

CHAPTER 643

REPLEVIN

[P]

Small claims jurisdiction; §631.1

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643.1 Where brought — petition.

An action of replevin may be brought in any county in which the property or some part thereof is situated. The petition must be verified and must state:

1. A particular description of the property claimed.
2. Its actual value, and, where there are several articles, the actual value of each.
3. The facts constituting the plaintiff's right to the present possession thereof, and the extent of the plaintiff's interest in the property, whether it be full or qualified ownership.
4. That it was neither taken on the order or judgment of a court against the plaintiff, nor under an execution or attachment against the plaintiff or against the property; but if it was taken by either of these modes, then it must state the facts constituting an exemption from seizure by such process.
5. The facts constituting the alleged cause of detention thereof, according to the plaintiff's best belief.
6. The amount of damages which the affiant believes the plaintiff ought to recover for the detention thereof.

[C51, §1703, 1994, 1995; R60, §3553; C73, §3225; C97, §4163; C24, 27, 31, 35, 39, §12177; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.1]

643.2 Ordinary proceedings — joinder or counterclaim.

The action shall be by ordinary proceedings, but there shall be no joinder of any cause of action not of the same kind, nor shall there be allowed any counterclaim.

[R60, §4175; C73, §3226; C97, §4164; C24, 27, 31, 35, 39, §12178; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.2]

643.3 Process on Sunday.

If the plaintiff alleges in the petition that the plaintiff will lose the property unless process issues on Sunday, the order may be issued and served on that day.

[C73, §3227; C97, §4165; C24, 27, 31, 35, 39, §12179; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.3]

[P] Analogous or related provisions, §602.1602, 626.6, 639.5, and 667.3

643.4 New parties.

If a third person claims the property or any part thereof, the plaintiff may amend and bring the third person in as a codefendant, or the defendant may obtain the substitution by the proper mode, or the claimant may intervene by the process of intervention.

[C51, §1684, 1999; R60, §3561; C73, §3228; C97, §4166; C24, 27, 31, 35, 39, §12180; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.4]

[P] Interpleader, R.C.P. 1.251 – 1.257

[P] Intervention, R.C.P. 1.407

643.5 Writ issued.

Upon direction of the court after notice and opportunity for such hearing as it may prescribe, the clerk shall issue a writ under the clerk's hand, and the seal of the court, directed to the proper officer, requiring the officer to take the property therein described and deliver it to the plaintiff.

[C51, §1997; R60, §3555; C73, §3230; C97, §4168; C24, 27, 31, 35, 39, §12183; C46, 50, 54, 58, 62, 66, 71, 73, §643.7; C75, 77, 79, 81, §643.5]

643.6 Filing — purpose of bond.

A bond shall be filed with the clerk, and be for the use of any person injured by the proceeding.

[C51, §1996; R60, §3554; C73, §3229; C97, §4167; C24, 27, 31, 35, 39, §12182; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.6]

643.7 Bond.

When the plaintiff desires the immediate delivery of the property, the plaintiff shall execute a bond to the defendant, with sureties to be approved by the clerk, in a penalty at least equal to twice the value of the property sought to be taken, conditioned that the plaintiff will appear in court on or before the day fixed in the original notice, and prosecute the action to judgment, and return the property, if a return is awarded, and pay all costs and damages that may be adjudged against the plaintiff.

[C51, §1996; R60, §3554; C73, §3229; C97, §4167; C24, 27, 31, 35, 39, §12181; C46, 50, 54, 58, 62, 66, 71, 73, §643.5; C75, 77, 79, 81, §643.7]

643.8 Wrongful removal — service.

If the petition shows that the property has been wrongfully removed into another county from the one in which the action is commenced, the writ may issue from the county whence the property was wrongfully taken, and may be served in any county where it may be found.

[C73, §3230; C97, §4168; C24, 27, 31, 35, 39, §12184; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.8]

[P] Analogous provision, §639.21

643.9 Following property — duplicate writs.

When any of the property is removed to another county after the commencement of the action, the officer to whom the writ is issued may follow the same and execute the writ in any county of the state where the property is found. For the purpose of following the property, duplicate writs may be issued, if necessary, and served as the original.

[R60, §3556; C73, §3231; C97, §4169; C24, 27, 31, 35, 39, §12185; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.9]

[P] Analogous provision, §639.21

643.10 Execution of writ.

The officer must forthwith execute the writ by taking possession of the property therein described, if it is found in the possession of the defendant or the defendant's agent, or of any other person who obtained possession thereof from the defendant, directly or indirectly, after the writ was placed in the officer's hands, for which purpose the officer may break open any dwelling house or other enclosure, having first demanded entrance and exhibited the officer's authority, if demanded.

[C51, §1998; R60, §3557; C73, §3232; C97, §4170; C24, 27, 31, 35, 39, §12186; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.10]

643.11 Defendant examined.

When it appears by affidavit that the property claimed has been disposed of or concealed so that the writ cannot be executed, the court upon verified petition therefor, may compel the attendance of the defendant or other person claiming or concealing the property, and

examine the person on oath as to the situation of the property, and punish a willful obstruction or hindrance or disobedience of the order of the court in this respect as in case of contempt.

