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CHAPTER DCXLV.

An ACT *for the sale of goods distrained for rent, and to secure such goods to the persons distraining the same, for the better security of Rents, and for other purposes therein mentioned.*

WHEREAS the most ordinary and ready way for recovery of arrears of rent is by distress, and no provision hath yet been made by the laws of this province, that such distresses may be sold, and by the common law the same may be only detained, as pledges for enforcing the payment of such rent, and the persons distraining have little benefit thereby: For the remedying whereof, *Be it enacted*, That, from and after the publication of this act, where any goods or chattels shall be distrained for any rent reserved and due, upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof, with the cause of such taking, left at the mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the Sheriff, according to law, that then, and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the Sheriff, Under-Sheriff, or any Constable in the city or county where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two reputable freeholders, who shall have and receive for their trouble the sum of two shillings *per diem* each, and shall first take the following oath or affirmation. I, *A. B. will well and truly, according to the best of my understanding, appraise the goods and chattels of C. D. distrained on for rent by E. F.* Which oath or affirmation such Sheriff, Under-Sheriff or Constable, are hereby empowered and required to administer; and after such appraisement shall or may, after six days public notice, lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same, for and towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said Sheriff, Under-Sheriff or Constable, for the owner's use.

Manner of proceeding with goods, &c. distrained for rent, &c.

II. *And be it further enacted*, That upon any pound-breach or rescous of goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action upon the case for the wrong thereby sustained, recover his, her or their treble damages, and costs of suit, against the offender or offenders in such rescous or pound-breach, any or either of them; or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession.

Penalty on any pound-breach or rescous of goods, &c. distrained.

III. *Provided always, and be it further enacted*, That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear and due, when in truth no rent shall appear to be in arrear or due to the person or persons distraining, or to him or them, in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods and chattels

Penalty on persons distraining &c. when no rent in arrear.

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 or persons so distraining, any or either of them, his or their executors or administrators, recover double the value of the goods or chattels so distrained and sold, together with full costs of suit.

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IV. *And be it further enacted*, That the goods or chattels lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, or otherwise, taken by virtue of any execution, shall be liable to the payment of all such sum or sums of money as are or shall be due for rent for the premises, at the time of taking such goods and chattels by virtue of such execution. And the said Sheriff shall, after sale of the said goods and chattels, pay to the landlord, or other person empowered to receive the same, such rent so due, if so much shall be in his hands, and if not, so much as shall be in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs in such execution mentioned. *Provided always*, That the said rent, so to be paid to the landlord, shall not exceed one year's rent.*

Goods and chattels taken in execution, first liable to the payment of rent, &c.

* So in case of insolvent debtors, chap. 315. sect. 11. ante, pa. 185.

V. *And be it further enacted*, That in case any lessee for life or lives, term of years, at will, or otherwise, of any messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall, from and after the publication of this act, fraudulently or clandestinely convey or carry off or from such demised premises his goods and chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved as aforesaid, it shall and may be lawful to and for such lessor or landlord, or any other person or persons, by him 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 may be found, as a distress for the said arrears of such 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 in and upon such demised premises, for such arrears of rent, any law, custom or usage, to the contrary notwithstanding.

Goods and chattels clandestinely conveyed away, to prevent being distrained on, may be seized, wherever found within thirty days.

VI. *Provided nevertheless*, That nothing herein contained shall extend, or be deemed or construed to extend, to empower such lessor or landlord to take or seize any such goods or chattels as a distress for arrears of rent, which shall be, *bona fide*, and for a valuable consideration, sold before such seizure made to any person or persons not privy to such fraud as aforesaid, any thing herein to the contrary notwithstanding.

Unless sold before such seizure be made.

VII. *And be it further enacted*, That from and after the publication of this act, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her or their 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 all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse or

Cattle, stock, corn, grass, &c. may be seized as a distress for arrears of rent, &c.

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other product whatsoever, which shall be growing on any part of the estate or estates so demised or holden, as a distress for arrears of rent, and 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 that the purchaser of any such corn, grass, hops, roots, fruits, pulse or other product, shall have free egress and regress to and from the same where growing, to repair the fences from time to time, and when ripe to cut, gather, make, cure, and lay up and thresh, and after to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

Penalty on tenants secreting declaration in ejectment, &c.

VIII. "And whereas great inconveniences may frequently happen to landlords, by their tenants secreting declarations in ejectment, which may be delivered to them, or by refusing to appear "to such ejectments, or to suffer their landlords to take upon them "the defence thereof:" *Be it further enacted*, That, from and after the publication of this act, every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements or hereditaments, within this province, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff, receiver, agent or attorney, under penalty of forfeiting the value of two years rent of the premises so demised, or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt, to be brought in any of the Courts of Common Pleas within this province, wherein no essoin, protection or wager of law, shall be allowed, nor any more than one imparlance.

