

No. 15.

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:

PRINTED BY THOMPSON & CO., ST. URSULE STREET.

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

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

Preamble.

I. No Writ of Replevin shall issue, unless the affidavit therefor states, in addition to what is required by the 4th Section of the Act relating to Replevin, that the deponent is advised and believes that the claimant is entitled to an order for the Writ, and that there is good reason to apprehend that unless the Writ is issued without waiting for an order, the delay would materially prejudice the 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 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.)

On what conditions only the writ of Replevin shall issue.

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

What the Sheriff shall do when the writ issues without a Judge's order.

III. 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 shew cause why the writ should not issue ; and may on the ex parte application or on the return of the rule or order to shew 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 shew cause), as, under the circumstances in evidence, appear just.

Discretionary power of the Court or Judge when an application for an order is made.

IV. 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 shew 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

Defendant may apply for a rule to show cause why the writ, &c., should not be discharged, &c.

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. 5

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 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. 10

Certain sec-
tions of
Common Law
Procedure
Act to apply.

VII. The sections of the Common Law Procedure Act, numbered respectively 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 Act. 15 20

Act limited to
U. C.

VIII. This Act applies to Upper Canada only.