

- Powers.** stock, by the name specified in said certificate, with power to adopt and use a corporate seal, to sue and be sued, to purchase, take, have, hold, receive and enjoy any lands, tenements and hereditaments in fee simple or otherwise, and any goods, chattels or property of any description, real or personal, whether acquired by gift, grant, devise, bequest or otherwise, and to grant, convey, lease, assign, sell or otherwise dispose of the same for the purposes of said association, and to receive and enjoy the rents, issues and profits thereof, and expend the same without limitation or restriction ; *provided, however,* that such association shall not have the power to grant, sell or convey, or convert to other than public use, any lands which have been in use by the public of any such city, town, township or borough as public squares, parks or places of public resort, without the authorization of the city or town council, township committee or borough commission or council of such city, town, township or borough, signified by their directing the proper officers of said city, town, township or borough to join in the execution of such deed ; *and provided also,* that any such conveyance shall be authorized by at least three-fourths of all the resident members entitled to vote at any annual election.
- Proviso.**
- Proviso.**
- Association empowered to make by-laws and regulations.** **44. SEC. 4.** That such association shall have power to make by-laws and regulations for its government, direction and management, elect officers and directors, and make such rules and regulations concerning the use by the public of such lands owned by it for public parks, squares, et cetera, as shall be necessary to preserve the shrubbery, improvements and grounds generally as places of free public resort and recreation forever.
- City, &c., may convey lands to association.** **45. SEC. 5.** That any city, town, township or borough as aforesaid, in which any such association shall be organized, may convey to said association any lands which the said city, town, township or borough now hold for the purpose aforesaid, to be used as places of public enjoyment ; *provided,* that no such conveyance shall be made until it shall have been approved by a majority of all the legal voters of said city, town, township or borough entitled to vote for city, town, township or borough authorities, at a special election to be held for that purpose.
- Proviso.** **46. SEC. 6.** That no dividend shall be declared by any such association upon any condition or pretense, and that no member of said association other than the regular officers thereof shall receive in any manner any money, emolument or dividend from the funds of said association, except in payment for services actually rendered.
- No dividend to be declared nor money paid to members.** **47. SEC. 7.** That upon the dissolution of the said association in any manner whatever, all the property of which it shall be seized, whether real or personal, and all the income to which it shall be entitled, shall revert to and become invested in the said city, town, township or borough in which said association was formed, of the same estate as the said association held in perpetual trust for the uses and purposes for which it was held by said association.
- Upon dissolution of association, property to revert to city.**

## Landlord and Tenant.

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I. Suits for rent.

An act concerning landlords and tenants.

Revision—Approved March 27, 1874.

1. That it shall and may be lawful for any person or persons, having any rent in arrear or due upon a lease for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as he, she, or they might have done in case such rent was reserved and due upon a lease for years.

2. That where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of any tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such undertenant or undertenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due, as aforesaid, making all just allowances, or a proportionable part thereof, respectively.

3. That it shall and may be lawful to and for the landlord or landlords, his, her, or their heirs or assigns, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement (not being by deed), whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered. (a)

II. Landlord's lien on tenant's goods.

4. That no goods or chattels whatsoever, lying or being, or which shall lie or be in or upon any messuage, lands or tenements, which are, or shall be leased for term of life or lives, year or years, at will or otherwise, shall be liable to be taken, by virtue of any execution, attachment or other process, unless the party at whose suit the said execution or other process is sued out, shall, before the removal of such goods from off the said premises, by virtue of such process, pay to the landlord of the said premises, or his bailiff, all rent due for the said premises, at the time of the taking such goods or chattels by virtue of such process, or which shall have accrued up to the day of the removal of the goods from off the said

R. S. 85.  
P. L. 1847, p. 42.  
" 1848, p. 185.  
" 1880, p. 485.

Debt for rent on lease for life.  
R. S. 85, § 1.

When tenant for life dies, remedy.  
Ib., § 2.

Action for use and occupation.  
Ib., § 3.

Landlord's lien for rent.  
Ib., § 4.

(a) In justices' courts suit for use and occupation must be in debt. *Langing v. Howell*, Pen. \*256. *Cox v. Baird*, 6 Hal. 106. It will not lie by a widow because she is entitled to dower, unless the tenant is in possession by her permission, or at his own request. *Andreas v. Andreas*, 2 Gr. 141. The law implies a contract to pay rent from the fact of occupation. *Chambers v. Ross*, 1 Dutch. 293. *Conover v. Conover*, Sax. 408. But not where the defendant entered under a contract of sale. *Brewer v. Conover*, 3 Har. 214. It must be on a contract, express or implied. *Stewart v. Fitch*, 2 Vr. 17. In a suit upon the contract the plaintiff need not show that defendant actually occupied

the premises. *Hunt v. Young*, 2 South. \*313. It lies although the tenant refused to enter. *Birchhead v. Cummins*, 4 Vr. 44. Proof of a demise or agreement, unless by deed, will not prevent recovery. *Perrine v. Hankinson*, 6 Hal. 181. The rent reserved in any parol lease is conclusive evidence of the amount of damages. *Holmes v. Stockton*, 2 Dutch. 93. The relation between the owner of lands and those who occupy it is of a purely legal character; and the fact that a lessee takes a lease for an unnamed principal, but in his own name, will not render the unnamed principal liable for the rent. *Borcherting v. Katz*, 10 Stew. 150.

