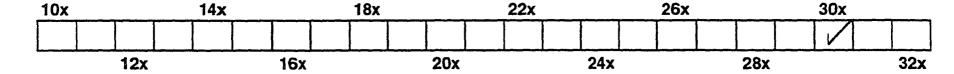
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3d Session, 6th Parliament, 23rd Victoria, 1860.

## BILL.

An Act to amend the Law of Replevin in Upper Canada.

Received and read, first time, Monday, 5th March, 1860.

Second reading, Wednesday 7th March, 1860.

Mr. Mowat.

QUEBEC:

An Act to amend the Law of Replevin in Upper Ca-

WHEREAS it is expedient to amend the law relating to Replevin Preamble. so as to prevent the same being perverted to purposes of injustice; Her Majesty, &c., enacts as follows:

I. No Writ of Replevin shall issue, unless the affidavit therefor on what con-5 states, in addition to what is required by the 4th Section of the ditions only Act relating to Replevin, that the deponent is advised and beReplevin
lieves that the claimant is entitled to an order for the Writ, and shall issue. that there is good reason to apprehend that unless the Writ is issued without waiting for an order, the delay would materially prejudice the 10 just rights of the claimant, in respect to the property,—or unless an order is granted for a Writ of Replevin, on an affidavit by the person claiming the property or some other person, showing to the satisfaction of the Court or Judge, the facts of the wrongful taking or detention which is complained of, as well as the value and description 15 of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be.)

II. In case the Writ issues without an order, the Sheriff shall What the take and detain the property, and shall not replevy the same to the Sherif shall claimant without the order of a Judge or a rule of the Court in that writ issues 20 behalf; but may, within days from the time of his taking the without a same, re-deliver it to the Defendant, unless in the meantime the Claim- Judge's order. ant obtains and serves on the Sheriff a Rule or Order directing a different disposition of the Property.

III. When an application for an order is made, the Court or Discretionary 25 Judge may proceed on the ex parte application of the claimant, power of the or may grant a rule or order on the defendant to shew cause why Judge when the writ should not issue; and may on the ex parte application anapplication or on the return of the rule or order to shew cause, grant or refuse for an order the writ, or direct the Sheriff to take a bond in less or more than treble 30 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 shew cause), as, under the circumstances in evidence, appear 35 just.

is made.

IV. In case a writ of Replevin is issued, whether with or without an Defendant 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 show cause Court or Judge, on affidavit or otherwise, for a rule or order on the why the wit, 40 plaintiff to shew cause why the writ, or why the rule or order respecting not be disthe same, should not be discharged, or why the same should not be charged to 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 or safety 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.

Form of bond to the Sheriff.

V. The bond to be taken by the Sheriff under the said Act shall be conditioned not only to the effect mentioned in form B, appended to the said Act, but also that the Plaintiff do observe, keep, and perform all rules and orders made by the Court in the suit.

Appeal from the order of a Judge to the full Court.

VI. The order of a Judge made under this Act shall be subject to 10 appeal to, and review by the full Court in which the matter is depending, and a rule or order of a County Court or County Judge shall be subject to the appeal provided for by the 68th section of the Act respecting County Courts.

Certain sections of Common Law Procedure Act to apply.

VII. The sections of the Common Law Procedure Act, numbered re- 15 spectively from 333 to 341, shall be deemed to apply to this Act as if this Act had been incorporated with the said Common Law Procedure Act, but it shall not be necessary to lay before Parliament the Rules, Orders, or Regulations, made by the Judges for the purposes of this 20 Act.

Act limited to v. c.

VIII. This Act applies to Upper Canada only.