

An act to enable justices of the peace, police justices, recorders and other magistrates before whom disorderly persons are tried, to fine and imprison such persons.

Approved May 6, 1889. P. L. 1889, p. 345.

46. SEC. 1. That in all cases where any person is convicted of having violated any of the provisions of the disorderly act, approved April ninth, eighteen hundred and seventy-five, and the supplements thereto, it shall and may be lawful for the magistrate before whom such person was convicted, to sentence such person to the workhouse or common jail of the county in which such person may be convicted, for a period not to exceed ninety days, or to impose a fine not exceeding twenty-five dollars on such person.

Magistrates empowered to fine or imprison persons convicted under the disorderly act.

1207-46
R98-958

47. SEC. 2. That after such person in default of paying such fine shall have been committed to said workhouse or jail, it shall be lawful for the magistrate to discharge such person on receiving such fine or portion thereof, as he may see fit.

May discharge prisoner upon payment of fine.

48. SEC. 3. That this act shall in nowise affect the proceedings against persons referred to in the fifth section of the disorderly act.

Act not to affect certain proceedings.

49. SEC. 4. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed.

Repealer.

Distress.

1. Distress to be reasonable.
2. Not wrongful, or driven out of county.
3. What not liable to distress.
4. Beasts distrained, where impounded.
5. Goods not in different places.
6. Distrained for rent, appraised and sold.
7. What may be distrained.
8. Further specification.
9. Impounded and sold on premises.
10. Remedy for pound breach.
11. For wrongful distress.
12. For unlawful act after distress.
13. Pleas and evidence in such case.
14. Goods may be followed and seized.

15. Forfeit for carrying off goods.
16. Power to seize goods so taken.
17. May distrain after term ended.
18. Remedy after estate for life ended.
19. After estate in wife's right ended.
20. Remedy by executors, &c.
21. Distress for residue.
22. Under-tenant to pay rent to landlord after notice.
23. When justice may order sale.
24. Exemptions. Appraised and selected.
25. How exemptions selected if landlord fails to proceed.
26. Extends to under-tenant.
27. Fees.

An act concerning distresses.

Revision—Approved March 27, 1874.

1. That all distresses made or taken, or to be made or taken for any cause whatsoever, shall be reasonable and not too great; and if any person shall take great and unreasonable distress or distresses, he or she shall answer the damages to the party aggrieved. (a)

2. That no person shall take any distress wrongfully, or cause any distress to be driven or conveyed out of the county where it shall be taken; and every person who shall do so of his or her own authority, and without judgment, shall answer the damages to the party aggrieved.

3. That no person shall be distrained for any cause whatsoever, by his or her beasts of the plow, or sheep, or by the implements of his or her trade, while other distress or chattels whereof the debt or demand may be levied, or sufficient for the same may be found; except the distraining and impounding beasts found on the ground of any person damage feasant.

4. That beasts, when they are distrained for any cause whatsoever, shall be put in open pound in the township or precinct where they shall be taken, and they to whom such beasts belong, may give them their feeding without disturbance, so long as they shall be impounded as aforesaid.

R. S. 63.

P. L. 1848, p. 224.
" 1861, p. 347.

Distress to be reasonable.
R. S. 63, § 1.

1207-1
39v-350

Not wrongful, or driven out of county.
Ib., § 2.

What not liable to distress.
Ib., § 3.

Beasts distrained, where impounded.
Ib., § 4.

(a) No precise act or form of words is essential to a distress, and a distress may be made without actual seizure. *Newell v. Clark*, 17 Vr. 364. Acts amounting to a distress. *Ib.*

Goods not in different places.
Ib., § 5.

Distrained for rent, appraised and sold.
Ib., § 6.
Amended.

Appraisers sworn.

Notice of sale.

What may be distrained.
Ib., § 7.

Further specifications.
Ib., § 8.

