

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1810. Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1810.

50 George III – Chapter 21

An Act to regulate the proceedings in actions of Replevin, and to enable the sale of goods distrained for Rent, in case the Rent be not paid in a reasonable time, and for the more effectual securing the payment of Rents, and preventing fraud by Tenants. Passed the 14th of March, 1810.

Whereas no County Courts are held by the Sheriffs of the several and respective Counties in this Province; and whereas the proceedings in actions of Replevin by Writ issuing out of the Court of Chancery, are dilatory and expensive.

I. Be it enacted by the President, Council, and Assembly, That of Replevin, shall and may be prosecuted by Writ issuing out of the Supreme Court, and out of the several and respective Inferior Courts of Common Pleas, in the several and respective Counties in this Province; and that such Writs of Replevin, shall be tested and made returnable in the said Courts, respectively, as Writs in other causes within the jurisdiction and of such Courts; and that such Writs shall, as soon as may be, be framed by the Justices of the Supreme Court, as near as may be, to the Writs and Processes in that behalf used in England, any Law, usage or custom to the contrary thereof, in any wise notwithstanding.

II. And be it further enacted, That such and the like proceedings shall be had upon such Writs, and upon the return and filing thereof, in all respects and to all intents and purposes, in said Courts respectively, as could or might be had in the said Supreme Court, in case such Writs had issued out of the Court of Chancery and been made returnable in the said Supreme Court.

III. Provided always, and be it further enacted, That if any thing touching the freehold or title to lands shall come in question, or the King shall be a party, or the taking of any distress, shall be in the right of the Crown, that then, and in all such cases, no farther proceedings shall be had thereon in the said Inferior Courts, but the party desirous to proceed therein, shall remove such cause, by Certiorari into the Supreme Court, where the same shall be finally heard and determined, any thing herein before contained to the contrary notwithstanding.

IV. And be it further enacted, That when any goods and chattels shall be distrained for any rent reserved and due upon any demise, lease, or contract whatsoever, and the tenant or owner of the goods so distrained, shall not within five days next after such distress taken, and notice thereof (with the cause of such taking) left at the dwelling house or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the Sheriff, according to Law, that then in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining, shall and may with the Sheriff, or under Sheriff of the County, or with a Constable of the Parish, City, or place where such distress shall be taken (who are hereby required to be aiding and assisting therein,) cause the

goods and chattels so distrained, to be appraised by two sworn appraisers (whom such Sheriff, under Sheriff or Constable are hereby empowered to swear) to appraise the same truly, according to the best of their understandings; and, after such appraisal, shall and may lawfully sell the goods and chattels so distrained, for the best price that can be gotten for the same, towards satisfaction for the rent, for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisal and sale, leaving the overplus, if any, in the hands of the said Sheriff, under Sheriff or Constable, for the owners use.

V. And be it further enacted, That upon any Pound Breach, or rescous of goods or chattels distrained for rent, the person or persons grieved thereby, shall, in a special action upon the case for the wrong thereby sustained, recover his and their treble damages, and costs of suit against the offender or offenders in any such rescous or pound breach; any or either of them, or against the owner of the goods distrained; in case the same be afterwards found to have come to his use or possession.

VI. Provided always, and be it further enacted, That in case any such distress and sale as aforesaid, shall be made by virtue or colour of this Act, for rent pretended to be arrear and due when in truth no rent is in arrear or due to the person or persons distraining, or to him or them in whose name or names; or right such distress shall be taken as aforesaid, that then the owner of such goods or chattels distrained and sold as aforesaid, his Executors, or Administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any, or either of them, his or their Executors, or Administrators, recover double of the Value of the goods or chattels so distrained and sold, together with full costs of suit.

VII. And be it further enacted, That where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their Agents; the distress itself, shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio, but the party or parties aggrieved by such unlawful act or irregularity, shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass, or on the case at the election of the plaintiff or plaintiffs: Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

VIII. Provided nevertheless, That no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining his, her, or their agent or agents before such action brought.

