

and keep a correct account of the receipts and disbursements of the same, and whenever required by the said corporation or by the association, to render a true statement, in writing, of the receipts and disbursements of the said corporation; and upon the death, resignation, removal or expiration of office of treasurer, or election of a new one, all the books, accounts, vouchers and documents in the hands of such treasurer, belonging to such corporation, shall be delivered to his successor in office.

Replevin.

I. WHEN ACTION LIES.

1. For a wrongful taking.
2. For any unlawful detainer.
3. Does not lie in case of distress for tax or fine.

II WRIT OF, HOW EXECUTED.

4. Out of what court to issue.
5. May be executed by coroners.
6. Bond by plaintiff.
7. Bond may be assigned to defendant.
8. Bond to coroner to be approved. Sureties to justify.
9. Goods delivered, unless claimed and bond given by defendant.
10. Sheriff and coroners return if defendant gives bond.
11. Penalty for unlawful delivery.
12. Officer may break open building.

III. PARTIES.

13. Who may be joined.
14. Action not to abate by reason of death.
15. Remedy of executors and administrators.

IV. PLEADING AND PRACTICE.

16. Pleadings when to be filed.
17. Plaintiff to bring on trial.
18. If plaintiff non-suit, court may award a return.
19. Defendant claiming property in himself shall not claim property in another.
20. Pleadings therein.
21. Avowry by landlord in case of distress.
22. Defendants may avow generally.
23. Non-suit in cases of distress, writ of inquiry, etc.
24. Judgment on demurrer in cases of distress.
25. In other cases except distress for rent.
26. Restitution.
27. When defendant to recover damages and costs.
28. Demand and refusal when necessary that plaintiff may recover damages and costs.
29. Costs assessed on replevin bonds.
30. Bond when assignable by sheriff or coroner's successor.
31. Writs of second deliverance.
32. Repealer.

An act to regulate the action of replevin.

R. S. 116, 449.

Revision—Approved March 27, 1874.

P. L. 1849, p. 311.
 " 1857, p. 296.
 " 1862, p. 111.
 " 1863, p. 5.
 " 1871, p. 32.
 " 1877, p. 14.

I. When action lies.

1. That if the goods or chattels of any person be taken and wrongfully detained, the sheriff, by a writ of replevin, shall cause the same goods or chattels to be replevied and delivered, and shall summon the person who took them, to appear at the return of the said writ, and answer the plaintiff of the taking and unjust detention of the same.

For a wrongful taking.

R. S. p. 116, § 1.

2. Any unlawful detention of goods and chattels from their lawful owner, or the person entitled by law to the possession of the same, shall be deemed an unlawful taking for the purpose of supporting an action of replevin.

For any unlawful detainer.

P. L. 1862, p. 111.
 Amended.

3. No replevin shall lie in case of distress for any tax, assessment or fine, to be collected or levied in pursuance of any law of this state; and if any person or persons shall hereafter sue out or prosecute a replevin, in any such case, he or they shall forfeit one hundred and fifty dollars, to be recovered, with costs of prosecution, by any person, who shall sue for the same, by action of debt, in any court of record having cognizance thereof; the one moiety of the said forfeiture to the person who shall sue for the same and the other moiety to the state.

Does not lie in case of distress for tax or fine.

R. S. 116, § 20.

II. Writ of—how executed.

4. All writs of replevin shall issue out of the supreme court, or out of the circuit court, or court of common pleas^(a) of the county where the property was taken or is detained, and the said writs shall be made returnable to the court out of which they were issued; and may be made returnable in term time or in vacation; and the summons therein shall be served and returned in the manner prescribed for the service and return of writs of summons in personal actions, in case such service can be made;

Out of what court to issue

R. S. 116, § 3.
 Amended.

(a) Before 1795, the writ issued out of chancery, *Snedeker v. Quick*, 6 Hal. 179, 180.

How summons served and returned.
P. L. 1871, p. 32.
Amended.

May be executed by coroners.

R. S. 116, § 2.

Bond to coroner executing writ.

Bond by plaintiff.
Ib. §§ 5, 15.

