



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor-General of all Her Majesty's Australian Possessions, and Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the advice and consent of the Legislative Council.

No XI.

An Act to regulate Distresses for Rent, and Replevins. [Assented to, 19th December, 1851.]

WHEREAS doubts exist whether it is lawful in this Colony to sell any goods or chattels distrained for rent, and it is expedient to remove such doubts, and to regulate the manner of making such distress and sale in future, as well as the mode of commencing and conducting actions of replevin in cases of distress for rent: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That no person to whom any rent shall be due shall distrain any goods or chattels for such rent except by himself personally, or by his agent or bailiff, then duly authorised by warrant under his hand, or under the hand of his Attorney, duly constituted, such warrant to be in the form or to the effect of the Schedule hereunto annexed, and marked with the letter A: Provided always, that whenever the person signing such warrant shall be unable to write his name, his signature shall be attested by a Justice of the Peace, an Attorney at Law or a Clerk of Petty Sessions.

Preamble.

No landlord to distrain, except personally or by bailiff authorised by written warrant.

II. And be it enacted, That every person making any such distress as the agent or bailiff of another, shall first procure from such person, two copies of the before mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him, resident at the place where the said distress shall be made; and in case there shall be no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand, within one month after the making of such distress.

Bailiff to procure warrant in duplicate and give one copy to person distrained on.

2 A

III.

Person distraining to
forthwith make out
and deliver inven-
tory.

III. And be it enacted, That every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of the Schedule hereunto annexed, and marked with the letter B. of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him, resident at the place where the said distress shall be made; and in case there shall be no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Goods distrained for
rent may be sold after
the expiration of five
days.

IV. And be it enacted, That where any goods or chattels shall be distrained for any rent, and the tenant or owner of the goods so distrained shall not within five days next after such distress taken, replevy the same with sufficient security to be given to the Sheriff or his Deputy, or to any Justice of the Peace, according to law, then in such case, after the expiration of the said five days, the person distraining shall and may cause the goods and chattels so distrained to be sold by public auction, by a duly licensed auctioneer, or by a Sheriff's bailiff, or a bailiff of some Court of Petty Sessions, or Court of Requests, for the best price that can be gotten for the same, towards satisfaction of the said rent and the charges of the said distress and sale; and the overplus, if any, shall be forthwith handed over to the said tenant or owner; and a full and true account in writing of every such sale shall, in every case, be given by the person making the distress to the tenant or owner on demand: Provided always, that nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing at the time of the same being seized as a distress.

Not to apply to
corn, grass, hops, &c.,
growing at time of
seizure.

Owner of distrained
goods may direct
order of sale.

V. And be it enacted, That the tenant or owner of any goods so distrained as aforesaid, may, at his option, direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale, according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers'
goods not to be seized
for rent.

VI. Provided always, and be it enacted, That no distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sheriff to appoint
Deputies at certain
places.

VII. And be it enacted, That the Sheriff for the time being of the said Colony shall, by writing under his hand and seal, appoint one or more Deputy or Deputies in each of the towns of Parramatta, Maitland, Goulburn, Bathurst, Windsor, and Brisbane, for the purpose of making replevin and deliverance of distresses.

Justices may grant
replevin in certain
cases.

VIII. And be it enacted, That in all cases in which any distress shall be made at any place distant more than ten miles from the Office of the Sheriff, or from the residence of any Deputy appointed as aforesaid, it shall be lawful for any Justice of the Peace to grant a replevin of the goods distrained, and for that purpose to take a replevin bond with sufficient sureties: Provided nevertheless, that neither such Justice, nor the Sheriff, nor any such Deputy as aforesaid, shall be liable to any action for taking insufficient security, if he shall have acted *bona fide* and with reasonable care and caution.

Sheriff before de-
liverance of any dis-
tress, to take suffi-
cient security as
herein mentioned.

