

Act 10 Geo. 4, c. 2,
revived and continued
for 4 years.

Parliament of Great Britain, entitled, “ An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty’s Reign, entitled, ‘ An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,’ and by the authority of the same, That the said Act be and the same is hereby revived and continued for four years from and after the passing of this Act, and from thence to the end of the then next ensuing Session of Parliament, and no longer.

Clerks of District
Courts to supply
Commissioners of the
King’s Bench with
writs of Capias ad
Respondendum.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, and the Clerks of the several District Courts in this Province are hereby required, upon application by any Commissioner of His Majesty’s Court of King’s Bench, and upon payment of the usual fees by law established for the same, to furnish such Commissioner with such number of writs of Capias ad Respondendum as such Commissioner may so require.

Commissioners may
issue bailable process.

III. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful for such Commissioner to issue a Writ of Capias ad Respondendum in the same manner and with the like effect as the same may now be issued in His Majesty’s Court of King’s Bench by virtue of the ninth section of an Act passed in the second year of His late Majesty’s reign entitled, “ An Act to repeal part of and amend the laws now in force respecting the practice of His Majesty’s Court of King’s Bench in this Province.”

Commissioner not to
act as such if Attorney
in the cause.

IV. *And be it further enacted by the authority aforesaid,* That no Commissioner shall issue any writ of Capias ad Respondendum in any case in which he shall be employed as Attorney for the person suing out such writ.

CHAP. VII.

AN ACT to facilitate the remedy by Replevin.

[Passed, 6th March, 1834.]

Preamble.

WHEREAS it is expedient to facilitate the remedy of Replevin :—
Be it therefore enacted by the King’s Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain entitled, “ An Act to repeal certain parts of an Act passed in

the fourteenth year of His Majesty's Reign entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec in North America, and to make further provision for the Government of the said Province,' and by the authority of the same, That any person complaining of a wrongful distress in a case in which by the Law of England Replevin might be made, may on filing a Prœcipe, obtain from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, a writ of Replevin, which may be in the form given in the Schedule to this Act marked A.

Remedy by Replevin same as by the Law of England.

II. *And be it further enacted by the authority aforesaid,* That before the Sheriff shall proceed to Replevy upon any such writ he shall take pledges from the Plaintiff according to the Law of England in that behalf, and the bond to be entered into for that purpose may be in the form given in the Schedule to this Act annexed marked B; and the assignment thereof to be made to the Defendant may be according to the form given in the same Schedule.

Proceedings by Sheriff upon writ of Replevin.

III. *And be it further enacted by the authority aforesaid,* That upon the Sheriff making such return of the goods distrained having been eloigned, as would warrant the issuing of a Capias in Withernam by the Law of England, a writ of Capias in Withernam shall issue upon the filing of such return from the office of the Clerk of the Crown and Pleas in this Province, or from the office of any of his Deputies, which writ may be in the form given in the Schedule to this Act annexed marked C; and that before executing such writ the Sheriff shall take pledges according to the Law of England in that behalf.

When Capias in withernam may issue.

IV. *And be it further enacted by the authority aforesaid,* That the Sheriff may make his warrant to any Bailiff or Bailiffs jointly and severally to execute either of the writs aforesaid to him directed, according to the law and custom of England in that behalf.

By whom, and how, writs to be executed.

V. *And be it further enacted by the authority aforesaid,* That upon the appearance of the Defendant being entered in the office from whence any writ of Replevin or Capias in Withernam shall issue the Plaintiff may declare, and may proceed in his Action of Replevin according to the law of England in that behalf.

Proceeding after appearance.

VI. *And be it further enacted by the authority aforesaid,* That if the Defendant shall not appear at the return of the writ, or within eight days thereafter, the Plaintiff shall cause a notice to be put upon the door of the Court House of the District in which such writ shall have issued,

Notice in case of non-appearance by Defendant.

according to the form in the Schedule to this Act annexed marked D; and that if at the expiration of twenty-one days after the said notice shall have been put up as aforesaid the Defendant shall not have appeared, it shall be lawful for the Plaintiff, upon filing an affidavit of the due publication of such notice in manner aforesaid, to enter appearance for the Defendant, and to proceed thereupon as if the Defendant had appeared.

When distress not exceeding £15, writ may issue from District Court.

VII. *And be it further enacted by the authority aforesaid,* That when the value of the goods distrained shall not exceed the sum of fifteen pounds, and where the title to lands shall not come in question, the writ of Replevin may issue from the District Court of any District in this Province within which the distress shall have been made, and such proceedings may be thereon had as shall be agreeable to the practice of the Court of King's Bench in this Province in actions of Replevin.

Rules of practice, and Forms, to be framed by Court of King's Bench.

