Distress for Rent Act 1737

1737 CHAPTER 19 11 Geo 2

An Act for the more effectual securing the Payment of Rents, and preventing Frauds by Tenants.

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

Modifications etc. (not altering text)
C1 Short title given by Short Titles Act 1896 (c. 14)

[1.] Landlords may distrain and sell goods fraudulently carried off the premisses within 30 days,

From and after the twenty-fourth day of June in the year of our Lord one thousand seven hundred and thirty eight, in case any tenant or tenants, lessee or lessees for life or lives, term of years, at will, sufferance, or otherwise, of any messuages, lands, tenements, or hereditaments, upon the demise or holding whereof any rent is or shall be reserved, due, or made payable, shall fraudulently or clandestinely convey away, or carry off or from such premisses, his, her, or their goods or chattels, to prevent the landlord or lessor, landlords or lessors, from distraining the same for arrears of rent so reserved, due, or made payable, it shall and may be lawful to and for every landlord or lessor, landlords or lessors, within England, dominion of Wales, or the town of Berwick upon Tweed, or any person or persons by him, her, or them for that purpose lawfully impowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found, as a distress for the said arrears of rent, and the same to sell or otherwise dispose of in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premisses for such arrears of rent, any law, custom, or usage to the contrary in any wise notwithstanding.

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2 unless sold to any person not privy to the fraud.

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

3 Penalty on the said fraud, or assisting thereto.

And to deter tenants from such fraudulent conveying away their goods and chattels, and others from wilfully aiding or assisting therein or concealing the same, from and after the said twenty fourth day of June, if any such tenant or lessee shall fraudulently remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his or her goods or chattels, or in concealing the same, all and every person and persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him, her, or them respectively carried off or concealed as aforesaid, to be recovered by action of debt in **[**[F1]the High Court**]** , or in the courts of session in the counties palatine of Chester, Lancaster, or Durham respectively . . . [F2]

Textual Amendments

F1 Words substituted by virtue of Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), **s. 224(1)**

F2 Words repealed by Statute Law Revision Act 1948 (c. 62), **Sch. 1**

Modifications etc. (not altering text)

C2 Functions of courts of session in counties palatine of Chester, Lancaster and Durham now exercisable by High Court: Law Terms Act 1830 (c. 70), **s. 14**, Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), **s. 18(2)(a)** and Courts Act 1971 (c. 23), s. 41, Sch. 5 Pt. I paras. 1, **2**

4 If the goods exceed not the value of £50, landlords to have recourse to 2 justices.

Provided always, that where the goods and chattels so fraudulently carried off or concealed shall not exceed the value of fifty pounds, it shall and may be lawful for the landlord or landlords from whose estate such goods or chattels were removed, his, her, or their bailiff, servant, or agent in his, her, or their behalf, to exhibit a complaint in writing against such offender or offenders before two or more justices of the peace . . .[F3], . . . [F4] not being interested in the lands or tenements whence such goods were removed, who may summon the parties concerned, examine the fact, and all proper witnesses upon oath, . . . [F4] and in a summary way determine whether such person or persons be guilty of the offence with which he or they are charged; and to enquire in like manner of the value of the goods and chattels by him, her, or them respectively so fraudulently carried off or concealed as aforesaid; and, upon full proof of the offence, by order under their hands and seals, the said justices of peace may and shall adjudge the offender or offenders to pay double the value of the said goods and chattels . . . [F5], at such time as the said justices shall appoint; . . . [F4]

Textual Amendments

F3 Words in s. 4 repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 2, **Sch. 10**; S.I. 2005/910, art. 3(y)

F4 Words repealed by Statute Law Revision Act 1948 (c. 62), **Sch. 1**

F5 Words repealed by Justices of the Peace Act 1949 (c. 101), **Sch. 7 Pt. III**

Modifications etc. (not altering text)

C3 S. 4 amended: (E.W.) (1.4.1996) by S.I. 1996/674, reg. 2, **Sch. Pt. II para. 5(2)(b)**; (1.4.1996) by S.I. 1996/675, art. 2, **Sch. Pt. II para. 7(2)(b)**

5 Appeal to the quarter-sessions.

Provided also, that it shall and may be lawful for any person who thinks himself aggrieved by such order of the said two justices to appeal to the **[**[F6]Crown Court**]** . . . [F7]

Textual Amendments

F6 Words substituted by Courts Act 1971 (c. 23), **Sch. 8 Pt. I para. 2**

F7 Words repealed by Summary Jurisdiction Act 1884 (c. 43), **Sch.**

6

Provided also, that where the party appealing shall enter into a recognizance with one or two sufficient surety or sureties in double the sum so ordered to be paid, with condition to appear at **[**[F8]the Crown Court**]** , the order of the said two justices shall not be executed against him in the mean time.

