

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1850.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1850.

13 Victoria – Chapter 53

**An Act to consolidate and amend the Laws relating to Landlord and Tenant, and regulating proceedings in Replevin. Passed 26th April 1850.**

Whereas it is deemed advisable to consolidate and amend all the Laws relating to Landlord and Tenant and proceedings in Replevin;

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That 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 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 frauds by Tenants*; also an Act made and passed in the fourth year of the Reign of His late Majesty William the Fourth, intituled *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*;' and also an Act made and passed in the eighth year of the said last mentioned Reign, intituled *An Act relating to Landlord and Tenant*; also an Act made and passed in the third year of the Reign of Her present Majesty Queen Victoria, intituled *An Act further to regulate proceedings in Replevin, by allowing damages in certain cases to the defendant*; also the thirty first, thirty second, thirty sixth and thirty seventh sections of an Act made and passed in the twelfth year of the last mentioned Reign, intituled *An Act to consolidate and amend various Acts of Assembly relating to the further amendment of the Law*; be and the same are hereby repealed: Provided always, that all acts, matters and things heretofore done under and by virtue of the said several Acts or any of them hereby repealed, shall be and remain good, valid and effectual so far as they are in accordance with the provisions of the said Acts or any of them; and provided also, that all actions and proceedings had and taken and now pending under the provisions of the said several Acts or any of them, shall in no wise be affected by the repeal of the said Acts, but that the same may be prosecuted and concluded in all respects as if the said several Acts still remained and continued in full force and effect; provided also, that no Act or part of an Act repealed by any of the said Acts hereby repealed, shall revive or come into force after the passing of this Act.

II. And be it enacted, That to obviate the difficulties which many times occur in the recovery of rents when the demises are not by deed, the Landlord, where the agreement is not by deed, may recover a reasonable satisfaction for the lands, tenements or hereditaments held or occupied by the defendant, in an action on the case, for use and occupation of what was so held or enjoyed; and if on the trial of such action, any parol, demise or any agreement, (not being by deed,) wherein a certain rent was reserved shall appear, the plaintiff in such action shall not therefor be

nonsuited, but may make use thereof as an evidence of the quantum of damages to be recovered.

III. And be it enacted, That when any goods and chattels shall be taken by virtue of any Warrant of Distress (A) for any rent reserved and due upon any demise 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 (B) (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 to whom such Sheriff, Under Sheriff or Constable are hereby empowered to administer the oath (C) to appraise the same truly according to the best of their understanding; and such oath shall be endorsed (D) on the said inventory, and after such appraisalment (E) 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, appraisalment and sale, leaving the overplus, if any, in the hands of the said Sheriff, Under Sheriff or Constable, for the owner's use.

IV. And be it enacted, That upon any pound breach or *rescous* of goods or chattels distrained for rent, the person grieved thereby shall in a special action upon the case for the wrong thereby sustained, recover treble damages and costs of suit against the offender in any such *rescous* or pound breach, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession; but provided that in case any such distress and sale as aforesaid, shall be made by virtue or under colour of this Act, for rent pretended to be in arrear and due when in truth no rent is in arrear or due to the person distraining, or to him in whose name 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 so distraining, his executors or administrators, recover double of the value of the goods and chattels so distrained and sold, together with full costs of suit.

V. And be it enacted, That when 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 distraining or by his agents, the distress itself shall not be therefor deemed to be unlawful, nor the party making it be deemed a trespasser ab initio, but the party aggrieved by such unlawful act or irregularity, shall or may recover full satisfaction for the special damage he shall have sustained thereby, and no more, in an action of trespass or upon the case at the election of the plaintiff; provided that where the plaintiff shall recover in such action he shall be paid his full costs of suit, and have all the like remedies for the same as in other cases of costs, but no tenant or lessee shall recover in any action for any such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party distraining or his agent before such action brought.

VI. And be it enacted, That in case any tenant or lessee for life 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 made payable, shall fraudulently or clandestinely convey away or carry off from such premises his goods or chattels to prevent the landlord or lessor from distraining the same for arrears of rent so made payable, every such landlord or lessor, or any person by him for that purpose lawfully empowered, may within the space of thirty days next ensuing the removal of such goods or chattels as aforesaid, take such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent, and may sell or otherwise dispose of the same in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such premises for such arrears of rent, any law, custom or usage to the contrary in any wise notwithstanding; provided that no such landlord or lessor shall take 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 not privy to such fraud as aforesaid, any thing herein contained to the contrary notwithstanding.

