courts in England refused to permit replevin to be brought in respect of goods seized under an execution issued upon a judgment recovered in the superior courts.

Our law of replevin in this country would seem to have its foundation in 4 Wm. IV. cap 7; for the sheriff in this country, having no county court, it is difficult to see how the action could have been brought before that statute. (See *Hutt* v. *Keith*, 1 U.C.Q.B. 478). By that Act, the remedy seems to have been limited to the case of a wrongful distress, probably because of there having been an opinion prevalent that it was only in such case that replevin lay in England. The Act provides 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 precipe, obtain from the crown office a writ of replevin in a form given by the statute.

This law was amended by 14 & 15 Vic. cap. 64, A.D. 1851, whereby it was enacted "that whenever any goods, chattels, deeds, &c., 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 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." The writ was to be obtained only upon an affidavit of the claimant, his servant or agent, that the person claiming is the owner of the property claimed, describing it.

The effect of this Act was to introduce the law as existing in England, namely, to authorize replevin to be brought for any wrongful taking, with this further addition, that it should also lie wherever trover lay.

It happily seldom occurs that a sheriff or his officer, under a writ of execution against B., wantonly and vexatiously, and without any reasonable excuse, takes from A his goods, of which he is in actual visible possession as undisputed owner. Consequently, we do not find that to redress such a wrong, any person required to avail themselves of the privileges of the Act by bringing replevin.

But cases of persons not being in actual possession, but claiming to be the owners, by virtue of some contract with an execution debtor, of goods taken under an execution from the actual visible possession of an execution debtor as apparent owner, are cases which do frequently occur in practice. *In such cases as last mentioned the action of replevin did not lie according to the law of England.* That remedy was only available when goods were taken from and out of the possession of the plaintiff in replevin, who also claimed to be the true owner, and therefore entitled to *retain* the possession and enjoyment of the goods taken. Replevin being the *re* delivery of the goods taken *to the person from whose actual possession they were taken*, upon pledges given by him to prosecute his claim of right to *retain* such possession. Although, according to the law of England, the real owner of goods taken under execution from the actual possession of an execution debtor as apparent owner, could not maintain replevin, nevertheless, upon the construction put upon 14 & 15 Vic. cap. 64, such persons were permitted in this Province to bring *replevin* against the sheriff, and to have his right tried in that form of action. Of such class of actions, *Short* v. *Ruttan* (Sheriff), 12 U. C. Q B. 79, is an example.

The words of the Act authorizing the owner to bring replevin in all cases wherein he could maintain trespass or trover, seemed to authorize him to bring an action of *replevin*, although the goods were never taken out of his actual possession, and although according to the law of England replevin in such a case could not be maintained. Doubts, however, were entertained whether it could have been the intention of the Legislature to place the remedy by replevin upon a footing so different from that upon which *ex vi termini*, and according to the law of England, it stood in England. Accordingly, to remove these doubts, the Act 18 Vic. cap. 118, appears to have been passed. The preamble of that Act recited that, "Whereas doubts have arisen whether by the provisions of a certain Act of the Parliament of this Province, passed in the fourteenth and fifteenth years of Her Majesty's reign, entitled, 'An Act to amend and extend the law relative to the remedy by replevin in Upper Canada,' when any goods and chattels or other personal property and effects in the said Act mentioned have been seized and taken in execution, or by attachment or otherwise, under process from any Court of Record in Upper Canada, *the same can be replevied* and *taken out of the hands and custody of the sheriff or other officer to whom the execution of such process of right belongs;* and whereas it is expedient to remove such doubts,"—and the Act declared that the said Act did not authorize, and shall not be construed to have authorized and permitted, or to authorize and permit, the replevying and taking out of the hands and custody of any sheriff or other officer, as aforesaid, any such goods and chattels which such sheriff or other officer shall have seized and taken, *and shall have in his lawful keeping under and by virtue* of any process whatsoever issued out of Her Majesty's Courts of Record in Upper Canada. Upon the passing of this Act it was held, in accordance with the law as it was always understood in England, that a person out of possession could not maintain replevin in respect of goods seized and taken in execution from and out of the possession of the execution debtor: *Calcutt* v. *Ruttan*, 13 U.C. 146. That decision is what would have been decided if the remedy by replevin had existed in this Province precisely as it existed in England, and the 14 & 15 Vict. cap. 64, had never been passed.

In so far as goods taken in execution were concerned, the object and effect of the Act 18 Vic. seems to have been to place the law in this Province upon the same footing as in like cases it was in England; but the Act went further, and extended to goods seized under an attachment against absconding debtors *the like* protection from the remedy by replevin, and, as it seems to me, *only the like* protection as by the law of England surrounded goods taken in execution. And there appears to be some reason for this, although the writ of attachment is not