

TASMANIA.

THE LANDLORD AND TENANT ACT
1935.

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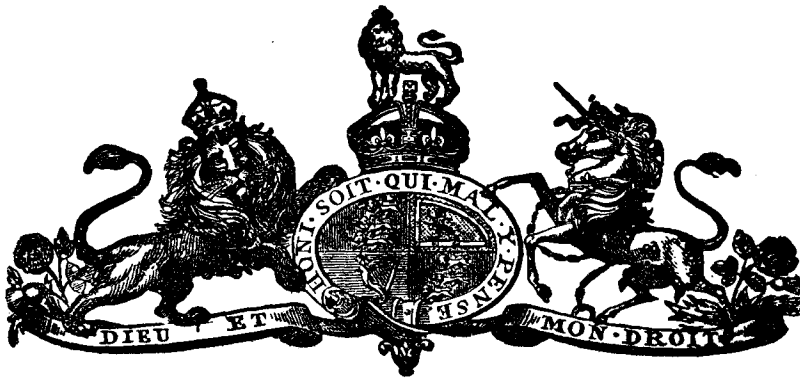
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TASMANIA.



1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 42.

AN ACT to consolidate and amend the Law
relating to Landlords and their Tenants.

A.D.
1935.

[18 October, 1935.]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative Council
and House of Assembly, in Parliament assembled, as follows :—

PART I.
PRELIMINARY.

- 1** This Act may be cited as the *Landlord and Tenant Act 1935*. Short title.
- 2**—(1) The Acts enumerated in the first schedule are hereby repealed. Repeal of Acts
in schedule (1).
- (2) No Imperial enactment directly relating to the law of landlord and tenant shall have effect in this State. Imperial Acts
to cease to apply.

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PART II.

LEASES AND RENTS.

Effect where words in schedule used.

17 Vict. No. 17, s. 1.

3 Whenever any party to any deed made according to the form set forth in Part I. of the second schedule, or to any other deed which shall be expressed to be made in pursuance of this Act, shall employ in such deed respectively any of the forms of words contained in the first column of Part II. of the second schedule, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in the second column of the same schedule, and distinguished by the same number as is set opposite to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Ib., s. 2.

4 Every such deed, unless any exception be specially made therein, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever, to the lands and tenements therein comprised belonging or in anywise appertaining.

Deed not taking effect by this Act to be valid.

Ib., s. 3.

5 Any deed or part of a deed which shall fail to take effect by virtue of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made.

Immaterial variances not to vitiate.

Ib., s. 4.

6 If, in employing any of the forms of words contained in the first column of Part II. of the second schedule in any such deed, there should occur a merely verbal and immaterial variance or departure from such form, or any clerical error, such variance or error shall not prevent such deed or the part thereof where such variance or error occurs from taking effect under this Act, provided the form of words employed is substantially to the same effect as any of those contained in the said first column.

Action against tenant for life.

8 Anne, c. 18, s. 4.

7 Where any person has any rent in arrear or due upon any lease or demise for life or lives he may bring an action for such arrears of rent in the same manner as he might have done in case such rent were due and reserved upon a lease for years.

Recovery of rent where lease not by deed.

11 Geo. II, c. 14.

8—(1) Where the agreement between the landlord and the tenant is not by deed, the landlord may recover a reasonable satisfaction for the lands, tenements, or hereditaments held or occupied by the defendant in an action for the use and occupation of what was so held or enjoyed.

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(2) 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 be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. A.D. 1935.

9 Where any tenant for any term of life, lives, or years, or other person who is in or comes into possession of any lands, tenements, or hereditaments by, from, or under, or by collusion with such tenant, wilfully holds over any lands, tenements, or hereditaments, after the determination of such term, and after demand made and notice in writing given for delivering the possession thereof by his landlord or lessor, or the person to whom the remainder or reversion of such lands, tenements, or hereditaments belongs, or his agent thereunto lawfully authorised, then such person so holding over shall, for and during the time he so holds over or keeps the person entitled out of possession of the said lands, tenements, or hereditaments, as aforesaid, pay to the person so kept out of possession, his executors, administrators, or assigns, at the rate of double the yearly value of the lands, tenements, and hereditaments so detained for so long time as the same are detained, to be recovered by action; against the recovering of which penalty there shall be no relief in equity. Tenant holding over to pay double rent.
4 Geo. II, c. 28, s. 1.

10—(1) In case any tenant gives notice of his intention to quit the premises by him held at a time mentioned in such notice and does not accordingly deliver up the possession thereof at the time in such notice contained, then the said tenant, his executors or administrators, shall thence forward pay to the landlord double the rent or sum which he should otherwise have paid; to be levied, sued for, and recovered at the same time and in the same manner as the single rent or sum which could, before the giving of such notice, be levied, sued for, and recovered. Tenant holding over after giving notice.
11 Geo II., c. 19, s. 18.

(2) Such double rent or sum shall continue to be paid during all the time such tenant continues in possession as aforesaid.

11 In case any tenant for life 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, then the executors or administrators of such tenant for life may, in an action, recover of and from such under tenant 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. Recovery of rent on death of tenant for life.
Ib., s. 15.

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PART III.

PROVISIONS AS TO EXECUTION AND SEIZURE BY THIRD PARTIES.

Goods not to be taken till rent paid.
8 Anne, c. 18, s. 1.

12 No goods or chattels whatsoever lying or being in or upon any messuage lands or tenements which are leased for life, or lives term of years at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is sued out before the removal of such goods from off the said premises by virtue of such execution pays to the landlord of the said premises or his bailiff all such sum or sums of money not exceeding or amounting to more than one year's rent as are due for rent for the said premises at the time of the taking of such goods or chattels by virtue of such execution.

Rent to be levied with execution.
Ib., s. 1

13 In case the said arrears exceed one year's rent, then the party at whose suit such execution is sued out paying the said landlord or his bailiff one year's rent may proceed to execute his judgment as he might have done before the commencement of this Act. And the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.

Certain goods not to be levied on.
56 Geo. III, c. 50, s. 1.

14 No sheriff or other officer shall by virtue of any process of any court of law carry off or sell, or dispose of for the purpose of being carried off from any lands let to farm any straw threshed or unthreshed, or any straw of crops growing, chaff, turnips, manure, compost, ashes, or seaweed in any case whatsoever; nor any hay, grass, or grasses whether natural or artificial, nor any tares or vetches, nor any roots or vegetables being produce of such lands, in any case, where according to any covenant or written agreement entered into and made for the benefit of the owner or landlord of any farm such hay, grass, or grasses, tares, or vetches, roots, or vegetables, ought not to be taken off or withholden from such lands, or which by the tenor or effect of such covenants or agreements ought to be used or expended thereon, and of which covenants or agreements such sheriff or other officer has received a written notice before he has proceeded to sale.

