

the property was distrained and taken under color of a distress for rent or damage feasant, and in such case the writ shall state that the defendant hath taken and unjustly detains the property, under color of a distress for rent or damage feasant (as the case may be).

In case the writ issue without an order the sheriff is to take and detain the property, and is not to replevy it to the claimant without the order of a Judge or that of the Court; but may within fourteen days from the time of his taking the same re-deliver it to the defendant, unless in the meantime the claimant obtain and serve on the sheriff a rule or order directing a different disposition of the property, but this is not to apply in case of a distress for rent or damage feasant (23 Vic. cap. 45, s. 2).

When an application for an order is made, the Court or Judge may proceed on the *ex parte* application of the claimant, or may grant a rule or order on the defendant to show cause why the writ should not issue; and may, on the *ex parte* application, or on the return of the rule or order to show cause, grant or refuse the writ, or direct the sheriff to take a bond in less or more than treble the value of the property, or may direct him to take and detain the property until the further order of the Court, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same, (on the return of a rule or order to show cause), as, under the circumstances in evidence, appear just (Ib. s. 3).

In case a writ of replevin is issued, whether with or without an order, or in case any rule or order is made under the preceding section, the defendant may, at any time, or from time to time, apply to the Court or Judge, on affidavit or otherwise, for a rule or order on the plaintiff to show cause why the writ, or why the rule or order respecting the same, should not be discharged, or why the same should not be varied or modified, in whole or in part, as therein specified, or why all further proceedings under the writ should not be stayed, or why any other relief, to be referred to in the rule or order so applied for, should not be granted to the defendant, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the Court or Judge may make such rule or order thereon, as, under all the circumstances, best consists with justice between the parties (Ib. sec. 4, *Scott v. McRea*, 3 U. C. Pr. 16).

The writ must be tested in the same manner as a writ of summons under the Common Law Procedure Act, and be returnable on the eighth day after service of a copy thereof, and may be in the form given (Con. Stat. U. C. cap. 29, sch. A) or otherwise adapted to the circumstances of the case (Con. Stat. U. C. cap. 29, s. 5).

The copy of writ should be served on defendant person-

ally, or if he cannot be found, by leaving a copy at his usual or last place of abode, with his wife, or some other grown person being a member of his household or an inmate of the house wherein he resided (Ib. s. 6).

The sheriff is not to serve the copy of writ until he has replevied the property or some part of the property therein mentioned—if he cannot replevy the whole in consequence of the defendant having eligned the same out of his county, or because the same is not in the possession of the defendant or of any person for him (Ib. s. 7).

Before the sheriff act on any writ of replevin he is to take a bond in treble the value of the property to be replevied, as stated in the writ, conditioned that if the plaintiff do prosecute his suit with effect and without delay against defendant for the taking, and unjustly detaining (or “unjustly detaining,” as the case may be) of the property described, make a return of the property, if a return thereof be adjudged, and pay such damages as the defendant shall sustain by the issuing of the writ of replevin if the plaintiff fail to recover judgment in the suit; and further, do observe, keep, and perform all rules and orders made by the Court in the suit, then the bond to be void, or else to remain in full force and virtue (Con. Stat. U. C. cap. 29, s. 8; Form B; 23 Vic. cap. 45, s. 5).

In case 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 in case the sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same be not delivered to him within twenty-four hours after such demand, he may, and if necessary shall 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 (Con. Stat. U. C. cap. 29, s. 9).

If the property to be replevied, or any part thereof, be concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the sheriff demands from the defendant or such other person aforesaid deliverance thereof, and deliverance be neglected or refused, he may, and if necessary, shall search and examine the person and premises of the defendant or of such other person for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ (Ib. s. 10).

The sheriff must return the writ at or before the return day thereof, and must transmit annexed thereto:—

1st. The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;