, attorneys, filed a demurrer to the declaration, assigning in substance the following causes of demurrer:

1st. Said supposed assignment is not sufficient in law.

2d. The declaration does not allege that the plaintiffs in said replevin suit filed an affidavit, or declaration, previous to the issuing of the writ, as required by law.

3d. Bond does not comply with the statute, and is insufficient.

4th. The declaration does not allege that said negroes were replevied and delivered to the plaintiffs in replevin after the execution of the bond.

5th. All the proceedings in the replevin suit are not set out.

6th. It is not alleged that said bond was forfeited prior to the supposed assignment.

7th. It is not shown when the execution was returned, or when the assignment was made.

8th. It is not alleged that the sheriff took a bond in at least double the value of the negroes, the value of the same having first been ascertained by the oath of one or more creditable witnesses according to the statute. The declaration is otherwise informal and insufficient, &c.

The other defendants, by *Warren,* attorney, also filed a demurrer, assigning fifteen causes of demurrer, stating in various forms, that the bond was void, because it appeared that it was executed after the slaves were delivered to the plaintiffs in the replevin suit—that the assignment was insufficient—that the proceedings in the replevin suit were not set out, &c. &c.

The court sustained the demurrers, plaintiff rested, and final judgment was rendered.

Plaintiff brought error.

PIKE for the plaintiff. The Statute *(Dig. Ch.* 136, *Secs.* 7, 9,*)* provides that a writ in replevin shall not be executed until a bond be given; but though the bond be given after the execution of the writ it cannot be avoided on that account. An informal bond voluntarily given is valid. *(Morse vs. Hodsdon,* 5 *Mass.* 314.*)* So where there is a variance in the amount required by Statute.—*(Class vs. Guile,* 8 *Mass.* 153. *Class vs. Cograin,* 7 *Mass.* 98.—*Freeman vs. Davis, ib.* 200.*)* So where the security did not live in the county as required by the Statute. *(Burroughs vs. Lewder,* 8 *ib.* 376.*)* So where there is a misrecital in the bond—the recital operating to restrain the condition but not to affect the obligatory part of the bond. *Chapel vs. Congdon,* 18 *Pick.* 257. 6 *T. R.* 702. *Selw. N. P.* 580. 9 *East.* 55.) Such bond, though executed after, relates to the time when it ought to have been given; and the parties executing it cannot deprive the defendant of the possession of his property, and then take advantage of their own wrong.

Though a bond prescribed by the Statute, does not conform in every particular to the Statute it may be assigned. *(Dunbar vs. Dunn,* 10 *Price* 54.*)* and is not void unless made so by express enactment, or the variance was intended to evade the Statute,

or operate as a fraud upon the obligors. (*Treasurer vs. Bates,* 2 *Bailey* 362.) The assignment is perfectly good without being under seal; a judgment may be assigned by parol or writing not under seal. (*Ford vs. Stewart,* 19 *J. R.* 342.) So may an obligation or covenant. (*Dawson vs. Coles,* 16 *J. R.* 51.) And a lease for years. (11 *J. R.* 538. 7 *ib.* 211.)

It was unnecessary to set out the proceedings in the replevin suit preliminary to the execution of the bond, for the Court will presume they were regular. See, as to suits in bail bonds, *Sharpe vs. Abbey,* 2 *M. & P.* 312. 5 *Bing.* 193. 11 *Moore* 445. 4 *Bing.* 501.

CUMMINS, *contra.* As the Statute prescribes that the bond shall be given before the execution of the writ of replevin, and the bond taken was executed after the delivery of the property to the plaintiff in replevin, the Sheriff had no right to exact it, and it is therefore void. *Ashley vs. Brazill & Linsday,* 1 *Ark.*. 148. *Heilman vs. Martin,* 2 *Ark.* 166. A bond taken by an officer materially variant from the Statute prescribing the substance and office of such bond, is utterly void. *People vs. Meigbun et al.* 1 *Hill's (N. Y.) Rep.* 298. *United States vs. Howell,* 4 *Wash. C. C. R.* 623. *U. S. vs. Morgan et al.* 3 *ib.* 10. *Walker et al. vs. Racey,* 20 *J. R.* 74. *Lytle vs. Davis,* 1, 2, 3 *and* 4 *Ohio Rep.* 361. 5 *Pick.* 226.—*N. Car. Rep.* (1800 *to* 1804) 107.

