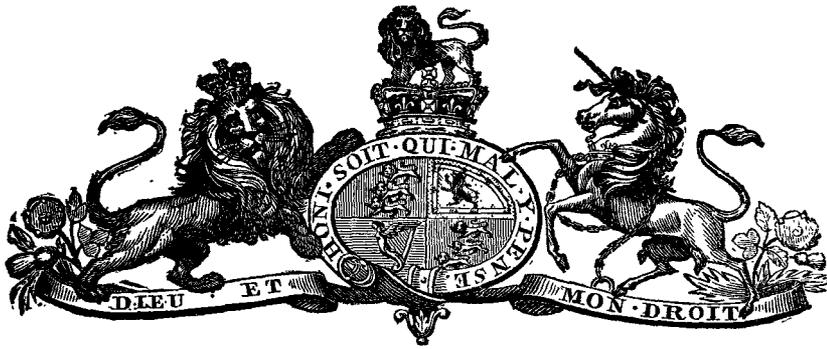


NEW ZEALAND.



ANNO TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. XXV.

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ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> <li>1. Short Title.</li> <li>2. Distress to be made in person or by agent authorized by warrant in writing. First Schedule.</li> <li>3. Signature of marksman to be attested.</li> <li>4. Copy of warrant of distress to be delivered.</li> <li>5. Inventory and bill of charges to be made of and delivered. Second Schedule.</li> <li>6. No appraisal necessary. Charges for distress. Third Schedule.</li> <li>7. Goods taken may be impounded on the premises or removed.</li> <li>8. Notice of removal to be given to tenant.</li> </ol> | <ol style="list-style-type: none"> <li>9. Writ of replevin. Fourth Schedule.</li> <li>10. To prevent vexatious replevins and to provide for the assignment of replevin bonds.</li> <li>11. Replevin by Justices in certain cases.</li> <li>12. Sale.</li> <li>13. Appropriation of proceeds of sale.</li> <li>14. Liberty of ingress egress and regress to and from premises.</li> <li>15. Distress not unlawful for any irregularity.</li> <li>16. Tenant not to recover if tender of amends be made.</li> <li>17. Penalties for misconduct of agent or bailiff.</li> <li>18. When Act to come into operation. Schedules.</li> </ol> |
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AN ACT to amend the Law of Distress and Replevin. Title.  
 [15th October 1868.]

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

1. The Short Title of this Act shall be "The Distress and Replevin Act 1868." Short Title.
2. No landlord or other person to whom any rent shall be due or to whom a power of distress shall be given by any deed or other instrument or shall be given by law shall seize and take any goods and chattels as a distress for arrears of rent unless such distress be made by such landlord or person or by the agent or bailiff of such landlord or person duly authorized by a warrant of distress in the form or to the effect set forth in the first Schedule of this Act signed by such landlord or person or by his attorney or agent thereunto by him duly authorized. Distress to be made in person or by agent authorized by warrant in writing. First Schedule.
3. In case such landlord or person giving such warrant of distress shall be unable to write his name his signature by mark thereunto shall be attested by a Justice of the Peace or by an attorney of the Supreme Court. Signature of marksman to be attested.
4. In case such distress shall be made by an agent or bailiff such agent or bailiff shall at the time of making the distress deliver to the tenant in possession of the premises or to the owner of the goods and Copy of warrant of distress to be delivered.

*Distress and Replevin.*

chattels distrained if at the premises or if absent to some person resident at or near to the premises for such tenant or owner a true copy of the warrant of distress hereinbefore mentioned and in case there shall be no person resident at or near to such premises to whom such copy can be delivered such agent or bailiff shall deliver the same to such tenant or owner if demanded at any time within thirty days next after such distress shall have been made.

Inventory and bill of charges to be made of and delivered.  
Second Schedule.

5. Every landlord or other person making any distress shall forthwith make out and sign an inventory in the form or to the effect set forth in the second Schedule of this Act of the goods and chattels distrained and also a bill of the charges then claimed on account of such distress and such landlord or other person shall thereupon deliver such inventory and bill of charges in the like manner as is hereinbefore directed with regard to the warrant of distress.