[R60, §3558; C73, §3233; C97, §4171; C24, 27, 31, 35, 39, §12187; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.11]

[P] Contempts, chapter 665

643.12 Delivery bond.

The officer, having taken the property or any part thereof, shall forthwith deliver the same to the plaintiff, unless, before the actual delivery to the plaintiff, the defendant executes a bond to the plaintiff, with sureties to be approved by the clerk or officer, conditioned that the defendant will appear in and defend the action, and deliver the property to the plaintiff, if the plaintiff recovers judgment therefor, in as good condition as it was when the action was commenced, and that the defendant will pay all costs and damages that may be adjudged against the defendant for the taking or detention of the property.

[R60, §3560; C73, §3234, 3235; C97, §4172; C24, 27, 31, 35, 39, §12188; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.12]

[P] Similar provisions, §639.42, 639.45, 667.7

643.13 Release — return of bond.

Said bond shall be delivered to the officer, who shall return the property to the defendant, append the bond to the writ, return it therewith to the officer issuing it, and refer thereto in the sheriff's return on the writ.

[R60, §3559; C73, §3237; C97, §4172; C24, 27, 31, 35, 39, §12189; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.13]

643.14 Inspection — appraisalment.

When the property is so retained by the defendant, the defendant shall permit the officer and plaintiff to inspect the same, and, if the plaintiff so requests, the officer shall cause it to be examined and appraised by two sworn appraisers chosen by the parties to the action, or, in their default, by the officer personally, in the manner provided for other cases of appraisalment, and in case they cannot agree the officer shall select a third, and an appraisalment agreed to by two of them shall be sufficient, and the officer shall return their appraisalment with the writ.

[C73, §3236; C97, §4173; C24, 27, 31, 35, 39, §12190; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.14]

643.15 Return of writ.

The officer must return the writ within sixty days after its issuance or at an earlier time if the court shall order, and shall state fully what the officer has done thereunder. If the officer has taken any property, the officer shall describe the same particularly.

[R60, §3559; C73, §3237; C97, §4174; C24, 27, 31, 35, 39, §12191; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.15]

643.16 Assessment of value and damages — right of possession.

The jury must assess the value of the property and the damages for the taking or detention thereof, whenever by their verdict there will be a judgment for the recovery or the return of the property, and, when required so to do by either party, must find the value of each article, and find which is entitled to the possession, designating the party's right therein, and the value of such right.

[R60, §3082; C73, §3238; C97, §4175; C24, 27, 31, 35, 39, §12192; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.16]

643.17 Judgment.

The judgment shall determine which party is entitled to the possession of the property, and shall designate the party's right therein, and if such party have not the possession thereof, shall also determine the value of the right of such party, which right shall be absolute as to an adverse party, and shall also award such damages to either party as the party may be entitled

to for the illegal detention thereof. If the judgment be against the plaintiff for the money value of the property, it shall also be against the sureties on the plaintiff's bond.

[C51, §2000, 2001; R60, §3554, 3562, 3567; C73, §3229, 3239; C97, §4176; C24, 27, 31, 35, 39, §12193; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.17]

643.18 Execution.

The execution shall require the officer to deliver the possession of the property, particularly describing it, to the party entitled thereto, and may at the same time require the officer to satisfy any costs, damages, or rents and profits, with interest, recovered by the same judgment, out of the property of the party against whom it was rendered, subject to execution, and the value of the property for which judgment was recovered to be specified therein if a delivery thereof cannot be had, and shall in that respect be deemed an execution against property.

[R60, §3253; C73, §3240; C97, §4177; C24, 27, 31, 35, 39, §12194; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.18]

643.19 Plaintiff's option.

If the party found to be entitled to the property be not already in possession thereof by delivery under the provisions of this chapter or otherwise, the party may at the party's option have an execution for the delivery of the specific property, or for the value thereof as determined by the jury, and if any article of the property cannot be obtained on execution, the party may take the remainder, with the value of the missing articles.

[R60, §3563, 3568; C73, §3241; C97, §4178; C24, 27, 31, 35, 39, §12195; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.19]

643.20 Judgment on bond.

When property for which a bond has been given as hereinbefore provided is not forthcoming to answer the judgment, and the party entitled thereto so elects, a judgment may be entered against the principal and sureties in the bond for its value.

[C73, §3242; C97, §4179; C24, 27, 31, 35, 39, §12196; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.20]

643.21 Concealment.

When it appears by the return of the officer or by the affidavit of the plaintiff that any specific property which has been adjudged to belong to one party has been concealed or removed by the other, the court may require the concealer or remover to attend and be examined on oath respecting such matter, and may enforce its order in this respect as in case of contempt.

[R60, §3564; C73, §3243; C97, §4180; C24, 27, 31, 35, 39, §12197; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.21]

[P] Contempts, chapter 665

643.22 Exemption.

A money judgment rendered under the provisions of this chapter for property exempt from execution shall also be to the same extent exempt from execution, and from all setoff or diminution by any person, which exemption may, at the election of the party in interest, be stated in the judgment.

[R60, §4176; C73, §3244; C97, §4181; C24, 27, 31, 35, 39, §12198; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §643.22]