

No. 58.

4th Session, 3d Parliament, 14 Victoria, 1851.

BILL.

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

Received and read a first time, Tuesday, 3rd June,
1851.

Second Reading, Monday, 9th June, 1851.

Mr. LYON.

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B I L L .

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

WHEREAS it is expedient to amend and extend the Preamble.
remedy by Replevin in Upper Canada: Be it therefore enacted, &c.

That whenever any goods, chattels, or other personal
5 property, for the taking or detention of which an action of
trespass or trover may now be sustained, have been or shall
have been wrongfully distrained, or otherwise wrongfully
taken, or have been or shall be wrongfully detained, the
owner, or person or persons, or corporation, who by law
10 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
15 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
20 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, and may be
25 in the following form:

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

Writ may be in a certain form.

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

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.

Where the action may be brought.

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.

What the Sheriff shall state in his return.

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 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 nonsuit, as in other personal actions.

As to pleadings, &c. in such action.

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 trover; 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, 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 defendants 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 was an action of trespass,

What pleas and matters of defence the defendant shall have.

when the taking be complained of, or trover when the detention only be complained of.

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

X. And be it enacted, That if the property to be replevied, or any part thereof, be secured or concealed in any dwelling house or other building or enclosure, 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.