P. L. 1877, p. 14.

Condition of. Officer liable for insufficient security.

Bond may be assigned to defendant.
Ib. § 15.

And sued. Court may grant relief.

Bond to coroner to be approved.

P. L. 1862, p. 111.
" 1863, p. 5.

Sureties to justify.

Goods delivered unless claimed by defendant.

R. S. 116, § 7.
Amended.

In writing.

And bond given.

Which bond may be assigned and sued on.

but if the summons cannot be served in manner aforesaid by reason of the absence of the defendant and his non-residence within the county in which the goods or chattels are replevied, then, the same shall be served as the court or a judge may by an order direct.

5. Writs of replevin may be directed to and executed by the coroners of any county, in all cases in which by law writs in other actions may be directed to and executed by such coroners; (a) and all such writs of replevin may be executed and returned by any one of such coroners in the same manner in all respects, as sheriffs are by law authorized or directed to execute and return the same; and all bonds required by law to be taken in such cases shall be made to the coroner executing such writs by his name of office.

6. Every sheriff or coroner, before he makes deliverance of any goods or chattels, by virtue of any writ of replevin, shall take in his own name, from the plaintiff and two responsible persons as sureties, a bond in double the value of the goods and chattels mentioned in the writ (such value to be ascertained by the oath or affirmation of one or more disinterested witnesses, which oath or affirmation may be made before such sheriff or coroner, or before any officer authorized by law to administer oaths), and conditioned for prosecuting the suit with effect and without delay, and for duly returning the said goods and chattels in case a return shall be awarded; and if any sheriff or coroner shall take security otherwise, or neglect to take sufficient security, he shall answer for the value of the goods and chattels. (b)

7. The sheriff or coroner taking bond as is mentioned in the preceding section, shall, at the request and costs of the defendant, assign the same to the defendant, under his hand and seal; and if the bond so taken and assigned be forfeited, the defendant may, in his own name, bring an action and recover thereon; and the court, wherein such action shall be brought, may, by rule of the court, give such relief to the parties upon such bond, as shall be agreeable to justice; and such rule shall have the nature and effect of a defeasance to such bonds.

8. No coroner shall execute a writ of replevin until the replevin bond and the sufficiency of the sureties shall be approved by one of the judges of the court out of which the writ shall issue, or a supreme court commissioner of this state, which approval shall be endorsed on the bond, and thereupon the coroner may proceed to serve the writ according to law.

Before the commissioner shall endorse his approval on such bond, he shall require the sureties named therein to justify before him in the usual form, and shall immediately file the affidavits of justification with the clerk of the court whence the writ of replevin issued.

9. The sheriff or coroner to whom any writ of replevin shall be delivered, shall take the goods and chattels whereof deliverance is sought, into his own custody and possession, notwithstanding any claim of property therein by the defendant, and shall proceed to make deliverance thereof to the plaintiff in the said writ named, unless the said defendant shall, within twenty-four hours after service of the writ of replevin upon him in the manner hereinbefore prescribed, deliver to such sheriff or coroner a written claim of property, specifying the goods and chattels so claimed, and shall also, within the time aforesaid, deliver to such sheriff or coroner a bond, with one or more sufficient sureties, being freeholders and residents in the county, and in double the value of the goods and chattels so claimed, with condition to deliver the said goods and chattels in as good condition as the same were at the time of making such claim, to the plaintiff or his lawful representatives, if the same shall be adjudged to the plaintiff; which bond the said sheriff or coroner is hereby required, at the request and costs of the plaintiff or his lawful representatives, to assign to such plaintiff or his lawful representatives, who are hereby authorized, if the said bond shall be forfeited, to bring an action, and recover thereon, in his or their own name. (c)

(a) A coroner may appoint a special deputy to execute a writ of replevin, *Jewell v. Hutchinson*, 2 Vr. 71. See *Hugg v. Kille*, 2 Hal. 485.

(b) What variance from the words of the statute is insuf-

ficient to invalidate the bond, *West v. Caldwell*, 1 Zab. 411. 3 Zab. 736.