The Sheriff having executed the writ of replevin before the bond was given, had violated the law; the bond then was simply an indemnity to the Sheriff, and cannot be binding. (*Denny vs. Lincoln,* 5 *Mass.* 385. 7 *Grenl.* 113. 4 *Cowen* 340;) it is void, being against public policy. *Mitchell vs. Vance,* 5 *Mon.* 621. *Churchill vs. Perkins,* 541. 4 *East.* 568. 4 *T. R.* 505. 1 *T. R.* 414.—7 *T. R.* 110.

The bond not having been taken at the time and in the manner prescribed by the Statute, is not a *Statutory bond.*

If it be a good common law bond it is not assignable so as to entitle the defendant in replevin to sue in his own name (as where a Sheriff's bond is variant from the Statute. *Bank vs. Twitley*

et al. 1 *Dev .Rep.* 153.) *Miller vs. Coms. Mont. co.,* 1 *Ohio Rep.* 272. *Knapp vs. Colburn,* 4 *Wend.* 618; and the suit should have been brought in the name of the Sheriff.

The entire declaration is defective (2 *Chit. Pl.* 212, 213, 214, *&c.,*) and particularly in not showing the facts giving the Court jurisdiction of the parties or property in the replevin suit.

MR. JUSTICE WALKER, delivered the opinion of the court.

This action was brought on a bond executed by the plaintiffs in an action of replevin to the Sheriff, which they were required by the 10th Sec., Dig. 844, to give before the execution of the writ of replevin. The bond is in the usual form, conditioned in every respect as required by the Statute. There is, however, in the recital of the bond which immediately preceeds the condition, a statement that the slaves mentioned in the writ had been replevied and delivered to the plaintiffs. The Sheriff, by leave of the Court, assigned this bond to the plaintiff in this suit, who filed his declaration in debt thereon. The declaration sets out a literal copy of the bond with its recitals and condition, and avers that, by the judgment and consideration of the Circuit Court, he recovered judgment against the plaintiffs in the replevin suit, for the slaves, and if they could not be had, then the value of them, and also the sum of $165.83 damages and $100 costs, which recovery remained in full force and wholly unsatisfied. He next alleged that the slaves had not been returned: nor had the value of them, nor the damages, nor costs, nor any part thereof been paid; averred an assignment of the bond by the Sheriff to the plaintiff, and concluded with a general breach.

There are several breaches in the declaration, but they are all based upon the above facts and may be considered together.— The defendants, with the exception of two, as to whom the action was discontinued, appeared by different attorneys and filed two demurrers to the declaration which demurrers the Circuit Court sustained and rendered judgment thereon for the defendant.

The several causes of demurrer may be considered 1st: As to whether an action can be maintained on the bond. 2d: Wheth-

er in averring a judgment and recovery in the action of replevin it is necessary to set forth in the declaration all the proceedings in that action necessary to show a valid judgment. 3d: Whether the bond was legally assigned.

As regards the first question, the whole ground of demurrer is that by the recital in the bond it appears that the property had been replevied and delivered to the plaintiff before the bond was executed. That recital was wholly unnecessary to the validity of the declaration; there was no necessity for copying the bond into the declaration. Whilst it did not vitiate, it but served to encumber the record with unnecessary matter. The legal effect of the bond and its condition was all that it was necessary to have set forth. The bond is in every respect taken in conformity with the Statute, with this exception that from the recital it appears to have been executed after the execution of the writ. The objection to the bond, therefore, is not as to its legal effect, but the time at which it was taken, and involves the mere question of power of the Sheriff to take the bond after the writ was executed. It is true that the 10*th Sec., Dig.* 844, requires that the Sheriff shall, before he executes the writ, take bond of the plaintiff. But for what purpose? Evidently for the benefit of the defendant, that before the property was taken from his possession by this summary process an indemnity should be given him. It is also true that this Court, in the case of *Pirani vs. Barden,* 5 *Ark.* 81, declared that if the Sheriff seized the defendant's property without first having taken bond, he should be held a trespasser. But by whom? Most clearly not the plaintiff. The whole proceeding is for the benefit of the defendant. So Sec. 28 gives him the right to except to the bond, and the 29th Sec. requires that where it is adjudged insufficient, the plaintiff shall perfect it, or judgment of restitution shall be rendered against him. Now if the plaintiff could be required to perfect this bond upon motion, why should not a bond voluntarily executed by the plaintiff without motion be equally valid? No difference can be said to exist unless it be that the one is the amendment of an insufficient bond which had been executed at the proper time, and the other the execution

of a bond where no previous attempt had been made to execute one, but in both instances the plaintiff does what the law requires of him, and effects thereby the object intended, an indemnity to the defendant.