Textual Amendments

F8 Words substituted by Courts Act 1971 (c. 23), **Sch. 8 Pt. I para. 2**

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

And where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or tenants, lessee or lessees, his, her, or their servant or servants, agent or agents, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, out-house, yard, close, or place, locked up, fastened, or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful for the landlord or landlords, lessor or lessors, his, her, or their steward, bailiff, receiver, or other person or persons impowered, to take and seize, as a distress for rent, such goods and chattels (first calling to his, her, or their assistance the constable, head-borough, borsholder, or other peace-officer of the hundred, borough, parish, district, or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein; and in case of a dwellinghouse, oath being also first made before some justice of the peace of a reasonable ground to suspect that such goods or chattels are therein), in the daytime, to break open and enter into such house, barn, stable, out-house, yard, close, and place, and to take and seize such goods and chattels for the

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said arrears of rent, as he, she, or they might have done by virtue of this or any former Act if such goods and chattels had been put in any open field or place.

8 and may distrain stock or cattle on the premisses, for arrears of rent.

And from and after the said twenty fourth day of June, which shall be in the year of our Lord one thousand seven hundred and thirty eight, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her, or their steward, bailiff, receiver, or other person or persons impowered by him, her, or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants feeding or depasturing upon any common, appendant or appurtenant, or any ways belonging to all or any part of the premisses 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 estates so demised or holden, as a distress for arrears of rent; and the same to cut, gather, make, cure, carry, and lay up, when ripe, in the barns or other proper place on the premisses so demised or holden; and in case there shall be no barn or proper place on the premisses so demised or holden, then in any other barn or proper place which such lessor or landlord, lessors or landlords, shall hire or otherwise procure for that purpose, and as near as may be to the premisses, and in convenient time to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement, and sale, in the same manner as other goods and chattels may be seized, distrained, and disposed of; and the appraisement thereof to be taken when cut, gathered, cured, and made, and not before.

9 Tenants to have notice of the place where the distress is lodged. Distress of corn, &c. to cease, if rent be paid before it be cut.

Provided always, that notice of the place where the goods and chattels so distrained shall be lodged or deposited shall, within the space of one week after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the last place of his or her abode; and that if after any distress for arrears of rent so taken, of corn, grass, hops, roots, fruits, pulse, or other product which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured, or gathered, the tenant or lessee, his or her executors, administrators, or assigns, shall pay or cause to be paid to the lessor or landlord, lessors or landlords, for whom such distress shall be taken, or to the steward or other person, usually employed to receive the rents of such lessor or lessors, landlord or landlords, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress and which shall have been occasioned thereby, that then and upon such payment or lawful tender thereof actually made, whereby the end of such distress will be fully answered, the same, and every part thereof shall cease, and the corn, grass, hops, roots, fruits, pulse, or other product so distrained, shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns, any thing herein before contained to the contrary notwithstanding.

10 Distresses may be secured, and sold on the premisses.

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

unavoidably done to such goods and chattels or stock in the removal thereof: from and after the said twenty fourth day of June one thousand seven hundred and thirty eight, it shall and may be lawful to and for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place or on such part of the premisses chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress, and to appraise, sell, and dispose of the same upon the premisses in like manner and under the like directions and restraints to all intents and purposes as any person taking a distress for rent may now do off the premisses by virtue of the [M1]Distress for Rent Act 1689 or of the [M2]Landlord and Tenant Act 1730 and that it shall and may be lawful to and for any person or persons whatsoever to come and go to and from such place or part of the said premisses where any distress for rent shall be impounded and secured as aforesaid, in order to view, appraise, and buy, and also in order to carry off or remove the same on account of the purchaser thereof, and that if any pound-breach or rescous shall be made of any goods and chattels, or stock distrained for rent and impounded or otherwise secured by virtue of this Act, the person or persons aggrieved thereby shall have the like remedy as in cases of pound-breach or rescous is given and provided by the said Statute.

Marginal Citations

M1 1689 c. 5.

M2 1730 c. 28.

11 . . . . . [F9]

Textual Amendments

F9 S. 11 repealed by Law of Property Act 1925 (c. 20), **Sch. 7**

12—13. . . . . . [F10]

Textual Amendments

F10 Ss. 12, 13 repealed by Statute Law Revision Act 1867 (c. 59)

14 . . . . . [F11]

Textual Amendments

F11 S. 14 repealed by Statute Law (Repeals) Act 1989 (c.43), s. 1(1), **Sch. 1 Pt. I** Gp. 5

15 . . . . . [F12]

Textual Amendments

F12 S. 15 repealed by Statute Law (Repeals) Act 1977 (c. 18), **Sch. 1 Pt. XVI**

16 Provision for landlords, where tenants desert the premisses.

And whereas landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premisses to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for the rent-arrear, but also refusing to deliver up the possession of the demised premisses, whereby the landlords are put to the expence and delay of recovering in ejectment: from and after the said twenty fourth day of June one thousand seven hundred and thirty eight, if any tenant holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be full three fourths of the yearly value of the demised premisses, who shall be in arrear for one year's rent, shall desert the demised premisses and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace [F13]...(having no interest in the demised premisses), at the request of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix or cause to be affixed on the most notorious part of the premisses, notice in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premisses, then the said justices may put the landlord or landlords, lessor or lessors into the possession of the said demised premisses, and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void.