(c) The assignment need not be under the sheriff's hand and seal, *Everett v. Bartlett*, *Spen*, 117.

10. In case the property replevied shall be delivered by the sheriff or coroner to the defendant, on his presenting a written claim of property and giving bond as above provided, the sheriff or coroner shall make return of the facts to the court, and shall annex the said claim of property to the said writ, and return the same therewith; and the said suit shall be proceeded in and determined in the same manner, in all respects, as if such claim of property had not been made; and, if the plaintiff recover, the jury empannelled to try the issues or to ascertain the damages, shall find the value of the goods and chattels as well as the damages of the plaintiff, and the plaintiff shall have judgment thereon in damages as well for the value of the goods and chattels, as for taking and detaining them; and upon such judgment, the plaintiff (in addition to his remedy on the bond) may have execution against the defendant in replevin by writ of *capias ad satisfaciendum* or *feri facias*.(a)

Sheriff and coroner return if defendant gives bond. _____
R. S. 116, § 8.
Amended.
Suit tried as if claim had not been made.
Execution thereon.

11. If any sheriff or coroner to whom any writ of replevin shall be delivered, either by himself or his deputy or bailiff, shall make deliverance to the plaintiff of the goods and chattels mentioned in such writ, or of any part thereof, before he shall have served a copy of the said writ upon the defendant as aforesaid, or within twenty-four hours after such service, or shall omit or refuse, upon the tender of such claim of property and bond as are hereinbefore mentioned, to restore the goods and chattels so claimed to the defendant, such sheriff or coroner shall be answerable to such defendant for all damages he shall sustain therefrom.

Penalty for unlawful delivery.
Ib. § 9.
Amended.

12. If any person shall take the goods and chattels of another, and put them into any stable, building, house, or place of strength, and the person from whom the same goods or chattels shall be taken, sues for a replevin thereof, the sheriff or coroner shall solemnly demand deliverance thereof at the stable, building, house or place where the same are detained; and if neither the taker nor any person on behalf of such taker, shall upon demand, deliver the same, or if no person shall come upon such demand to deliver the same, the sheriff or coroner shall take the power of his county and break open such stable, building, house or place of strength, and make replevin according to the writ.

Officer may break open building, &c.
Ib. § 4.

III. Parties.

13. All such persons as by the common law may join the plaintiffs or defendants in the said writs of replevin, as well without process as by process, shall and may join the said plaintiffs or defendants, as well without process as by process, and have like pleas and like advantages in all things (pleas of disclaimer only excepted), as they might have had by the common law before the making of this act.

Who may be joined as parties.
R. S. 116, § 12.

14. In any action of replevin, where there is a sole plaintiff, or defendant, if either die, the action shall not abate; but the death of such party being suggested upon the record, the name of the executor or administrator of such deceased party being entered upon the record, the action shall proceed to final judgment at the suit of the plaintiff, or if he be dead, at the suit of his executor or administrator against the defendant, or if he be dead, against his executor or administrator.

Action not to abate by reason of death of parties. _____
P. L. 1857, p. 256,
§ 11.

15. The parties to such action of replevin, and their executors or administrators, shall have the like remedy upon any bond given pursuant to this act as the original party would have had if both parties were living at the time of pursuing such remedy; and the sheriff or other officer taking any bond in an action of replevin, shall assign the same to the then plaintiff, in case the original plaintiff would have been entitled to the same, if there had been no death, or to the then defendant in case the original defendant would have been entitled to the same if there had been no death.

Executors, &c., to have same remedies as original party.
Ib. § 12.

IV. Pleading and practice.

16. The pleadings shall be filed within the times limited for filing pleadings in personal actions, and the same proceedings may be taken in

Pleadings when to be filed.

(a) See Gordon ads. Williamson, Spen. 77. Caldwell v. West, v. Haney, 8 Vr. 179. Frazier v. Fredericks, 4 Zab. 162. Bos- 1 Zab. 411, 3 Zab. 736. Field v. Post, 9 Vr. 346, 349. Peacock well v. Green, 1 Dutch. 390.