premises, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum, the time of payment of which, by the terms of the lease shall not have come; (a) *provided*, the said 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 process is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his process, as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff, as well the money so paid for rent as the money to be made by virtue of such process. (b)

**5.** That if any goods and chattels lying or being, or which shall lie or be in or upon any messuages, lands or tenements which are or shall be leased for term of life or lives, year or years, at will or otherwise, shall be taken by virtue of any execution, attachment or other process, and removed off said premises, the same shall not be sold by the sheriff or other officer so taking and removing the same until ten days after such removal, and then not unless the plaintiff or party at whose suit such goods or chattels are taken as aforesaid, shall, before the sale thereof, pay to the landlord of the said premises, or his or her bailiff, all rent due for the said premises, or which shall have accrued at the time of said sale, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum the time of payment of which shall not have come;

*provided*, the same do not exceed one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit execution or other process is sued out paying the said landlord, or his or her bailiff one year's rent, may proceed to execute his process as he might have done before the passing of this act; *provided*, the landlord or his bailiff shall, before the expiration of the said ten days from the time of said removal, give notice to the sheriff or other officer holding such execution, or other process, of the amount of the rent in arrear, and claim the same; which notice may be served by delivering the same to said officer, or leaving a copy thereof at his usual place of abode. (c)

**6.** That no such goods and chattels shall be removed off said premises by said sheriff or other officer, but openly and in the day time, and then not unless the sheriff or other officer shall, at the time of removing the said goods and chattels, give notice thereof to the defendant, or, in his absence, to some person of his family residing on said premises, of the removal of said goods and chattels.

### III. Ejectment under right to re-enter.

**7.** That in all cases between landlord and tenant, as often as it shall happen that one-half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law to re-enter for the non-

(a) The landlord has no remedy against a constable unless he gives him notice. *Ayres v. Johnson*, 2 Hal. 119. A levy and sale of the goods by a sheriff is a removal. *Ryerson v. Quackenbush*, 2 Dutch. 236. *Gaston, Ex'r, v. Tunison*, 10 N. J. L. J. 305. A sheriff by leaving the tenant's goods on the premises after levy, does not become himself a tenant, nor liable for the rent. *Hamilton v. Hamilton*, 1 Dutch. 541. At common law the sheriff was not liable for the rent if it was not due. *Schenck v. Vannest*, 1 South. \*329. An action will not lie by the landlord against a third person for advising or procuring the sheriff to remove the goods before the rent was paid. *Princeton Bank v. Gibson*, 3 Pen. 139. As against the plaintiff in an execution, who had purchased at a sale under the execution, the landlord is not put to his action against the officer to whom notice of the rent had been given, and he may, notwithstanding the sale, prevent the removal of the goods until the arrears of rent are paid. *Van Horn v. Goken*, 12 Vr. 499. *Newell v. Clark*, 17 Vr. 374. In case of proceedings against an insolvent corporation, the owner of the premises upon which that corporation carried on its business, under a lease from him, is entitled to an order directing the receiver to pay the amount of rent due at the time of the declaration of insolvency, not exceeding one year's rent. *Wood v. McCurdell, West & Ferrell Carriage Co.*, 4 Dick. 433. The order of the court directing the receiver to take possession of and to convert the goods and chattels of a corporation into money is embraced within the meaning of the phrase "any other process" in this section. *Ib.* While the tenant may dispose of or create

a lien upon goods and chattels, this section expressly forbids any person, armed with the process of the law, removing such goods without first paying one year's rent. *Ib.*

(b) If no certain rent is fixed, the landlord has no right to have his rent paid before the tenant's goods are removed. *Central Bank v. Peterson*, 4 Zab. 668. It must be upon such a lease as would give the landlord a right to distrain. *Kirkpatrick v. Cason*, 1 Vr. 331. Eviction by a landlord of his tenant from the whole or a part of the demised premises causes a suspension of the entire rent and all remedy for its recovery during the continuance of the eviction. *Hunter v. Keiley*, 14 Vr. 480. But the eviction, to have the effect of suspending the rent, must be effected before the rent becomes due, for the rent already accrued and overdue is not forfeited by the eviction, although the rent be payable in advance. *Ib.*

(c) Previous to this act, the landlord could not follow the goods beyond the demised premises. *Peacock v. Hammett*, 3 Gr. 165. An agreement, made by the holder of an execution levied on personal property, to pay the rent of the premises in which the property was when levied on (notice of the rent having been given by the landlord to the sheriff, requiring payment before removal of the property, pursuant to this section), in consideration of the landlord's waiving his right and consenting to a sale, is not an agreement without consideration; nor is it an agreement void by the statute of frauds. *Blackford v. Plainfield Gaslight Co.*, 14 Vr. 435.

Ejectment, and proceedings therein. *Ib.*, § 9. Amended.

Removal by day, and notice. *Ib.*, § 6.

Proviso.

But one year's rent payable.

Rent to be first paid.

Goods taken, when sold. *Ib.*, § 5.

