

Sales and conveyances heretofore made validated.

Proviso.

Repealed.

174. SEC. 2. That all such sales and conveyances heretofore made by such trustees are hereby validated and confirmed; *provided*, they have been or shall be authorized and approved by a majority of the members of such church or religious society present at a duly-called meeting thereof.

175. SEC. 3. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

An act to authorize the sale of lands belonging to religious corporations or societies, in which burials have been made.

P. L. 1895, p. 734.

Church burial-grounds may be sold when consent is obtained and conditions complied with.

Approved March 28, 1895.

176. SEC. 1. That it shall be lawful for any religious corporation or society owning real estate in which burials have been made to remove the bodies buried therein and sell the said land, or any part thereof, providing such corporation or society shall obtain the consents in writing of the living owner or owners of plots and burial permits therein, also the consents in writing of the living lineal descendants and widow or widower, if any, of the said person or persons buried in said lands, or the part thereof to be sold; and in case such descendants, widow or widower cannot be found by diligent inquiry, such corporation or society may, by petition duly verified, apply to the common pleas or county court of the county in which said lands sought to be sold are located, for an order to sell the same; said petition shall set forth the name of the corporation or religious society so applying, the location of the lands sought to be sold, the names of all known persons owning lots or burial permits in said lands, a description and map of the lands sought to be sold; and upon proof of the foregoing facts, and in such petition set forth, it shall then be lawful for the said common pleas or county courts to make an order setting forth the nature of said petition and the names of all owners of lots or burial permits contained in said land so sought to be sold who have not in writing consented to said sale, requiring said owner or owners of lots or burial permits to show cause at a time to be fixed by said court, why said land should not be sold as in said petition prayed for; a notice of which order shall be published in a newspaper to be designated by said court, for four weeks successively.

Order of court permitting sale.

177. SEC. 2. That upon the day fixed in the order and notice in section one herein referred to, or upon such adjourned day as said court may fix, it shall be lawful for said court of common pleas or county court to make an order permitting the sale of said lands, and the removal of any bodies buried therein, provided no objection be made in writing thereto by the lineal descendants, widow or widower of the parties buried therein.

How personal rights established.

178. SEC. 3. That if such religious corporation or society shall sell any land in which any person has heretofore acquired a right of burial, the said corporation or society shall refund to the party having such right, their heirs, executors or assigns, the amount paid for such right, with interest from the date of payment, and shall pay all costs and expense incurred in the removal of any bodies therefrom and the cost of properly re-interring the same.

Replevin.

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I. When action lies.

An act to regulate the action of replevin.

Revision—Approved March 27, 1874.

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.

2. That 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. (a)

3. That 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. (b)

II. Writ of, how executed.

4. That all writs of replevin shall issue out of the supreme court, or out of the circuit court, or court of common pleas (c) 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; 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. [See Sec. 36, post.]

(a) At common law, a writ of replevin never lies unless there has been an unlawful taking of property. This was held to be the law in this state until the passage of the act of 1882, providing that an unlawful detention should be deemed an unlawful taking, for the purpose of supporting the action. See *Bruen v. Ogden*, 6 Hal. 370. *Haythorn v. Rushforth*, 4 Har. 160. *Harwood ads. Smethurst*, 5 Dutch. 195. But this section does not confer a right on the owner of goods and chattels to maintain replevin in all cases where his goods are in another's possession. There must be an unlawful detention. In that respect, the action of replevin is put on the same footing as the action of trover. There must be an actual conversion, or a refusal to deliver on demand, which is evidence of conversion, before the detention becomes unlawful. *Woodside v. Adams*, 11 Vr. 417. To consti-

tute an actual conversion, there must be some repudiation by the defendant of the owner's right, or some exercise of dominion by him, inconsistent with such right, or some act done which has the effect of destroying or changing the quality of the chattel. *Id.* A defendant, whose goods are seized by an officer in obedience to the command of legal process, cannot, under any circumstances, maintain replevin against such officer for the goods so taken into legal custody. *Hawk v. Lepple*, 22 Vr. 208.

(b) This section does not apply to the case of the taking of goods of a person who is in no wise subject to the tax. *Noyes v. Finneman*, 12 N. J. L. J. 216.

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

R. S. 116, 449.

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

For a wrongful taking.
 R. S. 116, § 1.

