

CHAPTER 339

Replevin Act

- Title.** **1.** This Act may be cited as the *Replevin Act*. R.S. 1948, c. 289, s. 1.
- Action of replevin.** **2.** Where goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities, or other personal property or effects have been wrongfully distrained, the person complaining of such distress as unlawful may bring an action of replevin, or where such goods, chattels, property, or effects have been otherwise wrongfully taken or detained, the owner or other person entitled to maintain an action for damages therefor may bring an action of replevin for the recovery of the goods, chattels, property, or effects; and in any such action may claim for and recover the damages (if any) sustained by reason of the unlawful distress, or of the unlawful caption and detention, or of the unlawful detention. R.S. 1948, c. 289, s. 2.
- Goods seized not to be taken out of custody of Sheriff.** **3.** Nothing in this Act contained shall be deemed to authorize the replevying of, or taking out of the custody of any Sheriff or other officer, any goods and chattels or other personal property or effects seized or taken in execution by him under any writ or process of execution sued or issued out of any Court having by law jurisdiction to grant or issue such writ or process of execution. R.S. 1948, c. 289, s. 3.
- Actions may be brought in County Court.** **4.** All actions of replevin may be brought in a County Court in cases provided for by the *County Courts Act*, and this Act shall apply to such actions. R.S. 1948, c. 289, s. 4.
- Replevin rules.** **5.** The rules set forth in the Schedule are a portion of this Act. R.S. 1948, c. 289, s. 5.
- General rules and regulations.** **6.** The Lieutenant-Governor in Council may from time to time, by Order, make, alter, amend, vary, or annul rules and regulations, not inconsistent with this Act, for regulating the pleading, practice, and procedure in all matters coming under or within the scope of this Act, and for prescribing the fees to be payable to the Crown in respect of all such matters, and generally for ensuring the more full and perfect carrying-out of all or any of the enactments in this Act contained; and all such rules and regulations shall be published in such manner as the Lieutenant-Governor in Council may deem expedient, and upon such publication shall have the force of law. R.S. 1948, c. 289, s. 6.

SCHEDULE

REPLEVIN RULES

(Section 5)

Writ of
replevin
abolished.

Order of
replevin.

1. The writ of replevin is hereby abolished. Whenever a party is entitled to replevy goods, he may obtain an order therefor in an action commenced by a writ of summons.

2. An order of replevin may be obtained

(a) on motion therefor on an affidavit by the person claiming the property, or some other person showing to the satisfaction of the Court or a 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);

(b) or on præcipe if the person claiming the property, his servant or agent, makes an affidavit (which shall be intituled and filed in the Court out of which the order is to issue) stating

(i) that the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof, describing the property in the affidavit;

(ii) the value thereof to the best of his belief;

(iii) that the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession within two months next before the making of the affidavit;

(iv) that the deponent is advised and believes that the claimant is entitled to the order;

(v) and that there is good reason to apprehend that, unless the order is issued without waiting for a motion, the delay would materially prejudice the just rights of the claimant in respect of the property;

(c) or on præcipe (in case the property was distrained for rent or damage feasant) if the person claiming the property, his servant or agent, makes an affidavit (which shall be intituled and filed in the Court from which the order is to issue) stating

(i) that the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

(ii) the value thereof to the best of his belief;

(iii) that the property was taken under colour of a distress for rent or damage feasant, and in such case the order shall state that the defendant has taken and unjustly detains the property under colour of a distress for rent or damage feasant (as the case may be);

(d) except as hereinbefore mentioned, no order of replevin shall be issued.

Discretionary
power of the
Court or
Judge when
an applica-
tion for an
order is made.

3. Where a motion for an order is made, the Court or Judge may proceed on the ex parte application of the plaintiff, or may direct notice to be served on the defendant to show cause why the order should not issue; and may, on the ex parte application, or on the return of the motion, grant or refuse the order, or direct the Sheriff to take a bond in less or more than double 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 order, or in refusing the same, on the return of a motion, as under the circumstances in evidence appear just.

Defendant
may apply
to discharge
order.

