

LANDLORD AND TENANT ACT, 1936.

No. 2301 of 1936.

An Act to consolidate certain enactments amending the law relating to landlord and tenant.

[Assented to 5th November, 1936.]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

1. This Act may be cited as the "Landlord and Tenant Act, 1936", and shall come into operation on a day to be fixed by proclamation. Short title.

2. This Act is a consolidation of the enactments set out in Schedule J to this Act, and those enactments are repealed to the extent therein set out. Short title and repeal.

3. This Act is divided into Parts, as follows :— Division of Act.

PART I.—Forfeiture and relief: sections 4–12.

PART II.—Distress for rent: sections 13–46.

PART III.—Miscellaneous provisions: sections 47–53.

PART I.

PART I.

FORFEITURE AND RELIEF.

Recovery of Premises.

4. (1) In every case between a landlord and tenant, if—

(a) one half-year's rent is in arrear; and

(b) the landlord has by law the right to re-enter for non-payment thereof,

Proceedings by landlord for non-payment of rent.
5, 1853, s. 163.
442, 1888, s. 36.
U.K. 15 & 16
Vict. c. 76,
s. 210.

s. 1. This Act was proclaimed to commence on the 1st day of May, 1937: *Gazette* 25th March, 1937, p. 645.

the landlord may bring an action for recovery of the demised premises without making any formal demand for the rent or any re-entry, and the service of the writ in that action shall have the effect of a demand and re-entry.

(2) If the lessee or his assignees or other person claiming or deriving under the lease permits and suffers judgment to be recovered in the action and execution to be executed thereon without paying the rent and arrears together with full costs and without proceeding for relief on equitable grounds within six months after such execution executed, the said lessee, his assignees, and all other persons claiming under the lease shall be barred and foreclosed from all relief or remedy legal or equitable other than by appeal, and the landlord shall thereafter hold the demised premises discharged from the lease.

(3) Nothing in this section shall bar the right of any mortgagee of the lease or any part thereof who is not in possession, if such mortgagee within six months after such execution executed pays all rent in arrear, and all costs and damages sustained by the landlord, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Tenant, paying all rent, proceedings to cease.

5, 1853, s. 164.
Cf. U.K.
15 & 16 Vict.
c. 76, s. 212;
24 & 25
Geo. 5 c. 53,
s. 180.

5. If the tenant or his assignee at any time before the hearing of the action for recovery of the land pays or tenders to the landlord, or his executors, or administrators, or his or their solicitor in the action or pays into the court all the rent and arrears due at the time of such payment, together with the costs, all further proceedings in the action shall thereupon cease and be discontinued.

Damages for mesne profits.
5, 1853, s. 166.
U.K. 15 & 16
Vict. c. 76,
s. 214.

6. On the hearing of any action brought by a landlord against a tenant for recovery of the demised premises the judge, if satisfied that the defendant has been served with due notice of the hearing, shall, whether the defendant appears on the trial or not, permit the plaintiff, after proof of his right to recover possession of the whole or of any part of the demised land, to adduce evidence of the mesne profits thereof, which accrued or might have accrued from the day of the expiration or determination of the tenant's interest in the land, down to the time of the judgment given in the action, or to some preceding day to be specially mentioned therein; and judgment shall be given upon the whole matter, both as to the recovery of the whole or any part of the land, and also as to the amount of the damages to be paid for such mesne profits; and in such case the landlord shall have judgment, not only for the recovery of possession and costs, but also for the mesne profits found:

Provided that nothing in this section shall be construed to bar any landlord from bringing any action for the mesne profits which accrue from the time of the judgment or the day so specified therein, down to the day of the delivery of possession of the premises recovered in the action.

7. Nothing in the preceding three sections shall prejudice or affect any other right of action or remedy which landlords possess in any of the cases provided for, in these sections, except as therein expressly enacted.

Saving of former remedies.

5, 1853, s. 170.
U.K. 15 & 16
Vict. c. 76,
s. 218.

8. Every tenant to whom there is delivered any writ for the recovery of the premises demised to or held by him, or to whose knowledge any such writ comes, shall (except where the landlord is the plaintiff named in the writ) forthwith give notice thereof to the landlord or his agent; and if he fails to do so shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for that amount.

Notice of writs by lessee to landlord.

5, 1853, s. 162.
U.K. 15
Geo. 5 c. 20,
s. 145.

Relief Against Forfeiture.

9. (1) In the case of any action in the Supreme Court for recovery of land on forfeiture for non-payment of rent, the court or a judge may, upon motion or summons, give relief on equitable grounds in a summary manner, up to and within the same time after execution executed, and subject to the same terms and conditions in all respects as to payment of rent, costs, and otherwise, as would have applied in the Supreme Court in its equitable jurisdiction before the passing of the Supreme Court Act, 1878.

Relief against forfeiture for non-payment of rent.

3, 1862, ss. 1 and 3.
Of. U.K.
15 & 16
Geo. 5 c. 49,
s. 46;
24 & 25
Geo. 5 c. 53,
s. 180.