Proviso.

payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a summons in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery for any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in said summons in ejectment, and such affixing shall be deemed legal service thereof; which service or affixing shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant by default, it shall be made to appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the summons was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the plaintiff had power to re-enter, then and in every such case, the plaintiffs in ejectment shall have judgment and execution, in the same manner as if the rent in arrear had been legally demanded and re-entry made; and in case the lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming or deriving title under the said lease, shall suffer judgment on such ejectment and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed, then and in such case, the said lessee or lessees, his, her or their assignee or assignees, and all other persons claiming and deriving title under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall, from thenceforth hold the same demised premises discharged from such lease; and if on such ejectment, verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be non-suited therein, then and in every such case, the defendant or defendants shall have and recover his, her or their full costs; *provided always*, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do within six calendar months after such judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor, or person or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which on the part and behalf of the first lessee or lessees are and ought to be performed. (a)

Judgment and execution.

When lessee barred.

Mortgagee of lease may redeem it.

8. That in case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming any right, title or interest in law or equity, of, in or to the said lease, shall, within the time aforesaid, file one or more bill or bills for relief, in any court of equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejectment, unless he, she or they do or shall, within twenty days next after a full and perfect answer shall be filed, by the plaintiff in such ejectment, bring into court and lodge with the proper officer, such sum and sums of money as the plaintiff in the said ejectment shall, in his, her or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the said plaintiff in ejectment on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after the execution is executed, the plaintiff shall be accountable only for so much and no more as he, she or they shall really and bona fide, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof; and if what shall be so made by the plaintiff happen to be less than the rent reserved on the said lease,

How lessee relieved in equity. *Ib.*, § 10. Amended.

Must bring money due into court.

And pay deficiency.

(a) See *Furley v. Craig*, 6 *Hal.* 282, 3 *Gr.* 191. *Den v. McShane*, 1 *Gr.* 35.

then the said lessee or lessees, his, her or their assignee or assignees, before he, she or they shall be restored to his, her or their possession or possessions, shall pay such plaintiff, what the money, so by them respectively made, fell short of the reserved rent, for the time such plaintiff held the said lands.

Suit discontinued on payment and tender.  
Ib., § 11.

9. That if the tenant or tenants, his, her or their assignee or assignees, do or shall, at any time before the trial in such ejectment, pay or tender to the lessor or landlord, his or her executors or administrators, or his, her or their attorney in that cause, or pay into the court where the same cause is or shall be depending, all the rent and arrears, together with the costs; then and in such case, all further proceedings on the said ejectment shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she or they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her or them.

Will hold under old lease.

#### IV. Summary proceedings if premises deserted, or rent unpaid, or term ended.

Remedy if premises deserted.  
Ib., § 12.

10. That if any tenant, holding any lands, tenements or hereditaments, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace of the county in which the demised premises lie, and who have no interest in the same, at the request of the landlord or landlords, lessor or lessors, or his, her or their bailiff or agent, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing, what day (at the distance of fourteen days, at least) they will return to take a second view thereof, and if upon such second view the tenant, or some person in his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the said landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained, shall from thenceforth become void; *provided always*, that such proceedings of the said justices, shall be examinable in a summary way by the justices of the supreme court, who are hereby empowered to order restitution to be made to such tenants together with his or her expenses and costs, to be paid by the landlord or landlords, lessor or lessors, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs to be paid by such tenant, and the costs as well in the instance of restitution as of affirmance aforesaid, shall be levied and recovered against the body or bodies, or goods and chattels, lands and tenements, of such landlord or tenant as the case may be.

Notice.

Landlord put in possession.

Proviso.

11. [Amended by Sec. 30, *post.*]

Landlord's affidavit.  
P. L. 1847, p. 142, § 2.

12. Any landlord or lessor, his legal representatives, agents or assigns, may make oath(a) in writing, of the facts which, according to the preceding section, authorize the removal of a tenant, describing therein the premises claimed, and may present the same to any justice of the peace of the county where the premises are situated.

(a) What constitutes a sufficient affidavit. *State, Brahn v. Jersey City Forge Co.*, 9 Vr. 74. *Steffens v. Earl*, 11 Vr. 128. *Lloyd v. Richman*, 28 Vr. 385. Sufficient averments. *Shepherd v. Siker*, 2 Vr. 481. What an insufficient affidavit. *Tompkins v. Staiger*, 23 Vr. 350. The affidavit must set out the facts which constitute the tenancy. *Fowler v. Roe*, 1 Dutch. 549. A statement that according to deponent's belief satisfaction cannot be obtained by distress, is bad. *Schuyler v. Treferm*, 2 Dutch. 213. The affidavit must contain a statement of the facts which, under the statute, authorize the removal. Statements of the affiant's conclusions from undisclosed facts are not sufficient. *Wooley v. Lane*, 22 Vr. 504. *Layton v. Dennis*, 14 Vr. 380. If

one of the jurisdictional requisites is the legal service of a particular notice, the facts necessary to legalize the special method of service employed must appear in the affidavit. Upon this point the conclusion of the landlord upon undisclosed facts is useless. *Shettle v. Irving*, 24 Vr. 180. The affidavit that a tenant holds over after the expiration of his term, need not state that he holds over without the permission of the landlord. *Moore v. Smith*, 27 Vr. 446. An assignee of a landlord's reversionary interest can file an affidavit to dispossess a tenant in a summary proceeding under this act. *Watson v. Idler*, 25 Vr. 467. *Lloyd v. Richman*, 28 Vr. 385. *Gatti v. Meyer*, 9 N. J. L. J. 271.

