

C H A P. LIII. make a warrant to the clerk of his county, under his hand and seal, empowering and directing the said clerk to issue a writ of replevin for the goods and chattels taken as aforesaid, or such part of them as the said justice shall think proper, the said justice specifying in the said warrant the goods and chattels for which the replevin is to be sued out.

Party applying to lodge the sum due, &c.

III. And be it enacted, That if it shall appear to the said justice that part of the tax is due for which the distress is laid, he shall, in such case, insert in his warrant for replevin, a condition that the party applying shall lodge with the said clerk such sum as shall appear to be due for taxes, (which shall be stated particularly in the warrant,) before any replevin shall be granted; and upon such sum being lodged, the clerk shall issue replevin, in the usual manner, for the whole property, and shall pay over the said money to the collector, when demanded, under the penalty of paying to such collector double the sum received, to be recovered by action for money had and received, wherein the plaintiff may declare generally, and give this act and the special matter in evidence.

On trial, jury to give verdict for what is due, &c.

IV. And be it enacted, That upon trial of any such replevin, if the jury shall give their verdict for the defendant, they shall find particularly how much is due to him, whereupon the defendant shall have judgment to recover the sum so found, and costs, where the whole of the defendant's claim is found, but where the jury only find a part of the defendant's claim, he shall only have costs in the discretion of the court; and, upon such judgment, the said defendant may sue out *capias ad satisfaciendum*, *feri facias*, or attachment in nature of execution, on which last writs the property originally distrained may be taken and sold, in whose hands soever the same shall be found, to satisfy the said judgment, but the defendant shall not have the writ *de retorno habendo*; and if the jury shall give their verdict for the plaintiff, they may find such damages as they think reasonable, in which may be included the money (if any) lodged by the plaintiff with the clerk of the county, under the condition of the magistrate's warrant as aforesaid; whereupon judgment shall be given for the plaintiff for the said damages, and also for costs; on which judgment the same process of execution shall be had as aforesaid.

On nonsuit, defendant entitled to a return of the property, &c.

V. And be it enacted, That if in any such replevin the plaintiff shall be nonsuited for want of a declaration, or in any other manner, except on verdict, the defendant shall be entitled to a return of the property, or may take out a writ of inquiry, to ascertain the amount of his claim for taxes, and if he shall elect to have a return of the property, he may proceed to sell the goods, when returned, in the same manner as if no replevin had been sued out; but if the said defendant shall elect to issue a writ of inquiry, judgment shall be entered, on the return thereof, for the sum found by the jury, and costs, on which judgment he shall have the same advantage of execution, as is herein before given to him where the judgment is rendered on a verdict on issue joined between the parties.

On obtaining judgment, plaintiff may sue, &c.

VI. And be it enacted, That if in any such replevin judgment shall be given against the defendant by default, the plaintiff may sue out a writ of inquiry, to ascertain his damages, on which writ the jury may award damages for any money lodged by the plaintiff with the county clerk as aforesaid; and on the return of the said writ, judgment shall be rendered for the damages found by the jury, and costs, whereon process of execution may be had as aforesaid.

Clerk issuing, not liable, &c.

VII. And be it enacted, That any county clerk issuing replevin in virtue of a magistrate's warrant as aforesaid, shall not be liable to the penalties of the act to which this is a supplement.

Replevins to be tried at the return court, &c.

VIII. And be it enacted, That all replevins sued out in virtue of this act, shall be tried and determined at the court to which the same shall be returnable, unless, upon special reasons shewn to the court, on affidavit in writing, they shall otherwise order.