

C A P. L X I V .

An Act to amend and extend the Law relating to the remedy by Replevin in Upper Canada.

[30th August, 1851.]

WHEREAS it is expedient to amend and extend the remedy by Replevin in Upper Canada: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities or other personal property or effects have been, or shall be wrongfully distrained, or otherwise wrongfully taken, or have been or shall be wrongfully detained, the owner, or person or corporation, who by law can now maintain an action of trespass or trover for personal property, shall have and may bring an action of Replevin for the recovery of such goods, chattels, or other personal property aforesaid, and for the recovery of the damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are now by law brought and maintained by any person complaining of an unlawful distress; and the Writ of Replevin to be issued in any such case or action hereafter to be brought, shall be framed, according to the circumstances of each case, and tested in the name of the senior Judge of the Court out of which the same shall issue, and on the day of the month and year in which it shall issue, and be returnable on the eighth day after the service of a copy thereof on the defendant, or if he cannot be found, by leaving such copy at his usual and last place of abode, with his wife, or some other grown person being a member of his household, or of the house wherein he resided as aforesaid, and may be in the following form:

Preamble.

Action of Replevin to lie in certain cases where actions of trover or trespass now lie.

Writ may be in a certain form.

County }
or }
United Counties of } Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. The Form.
(as the case may be.) }

To the Sheriff of (here insert name of County or United Counties)—Greeting:

We command you that, without delay, you cause to be replevied to (A. B.) his goods, chattels and personal property following, that is to say: (here set out the description of property as in the affidavit filed,) which the said (A. B.) alleges to be of the value of , and which (C. D.) hath taken and unjustly detains. (or unjustly detains, as the case may be,) 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 Queen's Bench, (or Court of Common Pleas,) at Toronto, (or our County Court,) at in and for the County, (or United Counties, as the case may be,) within eight days after service of a copy of this Writ upon the said (C. D.) to answer to the said (A. B.) in a Plea of taking and unjustly detaining (or unjustly detaining, as the case may be,) his goods, chattels and personal property aforesaid. And what you shall do in the premises, make appear to us in our said Court on the day and at the place aforesaid; And have there and then this Writ.

Witness of our said Court, at this day of A. D. 18 .

(Signature of Clerk.)

This Writ is to continue in force for three months from the teste thereof, and no longer.

Proviso.

Provided always, That the Sheriff shall not serve a copy of the said Writ of Replevin on the defendant, until he shall have replevied the property therein mentioned, or until he shall have replevied some part thereof, and cannot replevy the residue, by reason of the same having been eloigned out of his bailiwick, by the defendant, or by reason of the same not being in the possession of the defendant, or of any person for him.

Affidavit to be taken before the Writ issues.

II. And be it enacted, That before any Writ of Replevin shall issue for the recovery of any such goods, chattels, or other personal property, the person claiming the same, his servant or agent, shall make an affidavit that such person claiming as aforesaid, is the owner of the property claimed, which shall be described in such affidavit, or that he is lawfully entitled to the possession thereof, and shall state the value thereof to the best of the deponent's belief, which affidavit shall and may be sworn before a Judge of one of the Superior Courts of Record in Upper Canada, the Judge of the County Court, or a Commissioner for taking affidavits in Her Majesty's Court of Queen's Bench or Common Pleas in Upper Canada, or a Commissioner duly appointed under the Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to authorize the Judges of the Superior Courts of Record in Upper Canada to appoint Commissioners for taking affidavits in Lower Canada*, and shall be entitled in the Court in which such action of Replevin may be brought, and filed therein, to be kept among the papers in the cause.

Defendant not appearing, plaintiff may file appearance for him, and proceed.

III. And be it enacted, That when the party or parties, defendant in any such suit of Replevin, shall have been duly served with a copy of the Writ of Replevin issued in any such suit, and if he, she or they do not enter their appearance in such suit, at the return of such Writ of Replevin, the plaintiff or plaintiffs in such action may, after filing such Writ, with an affidavit of the service thereof having been made on the defendant in manner before mentioned and directed, enter a common appearance for such defendant, and proceed thereon as if such defendant had appeared.

Condition and amount of the Bond to be taken by the Sheriff.

IV. And be it enacted, That the condition of the Bond to be taken by the Sheriff executing any such Writ of Replevin, and prescribed by the Act of the late Province of Upper Canada, passed in the fourth year of the Reign of His late Majesty King William the Fourth, chapter seven, intituled, *An Act to facilitate the remedy by Replevin*, may be altered in the wording thereof so as to correspond with the Writ in any such action to be brought; and the said Bond shall be taken for treble the amount of the value of the property to be replevied as sworn to in the affidavit filed by or on behalf of the claimant or plaintiff, and stated in such Writ of Replevin.