It is not necessary to the validity of a bond taken under authority of a Statute that it should strictly comply in every respect to the requirements of the Statute. 6 *Term Rep.* 702. 10 *Price* 54. Nor is it void for slight departures from the Statute unless expressly declared by Statute to be so. 2 *Bailey* 362. So in Massachusetts, where a replevin bond was required by Statute to be taken in the sum of $300, but was taken in $800, it was held good. *Class vs. Guile,* 8 *Mass.* 153. So a bond given for a less sum than required by the Statute is good as a common law bond. *Class vs. Cogran,* 7 *Mass.* 98. *Freeman, vs. Davis, ib.* 200. Unless the bond so departs from the requisitions of the Statute as to defeat the object of the Statute, it may still be a good common law bond. *Stephens vs. Miller,* 2 *Litt. Rep.* 306. *Cobb vs. Curtis,* 4 *Litt.* 235. *Fant &c. vs. Wilson,* 3 *Mon. R.* 342. *Hay &c. vs. Rogers,* 4 *Mon. Rep.* 225. *Roman vs. Stratton,* 2 *Bibb.* 199. *Class vs. Guile,* 8 *Mass.* 153. 7 *ib.* 98. *ib.* 200. *People vs. Collins,* 7 *John. Rep.* 549.

In the case of *Roman vs. Stratton* the plaintiff in replevin procured the property to be taken and delivered to him upon his executing a bond that he would prosecute his claim successfully or return the property; instead of a successful prosecution of his suit the proceedings were quashed; whereupon the defendant brought suit upon the bond. At the trial the defendant in that suit (the plaintiff in replevin) objected that the bond was void inasmuch as he had no right of action in the replevin suit. The Court, in delivering their opinion, say "This objection is predicated on the irregularity and unwarranted procedure of the party who makes the objection and over which the defendant in replevin had no control, and to which he was obliged to submit. And however irregular the proceedings were, Roman thereby obtained possession of the property to the injury of Stratton. This bond was freely and deliberately executed as an indemnity to Stratton

if Roman failed in the action of replevin. To permit the party to avail himself of this objection could have no better justification than the party's own wrong. Roman and his securities must abide the bond."

So in the case before us, the plaintiff had no control over the writ of replevin. It was the plaintiffs in that suit who procured the replevin in advance of the bond, who executed the bond voluntarily in fulfilment of a previous legal duty, and who (as in that case) complain of their own neglect of duty in avoidance of the liability incurred by law and their own voluntary act.

There is a still stronger case reported in 2 *J. J. Marsh,* 416, *Thompson vs. Buchanan.* The action was debt on a bastardy bond. By the Statute of Kentucky the County Court has the power to take the bond and security of the reputed father for the maintainance of the bastard child. After judgment against the reputed father he escaped without executing bond as required by law. Under the direction of the Court the Sheriff, who had no authority by law to take bond of the defendant, arrested him and took the bond in suit. The obligors objected that the bond was void. The Court say this bond was not voidable for duress and that "the general rule is that a bond, whether required by Statute or not, is good at common law if entered into voluntarily and for a valid consideration and if not repugnant to the letter or policy of the law." In the case of *More vs. Hodsden,* 5 *Mass.* 314, the Court say: "If the plaintiff execute an informal bond to obtain possession of the goods, and the officer thereupon deliver him the goods, the defendant in replevin may, if he please, accept the bond and pursue a remedy at law against the obligors unless the bond be void by common law."

The counsel for the defendants have referred to the cases of *Ashley vs. Brazill et al.* 1 *Ark.* 148, and *Heilman vs. Martin,* 2 *Ark.* 166, to show that this bond is void. Upon examination these cases will be found to decide that as the Court had no jurisdiction of the subject matter the bond and the recognizance taken before them were void; making the validity of the bond to turn exclusively upon the question of jurisdiction, and it is worthy of remark

that the question of the sufficiency of the bond as a common law bond was neither discussed nor alluded to in these cases.