VII. And be it enacted, That when any goods or chattels fraudulently or clandestinely removed by any tenant or lessee, or his servant, agent or other person aiding or assisting therein, shall be placed in any house, barn, stable, out-house, yard, close or place locked up, fastened or otherwise secured so as to prevent such goods or chattels from being taken as a distress for arrears of rent, it shall and may be lawful for the landlord or lessor, his bailiff, receiver or other person empowered to take as a distress for rent such goods and chattels, (first calling to his assistance a Constable or other Peace Officer of the place where the same shall be suspected to be concealed, who is 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 such goods and chattels for the said arrears of rent as he might have done by virtue of this Act if such goods and chattels had been put in any open field or place.

VIII. And be it enacted, That it shall and may be lawful to and for any person 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 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 aggrieved thereby shall have the like remedy as in cases of pound-breach or *rescous* is given and provided by this Act.

IX. And be it enacted, That it shall and may be lawful for any person having any rent in arrear, or due 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 he might have done if such lease or leases had not been determined; 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 arrears became due.

X. And be it enacted, That the executors or administrators of any lessor or landlord may distrain upon the lands demised for any term, or at will, for the arrearages of rent due to such lessor or landlord in his life time, in like manner as such lessor or landlord might have done in his life time; and that such arrearages may be distrained for after the end or determination of such term, or lease at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due; provided also, that all and every the powers and provisions made herein or to be made relating to distresses for rent, shall be applicable to the distresses so made as aforesaid.

XI. And be it enacted, That no goods or chattels whatsoever, lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, or at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out, shall before the removal of such goods from off the said premises by virtue of such execution, pay to the landlord of the said premises or his bailiff, such sum of money as shall be due for rent of the said premises, at the time of the taking of such goods or chattels by virtue of such execution, provided that the said arrears do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit such execution is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might heretofore have done; and the Sheriff or other officer to whom such execution may have been delivered to be executed, is hereby empowered and required in such case to levy and pay to the party at whose suit the said execution is sued out, as well the money so paid for rent as the money directed to be levied on such execution; provided that nothing in this section contained shall be construed to extend to hinder or prejudice Her Majesty, Her Heirs or Successors, in levying, recovering or seizing any debts, fines, penalties or forfeitures due or payable to Her Majesty, Her Heirs or Successors, but that it shall and may be lawful for Her Majesty, Her Heirs and Successors, to levy, recover, and seize such debts, fines, penalties or forfeiture in the same manner as if this Act had not been passed.

XII. And be it enacted, That the action of Replevin shall and may be prosecuted by Writ (F) issuing out of the Supreme Court or out of the Inferior Court of Common Pleas, and that such Writ of Replevin shall be tested and made returnable in the said Courts respectively, as Writs in other causes within the jurisdiction and cognizance of such Courts, and 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 the 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.

XIII. And be it enacted, That whenever in any such action of Replevin, anything touching the freehold or title to lands shall come in question, or the Queen shall be a party, or the taking of any distress shall be in right of the Crown, that then and in all such cases, no further proceedings shall be had thereon in the said Inferior Court, 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, anything hereinbefore contained to the contrary notwithstanding.

XIV. And be it enacted, That all Sheriffs and other officers having the execution and return of Writs of Replevin issued out of the Supreme Court or any Inferior Court of Common Pleas, may and shall in executing every such 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, and immediately upon the execution of the said Writ, 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 (G) in double the value of the goods replevied or seized under 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 is hereby authorized and required to administer 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 conusance in case of distress, assign such Bond to the avowant or person as 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, his executors or administrators, by endorsement (H) 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 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.

XV. And be it enacted, That in all actions of Replevin sued and prosecuted in the Supreme Court, or in any of the Inferior Courts of Common Pleas, whether in cases of distress or otherwise, if the defendant in such action, by himself, or his attorney or agent, shall within forty eight hours after the seizure of the property under any such suit of Replevin, give notice (J) to the Sheriff or other officer executing the same, that he claims 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 Writ, whereupon the said plaintiff shall immediately issue the Writ *de proprietate probanda*, (K) 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 by their inquisition (L) find such claim good, then the said Sheriff's power under the said Writ of Replevin, and all proceedings upon the said Writ, shall be at 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, together with the inquisition thereon, 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 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.

XVI. And be it enacted, That if upon the trial of such claim under the Writ *de proprietate probanda* a verdict shall be found for the claimant, he shall forthwith be entitled to and shall receive an assignment of the Replevin Bond, and may in an action thereon before any Court of competent jurisdiction, recover all actual costs and expenses incurred by him in the prosecution and proof of his said claim under the said Writ, together with such other damages as he may have sustained by reason of the said Writ of Replevin and the proceedings thereon, and the costs and counsel fee in relation to such proceedings shall be regulated by the fees allowed and taxed in the Supreme Court in actions not summary.

XVII. And be it enacted, That in any action hereafter brought in the Supreme Court or Inferior Court of Common Pleas upon any Replevin Bond, where the penalty exceeds the sum of twenty pounds, in case the plaintiff recover in such action a less sum than twenty pounds by way of damages, he shall be entitled to and shall recover the same costs as are now provided and allowed in the said Courts respectively in actions not summary.

