

New Zealand.



DISTRESS AND REPLEVIN.

1908, No. 47.

AN ACT to consolidate certain Enactments of the General Assembly relating to Distress and Replevin.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. (1.) The Short Title of this Act is “The Distress and Replevin Act, 1908.”

Enactments consolidated.

(2.) This Act is a consolidation of the enactments mentioned in the First Schedule hereto.

Interpretation.

1885, No. 23, sec. 10

(3.) All matters and proceedings commenced under any of the said enactments, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

2. In this Act, if not inconsistent with the context,—

“Chattels” includes “goods”:

“Stock” means and includes horses, cattle, sheep, and pigs.

Distress.

Distress only on chattels of tenant or person in possession.

Ibid, sec. 3

Distress on agisted stock only to extend to indebtedness for agistment.

Ibid, sec. 6

Chattels under bill of sale property of tenant or person in possession.

Ibid, sec. 4

3. (1.) No person shall distrain or levy, for rent due in respect of any messuages or lands, the chattels (other than agisted stock) of any person save and except of the tenant or person in possession of the premises in respect of which such rent has accrued due.

(2.) No person shall distrain or levy for rent upon stock not the property of the tenant or person in possession, agisted on the land in respect of which such rent is due, for a greater sum than the amount due for the agistment of such stock on the said land at the time such distress or levy is made.

4. All chattels being the property of any tenant or person in possession of any messuages or lands, and over which such tenant or person has given an instrument as defined in section two of “The Chattels Transfer Act, 1908,” shall, for the purposes of distress for rent, be deemed to

be the property of such tenant or person if such chattels are found in or upon the messuages or lands in respect of which such rent is due at the time the distraint for such rent is made.

5. The personal and family clothing, the bedclothes, bedding, and tools of trade, to an amount not exceeding in all twenty-five pounds, are hereby declared to be absolutely exempted from being sold or disposed of under any distress for rent :

Exemptions.

1885, No. 23, sec. 7

Provided that the tenant or person in possession of the messuages or lands in respect of which the distress is made gives up possession of the same if demanded by the landlord or his agent.

6. No person shall distrain for rent any stock that may be trespassing upon any land.

No distress for rent on stock trespassing.

Ibid, sec. 8

7. No person shall be entitled to distrain at any one time for more than twelve months' rent, nor be entitled to successive distresses for rent in arrear at the time of any distress taken.

No distress for more than twelve months' rent.

Ibid, sec. 9

8. No person to whom any rent is due or to whom a power of distress is given, whether by deed or other instrument or by law, shall seize and take any 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 form or to the effect set forth in the Second Schedule hereto, signed by such person or by his agent thereunto by him duly authorised.

Distress to be made in person or by agent authorised by warrant in writing.

1868, No. 25, sec. 2

9. If the 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 solicitor of the Supreme Court.

Signature of marksman to be attested.

Ibid, sec. 3

10. Where such distress is made by an agent or bailiff he shall, at the time of making the distress, deliver to the tenant or person in possession of the premises if at the premises, or, if absent, then to some person resident at or near to the premises for such tenant or person in possession, a true copy of the warrant of distress, and if there is no person resident at or near to such premises to whom such copy can be delivered, the agent or bailiff shall deliver the same to such tenant or person in possession, if demanded, at any time within thirty days next after the distress has been made.

Copy of warrant of distress to be delivered.

Ibid, sec. 4

11. The person making the distress shall forthwith make out and sign an inventory, in the form or to the effect set forth in the Third Schedule hereto, of the chattels distrained, and also a bill of the charges then claimed on account of the distress, and shall thereupon deliver such inventory and bill of charges in the like manner as is hereinbefore directed with regard to the warrant of distress.

Inventory and bill of charges to be made and delivered.

Ibid, sec. 5

12. No appraisalment of any chattels distrained shall be necessary to the validity of any distress or sale thereof, and no charges except such as are set forth in the Fourth Schedule hereto shall be made or demanded, or shall be payable in respect of any distress.

No appraisalment necessary.

Charges for distress.

Ibid, sec. 6

13. The person distraining any 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 them 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.

Chattels taken may be impounded on the premises or removed.