Tenant to give notice to sheriff.
Ib., s. 2.

15 The tenant or occupier of any lands let to farm against whose goods any process of law issues whereby such goods may be taken and sold shall on having knowledge of such process give a written notice to the sheriff or other officer executing the same of such covenants or agreements whereof he has knowledge and which may relate to and regulate or are intended to regulate the use and expenditure of the crops or produce grown or growing thereon, and also of the name and residence of the owner or landlord of such land.

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16 The sheriff or other officer shall forthwith, on executing such process and before any sale has been proceeded in, send a notice by the post to the owner or landlord of such lands in all cases where such owner or landlord is resident in any part of Tasmania and has been made known to and ascertained by such sheriff or other officer and also to the known agent of such owner or landlord in respect of such lands, stating to such owner, landlord, and agent the fact of possession having been taken of any crops or produce hereinbefore mentioned ; and such sheriff or other officer shall in all cases of the absence or silence of such owner or landlord or his agent postpone and delay the sale of such crops or produce until the latest day he lawfully can or may appoint for such sale.

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Sheriff to give notice to owner or landlord.

Ib., s. 2.

17 Such sheriff or other officer executing such process may dispose of any crops or produce hereinbefore mentioned to any person who agrees in writing with such sheriff or other officer in cases where a covenant or written agreement is shown to use and expend the same on such lands according to such covenant or written agreement ; and after such sale or disposal so qualified it shall be lawful for such person to use all such necessary barns, stables, buildings, outhouses, yards, and fields for the purpose of consuming such crops or produce as such sheriff or other officer allots or assigns to him for that purpose, and which such tenant or occupier would have been entitled to and ought to have used for the like purpose on such lands.

Sheriff may dispose of goods in certain cases.

Ib., s. 3.

18 Such sheriff or other officer shall, on the request of any owner or landlord who is aggrieved by any breach of such agreement, permit such owner or landlord to bring any action in the name of such sheriff or other officer for the recovery of damages in respect of such breach ; such landlord or owner having nevertheless fully indemnified such sheriff or other officer against all costs whatsoever and all loss and damage before any such action is commenced.

Sheriff to assign agreement.

Ib., s. 4.

19 Such sheriff or other officer shall, before any sale of any crops or produce of any lands let to farm is proceeded in, make by all ways and means due enquiry within the district where such lands are situate as to the name and residence of the owner or landlord of such lands.

Sheriff to enquire as to landlord.

Ib., s. 5.

20 No sheriff or other officer shall, by virtue of any process whatsoever, sell or dispose of any clover, rye grass, or any artificial grass or grasses whatsoever which are newly sown and growing under any crop of standing corn.

Sheriff not to sell grasses.

Ib., s. 7.

21 The above provisions shall not extend to any straw, turnips, and other articles which the tenant may remove from the farm consistently with some contract in writing.

Straw, &c., excepted.

Ib., s. 8.

22 In every case where any action is brought against such sheriff or other officer for any breach of or omission of compliance with the provisions hereinbefore mentioned, no plaintiff shall be entitled to

Protection of sheriff.

Ib., s. 9.

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recover any damages against such sheriff or other officer unless it is proved on the trial of such action that such breach or omission was wilful on the part of the sheriff or other officer.

Indemnity,
Ib., s. 10.

23 No such sheriff or other officer, nor any deputy, agent, bailiff, or servant of a sheriff or other officer, nor any person who purchases any hay, straw, chaff, turnips, grass or grasses, or other produce and things hereinbefore mentioned under the provisions aforesaid, nor the servant of such person, shall be deemed or taken to be a trespasser, by reason of his coming upon or remaining in possession of any barns or other buildings, yards, or fields, for the purpose of threshing out or consuming any straw, hay, turnips, or other produce hereinbefore mentioned under the provisions aforesaid, or for doing any matter or thing whatsoever fit and necessary to be done for the purpose of executing the same and carrying into effect all stipulations contained in any agreement made under such provisions, though such acts are done by or on behalf of such sheriff or other officer, or by such person or his servant, after the return of the process under which such sheriff or other officer has acted.

PART IV.

EMBLEMENTS AND FIXTURES.

On determination of leases or tenancies under tenant for life, &c., instead of emblements tenant to hold until expiration of current year, &c.
38 Vict. No. 12,
s. 2.

24 Where the lease or tenancy of any farm or lands held by a tenant at rack rent determines by the death or cesser of the estate of any landlord entitled for his life or for any other uncertain interest—

- i. Instead of making or having any claim to emblements, the tenant shall continue to hold and occupy such farm or lands until the expiration of the then current year of his tenancy, and shall then quit, upon the terms of his lease or holding, in the same manner as if such lease or tenancy were then determined by effluxion of time or other lawful means during the continuance of his landlord's estate;
- ii. The succeeding landlord or owner shall be entitled to recover and receive of the tenant, in the same manner as his predecessor or such tenant's lessor could have done, if he had been living or had continued the landlord or lessor, a fair proportion of the rent for the period which may have elapsed from the day of the death or cesser of the estate of such predecessor or lessor to the time of the tenant so quitting;
- iii. The succeeding landlord or owner and the tenant respectively shall, as between themselves and as against each other, be entitled to all the benefits and advantages, and be subject to the terms, conditions, and restrictions to which the preceding landlord or lessor and such tenant respectively

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would have been entitled and subject in case the lease or tenancy had determined in manner aforesaid at the expiration of such current year: and

A.D. 1885.

- iv. No notice to quit shall be necessary or required by or from either party to determine any such holding and occupation as aforesaid.

25 In case all or any part of the growing crops of the tenant of any farm or lands are seized and sold by the sheriff or other officer by virtue of any writ of *feri facias* or other writ of execution, such crops, so long as the same remain on the farms or lands, shall, in default of sufficient distress of the goods and chattels of the tenant, be liable to the rent which may accrue and become due to the landlord after any such seizure and sale, and to the remedies by distress for recovery of such rent, and that notwithstanding any bargain and sale or assignment which may have been made or executed of such growing crops by the sheriff or other officer.

Growing crops seized and sold under execution to be liable for accruing rent. *Ib.*, s. 3.

26—(1) If any tenant of a farm or lands at his own cost and expense erects, with the consent in writing of the landlord for the time being, any farm-building, either detached or otherwise, or puts up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (which are not erected or put up in pursuance of some covenant or obligation in that behalf), then all such buildings, engines, and machinery shall be the property of the tenant and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same or any part thereof may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise put the same in like plight and condition, or in as good plight and condition as the same were in before the erection of anything so removed.