XVIII. And be it enacted, That if the defendant in Replevin shall not claim property, or shall fail to enter an appearance to the said Writ at the return of the said Writ of Replevin or within twenty days thereafter, the plaintiff in such action may issue a Process (M) against such defendant, returnable at the next ensuing term of the Court wherein such action may be brought.

XIX. And be it enacted, That it shall and may be lawful to and for all defendants in Replevin to avow or make cognizance 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 was incurred, which rent was then and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or lessor, any law, usage, or custom to the contrary notwithstanding; and if the plaintiff in such action shall become nonsuit, discontinue his action, or have judgment given against him, the defendant in such Replevin shall recover double costs of suit.

XX. And be it enacted, 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 (N) to the defendant, and the defendant may enter up his judgment (O) thereupon with such damages and the costs of suit, and may issue execution for such damages and costs in like

manner as he may now for the costs of suit only; and 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 case it shall be so specifically stated in the rendering of their verdict (P), and the defendant shall be thereupon entitled to enter up his judgment (Q), for the recovery of 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; and all obligors in Replevin Bonds shall become and be liable and bound to the payment of any such damages as may be awarded to the defendant by virtue of this Act.

XXI. And be it enacted, That the several Sheriffs or other officers to whom any Writ of Replevin out of the Supreme Court or any Court of Common Pleas, 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 is set forth in the Schedule to this Act annexed; and any Sheriff or other officer to whom such Writ shall be directed, who shall presume to demand or receive any further or other fee or reward than is set forth and directed in such Schedule, shall be deemed and taken to be guilty of extortion, and liable to be punished for the same according to law.

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

XVIII. And be it enacted, That in case any tenant for any term of life, lives or years, or other person who shall come into possession of any lands, tenements or hereditaments by, from or under or by collusion with such tenant, shall wilfully hold over any lands, tenements or hereditaments after the determination of such term, and after demand made and notice in writing (R) given for delivering the possession thereof by his landlord or lessor or the person to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, or his agent thereunto lawfully authorized, then and in such case such person so holding over, shall for and during the time he shall so hold over or keep the person entitled out of possession of the said lands, tenements and hereditaments as aforesaid, pay to the person so kept out of possession, his executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements and hereditaments so detained, for so long a 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 shall be obliged to give special bail, against the recovery of which said penalty there shall be no relief in equity.

XXIV. And be it enacted, That in case any tenant shall give notice (S) of his intention to quit any premises by him holden, at a time mentioned in such notice, and shall not accordingly deliver up

the possession thereof at the time in such notice contained, that then the said tenant, his executors or administrators, shall from thenceforward pay to the landlord or lessor double the rent or sum which he 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 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 month's notice, and when by the week, one week's 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.

XXV. And be it enacted, That in all actions of trespass or upon the case to be brought against any person entitled to rents of any kind, or his bailiff, receiver or agent, 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 the defendant in such action may plead the general issue and give the special matter in evidence; and in case the plaintiff in such action shall become non-suit, discontinue his action, or have judgment against him, the defendant shall recover double costs of suit.

XXVI. And be it 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 re-entry, 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 messuage, or in case such ejectment shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in such declaration in ejectment, and such affixing shall be deemed legal service thereof; which serving or affixing such declaration in ejectment, shall stand in the place and stead of a demand and re-entry, 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 year's 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 in ejectment had power to re-enter, then and in every such case the lessor 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 his assignee, or other person 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 his assignee, and all other persons claiming and deriving under the said lease, shall be barred from all relief 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 the plaintiff shall be non-suited therein except for the defendant's not confessing lease, entry and ouster, then in every such case such defendant shall have and recover his full costs; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease or any part thereof who shall not be in possession, so as such mortgagee 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 or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

XXVII. And be it enacted, That in case the said lessee or his assignee, or other person claiming any right, title or interest in law or equity, of in or to the said lease, shall within the time aforesaid file a bill for relief in any Court of Equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment, unless he do within forty days next after a full and perfect answer shall be filed by the lessor of the plaintiff in such ejectment, bring into Court and lodge with the proper officer, such sum of money as the lessor of the plaintiff in the said ejectment shall in his 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 shall be filed within the time aforesaid, and after execution is executed, the lessor of the plaintiff shall be accountable only for so much and no more as he shall really and bona fide, without fraud, deceit or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what shall be so made by the lessor of the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by them made fell short of the reserved rent for the time such lessor of the plaintiff or landlord held the said lands.

XXVIII. Provided always, That if the tenant or his assignee do or shall at any time before the trial in such ejectment 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 further proceedings on the said ejectment shall cease and be discontinued; and if such lessee, his executors, administrators or assigns, shall upon such bill filed as aforesaid, be relieved in equity, he 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 or them.

