

Laws of Her Majesty's Province of Newfoundland, passed in the year 1849.

12 Victoria – Chapter 9

An Act for facilitating Proceedings in cases of Distress and Replevin. (Passed 23d April, 1849.)

Whereas the proceedings directed and required by the law of England in cases of Replevin cannot be carried into full effect by reason of the absence of County Courts, and are otherwise unsuited to the condition and circumstances of this Island; and it is expedient to provide a more simple and practicable course of procedure in such cases:

Be it therefore enacted, by the Governor, Council, and Assembly of Newfoundland, in legislative session convened, and by the authority of the same, that as well the sheriffs of the several districts of this Island, as their sworn bailiffs to be appointed by them at convenient places within their respective districts, and for whom and for whose acts the sheriffs shall respectively be responsible, shall be and they are hereby authorised to make replevies and deliverances of distresses in the manner hereinafter directed; and the said sheriffs shall from time to time respectively notify and publish in the Newfoundland Royal Gazette the names and places of residence of all such sworn bailiffs, who shall have authority to make such replevies and deliverances as aforesaid, in the sheriff's name, and in the same manner as the sheriff may and ought to do.

II. And be it further enacted, That in all cases of distresses for rent or otherwise, the person or persons whose goods shall be distrained, and who shall be desirous of replevying the same or any part thereof, shall enter into a bond to the sheriff of the district, with one or more sufficient sureties, to the satisfaction of the sheriff or the bailiff by whom the said bond shall be taken, which bond shall be in the form set forth in the schedule to this act annexed; and the penalty of such bond shall be a sum sufficient to cover the value of the cattle or goods distrained, if taken for any other cause than for rent, and if taken for rent, then in a sum double the value of the cattle or goods distrained; and upon the execution of such bond, the said sheriff, or such bailiff as aforesaid in the name of the sheriff, shall forthwith issue his warrant to replevy the cattle or goods so distrained as aforesaid, which warrant shall be in the form in the schedule hereto annexed set forth; and it shall be lawful to execute such warrant at any time before the actual sale of any such cattle or goods so to be distrained, as may by law be sold in pursuance of any such distress.

III. And be it further enacted, That the sheriff or bailiff taking any replevin bond shall, at the request and costs of the avowant or person making cognizance, assign such bond to the avowant or person aforesaid by indorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses, in the form set forth in the schedule to this Act; and if the bond so taken and assigned be forfeited, the avowant, or person making cognizance, 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 of such bond.

IV. And be it further enacted, That the party obtaining a replevy of cattle or other goods, so to be distrained as aforesaid, shall, on or before the first day of the then next term or sittings of the Court to be mentioned in such warrant of replevin, or if such Court be sitting, then within four days after the execution of such warrant of replevin, file in Court and also serve, or cause to be served, upon the person avowing or making cognizance, or upon his agent or attorney, a declaration in the usual form in such cases: to which declaration the defendant shall enter an appearance, and shall also plead, avow, or make cognizance thereto, without any demand of plea, or rule to plead, within the first four days of the term or sittings of the Court aforesaid; or if such declaration be served in term lime, then within four days after service of a copy thereof, as aforesaid; and the plaintiff shall, to every such plea, avowry, or cognizance, plead or demur, within two days after service of a copy thereof, without any demand of plea or rule to plead, unless the Court, or a Judge thereof, shall in any such case otherwise order; and thereupon, subject to the provisions hereinbefore contained, such further and other proceedings shall be had as are now used and practised in cases of replevin: Prodded, that it shall not be necessary in any case to execute a writ of enquiry of damages before the Sheriff, but all such damages shall be assessed in the usual manner before the Court, or a Judge of the Court, in which any such action may be pending.

V. And be it further enacted, That in all cases of distresses for rent, the person making any such distress shall deliver to the person in possession of the premises for the rent of which such distress shall be made, or in case there shall not be any person found in possession shall affix on some conspicuous part of such premises, a particular in writing of the rent demanded, specifying the amount thereof, the time or times when the same accrued, and the person by whom or by whose authority such distress is made.

VI. And be it further enacted, that every outport bailiff, who shall make any replevin in manner directed under the first section of this Act shall be entitled to receive the following fees, videlicet:—

For making out and executing each warrant to replevy—five shillings.

“ Milage for executing the same—per mile, sixpence.

“ Taking any bail bond—two shillings and six pence.

And that no fee shall be received by any other person authorised to grant replevin under this Act.

SCHEDULE. REPLEVIN BOND.

Know all men by these presents, that we, A. B., of _____, G. A, of _____, and T. R. of _____, are jointly and severally held and firmly bound to G. H., Esq., Sheriff of the _____ District, in the sum of £ _____ (a sufficient sum to cover the value of the cattle or goods distrained, if taken damages feasant, or if for rent then double the value of the cattle or goods taken,) to be paid to the said Sheriff or his certain attorney, executors, administrators, or assigns; for which payment to be well and truly made, we bind ourselves, and each and every of us, our and each and every of our heirs, executors and administrators, firmly by these presents. Sealed with our seals.—
Dated this _____ day of _____ A. D. 18 _____.

The condition of this obligation is such, that if the above bounden A.B. do appear at the next term or sittings of the _____ Court to be holden at _____ for the said District, (or if it be in term time then say in this present term of the _____ Court at _____) and do then and there prosecute his suit with effect and without delay against C.D. for the taking and unjustly detaining of his cattle, goods and chattels, to wit, (state the cattle or goods distrained) and do make return of the said cattle, goods and chattels, if a return thereof shall be adjudged; that then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

Sealed, &c.

A.B. (L.S.)

G.A. (L.S.)

T.R. (L.S.)

ASSIGNMENT OF REPLEVIN BOND, TO BE INDORSED ON THE BOND.

Know all men by these presents, that I, G.H., Esquire, Sheriff of the _____ district of Newfoundland, have, at the request of the above named C.D. the avowant, (or the person making cognizance) assigned over unto him, the said C. D., this replevin bond, according to the statute in such case made and provided.

Dated, &c.

G. H.

WARRANT TO REPLEVY.

_____ DISTRICT, }
To Wit. }

G. H., Esq., Sheriff of the _____ district of Newfoundland, to _____ and _____ and to every of them, jointly and severally, greeting:

Whereas A.B. hath found me sufficient security, as well for prosecuting his suit with effect against C.D. for taking and unjustly detaining his cattle, goods and chattels, to wit, (set out the cattle or goods) which the said C.D. hath taken and unjustly detains, as it is said; as also for making return thereof, if return thereof shall be adjudged; therefore on behalf of the said A.B. I command you jointly and severally that without delay you replevy, and cause to be delivered to the said A.B. his said cattle, goods and chattels, and that you immediately summon the said C.D. to appear at the next term of the Supreme Court (or Central, Northern, or Southern Circuit) to be holden at _____ in and for the said district (or as the case may be) to answer the said A.B. in the plea aforesaid; and in what manner you shall have executed this precept certify to me at the time and place aforesaid under the peril attending the neglect thereof.

Given under my seal this _____ day of _____ A. D.

G. H., sheriff.

(Or if granted by a bailiff, say "by L.H., one of the bailiffs of the said sheriff according to the form of the statute.")