13. On receiving and filing such affidavit, such justice shall issue a summons, describing the premises of which possession is claimed, and requiring any person in possession of said premises, or claiming the possession thereof, (a) forthwith to remove from the same, or to show cause before the said justice at a certain place and time therein to be specified, not less than five nor more than fifteen days from the date of such summons, why possession of such premises should not be delivered to such claimant.

Summons to be issued.  
Ib., § 3.

14. Previous to issuing such summons in a case of tenancy at will, or at sufferance, or from year to year, the justice shall be satisfied, by due proof, that such tenancy has been terminated by giving notice in the manner prescribed by law. (b)

Proof that tenancy has ended.  
Ib., § 4.

15. [Amended by Secs. 31 and 33, *post.*]

16. That if at the time appointed in the said summons, or at the time to which said suit may be adjourned, no sufficient cause be shown to the contrary, and it shall appear to the said justice or jury that the summons has been duly served, the said justice shall issue his warrant to any constable of the county, or marshal of the city or town in which the premises are situated, commanding him to remove all persons from the said premises, and to put the said claimant into full possession thereof, and to levy and make the costs out of the goods and chattels of such person or persons in possession; (c) *provided*, it shall be necessary for said claimant, if required by the defendant, to prove to the satisfaction of the justice, or of the jury, if there be a trial by jury, the facts which, according to the eleventh section of this act, authorize the removal of a tenant. (d)

Writ of possession.  
P. L. 1847, p. 142, § 6.

Proviso.  
P. L. 1848, p. 185.

17. That if, upon the said trial mentioned in the next preceding section of this act, the said plaintiff shall not be able to prove, by lease or other evidence of right of possession, his right to the possession of the said premises claimed by him, without proving title to lands, tenements and hereditaments, that then it shall be the duty of the said justice to dismiss the said action. (e)

Right of possession without proving title to be proved.  
Ib., § 2.

18. That the proceedings had by virtue of the eleventh section of this act shall not be appealed from or removed by certiorari; but the landlord shall remain liable in an action of trespass for any unlawful proceedings under this act. (g)

Proceedings not to be appealed from or removed by certiorari.

19. That the same fees shall be allowed to the justice, constable, witnesses and jurors, as are provided for like services by the act constituting courts for the trial of small causes; and the constable, for executing the process of possession, shall receive the sum of one dollar.

Fees.  
Ib., § 8.

20. That at any time after a summons has been issued according to the thirteenth section of this act, and before the return thereof, either the landlord, or the party in possession, may apply to a justice of the supreme court, who, if he shall deem the case of sufficient importance, may issue an order, under his hand, directing the said justice of the peace to file, forthwith, the said oath or complaint of the landlord, and the other papers appertaining to the proceedings, in the office of the clerk of the circuit court of the county in which such proceedings were commenced; and thereupon said circuit court shall have full and exclusive cognizance of the case; and said court shall be always open for such purpose. (h)

Proceedings may be removed to circuit court.  
Revision.

(a) The act makes no provision for admitting other parties to defend. *Ib.*

(b) The proof must be by some competent witness. *Stanley v. Horner*, 4 Zab. 511. An affidavit by the plaintiff that such notice had been served, with a copy annexed, although it does not state by whom served, is sufficient. *Morris Canal Co. v. Mitchell*, 2 Vr. 100.

(c) Under a writ of possession, the officers must invest the plaintiff with the full, actual and complete possession of the premises. He is bound to remove all persons in possession. The test is, that the plaintiff must be so established in his possession by the officers that any person entering upon him, *se invito*, will be indicted for a forcible entry. *Township of Union v. Bayliss*, 11 Vr. 61. The officer is not bound to remove the tenant's goods, but he may give the tenant an opportunity to do so, or he may remove them himself as an agent of the plaintiff. *Ib.*

(d) The determination of the tribunal is, with the exception named in the statute, conclusive between the parties on all questions within its jurisdiction which were litigated and decided, or which might have been litigated but for the neglect of the parties. *Brick v. Burr*, 2 Dick. 189.

(e) If, on the return day of duly-served summons in a summary proceeding, the tenant does not appear, or appearing does not demand proof of the jurisdictional facts authorizing his dis-possession, there is no trial and no question respecting title to lands can arise. *Watson v. Idler*, 25 Vr. 467.

(g) If not "by virtue of this act," as by proceeding when the case is not within the jurisdiction of the justice, &c., *certiorari* lies. *Stanley v. Horner*, 4 Zab. 511. *Fowler v. Roe*, 1 Dutch. 549. *Morris Canal Co. v. Mitchell*, 2 Vr. 100. *Shepherd v. Sticker*, 2 Vr. 432. In summary proceedings to remove a tenant, the finding of the fact that rent was due and unpaid is final as to that proceeding, but the statute deprives the judgment in that court of the quality of conclusiveness which it has in other cases. By the statute, the landlord is liable, in an action of trespass, for any unlawful proceeding thereunder. *Coe v. Haines*, 15 Vr. 134. To maintain an action by the tenant in such case, it must be shown that he was removed by a warrant to dispossess. *Ib.*

(h) The circuit court has power to quash proceedings under this act removed into it under Sec. 18. *Wakeman v. Johnson*, 3 N. J. L. J. 84.