XXIX. And be it enacted, That when any tenant of premises under a lease for years or less period, shall after the expiration of such tenancy, and on due notice (T) to quit having been given, refuse to deliver up such possession to the lessor or person entitled thereto, it shall be lawful for such lessor or person to apply to two of the Justices of the Inferior Court of Common Pleas of the County within which such premises are situate, or if situate within the City and County of Saint John, then to the Mayor, Recorder and Police Magistrate, and a Justice of the Peace of the said City, or any two of them, and having made oath before any one of such persons that such tenant has held and occupied such premises, (particularly designating in the affidavit whether a messuage or other premises, and where situate,) for a certain period then last past, as tenant to such person under a demise which had then expired, and that due notice to quit has been given, such Justices

or other persons authorized as aforesaid, shall and may thereupon issue a Summons (V) against such Tenant, giving at least six days notice, to be served by any Constable, subject to the order of such Justices, either personally on the tenant, or in case he cannot be found, by leaving the same with his wife, servant, or other adult member of the family, on the premises, to shew cause at a time and place in such Summons to be specified, before such Justices, why such tenant holds over such premises; and in case such tenant shall neglect or refuse to attend such Summons, or attending shall not shew sufficient cause to the satisfaction of such Justices or other persons aforesaid for so holding over, they shall issue their Warrant (W) in the nature of a Writ of possession and execution, directed to the Sheriff of the County, or City and County, within which such premises may be situate, which execution as to costs shall be regulated and enforced by the provisions of the Act to regulate proceedings before Justices of the Peace in Civil Suits, and it shall be the duty of such Sheriff to execute such Writ agreeably to the direction therein contained.

XXX. And be it enacted, That if such tenant or other person having an interest in such premises should consider himself aggrieved by the judgment of such Justices or other persons as aforesaid, it shall be lawful for the Supreme Court in term time, on the application of such tenant or other person, and upon sufficient cause shewn therefor by affidavit, to award a certiorari for the removal of such proceedings before such Court, and upon the return of such proceedings, such Court shall examine into the matter, and may admit affidavits on either side, and may in any case that in the opinion of such Court may require it, direct an issue for trial of facts, and shall order and determine in the matter, either by confirming or quashing the proceedings as to justice shall appertain, and such Court may make such orders and rules as may be necessary to carry their proceedings and determination into effect; provided that no such certiorari shall in the mean time stay or suspend the execution of the judgment of such Justices.

XXXI. And be it enacted, That in all such summary proceedings the party prevailing shall pay to the said Justices or other persons as aforesaid one guinea each, and shall recover his costs and have process therefor, that is to say, for proceedings had before such Justices, the said two guineas, and such other costs to be by them taxed and allowed, as are recoverable for similar services by the Act to regulate proceedings before Justices of the Peace in Civil Suits, except the Sheriff's fees on the execution of such Writ of possession, which shall be the same as for executing a Writ of *habere facias possessionem* issuing out of the Supreme Court, and all proceedings upon certiorari in the Supreme Court, costs to be levied and recovered in the usual manner.

XXXII. And be it enacted, That when such proceedings are quashed by the Supreme Court, the said Court may award a Writ of restitution, and such tenant or other person may recover against the adverse party in such proceedings any damage which such person may have sustained by reason of such proceedings, with costs, in an action on the case.

XXXIII. And be it enacted, That the several Forms in the Schedule to this Act contained, or Forms to the same or the like effect, shall be deemed good, valid and sufficient in law.

XXXIV. And be it enacted, That in all cases of distress for rent the fees therefor shall be regulated according to the Table of Fees relating thereto in the Schedule to this Act annexed, except in cases

where the rent due is under five pounds, when one half only of the said fees shall be allowed and taken.

XXXV. And be it enacted, That in the construction of this Act words importing the singular number or masculine gender only, shall be understood to include several matters as well as one matter, and several persons as well as one person, and female as well as male, and bodies corporate as well as individuals.

SCHEDULE.

(A)

*Warrant of Distress.*

To Mr. J. K. my Bailiff.

I hereby authorize you to distrain the goods and chattels of A. B. in the house he now dwells in, (or on the premises now in his possession), situate at \_\_\_\_\_ in the County of \_\_\_\_\_ for \_\_\_\_\_ pounds, being (one year's) rent, due to me for the same on the \_\_\_ day of \_\_\_\_\_ last; and to proceed thereon for the recovery of the said rent as the law directs.—Dated the \_\_\_ day of \_\_\_\_\_ 185\_\_

C.D.