Manner of proceeding, where ejectment is brought.

IX. *And be it further enacted*, That it shall and may be lawful for the court where such ejectment shall be brought to suffer the landlord or landlords to make him, her or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule, that, by the course of the court, the tenant in possession, in case he or she had appeared, ought to have done, then the court where such ejectment shall be brought shall and may permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Defendants in replevin to avow or make conuzance, &c.

X. And whereas great difficulties often arise in making avowries or conuzance upon distresses for rent: *Be it further enacted*, That, from and after the publication of this act, it shall and may be lawful for all defendants in replevin to avow and 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 or service, during the time wherein the rent or service, distrained for incurred, which

rent or service was then and still remains due, without further setting forth the grant, tenure, demise or title, of such landlord or landlords, lessor or lessors, any law or usage to the contrary notwithstanding; and if the plaintiff or plaintiffs in such action shall become non suit, discontinue his, her or their action, or have judgment given against him, her or them, the defendant or defendants in such replevin shall recover double costs of suit.

Sheriff, &c. serving replevins, to take a bond from the plaintiff, &c.

XI. And to prevent vexatious replevins of distresses taken for rent, *Be it enacted*, That, from after the publication of this act, all Sheriffs and other officers, having authority to serve replevins, may and shall, in every replevin of a distress for rent, take in their own names from the plaintiff, and one responsible person as surety, a bond, in double the value of the goods distrained (such value to be ascertained by the oath or affirmation of one or more credible person or persons, not interested in the goods or distress; which oath or affirmation the person serving 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, and that 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 credible witnesses; 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 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.

Manner of landlord's proceeding to gain re-possession, &c.

XII. And whereas it frequently happens within this province, that lessees or tenants for years, or at will, often hold over the tenements to them demised after the determination of such leases, and although such lessees and tenants have been required to deliver up the tenements to the landlord or lessor, who had occasion to dwell in his own house, or give, grant or demise the same to another, yet they have most unjustly refused so to do, and have obliged the lessors or landlords, at a great expense, to bring ejectments against their tenants, and, by the delays incident to law proceedings, have kept the owner of the house at law, and out of possession, several years: For preventing therefore such unjust practices, *Be it further enacted*, That where any person or persons in this province, having leased or demised any lands or tenements to any person or persons for a term of one or more years, or at will, paying certain rents, and he or they, or his or their heirs or assigns, shall be desirous upon the determination of the lease to have again and re-possess his or their estate so demised, and for that purpose shall demand and require his or their lessee or tenant to remove from and leave the same, if the lessee or tenant shall refuse to comply therewith, in three months after such request to him made, it shall and may be lawful to and for such lessor or lessors, his or their heirs and

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assigns, to complain thereof to any two Justices of the city, town or county where the demised premises are situate, and upon due proof made before the said Justices, that the said lessor or lessors had been quietly and peaceably possessed of the lands or tenements so demanded to be delivered up, that he or they demised the same, under certain rents, to the then tenant in possession, or some person or persons under whom such tenant claims, or came into possession, and that the term for which the same was demised is fully ended, that then, and in such case, it shall and may be lawful for the said two Justices, to whom complaint shall be made as aforesaid, and they are hereby enjoined and required forthwith to issue their warrant, in nature of a summons, directed to the Sheriff of the county, thereby commanding the Sheriff to summon twelve substantial freeholders to appear before the said Justices, within four days next after issuing the same summons, and also to summon the lessee or tenant, or other person claiming or coming into possession under the said lessee or tenant, at the same time to appear before them, the said Justices and freeholders, to shew cause, if any he has, why restitution of the possession of the demised premises should not be forthwith made to such lessor or lessors, his or their heirs or assigns; and if, upon hearing the parties, or in case of the tenant's, or other persons claiming or coming into possession under the said lessee or tenant, neglect to appear after being summoned as aforesaid, it shall appear to the said Justices and freeholders, that the lessor or lessors had been possessed of the lands or tenements in question, that he or they had demised the same for a term of years, or at will to the person in possession, or some other under whom he or she claims or came into possession, at a certain yearly or other rent, and that the term is fully ended, that demand had been made of the lessee, or other person in possession as aforesaid, to leave the premises three months before such application to the said Justices, that then, and in every such case, it shall and may be lawful for the said two Justices to make a record of such finding by them, the said Justices and freeholders, and the said freeholders shall assess such damages as they think right against the tenant, or other person in possession as aforesaid, for the unjust detention of the demised premises, for which damages, and reasonable costs, judgment shall be entered by the said Justices, which judgment shall be final and conclusive to the parties, and upon which the said Justices shall, and they are hereby enjoined and required to issue their warrant, under their hands and seals, directed to the Sheriff of the county, commanding him forthwith to deliver to the lessor or lessors, his or their heirs or assigns, full possession of the demised premises aforesaid, and to levy the costs, taxed by the Justices, and damages so by the freeholders aforesaid assessed, of the goods and chattels of the lessee or tenant, or other person in possession as aforesaid, any law, custom or usage, to the contrary notwithstanding.