Venire to issue.  
Revision.

Trial on return  
day.

Adjourned to.

Notice of trial.  
Revision.  
Jury may be  
waived.

Judgment.  
Revision.

Writ of posses-  
sion.

Power of court.  
Revision.

Writ of error.

Not a stay unless  
on order of judge  
and bond.

**21.** That immediately upon such papers being filed in said clerk's office, the judge of said circuit court shall cause a venire facias for a jury to be issued, returnable into said court in not more than one week from the time of issuing the same; and which said writ shall be served by the sheriff, or other officer, according to the practice of said court in like cases; and on the day of the return of the said writ the case shall be tried, unless, for good cause shown, the said trial shall be adjourned; that said adjournment, and all other adjournments, shall be for the shortest periods practicable, and the seventeenth section of this act shall not apply to said trial.

**22.** That such notice of the trial shall be given as the said judge may direct; the parties, if they shall agree so to do, may waive a trial by jury, and submit the case to the judge on the law and facts.

**23.** That a judgment shall be entered upon the finding of the judge or the jury, and if the same be in favor of the landlord, a writ shall issue to the sheriff of the county, commanding him to put the landlord in full possession of the premises in question, and to levy and make the costs out of the goods, chattels and lands of the person in possession; if judgment be rendered for the defendant, he shall have an execution in like manner for his costs.

**24.** That the said circuit court shall have the same power with respect to said proceedings, and the same control over the verdict and judgment as it has in other cases within its jurisdiction, and from the judgment so entered a writ of error shall lie to the supreme court; but such writ shall not stay the execution of such judgment unless upon an order to the effect indorsed on said writ by the said circuit judge, and upon a bond, with sufficient surety, being given in an amount which he shall designate, conditioned to indemnify the party in whose favor said judgment was rendered, against all losses and damages which he may sustain by reason of final process being stayed.

#### V. General provisions.

Surrender and  
renewal of chief  
lease not to in-  
validate under  
leases.  
R. S. 85, § 13.

**25.** That in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any of the under leases, be as good and valid, to all intents and purposes, as if all the under leases, derived thereout, had been likewise surrendered at or before the taking of such new lease, and all and every person or persons, in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her and their executors and administrators, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, land and tenements, in the respective under leases comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued; and the chief landlord or landlords shall have and be entitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments, comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under lease was derived, as he, she or they would have had, in case such former lease had been still continued, or as he, she or they would have had in case the respective under leases had been renewed under such new principal lease.

Attornment of  
defendant void.  
Ib., § 14.

**26.** *And whereas*, the possession of estates in lands, tenements, and hereditaments is rendered very precarious, by the frequent and fraudulent practice of tenants in attorning to strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expense of recovering the possession thereof by actions or suits at law; for remedy whereof, *be it enacted*, that all and every such attornment or attornments of any tenant or tenants of any messuages, lands, tenements or hereditaments, shall be absolutely null and void, to all intents

and purposes whatsoever, and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be in anywise changed, altered or affected, by any such attornment or attornments; *provided always*, that nothing herein contained shall extend to vacate or affect any attornment made pursuant to, or in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage has become forfeited. (a)

Proviso.

27. That in case any tenant or tenants for any term of life or lives, year or years, or other person or persons who are or shall come into possession of any lands, tenements or hereditaments by, from or under, or by collusion with such tenant or tenants, shall willfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing (b) given for delivering the possession thereof by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or agents, thereunto lawfully authorized, then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over, or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long a time as the same are detained; to be recovered in any court of record in this state, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail, and against the recovering of which said penalty there shall be no relief in equity.

Penalty for holding over.  
Ib., § 7.

Pay double rent.

Give bail, &c.

28. That in case any tenant or tenants shall give notice of his, her or their intention to quit the premises by him, her or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, that then the said tenant or tenants, his, her or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, double the rent or sum which he, she or they should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for and recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

Penalty for holding over after notice of quitting.  
Ib., § 8.

29. That in all cases where any tenant is, or may be entitled by law to notice to quit the premises by him holden, in order to determine his tenancy, three months' notice to quit as aforesaid shall be deemed and taken to be sufficient. (c)

Notice to quit.  
Ib., § 17.

(a) A tenant under a lease made prior to a mortgage, may be sued or distrained upon by the mortgagee for rent, after notice not to pay it to the landlord. *Souders v. Van Sickle*, 3 Hal. 313; overruled, *Hal. Dig.* 860. *Atter* where the lease is made after the mortgage. *Ib.* *Price v. Smith*, 1 Gr. Ch. 516. If the mortgagee obtain possession of the land from a tenant holding under a lease made subsequent to the mortgage, he is entitled to mesne profits only from the time of actual entry by the mortgagee. *Standerson v. Price*, 1 Zab. 637. The mortgagee in such case is entitled to the crops sown by tenant. *Howell v. Schenck*, 4 Zab. 89. See *Bloom v. Welsh*, 3 Dutch. 177. If a party claims to hold lands under a lease made before the mortgage, equity will not assist the mortgagee to obtain possession. *Thomas v. De Baum*, 1 McCart. 37. An assignment of the rent is valid without the attornment of the tenant, but it cannot be apportioned by the landlord to different persons without the tenant's consent. *Ryerson v. Quackenbush*, 2 Dutch. 237. See *Potts v. Del. Water Power Co.*, 1 Stock. 592. *Breitenbacher v. McElroy*, 2 N. J. L. J. 187.

