

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1840. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1840.

3 Victoria – Chapter 63

An Act further to regulate proceedings in Replevin, by allowing damages in certain cases to the Defendant. Passed 31st March 1840.

'Whereas great injustice is sometimes committed by the wrongful Replevin of goods and chattels, in Conscience of the party from whose possession such goods and chattels may be taken by Replevin not being entitled to recover damages where a return may be awarded;' Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That if, upon the trial of any issue respecting the property in any action of Replevin, or of any other issue which, upon the same being found in his favour, will entitle the Defendant to judgment for the return of the goods and Chattels replevied, or any part thereof, the Jury shall find such issue in favour of the Defendant, such Jury may if they shall think fit, give damages to the Defendant; and the Defendant may enter up his judgment thereupon with such damages and the costs of suit, and may issue execution for such damages and costs in like manner as he now may for the costs of suit only.

II. 'And whereas it may be of advantage to allow the goods and chattels which may be wrongfully replevied to be valued by the Jury at the trial of any such issue as aforesaid, and such value to be awarded to the Defendant in damages;' be it enacted That in all cases where the property may not have been already restored to the Defendant, the Jury on the trial of any such issue as aforesaid may, at the instance and request of the Defendant in whose favour such issue may be found, award to such Defendant the value of the goods and chattels in damages; and in such damages, and to issue execution thereupon, instead of entering up judgment *de retorno habendo* as heretofore accustomed; and upon the award of such value in damages and judgment thereupon, the Defendant's right and interest in such goods and chattels shall become vested in the Plaintiff.

III. And be it enacted, that all obligors in Replevin Bonds to be made after this Act takes effect, shall become liable and bound to the payment of any such damages as may be awarded to the Defendant by virtue of this Act.

IV. And be it enacted, That the Justices of the Supreme Court, or any three of them, shall have power and they are hereby authorized and required at any Term of the said Court which may occur after the time of passing this Act, to frame and prescribe proper and suitable forms for the Replevin Bonds hereafter to be taken, and for the entering of any verdict or judgment pursuant to this Act, which shall be published in the Royal Gazette; and such forms shall, from the time of this Act taking effect be observed and complied with in the same manner as if the same were in this Act specified and contained; and such forms shall be applicable to the Inferior Court of Common Pleas as well as the Supreme Court.

V. And be it enacted, That this Act shall commence and take effect on the first day of January in the year of our Lord one thousand eight hundred and forty one: Provided always, that in the mean time the Justices of the Supreme Court may frame and prescribe the forms mentioned in the fourth Section: Provided also, that nothing in this Act contained shall extend or be construed to extend to affect any proceeding in any action of Replevin commenced before this Act goes into operation.