IX. And be it further enacted, That it shall and may be lawful to and for all defendants in Replevin, to avow or make conuzance, generally that the plaintiff in Replevin, or other tenant of the lands and tenements, whereon such distress was made, enjoyed the same under a Grant or demise, at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due; without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors any law, usage, or custom to the contrary notwithstanding. And if the plaintiff or plaintiffs, in such action, shall become non-suit, discontinue his, her, or their

action, or have judgment given against him, her or them, the defendant or defendants in such Replevin; shall recover double costs of suit.

X. And to prevent vexatious Replevins of distresses taken for rent.—Be it further enacted, That all Sheriffs and other officers, having execution and return of Writs of Replevin, may and shall in executing every Writ of Replevin, of a distress for rent, take in their own names from the plaintiff and two responsible persons as sureties, a Bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more credible witness or witnesses, not interested in the goods or distress, which oath the person executing such Writ of Replevin, is hereby authorised and required to administer) and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded, before any deliverance be made of the distress, and that such, or other officer as aforesaid, taking any such Bond, shall at the request and costs of the avowant, or person making conuzance assign such bond to the avowant or person as aforesaid, by indorsing the same, and attesting it under his hand and seal in the presence of two or more credible witnesses; and if the bond so taken and assigned, be forfeited, the avowant or person making conuzance, may bring an action and recover thereon in his own name, and the Court where such action shall be brought may, by a rule of the same Court, give such relief to the parties upon such bond as may be agreeable to justice and reason ; and such rule shall have the nature and effect of a defeasance to such bond.

XI. And be it further enacted, That in case any tenant or tenants, lessee or lessees, for live or lives, term of years, at will, sufferance or otherwise, of any messuages, lands, tenements or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due or made payable, shall fraudulently, or clandestinely convey away, or carry off from such premises, his, her, or their goods or chattels to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent, so reserved, due, or made payable, it shall and may be lawful, to and for every such landlord or lessor, landlords or lessors, or any person or persons by him, her, or them, for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away, or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell or otherwise dispose of in such manner, as if the said goods and chattels, had actually been distrained by such lessor or landlord, lessors or landlords, in and, upon such premises for such arrears of rent, any Law, custom, or usage, to the contrary in any wise notwithstanding.

XII. Provided always, That no landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be, sold bona fide, and for valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid, any thing herein before contained to the contrary notwithstanding.

XIII. And be it further enacted, That when any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons, aiding or assisting therein, shall be put, placed, or kept, in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a

distress for arrears of rent, it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their bailiff, receiver, or other person or persons empowered to take and seize as a distress for rent, such goods and chattels (first calling to his, her, or their assistance a Constable, or other Peace officer of the Parish, district or place, where the same shall be suspected to be concealed, who are hereby required to aid and assist therein), and in case of a dwelling house, (oath being also first made before some Justice of the Peace, of a reasonable ground to suspect that such goods or chattels are therein) in the day time, to break open, and enter into such house, barn, stable, out-house, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this Act, if such goods and chattels had been put in any open field or place.

XIV. And be it further enacted, That it shall and may be lawful, to and for any person or persons, lawfully taking any distress for any kind of rent to impound, or otherwise secure the distress so made, of what nature or kind soever it may be, in such place, or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress, and to appraise, sell, and dispose of the same, upon the premises in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may do off the premises by virtue of this Act; and that it shall be lawful, to and for any person or persons whatsoever, to come and go to and from such place or part of the said premises, when any distress for rent, shall be impounded and secured as aforesaid, in order to view, appraise and buy, and also in order to carry off, or remove the same on account of the purchase thereof; and that if any pound, breach or rescous, shall be made of any goods and chattels, or stock distrained for rent and impounded, or otherwise secured by virtue of this Act, the person or persons aggrieved thereby, shall have the like remedy as in cases of pound breach, or rescous is given and provided by this Act.

XV. And to obviate some difficulties that many times occur in the recovery of rents, when the demises are not by deed.—Be it further enacted, That it shall and may be lawful to and for the landlord or landlords where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments, held or occupied by the defendant or defendants, in an action on the Case for the use and occupation of what was so held or enjoyed, and if in evidence on the trial of such action, any parole, demise or any agreement (not being by deed) whereon a certain rent was reserved shall appear, the plaintiff in such action shall not therefore be non-suited, but may make use thereof, as an evidence, of the quantum of damages to be recovered.