(b) After the ordinary demand and notice in writing have been given, no further notice is necessary. *Townley v. Eutan*, 1 Zab. 674. Three days' notice in writing must be given. *Schwylter v. Trefern*, 2 Dutch. 213.

(c) The tenant is bound to quit the premises without notice, when his lease expires. *Decker v. Adams*, 7 Hal. 93. Unless he remains by the consent of the landlord, shown by the latter accepting rent, &c. *Ib.* *Adams v. Decker*, 6 Hal. 87. In all cases of tenancies from year to year, or of uncertain duration, the tenant must have notice. *Den v. Drake*, 2 Gr. 523. *Van Campen v. Depue*, 6 Hal. 409. *Den, Mackay v. Mackay*, Pen.

\*419 (o). *Den, Snowhill v. Snowhill*, 3 Zab. 448. But not where he disclaims his landlord's title. *Den, Hankinson v. Blair*, 3 Gr. 181. His right to notice is not forfeited where he contests the claim of executors to the whole premises, when as heirs they are only entitled to an undivided share thereof. *Den, Snowhill v. Snowhill*, 3 Zab. 448. Where a lock-tender on a canal occupied a house of the company under a standing lease known to him that if discharged he was to vacate the house, he is not entitled to three months' notice. *Morris Canal Co. v. Mitchell*, 2 Vr. 100. So, where a lease was determinable if the manufacture of salt was abandoned by the tenant. *Horner v. Leeds*, 1 Dutch. 106. A mortgagor in possession or his grantee is not entitled to notice. *Den v. Wade*, *Spem*. 291. Nor a party who enters under an agreement to purchase the lands occupied by him. *Thackray v. Den, Cheseman*, 3 Har. 1. See *Den v. Westbrook*, 3 Gr. 371. Nor where he holds under a mortgagor by lease subsequent to the mortgage. *Den v. Stockton*, 7 Hal. 322. So, where no rent has been paid for twenty years. *Den, Crowther v. Lloyd*, 2 Vr. 395. Where the tenancy has expired the landlord may take possession even by force. *Todd v. Jackson*, 2 Dutch. 525. In monthly tenancies a month's notice to quit is sufficient. *Steffens v. Earl*, 11 Vr. 123. A notice must be to quit at the end of one of the recurring periods of holding, but a notice to quit on the day corresponding with the date of letting and entry is sufficient. *Ib.* Where no time is mentioned, and no annual rent reserved in the letting, the character of the tenure, as to time, will be controlled by the intervals between the payments, monthly or weekly payments implying monthly or weekly tenancies. *Ib.* If a tenant, after the expiration of a month's lease, holds over, without the assent of the landlord to his sub-

## VI. Supplements.

## Supplement.

Approved April 5, 1876.

P. L. 1876, p. 76.

**30. SEC. 1.** That the eleventh section of the act entitled "An act concerning landlords and tenants," which act was approved March twenty-seventh, anno domini eighteen hundred and seventy-four, and which section reads as follows [see P. L. 1876, p. 76], be and the same is hereby amended so that the same shall read as follows, viz.:

Remedy if rent unpaid or term ended.

[Any tenant, or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands or tenements, and the assigns, under-tenants or legal representatives of such tenant or lessee, may be removed from such premises by any justice of the peace of the county where such premises are situated, in the manner hereinafter prescribed, in the following cases; *provided*, that this act shall not be construed so as to give justices of the peace jurisdiction in cities where district courts are now established by law.

Proviso.

I. Where such person shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his or her term, and after demand made, and notice in writing, given for delivering the possession thereof by the landlord, or his agent for that purpose.

II. Where such person shall hold over after any default in the payment of the rent, pursuant to the agreement under which such premises are held, and satisfaction for such rent cannot be obtained by distress of any goods, and a demand of such rent shall have been made, by three days' notice in writing, requiring the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, or his agent, upon the person owing the same. (a)

The notices required in this section shall be served either personally on the tenant, by giving him a copy thereof, or by leaving a copy thereof at his last usual place of abode, with some member of his family above the age of fourteen years; or where, from any reason, such service cannot be had, then the same may be served by affixing a copy of such notice to the door of any dwelling, or such demised premises, occupied by such tenant.]

**31. SEC. 2.** That the fifteenth section of said act, which section reads as follows, namely [see P. L. 1876, p. 76], be and the same is hereby amended so as to read as follows, namely:

How summons served; trial and jury, &c.