IX. And be it enacted, That the said Sheriff or Deputy, or Justice of the Peace as aforesaid shall, before deliverance be made by him of any distresses, take from the person or persons to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness or witnesses, and which oath the person granting replevin is hereby authorised to administer, conditioned

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conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded; and such Sheriff, Deputy, or Justice of the Peace, taking any such bond, shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance, by indorsing the same and attesting it under his hand and seal, in the presence of one credible witness, and if the bond so taken and assigned be forfeited, the avowant or the person making cognizance may bring an action and recover thereupon in his own name; and the Court where such action shall be brought may, by a rule of the same Court, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond.

X. And be it enacted, That every action of replevin, except those over which jurisdiction is hereinafter given to Courts of Requests and Courts of Petty Sessions, shall be commenced in the Supreme Court of New South Wales by writ of summons in such form as the Judges shall from time to time prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with; and the Laws and Statutes in force in England applicable to actions of replevin, shall be in force in this Colony, and be applied in the Administration of Justice so far as the same can be applied within this Colony.

Actions of replevin to be commenced by writ of summons in such form as the Judges shall prescribe.

XI. And be it enacted, That every precept to replevy shall be in the form or to the effect of the Schedule to this Act annexed marked D; and every replevin bond shall be taken in the form or to the effect of the Schedule to this Act annexed marked E; and every assignment of such bond shall be in the form or to the effect of the Schedule to this Act annexed marked F.

Forms of Precept to Replevy; and of Replevin and Assignment Bonds.

XII. And be it enacted, That the Sheriff and every such Deputy as aforesaid, and every Justice of the Peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

Fees to be charged.

XIII. And be it enacted, That the respective Courts of Requests established, or hereafter to be established, in the County of Cumberland, and the respective Courts of Petty Sessions established, or hereafter to be established, in any part of the Colony other than the County of Cumberland, shall and they are hereby authorised and empowered to hear and determine within their respective jurisdictions all actions of replevin relating to distresses for rent, between landlord and tenant, where the rent for or in respect of which any distress shall be or ought to have been made shall not exceed thirty pounds in amount or value; and all proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner, and shall be subject to the same rules as the law now directs, or shall hereafter direct, with respect to other actions in the said Courts of Requests or Petty Sessions.

Courts of Requests and Petty Sessions, empowered to adjudicate in actions of Replevin, as to distresses for rent, not exceeding thirty pounds.

XIV. And be it enacted, That the plaint in actions of replevin in the said Courts of Requests or Petty Sessions shall be in the form or to the effect of the Schedule to this Act annexed, marked G.

As to form of Plaint in such Actions.

XV. And be it enacted, That if at the hearing of any such action of replevin before any of the said Courts of Requests or Petty Sessions, it shall appear that any sum was due for rent, and that no tender of the sum so due was made before the filing of the plaint in the said Court, it shall be lawful for such Court to give judgment for the defendant for the sum ascertained to be due for rent, and the costs of defending the action, and making the distress; and in case it shall appear that no rent was due at the time of such distress, or that

Court may award damages, or may order Replevin bond to be given up.

that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, it shall be lawful for such Court to direct the replevin bond to be delivered up to the party complaining of the distress, and also to give judgment for the plaintiff for such damages as the Court may think fit, and, if necessary, to direct that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due, and to make an order accordingly.

Court may order goods distrained on to be sold.

XVI. And be it enacted, That it shall be lawful for every such Court of Requests or Petty Sessions, on the hearing of any such action of replevin, to order that the goods distrained shall be returned to the party who distrained the same; and in every such case where the goods distrained shall be actually returned to the party who distrained the same, and the costs of the proceedings paid, no further proceedings shall be had on the replevin bond; and all such goods, if returned or recovered under any such order as aforesaid, may be sold for the recovery of the rent due and expenses, at the expiration of four days after the return thereof.

Charges of distress defined.

XVII. And be it enacted, That where any distress shall be made by the person to whom the rent shall be due, or by any bailiff or agent as aforesaid, the charges in the Schedule hereunto annexed, and marked with the letter C, and no other, shall be made in respect thereof.