Tenant may remove buildings and fixtures erected by him on farm unless landlord elect to take them. *Ib.*, s. 4.

(2) No tenant shall, under the provisions of this section, be entitled to remove any such matter or thing as aforesaid without first giving to the landlord or his agent one month's previous notice in writing of his intention so to do; and thereupon it shall be lawful for the landlord, or his agent on his authority, to elect to purchase the matters and things so proposed to be removed or any of them; and the right to remove the same shall thereby cease, and the same shall belong to the landlord; and the value thereof shall be ascertained and determined by two referees, one to be chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord who has so elected to purchase the same.

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PART V.

DISTRESS FOR RENT.

Division I.—General Provisions.

Remedy for rent where estate depends on life of another.
32 Hy. VIII, c. 37, s. 4.

27 Any person who has any rent for term of life of any other person and the said rent is due and unpaid in the life of such lastmentioned person may after the death of such person have an action against the tenant, his executors, and administrators; and also may distrain for the arrears upon the lands and tenements in like manner as he might have done during the life of the person on whose life the estate depended.

Rents to be recovered by distress.
4 Geo. II., c. 28, s. 5.

28 Every person who has or is entitled to any rent, of whatsoever nature the same may be, shall have the same remedy by distress and by impounding and selling the same as in the case of rent reserved upon a lease.

Corn loose may be distrained and sold.
2 Wm. and Mary, sess. 1, c. 5, s. 3.

29 Every person having rent in arrear and due upon any demise lease or contract may seize and secure any sheaves and cocks of corn or corn loose or in the straw or hay lying or being in any barn or granary or upon any hovel stack or rick or otherwise upon any part of the land or ground charged with such rent; and may lock up or detain the same in the place where the same is found for or in the nature of a distress until the same is replevied upon security given as hereinafter provided; and in default of replevying the same within the time hereinafter provided, may sell the same, so as nevertheless such corn, grain, or hay so distrained as aforesaid is not removed by the person distraining to the damage of the owner thereof out of the place where the same is found and seized but is kept there (as impounded) until the same is replevied or sold.

Landlord may distrain stock, &c., for arrears.
11 Geo. II., c. 19, s. 8.

30 Every landlord or his bailiff, receiver, or other person empowered by him may take and seize as a distress for arrears of rent any cattle or stock of his tenant feeding or depasturing upon any part of the premises demised or held, and may also take and seize all sorts of corn and grass, hops, roots, fruits, pulse, or other product whatsoever which is growing on any parts of the estates so demised or held as a distress for arrears of rent, and the same may cut, gather, make, cure, carry, and lay up when ripe in the barn or other proper place on the premises so demised or held; and in case there is no barn or proper place on the said premises, then in any other barn or proper place which the said landlord hires or otherwise procures for that purpose and as near as may be to the premises; and in convenient time may sell or otherwise dispose of the same towards satisfaction of the rent for which such distress has been taken and of the charges of such distress and sale in the same manner as other goods and chattels may be seized, distrained, and disposed of.

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31 In case the tenant, his executors, administrators, or assigns, after any distress for arrears so taken of corn, grass, hops, roots, fruits, pulse, or other product which is growing as aforesaid, and at any time before the same is ripe and cut, cured, or gathered, pays or causes to be paid to the landlord for whom such distress is taken, or to his bailiff or other person usually employed to receive the rent of such landlord, the whole rent which is then in arrear together with the full costs and charges of making such distress and which have been occasioned thereby, 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 tenant, his executors, administrators, or assigns.

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Distress to cease
if payment made.
Ib., s. 9.

32—(1) The following goods and chattels of a tenant or his family shall, subject to the proviso hereinafter contained, be exempt from distress for rent, namely, the tools, implements, and instruments of trade, if any, and the necessary wearing apparel, tables, chairs, cooking utensils, bedsteads and bedding of himself or his family, to a value not exceeding twenty pounds in the whole.

Certain goods,
&c., exempt from
distress.
Cf. 9 Ed. VII.,
No. 47, s. 11.

(2) In this section the word "trade" means any trade, profession, business, or occupation.

(3) Any sewing-machine, knitting-machine, type-writing machine, or mangle, the property of or let on hire to any female person, shall be exempt from distress for any rent claimed in respect of the premises or place in which such machine or mangle may be; but this exemption shall not apply in respect of more than one sewing-machine, one knitting-machine, one type-writing machine, or one mangle, respectively, the property of, or let on hire to, any one such person.

Sewing-machine,
knitting-machine,
type-writing
machine, or
mangle exempt
from distress in
certain cases.

(4) Where goods and chattels of exempt classes, aggregating more than twenty pounds in value, have been distrained the tenant, by notice in writing to the person distraining, may elect which of such goods and chattels, to the value of twenty pounds in all, shall be exempted from the distress, and the same, if and so far as they are exempt under this Act, shall be released from the distraint.

(5) A court of petty sessions, on complaint that any goods or chattels exempt under this section from distress for rent have contrary thereto been taken under distress, may by summary order direct that the goods and chattels so taken, if not sold, be restored, or if they have been sold, that such sum as the court determines to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

33 Beasts of the plough and sheep shall not be liable to be distrained for rent due and in arrear unless some other sufficient distress cannot be found, and all distress shall be reasonable and not too great.

Beasts of the
plough, cattle,
and sheep
exempt.51 Hen. III., s.
4.

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Landlord not to
distrain certain
goods.56 Geo. III.
c. 60, s. 6.

34 In all cases where any purchaser of any crops or produce under the provisions of Part III. has entered into an agreement with the sheriff or other officer as in the said Part authorised touching the use and expenditure thereof on lands let to farm, it shall not be lawful for the owner or landlord of such lands to distrain for any rent—

- I. Any corn, hay, straw, or other produce thereof which at the time of such sale, and the execution of such agreement entered into under the provisions aforesaid, has been severed from the soil and sold subject to such agreement by such sheriff or other officer :
- II. Any turnips whether drawn or growing if sold according to the provisions aforesaid : or
- III. Any horse, sheep, or other cattle, or any beast whatsoever, or any waggons, carts, or other implements of husbandry which any person employs, keeps, or uses on such lands for the purpose of threshing out, carrying, or consuming, any such corn, hay, straw, turnips, or other produce under the provisions and agreement aforesaid.

Distress after
lease expired.8 Anne, c. 18, ss.
6 and 7.

35 Where any person has any rent in arrear or due upon any lease for life or lives or for years, or at will, ended or determined, such person may, at any time within the space of six months after the determination of such lease and during the continuance of his title or interest and during the possession of the tenant from whom such arrears became due, distrain for such arrears.

Second distress if
first not sufficient.
17 Car. II, c. 7,
s. 4.