(2) If the lessee, his executors, administrators, or assigns are so relieved, they shall hold the demised lands according to the terms of the lease and without any new lease.

s. 9. COLLINS v. RASHEED (1925) S.A.S.R. 152; 12 Austn. Digest 809, 968, affirmed by RASHEED v. COLLINS (1925) 32 A.L.R. 193; 12 Austn. Digest 810. Where a lease contained a covenant to purchase, and a provision for forfeiture and payment of the purchase money in full by the lessee, on default in payment of rent or breach of covenant, held that the lessee was entitled to relief against both forfeiture and the obligation to pay the purchase money and a declaration that the covenants for sale and purchase remained of full force and effect. In view of a counter-claim by the defendant lessor for a declaration that the lease was duly determined and that he was entitled to resell the land, the following order for costs was made:—The plaintiff (lessor) to pay to defendant (lessee) his costs as between solicitor and client, except so far as they were increased by the defendant defending the action. The defendant to pay to the plaintiff his costs of the action as between party and party, so far as they have been so increased, and his costs as between party and party of the counter-claim. Provision for set-off.

(3) If such relief is granted, the court or judge shall direct a minute thereof to be made, by endorsement on the lease or otherwise.

No re-entry
till notice to
tenant to
remedy
breach.

580, 1893, s. 1.
Of. U.K.
15 Geo. 5
c. 20, s. 146
(1).

10. A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until—

- (a) the lessor serves on the lessee a notice specifying the particular breach complained of, and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and in any case requiring the lessee to make compensation in money for the breach; and
- (b) the lessee fails within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach.

Court or judge
may grant
relief.

580, 1893, s. 2.
U.K. 15
Geo. 5 c. 20,
s. 146 (2).

11. (1) Where a lessor is proceeding by action or otherwise to enforce such a right of re-entry or forfeiture the lessee may, in the lessor's action (if any), or in any action brought by himself, apply to the Supreme Court or a judge thereof for relief, and the court or judge may grant or refuse relief as such court or judge, having regard to the proceedings and conduct of the parties under the last preceding section and to all other circumstances, may think fit.

(2) If the court or judge grants relief it or he may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court or judge in the circumstances of each case thinks fit.

s. 10. *STAEHR v. FEDERAL LIME CO., LTD.* (1912) S.A.L.R. 102; 12 Austn. Digest 973. In accordance with the maxim *expressio unius exclusio alterius* the express declaration in s. 12 (4) that ss. 10 and 11 apply to a covenant against assignment when the consent of the lessor has been capriciously withheld, implies that ss. 10 and 11 do not apply unless consent has been applied for and capriciously withheld. There is, therefore, no need to give notice under s. 10 prior to forfeiture on the ground of assignment without consent, unless consent has been applied for and capriciously withheld.

SOLOMON AND OTHERS v. WINKLER (1922) S.A.S.R. 428; 12 Austn. Digest 970. S. 10 applies to a breach of a covenant or condition providing for forfeiture on the insolvency of the lessee.

HILL v. SHORT (1910) S.A.L.R. 141; 12 Austn. Digest 970. A notice in general terms complaining of the lessee's misconduct is not a valid notice under s. 10.

s. 11. *SOLOMON AND OTHERS v. WINKLER* (1922) S.A.S.R. 428; 12 Austn. Digest 972. Where an action was brought by the lessor for possession of the leased land and for *mesne* profits, on the ground that the lease was forfeited for breach of covenant, and the defendant counterclaimed for relief against forfeiture, held that the defendant should pay the costs of the action except so far as they were increased by the plaintiff's resistance to the defendant's claim for relief. Principles governing costs in applications for forfeiture discussed.

PART I.

12. (1) For the purposes of the two preceding sections a lease includes an original lease or a derivative under-lease, or a grant securing a rent by condition, and a lessee includes an original lessee or derivative under-lessee, and the heirs, executors, administrators, and assigns of a lessee, also a grantee under such a grant as aforesaid, his heirs and assigns; and a lessor includes an original lessor or derivative under-lessor, and his heirs, executors, administrators, and assigns, also a grantor as aforesaid, and his heirs and assigns.

Interpretation and application of preceding sections.
580, 1893, ss. 3-8.
Cf. U.K. 15 Geo. 5 c. 20, s. 146 (5).

(2) The said sections shall apply, although the provision or stipulation under which the right of re-entry or forfeiture accrues is inserted in the lease in pursuance of any Act.

580, 1893, s. 4.

(3) For the purposes of the said sections a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Ibid., s. 5.

(4) The said sections shall extend to a covenant or condition against assigning, under-letting, parting with the possession, or disposing of the land leased, when the consent of the lessor has been vexatiously or capriciously withheld.

Ibid., s. 6.

(5) The said sections shall not apply to Crown leases nor affect the law relating to re-entry and forfeiture for non-payment of rent.

Ibid., s. 7.

(6) The said sections shall apply to leases made either before or after the commencement of this Act, and shall have effect notwithstanding any stipulation to the contrary.

Ibid., s. 8.

PART II.

PART II.

DISTRESS FOR RENT.

13. In this Part, unless the context otherwise requires—

Interpretation.
442, 1888, s. 2.