Distress may be secured and sold on premises.

XVIII. And be it enacted, That it shall be lawful for any person lawfully taking any distress for rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such places or on such part of the premises chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress, and to sell and dispose of the same upon the premises; and it shall be lawful for any person or persons whatsoever, after the expiration of the five days hereinbefore mentioned, to come and go to and from such place or part of the said premises where any distress for rent shall be impounded and secured as aforesaid, in order to view and buy, and in order to carry off or remove the same on account of the purchaser thereof; and if any pound breach or rescotts shall be made of any goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action on the case, for the wrong thereby sustained, recover his and their treble damages and costs of suit against the offender or offenders in any such rescous or pound breach, any or either of them, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession.

Treble damages for pound breach.

Double damages and costs against unlawful distrainer.

XIX. And be it enacted, That in case any such distress and sale as aforesaid, shall be made by virtue or color of this Act, for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person distraining, or to him in whose name or right such distress shall be taken as aforesaid, then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall and may by action of trespass, or upon the case, to be brought against the person so distraining, his executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit.

No appraisement necessary in distress for rent.

XX. And be it enacted, That in no case of distress for rent shall any appraisement whatever be necessary, nor shall any costs or expenses be charged or allowed in respect thereof.

Indemnifying persons having distrained before passing of this Act.

XXI. And be it enacted, That no action shall be brought nor any damages recovered in any Court of Justice in this Colony, against any person for having at the time of the passing of this Act, remained in possession of any goods or chattels lawfully distrained for rent on the premises in respect of which such distress may have been made, during five days after the making of such distress; or for having at the time of the passing of this Act, sold and disposed of, after the expiration of such

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five days, any goods lawfully distrained for rent: Provided, that nothing herein contained shall be held to apply to any action already commenced at the time of the passing of this Act.

XXII. And be it enacted, That if any person shall knowingly and wilfully distrain for rent, as the agent or bailiff of another, without having first obtained the warrant hereinbefore mentioned, in duplicate, or shall neglect or refuse to deliver one of such duplicates to the tenant or owner as hereinbefore directed, or if any person distraining for rent shall neglect or refuse to make out and deliver or post up such inventory as aforesaid, or shall charge more for any distress or sale than is authorised by this Act, or shall refuse to give such account in writing of any sale as hereinbefore provided, every person so offending shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved, before any two Justices of the Peace.

Penalty for distraining &c., contrary to law.

XXIII. And be it enacted, That all penalties imposed by this Act shall be paid one moiety to Her Majesty Her Heirs and Successors, for the public uses of the said Colony, and in the support of the Government thereof, and shall be applied in such manner as may be from time to time directed by any Acts of the said Governor and Legislative Council, and the other moiety to the use of the informer or party prosecuting.

Application of penalties.

XXIV. And be it enacted, That for the purposes of this Act the word "rent" shall be held to mean any rent reserved upon any demise, lease, or contract whatsoever.

Interpretation clause.

Passed the Legislative Council, this sixteenth day of December, one thousand eight hundred and fifty-one.

CHARLES NICHOLSON,
SPEAKER.

WM. MACPIERSON,
CLERK OF THE COUNCIL.

In the name and on the behalf of Her Majesty, I assent to this Act,

CH^S. A. FITZ ROY,

GOVERNOR-GENERAL.

Govt. House, Sydney, 19th December, 1851.

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SCHEDULE A.

WARRANT TO DISTRAIN.

I, A. B. of do hereby authorise you C. D. of to distrain the goods and chattels in the dwelling-house [or in and upon the farm land and premises] of E. F., situate at being the amount of rent due to me for the same, on the day of last [or instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this

day of

A. D. 18

A. B.

[or A. B., by his Attorney, G. H.]

SCHEDULE B.

INVENTORY.

