

CHAPTER 58.

Of Distress and Replevin.

SECTION

- 1.—Upon distress for rent, particulars to be furnished.
- 2.—Articles exempt from distraint.
- 3.—Sheriffs and bailiffs authorized to make replevies.

SECTION

- 4.—Party replevying to give bond.
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Schedules.

1 In all cases of distress for rent, the person making any such distress shall deliver to the person in possession of the premises, for the rent of which such distress shall be made, or, in case there shall not be any person found in possession, shall affix upon some conspicuous part of such premises a particular in writing of the rent demanded, specifying the amount thereof, the time when the same accrued, and the person by whom or by whose authority such distress is made.

2. The working tools and implements of trade of any person, his fishing skiff or punt, the necessary cooking apparatus, the bedding and wearing apparel of himself and his family, shall not in any case be liable to be taken for any distraint for rent.

3. The sheriffs of the several districts of this Island, as well as their sworn bailiffs to be appointed by them at convenient places within their

respective districts, and for whom and for whose acts the sheriffs shall be respectively responsible, are hereby authorized to make replevies and deliverances of distress in manner hereinafter directed; and the said sheriffs shall from time to time notify and publish in the Newfoundland *Royal Gazette* the names and places of residence of all such sworn bailiffs, who shall have authority to make such replevies and deliverances as aforesaid in the sheriff's name, and in the same manner as the sheriff may and ought to do.

4. In all cases of distress for rent and otherwise, the person whose goods shall be distrained, and who shall be desirous of replevying the same or any part thereof, shall enter into a bond with the sheriff of the district, with one or more sufficient sureties, to the satisfaction of the sheriff or the bailiff by whom the said bond shall be taken, which bond shall be in the form set forth in the schedule A to this chapter annexed; and the penalty of such bond shall be a sum sufficient to cover the value of the cattle or goods distrained, if taken for any other cause than for rent, and if taken for rent, then in a sum double the value of the cattle or goods distrained; and upon the execution of such bond the said sheriff, or such bailiff as aforesaid in the name of the sheriff, shall forthwith issue his warrant to replevy the cattle or goods so distrained as aforesaid, which warrant shall be in the form C in the schedule to this chapter annexed; and such warrant may be executed at any time before the sale of any such cattle or goods so distrained, and may by law be sold in pursuance of any such distress.

5. The sheriff or bailiff taking any replevin bond shall, at the request and costs of the person by whom the distraint has been made, assign such bond to the person aforesaid, by endorsing the same and attesting it under his hand and seal, in the presence of two or more credible witnesses, in the form set forth in the schedule B to this chapter annexed; and if the bond so taken and assigned be forfeited, the person making distraint may bring an action and recover thereon in his own name; and the Court may, by rule, give such relief to the parties upon such bond as may be agreeable to justice; and such rule shall have the nature and effect of a defeazance of such bond.

6. The party obtaining a replevy of cattle or other goods so to be distrained as aforesaid, shall, on or before the first day of the then next term or sittings of the Court, to be mentioned in such warrant of replevin, or, if the Court be sitting, then within four days after the execution of such warrant of replevin, proceed with the action of replevin pursuant to the conditions of the bond to the sheriff, as above provided.

7. This chapter shall extend to all cases in which replevin will lie,

SCHEDULE A.

REPLEVIN BOND.

Know all men by these presents, that we, A. B., of _____, G. A., of _____, and T. R., of _____, are jointly and severally held and firmly bound to G. H., Esquire, Sheriff of the _____ district, in the sum of _____ dollars (a sufficient sum to cover the value of the cattle or goods distrained, if taken damage feasant, or, if for rent, then double the value of the cattle or goods taken), to be paid to the Sheriff or his certain attorney, executors, administrators or assigns; for which payment to be well and truly made, we bind ourselves and each and every of us, and our and each and every of our executors and administrators, firmly by these presents. Sealed with our seals.

Dated this _____ day of _____, A. D. _____.

The condition of this obligation is such, that if the above bounden A. B. do appear at the next term or sittings of the Supreme Court, which shall next sit within the district _____, to be holden at _____, for the said district (or if it be in term time, then say, "in this present term of the Court at _____")—and do then and there prosecute his suit with effect and without delay against C. D. for the taking and unjustly detaining of his cattle, goods and chattels, to wit, (state the cattle or goods distrained), and do make return of the said cattle, goods and chattels, if a return thereof shall be adjudged, then this present obligation shall be void and of none effect, or else to be and remain in full force and virtue.

A. B., (L. s.)

G. A., (L. s.)

T. R., (L. s.)

SCHEDULE B.

ASSIGNMENT OF REPLEVIN BOND TO BE ENDORSED ON BOND.

Know all men by these presents, that I, G. H., Esquire, Sheriff of the _____ district of Newfoundland, have, at the request of the above-named C. D., the avowant (or person making cognizance), assigned over to him, the said C. D., this replevin bond, according to the statute in such case made and provided.

Dated, &c.

G. H.

SCHEDULE C.

WARRANT OF REPLEVIN.

District, }
To wit: }

G. H., Esquire, Sheriff of the district of Newfoundland,
to , and , and to every of them, jointly and severally,
greeting:

Whereas A. B. hath found me sufficient security, as well for prosecuting his suit with effect against C. D. for taking and unjustly detaining his cattle, goods and chattels, to wit, (set out the cattle or goods), which the said C. D. hath taken and unjustly detains, as it is said: therefore, on behalf of the said A. B., I command you, jointly and severally, that without delay, you replevy and cause to be delivered to the said A. B., his said cattle, goods and chattels, and that you immediately summon C. D. to appear at the next term of the Supreme Court to be holden at in and for the said district (or as the case may be) to answer the said A. B. in the plea aforesaid; and in what manner you shall have executed the said precept certify to me at the time and place aforesaid, under the peril attending the neglect thereof.

Given under my seal this }
day of , A. D. 18 . }

G. H., *Sheriff*, (L. S.)

(Or if granted by a bailiff, say L. H., one of the bailiffs of the said Sheriff, according to the form of the statute.)