“rent” means any rent reserved upon or payable by virtue of any demise, lease, contract, or charge whatsoever for which a distress may lawfully be levied:

s. 12. (4) *MARTIN AND ANOTHER V. COULTAS AND ANOTHER* (1911) S.A.L.R. 1; 12 Austn. Digest 871. Where a lease contains a covenant against assigning, etc., without consent, and consent is capriciously refused, the lessee may assign and give possession notwithstanding the refusal.

HILL V. SHORT (1910) S.A.L.R. 141; 12 Austn. Digest 866. A covenant against assigning does not relate to an equitable assignment.

Part II. (Loss of right to distrain.) *DELANY V. WHITE* (1868) 2 S.A.L.R. 166; 7 Austn. Digest 793. Where under an agreement for sale and purchase of land the vendor

“goods” means any cattle, horses, livestock, furniture, goods, chattels, effects, or things which are by law liable to be distrained for rent, and includes lodgers’ goods, but, except in sections subsequent to section 29, shall not include agisted cattle :

“landlord” means any person having power to distrain for rent due to him :

“immediate tenant” means the person owing or alleged to owe any rent, in respect of which a distress has been or is levied or threatened or authorised to be levied.

Mode of
distress, and
warrant,
authority.

442, 1888, s. 3.
Cf. U.K.
51 & 52 Viet.
c. 21, s. 7.

14. (1) No person to whom any rent is due shall distrain any goods for such rent except by himself personally, or by some person duly authorised by warrant under his hand, or the hand of his agent lawfully authorised.

(2) Every such warrant shall be in duplicate, and in the form or to the effect of the form in Schedule A hereto, and shall be attested by a witness.

Exemption of
warrants from
stamp duty.
934, 1907, s. 5.

15. Notwithstanding any other enactment, no warrant or authority to distrain shall be chargeable with any stamp duty.

Delivery of
duplicate
warrant.

442, 1888,
s. 4.
Cf. U.K.
5 & 7 Geo. 3
c. 93, s. 6.

16. (1) Every person distraining for rent on behalf of another shall, at the time of making the distress, deliver one duplicate of the warrant authorising him to distrain to the immediate tenant, or some person residing on the premises where the distress is levied.

(2) If there is no person residing on the said premises with whom the duplicate can be left, the person distraining shall nail or affix the duplicate on some conspicuous part of the premises, and a copy of the affixed notice shall be posted to the tenant’s last known address.

Hours for dis-
tress.
442, 1888, s. 5.

17. (1) Every person making a distress for rent shall do so between the hours of six in the morning and six in the afternoon.

Inventory.
442, 1888, s. 5.

(2) Every person making a distress for rent shall forthwith make out a written inventory of the goods distrained in the form in Schedule B hereto, or in a form to the like effect.

(3) The inventory shall be dated on the day of the distress, and shall be signed by the person making the distress, who shall thereupon deliver a copy thereof to the immediate tenant,

Part II.
(*contd.*)

had the right to distrain for interest as for rent and the purchaser acknowledged himself tenant to the vendor at a rent equal to the interest, and the vendor obtained a judgment for interest and proceeded to execution, and then levied distress for the same interest, held that the vendor, by treating the interest as a debt and obtaining judgment and execution thereupon had waived his right to distrain.

or some person residing on the premises where the distress is levied.

(4) If there is no person residing on the said premises with whom the copy can be left, the person distraining shall nail or affix the copy on some conspicuous part of those premises, and a copy of the affixed notice shall be posted to the tenant's last known address.

18. (1) Every person distraining for rent shall on demand deliver one copy of the warrant (if any) under which the distress is levied, and a copy of the inventory in the last preceding section mentioned, to every person claiming an interest in the goods distrained, on payment of a charge at the rate of three-pence per folio for such copy.

Delivery
of copy
warrant and
inventory
to claimant.
442, 1888, s. 6.

(2) Any person refusing or neglecting so to supply such copy shall be guilty of an offence, and liable to a penalty not exceeding five pounds.

19. (1) If any landlord levies, or threatens to levy, or authorises to be levied, a distress on any cattle agisted on the demised premises, or on any goods being the property or in the lawful possession otherwise than as sub-tenant of any under-tenant other than the immediate tenant, or of any lodger, for arrears of rent due to such landlord by his immediate tenant, the owner of such agisted cattle, or his agent, or such under-tenant or lodger, or his agent, may serve the landlord or the person authorised by him to levy such distress, with a declaration in writing in or to the effect of the form in Schedule C hereto, signed by such owner or his agent, or such under-tenant or lodger or his agent.

Rights of
owner of
agisted cattle,
under-tenant,
or lodger.
442, 1888, s. 7
Of. U.K.
8 Edw. 7
c. 53, s. 1.

(2) The declaration shall—

(a) set forth that the immediate tenant has no right of property or beneficial interest in such cattle other than his lien for agistment, if any, or that he has no right of property or beneficial interest in such goods, and that such cattle are the property of such under-tenant or owner, or that such goods are the property of such lodger, or are, or immediately prior to being distrained were, in his lawful possession; and

(b) state whether any and what money is due for agistment, rent, or lodging, and for what period, from such owner, under-tenant, or lodger to the immediate tenant, and if no such money is due, then stating that fact; and

s. 19. WHITE AND ANOTHER v. CROZIER (1886) 20 S.A.L.R. 44; 1 Austn. Digest 821. Horses taken in for stabling are not "agisted."