Textual Amendments

F13 Words in s. 16 repealed (1.4.2005) by Courts Act 2003 (c. 39), s. 110(1), Sch. 8 para. 3, **Sch. 10**; S.I. 2005/910, art. 3(y)

Modifications etc. (not altering text)

C4 S. 16 amended by Deserted Tenements Act 1817 (c. 52) and Metropolitan Police Courts Act 1840 (c. 84), **s. 13**.

17 Tenants may appeal from the justices.

Provided always, that such proceedings of the said justices shall be examinable into in a summary way by the next justice or justices of assize of the respective counties in which such lands or premisses lie; and if they lie in the city of London or county of Middlesex, by the judges of the courts of King's Bench or Common Pleas; and if in the counties palatine of Chester, Lancaster, or Durham, then before the judges thereof; and if in Wales, then before the courts of grand-sessions respectively, who are hereby respectively impowered to order restitution to be made to such tenant, together with his or her expences and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs not exceeding five pounds for the frivolous appeal.

Modifications etc. (not altering text)

C5 Functions of justices of assize in civil proceedings and funtions of judges of courts of King's Bench and Common Pleas, judges of counties palatine of Chester, Lancaster and Durham and courts of grand-sessions in Wales now exercisable by High Court: Law Terms Act 1830 (c. 70), **s. 14**, Supreme Court of Judicature (Consolidation) Act 1925 (c. 49), **s. 18(2)(a)** and Courts Act 1971 (c. 23), ss. 1, 41, Sch. 5 Pt. I paras. 1, 2, **Sch. 10 Pt. II para. 5**

18 Tenants holding after the time they notify for quitting, to pay double rent.

And whereas great inconveniences have happened and may happen to landlords whose tenants have power to determine their leases, by giving notice to quit the premisses by them holden, and yet refusing to deliver up the possession when the landlord hath agreed with another tenant for the same: from and after the said twenty fourth day of June one thousand seven hundred and thirty eight, in case any tenant or tenants shall give notice of his, her, or their intention to quit the premisses by him, her, or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, that then the said tenant or tenants, his, her, or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, double the rent or sum which he, she, or they should otherwise have paid, to be levied, sued for, and recovered at the same times and in the same manner as the single rent or sum, before the giving such notice, could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

19 Distresses for rent not unlawful, &c. for any irregularity in the disposition of them;

And whereas it hath sometimes happened that upon a distress made for rent justly due, the directions of the [M3]Distress for Rent Act 1689 have not been strictly pursued, but through the mistake or inadvertency of the landlord or other person intitled to such rent, and distraining for the same, or of the bailiff or agent of such landlord or other person, some irregularity or tortious act hath been afterwards done in the disposition of the distress so seized or taken as aforesaid, for which irregularity or tortious act the party distraining hath been deemed a trespasser ab initio, and in an action brought against him as such, the plaintiff hath been intitled to recover, and has actually recovered the full value of the rent for which such distress was taken: And whereas it is a very great hardship upon landlords and other persons intituled to rents, that a distress duly made should be thus in effect avoided for any subsequent irregularity: from and after the said twenty fourth day of June in the year of our Lord one thousand seven hundred and thirty eight, where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her, or their agents, the distress itself shall not be therefore deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he she or they shall have sustained thereby, and no more, in an action of trespass or on the case, at the election of the plaintiff or plaintiffs: Provided always, that where the plaintiff or plaintiffs shall recover in such action, he, she, or they shall be paid his, her, or their full costs of suit, and have all the like remedies for the same as in other cases of costs.

Marginal Citations

M3 1689 c. 5.

20 . . . . . F14

Textual Amendments

F14 S. 20 repealed by Statute Law (Repeals) Act 1986 (c.12), s. 1(1), **Sch. 1 Pt. I** Gp. 5

21 . . . . . F15

Textual Amendments

F15 S. 21 repealed by Statute Law Revision Act 1958 (c. 46), **Sch. 3**

22 . . . . . F16

Textual Amendments

F16 S. 22 repealed by Statute Law Revision and Civil Procedure Act 1883 (c. 49), **s. 4**

23 . . . . . F17

Textual Amendments

F17 S. 23 repealed by Statute Law Revision and Civil Procedure Act 1881 (c. 59)

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