- case of the failure to file the pleadings as are prescribed in like cases by the practice in personal actions.^(a)
- Plaintiff to bring on trial. 17. The plaintiff shall bring on the trial of the cause as in other actions, and shall be liable to judgment of non-suit for failure to do so.
- If plaintiff non-suit court may award a return. 18. If the plaintiff shall be non-suit for failure to file his pleadings, or to bring on the trial of the cause as required by law, the court, besides a judgment of non-suit, shall, in all cases, except where the taking was as a distress for rent, award a return of the goods and chattels to the defendant if they have not been redelivered to him by the sheriff or coroner; and the defendant shall thereupon be entitled to his costs, and the same remedy in all respects upon the replevin bond, as he would be entitled to on the awarding of the return of the goods and chattels on the verdict of a jury.
- And defendant to have remedy on bond. 19. In any action of replevin, where the goods or chattels replevied shall not be delivered to the plaintiff, by reason of a claim thereto made by the defendant, of property in himself, it shall not be lawful for the defendant to plead any plea, avowry or cognizance justifying the taking of the same as the property of any person other than himself.
- Defendant claiming property in himself shall not claim property in another. P. L. 1857, p. 296, § 10. 20. Except in the cases provided for in the last preceding section, the plaintiff and defendant in replevin may have like pleas, avowries, cognizances and justifications, (pleas of disclaimer excepted), as they might have had before the making of this act, and as though the said avowry, cognizance or justification had been made after the order of the common law.
- Pleadings therein. R. S. 116, § 11. 21. Whensoever any lands, tenements or hereditaments are held by any person, by rents, customs or services, if the person of whom such lands, tenements or hereditaments are held, shall distrain upon the same for any such rents, customs or services, and replevin thereof be sued, the person of whom the said lands, tenements or hereditaments are so holden, may avow, or his or her bailiff or servant make cognizance, or justify, the taking of the said distress upon the lands, tenements or hereditaments so holden, as in lands, tenements or hereditaments within his or her fee, alleging, in the said avowry, cognizance and justification, the said lands, tenements or hereditaments to be holden of him or her, without naming any person certain to be tenant of the same, and without making any avowry, cognizance or justification upon any person certain.
- Avowry by landlord in cases of distress. R. S. 116, § 10. 22. The defendant in replevin may avow or make cognizance generally, that the plaintiff in replevin or other tenant of the lands and tenements, whereon the distress was made, enjoyed the same under a grant or demise at a certain rent, during the time wherein the rent distrained for accrued, which rent was then and still remains due, without further setting forth the grant, tenure, demise or title of such landlord or landlords, lessor or lessors, owner or owners.
- Defendants may avow generally. R. S. 116, § 16. 23. In all cases where the goods and chattels have been taken as a distress for rent, if the plaintiff in replevin shall be non-suit before issue joined, and the defendant shall make a suggestion in the nature of an avowry or cognizance for such rent, the court upon the prayer of the defendant, instead of awarding a return of the distress, shall award a writ to the sheriff or coroners of the county where the distress was taken, to inquire, by the oath or affirmation of twelve good and lawful men of his bailiwick, touching the sum in arrear for such rent, at the time of such distress taken, or the value of the goods or chattels distrained, and fifteen days' notice being given to the plaintiff or his attorney of the sitting of such inquiry, the sheriff or coroner shall thereupon inquire of the truth of the matters contained in such writ, by the oath or affirmation of twelve good and lawful men of his county; and upon the return of such inquiry, the defendant shall have judgment to recover against the plaintiff the arrearages of such rent, in case the goods and chattels distrained shall amount to that value; and in case they shall not amount to that value, then so much as the value of the goods and chattels so distrained shall amount to, together with his full costs of suit, and shall have execution thereon for the same by *capias ad satisfaciendum*, *fieri facias* or otherwise; and in case such plaintiff shall be non-suit, after cognizance or avowry
- In case of distress if plaintiff be non-suit before or after issue joined, writ of inquiry may issue and judgment be given thereon. Ib. § 13.