(c) have annexed thereto a correct inventory signed by the declarant of the cattle or goods referred to in the declaration.

(3) And such owner, under-tenant, or lodger, may pay to the landlord, or to the person authorised by him as aforesaid, the amount so due for agistment, rent, or lodging, or so much thereof as shall be sufficient to discharge the claim of such landlord and his lawful charges.

Effect of payment to landlord.

442, 1888, s. 9.
Of. U.K.
8 Edw. 7
c. 53, s. 3.

20. Any payment made by an owner of agisted cattle, or an under-tenant, or lodger, pursuant to the last preceding section, shall be deemed a valid payment on account of any moneys due for agistment, rent, or lodging from him to the immediate tenant.

Duty of landlord after being served with declaration.

442, 1888, s. 8.

21. Subject to the provisions of section 26, if any landlord, or any person authorised by a landlord, after being served with the said declaration and inventory, and in case any money is at the time of making such declaration due for agistment, rent, or lodging, as mentioned in section 19 of this Act, after payment to him of the money which by such section the owner of the agisted cattle, or the under-tenant, or lodger, is authorised to pay, levies or proceeds with a distress on such cattle, being the property of the person by or on whose behalf they have been claimed, or on the goods of the under-tenant or lodger, or goods which immediately prior to being distrained were in his lawful possession, that landlord, and the person so authorised, if any, shall if the immediate tenant had at the time of the service of the said declaration and inventory no right of property or beneficial interest in such agisted cattle other than his lien for agistment, if any, or in such goods, be deemed guilty of an irregular distress, and shall be liable to an action at the suit of such under-tenant or lodger, but shall not be deemed trespassers *ab initio*.

Rights of owners of goods in other cases.
442, 1888,
s. 10.

22. If, in any case not coming within section 19 of this Act, any landlord levies, threatens to levy, or authorises to be levied, a distress on any goods being the property or in the lawful possession of any person other than the immediate tenant, such person or his agent may serve the landlord, or the person authorised by him to levy such distress, with a declaration in, or to the effect of, the form in Schedule D hereto, signed by the first-mentioned person or his agent, setting forth that the immediate tenant has no right of property or beneficial

S. 22. *STALLEY V. HAIGH* (1928) S.A.S.R. 239; 7 Austn. Digest 788. Held that a landlord was entitled to exercise his remedies against goods the property of a person other than the tenant where the tenant had a beneficial interest in them at time of distress, but not at time of the making of the declaration under s. 22.

interest in such goods, and that such goods are the property of such first-mentioned person, or are, or immediately prior to being distrained were, in his lawful possession; and to such declaration shall be annexed an inventory, signed by the declarant, of the goods referred to in the declaration.

23. Subject to the provisions hereinafter contained and to the person who claims the goods proceeding, as provided in the next section before the sale thereof, and obtaining a decision in his favour, if any landlord or any person authorised by a landlord, after being served with the declaration and inventory provided for by the last preceding section, levies or proceeds with a distress on the goods mentioned in the inventory, being the property of the person by whom or on whose behalf the declaration and inventory was served, or having been immediately prior to such distress in his lawful possession, that landlord, and the person so authorised, if any, shall, if the immediate tenant had at the time of such service no right of property or beneficial interest in the goods, be deemed guilty of an irregular distress, and be liable to an action therefor, but shall not be deemed trespassers *ab initio*.

Duty of landlord after service of declaration.
442, 1888, s. 11.
Cf. U.K.
8 Edw. 7
c. 53, s. 2.

24. (1) When any claim is made by service of a declaration and inventory, by any person other than the immediate tenant, to or in respect of any agisted cattle or goods distrained, or threatened to be distrained, by any landlord for rent, any justice of the peace, upon complaint in writing by either the landlord or the claimant preferred before the sale of such goods under the distress (where the cattle or goods have been actually distrained) by the person making the claim, may—

Power of justices to adjudicate on adverse claims.
442, 1888, s. 12.

(a) issue a summons in the form in Schedule E hereto, or in a form to the like effect, directed as well to the landlord as to the person making the claim; and

(b) in his discretion order such sale to be postponed until the summons has been disposed of.

(2) Any two or more justices may adjudicate on such claim in a summary manner, and make an order in, or to the effect of, the form in schedule F hereto, and such order as to costs to be paid by either party as to them shall seem just.

(3) Service of the summons or order on a person authorised by the landlord to distrain shall be deemed service on the landlord, and service of the summons or order on a person who has made a claim on behalf of another shall be deemed service on the principal.

PART II.

Decision of
justices.
442, 1888,
s. 13.