Manner of poceeding where titles are disputed, &c.

XIII. *Provided always nevertheless*, That if the tenant shall allege that the title to the lands and tenements in question is disputed and claimed by some other person or persons, whom he shall name, in virtue of a right or title accrued or happening since the commencement of the lease, so as aforesaid made to him, by descent, deed, or

from or under the last will of the lessor, and if thereupon the person so claiming shall forthwith, or upon a summons, immediately to be issued by the said Justices, returnable in six days next following, before them appear, and on oath or affirmation, to be by the said Justices administered, declare that he verily believes that he is entitled to the premises in dispute, and shall, with one or more sufficient sureties, become bound by recognizance in the sum of one hundred pounds to the lessor or lessors, his or their heirs or assigns, to prosecute his claim at the next Court of Common Pleas to be held for the county where the said lands and tenements shall be, that then, and in such case, and not otherwise, the said Justices shall forbear to give the said judgment. *Provided also*, That if the said claim shall not be prosecuted, according to the true intent and meaning of the said recognizance, it shall be forfeited to the use of the lessor or landlord, and the Justices aforesaid shall proceed to give judgment, and cause the lands and tenements aforesaid to be delivered to him in the manner herein before enjoined and directed.

Arrears of rent may be distrained for after the determination of leases, &c.

XIV. And whereas, after the determination of such leases so made as aforesaid, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof: *Be it therefore further enacted*, That, from and after the publication of this act, it shall and may be lawful for any person or persons, having any rent in arrear or due upon any lease for life or lives, or for one or more years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined; provided that such distress be made during the continuance of such lessor's title or interest.

Passed 21st March, 1772.—Recorded A. vol. V. page 457. (y)

(y) By an act passed April 6th, 1802, (chap. 2294,) entitled "An act to enable purchasers at Sheriffs' or Coroners' sales to obtain possession." The purchasers of lands, &c. at Sheriffs' sales may give notice to the defendant, or person in possession, requiring him to surrender up the same; and the manner of proceeding to gain the possession, where it is withheld for three months after such notice; and also where the person in possession disclaims to hold under the defendant named in the execution, by virtue whereof the sale was made, is prescribed, being similar to the mode of proceeding directed in the twelfth and thirteenth sections of the act in the text; and no *certiorari* shall be a *supersedeas*, or have any effect to prevent or delay the execution, or delivery of possession.

Where such sale has been made of lands under lease, at the time of sale; the purchaser, after receiving the Sheriff's deed, shall be considered as the landlord, and shall have the like remedies by distress, or otherwise, to recover any rents due, subsequent to such sale, as the defendant, as whose property the same was sold, might or could have, if no such sale had taken place; and if, after notice of such sale, the tenant, or other person occupying the premises, shall pay any rent to the former landlord, he shall be liable to repay the same to the purchaser. The remaining part of the act relates to sales previously made.

By the 20th section of the act of March 20th, 1810, consolidating the different laws for the recovery of debts and demands not exceeding one hundred dollars, which repeals and supplies a former act containing a similar provision, the powers of Justices of the peace are extended to all cases of rent, not exceeding one hundred dollars, so far as to compel the landlord to defalcate, or set off the just account of the tenant out of the same; but the landlord may waive further proceedings before the Justice, and pursue the method of distress in the usual manner, for the balance so settled; but if any landlord

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shall be convicted, after such waiver, in any Court of Record, of distraining for, and selling more than to the amount of such balance, and of detaining the surplus in his hands, he shall forfeit to the tenant four times the amount of the sum detained. But no appeal shall lie in the case of rent, but the remedy by replevin shall remain as heretofore.

The ancient fictitious mode of proceeding by the delivery of a declaration in ejectment, is abolished by the 12th section of the act to regulate arbitrations and proceedings in Courts of Justice, passed March 21st, 1806, (chap. 2686,) and a new writ of ejectment is formed; and it is declared that an ejectment shall not be brought *otherwise.* But no provision is made for the case of notice to the landlord, when such writ may be served on the tenant, and it may deserve consideration, how far the eighth section of the act in the text is affected by the new act. By the supplement, passed April 13th, 1807, (chap. 2872,) a provision is introduced corresponding with the ninth section of the act in the text, "That the defendant may defend upon his own title, or the title of third persons; and the landlord may, as heretofore, be admitted as defendant, and in such case on the trial, shall admit himself in possession.

