CHAPTER 68.

RECOVERY OF RENT.

16/1890
24/1956

(*3rd March*, 1890.)

Short title.

1. This Act may be cited as the Recovery of Rent Act.

Sale of distress.

2. (1) Where any goods or chattels shall be distrained for any rent reserved and due upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not within five days next after such distress taken, and notice thereof, with the cause of such taking, left at the chief dwelling house or other most notorious place of the premises charged with the rent distrained for, replevy the same with sufficient security to be given to the prescribed official according to law, then and in such case after such distress and notice as aforesaid and expiration of the said five days, the person distraining shall and may with the prescribed official or a member of the police force (who are hereby required to be aiding and assisting therein) lawfully sell the goods and chattels, so distrained, for the best price that can be gotten for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained and of the charges of such distress and sale, leaving the overplus (if any) in the hands of the said prescribed official or member of the police force for the owner's uses:

Provided that where the tenant or owner of the goods and chattels by writing requires an appraisement to be made, the person distraining and the prescribed official or member of the police force where the distress is taken shall cause the goods and chattels so distrained to be appraised, in the prescribed manner, before the sale of such goods, and for the purpose of sale the goods and chattels shall at the request in writing of the tenant or owner of such goods and chattels be removed to a public auction room or some other fit and proper place specified in such request and be there sold.

(2) The costs and expenses of appraisement when required by the tenant or owner shall be borne and paid by him and the

costs and expenses attending any such removal and any damage to the goods and chattels arising therefrom shall be borne and paid by the person requesting the removal.

Time to replevy may be extended.

3. The period of five days provided in the last preceding section within which the tenant or owner of goods distrained may replevy the same shall be extended to a period of not more than fifteen days if the tenant or 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 costs that may be occasioned for such extension of time: Provided that the landlord or person levying the distress may at the written request or with the written consent of the tenant or such owner as aforesaid sell the goods and chattels distrained or part of them at any time before the expiration of such extended time as aforesaid.

Distress to be levied by certified bailiffs.

4. (1) From and after the commencement of this Act no person shall act as bailiff to levy any distress for rent unless he shall be authorized to act as a bailiff by a certificate in writing under the hand of the Registrar of the Supreme Court, and such certificate may be general or apply to a particular distress or distresses and may be granted at any time after the passing of this Act in such manner as may be prescribed.

(2) If any person holding a certificate shall be proved to the satisfaction of the Registrar of the Supreme Court to have been guilty of an extortion or other misconduct in the execution of his duty as a bailiff he shall be liable to have his certificate summarily cancelled by such Registrar.

(3) Nothing in this section shall be deemed to exempt such bailiff from any other penalty or proceeding to which he may be liable in respect of such extortion or misconduct.

(4) If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this Act the person so levying and any person who has authorized him so to levy shall be deemed to have committed a trespass.

Power to seize goods fraudulently received.

5. In case any lessee for life or lives, term of years, at will or otherwise of any messuages, lands or tenements on the demise whereof any rents are or shall be reserved or made payable, shall after the publication of this Act, fraudulently or clandestinely convey or carry off from such demised premises his goods or chattels with intent to prevent the landlord or lessor

from distraining the same for arrears of rent so reserved as aforesaid, it shall and may be lawful to and for such landlord or lessor or any person or persons by him for that purpose lawfully empowered, within the space of thirty days next ensuing the carrying off or conveying away such goods and chattels as aforesaid, to take and seize such goods and chattels wheresoever the same shall be found as a distress for such arrears of such rent and the same to sell or otherwise dispose of, in such manner as if the goods and chattels had actually been distrained by such lessor or landlord in and upon such demised premises, for such arrears of rent, any law custom or usage to the contrary in anywise notwithstanding:

Provided that nothing in this Act shall extend or be construed to extend the powers of such lessor or landlord to take or seize any goods or chattels as a distress for arrears of rent which shall be sold *bonâ fide* and for a valuable consideration before such seizure made, anything herein contained to the contrary notwithstanding.

Persons fraudulently removing or concealing goods or assisting therein to pay double value.

