



38 V. 12
So qto

ANNO SEPTIMO

VICTORIÆ REGINÆ,

Sec. 19 V. No. 16. S. 83

No. 1.

Amend. by. 38 V. No. 12. S. 9+10



*By His Excellency SIR JOHN EARDLEY EARDLEY-WILMOT,
Baronet, Lieutenant-Governor of the Island of Van Diemen's
Land and its Dependencies.*

AN ACT to regulate Distresses and Replevins.

WHEREAS by reason of there being no County Courts in this **PREAMBLE.**
Island it is expedient to make provision for the granting of Replevins and the delivery of Distresses by the Sheriff of Van Diemen's Land or his Deputies and for the commencing and prosecuting Actions of Replevin the Sale of Distresses and for other purposes connected therewith—**BE IT THEREFORE ENACTED** by His Excellency Sir JOHN EARDLEY EARDLEY-WILMOT Baronet Lieutenant-Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that the Sheriff of Van Diemen's Land shall have authority by himself or any Deputy to be by him in that behalf appointed by some writing under his hand and seal of office to make Replevin and deliverance of Distresses in all cases where by the Law of England Replevin and deliverance may be made.

Sheriff of Van Diemen's Land empowered to make Replevin &c.

II. AND BE IT ENACTED that the said Sheriff or any such Deputy as aforesaid shall before deliverance be made by him of any Distresses take in the name of the Sheriff from the person or persons to whom such Replevin is granted and two sufficient Sureties a bond in double the value of the property distrained such value to be ascertained by the oath of one or more credible witness or witnesses and which oath the person granting Replevin is hereby authorised to administer conditioned for commencing within one calendar month **Bond to be taken by the Sheriff from the person to whom Replevin is granted.**

from the date of such bond and prosecuting with effect and without delay an action for the taking and detaining the property distrained and for returning such property in case a return should be awarded and such Sheriff or Deputy taking any such bond shall at the request of the avowant or person making cognizance assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses and if the bond so taken and assigned be forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name and the Court where such action shall be brought may by a rule of the same Court give such relief to the parties upon such bond as may be agreeable to justice and reason and such rule shall have the nature and effect of a defeazance to such bond.

Assignment thereof.

*See. 14 V. No. 16
S. 13.*

Proceeding and practice in Actions of Replevin.

III. AND BE IT ENACTED that every Action of Replevin shall or lawfully may be commenced in the Supreme Court of Van Diemen's Land by Writ of Summons in the form mentioned in the Schedule to this Act marked A. and be thenceforward prosecuted and dealt with in like manner as other Actions in the same Court may be prosecuted and dealt with and the laws and statutes in force in England applicable to Actions of Replevin shall be in force in this Colony and be applied in the administration of justice in the prosecution of such actions so far as the same can be applied within this Colony and all the laws regulations rules and practice of the Supreme Court of Van Diemen's Land respecting the service of Writs of Summons and appearance and default of appearance thereto now or hereafter to be in force in this Island shall extend and be applied to the service of Writs of Summons for the commencement of Actions of Replevin the appearance thereto and upon default of such appearance.

Forms of Proceedings.

IV. AND BE IT ENACTED that every Precept to replevy shall be in the form mentioned in the Schedule to this Act marked B. and every Replevin-bond shall be taken in the form in the Schedule marked C. and every Assignment of such bond shall be in the form in the Schedule marked D.

Fees to the Sheriff.

V. AND BE IT ENACTED that every such Sheriff or Deputy shall be entitled to demand and receive for the making of every Replevin and the taking of the Bond thereon a fee of Ten Shillings and for the making of every such Assignment a fee of Two Shillings and Sixpence.

Manner of proceeding where the tenant of the land distrained upon is absent from the Colony.