25. If it appears upon the hearing of the complaint that—

- (a) the agisted cattle claimed were the property of the person alleged to be the owner thereof, or that the goods claimed, or part of them, were the property or in the lawful possession of the claimant, being an under-tenant or lodger; and
- (b) the immediate tenant had no right of property or beneficial interest in such cattle, other than his lien for agistment, if any, or in such goods; but
- (c) the claimant did not, before the complaint was preferred, pay to the landlord, or the person authorised by him to distrain, all moneys due by the owner of the cattle, or by the under-tenant or lodger to the immediate tenant for agistment, rent, or lodging, or so much thereof as was sufficient to discharge the claim of such landlord and his lawful charges,

the justices before whom the complaint is heard shall find accordingly, and their decision shall be deemed to be in favour of the landlord.

Power of
landlord to
hold goods.
442, 1888,
s. 14.

26. Where any complaint is preferred as in section 24 mentioned, the landlord may, at his option, where the agisted cattle or the goods have been distrained before the making of the claim, hold the cattle or goods claimed until the claim has been adjudicated upon; and the costs of such holding, and of holding possession from the making of the claim until the adjudication, or such part thereof as the justices adjudicating upon such claim shall think fit, shall, if the justices so order, be added to the costs of the distress, or paid by the claimant to the landlord.

Power of
landlord to
sell goods if
claim in his
favour.
442, 1888,
s. 15.
Cf. U.K.
2 Will. & M.
c. 5, s. 1.

27. The landlord may seize or reseize any agisted cattle or any goods as to which the decision is in his favour wherever they may be found, and, if necessary, may, between sunrise and sunset only, break into any premises where those cattle or goods may be, or may reasonably be supposed to be, and may deal with any such cattle or goods as if no such claim had been made, although he may have previously sold other cattle or goods distrained at the same time, and no fresh claim has been made by the same claimant.

False declara-
tions.
442, 1888,
s. 16.

28. If any person wilfully makes or signs any false declaration or inventory under this Part he shall be guilty of a misdemeanour, punishable by imprisonment for any term not exceeding twelve calendar months, with or without hard labour.

29. A declaration under this Part may be made before a justice of the peace, notary public, commissioner for taking affidavits in the Supreme Court, or practitioner of the Supreme Court or clerk of a local court.

Persons entitled to take declarations.
442, 1888, s. 17.

30. Where goods are distrained for rent, and are not replevied within five days next after the delivery or affixing of the copy of the inventory provided for by section 17, the landlord may, at the expiration of those five days, subject to the provisions hereinafter contained, and unless payment or tender of the rent and the charges in respect of the distress be made to him by or on behalf of the tenant before sale, sell the goods distrained for the best price that can be obtained.

Sale of distrained goods.
442, 1888, s. 18.
Of. U.K.
2 Will. & M.
c. 5, s. 1.

31. Any landlord or his agent may distrain any sheaves of corn, or corn loose, or in the straw, or hay lying on the ground, or being in any barn, granary, hovel, stock, or rick, or otherwise upon any part of the land subject to the rent, and may deal therewith as he might have dealt with any other goods distrained for rent, except that corn or hay so distrained shall not be removed by the landlord or his agent out of the place where it was seized, if such removal would depreciate its value, but shall be kept there (as impounded) until it is replevied or sold.

Power to distrain corn and hay.
442, 1888, s. 19.
Of. U.K.
2 Will. & M.
c. 5, s. 2 (part).

32. (1) Any landlord or his agent may impound or otherwise secure goods distrained for rent, in such place, or on such part of the premises subject to the rent, as are most fit and convenient for impounding and securing them, and may sell and dispose of them upon the premises, or, where the goods cannot be advantageously disposed of upon the said premises, may remove them to some more convenient place for disposal.

Distress may be secured and sold on premises.
442, 1888, s. 20.
Of. U.K.
2 Will. & M.
c. 5, s. 2 (part);
11 Geo. 2
c. 19, s. 10.

(2) Any other person or persons may, after the expiration of the five days hereinbefore mentioned, come and go to and from the place or part of the said premises where the goods are impounded and secured in order to view or buy the goods, or remove them on account of the purchaser thereof.

(3) If any rescue or pound breach is made of any goods distrained, the person aggrieved thereby shall, in an action for the wrong sustained, recover damages and costs of suit against the offender or offenders, or any or either of them, or against the immediate tenant or the owner of the goods distrained, if the goods afterwards have come to his use or possession.

33. The proceeds of any such sale shall be applied as follows :—First, in payment of the costs of and incident to such distress and sale ; and next, in satisfaction of the rent for which

Disposal of proceeds of sale.
442, 1888, s. 21.

the distress was made ; and the overplus (if any) of such proceeds shall be paid into the hands of the immediate tenant, or, in his absence, to the clerk of the local court nearest to the place where such distress is levied, for the use of such immediate tenant.

Sale to be by
auction.
442, 1888,
s. 22.

34. The sale of any goods distrained for rent shall be by public auction, of which full and reasonable notice shall be given ; and such sale shall be conducted by a licensed auctioneer, or may, with the written consent of the immediate tenant, be made by the landlord or his agent.

Costs of
distress and
sale.

442, 1888,
s. 23.
2156, 1934,
s. 890
Cf. U.K.
57 Geo. 3
c. 93.