6. If any tenant or lessee shall fraudulently remove and convey away his or her goods or chattels, as in the last preceding section mentioned, or if any person or persons shall wilfully and knowingly aid or assist any such tenant or lessee so to do, such tenant or lessee or person or persons, shall pay to the landlord or lessor from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods by him carried off or concealed as aforesaid, to be recovered by action.

Summary remedy before Magistrate where value of goods carried away or concealed does not exceed $24.00.

7. Where the goods or chattels so fraudulently carried off or concealed shall not exceed the value of twenty-four dollars, it shall and may be lawful for the landlord, from whose estate such goods or chattels were removed, or his bailiff, servant or agent to exhibit a complaint in writing against such offender or offenders before the Magistrate, who may determine in a summary way whether such person or persons be guilty of the offence with which he or they is or are charged, and upon full proof of the offence, the said Magistrate shall and may adjudge the offender or offenders to pay double the value of the said goods and chattels to such landlord or his bailiff, servant or agent at such time as such Magistrate shall appoint. And in case the offender or offenders, having notice of such order, shall refuse or neglect so to do, shall by warrant levy the same by

distress and sale of the goods and chattels of the offender or offenders, and for want of such distress may commit the offender or offenders to be kept to hard labour for the space of three months in the common gaol unless the money so ordered to be paid as aforesaid shall be sooner satisfied: Provided that it shall be lawful for any person who thinks himself aggrieved by such order by the said Magistrate to appeal under the law for the time in force regulating appeals from Magistrates' decisions.

Power to break open house or place in which goods removed are locked up.

8. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or lessee or other persons aiding or assisting therein shall be placed or kept in any house 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 lessor or any person empowered by him to take or seize as a distress for rent such goods and chattels (first calling to his assistance the prescribed official or some member of the police force having jurisdiction in the place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein, and in case of a dwelling house, oath being first made before some Magistrate of a reasonable ground to suspect that such goods and chattels are therein), in the daytime, may break and open and enter into such house or place and take and seize such goods and chattels for the said arrears of rent.

Distress may be impounded upon premises.

9. Any person or persons lawfully taking any distress for any kind of rent may 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 premises chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress, and may appraise, sell and dispose of the same upon the premises in like manner and under the like directions and restraints to all intents and purposes as any person taking a distress for rent may do off the premises; and any person or persons whatsoever may come and go to and from such place or part of the said premises, where any distress for rent shall be secured and impounded 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 if any pound-breach or rescue shall be made of any goods or chattels or stock distrained for rent and impounded or otherwise secured by virtue of this

section, the person or persons aggrieved thereby shall have the same remedies given by section 20.

Animals impounded to be fed by person impounding them.

10. Every person who shall impound or confine or cause to be impounded or confined in any pound or receptacle of the like nature any animal, shall provide and supply during such confinement a sufficient quantity of fit and wholesome food and water to such animal; and every such person who shall refuse or neglect to provide and supply such animal with such food and water as aforesaid, shall for every such offence forfeit and pay a penalty of four dollars and eighty cents, to be recovered by summary proceedings before a Magistrate.

If animal not fed, third person may feed it and recover cost from owner.

11. In case any animal shall at any time be impounded or confined as aforesaid and shall continue confined without sufficient food and water for more than twelve successive hours, it shall and may be lawful to and for any person, as often as shall be necessary, to enter into and upon any pound or other receptacle of the like nature in which any such animal shall be so confined, and to supply such animal with fit and sufficient food and water during so long a time as such animal shall remain and continue confined as aforesaid; without being liable to any action or any other proceeding by any person for or by reason of such entry for the purposes aforesaid. And the reasonable cost of such food and water shall be paid by the owner of such animal, before such animal is removed, to the person who shall supply the same; and the said cost may be recovered by summary proceedings before a Magistrate.

Recovery of expenses of feeding animal impounded.

12. Every person who shall impound or confine any animal and shall provide and supply such animal with food and water shall recover from the owner or owners of such animal the value of the food and water so supplied, together with the costs of providing the same, before a Magistrate in a summary way. And every such person instead of proceeding for the recovery of the value and expense of providing such food and water may, after the expiration of seven clear days from the date of impounding the same, sell any such animal openly at any public market (after having given three days public notice thereof) for the most money that can be got for the same and apply the proceeds in discharge of the value of such food and water so supplied as aforesaid, and the cost of supplying the same and the expense of and attending such sale, tendering the surplus (if any) to the owner of such animal. Where several animals are distrained for

rent, one of them may be sold for the expenses of all—and this may be repeated *toties quoties*.