5. That no goods or chattels, distrained or taken by way of distress for any cause whatsoever at one time, shall be impounded in several places, whereby the owner or owners of such distress shall be constrained to sue several replevins for the delivery of the said distress so taken at one time, upon pain that every person offending therein shall, for every such offense, forfeit to the party grieved, forty dollars and treble damages, to be recovered by action of debt in any court of record where the same shall be cognizable.

6. Whereas, the most usual and ready way for recovery of arrears of rent is by distress, yet such distresses not being to be sold, but only detained as pledges for enforcing the payment of such rent, the persons distraining have little benefit thereby; for remedy whereof, be it enacted, that where any goods or chattels shall be distrained for any rent reserved and due (a) upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within ten days next after such distress taken, and notice thereof, with the cause of such taking, left at the chief mansion-house or other most notorious place on the premises, charged with the rent distrained for, replevy the same with sufficient security to be given to the sheriff, according to law, that then in such case, after such distress and notice as aforesaid and expiration of the said ten days, the person distraining shall and may, on two days' notice to the tenant, with the sheriff or under sheriff of the county, or with the constable of the township, precinct or place, where such distress shall be taken (who are hereby required to be aiding and assisting therein), cause the goods and chattels, so distrained, to be inventoried and appraised by three sworn appraisers (whom such sheriff, under sheriff or constable, are hereby empowered to summon for that service, and to swear well and truly to appraise the same, at the true and intrinsic value thereof, according to the best of their understanding), and after such inventory and appraisal shall and may lawfully sell, at public vendue, the goods and chattels so distrained (giving five days' public notice by advertising the articles to be sold, and the time and place of sale, in at least three of the most public places in the township where such distress shall be made), 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, appraisal and sale, leaving the overplus, if any, in the hands of such sheriff, under sheriff or constable for the owner's use.

7. That it shall and may be lawful for any person or persons, having rent in arrear and due upon any such demise, lease or contract as aforesaid, to seize and secure any sheaves, cocks, or stacks of wheat, rye, buckwheat, barley, oats, Indian corn, or other corn or grain, or wheat, rye, buckwheat, barley, oats, Indian corn or other corn or grain loose or in the straw, or flax, hemp, or hay, lying or being in any barn, crib or granary, or upon any hovel, stack, rick or barrack, or elsewhere, upon any part of the land charged with such rent, and to lock up or detain the same in the place where the same shall be found, for and in the nature of a distress, until the same shall be replevied, upon such security to be given as aforesaid; and in default of replevying the same as aforesaid, within the time aforesaid, to sell the same, after the appraisal thereof, in the manner as above directed.

8. That it shall and may be lawful for all and every lessor or landlord, lessors or landlords, or his, her or their steward, bailiff, receiver or other person or persons empowered by him, her or them to take and seize as a distress for arrears of rent, any of the goods and chattels, of his, her or their tenant or tenants, and not of any other person, (b) although in pos-

(a) A distress will not lie for rent until it is due; and although the property is not appraised and sold until after the rent is due, the irregularity is not thereby cured, but the distrainer will be liable as a trespasser from the beginning. *Evans v. Herring*, 3 *Dutch*. 243. If a sheriff allow a tenant's goods to remain on the premises after a levy, he does not thereby become a tenant of the landlord and subject to distress. *Hamilton v. Hamilton*, 1 *Dutch*. 544.

(b) Where a tenant, one of two partners, gave a chattel mortgage on his lease and machinery on the demised premises—

Held, on foreclosure, that rent due must be paid before interest or principal of the mortgage. *Mechanics' Bank v. Godwin*, 1 *Hal. Ch.* 334. *Schalle v. Schmidt*, 1 *McCart.* 268. A tenant under a lease made prior to a mortgage may be distrained upon by the mortgagee for rent. *Souders v. Vansickle*, 3 *Hal.* 313; reversed in error, *Hal. Dig.* 860. See *Sanderson v. Price*, 1 *Zab.* 646. But if such lease be subsequent to the mortgage, the mortgagee cannot distraint. *Price v. Smith*, 1 *Gr. Ch.* 516. As to the mortgagee, such tenant, after foreclosure, is a trespasser. *Den, Hart v. Stockton*, 7 *Hal.* 322. *Howell v. Schenck*, 4 *Zab.* 89. See