Connected with the subject of the act in the text, there are various English statutes extending to Pennsylvania.

Thus, the remedy for an excessive distress, is founded on the statute of *Marlborough* (commonly called the statute of *Marlbridge,)* 52, Hen. 3, chap. 4.

"None from henceforth shall cause any distress that he hath taken, to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, and without judgment, he shall make fine as for a thing done against the peace: nevertheless, if the lord presume so to do against his tenant, he shall be grievously punished by amerciament. Moreover, distresses shall be reasonable, and not too great. And he that taketh great and unreasonable distresses, shall be grievously amerced for the excess of such distresses."

1 & 2, *Philip* & *Mary*, chap. 12, an act for the impounding of distresses. "No distress of cattle shall be driven out of the hundred, &c. where such distress is, or shall be taken, except that it be to a pound *overt* within the same shire, not above three miles distant from the place where the said distress is taken; and that no cattle, or other goods, distrained or taken by way of distress for any manner of cause at one time, shall be impounded in several places, whereby the owner, or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this act, shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages."

52, Hen. 3, chap. 15, *(stat. of Marlb.)* In what places distresses shall not be taken. "It shall be lawful for no man from henceforth, for any manner of cause to take distresses out of his fee, nor in the King's highway, nor in the common street, &c."

11th Geo. 2, chap. 19, sect. 14. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, *Be it enacted, &c.* That 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; 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 damages to be recovered.

Sect. 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 tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying any thing for the same: For remedy whereof, *Be it enacted, &c.* That 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, that 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 aforesaid, making all just allowances, or a proportionable part thereof respectively.

The stat. of 32 Hen. 8, chap. 34, gives to grantees of reversions advantage of the conditions to be performed by the lessees. (Such part as relates to the king and his grantees, does not, of course, extend to Pennsylvania.) It is enacted, "That as well all and every person and persons, and bodies politic, being grantees or assignees, &c. their heirs, executors, successors and assigns of every of them, shall and may have and enjoy like advantages against the lessees, their executors administrators and assigns, by entry for non payment of the rent, or for doing waste, or other forfeiture; and also shall and may have and enjoy all and every such like and the same advantage, benefit and remedies by action only for not performing of other conditions, covenants or agreements contained and expressed in the indentures of their said leases, demises or grants, against all and every the said lessees and farmers and grantees, their executors, administrators and assigns, as the said lessors, or grantors themselves, or their heirs or successors ought, should or might have had and enjoyed at any time or times, in like manner and form, &c. moreover, *Be it enacted, &c.* That all farmers, lessees and grantees of manors, lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators or assigns shall and may have like action, advantage and remedy against all and every person and persons and bodies politic, their heirs, successors and assigns which have, or shall have any gift or grant of any other person or persons of the reversion of the same manors, lands, tenements and other hereditaments so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases as the same lessees or any of them might and should have had against the said lessors and grantees, their heirs and successors; all benefits and advantages of recoveries in value by reason of any warrants in deed or in law by voucher or otherwise only excepted.

32 Hen. 8, chap. 37. For recovery of arrearages of rents by executors of tenant in fee simple.

Be it enacted, &c. That the executors and administrators of every person or persons unto whom any rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants that ought to have paid the said rent or fee farms so being behind in the life of their testator, or against the executors or administrators of the said tenants; and also further more, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee farms, upon the lands, tenements and other hereditaments, which were charged with the payment of such rents and fee farms, and chargeable to the distress of the said testator, so long as the said lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesn, who ought immediately to have paid the said rent or fee farm so being behind, to the said testator in his life or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments only by and from the same tenant by purchase, gift or descent, in like manner and form as their said testator might or ought to have done in his life time; and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

And be it further enacted, That if any man which now hath or hereafter shall have in the right of his wife, any estate in fee simple, fee tail or for term of life of, or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesn that ought to have paid the same, his executors and administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

And likewise, it is *further enacted,* that if any person or persons shall have any rents or fee farms for term of life or lives of any other person or persons, and the said rent or fee farms shall be due, behind, and unpaid, in the life of such person or persons for whose life or lives

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the estate of the said rent or fee farm did depend or continue, and after the said person or persons do die, then he unto whom the said rent or fee farm was due in form aforesaid, his executors or administrators, shall and may have an action of debt against the tenant in demesn, that ought to have paid the same when it was first due, his executors and administrators; and also distrain for the same arrearages upon such lands and tenements out of which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee farms was determined and expired, had been in full life, and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid.