(a) For instances of pleading and practice, see *Snedeker v. Zab*, 46, 267. *Boswell v. Green*, 1 *Dutch*, 390. *Harwood v. Quick*, 6 *Hal.* 179. *Bruen v. Ogden*, 6 *Hal.* 370. *Chambers v. Smethurst*, 5 *Dutch*, 195; 1 *Vr.* 230. *Field v. Post*, 9 *Vr.* 346. *Hunt*, 3 *Harr.* 339; 1 *Zab.* 620; 2 *Zab.* 552. *Brown v. Bissett*, 1

made and issue joined, or if the verdict shall be given against such plaintiff, then the jurors empannelled or returned to inquire of such issue, shall, at the prayer of the defendant, inquire concerning the sum of the arrears and the value of the goods and chattels distrained, and thereupon the avowant or the person who makes cognizance shall have judgment for such arrearages, or so much thereof as the goods and chattels distrained amount to, together with his full costs, and shall have like execution for the same as aforesaid.

24. If judgment be given upon demurrer for the avowant, or person making cognizance for rent, the court, instead of awarding a return of the distress, shall, at the prayer of the defendant, award a writ to inquire of the value of such distress, and upon the return thereof, judgment shall be given for the avowant or person making cognizance as aforesaid, for the arrears alleged to be due in such avowry or cognizance, if the goods and chattels so distrained shall amount to that value; and in case they do not amount to that value, then for so much as the said goods and chattels, so distrained, amount to, together with his full costs of suit, and shall have like execution for the same, as aforesaid.

Judgment on demurrer in cases of distress. *Ib.* § 14.

Writ of inquiry judgment and execution.

25. In all actions of replevin, except where the goods and chattels have been taken as a distress for rent, if the plaintiff shall be non-suit before issue joined, or for not bringing on the cause for trial, or judgment be given for the defendant upon demurrer, and the goods have not been redelivered to the defendant by the sheriff, the court, instead of awarding a return of the goods and chattels, shall, on the application of the defendant upon a suggestion of property in such defendant award a writ of inquiry to ascertain the value of such goods and chattels, and the damages of the defendant, which writ of inquiry shall be awarded, executed and returned in the same manner as writs of inquiry for the assessment of damages in personal actions; and upon the return of such inquisition, the defendant shall have judgment against the plaintiff for the value of the goods and chattels and damages so found, together with his costs of suit, and shall have execution thereon by a *capias ad satisfaciendum*, or by a *feri facias* against the goods and chattels, lands and tenements of the plaintiff in replevin; and if upon the trial of an issue of property in the defendant, a verdict shall be given against the plaintiff, the jurors empannelled to try such issue, shall, at the prayer of the defendant, find the value of the property of the defendant in such goods and chattels, and his damages; and the defendant shall thereupon have judgment for the sum so found, together with his costs of suit, and shall have like execution for the same as aforesaid; *provided*, the defendant shall have given the plaintiff's attorney a notice in writing, fifteen days before the trial, of his intention to require the jury to find the value of the goods and damages, in case a verdict should be found for the defendant.

In other cases except where distress for rent.

The court may award writ of inquiry.

Proceedings thereon.

Judgment thereon.

Execution.

Issue of property.

26. In all actions of replevin, except where the taking was as a distress for rent, if the property replevied shall have been delivered by the sheriff or coroner to the party against whom the issue of property shall be found, the party succeeding on such issue may, instead of pursuing his remedy for the damages, by execution or by action on the bond, apply to the court in which the action is pending, for an order that the said goods and chattels be restored to him; and thereupon it shall be lawful for the court in its discretion to make an order that the said goods and chattels be delivered to the party in whom the property therein has been found, and to enforce the performance of such order by a writ in the nature of a writ of restitution, or by an attachment as for contempt; and the party succeeding in such action, may, notwithstanding such order, recover his costs in the suit by execution as in other cases.

When property delivered by officers to party against whom issue of property is found.

Party succeeding may have order of restitution.