I have this day, [if distress made by a bailiff here add by virtue of the Warrant, a copy of which is hereunder written,] distrained the following goods and chattels in the dwelling-house [or in and upon the farm land and premises] of E. F., situate at being the amount of rent due to me, [or, if the distress be made by a Bailiff, to A. B. of] for the same, on the day of last [or instant.]

Dated this

day of

A. D. 18

A. B., Landlord.

[or C. D., Bailiff.]

[And if distress made by a Bailiff enumerate the goods and chattels at full length; then insert a copy of the Warrant to distrain.]

SCHEDULE C.

CHARGES OF DISTRESS.

	£	s.	d.
Costs of levy where made by an Agent or Bailiff, under the authority of a Warrant to distrain, according to the following scale:—Where the sum distrained for shall be more than two and less than ten pounds	0	5	0
Where such sum shall be ten and less than fifty pounds	0	10	0
Where such sum shall be fifty pounds or upwards	1	0	0
Man in possession, per diem	0	4	0
Charges of Auctioneer or Bailiff conducting sale, not exceeding 2½ per cent.			
Advertisements—the money paid for their insertion, if such advertisements be required by the person whose goods are distrained.			

SCHEDULE D.

PRECEPT TO REPLEVY.

A. B., Esquire, Sheriff [or Deputy specially appointed by the Sheriff, or one of Her Majesty's Justices assigned to keep the Peace] To C. D., my bailiff:—Because E. F. hath found me sufficient security as well for prosecuting his suit with effect against G. H. for taking his goods and chattels, to wit, [specifying them] and also for making a return thereof, if return thereof shall be adjudged; therefore I command you without delay to replevy and deliver to the said E. F., his said goods and chattels which the said G. H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this

day of

A. D. 18

A. B.

Sheriff,

[or Sheriff's deputy, or Justice of the Peace.]

SCHEDULE E.

REPLEVIN BOND.

Know all men by these presents that we, J. P., of [place of abode and addition], C. D., of [place of abode and addition], and L. H., of [place of abode and addition], are held and firmly bound to A. B., Esquire, Sheriff of New South Wales, [or Deputy, specially appointed by the Sheriff; or one of Her Majesty's Justices, assigned to keep the Peace], in the sum of [insert double the value of the goods and chattels,] of lawful money of Great Britain, to be paid to the said A. B., or his certain Attorney, Executors, Administrators, or Assigns, for which payment to be made we bind ourselves, and each of us, our respective Heirs, Executors, and Administrators, jointly and severally, firmly by these presents.

Dated this

day of

A. D. 18

Whereas the above A. B., upon the complaint of the above J. P., hath consented to deliver and replevy to the said J. P., the goods and chattels following, to wit, [enumerate the whole of the property,] which J. N., of [place of abode and addition,] hath taken and wrongfully withheld, as the said J. P. alleges.

Now

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Now the condition of this obligation is, that if the said J. P. do, within one month now next ensuing, commence an action against the said J. N., in the Supreme Court of New South Wales, or in some competent Court of Requests or of Petty Sessions, and do prosecute such suit with effect and without delay, against the said J. N., for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A. B., against the said J. N. and all other persons, from and against all matters and things concerning the premises; then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered,
in the presence of }

J. P. (L. S.)
C. D. (L. S.)
L. H. (L. S.)

SCHEDULE F.

ASSIGNMENT OF BOND.

Know all men by these presents, that I the within named A. B. have at the request of the within named J. N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J. N., pursuant to the Act in such case made and provided. In witness whereof, I have hereunto set my hand and seal, this day of 18

Signed, sealed, and delivered,
in the presence of }

A. B. (L. S.)

SCHEDULE G.

PLAINT.

A. B., of [*insert place of residence*], complains of C. D., of [*insert place of residence*], for that the said C. D. did on the day of last [*or instant*], at [*insert place of distress*], unlawfully distrain the following goods and chattels of the said A. B., that is to say, [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C. D. alleged to be due to him for rent.