Distress for rent after determination of lease.

13. From and after the publication of this Act, it shall be lawful for any person or persons having any rent in arrear or due upon any lease for life or lives or for years or at will ended or determined to distrain for such arrears after the determination of such respective leases, in the same manner as they might have done if such lease or leases had not been ended or determined: Provided that such distress be made within the space of six calendar months after the determination of such lease and during the continuance of such landlord's title or interest and during the possession of the tenant from whom such arrears became due.

Executor of lessor may distrain.

14. It shall be lawful for the executors or administrators of any lessor or landlord to distrain upon the land demised for any term or at will for the arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done in his lifetime.

Protection of lodgers from distress by lodger making a declaration of his goods.

15. If any superior landlord shall levy or authorize to be levied a distress on any furniture, goods or chattels of any lodger for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord or the prescribed official or other person employed by him to levy such distress with a declaration in writing, made by such lodger, setting forth that such immediate tenant has no right to the property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that such furniture, goods or chattels are the property or are in the lawful possession of such lodger, and also setting forth whether any and what rent is due and for what period from such lodger to his immediate landlord, and such lodger may pay to the superior landlord, or to the prescribed official or other person employed by him as aforesaid, the rent if any so due as last aforesaid or so much thereof as shall be sufficient to discharge the claim of such superior landlord; and to such declaration shall be annexed a correct inventory subscribed by the lodger of the furniture, goods and chattels referred to in the declaration, and if any lodger shall make or subscribe such declaration and inventory, knowing the same or either of them to be untrue in any material particular, he shall be guilty of a misdemeanour.

Remedy for distress on lodger's goods after declaration.

16. If any superior landlord or any prescribed official or other person employed by him, after being served with the before-mentioned declaration and inventory and after the lodger shall have paid or tendered to such landlord, prescribed official or other person, the rent, if any, which by the last preceding section such lodger is authorized to pay, shall levy or proceed with a distress of the furniture, goods or chattels of the lodger, such superior landlord, prescribed official or other person shall be deemed guilty of an illegal distress and the lodger may apply to the Magistrate or the owner for the restoration to him of such goods, and such Magistrate shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him may seem just, and the superior landlord shall also be liable to an action at law at the suit of the lodger in which action the truth of the declaration and inventory may likewise be inquired into.

Payment of rent to landlord by lodger.

17. Any payment made by any lodger pursuant to section 15 shall be deemed a valid payment on account of any rent due from him to his immediate landlord.

Landlord may distrain from time to time where no sufficient distress.

18. In all cases where the value of the goods or chattels distrained shall not be found to be the full value of the arrears distrained for, the party to whom such arrears are due, his executors or administrators may from time to time distrain again for the residue of the said arrears: Provided that no second distress shall be justified where there was enough which might have been taken upon the first distress.

Protection of landlord from executions.

19. From and after the publication of this Act, no goods or chattels whatsoever lying, being in or upon any messuages, lands or tenements which are or shall be leased for life or lives, term of years, at will or otherwise shall be liable to be taken by virtue of any execution or any pretence whatsoever, unless the person at whose suit execution is sued out shall, before the removal of such goods from off the said premises by virtue of such execution or extent, pay to the landlord of the said premises or his bailiff all such sum or sums of money as are or shall be due for rent of the said premises at the time of taking such goods or chattels by virtue of such execution: Provided that such arrears of rent do not amount to more than one year's rent, and in case the said arrears shall exceed one year's rent then the said 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 making of this Act and the prescribed official is hereby empowered and required to levy and pay to the plaintiff as well the moneys so paid for rent as the execution money.

Damages for pound breach.

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

Damages for fraudulent distress.

21. In case where any distress and sale shall be made by virtue or colour of this present Act for rent pretended to be in arrear and due, where in truth no rent is in arrear and due to the person or persons distraining or to him or them in whose name or names or right such distress shall be taken as aforesaid, then the owner of such goods and chattels distrained and sold as aforesaid, his executors or administrators, shall and may in an action to be brought against the person or persons so distraining or any or either of them, his or their executors or administrators, recover double the value of the goods and chattels so distrained and sold together with full costs of suit.