Ibid, sec. 7

14. (1.) In every case of such removal the person distraining shall, within twenty-four hours after such removal, give notice in writing to

Notice of removal to be given to tenant.

Ibid, sec. 8

the tenant or person in possession of the premises of the removal of the chattels, and of the place to which they have been removed.

(2.) Such notice may either be given to such tenant or person in possession or, if he is absent, may be left with some person at the place from which the chattels have been removed.

Replevin.

Writ of replevin.
1868, No. 25, sec. 9

15. (1.) Where an action of replevin is commenced in the Supreme Court the plaintiff may sue out of such Court a writ, to be called a "writ of replevin," directed to the Sheriff of the Sheriff's district in which the chattels are under distress, requiring him to replevy the same; and the said Court or any Judge thereof is hereby authorised to issue such writ.

(2.) Every such writ shall be in the form in the Fifth Schedule hereto, and shall have the same effect as any process or proceedings for such purpose heretofore in use.

(3.) The Sheriff, upon security being given to him as hereinafter provided, shall execute such writ, and return the same, with a correct and proper statement indorsed thereon of the manner in which it has been executed or the cause why it has not been executed, to the said Court within a reasonable time after the delivery of the writ to him.

To prevent vexatious replevins and to provide for the assignment of replevin bonds.
Ibid, sec. 10

16. (1.) Every Sheriff or other officer having authority to grant replevins may and shall in every replevin of a distress take, in his own name, from the plaintiff and two responsible persons as sureties a bond in double the value of the chattels distrained, and with respect to such bond the following provisions shall apply:—

(a.) Such value shall be ascertained by the oath of one or more credible witnesses not interested in the chattels or distress.

(b.) The person granting the replevin is hereby authorised and required to administer such oath.

(c.) The bond shall be conditioned for prosecuting the action with effect and without delay and for paying such sum as the Court awards.

(2.) The Sheriff or other officer taking the bond shall, at the request and costs of the defendant, assign it to the defendant by indorsing the same and attesting it under his hand and seal in the presence of two or more credible witnesses.

(3.) If the bond so taken and assigned is forfeited, the defendant may bring an action and recover thereupon in his own name; and the Court where such action is brought may, by a rule of the Court, give such relief to the parties upon the bond as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to the bond.

Replevin by Justices in certain cases.
Ibid, sec. 11

17. (1.) If any distress is made at any place distant more than twenty miles from the office of the Sheriff of the Sheriff's district in which the same was made, any Justice may grant replevin of the chattels distrained in the same manner and subject to the same conditions as any Sheriff may grant the same.

(2.) Such Justice shall take, in his own name, from the person desiring to replevy and two responsible persons as sureties such a bond as a Sheriff is required to take.

(3.) The Justice taking such bond may assign the same in the manner in which a Sheriff may assign a replevin bond, and such bond may be sued on in like manner as a replevin bond taken by a Sheriff.

(4.) No such Justice shall be liable in any action for taking any insufficient security if he acted *bona fide* and with reasonable care and caution.

General.

18. Where chattels are distrained, and the tenant or person in possession of the premises does not within five days next after the distress replevy the same according to law, the person distraining may, after the expiration of the said five days, cause such chattels to be sold by public auction either by a duly licensed auctioneer or by a bailiff of the Sheriff or of a District Court or Magistrate's Court.

Sale.

1868, No. 25, sec. 12

19. (1.) The money arising from such sale shall be applied—first, in satisfaction of the charges of making the distress and sale; secondly, in satisfaction of the distress; and the overplus, if any, shall be forthwith paid to the said tenant or person.

Appropriation of proceeds of sale.

Ibid, sec. 13

(2.) The person causing the distress to be made shall deliver to the said tenant or person in possession, if demanded at any time within thirty days from the time of the sale, a true account in writing of such sale.

20. 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 chattels are impounded or otherwise secured, in order to view or buy and remove any part thereof, without being liable as a trespasser.

Liberty of ingress, egress, and regress to and from premises.

Ibid, sec. 14

21. 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, his agent or bailiff, the distress shall not be deemed unlawful nor the distrainer a trespasser *ab initio*, but the party aggrieved may by action recover satisfaction for the damage, and if he recovers he shall have full costs.