session of such tenant or tenants, which may be found on the demised premises except such goods and chattels as are by law privileged from distress; (a) and also any hogs, horses, cattle or stock of his, her or their respective tenant or tenants, and not of any other person, although in possession of such tenant or tenants, feeding or depasturing on the demised premises, or upon any common appendant or appurtenant, or anyways belonging to all or any part of the premises demised or holden; and also to take or seize all or any wheat, rye, buckwheat, barley, oats, Indian corn or other corn or grain and grass, hops, roots, pulse, fruits, vegetables or other produce whatsoever, growing or being on the premises or any part thereof, so demised or holden as a distress for arrears of rent, and the same to cut, dig, pull, gather, make, cure, carry and lay up in some proper and convenient place on the premises, and for want thereof in some other place to be procured by such lessor or landlord, lessors or landlords, (due notice of such place being given to such tenant or lessee, or left at his or her place of abode) and to appraise, sell and dispose of the same in the time and manner hereinbefore directed; (b) *provided always*, that it shall not be lawful for any lessor or landlord, at one time to distrain for more than one year's rent in arrear, and that such distress must be made within six months after the same shall become due; or where the rent is payable in installments, then within six months after the year's rent shall have become due.

Limitation of the right.

9. That it shall and may be lawful for any person or persons, lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of what nature or kind soever it may be, in such place or on such part of the premises as shall be most convenient for the purpose, and to appraise, sell and dispose of the same upon the premises, in like manner as any person taking a distress for rent may do off the premises by virtue of this act; and it shall and may be lawful to and for any person or persons whatsoever, to come and go to and from such place or part of the premises, where any distress for rent shall be impounded or secured as aforesaid, in order to view, appraise and buy, and also to carry off or remove the same on account of the purchaser thereof.

Impounded and sold on premises. *Ib.*, § 9.

10. That if any pound breach or rescous shall be made of any goods, chattels or other things distrained for rent and impounded or otherwise secured by virtue of this act, the person or persons aggrieved thereby, shall in a special action upon the case for the wrong thereby sustained, recover his, her or their treble damages and costs of suit against the offender or offenders or any of them, in any such rescous or pound breach, or against the owner of the goods distrained in case the same be afterwards found to have come into his or her use or possession. (c)

Remedy for pound breach. *Ib.*, § 10.

11. *Provided, always*, that in case any such distress and sale as aforesaid shall be made by virtue or color of this present act, for rent pretended to be in arrear and due, where in truth no rent is in arrear or 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, that then the owner of such goods or chattels distrained and sold as aforesaid, his or her executors

For wrongful distress. *Ib.*, § 11.

Thomas v. De Baum, 1 *McCurt.* 37. Goods owned jointly by the tenant and a stranger may be distrained. *Allen v. Agnew*, 4 *Zab.* 443. Even after an assignment for the benefit of creditors. *Hoskins v. Paul*, 4 *Hul.* 110. The statute expressly limits the right of distress to the goods and chattels of the tenant and no other person. *Woodside v. Adams*, 11 *Fr.* 417. Goods of a tenant on the premises demised were levied on by the sheriff by virtue of an execution against the tenant, and were left in the tenant's possession; the landlord then made a distress on the same goods for rent. In an action on the case by the landlord against the tenant and a third person for selling the goods distrained on—*Held*, that the defendants could not justify under the levy, the sale of the goods having been made without the knowledge or authority of the sheriff. *Newell v. Clark*, 17 *Fr.* 363. The property in goods taken in execution is not changed by the levy, so that they are thereafter the property of the sheriff, within the meaning of section 8, which allows a distress for rent to be made on the goods of the tenant, and "not of any other person." A sheriff, by his levy, acquires a special property in the goods levied on, but the title of the defendant in execution is not thereby wholly divested. *Ib.* See *Garton, Err.*, v. *Tunison*, 10 *N. J. L. J.* 305. *Van Horn v. Goken*, 12 *Fr.* 499.

