

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1834.* Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1834.

4 William IV – Chapter 38

**An Act in Addition to and in Amendment of an Act made and passed in the Fiftieth Year of the Reign of His late Majesty King George the Third, intituled *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 22d March 1834.**

Whereas the Action of Replevin is frequently used in this Country in other Cases than Distress for Rent, and frequently in the Place of Detinue, Trespass and Trover: And Whereas the Provisions of the Tenth Section of the above recited Act are merely applicable to Cases of Distress for Rent, which has been found in many Cases inconvenient and injurious; for Remedy whereof

- I. Be it enacted by the Lieutenant Governor, Council and Assembly, That the Tenth Section of the said recited Act, be and the same is hereby repealed; and in lieu thereof,
- II. Be it enacted, in order to prevent vexatious Replevins in all Cases, that from and after the passing of this Act, all Sheriffs and other Officers having the Execution and Return of Writs of Replevin, may and shall in executing every Writ of Replevin, as well in Cases of Distress for Rent, as in all other Cases whatsoever in which the Action of Replevin will lie, take, in the Name of the High Sheriff of the County for the Time being, from the Plaintiff and Two responsible Persons as Sureties, a Bond in Double the Value of the Goods replevied or seized tinder such Writ of Replevin, (such Value to be ascertained by the Oath of One or more credible Witness or Witnesses not interested in the Goods replevied or seized by the Sheriff or other Officer under such Writ of Replevin, which Oath the Person executing such Writ of Replevin, is hereby authorized and required to administer,) and conditioned for prosecuting the Suit with Effect and without Delay, and for duly returning the Goods and Chattels replevied or seized in case a Return shall be awarded before any Deliverance be made of the Distress or Goods replevied; and that the Sheriff or other Officer taking such Bond, or his Successor, shall, at the Request and Cost of the Avowant or Person making Connusance in Cases of Distress, assign such Bond to the Avowant or Person its aforesaid, and in all other Cases in Actions of Replevin, at the Request, Cost and Charges of the Defendant, his Executors, Administrators or Assigns, in such Action of Replevin, assign such Bond to the said Defendant or Defendants, his or their Executors or Administrators, by Endorsement on the Back of such Bond, and attesting it under his Hand and Seal, in the Presence of Two or more Witnesses; and if the Bond so taken and assigned be forfeited, the Person or Persons to whom the Sheriff or other. Officer taking such Bond by Virtue of the Provisions of this Act shall assign the same, may bring an Action and recover thereon in his own Name; and the Court wherein 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.

III. And be it enacted, That in all Actions of Replevin, whether in Cases of Distress or otherwise, if the Defendant or Defendants in such Action by himself, his Attorney or Agent, shall, within Forty eight Hours after the Seizure of the Property under any Writ of Replevin, give Notice to the Sheriff or other Officer executing the same, that ho or they claim an absolute or special Property in the Goods seized under the said Writ, then the said Sheriff shall not deliver the said Property to the said Plaintiff, but shall immediately Return the said Writ of Replevin, with such Claim of Property endorsed thereon, to the Attorney who issued the same, upon which shall be immediately issued by the said Plaintiff the Writ *de Proprietaie probanda*, under which the said Sheriff shall summon a Jury, as soon as may be, at some convenient Time and Place, to try such Claim, giving each Party Six Days' previous Notice thereof, unless they both consent to an earlier Day, and in case such Jury shall find such Claim good, then the said Sheriffs Power under the said Writ of Replevin shall heat an End, and the said Sheriff shall forthwith return the said Goods seized to the said Defendant, and the Plaintiff in such Case if he be not satisfied with the Verdict given on such Claim of Property, may resort to his Action of Trespass or Trover; but if such Jury find the Property in the Plaintiff, then the said Sheriff shall replevy and deliver the said Goods to the Plaintiff; which said Writ and Inquisition shall be returned by the said Sheriff, to the Attorney who issued such Writ of Replevin, who is hereby required forthwith to file the same in the Office of the Court in which such Action was commenced: Provided always, That nothing in this act contained shall prevent the Defendant from appearing to such Action, and pleading Property, in the Court out of which such Writ issued, or to which it may be removed.

IV. And be it enacted, That the several Sheriffs of this Province or other Officers to whom any Writ of Replevin or Writ *de Proprietate probanda* shall be directed, shall and may demand and have for the executing of the said Writs, and doing all things which they are or shall be legally bound or obliged to do or perform, by virtue of the said Writs, no further or other Fee or Reward, directly or indirectly, than as is set forth in the following Schedule; (that is to say,)

For entering the Writ of Replevin, and endorsing the Time of receiving the same, One Shilling;

For Mileage in travelling to execute the same, to be computed from the Court House to the Place where the Goods and Chattels may be found, and back, each Mile Three-pence;

For executing the Replevin, Six Shillings and Eight-pence;

For making a Return, if common, One Shilling;

For making a Return, if special, Two Shillings and Six-pence;

For entering the Writ *de Proprietate probanda*, and endorsing the Time of receiving the same, One Shilling;

For Mileage, to be computed as above, each Mile Three-pence;

For summoning the Jury, Five Shillings;

For the Constable, Two Shillings and Sixpence;

Forswearing the Jury Two Shillings and Sixpence;

For swearing each Witness, or reading a Paper in Evidence, Six-pence;

For attending the Inquest, Five Shillings;

For making out the Inquisition, and returning the Writ *de Proprietate probanda*, Five Shillings;

For an Order to restore the Goods and Chattels, One Shilling;

And any Sheriff or other Officer to whom such Writ or Writs shall be directed, who shall presume to demand or receive any further or other Fee or Reward than as is hereby set forth and directed, shall be deemed and taken to be guilty of Extortion and liable to be punished for the same according to Law.