Special damage only may be recovered for irregularity in making distress.

22. Where any distress is made for any kind of rent justly due and any irregular or unlawful act is afterwards done by the party distraining or his agent, the distress itself shall not be therefore deemed unlawful nor the party a trespasser *ab initio,* but the party aggrieved by such unlawful act shall recover full satisfaction for the special damage thereby sustained and no more, but the plaintiff shall not recover in any such action if tender of amends has been made by the party distraining or his agent before such action brought.

Growing crops may be distrained.

23. After the passing of this Act it shall be lawful for any lessor or landlord to take and seize as a distress for arrears of rent all sorts of roots or other product whatsoever which shall be growing on any parts of the estates so demised or holden and the same to cut, gather, make, cure, carry and lay up in the barns, or other proper places on the premises so demised or holden, and in case there shall be no barn or proper place

on the premises so demised or holden, then in any other proper place which such lessor or landlord shall hire or otherwise procure for that purpose (as near as may be to the demised premises); 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 shall be taken when cut, gathered, cured and made and not before:

Provided that nothing in this Act shall in any way affect or prejudice any right, title or privilege given or acquired to or by any person, company or corporation by, under, or by virtue of the Title by Registration Act, or shall in any way affect the provisions of the said Act. Cap. 257.

Rules.

24. The Administrator in Council may make rules—

(*a*) for regulating the security (if any) to be required from bailiffs;

(*b*) for regulating the fees, charges and expenses in and incidental to distresses; and

(*c*) for carrying into effect the objects of this Act.

L.I. Gazette 1891.

CHAPTER 68.

RECOVERY OF RENT ACT.

THE RECOVERY OF RENT RULES MADE OCTOBER 2, 1891, UNDER SECTION 24 OF THE RECOVERY OF RENT ACT.

1. SHORT TITLE. These Rules may be cited as the Recovery of Rent Rules.

2. INTERPRETATION. In these rules "the Act" means the Recovery of Rent Act.

3. (1) CERTIFICATE TO ACT AS BAILIFF. The certificate to be granted by the Registrar of the Supreme Court authorizing any person to act as a bailiff to levy any distress for rent may be in the Form A or B in the Schedule as the nature of the case may require.

(2) When the Registrar shall grant any certificate authorizing any person to act as such bailiff as aforesaid, he shall prepare and sign such certificate in duplicate, and one of such certificates shall be delivered to the person whose name is mentioned therein, and the other shall be kept by him as a record and both such certificates shall be deemed originals for all purposes whatever.

(3) Before the Registrar shall grant any certificate as aforesaid, the person to whom the same is to be granted shall deliver to the Registrar a written request for such certificate; and such request shall state whether the person desiring the same desires a general certificate or a certificate to act in a particular distress or particular distresses only, and if the latter, then such request shall state the particular distress or distresses in which such person desires to act. All requests as aforesaid shall be signed by the person who desires the certificate in the presence of the Registrar.

(4) The person requiring any certificate as aforesaid shall, if the Registrar require it, give security for the faithful performance of his duties as bailiff as aforesaid and for the accounting for monies coming to his hands as bailiff in respect of distresses generally or the particular distress or distresses concerning which the certificate is granted.

(5) The Registrar shall have full discretion to grant or refuse any application for a certificate of authority to levy distresses or any distress as aforesaid notwithstanding that the applicant may have complied with the requirements of these rules and the Act.

4. FORM OF SECURITY. When the Registrar shall require security, such security shall be in the form of a bond to such Registrar, executed by the applicant and one or more sufficient sureties as the Registrar may require in a sum not exceeding $96 in the case of general certificate, and in a sum not exceeding $24 in the case of a particular distress or distresses, and the sufficiency of such surety or sureties shall be inquired into and decided upon by the Registrar. All bonds given as aforesaid shall be signed in the presence of the Registrar granting the certificate and one other person, and shall be kept by the Registrar. The expense of stamping and recording such bond, if necessary, shall be paid by the applicant.