(a) Where the tenant makes a verbal contract with a third party to work a farm on shares, such party is not a tenant, and hence not entitled to the exemption. *Guest v. Opatyke*, 2 *Fr.* 553. See *Edgar v. Jewell*, 5 *Fr.* 259.

(b) This section authorizes the landlord to distrain all grain, &c., "growing or being on the premises," whether belonging to the tenant or another person. *Guest v. Opatyke*, 2 *Fr.* 552. But, it seems, the tenant has a right to the possession of the crops, and can dispose of them absolutely without the landlord's consent. *Doremus v. Howard*, 3 *Zab.* 390. See *Bloom v. Welsh*, 3 *Dulch.* 177. *Edgar v. Jewell*, 5 *Fr.* 259. The right of a lessor to distrain growing crops, is not affected by the sale of such crops by the tenant. *Bird v. Anderson*, 12 *Fr.* 392.

(c) An action for treble damages and costs, under this section, cannot be maintained unless the goods distrained have been "impounded or otherwise secured." *Newell v. Clark*, 17 *Fr.* 363. Where goods distrained are left on the demised premises, in the possession of the tenant and there impounded, in an action for pound breach and treble damages against a person claiming to be the owner, it is necessary to prove that he has notice of the impounding. *Cadmus v. Barney*, 13 *Fr.* 346.

or administrators shall and may, by action of trespass or upon the case to be brought against the person or persons so distraining or any of them, his, her or their executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. (a)

For unlawful act
after distress.
Ib., § 12.

1210-12
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12. That where any distress shall be made for any kind of rent justly due and any irregularity or unlawful act shall be afterwards done by the party or parties distraining, or by his, her or their agent or agents, the distress itself shall not be therefor deemed to be unlawful, nor the party or parties making it be deemed a trespasser or trespassers ab initio; but the party or parties aggrieved by such unlawful act or irregularity shall and may recover full satisfaction for the special damage which he, she or they shall have sustained thereby and no more, in an action of trespass, or on the case, at the election of the plaintiff or plaintiffs; *provided*, that where the plaintiff or plaintiffs shall recover in such action, he, she or they shall be paid his, her or their full costs of suit, and have the like remedies for the same as in other cases of costs; *and provided also*, that no tenant or tenants, lessee or lessees shall recover in any action for such unlawful act or irregularity as aforesaid, if tender of amends hath been made by the party or parties distraining his, her or their agent or agents, before such action brought.

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1210-12
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350

Pleas and evi-
dence in such
case.
Ib., § 13.

13. That in all actions of trespass or upon the case, to be brought against any person or persons entitled to rents or services of any kind, his, her or their bailiff or receiver, or other person or persons relating to any entry by virtue of this act, or otherwise, upon the premises chargeable with such rents, or to any distress or seizure, sale or disposal of any goods or chattels thereupon, it shall and may be lawful to and for the defendant or defendants in such actions to plead the general issue and give the special matter in evidence; (b) and in case the plaintiff or plaintiffs shall become non-suit, discontinue his, her or their action, or have judgment against him, her or them, the defendant or defendants shall recover double costs of suit.

Costs.

Goods may be fol-
lowed and seized.
Ib., § 14.

