

AN ACT for the more effectual securing the Payment of Rents,
and preventing Frauds by Tenants.

WHEREAS the several laws heretofore made for the better security of rents, and to prevent frauds committed by tenants, have not proved sufficient to obtain the good ends and purposes designed thereby, but rather the fraudulent practices of tenants, and the mischief intended by the said Acts to be prevented, have of late years increased, to the great loss and damage of their lessors or landlords : For remedy whereof,

Landlords
may distrain
and sell
goods fraudu-
lently carried
off the pre-
mises within
thirty days,

In case any tenant or tenants, lessee or lessees, for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or

¹ It would appear this Act is in force in the colony so far as not affected by "The Distress and Replevin Act, 1868," and "The Resident Magistrates Act, 1867," sections 82 *et seq.*

from such premises, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable; it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within that part of Great Britain called England, Dominion of Wales, or the Town of Berwick-upon-Tweed, or any person or persons by him, her, or them for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent, any law, custom, or usage to the contrary in any wise notwithstanding.

2. Provided always that no landlord or lessor, or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same which shall be sold *bond fide*, and for a valuable consideration, before such seizure made, to any person or persons not privy to such fraud as aforesaid, anything herein contained to the contrary notwithstanding.

unless sold to any person not privy to the fraud.

3. And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting therein, or concealing the same,

If any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same, all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her, or them respectively carried off or concealed as aforesaid, to be recovered by action of debt in any of His Majesty's Courts of Record at Westminster, or in the Courts of Session in the Counties Palatine of Chester, Lancaster, or Durham, respectively, or in the Courts of Grand Sessions in Wales, wherein no essoin, protection, or wager of law shall be allowed, nor more than one imparlance.

Penalty on the said fraud, or assisting thereto.

4. Provided always that, where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of fifty pounds, it shall and may be lawful for the landlord or landlords, from whose estate such goods or chattels

If the goods exceed not the value of £50 landlords to have recourse to two Justices.

were removed, his, her, or their bailiff, servant, or agent, in his, her, or their behalf, to exhibit a complaint in writing against such offender or offenders, before two or more Justices of the Peace of the same county, riding, or division of such county, residing near the place whence such goods and chattels were removed, or near the place where the same were found, not being interested in the lands or tenements whence such goods were removed ;

Who may summon the parties concerned, examine the fact, and all proper witnesses, upon oath, or, if any such witness be one of the people called Quakers, upon affirmation required by law ; and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged, and to inquire in like manner of the value of the goods and chattels by him, her, or them respectively so fraudulently carried off or concealed as aforesaid ;

And, upon full proof of the offence, by order under their hands and seals, the said Justices of Peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or landlords, his, her, or their bailiff, servant, or agent, at such time as the said Justices shall appoint : and, in case the offender or offenders, having notice of such order, shall refuse or neglect so to do, may and shall, by warrant under their hands and seals, levy the same by distress and sale of the goods and chattels of the offender or offenders ; and, for want of such distress, may commit the offender or offenders to the house of correction, there to be kept to hard labour without bail or mainprize for the space of six months, unless the money so ordered to be paid as aforesaid shall be sooner satisfied.

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7. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent ; it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons empowered to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance the constable, headborough, bors-holder, or other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein ;

Landlords may break open houses to seize goods fraudulently secured therein ;

and, in case of a dwelling-house, oath being also first made before some Justice of the Peace of a reasonable ground to suspect that such goods or chattels are therein), in the day-time to break open and enter into such house, barn, stable, out-house, yard, close, and place, and to take and seize such goods and chattels for the said arrears of rent, as he, she, or they might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

8. . . . It shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other person or persons empowered by him, her, or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants, feeding or depasturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premises demised or holden ;

and may
distrain stock
or cattle on
the premises
for arrears of
rent.

And also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever, which shall be growing on any part of the estates so demised or holden, as a distress for arrears of rent ; and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premises so demised or holden ;

And in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premises ;

And in convenient time to appraise, sell, or otherwise dispose of the same towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of ; and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

9. Provided always that notice of the place where the goods and chattels so distrained shall be lodged or deposited shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode ;

Tenants to
have notice of
the place
where the
distress is
lodged.

And that if, after any distress for arrears of rent so taken, of corn, grass, hops, roots, fruits, pulse, or other product, which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured, or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay, or cause to be paid, to the lessor or landlord, lessors or landlords,

Distress of
corn, &c., to
cease if rent
be paid before
it be cut.

for whom such distress shall be taken, or to the steward or other person usually employed to receive the rents of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby,

That then and upon such payment, or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same and every part thereof shall cease; and the corn, grass, hops, roots, fruits, pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns, anything hereinbefore contained to the contrary notwithstanding.