5. CERTIFICATE TO BE INDORSED WHEN GRANTED WITHOUT SECURITY. When any certificate of authority shall be granted by a Registrar without security as aforesaid he shall indorse on such certificate the words "granted without security", and shall sign such indorsement.

6. BREACH OF CONDITIONS OF BOND. In the event of a breach of any of the conditions of any bond given as hereinbefore provided for, and of the Registrar recovering any money on any such bond, the amount recovered shall, after the payment of all expenses incurred in recovering the same, be disposed of by the Registrar in compensating any person or persons for loss sustained by him or them consequent upon the improper act or default of such bailiff in such manner as the Administrator may direct.

7. FEES. (1) The fees charges and expenses to be demanded and taken as incidental to distresss shall be as provided for in the Schedule.

(2) All fees received by the Registrar in accordance with the Schedule shall be paid by him into the public Treasury.

8. PRESCRIBED OFFICIAL UNDER THE ACT. The prescribed official within the meaning of the Act shall be the Registrar.

9. APPRAISEMENT. When any appraisement shall be demanded or shall become necessary pursuant to the provisions of the Act such appraisement shall be made as follows that is to say—

(*a*) The Registrar shall nominate one appraiser and the owner of the goods or other property distrained upon shall nominate the other appraiser, and if the owner shall fail to nominate an appraiser within 24 hours after notice given to him by the Registrar for that purpose then the Registrar shall nominate such other appraiser.

(*b*) The appraisers so nominated shall be sworn by the Registrar to make a true and faithful appraisement, and such appraisers shall make their appraisement in writing on or before a day to be named by the Registrar,

and shall sign such appraisement in triplicate and deliver the same to the Registrar, and the Registrar shall deliver one of such appraisements to the owner of the goods or other property distrained upon, and shall deliver one copy thereof to the bailiff who distrained, and shall retain the third copy. In the event of the appraisers or any of them refusing or neglecting to be sworn or to make such appraisement as aforesaid the Registrar shall cause such appraisement to be made as and in such manner as to him may seem most expedient.

10. BAILIFF TO PREPARE ACCOUNT OF PROCEEDS OF SALE. An account of the proceeds of every sale made pursuant to the Act and of every fee charged and expense incidental thereto shall be prepared by the bailiff levying the distress and conducting the sale thereof and shall be submitted to the Registrar to be checked and certified by him, if correct, and when so certified two copies of such account as certified by the Registrar shall be prepared by the bailiff and signed by him, and one of such copies shall be lodged with the Registrar and the other copy delivered to the owner of the distress, and the bailiff shall only be entitled to deduct from the gross proceeds of any sale the amount of the account as certified by the Registrar.

SCHEDULE.

CERTIFICATE OF AUTHORITY TO ACT AS BAILIFF.

r. 3 (1).

FORM A.

Colony of Montserrat.

In the matter of the Recovery of Rent Act.

THIS is to certify that (name of person to whom certificate granted) is hereby authorized to act as a general bailiff to levy any distress pursuant to the provisions of the Recovery of Rent Act.

Dated this day of , 19

Registrar.

FORM B.

r. 3 (1).

Colony of Montserrat.

In the matter of the Recovery of Rent Act.

This is to certify that ( ) is hereby authorized to act as bailiff pursuant to the provisions of the Recovery of Rent Act to levy (set forth the particular distress or distresses in respect of which the bailiff is authorized to act.)

Dated this day of . 19 .

Registrar.

FEES CHARGED AND EXPENSES INCIDENTAL TO DISTRESSES.

r. 7 (1).

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1.	Fee payable to the Registrar for any general certificate	1.20
2.	Fee payable to the Registrar for any particular certificate	.24
3.	Fee payable to the bailiff for levying any distress	.96
4.	Fee payable to the bailiff for catalogues, sales and commission and delivery of the goods or other property—5% on the net proceeds of the sale	
5.	Fee payable to the man in possession per day	.36
6.	Fee payable to each of the appraisers—2½% on the value of the goods or other property appraised	
7.	All expenses of advertisements, if any such, the sum paid therefor, not exceeding	1.92

CHAPTER 69.

REGISTRATION AND RECORDS ACT.

No subsidiary legislation.

CHAPTER 70.

REWARDS FOR THE APPREHENSION OF CRIMINALS ACT.

No subsidiary legislation.