

Recorded, with the names of the parties thereto; he shall give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day as the entry, and containing the abstract aforesaid: *Provided*. That it shall be the duty of all recorders under this act to file immediately all deeds and papers which may be presented to them for record, and they shall note, on the back of the same, the hour and the day when the same were filed.

**Fees.** SEC. 5. And as a compensation for the duties to be performed by said recorder of deeds, that the following be his lawful fees, which he may demand and collect for recording all deeds, mortgages, and other instruments of writing; for every one hundred words, twelve cents; for copies of the same, when requested, for every one hundred words, twelve cents; for every official certificate, with seal, when requested, twenty-five cents.

**Recorders now in office.** SEC. 6. But nothing herein contained shall be so construed as to affect or remove from office any recorder of deeds now elected in this Territory, until an election take place in each organized county, either general or special, and the newly elected recorder is sworn into office. That all acts, or parts of acts, now in force in this Territory, relating to the recorder of deeds, be and the same are hereby repealed from the taking effect of this act.

SEC. 7. This act to take effect and be in force from and after the first day of March next.

APPROVED, January 19, 1839.

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## REPLEVIN.

AN ACT regulating the action of Replevin.

**Action of replevin, when, by whom, and for what purpose instituted.** SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That where any goods and chattels are wrongfully detained, an action of replevin may be brought for the recovery of such property, by the person entitled to the immediate possession thereof, or, in his name, by any person duly authorized, by him, for that purpose.

**Affidavit, when and with whom filed, and what shall be set forth therein.** SEC. 2. The writ, in this action, shall not issue without an affidavit of the plaintiff, his agent or attorney, shall have been filed in the office of the clerk by whom such writ is to be issued, stating that such goods and chattels are wrongfully detained by the

defendant, that the plaintiff has a good right to the present possession thereof, and that they were not taken from him by writ of replevin, or in execution issued on any judgment against him, nor for the payment of any tax, fine, or amercement against the said plaintiff.

SEC. 3. Where property shall have been taken in execution, which was exempt therefrom by law, upon affidavit filed as aforesaid, that such property was so exempt, a writ of replevin may issue as above provided.

Property exempt from levy, may be replevied.

SEC. 4. Any writ of replevin, issued without an affidavit being filed as aforesaid, shall be quashed at the costs of the clerk, who issued the same, who, as well as the plaintiff, shall be, moreover, liable in damages to the party injured.

Clerk and Plaintiff liable, where affidavit is not filed.

SEC. 5. Such writ, however, shall not be quashed for any defect in the affidavit happening by mistake, or oversight, if upon being objected to, a new affidavit of the proper form and substance shall be made and filed as aforesaid.

Defects in affidavit, how remedied.

SEC. 6. The writ shall be directed to the sheriff (or coroner, as the case may be,) of the county, commanding him to cause to be replevied, to the plaintiff, the goods and chattels therein named, and to summon the person charged with their unlawful detention, to appear at the proper district court, on the first day of the next term thereof, to answer unto the plaintiff for such unlawful detention.

The writ, to whom directed, and its requirements.

SEC. 7. The officer executing such writ may break open any house, or other building, or inclosure, in which such property is concealed, in order to replevy the same, having first made demand of such property, and of entrance into said building, or enclosure, and the same having been refused.

Privilege of officer, as to buildings, and enclosures. Demand and refusal.

SEC. 8. Before such officer shall deliver to the plaintiff any goods or chattels, replevied as aforesaid, a bond shall be given to the said officer, with two or more sufficient sureties, conditioned that the plaintiff shall appear at the return term of the writ, and prosecute his suit to effect, and pay all costs and damages that shall be awarded against him.

Bond and securities.

Condition.

SEC. 9. Such bond shall be in double the value of property replevied (which value shall be ascertained by two or more disinterested persons whom the officer shall swear truly to appraise the same,) and shall be returned with the writ for the security and benefit of the defendant, and of the officer taking the same.

Amount of bond returned with the writ, and for whose security.

Remedies and liabilities of the officer, &c.