VI. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that in case any distress shall be levied upon any lands or tenements the tenant whereof shall at the time of such Distress being levied be absent from this Colony then it shall be lawful for the said Sheriff or any such Deputy as aforesaid to grant a Replevin and to make deliverance of the goods and chattels distrained to the agent or attorney of such tenant so being absent as aforesaid and to take such bond as aforesaid from such agent or attorney in the name of such agent or attorney and to assign such bond to the avowant or person making cognizance as aforesaid in the manner hereinbefore provided for the taking and assigning Replevin-bonds and in case such bond shall be forfeited the avowant or person making cognizance may bring an action and recover thereupon in his own name in the same manner in all respects as is hereinbefore provided for the prosecution of Actions upon Replevin-bonds and it shall be

lawful for such agent or attorney to commence and prosecute an Action of Replevin for the taking of any such Distress as aforesaid in which action the Plaintiff shall be allowed to plead the same pleas and upon the trial thereof to give in evidence and have the benefit of all the same matters and things which the tenant himself might have pleaded and given in evidence or had the benefit of if he had been the Plaintiff in the same action instead of such attorney or agent and for the purposes of this action only it shall be sufficient in any pleading to describe the goods and chattels distrained as and to be the goods and chattels of the Plaintiff as agent or attorney of such tenant and in all other respects the said action shall be prosecuted and dealt with in such and the same manner as if the action had been commenced and prosecuted by the tenant himself.

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VII. AND BE IT ENACTED that where any goods and chattels shall be distrained for any rent reserved and due upon any demise lease or contract whatsoever and the tenant or owner of the goods and chattels distrained shall not within Fifteen Days next after such Distress taken and notice thereof (with the cause of such taking) left at the chief mansion house or other most notorious place on the premises charged with the rent distrained for Replevy the same then in such case and after such Distress and notice as aforesaid and expiration of Fifteen Days the person distraining shall with the Sheriff or any such Deputy as aforesaid cause the goods and chattels so distrained to be appraised on the oath of two or more credible persons who shall swear to appraise the same truly according to the best of their understanding which oath the said Sheriff or his Deputy as aforesaid is hereby authorised to administer and after such appraisement shall sell the same for the best price that can be gotten for the same for satisfaction of the rent and charges of the distress appraisement and sale leaving the overplus if any with the Sheriff or such Deputy as aforesaid for the owner's use.

Provision for appraisement and sale of goods distrained when not replevied.

*Act. 35 11 No. 12
S. 10
Masters of any Municipality
or Police or independent
Magistrate
Magistrate (as above)
Magistrate (as above)*

VIII. AND BE IT ENACTED that in all other respects not hereinbefore otherwise provided for the Act passed in the second year of the reign of their late Majesties King William and Queen Mary intituled *An Act for enabling the Sale of Goods distrained for Rent in case the Rent be not paid in a reasonable time* and the Act passed in the Fifty-seventh year of the reign of His late Majesty King George the Third intituled *An Act to regulate the Costs of Distresses levied for Payment of small Rents* shall extend to and be applied in the administration of justice in this Colony so far as the same are applicable and can be applied.

2nd Wm. & Mary and 57 Geo. 3rd extended to this Colony.

IX. AND BE IT ENACTED that from and after the passing of this Act no person whatsoever making any Distress for rent where the sum demanded and due shall exceed the sum of Twenty Pounds for and in respect of such rent nor any person whatsoever employed in any manner in making such distress or doing any act whatsoever in the course of such distress or for carrying the same into effect shall have take or receive out of the produce of the goods and chattels distrained upon and sold or from the tenant distrained on or from the landlord or from any other person whatsoever any other or more costs and charges for and in respect of such Distress or any matter or thing done therein than such as are fixed and set forth in the Schedule hereunto annexed marked E. and appropriated to each act which shall have been done in the course of such Distress and no person or persons whatsoever shall make any

Charges on Distresses above £20.

*Sec. 35 V. No. 12
S. 7*

charge whatsoever for any act matter or thing mentioned in the said Schedule unless such act shall have been really done.

Penalties for overcharging.