(B)

*Inventory and Notice, to be served on the Tenant.*

An Inventory of the several goods and chattels distrained by me J. K. as Bailiff to Mr. C. D. this \_\_\_ day of \_\_\_\_\_ 185\_\_, in the dwelling house, out houses, and lands [or otherwise as the case may be] of A. B. situate in the Parish of \_\_\_\_\_ in the County of \_\_\_\_\_ by the authority and on the behalf of the said C. D., the landlord of the said premises, for the sum of \_\_\_\_\_ pounds, being (one year's) rent, due on the \_\_\_ day of \_\_\_\_\_ last, and as yet in arrear and unpaid.

IN THE DWELLING HOUSE.

*Kitchen.*

One table, one cook stove, two kettles.

*Parlour.*

One mahogany table, six chairs.

IN THE BARN.

Fifty bushels of oats, four tons of hay, &c. &c. &c.

[Describing the things according to where they are taken from, then subjoin the notice.]

Mr. A. B.

Take notice that I have this day distrained as Bailiff to C. D. your landlord, on the premises above mentioned, the several goods and chattels specified in the above Inventory, for the sum of \_\_\_\_\_ pounds, being (one year's) rent due to the said C. D. on the \_\_\_ day of \_\_\_\_\_ last, for the said premises; [if the goods are secured on the premises, insert here, "and have secured the said goods and chattels in the stable, &c., on the said premises,"] and that unless you pay the said arrears of rent, with the charges of distraining for the same, within the space of five days from the date hereof, the said goods and chattels will be appraised and sold according to law.—Given under my hand this \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_

J. K.

(C)

*Appraiser's Oath.*

You and each of you shall well and truly appraise the goods and chattels mentioned in this Inventory [the Constable holding in his hand the Inventory and shewing it to the appraisers] according to the best of your judgment.—SO HELP YOU GOD.

(D)

*Endorsement of Oath on Inventory.*

Memorandum, That on the \_\_\_ day of \_\_\_\_\_ in the year of our Lord 185\_\_ L. M. of, &c. and N. O. of, &c. were sworn upon the Holy Evangelists by me P. Q. of, &c. Constable (or Sheriff or Under Sheriff) well and truly to appraise the goods and chattels mentioned in this Inventory, according to the best of their judgment, as witness my hand.

P. Q. Constable.

Present at the time of swearing the said L. M. }  
and N. O. as above, and witnesses thereto, }

R. S.

T. U.

(E)

*Appraisement on Inventory.*

We, the above named L. M. and N. O. being sworn upon the Holy Evangelists by P. Q. the Constable (or other officer) above named, well and truly to appraise the goods and chattels mentioned in this Inventory, according to the best of our judgment; and having viewed the said goods and chattels, do appraise and value the same at the sum of \_\_\_\_\_ pounds and no more, as witness our hands the \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_

L.M. }  
N.O. } *Sworn Appraisers.*

Witness

R. S.

(F)

*Writ of Replevin in the Supreme Court, Common Pleas, &c.*

[L. S.] Victoria, by the Grace of God, of the United Kingdom of Great Britain  
and Ireland, Queen, Defender of the Faith, &c. &c.

To the Sheriff of \_\_\_\_\_ Greeting:

We command you if A. B. shall make you secure of prosecuting his complaint, and also of returning the goods and chattels, to-wit, \_\_\_\_\_ which C. D. hath taken and unjustly detained, as it is alleged, if a return thereof shall be adjudged, that then the goods and chattels aforesaid to him the said A. B. without delay you cause to be replevied and delivered and put by sureties and safe pledges the aforesaid C. D., that he be before us at Fredericton, (or in the Common Pleas, before the Justices of the Inferior Court of Common Pleas for the said County of \_\_\_\_\_; or before the Recorder of the said City of Saint John at the next Inferior Court of Common Pleas to be holden for the said City and County; at \_\_\_\_\_ on \_\_\_\_\_) on the \_\_\_ Tuesday in \_\_\_\_\_ next, to answer to the said A. B. of a plea wherefore he took the said goods and chattels of the said A. B., and them unjustly detained against gages and pledges, as he saith, and have there then the names of the pledges and this Writ.—'Witness, &c. &c.

(G)

*Replevin Bond.*

Know all men by these presents, that we [names and additions of the Plaintiff and his sureties] are jointly and severally held and firmly bound unto \_\_\_\_\_ Esquire, Sheriff of the County of \_\_\_\_\_ (or City and County, as the case may be,) in the sum of \_\_\_\_\_ [double the value of the goods to be replevied] of lawful money of New Brunswick, to be paid to the said \_\_\_\_\_ his certain Attorney, Executors, Administrators, or Assigns, for which payment to be well and truly made, we bind ourselves and each of us, our and each and every of our Heirs, Executors, and Administrators, firmly by these presents. Sealed with our Seals. Dated the \_\_\_ day of \_\_\_\_\_ in the year of our Lord, 185\_\_\_.