SEC. 10. The remedies and liabilities of the officer taking such bond, and all the parties bound by, or interested in the same, shall be like those in case of an ordinary bail bond and the same proceedings, as far as the nature of the case will admit, may in all respects be had to carry those remedies into effect.

Bond to be executed within 24 hours, or the property returned.

SEC. 11. If the plaintiff, his agent or attorney, shall refuse, or neglect, to execute and give bond, as aforesaid, within twenty-four hours from the taking of such property by virtue of said writ, the officer who shall have said property in possession, must return the same to the defendant.

Officer's liability, where insufficient security shall have been taken.

SEC. 12. If such officer shall deliver any property, so replevied, to the plaintiff, or detain the same from the defendant, without taking sufficient security as aforesaid, he shall be liable to the defendant in damages.

Where property is claimed by third persons.

SEC. 13. If the property replevied, or any part thereof, be claimed by some third person, the right of property shall be tried in the same manner as where property may have been thus claimed, after having been taken in execution.

Claimant made a def't. on motion, &c.

SEC. 14. Such claimant shall, in all cases, on motion, be made a defendant in the action, unless he will disclaim, or the plaintiff relinquish the right to said property

Where property is not delivered, action may proceed.

SEC. 15. If the property replevied, as aforesaid, in any case, be not delivered to the said plaintiff, he may, nevertheless, proceed in the action for the recovery of said property, or the value thereof.

This action to conform to what rules, usages, &c.

SEC. 16. The proceedings in an action of replevin shall, as far as practicable, be subject to the same usages and rules of practice, as in ordinary personal action, except as otherwise provided by law, or by the rules of court.

Right of property, trial by jury, &c.

SEC. 17. If the plaintiff shall discontinue his suit, or become non-suit, or judgment be rendered against him on demurrer, or he shall otherwise fail to prosecute his suit to final judgment, the court, on application of the defendant, or his attorney, shall empanel a jury to inquire into the right of property and right of possession of the defendant, to the goods and chattels in controversy.

When the jury find for the defendant;—damages, costs, &c.

SEC. 18. If such jury find that said goods and chattels were the property of the defendant, or that he was entitled to the possession thereof, at the commencement of the action, they shall assess damages for the defendant, as may be right and proper, for

which, together with costs of suit, the court shall render judgment against the plaintiff.

SEC. 19. In all cases, upon issue joined where the jury shall find for the defendant, they shall also find whether he had the right of property, or right of possession in said goods and chattels, and if they find either in his favor, they shall assess the damages of the defendant, on which judgment shall be rendered as declared in the preceding section.

Right of prop-  
erty, and right  
of possession.

SEC. 20. Where the jury find for the plaintiff on an issue joined, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property for which, and the costs of suit, the court shall render judgment.

Where the jury  
find for the  
plaintiff,—  
costs, damages,  
&c.

SEC. 21. In such case, if said property shall not have been replevied and delivered to the plaintiff, he shall, in addition to the judgment authorized by the preceding section, be entitled to a further judgment, that such goods and chattels be replevied and delivered to him, without delay, or in default thereof, that he recover the value of said property, as the same shall have been assessed by the jury who gave the verdict in the case, the requirements of the writ of execution shall be regulated accordingly.

Additional  
judg't, where  
property has  
not been re-  
plevied; value  
how ascertain-  
ed, &c.

SEC. 22. The judgment for the plaintiff shall be against all those defendants who have been guilty of wrongfully detaining the property or interposing a claim thereto, as aforesaid.

Judgment,  
against whom,  
&c.

SEC. 23. No suit shall be instituted on the bond given by the plaintiff, as provided in this act, nor against the officer who took the same, until an execution shall have issued on the judgment in favor of the defendant, in which it shall be returned, that sufficient property of the plaintiff cannot be found in the county, whereon to levy, and make the amount of said judgment.

Suit on bond,  
when it may  
be commenced

APPROVED, January 23, 1839.

## REVENUE.

AN ACT for assessing and collecting county revenue.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa*, That for the purpose of raising a revenue for county purposes, the board of county commissioners shall levy a tax

County com-  
missioners to  
levy a tax, and