

471; April 15, 1828, P. L. 491; April 15, 1834, P. L. 537; April 1, 1835, P. L. 101; June 11, 1840, P. L. 612; May 27, 1841, P. L. 400; May 7, 1855, P. L. 495; April 13, 1859, P. L. 607; April 3, 1860, P. L. 650; April 21, 1876, P. L. 46; June 8, 1881, P. L. 81; June 27, 1883, P. L. 163; May 24, 1887, P. L. 185.

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## CHAPTER DCXLV.

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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:

[Section I.] Be it enacted by the Honorable Richard Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and John Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, 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.

[Section II.] And be it further enacted by the authority aforesaid, 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.

[Section 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 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.

[Section IV.] And be it further enacted by the authority aforesaid, That the goods and 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.

[Section V.] And be it further enacted by the authority aforesaid, 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 or chattels with the 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.

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, anything herein to the contrary notwithstanding.

[Section VI.] And be it further enacted by the authority aforesaid, 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 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.

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 defense thereof:

[Section VII.] Be it further enacted by the authority aforesaid, 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.

[Section VIII.] And be it further enacted by the authority aforesaid, 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 landlords so to do, and order a stay of execution upon such judgment against the casual ejector until they shall make further order therein.

And whereas great difficulties often arise in making avowries or conusance upon distresses for rent:

[Section IX.] Be it further enacted by the authority aforesaid, That from and after the publication of this act it shall and may be lawful 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 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 nonsuit, 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.

And to prevent vexatious replevins of distresses taken for rent:

[Section X.] Be it enacted by the authority aforesaid, That from and 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.

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 inci-

dent to law proceedings have kept the owner of the house at law and out of possession several years:

For preventing therefore such unjust practices:

[Section XI.] Be it further enacted by the authority aforesaid, 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 repossess 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 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 show 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 tenants 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.

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 hereinbefore enjoined and directed.

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:

[Section XII.] Be it therefore further enacted by the authority aforesaid, 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 March 21, 1772. Referred for consideration by the King in Council, January 15, 1773, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXX, and the Acts of Assembly passed March 20, 1810, P. L. 208; March 22, 1814, P. L. 179; March 26, 1814, P. L. 216; March 25, 1825, P. L. 114; April 10, 1828, P. L. 285; April 3, 1830, P. L. 187; June 16, 1836, P. L. 755; April 22, 1846, P. L. 476; (the two Acts of Assembly passed) April 9, 1849, P. L. 524, 533; March 22, 1861, P. L. 181; December 14, 1863, P. L. (1864) 1125; May 4, 1864, P. L. 766; February 28, 1865, P. L. 253; March 14, 1865, P. L. 6; March 24, 1865, P. L. 750; March 30, 1866, P. L. 389; April 11, 1866, P. L. 97; February 20, 1867, P. L. 30; April 8, 1868, P. L. 757; April 28, 1868, P. L. 104; February 25, 1869, P. L. 263; April 15, 1869, P. L. 972; April 17, 1869, P. L. 1126; June 25, 1869, P. L. 1275; January 20, 1870, P. L. 84; March 28, 1870, P. L. 604; March 29, 1870, P. L. 668; March 6, 1872, P. L. 22; May 13, 1876, P. L. 171; May 26, 1891, P. L. 122; June 25, 1895, P. L. 282; April 19, 1901, P. L. 88.