4. In case an order of replevin is issued, the defendant may, at any time, or from time to time, on notice to the plaintiff, apply to the Court or a Judge, on affidavit or otherwise, to discharge, vary, or modify the order, or to stay proceedings under

the order, or for any other relief to be specified in the notice, with respect to the return, safety, or sale of the property, or any part as, under all the circumstances, best consists with justice between the parties.

Contents of order and how to be dated.

5. The order shall state the description and value of the property, and shall be dated on the day on which it is made, and may be in the words or effect of Form No. 1 in the Schedule hereto, or otherwise adapted to the circumstances of the case.

Sheriff to take bond before he replevies.

6. (1) Before the Sheriff acts on the order, he shall take a bond from the plaintiff, with two sufficient sureties, in double the value of the property to be replevied, as stated in the order, which bond shall be assignable to the defendant; and the bond and assignment thereof may be in the words or to the effect of Form No. 2 in the Schedule hereto, the condition being varied to correspond with the order.

(2) The bond shall be subject to the provisions of the *Bond Procedure Act*.

(3) The bond to be taken from the plaintiff may be made by the plaintiff and a company licensed under the *Insurance Act* and authorized to do the business of a guarantee company, and in such case Form No. 2 may be varied to meet the circumstances.

Indemnity of defendant in replevin proceedings.

7. Where an order of replevin is issued for any personal property which had not been previously taken out of the plaintiff's possession, and for which the plaintiff might formerly have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action; and the bond to be taken by the Sheriff shall be conditioned, not only as heretofore required in that behalf, but also to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges, and expenses which the defendant may incur, including reasonable costs not taxable between party and party. This rule shall not apply to cases of distress for rent or damage feasant.

Sheriff not to serve writ of summons till he has replevied.

8. The Sheriff shall not serve a copy of the writ of summons or the order until he has replevied the property, or some part of the property therein mentioned, if he cannot replevy the whole in consequence of the defendant having eligned the same out of his county, or because the same is not in the possession of the defendant, or of any person for him.

What Sheriff shall do when the order issues on præcipe.

9. In case the order issues on præcipe, the Sheriff shall take and detain the property, and shall not replevy the same to the plaintiff without an order of the Court or a Judge in that behalf, but may, within fourteen days from the time of his taking the same, redeliver it to the defendant unless in the meantime the plaintiff obtains and serves on the Sheriff an order directing a different disposition of the property; but this rule shall not apply in case of a distress for rent or damage feasant under Rule 2.

If property concealed in any house, how Sheriff to act.

10. In case the property to be replevied or any part thereof is secured or concealed in any dwelling-house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the Sheriff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same is not delivered to him within four hours after such demand, he may, and shall if necessary, break open such house, building, or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the order.

If property concealed about the person or premises of defendant.

11. If the property to be replevied or any part thereof is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the Sheriff demands from the defendant or such other person deliverance thereof, and deliverance is neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant or

other person for the purpose of replevying the property or any part thereof, and shall make replevin according to the order.

When order
to be returned
with schedule
annexed.

12. The Sheriff shall return the order on or before the tenth day after the service thereof, and shall transmit annexed thereto

- (a) the names of the sureties in and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto;
- (b) the place of residence and additions of the sureties;
- (c) the number, quantity, and quality of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the order, and cannot replevy the residue by reason of the same having been eloigned out of his county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy and the reason why not.

If Sheriff
returns that
the property
has been
eloigned,
order to issue.

13. If the Sheriff makes such a return of the property distrained, taken, or detained, having been eloigned, as would have warranted the issuing of a *capias* in *withernam* by the law of England on the fifth day of December, 1859, then upon the filing of such return an order shall be issued on *præcipe* in the words or to the effect of Form No. 3 in the Schedule hereto, which shall have the same force and effect as a *capias* in *withernam* had, and before executing such order the Sheriff shall take security as provided by Rule 6.

Damages on
judgment by
default.

14. In case the plaintiff becomes entitled to sign judgment by default, he shall be at liberty to sign final judgment for the sum of five dollars and costs according to the proper scale, but shall not be entitled to recover a larger sum except upon an assessment before a Judge or jury, or upon filing the written consent of the defendant or his solicitor, and an affidavit verifying the signature to such consent.