X. AND BE IT ENACTED that if any person or persons whatsoever shall in any manner levy take or receive from any person or persons whatsoever or retain or take from the produce of any goods and chattels sold for the payment of such last-mentioned rent any other or greater costs and charges than are mentioned and set down in the said Schedule marked E. or make any charge whatsoever for any act matter or thing mentioned in the said Schedule and not really done then and in any such case all such proceedings shall and may be had and taken against any and every person transgressing the regulations of this Act in the levying or distraining for any such last-mentioned rent and all such persons shall be liable to and shall incur such and the like penalties as by the said Act passed in the Fifty-seventh year of the reign of His late Majesty King George the Third are directed required and imposed with respect to persons making any Distresses for rents contrary to the directions of that Act and all the rules regulations clauses provisions penalties matters and things in the said Act contained shall be construed to extend and shall be applied and put in execution with respect to any Distress or Levy which shall be made for any rent where the sum demanded and due shall exceed the sum of Twenty Pounds for and in respect of such rent and that such costs and charges as are contained in the Schedule to this Act marked E. and no other shall be taken and payable as the costs and charges of the Levy and dispositions of such Distresses and that in any order or judgment of any Justices before whom any complaint shall be preferred in consequence of any matter or thing contained in the said Act passed in the Fifty-seventh year of the reign of His late Majesty King George the Third such order shall be expressed to be made upon a complaint for the breach of that Act and that in any order or judgment of any Justices before whom any complaint shall be preferred in consequence of any matter or thing contained in this Act such order shall be expressed to be made upon a complaint for a breach of this Act.

This Act not to interfere with the Impounding or Police Acts.

XI. PROVIDED ALWAYS AND BE IT FURTHER ENACTED that nothing in this Act contained shall extend or be construed to extend to repeal alter or vary the laws at present in force in this Island with respect to the Impounding of Animals as the same are contained in an Act passed by the Legislative Council of this Island in the Eleventh year of His late Majesty King George the Fourth intituled *An Act to regulate the Impounding of Animals for Trespass and for other Purposes relating thereto* and in another Act passed by the Legislative Council of this Island in the Second year of Her present Majesty intituled *An Act to regulate the Police in certain Towns and Ports within the Island of Van Diemen's Land and to make more effectual provision for the Preservation of the Peace and good order throughout the said Island and its Dependencies generally* and in another Act passed by the Legislative Council of this Island in the Fifth year of the reign of Her present Majesty intituled *An Act to repeal the Thirtieth Section of an Act passed in the Eleventh Year of His late Majesty King George the Fourth intituled An Act to regulate the Impounding of Animals for Trespass and for other Purposes relating thereto.*

Indemnity to Sheriffs for past acts.

XII. AND WHEREAS before the passing of this Act the Sheriffs of Van Diemen's Land have been accustomed to make deliverance of

property distrained and to take bonds in the nature of Replevin bonds from the persons whose property had been distrained and it is expedient that protection should be given to such Sheriffs on account thereof—
BE IT THEREFORE ENACTED that from and after the passing of this Act no action suit or other proceeding at law shall be commenced or prosecuted against any persons or person who may have been or may be Sheriff of Van Diemen's Land their executors or administrators for or on account of the deliverance by them or him of any such property so distrained as aforesaid or for or on account of any such bond so taken by him as aforesaid or for or on account of any other matter or thing done by him in respect of such deliverance as aforesaid and which deliverance bond matter or thing hath been made taken or done in such and the same manner as the same might have been made taken or done in England by any Sheriff of any county in England.

E. EARDLEY-WILMOT.

Passed the Legislative Council, this thirtieth
 day of October, one thousand eight
 hundred and forty-three,

ADAM TURNBULL, *Clerk of the Council.*

SCHEDULE A.

SUMMONS IN REPLEVIN.

*Victoria by the Grace of GOD of the United Kingdom of
 Great Britain and Ireland Queen Defender of the Faith.*

To _____ of _____
 in the County of _____ Van Diemen's Land.