35. Where any distress is made under the provisions of this Part, the charges in Schedules G and H hereto. and no others, shall be made in respect thereof.

No appraise-
ment necessary.
442, 1888,
s. 24.
Cf. U.K.
51 & 52 Vict.
c. 21, s. 5.

36. In no case of distress under this Part shall any appraisement whatever be necessary, nor shall any costs or expenses be charged or allowed in respect thereof.

Double
damages
against
wrongful
distrainer.

442, 1888,
s. 25.
Cf. U.K.
2 Will. & M.
c. 5 s. 4;
58 & 59 Vict.
c. 24, s. 4.

37. If any distress and sale is made for rent alleged to be due where in truth no rent was due to the person by whom or in whose name or right the distress was levied, the owner of the goods distrained and sold, his executors or administrators, may, by action against that person, recover double the value of the goods so distrained and sold, together with costs of suit as between solicitor and client.

Goods
fraudulently
or clandes-
tinely removed.
442, 1888,
s. 26.
Cf. U.K.
11 Geo. 2
c. 19, ss. 1, 2.

38. If the immediate tenant, before, at, or within fourteen days after the expiration of his term or tenancy, fraudulently or clandestinely removes any goods from the premises in respect of which rent is due by him to prevent the landlord from distraining upon the goods for rent, it shall be lawful for the landlord or his agent, within the space of thirty days next after the removal of those goods, to take and seize them wherever they are found as a distress for the said rent, and to sell and dispose of them in like manner as if they had actually been distrained by the landlord in and upon such premises for such rent ; but no landlord shall seize or take any such goods which, before such seizure, have been sold *bona fide* and for a valuable consideration to any person not privy to the fraud or clandestine removal.

PART II.

39. Upon any pound breach or rescue of goods distrained for rent, the person injured thereby shall, in an action upon the case for the wrong thereby sustained, recover treble damages with costs of suit against the offender or against the owner of the goods distrained if they afterwards come into his use or possession.

Damages or pound breach or rescue.

442, 1888, s. 27.
Cf. U.K. 2 Will. & M. c. 5, s. 3;
6 & 7 Vict. c. 30, s. 1.

40. Penalties for offences against this Part may be recovered in a summary way on the complaint of any person.

Penalties, how recovered.
442, 1888, s. 29.

41. The forms in the schedules hereto may be modified according to circumstances.

Forms may be modified.
442, 1888, s. 34.

42. So far as consistent with this Part, nothing in the previous sections of this Part shall affect or abridge any right, remedy, or power of any landlord by statute, common law, or otherwise howsoever conferred upon or vested in him.

Landlord's powers not abridged.
442, 1888, s. 35.

Exemptions from Distress.

43. Cattle and vehicles at livery, with all saddles, bridles, and other harness belonging or appertaining thereto are hereby exempted from distress for rent.

Exemption of cattle and vehicles.
442, 1888, s. 28

44. It shall not be lawful to distrain any sewing machine, typewriting machine, or mangle, the property of or under hire to any female person, whether belonging to the tenant or otherwise, for any rent claimed in respect of the premises or place in which such sewing machine, typewriting machine, or mangle may be: Provided that any such person shall not be entitled to have more than one sewing machine, one typewriting machine, and one mangle protected from distress under this section.

Exemption of sewing machines, &c.
934, 1907, s. 2.
Cf. U.K. 51 & 52 Vict. c. 21, s. 4;
8 Edw. 7 c. 53, s. 4.

45. (1) Wearing apparel, tools and implements of trade, and household requisites to the total value of ten pounds shall be exempt from seizure under any distress for rent, and such goods are hereby protected from such seizure.

Exemption of wearing apparel and tools.
934, 1907, s. 3.
Cf. U.K. 51 & 52 Vict. c. 21, s. 4.

(2) The word "value" as applied to goods in this section means value of such goods at a forced sale. The value of any article protected under the preceding section of this Act shall not be taken into account in computing the said sum of ten pounds.

s. 45. BECK v. BANSEMER, 25th September, 1894. Held that a landlord could not distrain upon the excepted articles to the value of £30 selected by an insolvent under s. 126 of The Insolvent Act, 1886.

PART II.

Application of preceding section.
934, 1907, s. 4.

46. (1) The two last preceding sections shall not extend to any case where the lease, term, or interest of the tenant has expired, and where possession of the premises in respect of which the rent is claimed has been demanded in writing, and where the distress is made not earlier than seven days after such demand.

(2) The said sections shall be taken as providing for and supplementing exemptions, and not limiting any exemption already existing.

PART III.

PART III.

MISCELLANEOUS PROVISIONS.

Effect of licences granted to lessees.
6, 1860, s. 2.
U.K. 15
Geo. 5 c. 20,
s. 143 (1),
(2).

47. (1) Where a licence is granted to a lessee or his assigns to do any act which without the licence would create a forfeiture, or give a right to re-enter, the licence, unless otherwise expressed, shall extend only—

- (a) to the permission actually given ; or
- (b) to the specific breach of any proviso or covenant made or to be made ; or
- (c) to the actual assignment under lease or other matter specifically authorised by the licence to be done.

and the licence shall not prevent any proceeding for any subsequent breach unless otherwise specified in the licence.