The following statutes, prior in point of time to the foregoing, also extend to Pennsylvania, and are connected with the subject of landlord and tenant; but not so immediately with the subject matter of the act in the text, as 11 Hen. 6, chap. 5, which provides a remedy where a tenant granteth over his estate, taketh the profits, and committeth waste, 7 Hen. 8, chap. 4, an act concerning avowries for rents and services—How rents and services may be recovered by avowry; the recoveror in a common recovery, may distrain for the rents and services of the tenant, &c. 32 Hen. 8, chap. 28. Lessees to enjoy the farm against tenants in tail; and of leases made by husband and wife, of lands held in right of the wife, &c.

See chap. 139, ante. page 44, and the notes thereto subjoined.

The following points have been determined, under the 11th section of the act in the text.

Murdock v. *Will*.

Action against the Sheriff for taking insufficient sureties on a replevin bond. The President of the Common Pleas laid down the following positions:

1. That as the law gives the remedy of distress to a landlord, it is incumbent upon the Sheriff to see that the security is good, before he returns the property on a replevin.

2. That evidence of a vague report of the surety's being in good circumstances, is not sufficient to repel the proof made by the plaintiff, that his circumstances were bad at the time of the replevin.

3. That the value of the distress, at the time of the replevin, and not the amount of the rent due, is the proper measure of damages in this action.

4. That, therefore, the goods distrained ought (although a contrary practice has prevailed) to be valued before they are delivered on a replevin.

Verdict for the plaintiff, for the value of the goods distrained. 1 Dallas, 341.

And in the case of *Oxley* v. *Copperthwaite*, 1 Dallas, 349, which was also an action for taking insufficient sureties on a replevin bond; the question was, whether a Sheriff is responsible that the sureties shall prove sufficient on the event of the replevin; or only that they were of good credit at the time of their entering into the bond?

Shippen, President.—The case of a bail bond differs, I think, in one respect, at least, from a replevin bond; for the sufficiency of the former may speedily be inquired into, but the latter must wait the event of the replevin, which may be suspended for several years, until, perhaps, by the vicissitudes of trade and fortune, the sureties have become insolvent. This, therefore, is certainly a hard part of the Sheriff's duty. But there is likewise a hardship in the case of the landlord; for, by the replevin he is divested of the immediate security of his tenant's goods, and yet has no right to interfere in the choice of the sureties, that undertake to see them returned when he has established his demand.

From this view, then, it certainly seems reasonable, that he, who is exclusively authorised to take and judge of the security, should rather be affected by its eventual insufficiency, than he who has no right to question its validity. The authorities, indeed, are positive, that, if the sureties do not *prove sufficient*, the Sheriff is liable; and, although the case must frequently have happened, no contrary decision can be produced; for, in *Murdock* v. *Will*, and *Welsh* v. *Proctor*, both lately tried here, the counsel put the cases upon the point of insufficiency of the sureties at the time of taking them; so that the present point never came in question.

That the policy of the law bears hard in this respect upon the Sheriff, may be a reason with the legislature to make some new provision for an enquiry into the sufficiency of the bail in an earlier stage of the cause; but cannot be a justification for our deciding, at this time, contrary to an established principle.

The Court are, therefore, clearly of opinion, that the verdict, on the question of law, ought to be in favour of the plaintiff.

Verdict accordingly, for plaintiff, for damages to the value of the goods at the time they were distrained.

So, it was adjudged, in the case of *Miller* v. *Foutz*, in the Supreme Court,

Dec'r, 1798. That the bail for defendant in replevin, on a *claim* of *property*, are liable to the extent of the penalty of their bond. MSS. Reports.

In *Philips* v. *Hyde*, 1 Dallas, 439. Debt upon a replevin bond:—after judgment de *retorno habendo*, the Sheriff returned an *elongatur*.

The defendant offered to prove, that the goods had been tendered to the plaintiff; and, therefore, that the condition of the replevin bond had been performed.

This was opposed, on the ground, that no evidence could be received to contradict the Sheriff's return. See 12, Mod. 424. T. Raym. 485, 487. 2 Mod. 10, 11. Cro. El. 872, pl. 9.

In reply, it was admitted, that some returns of the Sheriff could not be traversed; but it was contended, that the return of *elongatur* was not of that class. See 12 Mod. 426.

The Court over-ruled the evidence.

A question then arose, whether the jury could include the costs which had accrued on the *replevin*, in their verdict in the present action: and the Court were clearly of opinion, that they could, and ought to do so. Conformably to which was the verdict of the jury.

And, goods distrained and replevied are discharged from the lien of the distrainor; but if the identical goods distrained are found in the hands of the tenant, undisposed of, and unincumbered, they may be taken on a *retorno habendo*. (See sect. 1.)