36 In all cases where the value of the cattle or goods or chattels distrained is found not to be of the value of the arrears distrained for, the party to whom such arrears were due, his executors or administrators may distrain again for the residue of the said arrears.

Avowry without
naming tenant.
21 Hy. VIII. c.
19, s. 2.

37 Whenever any lands, tenements, and other hereditaments are held of any person by any rents, if the landlord of whom any such lands, tenements, or hereditaments are so held, distrain upon the same for any such rents and replevin thereof is sued, the landlord may avow or his bailiff or servant may take cognisance or justify for taking of the said distresses, without naming any person certain to be tenant of the same and without making any avowry, justification or cognisance upon any person certain.

How defendant
may avow in
replevin.11 Geo II., c.
19, s. 22.

38 All defendants in replevin may avow and make cognisance 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 accrued, which rent was then and still remains due, or that the place where the distress was taken was parcel of such tenements, without further setting forth the grant, tenure, demise, or title of such landlord.

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- 39** In case any tenant 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 or made payable, shall fraudulently or clandestinely convey away or carry off or from such premises his goods or chattels to prevent the landlord from distraining the same for arrears of rent so reserved or made payable, then such landlord or any person by him for that purpose lawfully empowered within the space of thirty days next ensuing such conveying away or carrying off such goods and chattels, wherever the same are found, as a distress for the said arrears of rent; and the same may sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such landlord in and upon such premises for such arrears of rent.
- A.D. 1935.
Seizure and sale of goods fraudulently removed.
Ib., s. 1.
- 40** No landlord 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 are sold in good faith and for a valuable consideration before such seizure made to any person not privy to such fraud as aforesaid, anything herein contained to the contrary notwithstanding.
- Goods not to be seized if sold in good faith.
Ib., s. 2.
- 41** In case any tenant fraudulently removes and conveys away his goods or chattels as aforesaid, or in case any person wilfully and knowingly aids or assists any such tenant in such fraudulent removal or conveying away of any part of his goods or chattels or in concealing the same, every person so offending shall forfeit and pay to the landlord from whose estate such goods and chattels were fraudulently carried off as aforesaid double the value of the goods by him or them respectively carried off or concealed as aforesaid, to be recovered by action in any court of competent jurisdiction.
- Penalty for fraudulent removal.
Ib., s. 3.
- 42**—(1) Where the goods or chattels so fraudulently carried off or concealed do not exceed the value of fifty pounds, the landlord or his agent in his behalf may proceed on complaint against such offender.
- Summary proceedings if value £50 or less.
Cf. *ib.*, s. 4.
- (2) A court of petty sessions, upon the hearing of any such complaint, may examine the facts and all proper witnesses, and in a summary way determine whether such person is guilty of the offence with which he is charged; and may inquire in like manner of the value of the goods and chattels alleged to have been fraudulently carried off or concealed by him as aforesaid; and, upon proof of the offence, the court shall adjudge the offender to pay double the value of the said goods and chattels to such landlord or to his agent at such time as the court appoints.
- 43** When any goods or chattels which have been fraudulently or clandestinely conveyed or carried away as aforesaid are put, placed, or kept in any house, barn, stable, outhouse, 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, the landlord or any person empowered to take and seize as a distress
- Recovery of goods fraudulently removed.
Ib., s. 7.

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for rent such goods and chattels (first calling to his assistance some police officer who is hereby required to aid and assist therein, and, in case of a dwelling-house, oath being made before some justice of a reasonable ground to suspect that such goods or chattels are therein) in the daytime may break open and enter into such house, barn, stable, outhouse, yard, close, or place, and may take and seize such goods and chattels for the said arrears of rent.

Treble damages
for pound-breach.
Cf. 2 W. and M.,
sess. 1, c. 5, s. 4.

44 Upon any pound-breach or rescue of goods or chattels distrained for rent, the person aggrieved thereby shall, in any action for the wrong thereby sustained, recover treble damages and costs of suit against the offender in any such rescue or pound-breach, or against the owner of the goods distrained, in case the same be afterwards found to have come to his use or possession.

Double damages
and costs against
wrongful
distraîner.
Cf. *ib.*, s. 5.

45 If any distress and sale shall be made for rent pretended to be in arrear or due, where in truth no rent is in arrear or due to the person distraining, or to him in whose name or right such distress shall be taken, the owner of such goods or chattels distrained and sold, or his executors or administrators, shall and may, by action to be brought against the person so distraining, or his executors or administrators, recover double the value of the goods or chattels so distrained and sold, together with full costs of the action.

Distress how to
be made.
Vic. ss. 49 to 50.

46—(1) No landlord or other person to whom any rent is due or to whom a power of distress is given by any deed or other instrument or is given by law, shall seize and take any goods or chattels as a distress for arrears of rent, unless such distress is made by such person or by his agent or bailiff duly authorised by a warrant of distress in the appropriate form in the third schedule, signed by such landlord or person, or by his solicitor or agent, thereunto by him duly authorised.

(2) If the landlord or person giving such warrant of distress is unable to write his name, his signature, by mark thereunto, shall be attested by a justice or by a legal practitioner.

(3) Where a distress is made by an agent or bailiff he shall deliver, at the time of making the distress, a copy of such warrant as aforesaid to the tenant in possession of the premises or to the owner of the goods or chattels distrained, or, if the tenant or owner is not present, to some person resident at or near the premises, for such tenant or owner, and in case there is no person resident at or near to such premises to whom such copy can be delivered, such agent or bailiff shall deliver the same to such tenant or owner if demanded at any time within thirty days next after such distress has been made.

Inventory and
bill to be
delivered.
57 Geo. III., c.
93, s. 6.

47 Every landlord or other person making any distress shall forthwith make out and sign an inventory in the appropriate form in the third schedule of the goods and chattels distrained and also a bill of the charges then claimed on account of such distress; and such landlord or other person shall thereupon deliver such inventory and bill of charges in the like manner as is hereinbefore directed with regard to the warrant of distress.

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48 No appraisalment of any goods and chattels distrained shall be necessary to the validity of any distress or sale thereof unless the same is required as hereinafter provided.

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Appraisalment not required.

Vic., s. 53.

Charges for distraining.

49—(1) The charges which may be made in respect of any distress shall be those prescribed in the fourth schedule and no other charges shall be made or demanded or shall be payable in respect of any distress.

(2) The judges may, by rules of court, prescribe a scale of charges in lieu of those set forth in the fourth schedule and thereupon such scale shall be deemed to be the fourth schedule.

50—(1) Every person distraining any goods or chattels may impound or otherwise secure the same upon the premises where the same are taken; or may at any time within five days after the distress remove such goods or chattels to some one convenient place not more than three miles from the premises where they were taken and may there impound or otherwise secure the same.

