

1705.  
measure out  
of doors.

wine-measure to all persons as drink it in their houses, and by beer-measure to all such persons as carry the same out of their houses, under the penalty of ten shillings, to the use of the poor for every county where the offence is committed, any law, custom or usage, to the contrary in any wise notwithstanding.

Repeal of a  
part of a  
former law.

II. *Provided always, and be it further enacted*, That the above recited law, entitled, *An act for regulating weights and measures*, and every part and proviso therein contained, except the last clause thereof, relating to selling beer and ale by beer-measure, shall be and remain in full force, any thing herein contained to the contrary notwithstanding.

Passed in 1705.—Recorded A. vol. I. page 184.

See ante. (chap. 73,) pa.19. The act for regulating the dimensions of casks, &c. herein recited, was repealed March 20th, 1810.

## CHAPTER CXXXIX.

*An ACT for the more easy and effectual collecting of the Proprietary's quitrents.*

Writs of replevin grantable.... So by the 22d section of the act of May 22, 1722, (post. chap. 255.)

XII. *AND be it further enacted*, That it shall and may be lawful for the Justices of each county in this province to grant writs of replevin in all cases whatsoever, where replevins may be granted by the laws of England, taking security as the said law directs, and make them returnable to the respective Courts of Common Pleas, in the proper county, there to be determined according to law.

Passed in 1705.—Repealed (in part) 27th November, 1779.—Recorded A. vol. I. page 185. (y)

(y) By an act of the 3d of April, 1779, (chap. 826,) it is provided that goods taken in execution or by distress, under the authority of the State, shall not be replevied. For the law respecting distresses and replevins in cases of rent; [and of the avowry, and making consurance, and how replevin bonds are to be taken by the Sheriff, see the act of March 21, 1772, (post. chap. 645,) and in what cases, and to what extent the Sheriff is liable for the sufficiency of the security, see 1 Dallas, 341, 349, 439, 440.]

The judicial writ, *de proprietate probanda*, cannot issue here in the case of a replevin. 1 Dallas, 156. The act in the text seems to have made a very considerable alteration in the proceedings in replevin: for, 1st. It does not recognize two kinds of replevin, one by plaint, and the other by writ; 2d. Replevins are made always returnable writs, and the party's appearance required on the return: and 3dly. They are directed to be *there* determined; that is, in the Court of Common Pleas. *Ibid.*

Before the goods are removed on a

replevin, the Sheriff ought to allow a reasonable time for the defendant to find security on a claim of property; which, in the practice of Pennsylvania, supplies the place of a writ *de proprietate probanda*. 1 Dallas, 225.

Goods taken in execution cannot be replevied; an action of trespass is the proper remedy for a wrongful levy. 1 Dallas, 312-13. [Replevin lies, in Pennsylvania, wherever a man claims goods in the possession of another. 1 Dallas, 156, and see 2 Dallas, 54. In replevin, bail for defendant, on a claim of property, are liable to the extent of the penalty of their bond. Where the goods are delivered to plaintiff, the Court will not give him leave to discontinue. Replevin will not lie for goods seized for non-payment of the city water tax. MSS. Reports, Sup. Court. Nor where plaintiff has no property in the thing replevied. See 4 Dallas, 342. See also the notes to chap. 645, post. Actions of replevin must be commenced within six years after cause of action. Act of March 27th, 1713, (post. chap. 195.)]