The condition of this obligation is such, that if the above bounden (Plaintiff) do appear before our said Lady the Queen at Fredericton on [the return day of the Writ of Replevin,] and do then and there prosecute his suit with effect and without delay against (the Defendant) for taking and unjustly detaining his goods and chattels, to wit, [here specify the goods to be replevied,] and do make a return of the said goods and chattels, if a return of the same shall be adjudged, and do pay all such damages as may be awarded to the said (Defendant) pursuant to the Act of Assembly in such case provided, or in case a claim be made to the said property by the said (Defendant) and a

Writ de proprietate probanda issue thereon, and upon the trial of such claim the said property be found in the said (Defendant,) and the above bounden (Plaintiff) do thereupon pay to the said (Defendant) all such costs and charges as may be incurred by him in the prosecution and proof of his said claim under the said Writ, together with such other damages as the said (Defendant) may sustain by reason of the said Replevin and the proceedings thereon, then this obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered }  
in presence of }

*[If the Writ be issued out of any Inferior Court of Common Pleas, the condition of the Bond will be as follows:]—*

The condition of this obligation is such, that if the above bounden (the plaintiff) do appear before the Justices of the Inferior Court of Common Pleas for the said County of \_\_\_\_\_ at \_\_\_\_\_ on \_\_\_\_\_ (as specified in the Writ, or before the Recorder of the said City of Saint John, at the next Inferior Court of Common Pleas to be holden for the said City and County, at the said City, on, &c.,) then [conclude as in the form next preceding.]

(H)

*Assignment of Replevin Bond by Sheriff.*

Know all men by these presents, that I, \_\_\_\_\_ Esquire, Sheriff of the County of \_\_\_\_\_ (or City and County,) have at the request of the within named (the avowant, person making consuance, or defendant,) in this cause assigned over this Replevin Bond to him the said \_\_\_\_\_ pursuant to the Act of Assembly in such case provided.—In witness whereof I have hereto set my hand and seal of office this \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_\_  
Sealed, &c., in presence }  
of [two witnesses.] }

A.B., Sheriff.

(I)

*Notice of claim of property to be served on Sheriff.*

To \_\_\_\_\_ Esquire, Sheriff of, &c.  
You will take notice that I claim an absolute (or special,) property in the goods seized by you under a Writ of Replevin sued by \_\_\_\_\_ (the plaintiff,) against me, and govern yourself accordingly.—Dated the \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_\_.

Yours, &c.  
L. M., the Defendant.

(K)

*Writ de proprietate probanda.*

[L. S.] Victoria, &c. &c.

To our Sheriff of the County of \_\_\_\_\_ Greeting:

Whereas we have commanded you that without delay you should cause to be replevied and delivered to \_\_\_\_\_ the goods and chattels, to wit, \_\_\_\_\_ of his which \_\_\_\_\_ hath taken and unjustly detained as he saith, and for that the said doth avouch the said goods and chattels to be his own proper goods and chattels, you could not replevy the same to the said \_\_\_\_\_ as you have signified to us:

We not being willing that the said \_\_\_\_\_ should be defrauded of his goods and chattels by such false avouchment, whereby the said goods and chattels if they belong to him cannot be replevied to him according to law, command you that in the presence of the said \_\_\_\_\_ if he will be present and he will hereupon be by you warned, you duly inquire by the oath of honest and lawful men of your Bailiwick, by whom the truth of the matter may be best known, whether the goods and chattels so taken and detained be the goods and chattels of the said \_\_\_\_\_ or of the said \_\_\_\_\_ and if by such inquisition it may appear to you that the said goods and chattels be the goods and chattels of the said \_\_\_\_\_ (plaintiff,) then you shall cause the same to be replevied and delivered to the said \_\_\_\_\_ (plaintiff,) according to the tenor of our said commands thereupon formerly directed unto you; and nevertheless if the said \_\_\_\_\_ (plaintiff,) shall give you security to prosecute his suit, then attach the said \_\_\_\_\_ so that you may have his body before us at Fredericton, on the \_\_\_\_ Tuesday in \_\_\_\_\_ next, to answer us for the contempt done in this behalf, and the said \_\_\_\_\_ (plaintiff,) for the damages which he hath sustained by reason of the avouchment of the said goods and chattels, and have there then this Writ.—Witness, &c. &c.