14. That if any tenant or tenants, lessee or lessees, for life or lives, term of year or years, at will, sufferance, or otherwise of any messuage, lands, tenements or hereditaments, shall convey away or carry off or from such premises, his, her or their goods or chattels, leaving the rent or any part thereof unpaid, it shall and may be lawful to and for every landlord or lessor, landlords or lessors, or any person or persons by him, her or them for that purpose lawfully empowered, within the space of thirty days next after such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels wherever the same shall be found as a distress for the said arrears of rent, and the same to sell or otherwise dispose of, in such manner as if the said goods and chattels had actually been distrained by such lessor or landlord, lessors or landlords, in and upon such premises for such arrears of rent; *provided always*, that no landlord or lessor or other person entitled to such arrears of rent, shall take or seize any such goods or chattels as a distress for the same, which shall be sold bona fide, or for a valuable consideration, before such seizure made to any person not privy to such fraud as aforesaid; this section shall extend to all cases where rent shall have accrued and shall be unpaid, upon any demise or contract hereafter made, although by the terms thereof the rent shall not be payable. (c)

Provided not bona
fide sold.
P. L. 1848, p. 224,
§ 1.

(a) This action can only be maintained by the tenant, and not by a stranger, whose goods have been distrained. *Hartshorne v. Kierman*, 2 *Hut.* 29. It must appear on the record what the single damages were. *Ib.* In a declaration in an action for unlawful distress there was a count for double value of goods, under section 11, to which was added a count for injury to tenant's business. The jury returned, as single damages, a sum as the value of the goods distrained and sold, and a separate sum for injury to tenant's business. *Held*, that the plaintiff could not recover both sums, but as the first finding was clearly under the first count, there was no waiver of the claim for double damages by the second count and finding. *Held*, that the last sum should be struck from the verdict, and judgment entered for double the value of the goods found by the jury. *Hugill v. Reed*, 20 *Vr.* 300.

(b) The landlord, on trespass brought by the tenant for a wrongful distress, cannot give the special matter in evidence under the general issue, unless the distress was made on the demised premises. *Oliver v. Phelps*, *Spen.* 180, 1 *Zab.* 597. See *Carson v. Wilson*, 6 *Hal.* 43. *Hetfield v. Central E. E. Co.*, 5 *Dutch.* 571. *Todd v. Jackson*, 2 *Dutch.* 525.

(c) The landlord may follow the goods, although removed by a constable under an execution, after notice to the constable of the rent due. *Peacock v. Hammit*, 3 *Gr.* 165. So, goods taken from the demised premises during the term, but before the rent accrued, can be distrained off the premises, for such subsequently-accruing rent, within thirty days after their removal. *Weiss v. Jahn*, 8 *Vr.* 93. *Jodel v. Benedict*, 2 *N. J. L. J.* 370.

15. And to deter tenants from such conveying away their goods and chattels, leaving the rent unpaid, and others from willfully aiding or assisting therein, or concealing the same, *be it further enacted*, that if any such tenant or lessee shall remove and convey away his or her goods or chattels as aforesaid, or if any person or persons shall willfully and knowingly aid or assist any such tenant or lessee in conveying away or carrying off any part of his or her goods or chattels, or in concealing the same, all and every person or persons so offending shall forfeit and pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, from whose estate such goods and chattels were so carried off as aforesaid, double the value of the goods or chattels by him, her or them respectively carried off or concealed as aforesaid, to be recovered by action of debt in any court of record. (a)

Forfeited for carrying off goods.
R. S. 63, § 16.

16. That where any goods or chattels, conveyed or carried away as aforesaid, by any tenant or tenants, lessee or lessees, his, her or their servant or servants, agent or agents, or other person or persons assisting therein, shall be put, placed or kept in any house, barn, stable, outhouse, yard, close, or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall and may be lawful to and for the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, or his, her or their steward, bailiff, receiver or other person or persons empowered to take and seize, as a distress for rent such goods and chattels, first calling to his, her or their assistance the constable or one of the constables or other peace officer of the township, precinct or place where the same shall be suspected to be concealed, who are hereby required to aid and assist therein, and in case of a dwelling-house (oath being also first made before some justice of the peace, of a reasonable ground to suspect that such goods and chattels are therein), in the daytime, to break open and enter into such house, barn, stable, outhouse, yard, close or place, and to take and seize such goods and chattels for the said arrears of rent, as he, she or they might have done by virtue of this act, if such goods and chattels had been put in any open field or place.