Thus, in the case of *Woglam* v. *Copperthwaite*, 2 Dallas, 68,—which was an action brought by the Sheriff of *Philadelphia*, for taking goods by virtue of a writ *de retorno habendo*; the facts were as follow: One *Cresson* distrained goods of *Hamilton*, for rent due to *S. Emlen*: *Hamilton* replevied the goods, and gave security to the Sheriff in the usual form; he afterwards moved with his goods into the house of the plaintiff, who, after rent had accrued to him, distrained the goods; Hamilton, the next day after this distress, removed the goods from off the premises; they were followed by the officer, who made the second distress, and he had them appraised in the house to which *Hamilton* had removed them; shortly after this appraisement, and while the goods remained where they were appraised, the defendant in the first replevin obtained judgment for his rent, and issued a *retorno habendo*; by virtue of which, the Sheriff took the goods, and delivered them to *Cresson*, who sold them at public vendue.

The question submitted to the Court was, whether the goods were liable to be taken under the *retorno habendo*, in preference of, or to exclude *Woglam's* distress? or whether, by the removal of the goods by Hamilton, the lien on the property, acquired by *Woglam's* distress was not defeated as against *Emlen*?

The President, after recapitulating the above facts, delivered the opinion of the Court.

Shippen, President. The first point which arises on the case, is, whether there was any subsisting lien in favour of the first distrainor, the goods having been replevied, and security given?

Whatever doubt there might have been before, it appears to be now settled (1. Bro. Chan. Ca. 427,) that no lien remained in the distrainor. By the replevin, the securities in the bond are substituted in the place of the goods, which are restored to the tenant, as his sole property; he may sell them; they may be taken in execution; and they become liable to any future lien or incumbrance. Upon the *retorno habendo*, if the identical goods distrained, are found in the hands of the tenant undisposed of, and unincumbered, they may be taken by the Sheriff; if not, after an *elongati* returned, a *withernam* may go against the general goods of the tenant.

As to the removal of the goods by the tenant, and the subsequent *appraisement*, it will be proper to take notice of the alterations made in the common law, by the statutes in *England*, and our acts of Assembly.

Distresses for rent being, at common law, in nature only of pledges, the distrainor had no power to sell or dispose of them, till the stat. 2 Wm. and Ma. c. 5, § 2, which directs, that, if upon a distress made, the tenant did not, in five days after, replevy the same, the person distraining might, with a proper officer, cause the goods distrained to be appraised, and after such appraisement to be sold. The stat. of the 11 Geo. 2, c. 19, makes it lawful for the distrainor to impound the distress on the premises, and there to appraise, sell and dispose of them. Our act of assembly pursues, in general, the stat. of *William*, and contains some of the clauses of the latter statute, but omits that which empowers the landlord to impound on the premises; the usage, however, has been, both before and since our act of assembly, to impound on the premises agreeable to the directions of the act of Geo. 2d. Whether that usage will amount to an adoption of the statute, need not be considered in the present case, because the goods did not remain upon the premises that length of time which the statute requires to give the landlord a

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right to appraise and sell them without a removal; but it is material to consider whether under our act of assembly he might not legally leave them on the premises, for the space of time which he appears to have done. The clause in the statute of *William* before recited, is transcribed, almost *verbatim* in the act of assembly. The case of *Griffin* v. *Scott* in 2 Stra. 717, was determined many years previous to the stat. 11 Geo. 2. It was an action of trespass against a landlord, for entering his house, and keeping possession of his goods for eight days. The defendant justified under a distress for rent, and the court say in that case, that the defendant ought to have removed the goods *at the five days end*, but having kept them for *eight* days, he was a trespasser for the *other three days*. This implied strongly, that the construction of the stat. of *William* was, that the distrainor might leave the distress on the premises *for five days*, mentioned in the act, that the tenant might have the opportunity of replevying them, in the same plight in which they were, when distrained. If that was the construction of the statute of *William*, the like construction will hold under our act of assembly, which follows the words of the statute. Even at common law, goods distrained might be left on the premises for a reasonable time. In the present case they were left but one day before they were removed by the tenant himself, and they were quickly followed, and appraised in the house to which they were removed. By the act of assembly, they could not be appraised till five days after the distress; they were actually appraised in eight days, though clandestinely removed by the tenant in the mean time. By the common law, in the case of a pound breach, by the owner of the goods, the distrainor may have his action *de parco fracto, or may take the goods distrained wherever he finds them*, and impound them again, Co. Lit. 47, 6—1 Roll. Abr. 674, 12 Mod. 661. The following the goods, and making the appraisement in so short a time, under the directions of the officer who made the distress, was all that could be reasonably expected from the landlord, who ought not to be defeated of his remedy, by the unlawful act of the tenant. If not defeated as against the tenant, he could not be defeated as against the first distrainor, who had no better right than the tenant himself had unless his original lien had continued.