(L)

*Inquisition.*

\_\_\_\_\_ to wit: An Inquisition indented taken at \_\_\_\_\_ in \_\_\_\_\_ this \_\_\_\_ day of \_\_\_\_\_ in the year \_\_\_\_\_ between the hours of \_\_\_\_\_ and \_\_\_\_\_ before me \_\_\_\_\_ Esquire, Sheriff of the said County, by virtue of Her Majesty's Writ to me directed, and to this Inquisition annexed, upon the oaths of \_\_\_\_\_ good and lawful men of the said County of \_\_\_\_\_ who being charged upon their oaths, say that the property in the said goods and chattels in the said Writ named, is in the said \_\_\_\_\_ and not in the said \_\_\_\_\_.—In testimony whereof as well the said Sheriff as the Jurors aforesaid, to this Inquisition have severally put their hands and seals the day and year aforesaid.

(M)

*Process, Defendant not appearing.*

[L. S.] Victoria, &c. &c.

To the Sheriff of, &c., greeting:

We command you that you take C. D. if he shall be found in your Bailiwick, and him safely keep, so that you may have his body before us at Fredericton, [or as directed in Writ of Replevin in cases in the Common Pleas, &c.] on the Tuesday in \_\_\_\_\_ next, to answer A. B. of a plea wherefore he took the goods and chattels of the said A. B. and them unjustly detained against gages and pledges as he saith, and have you there then this Writ.—Witness, &c.

*[Notice to be subjoined in the ordinary form of non-bailable process.]*

(N)

*Form of entry of Verdict on Postea where damages are awarded to the Defendant.*

[Commence in the usual form,] say upon their oaths that [stating the negative or affirmative of the pleading which concludes to the Country according as it makes for the defendant,] in manner and form as the said \_\_\_\_\_ hath “complained against him,” or “in pleading alleged,” and they assess the damages of the said defendant, by reason of the premises, to \_\_\_\_\_ pursuant to the Act of Assembly in such case made and provided, besides his costs and charges, &c., [as in the usual form.]

(O)

*Entry of Judgment on the above.*

Therefore it is considered that the said plaintiff take nothing by his suit, but that the said defendant do go thereof without day, &c., and that he have a return of the said goods and chattels to hold to him imperishable forever: And it is further considered that the said defendant do recover against the said plaintiff his said damages, costs and charges by the Jurors aforesaid, in form aforesaid assessed, and also \_\_\_\_\_ for his said costs and charges by the Court of our said Lady the Queen now here, (or in the Inferior Court “by the Justices here,”) adjudged of increase to the defendant according to the form of the statute in such case made and provided; which said damages, costs and charges, in the whole amount to \_\_\_\_\_ and that the said defendant have execution thereof.

(P)

*Entry of Verdict on Postea when the value of the goods is assessed by the Jury.*

[Commence in the usual form as in first form above,] in manner and form as the said \_\_\_\_\_ hath complained against him, (or in pleading alleged,) and at the prayer of the said defendant they further say upon their oaths aforesaid, that the said goods and chattels at the time of the replevying thereof, were worth according to the true value thereof, which they award to the said defendant in damages, according to the form of the Act of Assembly in such case made and provided, and they assess the defendant’s other damages by reason of the premises to



\_\_\_\_\_ pursuant to the said Act, besides his costs and charges, &c., [as in the usual form.]

(Q)

*Entry of Judgment on the above.*

Therefore it is considered that the said plaintiff take nothing by his suit, but that the said defendant do go thereof without day, &c: And it is further considered that the said defendant do recover against the said plaintiff the said sum of \_\_\_\_\_ being the value of the goods and chattels aforesaid by the Jury in form aforesaid assessed, and also \_\_\_\_\_ for his said other damages, costs and charges by the Court of our said Lady the Queen now here, (or in the Inferior Court, "by the Justices here,") adjudged of increase to the said defendant, according to the form of the statute in such case made and provided; which said damages, costs and charges in the whole amount to \_\_\_\_\_ and that the said defendant have execution thereof.

(R)

*Notice to quit or pay double value.*

SIR,—I hereby give you notice to quit and deliver up on or before the \_\_\_ day of \_\_\_\_\_ next, the premises which you now hold of me, situate at \_\_\_\_\_ in the County of \_\_\_\_\_ in default thereof I shall require for the same the net yearly rent or value of \_\_\_\_\_ [being double the present yearly rent or value thereof] for so long time as you keep possession of the said premises, according to the form of the Act of Assembly in such case provided.—Dated, &c.

C. D., Landlord.

To. Mr. A.B., &c.

(S)

*Notice to quit by Tenant.*

SIR,—I hereby give you notice that on the \_\_\_ day of \_\_\_\_\_ next, I shall quit and deliver up possession of the house and premises which I now hold of you situate at \_\_\_\_\_ in the County of \_\_\_\_\_ Dated, &c.

A.B., Tenant.

To Mr. C.D.

(T)

*Ordinary notice to quit.—Landlord to Tenant.*

SIR,—I hereby give you notice to quit and deliver up the premises which you now hold of me, situate at \_\_\_\_\_ in the County of \_\_\_\_\_ on the \_\_\_ day of \_\_\_\_\_ next, or at the expiration of the current year of your tenancy.—Dated the \_\_\_ day of \_\_\_\_\_ 185\_

C. D.

To Mr. A. B., Tenant in possession.