For any unlawful detainer.
 P. L. 1862, p. 111.
 Amended.

Does not lie in case of distress for tax or fine.
 R. S. 116, § 20.

Out of what court to issue.
 R. S. 116, § 3.
 Amended.

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.

5. That 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.

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

And sued.

Court may grant relief.

6. [Amended by Sec. 38, *post.*]

7. That 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. (b)

Bond to coroner to be approved. P. L. 1862, p. 111.
" 1863, p. 5.

8. That 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 indorsed on the bond, and thereupon the coroner may proceed to serve the writ according to law.

Sureties to justify.

Before the commissioner shall indorse 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.

Goods delivered unless claimed by defendant. R. S. 116, § 7.
Amended.

9. That 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)

In writing.

And bond given.

Which bond may be assigned and sued on.

Sheriff and coroner return if defendant gives bond. R. S. 116, § 8.
Amended.

Suit tried as if claim had not been made.

Execution thereon.

10. That 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 impaneled 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)

(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. 435.

(b) This section provides for an assignment of a replevin bond to a defendant in the suit, but not to any other person. *Harrison v. Maxwell*, 15 Vr. 321.

(c) The assignment need not be under the sheriff's hand and seal. *Everett v. Bartlett*, *Spec.* 117. Property in the sheriff's hand by virtue of a writ of replevin is in the custody of the

law, and cannot be taken from him by a second writ of replevin before he has executed his writ. *Weiner v. Van Rensselaer*, 14 Vr. 547. As soon as he has perfected service of the writ, the property may be replevied from the person to whom the officer has delivered it. *Ib.* While the property remains in the sheriff's custody, the court may make such order touching it as will enable a third person, who may claim it, to effect service of his writ upon it. *Ib.*

may have execution against the defendant in replevin by writ of *capias ad satisfaciendum* or *fieri facias*. (a)

11. That 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. That 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. That 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. That 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. 296, § 11.

15. That 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. That the pleading shall be filed within the times limited for filing pleadings in personal actions, and the same proceedings may be taken in case of the failure to file the pleadings as are prescribed in like cases by the practice in personal actions. (b)

Pleadings, when to be filed.

17. That 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.

Plaintiff to bring on trial.

(a) See *Gordon* ads. *Williamson*, *Spen.* 77. *Caldwell* v. *West*, 1 *Zab.* 411, 3 *Zab.* 736. *Field* v. *Post*, 9 *Vr.* 346, 349. *Peacock* v. *Haney*, 8 *Vr.* 179. *Frazier* v. *Fredericks*, 4 *Zab.* 162. *Boswell* v. *Green*, 1 *Dutch.* 390. In replevin, where the officer has delivered the goods and chattels to the plaintiff on a finding of the issues for the plaintiff, he is entitled to recover damages for the taking merely; it is only when the property has been re-delivered to the defendant, pursuant to this section, that the

plaintiff is entitled to have the value of the property as well as the damages for the taking and detaining included in the verdict. *Lindauer* v. *Teeter*, 12 *Vr.* 265.

(b) For instances of pleading and practice, see *Snedeker* v. *Quick*, 6 *Hal.* 179. *Bruen* v. *Ogden*, 6 *Hal.* 370. *Chambers* v. *Hunt*, 3 *Har.* 339, 1 *Zab.* 620, 2 *Zab.* 552. *Brown* v. *Bissett*, 1 *Zab.* 46, 287. *Boswell* v. *Green*, 1 *Dutch.* 390. *Harwood* v. *Smethurst*, 5 *Dutch.* 195, 1 *Vr.* 230. *Field* v. *Post*, 9 *Vr.* 346.

If plaintiff non-suit, court may award a return.

And defendant to have remedy on bond.

Defendant claiming property in himself shall not claim property in another.
P. L. 1857, p. 296, § 10.

Pleadings therein.
R. S. 116, § 11.

Avowry by landlord in cases of distress.
R. S. 116, § 10.

Defendants may avow generally.
R. S. 116, § 16.

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.