The judgment for a return in favour of the first distrainor, the issuing the writ of *retorno habendo*, and the taking the goods under it by the Sheriff, were all subsequent to the second distress and appraisement, and before the distrainor could by law expose them to sale. We therefore think, there was no default in him, that the goods were in *custodia legis*, subject to his lien, and were, consequently, wrongfully taken by the defendant, under the writ of *retorno habendo*.

And, in *Frey* v. *Leeper*, 2 Dallas, 131, The question was, whether goods, which, after being distrained for rent, had been replevied, and delivered to the plaintiff in replevin, could be taken in execution?

By the Court; This point has been already determined in *Philadelphia*. The lien on the goods is discharged by the security given to the Sheriff; and as soon as they are delivered back to the plaintiff in replevin, they are open to execution, or a new distress.

On the replication of *riens in arrear*, the Jury ascertain the sum due to the avowant for rent, and are not confined to the value of the goods distrained.

Thus, in *Albright* v. *Pickle*, Circuit Court, Northumberland, Oct. 1805, before *Yeates, J.* in replevin for certain goods distrained, &c. The defendant avowed for rent in arrear. The plaintiff replied that no rent was in arrear.

The defendant's counsel, having established the contract to pay the rent, contended that they were entitled to recover the whole sum, with interest from the time of bringing the suit.

The plaintiff's counsel insisted that the avowant could only recover the value of the articles distrained; his remedy being by the writ of *retorno habendo*; and cited 17 Car. 2, c. 7. Bull. 58, 3 Term. Rep. 349. That if the Jury should find a sum in arrear exceeding the value of the articles distrained, a Judgment thereon could not be enforced by any execution known to the law, and would therefore be of no effect.

By the Court; The issue joined, is, whether any, and what rent is in arrear and I do not see how the Jury can be prevented from ascertaining it; whether the verdict can be inforced by execution or otherwise, is another consideration.

The stat. 17, c. 2, c. 7, extends to cases, where a plaintiff in replevin, whose goods have been distrained for rent, is nonsuited before, or after issue joined. The statute does not alter the judgment at common law, but gives a further remedy to the avowant. On a verdict for the avowant, the Jury in that verdict ascertain the damages, and then there needs no writ of inquiry; but the judgment is entered, that the defendant have a return of the cattle or goods taken, and that he recover against the

Plaintiff £ for his damages by the jury aforesaid, in form aforesaid, assessed, and also £ for his charges and costs.

Our Act of Assembly of 21st March, 1772, pursues in many particulars, the British Statute of 11 Geo. 2, c. 19, and the 11th section of the former, is couched nearly in the same terms with the 23d sect. of the latter. The sheriff is directed to take a bond in double the value of the goods distrained, conditioned to prosecute the suit with effect, and to return the goods distrained, in case a return shall be awarded; and the same being assigned to the avowant, he may recover thereupon in his own name; "and the court where such action shall be brought, may, by a rule, 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."

This mode of proceeding is now generally preferred, and is not affected by the former stat. of 17 Car. 2. c. 7.—Therefore it would seem, that in such a case as the present, the avowant would not be without relief, to the extent of the penalty of the Replevin Bond. He is not bound to sue out his writ of *retorno habendo*, though a judgment of return is entered for him, as a matter of course.

It is not the usage in this state, to allow interest on rent; but from the time the landlord distrains, or sues for it, it is customary for the Jury to make such allowance. The practice is right and proper in itself. Where one unreasonably and vexatiously delays another from the recovery of his just debt, the least compensation he can make, is to pay interest for the delay he has thus given.

Verdict accordingly for the rent in arrear, and interest from the time of suing out the replevin. MSS. Reports. See 2, Binney, 154.

In replevin, where the goods are delivered to the plaintiff, the court will not give him leave to discontinue. *Broom* v. *Fox*, March, 1800. MSS. Reports, Sup. Court.

Upon the 5th Section of the act, the following case has been decided.

Adams v. *Lacomb.*

Replevin. The material question, on the trial of this cause, was, whether the goods of a *stranger*, being removed from the premises before a distress, could be pursued and seized within the thirty days.

Shippen, President, in the charge to the jury, delivered it as the clear opinion of the court, that the right of pursuing and seizing goods after their removal, was confined to the goods of the lessee, from whom the rent was really due; and that the goods of a stranger could only be distrained while they were on the premises. 1 Dallas, 440.

The landlord is entitled to the rent due to the time of the sheriff's levying on his tenant's goods found on the premises, provided it does not exceed one year. *West's administrators* v. *Sink*, March, 1798. MSS. Rep. Sup. Court.

Where a landlord claims and uses certain privileges against the tenant's consent, it is incumbent on him to shew that he reserved them, otherwise he suspends the rent; so, if lessor enter into part of the lands, the whole rent is suspended. *Vaughan and others, assignees*, v. *Blanchard and others.* Sept. 1792. MSS. Rep. Sup. Court, and see 4 Dallas, 124, 125.