(2) Notwithstanding any such licence—

- (a) all rights under covenants and powers of re-entry contained in the lease shall remain in full force, and be available as against any subsequent breach of covenant, or condition or assignment underlease or other matter not specifically authorised or waived, in the same manner as if no licence had been granted ; and
- (b) the condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

Effect of restricted licence.
6, 1860, s. 3.
U.K. 15
Geo. 5 c. 20,
s. 143 (3).

48. Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting, or doing any other specified act without a licence, and a licence is granted—

- (a) to one of two or more lessees or co-owners to do any act ; or

- (b) to any lessee or owner, or to any one of two or more lessees or owners to assign or underlet part only of the property, or to do any act in respect of part only of the property ;

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by any co-lessee or owner of any other share or interest in the property, or by any lessee or owner of the rest of the property (as the case may be), in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests, or property not the subject of the licence.

49. The two preceding sections apply to licences granted after the first day of November, eighteen hundred and sixty, in respect of leases whether granted before or after that date.

Application of preceding sections.

U.K. 15 Geo. 5 c. 20, s. 143 (4).

50. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion, shall, in respect of the apportioned rent or other reservation allotted or belonging to him have, and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent, or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion, in respect of the apportioned rent, or other reservation, allotted or belonging to him.

Apportionment of conditions of re-entry in certain cases.
6, 1860, s. 4.
Of. U.K.
15 Geo. 5 c. 20, s. 140.

51. (1) Where on the *bona fide* purchase of a leasehold interest, under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages, or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase of which the purchaser had not notice before the completion of the purchase ; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.
6, 1860, s. 9.

(2) This section applies to all purchases made after the first day of November, eighteen hundred and sixty.

PART III.

Preceding provisions to apply to leases for a term of lease absolute, etc.

6, 1860, s. 10.

When the reversion on a lease is gone, the next estate to be deemed the reversion.

25, 1852, s. 8.

Of. U.K.

15 Geo. 5

c. 20, s. 139.

52. The preceding sections of this Part shall be applicable to leases for a term of years absolute or determinable on a life or lives or otherwise, and also to a lease for the life of the lessee, or the life or lives of any person or persons.

53. When the reversion expectant on a lease of any land is surrendered or merges, the estate which for the time being confers as against the tenant under that lease the next vested right to the land shall, to the extent necessary for the purpose of preserving those incidents to and obligations on the reversion, which but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the lease.

SCHEDULES.

SCHEDULE A.

WARRANT TO DISTRAIN.

I, A. B., of _____, (draper), do hereby authorise C. D., of _____, to distrain the goods in (or on) the dwelling (or shop, or *as the case may be*) of E. F., situate at _____, for the sum of £ _____, being the amount of rent due to me for the same from the _____ day of _____ 19, to the _____ day of _____ 19, and to proceed thereon for the recovery of the said rent and costs as the law directs.

Dated this _____ day of _____ 19 _____

Witness

A. B., or
A. B., by his agent, O.K.

SCHEDULE B.

INVENTORY.

I have this day distrained the following goods in (or on) the *[mention premises distrained upon]* for £ _____, being the amount of rent due and costs.

Dated this _____ day of _____ 19 _____

A. B., Landlord
(or D. E., *person levying*)
on behalf of A. B., Landlord.

[Set out goods.]

SCHEDULE C.

DECLARATION TO BE MADE BY OR ON BEHALF OF OWNER OF AGISTED CATTLE OR UNDER-TENANT OR LODGER.

I, _____, of _____, do hereby declare that *[name of immediate tenant]* has no right of property or beneficial interest in the cattle set out in the inventory annexed hereto other than his lien for agistment if any (or in the goods set out in the inventory annexed hereto): And I further declare that the said cattle (or goods) are my property (or the property of *name of owner, under-tenant, or lodger*); or (as to goods) are, or immediately prior to their being distrained were, in my lawful possession, or in the lawful possession of *[name of under-tenant or lodger]*; and that *[state in what capacity possession held]*: And I further declare that the amount due by me (or by the said *name of owner, under-tenant, or lodger*) for agistment (or rent, or lodging) is £ _____ : s. _____ d. for the period of _____ (or nil, as the case may be): And I make this declaration under the provisions of the "Landlord and Tenant Act, 1936," conscientiously believing the same to be true.

Declared before me at

this _____ day of _____ 19 _____

[Set out goods claimed, and annex inventory to declaration.]

SCHEDULE D.

Declaration under Section 22.

I, _____, of _____, do hereby declare that *[name of immediate tenant]* has no right of property or beneficial interest in the goods set out in the inventory annexed hereto, and I further declare that the said goods are my property (or the property of *[name of owner]*, or are, or immediately prior to being distrained were) in my lawful possession (or in the lawful possession of *[name of owner]*), and that *[state in what capacity possession held]*: And I make this declaration under the provisions of the Landlord and Tenant Act, 1936, conscientiously believing the same to be true.

Declared at _____ before me this _____ day of _____ 19 _____

(Signed)

[Set out inventory of goods.]