Impounding goods distrained. *Ib.*, s. 54.

(2) In every case of such removal the person distraining shall within twenty-four hours after such removal give notice in writing to the tenant in possession or owner of such goods or chattels of the removal of the same and the place to which such goods and chattels have been removed; and such notice may either be given to such tenant or owner, or if he is absent may be left with some person at the place from which such goods or chattels have been removed.

11 Geo. II., c. 19, s. 9.

51—(1) It shall be lawful for the registrar of any court of requests held at or conveniently near to the place where any goods or chattels have been distrained for rent to make replevin and deliverance of such distress in any case where by law replevin and deliverance may be made.

Registrars of courts of requests may make replevin, &c. Cf. 7 Vict. No. 1, s. 1.

(2) Before such deliverance is made, the registrar shall take in his name from the person to whom such replevin is granted and two sufficient sureties a bond in double the value of the property distrained (such value to be ascertained by the oath of one or more credible and disinterested witness or witnesses, which oath the registrar is hereby authorised to administer), conditioned for commencing within one month from the date of such bond, and prosecuting with effect and without delay, an action for the taking and detaining the property distrained and for returning such property in case a return shall be awarded.

Bond to be taken by the registrar from the person to whom replevin is granted.

Ib., s. 2.

(3) The registrar shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance, by indorsing the same and attesting it under his hand in the presence of two or more witnesses, and, if the bond so taken and assigned be forfeited, the avowant or the person making cognizance may bring an action and recover thereupon in his own name, and the court where such action shall be brought may give

Assignment thereof.

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Registrar may
issue process in
replevin.

Ib., s. 5.

such relief to the parties upon such bond as may be agreeable to justice and reason, and the judgment of the said court shall have the nature and effect of a defeasance of such bond.

(4) The registrar may issue all necessary process in connection with any replevin granted by him, and such process shall be executed by the bailiff of his court.

(5) The registrar shall be entitled to demand and receive for the making of every replevin and the taking of the bond thereon a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence

(6) In all cases in which any distress is made at any place distant more than twenty miles from the office of the sheriff or of a deputy-sheriff, or of any such registrar as aforesaid, any justice may grant replevin of the goods and chattels distrained in the same manner and subject to the same conditions as the registrar may grant the same.

(7) The justice taking the bond may assign the same in the like manner as the registrar; and such bond may be sued on in like manner.

(8) No such justice shall be liable in any action for taking insufficient security if he has acted in good faith and with reasonable care and caution.

(9) Nothing in this section shall affect the power of the sheriff or his deputy to grant replevin.

Manner of
proceeding where
the tenant of the
land distrained
upon is absent
from the State.

Cf. ib., s. 6.

52 In case any distress shall be levied upon any land or tenements the tenant whereof shall, at the time of such distress being levied, be absent from this State, then it shall be lawful for the sheriff or his deputy or any such registrar as aforesaid to grant a replevin and make deliverance of the goods and chattels distrained to the agent or attorney of such tenant so being absent as aforesaid and to take such bond as aforesaid from such agent or attorney in the name of such agent or attorney and to assign such bond to the avowant or person making cognizance as aforesaid in the manner hereinbefore provided for the taking and assigning replevin bonds, and in case such bond shall be forfeited the avowant or person making cognizance may bring an action and recover thereupon in his own name in the same manner in all respects as is hereinbefore provided for the prosecution of actions upon replevin bonds and it shall be lawful for such agent or attorney to commence and prosecute an action of replevin for the taking of any such distress as aforesaid in which action the plaintiff shall be allowed to plead the same pleas and upon the trial thereof to give in evidence and have the benefit of all the same matters and things which the tenant himself might have pleaded and given in evidence or had the benefit of if he had been the plaintiff in the same action instead of such attorney or agent, and, for the purposes of this action only, it shall be sufficient in any pleading to describe the goods and chattels distrained as and to be the goods and chattels of the plaintiff as agent or attorney of such

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tenant, and in all other respects the said action shall be prosecuted and dealt with in such and the same manner as if the action had been commenced and prosecuted by the tenant himself. A.D. 1935.

53—(1) Where any goods or chattels are distrained, and the tenant in possession or owner of the goods does not, within five days next after the distress, replevy the same according to law, it shall be lawful for the person distraining, after the expiration of the said five days, to cause such goods or chattels to be sold. Sale of distress.
2 Wm. and Mary,
sess. 1, c. 5, s. 2.

(2) The period of five days aforesaid shall be extended to a period of not more than fifteen days if the tenant or such owner make a request in writing in that behalf to the landlord or other person levying the distress and also give security for any additional cost that may be occasioned by such extension of time.

(3) The landlord or person levying the distress may, at the written request or with the written consent of the tenant or such owner, sell the goods or chattels distrained, or part of them, at any time before the expiration of such extended period as aforesaid.

(4) In all cases the sale of such goods or chattels shall be made by public auction, either by a licensed auctioneer or by a bailiff of the sheriff or of a court of requests.

54—(1) If within the period of five days next after the distress the tenant by notice in writing to the person distraining requires the goods and chattels distrained to be appraised the same shall be appraised as hereinafter provided. Appraisement
when demanded.
Cf. 51 and 52
Vic., c. 21, s. 5.

(2) On receipt of such notice the person distraining, with a police officer, shall before proceeding to sell the same cause such goods and chattels to be appraised by two appraisers sworn to appraise the same truly according to the best of their understanding.

(3) Any police officer, when so required, shall aid and assist in such appraisement and may administer the necessary oath to any person appointed to make the appraisement.

55 The money to arise from such sale shall be applied in satisfaction of the charges of making the distress and sale and of the sum demanded; and the overplus, if any, shall be forthwith paid to the said tenant or owner, and the person causing such distress to be made shall deliver, if demanded at any time within thirty days from the time of such sale, a true account in writing of such sale. Application of
proceeds.
Vic. s. 59.

Penalty: Fifty pounds.

56 At the time appointed for any such sale, any person shall have full liberty of ingress, egress, and regress into and out of the premises where such goods or chattels are impounded or otherwise secured, in order to view or buy and remove any part of such goods or chattels, without being liable as a trespasser. Public to have
access to new
goods.
Ib., s. 60.

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Irregularity not
to vitiate distress.11 Geo. II., c.
19, ss. 19 and 20.

57—(1) Where any distress is made for any rent or sum justly due, and any irregularity or unlawful act is afterwards done by the person causing the distress to be made, or by his agent or bailiff, the distress shall not be deemed unlawful nor the distrainer a trespasser *ab initio*; but the party grieved may recover satisfaction for the damage by action; and if he recovers he shall have full costs.