XVI. And be it further enacted, That in case any tenant or tenants for any term of life, lives, or years, or other person or persons, who are, or shall come into possession of any lands, tenements, or hereditaments, by, from, or under, or by collusion yearly value. with such tenant or tenants, shall wilfully hold over any lands, tenements, or hereditaments, after the determination of such term or terms, and after demand made and notice in writing given for delivering the possession thereof, by his or their landlords or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements, or hereditaments, shall belong, his or their agent or agents, thereunto lawfully authorised, then and in such case, such person or persons so holding over, shall, for and during the time he, she, or they shall so hold over, or keep the person or persons

entitled, out of possession of the said lands, tenements and hereditaments as aforesaid, pay to the person or persons, so kept out of possession, their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements, and hereditaments, so detained, for so long time as the same are detained, to be recovered in any Court of Record in this Province, having cognizance of the same, by action of debt, whereunto the defendant or defendants shall be obliged to give Special Bail, against the recovery of which said penalty there shall be no relief in equity.

XVII. And be it further enacted, That in case any tenant or tenants shall give notice of his, her, or their intention to quit any premises by him, her, or them holden at a time mentioned such notice, and shall not accordingly deliver up the possession thereof, at the time in such notice contained, that then the tenant or tenants, his, her, or their executors or administrators, shall from thence forward pay to the landlord or landlords, lessor or lessors, double the rent or sum, which he, she, or they, should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner, as the single rent or sum, before the giving such notice, could be levied, sued for or recovered and such double rent or sum shall continue to be paid, during all the time such tenant or tenants shall continue in possession as aforesaid. Provided always, that when any houses, lands, tenements or hereditaments, shall be let by the year, three months notice; when by the month, one months notice and when by the week, one weeks notice shall be given either to the tenant in possession to quit, or by the tenant to the landlord, of an intention to quit as aforesaid.

XVIII. And be it further enacted, That in all actions of trespass, or upon the case to be brought against any person or persons entitled to rents of any kind, his, her or their bailiff or receiver, or other person or persons relating to any entry by virtue of this Act, or otherwise upon the premises chargeable with such rents, or to any distress or seizure, sale or disposal of any goods or chattels thereupon* it shall and may be lawful to and for the defendant or defendants, in such actions to: plead the general issue, and give the special matter in evidence, any Law, usage, or custom to the contrary notwithstanding -- And in case the plaintiff or plaintiffs, in such action shall become non-suit, discontinue, his, her, or their action, or have judgment against him, her or them, the defendant or defendant's shall recover double costs of suit.

XIX. And be it further enacted. That it shall and may be lawful for any person or persons having any rent in arrear, or due upon any lease, or demise, for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as they might have done, in case such rent were due and reserved upon a lease for years.

XX. And be it further enacted, That it shall and may be lawful for any person or persons, having any rent in arrear, or upon any lease, for life or lives, or for years, or at will, ended or determined, to distrain for such arrears, after the determination of the said respective leases in the same manner as they might have done if such lease or leases had not been determined.

XXI. Provided that such distress be made within the space of six calendar months, after the determination of such lease, and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrear became due.

XXII. And be it further enacted, That in cases between landlord and tenant, as often as it shall happen that one half year's rent, shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by Law to re-enter for non-payment thereof, such landlord and lessor shall and may, without any formal demand or reentry, serve a declaration in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in .actual possession of the premises, then to affix the same upon the door of any demised message, or in ease such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments, comprized in such declaration in ejectment, and such affixing shall be decreed legal service thereof, which service or affixing such declaration in ejectment, shall stand in the place and stead of a demand and reentry, and in case of judgment against the casual ejector, or non-suit for not confessing lease entry and ouster, it shall be made appear to the Court where the said suit is depending by affidavit, or be proved upon the trial in case the defendant appears, that half a years rent was due, before the said declaration was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor or lessors, in ejectment had power to re-enter, then and in every such case the lessor or lessors in ejectment, shall recover judgment and execution in the same manner as if the rent in arrear, had been legally demanded, and a re-entry made; and in case the lessee or lessees, his, her, or their assignee, or assignees, or other person or persons, claiming or deriving under the said leases, shall permit and suffer judgment to be had and recovered in such ejectment and execution, to be executed thereon without paying the rent and arrears, together with full costs, and without filing any bill or bills, for relief in equity within six calendar months after such execution executed, then and in such case the said lessee or lessees, his, her or their assignee or assignees, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error, for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor, shall from thenceforth hold the said demised premises discharged from such lease, and if in such ejectment verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be non-suited therein, except for the defendant or defendants not confessing lease, entry and ouster, then in every such case such defendant or defendants shall have, and recover his, her and their full costs. Provided always, that nothing herein contained, shall extend to bar the right of any mortgagee or mortgagees of such lease, or any part hereof, who shall not be in possession, so as such mortgagee or mortgagees, shall and do within six calendar months after such judgment obtained, and execution executed, pay all rent in arrear, and all costs and damages sustained by such lessor, person or persons intitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which on the part and behalf of the first lessee or lessees, are and ought to be performed.