There must be an union of the land and the rent in the same person to work an extinguishment of the rent. A vested right to enter and hold the land until the payment of the rent, is not sufficient. 2 Binney, 138.

Where between landlord and tenant, justices of the peace do not allow a reasonable time to the tenant to procure his testimony, the court will set aside their proceedings. *Stewart* v. *Martin*, July, 1791. MSS. Rep. Sup. Court.

Where a landlord on a lease from year to year, gives notice to his tenant to quit at the end of the year, but does not proceed agreeable to his notice, the tenant may be removed one year afterwards, provided no act is shewn to prove an implied renewal of the lease by the landlord after such notice. *Boggs* v. *Galbraith*. 1 Binney, 333.

The notice to quit, required by the landlord, and tenant, and law, must be given three months before the end of the term. *Brown* v. *Vanhorn*. 1 Binney, 334, (in note.)

If in proceedings between landlord and tenant, there are more than four days between the date of the justice's warrant and its return, it is cured by the tenant's appearance and making defence. *Stroup, in Error* v. *M'Clure*, July, 1808. MSS. Rep. Sup. Court. See *Bache's Manual*, vol. 1, page 214, 215.

Where proceedings between landlord and tenant are reversed, the court is not bound *ex debito justitiæ* to award restitution. *Fitch Alden* v. *Lee*, April, 1792. MSS. Rep Sup. Court.

A landlord cannot support an ejectment against his lessee without a forfeiture of his lease. If lessee has infringed the covenants in the lease, or has been guilty of waste, he is punisha-

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ble in other actions. *Penn's Lessee* v. *Musser*, Huntingdon, May, 1798. *Nisi Prius*, MSS. Reports.

Where a sheriff's vendee has come into possession under defendant's title since the bringing of an ejectment, he will be permitted to be made a co-defendant in the suit. *Lessee of Murray* v. *Galbraith*. Sup. Court, Middle District, July, 1809, 2 Binney, 59.

For precedents to recover possession by the landlord, under this act, see *Graydon's Justice*, and Appendix to 1 *Bache's Manual*.

CHAPTER DCLII.

A **SUPPLEMENT** *to the act, entitled An Act for the advancement of justice, and more certain administration thereof.* (z)

Persons convicted of burning the State-house, &c. to suffer death.

TO prevent and deter evil minded persons from committing the offences herein after mentioned, *Be it enacted*, That, if any person or persons, from and after the publication of this act, shall maliciously and voluntarily burn the State-house of this province, or any of the adjoining offices and buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library, belonging to any body politic or corporate, and shall be thereof legally convicted, every such person and persons shall suffer death, without benefit of clergy. (a)

Punishment to be inflicted on persons breaking into any public building in the night.

II. *And be it further enacted*, That if any person or persons shall break and enter into any of the houses aforesaid, in the night time, with intent to commit a felony within the same, whether the felonious intent be executed or not, every such person so offending, being thereof legally convicted, shall stand in the pillory during the space of one hour, have his, her or their ears cut off, and nailed to the pillory, be publickly whipped with thirty-nine lashes on the bare back, well laid on, and be committed to the work-house or gaol of the city or county where such offender shall be convicted, during the space of twelve months. (b)

Penalty on breaking off the knockers of doors, &c.

III. *And be it further enacted*, That if any person or persons shall maliciously and voluntarily break, or take off or from the door of any inhabitant, within this province, any brass or other knocker affixed to such door, or shall maliciously or voluntarily cut, break, or otherwise destroy any leaden, tin or copper spout, or any part thereof, affixed to any such house, every person so offending, being thereof legally convicted, shall forfeit and pay the sum of twenty-five pounds for every such knocker or spout so broken or taken away, or cut, or otherwise destroyed, or be publickly whipped on his, her or their bare backs with twenty-one lashes, well laid on. (c)

(z) For the original act, and a general reference to all the penal laws, see ante. chap. 236, and the notes there subjoined. (*Note to former edition.*)

(a) For the various subjects of arson, see ante. chap. 236, sect. 13, and the note there subjoined. The punishment of arson, or of being accessary thereto, is now, however, commuted into confinement at hard labour, post. chap. 1766, sect. 4. (*Note to former edition.*)

(b) For the general definition of burglary, and its punishment, see ante chap. 236, sect. 12, and the note there subjoined. The punishment of the offence stated in this section is changed to confinement at hard labour, by virtue of the fourth section of the act of the 5th of April, 1790, post. chap. 1505. (*Note to former edition.*)

(c) The punishment of this offence is now changed to confinement at hard labour, post. chap. 1505. (*Note to former edition.*)