18. That 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. (a)

19. That 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.

20. That 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.

21. That 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.

22. That 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.

23. That 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*, *feri facias* or otherwise; and in case such plaintiff shall be non-suit, after cognizance or avowry made and issue joined, or if the verdict shall be given against such plaintiff, then the jurors impaneled or returned to inquire of such issue, shall, at the

(a) The return to the original action showing a non-suit, the order for a writ *de retorno habendo*, the return of the writ with-

out the goods, are sufficient proof of a breach of the condition of the bond. *Hood v. Spaeth*, 22 Vr. 129.

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 arrears, 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. That if judgment be given upon demurrer for the avowment, 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 avowment, or person making cognizance as aforesaid, for the arrears alleged to be due in such avowry or recognizance, 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. That 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 impaneled 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. (a)

In other cases except where distress for rent.

The court may award writ of inquiry.

Proceedings thereon.

Judgment thereon.

Execution.

Issue of property.

26. That 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. That 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,

When defendant to recover damages and costs. *R. S.* 449, § 3. Amended.

Costs, when determined by jury. *R. S.* 116, § 19.

(a) See *Watton v. Gould*, 2 *N. J. L. J.* 52.

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.

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.

28. That in cases where the property has been delivered to the plaintiff by the officer, if the defendant does not appear and make defense, 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. That 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. That 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 the 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. That writs of second deliverance be and they are hereby abolished.

32. That 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.

V. Supplements.

Supplement.

Approved June 13, 1890.

P. L. 1890, p. 443.

If immediate delivery of property is not required, by plaintiff, on judgment awarding property, court may direct delivery of property in accordance with judgment.

33. SEC. 1. That in any action of replevin if the plaintiff does not require the immediate delivery to him of the property in question, the officer to whom the process shall issue shall, if so directed by the plaintiff or his attorney, serve the process and other papers given him as in other cases without taking possession of or delivering the property in question, and upon the process being returned into court the cause shall be put at issue and brought on for trial or judgment by default may be entered as in other cases, and upon judgment being entered awarding the possession of the property in question to the plaintiff an order may be made by the court as a part of the judgment, directing the proper officer to take possession of and deliver the property in question in accordance with such judgment, and it shall thereupon be the duty of the officer so directed to execute such order and deliver the property to the party to whom it has been so awarded.

Bond not required unless ordered by the court.

34. SEC. 2. That in any proceeding under the above section no bond shall be required of the plaintiff unless ordered by the court, and the order of the court shall be a justification of the officer for the delivery as directed hereby.

Bond required for protection of parties having some ownership in the property.

35. SEC. 3. That if in any such action it shall appear to the court that parties not before the court have some ownership in the property replevied the court may require a bond or other security for their protection before awarding the property to the plaintiff.

Supplement.

Approved June 13, 1890.

P. L. 1890, p. 463.

Writs may issue out of district courts.

36. SEC. 1. That writs of replevin may issue out of any district court in this state in all cases where the value of the goods and chattels of which replevin is sought does not exceed the jurisdiction of the court at the time such writs may issue, and the practice in replevin suits in the district courts shall be that prescribed by the act to which this is a supplement.

37. SEC. 2. That all suits of replevin brought in any district court since the twenty-seventh day of March, one thousand eight hundred and eighty-two, in which the value of the goods and chattels sought to be recovered does not exceed the jurisdiction of such court at the time such suits were begun, are hereby declared to have been within the jurisdiction of such court.

Certain suits declared to have been within the jurisdiction of such courts.

Supplement.

Approved June 20, 1890. P. L. 1890, p. 494.

38. SEC. 1. That section six of an act entitled "An act to regulate the action of replevin" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be and the same is hereby amended so as to read as follows :

[That 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 with sufficient surety 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 ; *provided*, the said sheriff may accept in lieu of such bond a deposit in cash amounting to double the appraised valuation of such goods and chattels ; 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.] (a)

Sheriff or coroner authorized to take bond.

Condition of.

Officer liable for insufficient security.

Supplement.

Approved March 23, 1892. P. L. 1892, p. 172.

39. SEC. 1. That in all cases where writs of replevin are or may be issued out of any district court in this state, and the value of the goods and chattels of which replevin is sought does not exceed the sum of two hundred dollars, said writs may be issued to any constable of the county in which such district courts may be situated, who shall perform the same duties and have the same powers, and be subject to the same restrictions and penalties as sheriffs and coroners are, under said act ; *provided*, this act shall not apply to district courts in counties of the first class.

Writs out of district courts where value of goods does not exceed \$200 may be executed by constables.