SCHEDULE OF FORMS

No. 1

ORDER OF REPLEVIN

In the Supreme Court of British Columbia

, Judge in Chambers

Date

Between *A. B.*, Plaintiff

and

C. D., Defendant

Upon the application of the above-named plaintiff, and upon reading the affidavit of filed, and upon hearing :

It is ordered that the Sheriff of [*here insert the name of the county*] do without delay take the security required by law and cause to be replevied to the plaintiff his goods, chattels, and personal property following, that is to say [*here set out description of property*], as in the affidavit filed, which the said plaintiff alleges to be of the value of \$, and to have been taken and unjustly detained [*or unjustly detained, as the case may be*] by the defendant, *C. D.*, in order that the said plaintiff may have his remedy in that behalf.

And it is further ordered that the said Sheriff do forthwith, after the execution of this order, make return to [*insert here the officer in whose office the appearance in the action is to be entered*] what he shall have done in the premises, and do also return this order.

No. 2

REPLEVIN BOND

Know all men by these presents that we, *A. B.* (the plaintiff), of _____; *W. G.*, of _____; and *J. S.*, of _____, are jointly and severally held and firmly bound to *W. P.*, Esquire, Sheriff for the County of _____, in the sum of \$ _____ of lawful money of Canada, to be paid to the said 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 in the whole, our and each and every of our heirs, executors, and administrators, firmly by these presents, sealed with our seals.

Dated this _____ day of _____, one thousand nine hundred and _____.

The condition of this obligation is such that if the above-bounden *A. B.* do prosecute his suit with effect and without delay against *C. D.* for the taking and unjustly detaining [or unjustly detaining, *as the case may be*] of his cattle, goods, and chattels, to wit [here set forth the property distrained, taken, or detained], and do make a return of the said property, if a return thereof shall be adjudged, and also do pay such damages as the defendant shall sustain by the issuing of the writ of replevin if the said *A. B.* fails to recover judgment in his said suit, and further do observe, keep, and perform all rules and orders made by the Court in the said suit, then this obligation shall be void, or else remain in full force and virtue.

Signed, sealed, and delivered }
in the presence of— }

FORM OF ASSIGNMENT

Know all men by these presents that I, *W. P.*, Esquire, Sheriff for the County of _____, have, at the request of the within-named *C. D.*, the avowant [or person making cognizance] in this cause, assigned over this replevin bond unto the said *C. D.*, pursuant to the Statutes in such case made and provided.

In witness whereof I have hereunto set my hand and seal of office this _____ day of _____, 19 _____.

Signed, sealed, and delivered }
in the presence of— }

No. 3

ORDER OF WITHERNAM

In the Supreme Court of British Columbia

Between *A. B.*, Plaintiff

and

C. D., Defendant

Upon the application of the plaintiff, and it appearing by the return of the Sheriff of the _____ of _____ to the order of replevin made herein on the _____ day of _____, that the goods, chattels, and personal property mentioned in said order have been eloiigned by the defendant, *C. D.*, out of the bailiwick of the Sheriff of _____ to places to him unknown, so that he could not replevy the same to the said plaintiff:

It is ordered that the said Sheriff do forthwith take in withernam the goods, chattels, and personal property of the said defendant, *C. D.*, in his bailiwick, to the value of the goods, chattels, and personal property by the said defendant, *C. D.*, before taken, and do forthwith deliver them to the said plaintiff to be kept by him

until the said defendant, *C. D.*, delivers the goods, chattels, and personal property last aforesaid to the said plaintiff.

And it is further ordered that if the said plaintiff shall give security to the said Sheriff, as provided by law, for the prosecution of the plaintiff's claims, and for the return of the goods, chattels, and property so to be taken in withernam as aforesaid, if the return thereof shall be adjudged, then the said Sheriff do take security with two sufficient sureties from the said defendant, *C. D.*, to answer to the said plaintiff for the taking and unjustly detaining of his goods, chattels, and personal property aforesaid.

And it is further ordered that the said Sheriff do forthwith make return to [*insert here the officer in whose office the appearance in the action is to be entered*] what he shall have done in the premises, and do also return this order.

Dated this day of , 19 .

R.S. 1948, c. 289, Sch.