Distress not unlawful for any irregularity.

Ibid, sec. 15

22. The party aggrieved as aforesaid shall not recover in any action for any such unlawful act or irregularity as aforesaid if tender of amends is made by the party distraining or by his agent before action brought.

Tenant not to recover if tender of amends is made.

Ibid, sec. 16

23. Every person is liable to a fine not exceeding fifty pounds who—

Misconduct of agent or bailiff.

Ibid, sec. 17

(a.) Distrains as bailiff or agent without having obtained a warrant as hereinbefore prescribed, or, having distrained as bailiff or agent, wilfully neglects or refuses to deliver a copy of the warrant as hereinbefore required; or

(b.) Having distrained, wilfully neglects or refuses to make out, sign, and deliver the inventory or bill of charges, or to deliver the notices, or make out and deliver the account of the sale, as hereinbefore required, or retains, takes, or receives any other or greater charges than those specified in the Fourth Schedule hereto.

24. All fines incurred under this Act may be recovered in a summary manner under the provisions of "The Justices of the Peace Act, 1908."

Recovery of fines.

Ibid, secs. 13, 17

SCHEDULES.

FIRST SCHEDULE.

ENACTMENTS CONSOLIDATED.

1868, No. 25.—“ The Distress and Replevin Act, 1868.”
 1885, No. 23.—“ The Distress Act, 1885.”

SECOND SCHEDULE.

Under “ The Distress and Replevin Act, 1908.”

WARRANT TO DISTRAIN.

I, A. B., of _____, do hereby authorise you, C. D., of _____, to distrain the chattels in the dwellinghouse [or in and upon the farm land and premises] of E. F., situate at _____, for £ _____, being the amount of _____ due to me for the same on the _____ day of _____ last [or instant], and to proceed thereon for the recovery of the said _____ as the law directs.

Dated this _____ day of _____, 19 _____.

A. B.

[or by his duly authorised agent, G. H.].

THIRD SCHEDULE.

Under “ The Distress and Replevin Act, 1908.”

INVENTORY.

TAKE notice that I (as agent or bailiff of _____) have this day distrained the following chattels in the dwellinghouse [or in and upon the farm land and premises] of E. F., situate at _____, for £ _____, being the amount of _____ due to _____ for the same on the _____ day of _____ last [or instant]: And take notice that unless the above sums and charges claimed in respect of the distress are paid within five days the chattels taken will be sold.

Dated this _____ day of _____, 19 _____.

C. D., Bailiff.

[Then enumerate the chattels at full length.]

FOURTH SCHEDULE.

Under “ The Distress and Replevin Act, 1908.”

CHARGES OF DISTRESS.

Costs of levy made by an agent or bailiff under the authority of a warrant to distrain according to the following scale :—

	£	s.	d.
Where the sum distrained for is more than two and less than ten pounds	..	0	5 0
Where such sum is not less than ten and less than fifty pounds	..	0	10 0
Where such sum is fifty pounds or upwards	..	1	0 0
Man in possession, per diem	..	0	4 0

Charges of auctioneer or bailiff conducting sale not exceeding five per cent.

If advertisements are required by the person whose chattels are distrained the money actually paid for their insertion shall be charged.

Section 8.
1868, No. 25, First
Schedule

Section 11.
Ibid, Second
Schedule.

Section 12.
Ibid, Third Schedule.

FIFTH SCHEDULE.

Section 15 (2).
1868, No. 25, Fourth
Schedule.

EDWARD THE SEVENTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith, to the Sheriff of _____, Greeting: Whereas one A. B. has lately in our Supreme Court at _____ commenced his action against C. D., of [*&c., as in the writ of summons*], and intends to prosecute the same against him for a return of certain chattels of the said A. B., which the said C. D. hath taken and unjustly detains: We do therefore command you that you do forthwith cause to be replevied to the said A. B. the said chattels if they are found in your bailiwick, and in what manner you have executed this writ make appear to our said Court immediately after the execution hereof and have there then this writ.

Witness _____, at _____, the _____ day of _____, one thousand nine hundred and _____.