Proviso.

40. SEC. 2. That the pleadings in any such case shall be the same as in suits in district courts in cases where the amount involved is more than two hundred dollars.

Pleadings.

41. SEC. 3. That the same and no greater fees shall be allowed in such cases to the constable, court and clerks as are now allowed by law in suits commenced by summons in said district courts where the amount in question does not exceed two hundred dollars.

Fees.

Supplement.

Approved March 23, 1892. P. L. 1892, p. 175.

42. SEC. 1. That where a sheriff or coroner shall take a bond, conditioned for the return of the goods and chattels mentioned in any writ of replevin, in case a return shall be awarded in such suit, and it shall appear to the court that the condition of the said bond has been fulfilled, it shall be lawful for a judge thereof, either in term time or vacation, to direct that said bond be delivered up to the plaintiff to be canceled.

When bond may be canceled.

(a) What variance from the words of the statute is insufficient to invalidate the bond. *West v. Caldwell*, 1 Zab. 411, 3 Zab. 736. In an action on a replevin bond, the writ of replevin is competent and relevant evidence under the suggestion of breaches. *West v. Caldwell*, 3 Zab. 736. The plaintiff, in an action on a replevin bond, is not bound by the value of the goods, as recited in the condition ; that is by an appraisal for the purpose of guiding the sheriff as to the amount of security, but is not binding upon either of the parties. *Id.* In an

action on a replevin bond, the plaintiff is entitled to recover, as damages, the value of the goods and, as a general rule, interest thereon from the judgment of a return, together with the costs taxed in the original action. The damages in such cases cannot be assessed by the court, but must be ascertained by a writ of inquiry. *Peacock v. Haney*, 8 Vr. 179. In actions of replevin, the measure of damage is the real value of the chattel at the time the tortious possession of the defendant began, with damages for its unlawful detention. *Maguire v. Dutton*, 25 Vr. 597.

Supplement.

P. L. 1893, p. 451.

Approved March 27, 1893.

When warehouse-
man not liable
for taxed costs.

43. SEC. 1. That whenever a warehouseman at the time any goods or chattels are placed on storage with him shall obtain from the party placing such goods or chattels on storage a statement in writing that such goods are the sole and absolute property of the bailor aforesaid, and in any action of replevin thereafter brought in any court for the recovery of such goods or chattels by any person other than the bailor aforesaid, no costs of suit shall be adjudged, taxed or recovered against said warehouse keeper in any action aforesaid, whenever judgment is obtained against the defendant in such action.

Reports.

1. Law and chancery reports to be printed in numbers.
2. Amended by section 13.
3. Amended by section 12.
4. Copies delivered to treasurer to be bound by state.
5. Time within which opinions shall be filed.
6. Reports, how designated.
7. Manner of binding and lettering.
8. Each volume to contain a list of previous reports.
9. Annual salary of reporters.
10. Amended by section 14.
11. Repealer.
12. Law and chancery reports to contain at least six hundred pages to the volume.
13. Reports to be printed at expense of reporters.
14. Distribution of copies, how made.
15. Repealer.
16. Treasurer to purchase copies of law reports when reprinted.
17. Payment for such reports.
18. Treasurer to purchase copies of equity reports when reprinted.
19. Payment for such reports.
20. Law and equity reports to be distributed to president law judges of common pleas.

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.

Time within
which reports
shall be printed.

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.

2. [Amended by Sec. 13, *post.*]

3. [Amended by Sec. 12, *post.*]

Copies delivered
to treasurer to be
bound at expense
of the state.

Time within
which opinions
shall be filed.

Copies to be made
for the reporters.

4. That it shall be the duty of the treasurer to cause the said numbers, when sufficient to make a volume, which shall be delivered to him by said reporters, respectively, to be bound at the expense of the state, in good and substantial law binding in the manner prescribed by this act.

5. That it shall be the duty of the chancellor, the judges of the supreme court and of the court of errors and appeals, to file all opinions delivered by them in the office of the clerks of their respective courts, within twenty days after the delivery of such opinions, and the said clerks shall within twenty days after such opinions are filed make and deliver to the reporters of said courts, fair and legible copies thereof, for which they shall be paid by the state treasurer the sum of eight cents per folio, upon their respective accounts being audited by the comptroller.