[The summons shall be served in the manner prescribed by the act constituting courts for the trial of small causes, except in cases where the tenant denies admission to the dwelling occupied by such tenant to the officer attempting to serve such summons, and in such case it shall be a lawful service of such summons if the said officer affix a copy of such summons to the door of said dwelling; and the suit may be adjourned, and either party may demand and have a trial by jury of twelve men, and if such jury fail to agree the justice may discharge them and summon a new jury before whom the matter shall again be tried.] (b) [See Sec. 33, *post.*]

sequent occupation, he is a trespasser and not entitled to notice to quit as a tenant at will or from month to month. *Moore v. Moore*, 12 Vr. 515. If a party be let into possession under a contract to purchase, and the purchase be not afterwards completed, he is not to be regarded as a tenant to the vendor in such sense as to entitle him to three months' notice to quit. *Boss v. Van Aulen*, 13 Vr. 49. A demand for rent by a landlord upon a tenant holding over is not conclusive evidence of consent such as converts a holding at sufferance into a tenancy from year to year. *Condon v. Barr*, 18 Vr. 113. Where a tenancy is terminable on notice and demand of possession, and such notice and demand has been given terminating the tenancy on a certain day, jurisdiction to issue a rule to show cause why the tenant should not be removed from the premises under the landlord and tenant act, will be acquired by proof of such notice and demand. *Wartman v. Richards*, 25 Vr. 525. When a person having a contract to purchase takes a lease from the owner, for a month, for the same property, and enters under it, his possession, after the expiration of his term, in the absence of any other agreement, is that of a tenant at sufferance. *Moore v. Smith*, 27 Vr. 446. A tenant at sufferance is not entitled to notice at common law, and under the landlord and tenant act a previous demand of possession only is required as a condition upon which a summons may issue. *Id.*

(a) A notice to a tenant that after the expiration of his existing term he would be charged an increased rent, if such notice is given on Sunday and the tenant simply remains in possession after his term ends, does not raise a contract to pay such increased rent. *Connor v. Ryan*, 20 Vr. 314. The termination of a lease by a landlord's election, on the breach of a condition, is not an expiration of the term under this section. *Wakeman v. Johnson*, 3 N. J. L. J. 84. Any one of a number of joint tenants, or tenants in common, named as landlords in a lease, is authorized to make demand in writing for the payment of rent, and sign and give the three days' notice required by the statute. *Mullone v. Klein*, 26 Vr. 479.

(b) This section was amended by P. L. 1888, p. 462 (Sec. 33, *post*). The amendatory act does not rectify this section, but does give the section as amended. The provision for a trial by jury is omitted in the amendatory act. *Held*, that an examination of the entire act shows that the omission of this provision in reference to jury trial was a mere inadvertence and not a deliberate intent to abolish it in this class of cases. *Fry v. Myers*, 27 Vr. 117. See, also, as to ability of justice to adjourn to another day, after a mistrial by reason of a disagreement of the jury, *Frost v. Chandler*, 25 Vr. 128.

**32. SEC. 3.** That when any warrant shall be issued under the provisions of the sixteenth section of the act to which this is a supplement, to any constable or marshal it shall be the duty of said constable or marshal to obey the command of such warrant, and to faithfully execute such warrant, and in such execution of such warrant the said constable or marshal shall have power if necessary to the execution of such warrant, to break in any door of any dwelling or other building so in possession of such tenant, and to use whatever force may be necessary to effect an entrance into such building to execute his said warrant.

Constable or marshal to execute warrant.

How executed.

Supplement.

Approved April 23, 1888.

P. L. 1888, p. 462.

**33. SEC. 1.** That section fifteen of the said act as amended by act entitled "Supplement to the act entitled 'An act concerning landlords and tenants,'" approved March twenty-seventh, one thousand eight hundred and seventy-four, which said supplement was approved April fifth, one thousand eight hundred and seventy-six [see Sec. 31, *ante*], be amended so as to read as follows :

[That the summons shall be served in the manner prescribed by the act constituting courts for the trial of small causes, except in cases where the tenant or other person in occupation or possession denies admission to the dwelling or other building occupied by, or in the possession of, such tenant or other person to the officer attempting to serve such summons, or should such tenant reside out of the county in which the demised premises are located, and there is no person in occupation or possession thereof, then it shall be lawful service of such summons, if the said officer affix a copy of such summons to the door of said dwelling or other building, or at any conspicuous place on said premises if there be no building thereon ; *and provided further*, in case the tenant shall not be a resident of the county in which said demised premises are situated, and the same are in the occupation of any other person, then said summons may be served either personally upon such person, or by leaving the same with a member of the family above the age of fourteen years.] (*a*) [See note (*b*), p. 1922.]

Summons, how served.

Proviso.

Supplement.

Approved March 27, 1889.

P. L. 1889, p. 110.

**34. SEC. 1.** That if the lessee of any dwelling-house or other premises in this state shall use the same for purposes of prostitution or assignation, the lease or agreement for letting the same shall thereupon become immediately void, and the landlord may enter upon the premises so let, and shall have the same remedies to recover possession as are given by law in case of a tenant holding over after the expiration of his lease. (*b*)

If lessee uses leased premises for purposes of prostitution, &c., lease void.

A further supplement to an act entitled "An act concerning landlords and tenants," approved April 15th, 1846.(1)

Approved March 5, 1874.