27. In all actions of replevin, if the plaintiff be non-suit, or a verdict be found in favor of the defendant, the defendant shall recover his damages and costs against the plaintiff, if the plaintiff would have recovered damages and costs, if he had succeeded in the action; *provided*, that in all actions of replevin for goods and chattels taken as a distress, the jury trying the same or to whom the question of damages shall be submitted, shall determine by their verdict whether the plaintiff or defendant shall pay the costs of the suit, or whether each party shall pay his own costs.

When defendant to recover damages and costs.

R. S. 449, § 3. Amended.

Costs, when determined by jury.

R. S. 116, § 19.

Demand and refusal when necessary that plaintiff may recover damages and costs.

R. S. 116, § 17.

Costs assessed on replevin bonds. *Ib.* § 18.

If sheriff, &c., absconds, &c., bond assigned by his successor.

P. L. 1849, p. 311. Amended.

Writs of second deliverance abolished.

Repealer.

28. In cases where the property has been delivered to the plaintiff by the officer, if the defendant does not appear and make defence, but suffers judgment to be entered by default, there shall be no judgment for damages or costs, except in case of a demand being made in writing before the commencement of the action, and the refusal of the defendant to deliver the property in pursuance thereof; and in such case the plaintiff shall be at liberty to suggest the facts upon the record, and instead of taking judgment by default, may enter a discontinuance of the action without costs.

29. In actions upon replevin bonds, the costs taxed in the original action shall be included as part of the damages to be assessed therein.

30. When any sheriff or coroner shall have taken any bond by virtue of this act, and such sheriff or coroner shall die, abscond or remove out of this state before assigning such bond, it shall be lawful for any successor in office of such sheriff or coroner, by order of the court in which the action was brought, to assign such bond in writing, under his hand and seal, to the party entitled to the same, or to his lawful representatives, who are hereby authorized, if the said bond shall become forfeited, to bring an action and recover thereon in his or their own names.

31. Writs of second deliverance be and they are hereby abolished.

32. The sixth section of the act entitled "An act for the better regulation of actions of replevin," approved April fifteenth, one thousand eight hundred and forty-six, and all acts and parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed.

Reports.

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| 1. Law and chancery reports to be printed in numbers. | 10. Distribution of copies by state treasurer. |
| 2. To be printed at expense of reporter. | 11. Repealer. |
| 3. Size of volume. | 12. Treasurer to purchase copies of law reports that may be reprinted. |
| 4. Copies delivered to treasurer to be bound by state. | 13. Payment for such reports. |
| 5. Time within which opinions shall be filed. | 14. Treasurer to purchase copies of equity reports that may be reprinted. |
| 6. Reports how designated. | 15. Payment for same. |
| 7. Manner of binding and lettering. | |
| 8. Each volume to contain a list of previous reports. | |
| 9. Annual salary of reporters. | |

An act for the publication of the law and chancery reports.

P. L. 1877, p. 34.

Approved February 28, 1877.

Law and chancery reports to be printed in numbers.

1. That it shall be the duty of the law and chancery reporters of this state to cause the reports of the judicial opinions of their respective courts to be printed in numbers, one for each term of their respective courts, without waiting until sufficient opinions shall have accumulated to make a volume of six hundred pages; that the chancery reporter shall cause the printer to commence to print each number of his reports within thirty days after the delivery of the opinions at each regular term of the court of chancery, and shall continue the same with all convenient speed until all opinions of said term are printed, and shall add at the end of such number all opinions on appeals from chancery delivered at the next ensuing term of the court of errors and appeals; and the law reporter shall cause the printer to commence to print each number of his report within thirty days after the delivery of the opinions at each regular term of the supreme court, and shall continue the same with all convenient speed until all the opinions of such term are printed, and shall add at the end of such number all opinions on writs of error delivered at the next ensuing term of the court of errors and appeals.

Time within which reports shall be printed.

To be printed at the expense of the reporters.

2. That said reports shall be printed by said law and chancery reporters, respectively, at their own expense, upon good paper to be approved by the secretary of state; and whenever a number of said reports shall be printed, the said reporters shall, each, deliver to the state treasurer