VIII. *And be it further enacted by the authority aforesaid,* That the Court of King's Bench may by rule or rules from time to time make such provision for rendering the remedy of Replevin easy and effectual as such Court may deem conducive to the ends of Justice, as well by regulating the practice to be observed in Actions of Replevin as by prescribing or changing the forms of writs and proceedings to be used in such Actions, or for advancing the remedy by Replevin; and that to that end the forms given to the several Schedules annexed to this Act, or any of them, may by rule of the said Court be modified and altered.

How far practice of Court of King's Bench in England to prevail.

IX. *Provided always, and be it further enacted by the authority aforesaid,* That in the absence of any provision in this Act, or in any rule of the Court of King's Bench to the contrary, the practice in England in cases of Replevin shall be pursued so far as the same can be applied to the jurisdiction having cognizance of the case and to the circumstances of this Province.

SCHEDULE A.

— District, }
to wit : } William the Fourth by the Grace of God, &c.

To the Sheriff of —, Greeting :

Writ of Replevin.

We command you, that without delay, you cause to be Replevied to A. B. his cattle, goods and chattels, which C. D. hath taken and unjustly detains, as it is said, in order that the said A. B. may have his just remedy in that behalf, and that you summon the said C. D. to appear before us in our Court of King's Bench at York, on the — day of — Term, to answer to the said A. B. in a plea of taking and unjustly detaining

his cattle, goods and chattels, and what you shall do in the premises make appear to us in our Court of King's Bench, at York, on the day and at the place aforesaid, and have there then this writ.

Witness the Honorable ———, Chief Justice of our said Province, this — day of — &c.

SCHEDULE B.

Know all men by these presents that we A. B. of —, W. G. of — and J. S. of — are jointly and severally held and firmly bound to W. P. Esquire, Sheriff of the District of — in the sum of — of lawful money of Upper Canada, 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 in the whole, our and each and every of our Heirs, Executors and Administrators, firmly by these presents, sealed with our seals. Replevin Bond.

Dated this — day of —, one thousand eight hundred and —.

The condition of this obligation is such, that if the above bounden A. B. do 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, (here set forth the cattle or goods distrained) and do make a 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. Condition.

Scaled and delivered }
in the presence of }

Know all men by these presents, that I, W. P. Esquire, Sheriff of the District of —, have at the request of the within named C. D. the avowant (or person making cognizance) in this cause, assigned over this Replevin Bond unto him the said C. D. pursuant to the Statute in such case made and provided. Assignment by Sheriff.

In witness whereof I have hereunto set my hand and seal of office this — day of —, one thousand eight hundred and —.

Scaled and delivered }
in the presence of }

SCHEDULE C.

———District, }
to wit : } William the Fourth by the Grace of God, &c.
To the Sheriff of ——, Greeting :

Writ of Capias in
Withernam.

Whereas we lately commanded you, that without delay, you should cause to be Replevied to A. B. his cattle, goods and chattels, to wit, &c. (setting out the cattle and goods,) which C. D. had taken and unjustly detained, as it is said, according to our writ to you afore directed, and that you should make appear to us in our Court of King's Bench at York, on the —— day of —— Term, what you should do in the premises, and you at that day returned to us that the cattle, goods and chattels, aforesaid were eloiigned by the said C. D. out of your Bailiwick to places to you unknown, so that you could in no wise Replevy the same to the said A. B.

Therefore we command you that you take in Withernam the cattle, goods and chattels, of the said C. D. in your Bailiwick to the value of the cattle, goods and chattels, by him the said C. D. before taken, and deliver them to the said A. B. to be kept by him until the said C. D. will deliver the aforesaid cattle, goods and chattels, to the said A. B. and in what manner you shall have executed this our writ make appear to us on the —— day of —— Term, in our Court of King's Bench, that we may cause to be further done thereupon what of right and according to the Laws of our Province of Upper Canada we shall see meet to be done. We also command you, that if the said A. B. shall make you secure of prosecuting his claims, and of returning the cattle, goods and chattels aforesaid, if a return thereof shall be adjudged, then that you put by gages and safe pledges the said C. D. that he be before us at the time last aforesaid, to answer to the said A. B. of the taking and unjustly detaining of his cattle, goods and chattels aforesaid, and have then there this writ.

Witness ——

SCHEDULE D.

Form of Notice.

Take notice that unless A. B. who has distrained the cattle, goods and chattels, of C. D. shall enter his appearance in an action brought against him on account of the said distress, the said A. B. will on or after the —— day of ——, being twenty-one days exclusive after this notice was put up, enter appearance for him to the said action, and proceed therein as if the said C. D. had appeared.

Dated ——, A. B. in person, (or by his Attorney) E. F.