Where the action may be brought.

V. And be it enacted, That whenever an action of Replevin shall be brought for the recovery of goods, chattels or other personal property aforesaid, distrained for any cause, it shall be laid and brought in the County or United Counties in which the distress was made, and not elsewhere, and in other cases, the action shall or may be laid and brought in any County or United Counties.

What the Sheriff shall state in his return.

VI. And be it enacted, That the Sheriff shall return the Writ at or before the return day thereof, and shall annex thereto, and transmit therewith, the names of the persons who were sureties in the Bond taken by him from the plaintiff, with their places of residence and additions, together with the date of such Bond, and the name or names of the witnesses thereto, and shall state in his return the number, quantity and quality of the articles or property replevied thereunder, and if the Sheriff shall have replevied only a portion of the property and effects in said Writ mentioned and set forth, and cannot replevy the residue by reason of the same having been eloigned out of his bailiwick by the Defendant, or by reason of the same not being in the possession of the Defendant, or of any other person for him, that then he shall state in his said return the articles of property which he cannot replevy, and the reason therefor.

As to pleadings, &c. in such action.

VII. And be it enacted, That the Plaintiff and Defendant to any such action or suit shall declare, avow, reply, rejoin and otherwise plead to issue, and have and take all subsequent proceedings to trial and judgment within the same time as is in other personal actions, and in case of default or neglect so to do, shall be liable to the like judgment of discontinuance, *non pros.*, or non-suit, as in other personal actions.

VIII. And be it enacted, That where the original taking of the goods, chattels, or other personal property, is not complained of, but the action is founded on a wrongful detention thereof, the declaration shall conform to the Writ, and may be the same as in an action of detinue, and where the action is founded upon a wrongful taking and detention of the property aforesaid, it shall not be necessary for the Plaintiff to state in his declaration a place certain within the city, town, township or village as that where the property was taken; provided always, that if the Defendant, in any such action last aforesaid, justifies or avows the right to take or distrain any such goods, chattels, or other property aforesaid, in or upon any place or premises, in respect of which the same would be liable to forfeiture, distress for rent, damage, feasant custom, rate or duty, by reason of any law, usage or custom now existing and in force, such Defendant shall state in such plea of justification or avowry a place certain within the City, Town, Township or Village within the County, as that where such property was so distrained or taken.

Declaration to be made to suit the case, &c.

Proviso: if the defendant avows and justifies.

IX. And be it enacted, That the Defendant shall be entitled to the same pleas in abatement or bar as heretofore, and may plead as many matters in defence as he shall think necessary, and which would by law constitute a legal defence, if such action were an action of trespass, when the taking be complained of, or were an action of detinue when the detention only be complained of.

What pleas and matters of defence the defendant shall have.

X. And be it enacted, That the property to be replevied, or any part thereof, be secured or concealed in any dwelling house or other building or enclosure of the Defendant, or of any other person holding the same for him, and if the Sheriff shall have publicly demanded from the owner and occupant of the premises deliverance thereof, and if the same be not delivered to him within twenty-four hours after such demand made, he may or shall, if necessary, break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid, and that if the property to be replevied or any part thereof be concealed either about the person or the premises of the Defendant or any other person holding the same for him, and if the Sheriff shall have demanded from the Defendant, or such other person aforesaid, deliverance thereof, he shall and may, if necessary, search and examine the person and premises of the Defendant, or of such other person aforesaid, for the purpose of replevying such property or any part thereof, and shall make replevin according to the Writ aforesaid.

Sheriff may in certain cases break open any house, &c., in which the goods replevied are.

C A P. L X V.

An Act to amend the Upper Canada Jurors' Act of one thousand eight hundred and fifty, and to make some further provisions for the better accomplishment of the object thereof.

[30th August, 1851.]

WHEREAS it is expedient to amend some of the provisions of the Act passed in the last Session of the Parliament of this Province, chaptered fifty-five, and intituled, *An Act for the consolidation and amendment of the Laws relative to Jurors, Juries and Inquests in that part of this Province called Upper Canada*, and to make some further provisions for the better accomplishment of the object thereof: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That where there shall not appear as many as twelve of the Grand Jurors summoned upon any Panel returned upon any Precept to any Court of Criminal Jurisdiction, every such

Preamble.

13 & 14 Vict. c. 55.

When so many as twelve Grand Jurors shall not appear, the Court may order the