*By Landlord's Agent.*

SIR,—I do hereby, as the Agent for your landlord, Mr. C. D. of \_\_\_\_\_ give you notice to quit and deliver up possession of the premises situate at [as in preceding form] now in your occupation, on the \_\_\_ day of \_\_\_\_\_ [as before].—Dated, &c.

E. F., Agent for the said C. D.

To Mr. A. B., &c.

(V)

*Form of Summons by two Justices of the Common Pleas.*

ss—To \_\_\_\_\_  
Whereas \_\_\_\_\_ of \_\_\_\_\_ hath this day on oath made it appear to us \_\_\_\_\_ that you have as his tenant occupied [here describe the premises,] for \_\_\_\_\_ last past, under a demise which has expired, and that after being duly notified to quit you hold over and refuse to give up the possession of said premises: We do therefore, agreeably to the directions of the Act of Assembly in such case made and provided, summon you to appear before us (here describe day, hour and place,) to shew cause, if any you have, why you should not deliver up to the said \_\_\_\_\_ the possession of the said premises.—Given under our hands this \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_\_

L. M., J.C.P.

N. O., J.C.P.

(W)

*Writ of Possession and Execution.*

By L. M. and N. O., two of the Justices of the Inferior Court of Common Pleas in and for the County of \_\_\_\_\_ (or otherwise, according to the Act.)

To the Sheriff of \_\_\_\_\_

Whereas G. H. claiming as lessor of certain premises situate [here describe premises] now in the occupation of \_\_\_\_\_ hath on oath made it appear to us that the said \_\_\_\_\_ holds over and refuses to give up the possession of the said premises after his demise thereof has expired and due notice to quit given, and the said \_\_\_\_\_ having been duly summoned to appear before us agreeably to the direction of the Act of Assembly in such case made and provided, to shew cause why he should not deliver up to the said \_\_\_\_\_ the possession of the said premises: We have adjudged that the said \_\_\_\_\_ shall be forthwith put in possession of the said premises, and shall also recover his costs of proceeding, being \_\_\_\_\_ besides your fees on executing this Writ; and we do hereby command you, that without delay, you cause the said \_\_\_\_\_ to have possession of said premises: We also command you, that you levy of the goods and chattels of the said \_\_\_\_\_ the sum of \_\_\_\_\_ adjudged to him for his costs, besides your fees, and for want of goods and chattels whereon to levy, you are required to take the body of said \_\_\_\_\_ and deliver him to

the keeper of gaol of said County, and the said keeper will take the said \_\_\_\_\_ into his custody and him safely keep for \_\_\_ days, unless the said \_\_\_\_\_ and your fees be sooner paid; and how you shall have executed this Writ return to us within \_\_\_ days from the date hereof.— Given under our hands this \_\_\_ day of \_\_\_\_\_ A. D. 185\_\_

L. M., J.C.P.  
N.O., J.C.P.

*Table of Fees in cases of Distress for Rent.*

Warrant of Disress, ... .. £ 0	1	0
Bailiff executing Warrant, (exclusive of mileage), ... 0	2	6
Mileage on Distress, three pence per mile going and returning, to be estimated from the residence of the Bailiff.		
Preparing Inventory and Notice, ... .. 0	5	6
Swearing Appraisers, ... .. 0	1	0
Endorsing the same on Inventory, ... .. 0	0	6
Appraisers, each, ... .. 0	2	0
Drawing appraisement, ... .. 0	1	0
On sale of goods distrained four pence per pound on the rent due.		
Bailiff or other Officer for taking charge of goods, ... 0	2	6

*Officer's fees for executing Writs of Replevin and De Proprietate Probanda.*

For entering the Writ of Replevin and endorsing the time of receiving the same, ... .. £ 0	1	0
Mileage in travelling to execute the same to be computed from the Court House to the place where goods may be found and back, each mile three pence.		
For executing the Replevin, ... .. 0	6	8
For making a Return, if common, ... .. 0	1	0
For making a Return, if special, ... .. 0	2	6
For entering the Writ <i>De Proprietate Probanda</i> , and endorsing the time of receiving the same, ... .. 0	1	0
For mileage, to be computed as above, each mile three pence.		
For summoning the Jury, ... .. 0	5	0
For the Constable, ... .. 0	2	6
For swearing the Jury, ... .. 0	2	6
For swearing each witness or reading a paper in evidence, 0	0	6
For attending the Inquest, ... .. 0	5	0
For making out the Inquisition and returning the Writ <i>De Proprietate Probanda</i> , ... .. 0	5	0
For an order to restore the goods and chattels, ... .. 0	1	0