Power to seize goods so taken.
Ib., § 16.

Upon oath, may break and enter

17. That it shall and may be lawful to and for any person or persons having any rent in arrear and due upon a lease for term of life or lives, year or years, or at will, ended or determined, to distrain for such arrears after the determination of the said 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; or if the landlord's title and interest shall have ceased, or the tenant shall have removed from the leasehold premises, then within thirty days after the end and determination of such term of tenancy.

May distrain after term ended.
Ib., § 17.

Proviso

18. That if any person who now hath or hereafter shall have any rents or fee-farms, for term of life or lives, of any other person or persons and the said rent or fee-farm now be or hereafter shall be due and behind, and unpaid in the life of such person or persons, for whose life or lives the estate of the said rent or fee-farm did depend or continue, and after the said person or persons do die, then he or she, unto whom the said rent or fee-farm was due, his or her executors or administrators, shall and may have an action of debt against the tenant in demesne, who ought to have paid the same when it was first due, his or her executors or administrators; and also may distrain for the same arrearages upon the lands and tenements, out of which the said rents or fee-farms were issuing and payable, in the like manner and form, as he or she ought or might have done, if the person or persons by whose death the aforesaid estate in the said rents and fee-farms was determined and expired, were in full life, and the avowry for the taking of the same distress to make in manner and

Remedy after estate for life ended.
Ib., § 18.

(a) Attachment for rent will not lie against a tenant who has placed his goods on a boat to remove them from the state, and has delivered the keys and possession of the premises to his landlord. *Kugler v. Shreve*, 4 Dutch. 129.

form aforesaid, and make appraisement and sale of such distress in manner aforesaid.

After estate in
wife's right ended.
Ib., § 19.

19. That if any man who now hath or hereafter shall have in the right of his wife, any estate in fee-simple, fee-tail or for term of life, of or in any rents or fee-farms, and the same rents or fee-farms now be or hereafter shall be due, behind and unpaid, in the lifetime of the said wife, then the said husband, after the death of his said wife, his executors or administrators, shall have an action of debt for the said arrearages, against the tenant of the demesne, who ought to have paid the same, his or her executors or administrators; and also, that the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his wife had been then living, and for the same distress make avowry upon his matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Remedy by
executors, &c.
Ib., § 20.

1212-26
37V-27

20. And whereas, by the common law, the executors or administrators of tenants in fee-simple, tenants in fee-tail and tenants for term of life, of rent-service, rent-charge, rent-seck and fee-farms, have no remedy to recover such arrearages of the said rents or fee-farms, as were due unto their testators or intestates in their lives, nor may the heirs of such testator, nor any person having the reversion of his or her estate after his or her decease, distrain or have any lawful action to levy any such arrears of rents or fee-farms; for remedy whereof, *be it enacted*, that the executors or administrators of any such person or persons, unto whom any such rent or fee-farm is or shall be due, and not paid at the time of his, her or their death, shall and may have an action of debt for all such arrearages against the tenant or tenants, who ought to have paid the said rent or fee-farm, so being behind in the life of the testator or intestate, or against the executors or administrators of such tenant or tenants; that it shall be lawful for every such executor or administrator of any such person or persons, unto whom such rent or fee-farm is or shall be due, and not paid at the time of his, her or their death as aforesaid, to distrain for the arrearages of all such rents and fee-farms, upon the lands, tenements and hereditaments which were, are or shall be charged with the payment of such rents or fee-farms, and chargeable to the distress of the testator or intestate, so long as the said lands, tenements or hereditaments continue, remain, and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee-farm, so being behind, to the said testator or intestate, in his or her lifetime, or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments only by or from the said tenant, by purchase, gift or descent, in like manner and form as the said testator or intestate might or ought to have done in his or her lifetime; and the said executors or administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid, and make appraisement and sale of such distress in the manner aforesaid.

Distress for
residue.
Ib., § 21.