No appraisement necessary.  
Charges for distress.  
Third Schedule.

6. No appraisement of any goods and chattels distrained shall be necessary to the validity of any distress or sale thereof and no charges except such as are set forth in the third Schedule of this Act shall be made or demanded or shall be payable in respect of any distress.

Goods taken may be impounded on the premises or removed.

7. Every person distraining any goods and chattels may impound or otherwise secure the same upon the premises where the same are taken or may at any time within five days after the distress remove such goods and chattels to some one convenient place not more than three miles from the premises where they were taken and may there impound or otherwise secure the same.

Notice of removal to be given to tenant.

8. In every case of such removal the person distraining shall within twenty-four hours after such removal give notice in writing to the tenant in possession or owner of such goods of the removal of the same and of the place to which such goods and chattels have been removed and such notice may either be given to such tenant or owner or if he be absent may be left with some person at the place from which such goods and chattels may have been removed.

Writ of replevin.

9. When any action of replevin shall have been commenced in the Supreme Court it shall be lawful for the plaintiff therein to sue out of such Court a writ to be called a "writ of replevin" directed to the Sheriff of the sheriff's district in which the goods and chattels shall be under distress requiring him to replevy the said goods and chattels and the said Court or any Judge thereof is hereby authorized to issue such writ which shall be in the form contained in the fourth Schedule to this Act and shall have the same effect as any process or proceedings for such purpose heretofore in use in the Supreme Court at Westminster in England and the said Sheriff upon security being given to him as hereinafter provided shall execute such writ and return the said writ with a correct and proper statement indorsed thereon of the manner in which the same shall have been executed or the cause why the same has not been executed to the said Court within a reasonable time next after such writ shall have been delivered to him.

Fourth Schedule.

To prevent vexatious replevins and to provide for the assignment of replevin bonds.

10. All Sheriffs and other officers having authority to grant replevins may and shall in every replevin of a distress take in their own names respectively from the plaintiff and two responsible persons as sureties a bond in double the value of the goods distrained (such value to be ascertained by the oath of one or more credible witness or witnesses not interested in the goods or distress which oath the person granting such replevin is hereby authorized and required to administer) and conditioned for prosecuting the suit with effect and without delay and for paying such sum as the Court shall award and such Sheriff or other officer as aforesaid taking any such bond shall at the request and costs of the defendant assign such bond to the defendant by indorsing

*Distress and Replevin.*

the same and attesting it under his hand and seal in the presence of two or more credible witnesses and if the bond so taken and assigned be forfeited the defendant may bring an action and recover thereupon in his own name and the Court where such action shall be brought may by a rule of the same Court give such relief to the parties upon such bond as may be agreeable to justice and reason and such rule shall have the nature and effect of a defeasance to such bond.

11. In all cases in which any distress shall be made at any place distant more than twenty miles from the office of the Sheriff of the sheriff's district in which the same shall have been made any Justice of the Peace may grant replevin of the goods and chattels distrained in the same manner and subject to the same conditions as any Sheriff may grant the same and such Justice shall take in his own name from the person desiring to replevy and two responsible persons as sureties such a bond as a Sheriff is required to take and the Justice taking such bond may assign the same in the manner in which a Sheriff may assign a replevin bond and such bond may be sued on in like manner as a replevin bond taken by a Sheriff and no such Justice shall be liable in any action for taking insufficient security if he shall have acted *bonâ fide* and with reasonable care and caution.

Replevin by Justices  
in certain cases.

12. Where any goods and chattels shall be distrained and the tenant in possession or owner of the goods shall not within five days next after the distress replevy the same according to law it shall be lawful for the person distraining after the expiration of the said five days to cause such goods and chattels to be sold and the sale of such goods and chattels shall be made by public auction either by a duly licensed auctioneer or by a bailiff of the Sheriff or of a District Court Resident Magistrate's Court or Court of Petty Sessions.