10. And whereas great difficulties and inconveniences frequently arise to landlords and lessors, and other persons taking distresses for rent, in removing the goods and chattels or stock distrained off the premises, in cases where by law they may not be impounded and secured thereupon; and also to the tenants themselves many times, by the damage unavoidably done to such goods and chattels, or stock, in the removal thereof:

It shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place, 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 appraise, sell, and dispose of the same upon the premises, in like manner, and under the like directions and restraints to all intents and purposes, as any person taking a distress for rent may now do off the premises, by virtue of an Act made in the second year of the reign of King William and Queen Mary, intituled "An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid in a reasonable Time;" or of one other Act made in the fourth year of His present Majesty, intituled "An Act for the more effectual preventing Frauds committed by Tenants, and for the more easy Recovery of Rents, and Renewal of Leases;"

And it shall and may be lawful to and for any person or persons whatsoever 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, appraise, and buy, and also in order to carry off or remove the same, on account of the purchaser thereof; and if any pound-breach or rescous shall be made of any goods and chattels, or stock, distrained for rent, and impounded or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have

Distresses
may be se-
cured and sold
on the pre-
mises.

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14. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, . . . it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed;

Rents, how to be recovered, where the demises are not by deed.

And if in evidence on the trial of such action any parol, demise, or any agreement (not being by deed), whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of the damages to be recovered.

15. And whereas, where any lessor or landlord, having only an estate for life in the lands, tenements, or hereditaments demised, happens to die before or on the day on which any rent is reserved or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements, or hereditaments, from the death of the tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying anything for the same:

For remedy whereof, . . . where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable upon any demise or lease of any lands, tenements, or hereditaments, which determined on the death of such tenant for life, the executors or administrators of such tenant for life shall and may in an action on the case recover of and from such under-tenant or under-tenants of such lands, tenements, or hereditaments, if such tenant for life die on the day on which the same was made payable the whole, or if before such day then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as afore-said, making all just allowances or a proportionable part thereof respectively.

Rent recoverable from under-tenant, where tenants for life die before the rent is payable.

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18. And whereas great inconveniences have happened and may happen to landlords whose tenants have power to determine their leases, by giving notice to quit the premises by them holden, and yet refusing to deliver up the possession when the landlord hath agreed with another tenant for the same: . . .

Tenants hold-
ing premises
after the time
they notify
for quitting
them to pay
double rent.

In case any tenant or tenants shall give notice of his, her, or their intention to quit the premises by him, her, or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained; then the said tenant or tenants, his, her, or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent or sum, which he, she, or they should otherwise have paid; to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

19. And whereas it hath sometimes happened that, upon a distress made for rent justly due, the directions of the Statute made in the second year of the reign of King William and Queen Mary, intituled "An Act for enabling the Sale of Goods distrained for Rent, in case the Rent be not paid within a reasonable Time," have not been strictly pursued, but, through the mistake or inadvertency of the landlord or other person entitled to such rent and distraining for the same, or of the bailiff or agent of such landlord or other person, some irregularity or tortuous act hath been afterwards done in the disposition of the distress so seized or taken as aforesaid; for which irregularity or tortuous act the party distraining hath been deemed a trespasser *ab initio*, and in an action brought against him as such the plaintiff hath been entitled to recover, and has actually recovered, the full value of the rent for which such distress was taken: And whereas it is a very great hardship upon landlords and other persons entitled to rents that a distress duly made should be thus in effect avoided for any subsequent irregularity:

Distresses for
rent not
unlawful, &c.,
for any irre-
gularity in the
disposition of
them;

Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents, the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers *ab initio*; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he, she, or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs: Provided always that, where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

20. Provided, nevertheless, that no tenant or tenants, lessee or lessees, shall recover in any action for any such unlawful act or irregularity as aforesaid if tender of amends hath been made by the party or parties distraining, his, her, or their agent or agents, before such action brought.

nor tenants to recover by action on tender of amends.

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22. And whereas great difficulties often arise in making avowries or conuzance upon distresses for rent, quit-rents, reliefs, heriots, and other services :

It shall and may be lawful to and for all defendants in replevin to avow or make conuzance generally that the plaintiff in replevin or other tenant of the lands and tenements whereon such distress was made enjoyed the same under a grant or demise at such a certain rent, during the time wherein the rent distrained for incurred, which rent was then and still remains due ; or that the place where the distress was taken was parcel of such certain tenements held of such honor, lordship, or manor, for which tenements the rent, relief, heriot, or other service distrained for was at the time of such distress and still remains due ; without further setting forth the grant, tenure, demise, or title of such landlord or landlords, lessor or lessors, owner or owners of such manor, any law or usage to the contrary notwithstanding.

Defendants in replevin to avow, &c., that the plaintiff held the premises at a certain rent, &c.

23. And to prevent vexatious replevins of distresses taken for rent, . . . all Sheriffs and other officers having authority to grant replevins may and shall, in every replevin of a distress for rent, take, in their own names, from the plaintiff and two responsible persons as sureties a bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress, which oath the person granting such replevin is hereby authorized and required to administer), and conditioned for prosecuting the suit with effect and without delay, and for duly returning the goods and chattels distrained in case a return shall be awarded, before any deliverance be made of the distress :

To prevent vexatious replevins.

And such Sheriff or other officer as aforesaid taking any such bond shall, at the request and costs of the avowant or person making conuzance, assign such bond to the avowant or person aforesaid, by indorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses, which may be done without any stamp ; . . . and, if the bond so taken and assigned be forfeited, the avowant or person making conuzance may bring an action and recover thereupon in his own

Replevin bonds may be assigned.

11 *Geo. II.*,
c. 19.

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.