21. That in all cases where the value of the goods and chattels distrained as aforesaid, shall not be found to be of the full value of the arrears distrained for, the party to whom such arrears are or shall be due, his or her executors, administrators or legal representatives may, from time to time, distrain for the residue of the said arrears; *provided*, that such distress shall be made within the time limited by this act.

Under-tenant to
pay rent to land-
lord, after notice.
P. L. 1848, p. 224,
§ 2.

22. That when premises shall be underlet by any tenant, the under-tenant shall be liable to pay to the lessor or landlord the rent which shall accrue, from and after notice in writing shall be served for that purpose upon the said under-tenant, or which shall be unpaid by said under-tenant at the time of such notice; and the lessor or landlord shall have all the remedy for the recovery of the same, as is provided in this act; *provided, however*, that the rent to be paid by such under-tenant shall in no case exceed the amount agreed to be paid by the first tenant; *and provided also*, that in case a part of the premises shall be underlet, payment shall be required only for the part underlet to such tenant, and at a rate proportioned to the rent agreed to be paid by the first tenant or lessee.

23. That in all cases where any justice of the peace is or shall be required or empowered, by any law of this state, to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such law, and no mode pointed out for the disposal of such distress, it shall be lawful for the justice granting such warrant, therein to order and direct the goods and chattels, so to be distrained, to be sold and disposed of within a certain time to be limited in such warrant, so as such time be not less than four days, nor more than ten days, unless the penalty or sum of money for which such distress shall be made, together with the reasonable charges (to be taxed by such justice), of taking and keeping such distress be sooner paid; and the officer making such distress, shall and may deduct the reasonable charges of taking, keeping and selling such distress (to be taxed as aforesaid), out of the money arising by such sale, and the overplus, if any, after such charges, and also the said penalty or sum of money shall be satisfied and paid, shall be returned, on demand, to the owner of the goods so distrained; and the officer executing such warrant shall show the same to the person whose goods are distrained, and shall suffer a copy thereof to be taken; *provided always*, that this clause shall not be construed to affect any law wherein the sale of any distress made on account of any penalty, fine, or sum of money directed to be paid, and the manner and time of such sale, are by such law particularly provided for and ascertained.

When justice may order sale.
R. S. 63, § 22.

In what time.

Proviso.

24. That goods and chattels of every kind, not exceeding in value (exclusive of wearing apparel) the sum of two hundred dollars, and all wearing apparel the property of any tenant having a family residing in this state, shall be reserved, as well after as before the death of such tenant, for the use of his family, and shall not be liable to be sold as, or for, a distress for rent, by force of this act or of any usage or law of this state; that from the inventory of the goods appraised under the sixth section of this act, such tenant, or in his absence, his agent, attorney, or any member of his family, may select articles, the value of which, according to said appraisement, shall not exceed two hundred dollars; and if such tenant, or a member of his family, his agent or attorney, cannot readily be found, such selection may be made by said appraisers, and the goods so selected shall be left for the use of the family of said tenant.

Exemptions.
P. L. 1851, p. 347.
Amended.

Appraised and selected.

25. That in case the landlord, his attorney or agent, shall not, within two days after being served with a request in writing from his tenant to proceed and have the distrained goods appraised in the manner directed in the sixth section of this act, it shall be lawful for such tenant, after five days' notice thereof to his said landlord, his attorney or agent, to apply to the sheriff or to any constable of the county, and have the said goods inventoried and appraised in the manner appointed in said sixth section; and from such inventory and appraisement the goods exempted for the use of the family of the tenant, may be selected in the manner provided in the next preceding section, and with like effect.

How exemptions selected if landlord fails to proceed.

Revision.

26. That the provisions contained in the next two preceding sections shall apply to the case of under-tenants.

Extends to under-tenant.

27. That all sheriffs and constables in this state are hereby required to be aiding in the execution of the next three preceding sections of this act; and for such services they and the appraisers therein mentioned, shall be entitled to the same fees that are provided for like services in the act entitled "An act respecting executions."

Fees.