Sale.

13. The money to arise from such sale shall be applied in satisfaction of the charges of making the distress and sale and of the sum demanded and the overplus if any shall be forthwith paid to the said tenant or owner and the person causing such distress to be made shall deliver if demanded at any time within thirty days from the time of such sale a true account in writing of such sale and if any such person shall wilfully neglect or refuse so to do upon demand made within the period aforesaid he shall forfeit a sum not exceeding fifty pounds which may be sued for and recovered in the manner directed by the law now regulating or hereafter to regulate summary convictions.

Appropriation of  
proceeds of sale.

14. At the time appointed for any such sale any person shall have full liberty of ingress egress and regress into and out of the premises where such goods and chattels are impounded or otherwise secured in order to view or buy and remove any part of such goods and chattels without being liable as a trespasser.

Liberty of ingress  
egress and regress to  
and from premises.

15. Where any distress shall be made for any rent or sum justly due and any irregularity or unlawful act shall be afterwards done by the person causing the distress to be made his agent or bailiff the distress shall not be deemed unlawful nor the distrainer a trespasser *ab initio* but the party grieved may recover satisfaction for the damage in a special action of trespass or on the case at the election of the plaintiff and if he recover he shall have full costs.

Distress not unlawful  
for any irregularity.

16. No tenant shall recover in any action for any such unlawful act or irregularity as aforesaid if tender of amends hath been made by the party distraining or by his agent before action brought.

Tenant not to recover  
if tender of amends  
be made.

17. In case any agent or bailiff shall distrain without having obtained any warrant as hereinbefore required or if he shall distrain and shall wilfully neglect or refuse to deliver a copy of such warrant or in case any person distraining his agent or bailiff shall wilfully neglect or

Penalties for miscon-  
duct of agent or  
bailiff.

*Distress and Replevin.*

refuse to make out sign and deliver such inventory of the goods and chattels distrained or such bill of charges claimed or to deliver the notices hereinbefore directed or if he shall retain take or receive any other or greater charge than such as are mentioned and allowed by the third Schedule of this Act then every such person so offending shall for every such offence forfeit and pay a sum not exceeding fifty pounds which may be sued for and recovered in the manner hereinbefore directed with respect to other penalties.

When Act to come into operation.

18. This Act shall not come into operation until the first day of December one thousand eight hundred and sixty-eight.

Schedules.

## SCHEDULES.

Sec. 2.

## FIRST SCHEDULE.

## WARRANT TO DISTRAIN.

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

Dated this day of 18

A.B.  
(or by his attorney G.H.)

Sec. 5.

## SECOND SCHEDULE.

## INVENTORY.

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

Dated this day of 18

C.D. Bailiff.

Then enumerate the goods and chattels at full length.

Sec. 6.

## THIRD SCHEDULE.

## CHARGES OF DISTRESS.

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

	£	s.	d.
Where the sum distrained for shall be more than two and less than ten pounds	0	5	0
Where such sum shall be ten and less than fifty pounds ...	0	10	0
Where such sum shall be fifty pounds or upwards ...	1	0	0
Man in possession per diem ...	0	4	0

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

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

Sec. 9.

## FOURTH SCHEDULE.

VICTORIA by the Grace of God of the United Kingdom of Great Britain and Ireland Queen Defender of the Faith to the Sheriff of Greeting—Whereas one A.B. has lately in our Supreme Court at commenced his suit against C.D. of &c. [as in the writ of summons] and intends to prosecute the same against him for a return of certain cattle goods and chattels of the said A.B. which the said C.D. hath taken and unjustly detains We do therefore command you that you do forthwith cause to be replevied to the said A.B. the said cattle goods and chattels if they shall be found in your bailiwick and in what manner you shall have executed this writ make appear to our said Court immediately after the execution hereof and have there then this writ.

Witness at the day of

one thousand eight

hundred and

WELLINGTON, NEW ZEALAND:

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