P. L. 1874, p. 27.

**35. SEC. 1.** That whenever any building or buildings erected on leased premises shall be injured by fire without the fault of the lessee, the landlord shall repair the same as speedily as possible, or in default thereof, the rent shall cease until such time as such building or buildings shall be put in complete repair ; and in case of the total destruction of such building or buildings by fire or otherwise, the rent shall be paid up to the time of such destruction, and then, and from thenceforth, the lease shall cease and come to an end ; *provided always*, that this section shall not extend to or apply to cases where the parties have otherwise stipulated in their agreement of lease. (*c*) [See WASTE, Sec. 8.]

In case of fire without fault of lessee, rent to cease until building repaired ; if building destroyed, lease to end.

Proviso.

(*a*) In summary proceedings, the tenant is entitled to a trial by jury, notwithstanding the passage of this act. *Fry v. Meyers*, 27 Vr. 115.

(*b*) See *Miller v. Norman*, 8 Vr. 55.

(*c*) This act cannot alter the terms, or in anywise control a lease containing an express and absolute promise to pay the

rents reserved, made prior to the passage of the act. *Coles v. Celluloid Mfg. Co.*, 10 Vr. 326. The negligence of a tenant, occasioning injury to the demised premises by fire, is a *fault* within the meaning of this act. *Dorr v. Harkness*, 20 Vr. 571. See *Breece v. Mersfelden*, 17 N. J. L. J. 341.

(1) The act to which this act is a supplement was repealed by the general repealer of 1874 (Rev., p. 1120); this supplement was not repealed.

## VII. Miscellaneous acts.

An act regulating lettings in cases where no definite term is fixed.

P. L. 1884, p. 178.

Approved April 14, 1884.

36. SEC. 1. [Amended by Sec. 37, *post.*]

## Supplement.

P. L. 1888, p. 426.

Approved April 16, 1888.

37. SEC. 1. That the act entitled "An act regulating lettings in cases where no definite term is fixed," approved April fourteenth, one thousand eight hundred and eighty-four, be and the same is hereby amended so as to read as follows :

When landlord may dispossess tenant in case no term is agreed upon, and the rent is payable monthly.  
Proviso.

[That in any letting where no term is agreed upon and the rent is payable monthly, so long as the tenant pays the rent as agreed, it shall be unlawful for the landlord to dispossess the tenant before the first day of April succeeding the commencement of such letting, without giving the tenant three months' notice in writing to quit ; *provided, however,* that in case any such tenant shall be so disorderly as to destroy the peace and quiet of the other tenants living in said house or the neighborhood, or shall willfully destroy, damage or injure the premises, or shall constantly violate the said landlord's rules and regulations governing said premises, and a copy of which regulations said landlord has caused to be conspicuously posted on said premises ; in any such case the said landlord may cause a written notice of the termination of such tenancy to be served upon said tenant and a demand that said tenant remove from the premises so occupied by him within three days from the service of such notice, and in case said tenant shall not so remove, it shall be lawful for said landlord or his agent, after the expiration of said three days, to make and file with any justice of the peace, an affidavit setting forth either or any of the causes for removal above set forth and of the service of such notice, and thereupon it shall be lawful for such justice to issue his summons in ejectment such as now provided under the act entitled "An act concerning landlords and tenants," for the summary removal of tenants holding over after the expiration of of his or her term, and on proof before said justice, on the return of said summons, of any one of the causes for removal aforesaid, it shall be lawful for said justice to give judgment for said landlord and issue his warrant for such removal and take such other proceedings as is now provided by law for summary removal of tenants.] (a)

(a) This act does not apply where the letting is for a definite term, for "one month and a monthly term thereafter." The monthly term commenced on the 10th of November ; a notice to quit on the 1st day of April following is insufficient. *Finkelstein v. Herson*, 26 Vr. 217. See *Shaw v. Schietinger*, 22 Vr. 152.

A justice of the peace in a city where there is a district court, has no color of jurisdiction to hear a summary ejectment case between landlord and tenant, under this act, when the defendant lives in the city. *Stearns v. Klein & Cook*, 14 N. J. L. J. 42.

## Learning, Societies to Promote.

1. Amended by section 30.
2. Corporate name and powers of societies for promotion of learning.
3. Election of officers.
4. Amended by section 32.
5. Annual report by trustees.
6. By-laws.
7. Record of proceedings to be kept.
8. Corporation not dissolved for failure to elect.
9. Property to continue vested.
10. Act to extend to library companies.
11. By-laws of library companies.
12. Power to create capital stock.
13. Consent to be attested.
14. Methodist or other educational institutions authorized.
15. Duty of trustees, &c.
16. Conferences, &c., subject to this act.
17. How certain religious denominations may incorporate societies.
18. Deed of conveyance to be executed.
19. Vacancies, how filled.
20. Institutions may give diplomas and confer degrees.
21. Baptist societies may become incorporated.
22. When incorporation effected, &c.
23. Business to be managed by a board of managers. Election of officers.
24. Societies to establish high schools, &c. Form of certificate.
25. Declaration to be annexed to certificate.
26. Upon filing certificate, incorporation effected.
27. Management to be vested in board of trustees.
28. Corporation may hold real and personal property.
29. When three or more members of association may call meeting thereof.
30. Associations for promotion of learning, how incorporated.