(2) No tenant shall recover in any action for any such unlawful act or irregularity as aforesaid if tender of amends has been made by the party distraining, or by his agent, before action brought.

Penalties.

Cf. Vic., s. 63.

58 No person shall—

i. Wilfully neglect to make out, sign and deliver—

(a) The prescribed inventory :

(b) A bill of charges claimed : or

(c) Any prescribed notice—

as required by this Act in respect of any goods or chattels distrained by him :

ii. Being an agent or bailiff make any distress without obtaining a warrant as required by this Act or wilfully neglect to deliver, as required by this Act, a copy of such warrant :
or

iii. Retain, take, or receive any other or greater charge than is prescribed by the fourth schedule.

Penalty : Fifty pounds.

Forms to be used.

59 Every precept to replevy, replevin, and assignment of such bond, respectively shall be in the appropriate form in the third schedule.*Division II.—Provisions as to Lodgers, Under-Tenants, &c.*

Interpretation.

Cf. 9 Ed. VII.
No. 47, s. 4.**60**—(1) In this division—

“Superior landlord” includes a landlord in cases where the goods seized are not those of an under-tenant or lodger :

“Tenant” and “under-tenant” do not include a lodger.

Under-tenant or
lodger, if distress
levied, to make
declaration that
immediate
tenant has no
property in goods
distrained.*Ib.*, s. 5.**61**—(1) If any superior landlord levies or authorises to be levied, a distress on any goods or chattels of—

i. Any under-tenant :

ii. Any lodger : or

iii. Any other person not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof—

for arrears of rent due to the superior landlord by his immediate tenant, the under-tenant, lodger, or other person aforesaid may serve the superior landlord, or the agent employed by him to levy such distress, with a statutory declaration made by the under-tenant, lodger, or other person aforesaid in accordance with the provisions of this section.

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(2) Such declaration shall set forth—

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- i. That the immediate tenant has no right of property or beneficial interest in the goods or chattels so distrained or threatened to be distrained, and that such goods or chattels are the property, or in the lawful possession, of the declarant : and
- ii. In the case of an under-tenant or lodger, the amount of rent, if any, then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and shall contain an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorised to be levied have been paid off—

and there shall be annexed to and verified by such declaration a correct inventory, subscribed by the declarant, of the goods and chattels referred to in the declaration.

62—(1) If any superior landlord, or any agent employed by him— Penalty.

- i. After being served with such declaration and inventory as aforesaid : and *Ib.*, s. 6.
- ii. In the case of an under-tenant or lodger, after such undertaking as aforesaid has been given, and the amount of rent, if any, then due has been paid or tendered in accordance with such undertaking—

levies or proceeds with a distress on the goods or chattels of the under-tenant, lodger, or other person aforesaid, such superior landlord, bailiff, or other agent shall be guilty of an illegal distress, and the under-tenant, lodger, or other person aforesaid may apply by complaint under the *Justices Procedure Act 1919* for an order for the restoration to him of such goods.

(2) On the hearing of such complaint the court shall inquire into the truth of the declaration and inventory, and shall make such order for the recovery of the goods or chattels or otherwise as to it may seem just.

(3) The superior landlord shall also be liable to an action at law at the suit of the under-tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

63—(1) For the purposes of the recovery of any sums payable by an under-tenant or lodger to a superior landlord under—

Payments of
under-tenant or
lodger to
superior landlord.
Ib., s. 7

- i. Any such undertaking as aforesaid : or
- ii. A notice served in accordance with section sixty-five—

the under-tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent.

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(2) Where the under-tenant or lodger has, in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and in that case such immediate landlord may make the like deductions from any rent due or which may become due from him to his immediate landlord if any.

Exclusion of
certain goods.
Ib., s. 8.

64 The preceding sections of this division shall not apply to any goods—

- i. Belonging to the husband or wife of the tenant whose rent is in arrear: nor
- ii. Comprised in any bill of sale, hire-purchase agreement, or settlement made by such tenant: nor
- iii. In the possession, order, or disposition of such tenant by the consent and permission of the true owner, under such circumstances that such tenant is the reputed owner thereof.

Alternative to
distress.
Ib., s. 9.

65—(1) In cases where the rent of the immediate tenant of the superior landlord is in arrear, it shall be lawful for such superior landlord to serve personally upon any under-tenant or lodger a notice in writing—

- i. Stating the amount of such arrears of rent: and
- ii. Requiring all future payments of rent, whether the same has already accrued due or not, by such under-tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been fully paid.

(2) Upon the service as aforesaid of such notice the superior landlord shall have the right to recover, receive, and give a discharge for such rent from such under-tenant or lodger.

Division III.—Special Provisions as to Hire-purchase Goods.

Procedure
where hire-
purchase goods
distrained.

18 Geo. V. No.
85, s. 2.

66—(1) Where any goods or chattels have been distrained for rent due by a tenant or lodger in respect of any premises, and such goods or chattels or any part thereof are comprised in a hire-purchase agreement, the owner of such lastmentioned goods or chattels (hereinafter referred to as “the owner”) may, within ten days after such distraint has been made, or at any time before the removal of the goods or chattels so distrained, deliver to the landlord of such premises, or to the agent or bailiff of such landlord, a statutory declaration, stating that he is such owner, and setting out the particulars of the goods or chattels comprised in the hire-purchase agreement, and the amount still unpaid and upon payment of which such goods or chattels as last aforesaid would, if the hire-purchase agreement had been fully carried out, have become the property of the hirer.

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(2) Upon delivery of any such declaration as aforesaid—

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- i. If there are, upon the premises upon which the distress has been levied, sufficient other goods or chattels to satisfy the distress, no further proceedings shall be taken under such distress in respect of the goods or chattels comprised in the hire-purchase agreement :
- ii. In any other case, the landlord or his agent or bailiff may, in addition to the distraint already made by him, make a further distraint upon the goods and chattels liable to distress, for such an amount as is referred to in subsection (1) of this section, and proceed to a sale thereof in the manner provided by law, and the proceeds of such sale shall be applied by the landlord, in so far as the same shall extend, in manner following :—
 - (a) First in payment of the costs of and incidental to the distress and sale ;
 - (b) Secondly in payment to the owner of such amount as is referred to in subsection (1) of this section ;
 - (c) Thirdly in satisfaction of the amount due to the landlord—

and the balance, if any, of such proceeds shall be paid by the landlord to the hirer.

(3) For the purposes of this section a hire-purchase agreement does not include an agreement whereby the goods comprised therein have become the absolute property of the person therein expressed to be the hirer thereof.

PART VI.

SUMMARY PROCEEDINGS TO RECOVER POSSESSION OF PREMISES.

67 In this part—

Interpretation.