XXIII. And be it further enacted, That in case the said lessee or lessees, his, her, or their assignee or assignees, or other persons claiming any right, title, or interest, in law or equity, of, in or to the said lease, shall within the time aforesaid, file one or more bill or bills for relief in any Court of Equity,

such person or persons, shall not have or continue any injunction against the proceedings at law on such ejection, unless he, she, or they, do or shall within forty days next after a full and perfect answer, shall be filed by the lessor or lessors of the plaintiff in such ejection, bring into Court, and lodge with the proper officer, such sum and sums of money as the lessor or lessors of the plaintiff in the said ejection, shall in his, her, or their answer, swear to be due, and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the lessor or landlord, on good security, subject to the decree of the Court; and in case such bill or bills shall be filed within the time aforesaid, and after execution is executed the lessor or lessors of the plaintiff, shall be accountable only for so much and no more, as he, she or they shall really and bona fide, without fraud, deceit or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof, and if what shall be so made by the lessor or lessors of the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her, or their assignee or assignees before he, she, or they shall be restored to his, her, or their possession or possessions, shall pay such lessor or lessors, or landlord or landlords, what the money so by them made, fell short of the reserved rent for the time such lessor or lessors of the plaintiff, landlord or landlords held the said lands.

XXIV. Provided always, and be it further enacted, That if the tenant or tenants, his or their assignee or assignees, do or shall at any time before the trial in such ejection, pay or tender to the lessor or landlord, his executors or administrators, or his, her or their Attorney in that cause, or pay into the Court where the same cause is depending, all the rent and arrears, together with the costs then and in such case all farther proceedings on the said ejection, shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, or they, shall have, hold, and enjoy the demised lands according to the lease thereof made, without any new lease to be thereof made to him, her or them.

XXV. And whereas the expences attending the process in suing out Replevin in the Courts of Record in cases of trespasses, by horses, neat cattle, sheep, goats and swine, where the value of the damages does not exceed forty shillings, should be prevented.

Be it further enacted, That in all cases where a trespass or supposed trespass, shall have been committed by horses, neat cattle, sheep, goats, or swine, and the value of the damages alleged to be suffered, shall not exceed the sum of forty shillings, the same shall be heard and tried by one Justice of the Peace, in the same manner as in cases of debt to that amount.

XXVI. And be it further enacted, That in all such cases aforesaid, where it may become necessary, any Justice of the Peace in the County, shall grant a Replevin, and take security for prosecuting the same with effect within a term not exceeding seven days, which Replevin shall be directed to a Constable of the Parish in which the same is to be made, and shall be in the form following, to wit—

You are hereby commanded to replevy to A. B. his which C. D. unjustly as is alleged detains, under pretence of having committed a trespass not exceeding forty shillings; and also to summon the said C. D. to be, and appear before me on the _____ day of _____ at _____ o’Clock in the noon, then to answer such things as shall be objected against him by the said A. B.—
Witness my hand and seal this _____ day of _____

And shall hear the merits of the case between the parties and shall give judgment, and grant execution, as in other cases to the same amount, and shall receive no more, nor greater fees, than in such other cases as aforesaid.

XXVII. And be it further enacted, That the Clerk’s Courts in the several and respective Counties, and the City Court in the City of Saint John, shall have the like powers as are given in the two last preceding Sections; to a Justice of the Peace, and shall and may proceed in the like cases, according to the form and course of proceedings in such Courts respectively.