GREETING—

WE command you that within Fifteen Days after the service of this Writ upon you inclusive of the day of such service you do cause an appearance to be entered for you in Our Supreme Court of Van Diemen's Land in an Action of Replevin at the suit of

And take notice that in default of your so doing the said _____ may cause an appearance to be entered for you and proceed thereon to judgment and execution.

Witness the Honourable _____ Our
 Chief Justice of Our said Supreme Court at Hobart Town
 the _____ day of _____ in the
 year of Our reign.

Registrar.

Nota Bene to be written under the Writ.

This writ is to be served personally within four calendar months from the date thereof including the day of such date and not afterwards.

And to be indorsed thereon:—

This writ was issued by A.B. of [*office of business*] Hobart Town Attorney for the Plaintiff.

SCHEDULE B.

PRECEPT TO REPLEVY.

A.B. Esquire Sheriff of Van Diemen's Land to *C.D.* my Bailiff greeting—Because *E.F.* hath found me sufficient security as well for prosecuting his suit with effect against *G.H.* for taking his goods and chattels to wit [*specifying them*] and also for making a return thereof if return thereof shall be adjudged therefore I command you without delay to replevy and deliver to the said *E.F.* his said goods and chattels which the said *G.H.* hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of 18

By the Sheriff (*Seal.*)
[*Signature of Sheriff or Deputy.*]

SCHEDULE C.

REPLEVIN BOND.

KNOW all men by these presents that we *J.P.* of [*place*] farmer [*or Agent or Attorney of A.B.* who is absent from this Colony] *C.D.* of [*place*] gentleman and *L.H.* of [*place*] yeoman are held and firmly bound to *A.B.* Esquire Sheriff of Van Diemen's Land in the sum of lawful money of Great Britain [*double the value of the goods and chattels*] to be paid to the said Sheriff or his certain Attorney Executors Administrators or Assigns for which payment to be made we bind ourselves and each of us our respective Heirs Executors and Administrators jointly and severally firmly by these presents. Sealed with our seals.

Dated this day of 18

WHEREAS the above Sheriff by virtue of his office and upon the complaint of the above *J. P.* hath consented to deliver and replevy to the said *J. P.* the goods and chattels following to wit [*enumerate the whole of the property*] which *C. D.* of [*place*] Esquire hath taken and wrongfully withheld as the said *J. P.* alleges.—Now the condition of this obligation is that if the said *J. P.* do within one month now next ensuing commence an Action against the said *C. D.* in the Supreme Court of Van Diemen's Land and do prosecute such suit with effect and without delay against the said *C. D.* for the taking and withholding of the said goods and chattels and also do make return thereof if return thereof shall be adjudged by law and so defend and save harmless the said Sheriff against the said *C. D.* and all other persons from and against all matters and things concerning the premises.—Then this obligation shall be void otherwise it is to remain in full force.

Signed sealed and delivered }
in the presence of }

SCHEDULE D.

ASSIGNMENT OF BOND.

KNOW all men by these presents that I [*G. H.* Deputy of] *J. B.* Esquire Sheriff of Van Diemen's Land have at the request of the within named *C. D.* [*the avowant or person making cognizance*] assigned over this Replevin Bond unto him the said *C. D.* pursuant to the Act of this Island in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18

Signed sealed and delivered }
in the presence of }

SCHEDULE E.

COSTS AND CHARGES OF DISTRESS.

The Rent being above £20.

	s.	d.
Levying Distress	20	0
Man in possession if kept by tenant per diem.....	3	0
Man in possession if otherwise per diem	4	0
Appraisement six-pence in the pound upon the value of the goods distrained.		
Expenses for advertising	10	0
Catalogues Sale Commission and delivery of Goods one shilling in the pound on the net produce of Sale.		

35/11, 12 sec 9. He also have power to make Table of charges in lieu of this Schedule