- “ Agent ” means any person usually employed by the landlord in the letting of the premises or in the collection of the rents thereof, or specially authorised in writing by the landlord to act in the particular matter :
- “ Landlord ” means the person entitled to the immediate reversion of the premises, or, if the premises be held in joint-tenancy, co-parceny, or tenancy-in-common, shall mean any one of the persons entitled to such reversion :
- “ Premises ” means lands, houses, or other corporeal hereditaments :
- “ Tenant ” includes any person in possession of the premises or any part thereof, after the termination of the tenancy without the authority of the landlord.

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Tenant holding over may be summoned before police magistrate or justices.

Cf. *ib.*, s. 3, and 12 Geo. V. No. 9, s. 4.

Court may order possession to be given up.

Cf. 1 Ed. VII. No. 20, s. 4.

Warrant to give possession of premises.

Cf. *ib.*, s. 5.

Saving as to existing law.

ib., s. 7.

68—(1) If the term or interest of the tenant of any premises held by him at will or for any term not exceeding seven years, either without being liable to the payment of any rent or at a rent not exceeding the rate of two hundred and sixty pounds a year, and upon which no fine shall have been reserved or made payable, shall have ended or shall have been duly determined by a legal notice to quit or otherwise, and such tenant shall neglect or refuse to quit and deliver up possession of the premises, or any part thereof, the landlord or his agent may proceed by complaint under the *Justices Procedure Act 1919* against the tenant for the recovery of possession of such premises.

(2) If such premises were held by the tenant at a rental exceeding a rate of forty pounds a year such complaint shall be heard and determined by a police magistrate.

69—(1) Upon the hearing of any such complaint as aforesaid, it shall be lawful for the court, upon proof of the tenant still neglecting or refusing to deliver up possession of the premises, and of the rent payable in respect of the premises, and of the holding, and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the landlord, if such title has accrued since the letting of the premises, and of the service of the summons if the tenant shall not appear thereto, to order that possession of such premises shall be given by the tenant to the landlord or his agent on or before such day as the court shall name, not being more than twenty-eight days nor less than forty-eight hours after the hearing of the complaint.

(2) The court in its discretion may allow to the landlord such sum as it may think fit for rent or mesne profits of the premises, to be paid on or before a day to be named by the court.

(3) Such order for payment of rent or mesne profits shall be enforceable by distress only and not by imprisonment.

70—(1) If the tenant shall neglect or refuse to give possession of the premises to the landlord or his agent within the time named in the order, it shall be lawful for the court or one of the justices by whom such order was made, to issue a warrant addressed to all police officers commanding them to enter into the premises and to give possession of the same to the landlord or his agent.

(2) Entry upon any such warrant shall not be made on a Sunday, Good Friday, or Christmas Day, or at any time except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(3) For the purpose of executing any such warrant every police officer is hereby authorised and empowered, if necessary, to break and enter into the premises and eject the tenant or any other person therefrom.

(4) Any such warrant may be in the appropriate form in the third schedule.

71 The provisions of this Part for recovery of possession of premises and of payment of rent and mesne profits shall not prejudice or affect any other remedy in respect thereof.

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THE FIRST SCHEDULE.

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REPEAL.

Section 2.

Regnal Year and Number.	Title of Act.
7 Vict. No. 1	<i>An Act to regulate Distresses and Replevins</i>
38 Vict. No. 12	<i>The Landlord and Tenant Act 1874</i>
1 Ed. VII. No. 20	<i>The Recovery of Possession of Tenements Act 1901</i>
9 Ed. VII. No. 47	<i>The Landlord and Tenant Act 1909</i>
12 Geo. V. No. 9	<i>The Recovery of Possession of Tenements Act 1921</i>
18 Geo. V. No. 85	<i>The Landlord and Tenant Act 1927</i>

THE SECOND SCHEDULE.

PART I.

Section 3.

This Indenture made the _____ day of _____ one thousand nine hundred and _____, in pursuance of Part II. of the *Landlord and Tenant Act 1935*, between [here insert the names of the parties, and recitals, if any], witnesseth, that the said [lessor] or [lessors] doth [or do] demise unto the said [lessee or lessees], his [or their] executors, administrators, and assigns, all, &c., [parcels], from the _____ day of _____, for the term of _____ thence ensuing, yielding therefor during the said term the rent of [state the rent and mode of payment.]

In witness whereof the said parties hereto have hereunto set their hands and seals.

DIRECTIONS AS TO THE FORMS IN THE SCHEDULE.

- Parties who use any of the forms in the first column of this schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.
- Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the forms in the first column of this schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.
- Such parties may fill up the blank spaces left in the forms 4 and 5 in the first column of this schedule so employed by them, with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.
- Such parties may introduce into or annex to any of the forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.
- The covenants 1 to 10 shall be taken to be made with, and the proviso 11 to apply to, the lessor, his executors, administrators, and assigns.

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PART II.

FIRST COLUMN.

1. That the said [lessee] covenants with the said [lessor] to pay rent.

2 And to pay taxes.

3. And to repair.

4. And to paint outside every year.

5. And to paint and paper inside every year.

6. And to insure from fire in the joint names of the said [lessor] and the said [lessee].

SECOND COLUMN.

1. And the said lessee doth hereby, for himself, his executors, administrators, and assigns, covenant with the said lessor, that he the said lessee, his executors, administrators, and assigns, will during the said term pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

2. And also will pay all taxes, rates, duties, and assessments whatsoever, now charged or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof (excepting all taxes, rates, duties, and assessments whatsoever, or any portion thereof, which the lessee is or may be by law exempted from).

3. And also will during the said term well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, together will all chimney pieces, windows, doors, fastenings, water closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks, and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where, and so often as need shall be.

4. And also that the said lessee, his executors, administrators, and assigns, will in every year in the said term paint all the outside wood-work and iron-work belonging to the said premises, with two coats of proper oil colours, in a workmanlike manner.

5. And also that the said lessee, his executors, administrators, and assigns, will in every year paint the inside wood, iron, and other works, now or usually painted, with two coats of proper oil colours in a workmanlike manner; and also re-paper with paper of a quality as at present such parts of the premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.

6. And also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full value thereof, in some respectable insurance office, in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and

*Landlord and Tenant.*PART II.—*continued.*

A.D. 1935.

FIRST COLUMN.

SECOND COLUMN.

to show receipts;

and to rebuild in case of fire.

7. And that the said [lessor] may enter and view state of repair, and that the said [lessee] will repair according to notice.