SCHEDULE E.

Summons in Case of Adverse Claim to Goods Distrained.

SOUTH AUSTRALIA,	} To A. B., of	&c., and Z. D., of	&c.
<i>to wit.</i>			

Whereas complaint hath this day been made by the undermentioned A. B. (or C. D.) before the undersigned _____, one of His Majesty's Justices of the Peace in and for the said province, for that A. B., of _____, doth claim (or threaten to claim) certain agisted cattle (or certain goods), and that C. D., of _____ (by his agent, O. K.) has claimed the said cattle (or goods): These are therefore to command you, the said A. B. and C. D., in His Majesty's name, to be and appear on the _____ day of _____ at _____, in the said province, before such Justices of the Peace as may then be present, in order that they may adjudicate upon the said claim and make an order thereupon according to law.

Given under my hand and seal this _____ day of _____, in the
said province.
J.P.

SCHEDULE F.

Order in Case of Adverse Claim to Aged Cattle or Goods Distrained.

SOUTH AUSTRALIA, } Be it remembered that, on the day of ,
to wit, } 19 , complaint was made for that A. B., of ,
distrained (or threatened to distrain) certain agisted cattle (or certain goods, and that
(by his agent O. K.), C. D., of had claimed the same, and now on this day
A. B. (or C. D.) who made the said complaint, and the said C. D. (or A. B.) appear before
us, the undersigned, (two) of His Majesty's Justices of the Peace in and for the said
province [if both do not appear state service of the summons and the non-appearance], in
order that we might adjudicate upon the said claim and make an order thereupon according
to law: And now, having heard the matter of the said complaint, we do adjudge that
[here state the adjudication in one of the following forms]:

The said cattle (*or goods*) were (*not*) at the time of the said distress thereof (*or at the time when the said distress was threatened*) the property (*or as to goods in the lawful possession*) of the said C. D. and that E. F., the immediate tenant, had no right of property or beneficial interest in such cattle (*or goods*), (other than his lien for agistment) (*or but that E. F., the immediate tenant, had a right of property or beneficial interest in the same*) (*or in part thereof to wit*) [*here set out items*].

[But we find that the said C. D., [being an under-tenant (*or* lodger) of E. F., the immediate tenant], did not, before the said complaint was preferred, pay to the said A. B., or to the person authorised by him to distrain, all moneys due by the said C. D. to the said E. F. for agistment (*or* rent *or* lodging), or so much thereof as was sufficient to discharge the claim of the said A. B. and his lawful charges]; and we also adjudge the said C. D. (*or* A. B.) to pay to the said A. B. (*or* C. D.) forthwith (*or* on or before the day of 19) the sum of £ s. d. for his costs in this behalf [and that the sum of £ : s. d. being the cost (*or* part of the costs) of the said A. B. of holding possession from the making of the said claim until this adjudication be added to the costs of the distress (*or* paid by the said C. D. to the said A. B.)]

Given under our hands and seals this _____ day of _____, 19____.

J.P.

J.P.

SCHEDULE G.

CHARGES.

Solicitors' charges, including instructions to distrain, letters, attendances, &c., up to distress and sale, exclusive of moneys out of pocket :—

	£	s.	d.
When the rent distrained for shall be not less than £5 nor more than £10.....	0	10	6
More than £10 and not more than £20	1	1	0
More than £20 and not more than £50	2	2	0
More than £50 and not more than £100	3	3	0
More than £100	4	4	0

SCHEDULE H.

Costs of levy made by a landlord or by a person distraining under the authority of a warrant to distrain, including inventory, instructing auctioneer, and all other attendances :—

	£	s.	d.
Where the rent distrained for shall be not more than £10.....	0	5	0
More than £10 and not more than £20	0	10	0
More than £20 and not more than £50	1	0	0
More than £50 and not more than £100	1	10	0
Over £100	2	0	0
Man in possession per diem	0	7	0
When more than one man required in possession each per diem	0	7	0
Mileage from place of abode or business of landlord or person distraining per mile	0	1	0

Charges of auctioneer, landlord, or agent conducting sale :—

Up to first £300	5 per cent.
Up to next £700	2½ “
On the excess over £1,000	1 “

The amount actually paid for reasonable notice of sale to be charged. When the goods shall be in the custody of any auctioneer, or in any store or warehouse, the actual and reasonable charges paid for removal and storage in lieu of the fee per man in possession per diem.

SCHEDULE J.

ACTS OR PARTS OF ACTS REPEALED.

Number of Act.	Title of Act.	Extent of Repeal.
25 of 1852.....	An Act to amend the law of Real Property .	s. 8
5 of 1853.....	Supreme Court Procedure Amendment Act .	ss. 162-170
6 of 1860.....	The Property Act of 1860	ss. 2-7 inclusive, 9, 10
3 of 1862.....	The Common Law Procedure Act, 1862	ss. 1-3
442 of 1888.....	The Distress for Rent Act, 1888.....	The whole except section 31
580 of 1893.....	An Act to amend the Law of Landlord and Tenant	The whole
934 of 1907.....	The Distress for Rent Amendment Act, 1907	The whole