There is a case turning upon the same principle decided in 3 *J. J. Marsh.* 621, *(Moore vs. Allen,)* which illustrates this doctrine more fully, and draws a distinction which perhaps the counsel had overlooked. In that case a Jailor had custody of one without power of law to take a bond for the prison bounds, but did so. The Court decided the bond valid, saying that "Bonds given by prisoners for ease and favor to those who have them in custody, and who are not by Statute authorized to take such bond, are void at common law." It will readily be perceived that the Court decided (and correctly) that this bond was void as a common law bond, for the reason that it was taken against the policy of the law; for it was unquestionably such to turn one loose on bail, who had been committed to prison, without some authority of law for so doing. But how marked and different is the state of the case before this Court; here the plaintiffs were about to take from the possession of the defendant in replevin his slaves upon mere ex parte affidavit, and by express Statute was required to execute bond before they took the slaves; they, however, procured the writ to be executed before they executed the bond. Now the policy of the law is most clearly that this bond should be given by the plaintiffs and taken by the Sheriff; in compliance with reciprocal duties devolving upon them one party vountarily gave, the other accepted a good and sufficient bond in every respect conforming to the Statute. This bond then having been given not against, but in accordance with the policy and spirit of the act, and in other respects unexceptionable, must in any event be held a good common law bond.

We have examined most of the cases referred to by the defendants' counsel in his brief, and are of opinion that they do not sustain the proposition, assumed in argument, that a bond not taken in accordance with the provisions of the Statute must necessarily be void. It is true that a bond may be so repugnant to the spirit and intent of the Statute that it should not be sustained even as a common law bond. Those extreme cases have no

direct application to this case. The first was where the condition of the bond materially varied from the Statute. In the other the Court say: "If the conditions go beyond what the Statute warrants, it is void, so far at least as it extends the condition." Nor do the other cases referred to conflict materially with the authorities which sustain the sufficiency of this bond; and from which we feel fully warranted in deciding that the bond is valid and the Circuit Court erred in sustaining the demurrer to the declaration for that cause.

We will next proceed to examine the second objection to the declaration. It is wholly unnecessary to set out the whole of the record, even where it is the foundation of the action. In this case, however, it is but matter of inducement, and even less certainty is required than in case where the suit is founded on the record. In 1 *Chitty's Pleadings, page* 370, it is held that "Formerly in an action upon a judgment it was usual to set forth in the declaration the whole of the proceedings in the former suit; but this is no longer the practice, and it is sufficient to state the judgment concisely even though it were recorded in an inferior court." So in Archbold's Civil Pleading, page 148, it is said, "In pleading a judgment it is not necessary to set forth all the proceedings in the cause. It is sufficient to state shortly that the plaintiff in Easter, term 7, impleaded the defendant in the Court of our Lord the King, the Court then being held, &c., in a plea of debt, and that afterwards such proceedings were had that the plaintiff by the consideration of said Court recovered his debt,"&c. The declaration sets out, in our opinion, all that is necessary to sustain the averment of recovery in the replevin suit, and for that cause also the demurrer should have been overruled.

The third material objection is that there is no sufficient assignment of the bond to the plaintiff. This is a substantial averment upon which rests the plaintiff's right of action. The bond not having been executed to him, he could only acquire a right of action by assignment, which assignment must affirmatively appear to have been made before the action was commenced.—This appears to have been done, and upon demurrer its truth can-

not be questioned. The objection that it was not under seal is, in our opinion, untenable. It is true that there is no date to the assignment disclosed in the pleadings, but it appears to have been made before the commencement of the suit—having been set forth in the declaration—and thereby the plaintiff acquired a cause of action perfect in himself. The validity of the assignment does not depend upon the fact, as to whether it was dated or not, the right of action was complete by the assignment and a delivery over without a date. The declaration, although not drawn after the usual and approved forms of pleading, and in many respects unnecessarily full in detail and recitals, is, we think, substantially good.

The judgment of the Circuit Court must therefore be reversed and the cause remanded to the Circuit Court to be proceeded in not inconsistent with the opinion herein delivered.

MR. JUSTICE SCOTT, not sitting.