8. That the said [lessee] will not use premises as a shop.

9. And will not assign or underlet without leave.

10. And that he will leave premises in good repair.

keep the same so insured during the said term; and will, upon the request of the said lessor, or his agent, show the receipt for the last premium paid for such insurance for every current year; and as often as the said premises hereby demised shall be burnt down or damaged by fire, all and every the sums or sum of money which shall be recovered or received by the said lessee, his executors, administrators, and assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down or damaged by fire as aforesaid.

7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term, to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises; and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

8. And also that the said lessee, his executors, administrators, and assigns, will not convert, use or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.

9. And also that the said lessee shall not nor will during the said term assign, transfer, or set over, underlet, or part with the possession of the said premises, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred, underlet, or set over, unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns, first had and obtained.

10. And further, that the said lessee will, at the expiration or other sooner determination of the said term, peaceably sur-

Landlord and Tenant.

A.D. 1935.

PART II.—*continued.*

FIRST COLUMN.

11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.

12. The said [*lessor*] covenants with the said [*lessee*] for quiet enjoyment.

SECOND COLUMN.

render and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear, and damage by fire, only excepted.

11. Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor, at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy as of his or their former estate, any thing hereinafter contained to the contrary notwithstanding.

12. And the lessor doth hereby, for himself, his executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

Landlord and Tenant.

THE THIRD SCHEDULE.

A.D. 1935.

FORM I.

Section 59.

THE LANDLORD AND TENANT ACT, 1935.

PRECEPT TO REPLEVY.

A.B., [*Registrar of the Court of Requests held at* _____ *or as*
the case may be].

To J.S., my Bailiff

WHEREAS A.B., of [*address and description*], hath found me sufficient security as well for prosecuting his suit with effect against L.H., of [*address and description*], for taking his goods and chattels, to wit [*specify them*], and also for making a return thereof, if return thereof shall be adjudged: Therefore I command you, without delay, to replevy and deliver to the said A.B. his said goods and chattels, which the said L.H. is alleged to have taken and unjustly detained. Thereof fail not.

Dated this _____ day of _____, 19 ____
Registrar (or as the case may be).

FORM II.

Section 59.

THE LANDLORD AND TENANT ACT, 1935.

REPLEVIN BOND.

KNOW all men by these presents that we, A.B. _____ of [*address and description*] [*or agent or attorney of A.B. of, &c.,* _____, who is absent from the State]; C.D., of _____ [*address and description*]; and E.F., of _____ [*address and description*], are held and firmly bound to _____ Registrar of the Court of Requests held at _____ in the sum of [*double the value of the goods and chattels*], to be paid to the said Registrar or his attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals.

Dated this _____ day of _____, 19 ____

WHEREAS the abovenamed Registrar, by virtue of his office and upon the complaint of the abovenamed A.B. hath consented to deliver and replevy to the said A.B. the goods and chattels following, to wit, [*enumerate the whole of the goods and chattels*], which L.H. hath taken and wrongfully withheld, as the said A.B. alleges: Now the condition of this obligation is that, if the said A.B. do, within one month now next ensuing, commence an action against the said L.H. in the Supreme Court of Tasmania, and do prosecute the same with effect and without delay against the said L.H., for the taking and withholding of the said goods and chattels, or do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said Registrar against the said L.H. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void; otherwise it is to remain in full force.

Signed, sealed, and delivered
 in the presence of _____

Landlord and Tenant.

A.D. 1935.

FORM III.

LANDLORD AND TENANT ACT, 1935.

Section 47.

INVENTORY.

TAKE notice that I (as agent or bailiff of _____), have this day distrained the following goods and chattels in the dwelling-house (or in and upon the farm land and premises) of *E.F.*, situate at _____, for £ _____, being the amount of _____ last (or instant). AND take notice that, unless the above sums and charges claimed in respect of the distress be paid within five days, the goods and chattels taken will be sold.

Dated this _____ day of _____, 19 _____
C.D., Bailiff.

Section 59.

FORM IV.

THE LANDLORD AND TENANT ACT, 1935.

ASSIGNMENT OF BOND.

KNOW all men by these presents that I, _____, Registrar of the Court of Requests held at _____, in Tasmania, have, at the request of the within-named _____ [the avowant or person making cognizance], assigned over this replevin bond unto him, the said _____, pursuant to law.

In witness whereof I have hereunto set my hand this _____ day of _____, 19 _____.

Signed by the said _____
as such Registrar as aforesaid
in the presence—

Section 70.

FORM V.

THE LANDLORD AND TENANT ACT, 1935.

WARRANT TO POLICE OFFICERS TO TAKE AND GIVE POSSESSION.

Police Office,

To all police officers in the State.

WHEREAS on the _____ day of _____, 19 _____, complaint was made before one of His Majesty's Justices, that _____, being the tenant of certain premises situate at _____ the tenancy whereof has ended [or been legally determined], and the said _____ has neglected or refused to quit and deliver up possession of the same: AND whereas on such complaint being made a summons was issued which was duly served upon the said _____: AND whereas the said complaint was, on the _____ day of _____, 19 _____, heard before me, the undersigned Police Magistrate [or before me and _____, esquire one of His Majesty's Justices], and it was thereupon ordered that the said _____ should, on or before the day of _____, 19 _____, deliver up possession on the said premises to _____ [or to _____, his agent]:

AND whereas such time has now expired, but the said _____ has not delivered up possession of the said premises to the said _____ [or to _____, his agent], but therein has made default:

Landlord and Tenant.

THESE are therefore to authorise and command you and each of you, **A.D. 1935.**
 as soon as possible, after the issuing of this Warrant, except on Sunday, Christmas Day, or Good Friday, between the hours of Nine in the forenoon and Four in the afternoon, to enter (by force if needful), and with or without the aid of [the landlord or agent, as the case may be], or any other person who you may think requisite to call to your assistance, into and upon the said premises, and to reject therefrom any person, and of the said premises full and peaceable possession to deliver to the said [or to , his agent]. And for so doing this shall be your sufficient warrant.

Given under my hand, at , this day
 of , 19 .

Police Magistrate.
 [or
 Justice of the Peace.]

THE FOURTH SCHEDULE.

CHARGES OF DISTRESS.		£	s.	d.	Section 49.
Levying distress—					
Where the sum distrained for does not exceed £10		0	5	0	
Where such sum exceeds £10 and does not exceed £50		0	10	0	
Where such sum exceeds £50		1	0	0	
Appraisement (if made), a percentage in the pound on the value of the goods distrained equal to		0	0	6	
Man in possession, per diem		0	4	0	
Advertisement of sale, if required by the person whose goods are distrained					The sum actually paid
Carriage of goods to place of sale, where the same are not sold on the premises					The sum actually paid
Printing of catalogues (if any) of goods to be sold					The sum actually paid
Charges of auctioneer or bailiff for conducting sale					Five per cent. on gross amount realised

