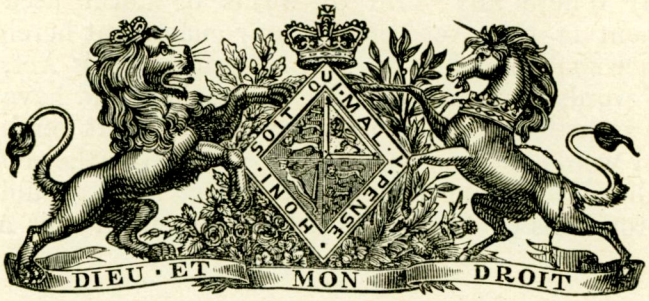
This Act is amended by the Act No. 17, 1912, and by the Act No. 6, 1919. See also the Act No. 57, 1916.

New South Wales.



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Schedule A.

2. (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed.

(2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.

(3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

PART I.

Facilitation of leases.

Where the words of column 1 of Schedule C employed, the deed to have the same effect as if words of column 2 were inserted.

11 Vic. No. 28, s. 1.

Schedules B, C.

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B to this Act, or whenever any party to any other deed which is expressed to be made in pursuance of this Act employs in such deed respectively any of the forms of words contained in column 1 of Schedule C to this Act, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Ibid. s. 2.

4. Every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

Remuneration for deed under the Act not to be by length only.

Ibid. s. 3.

5. In taxing any bill for preparing and executing any deed under this Part of this Act, or which might be prepared under this Part of this Act, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof.

6.

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Deed not taking effect by this Act to be valid. *Ibid.* s. 4.

PART II.

Tenements recovery by ejectment in the Supreme Court.

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord. 17 Vic. No. 21, s. 160.

8. (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord or lessor to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or if the same cannot be legally served, or no tenant be in actual possession of the premises, may affix a copy thereof upon the door of any demised messuage, or if such action in ejectment is not for the recovery of any messuage, then upon some notorious place of the land comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry.

Proceedings in ejectment by landlord for non-payment of rent. *Ibid.* s. 161.

(2) If judgment is recovered against the defendant for non-appearance, and it is proved to the Court by affidavit (or if the defendant appears and it is proved at the trial) that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

Landlord to recover judgment and execution.

(3) If the lessee, or his assignee or other person claiming or deriving under the said lease, suffers judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, such lessee, assignee, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease.

If judgment unsatisfied or proceedings not taken in equity, lease to be discharged.

(4)

Successful lessee to recover costs.

(4) If on such ejectment a verdict passes for the defendant, or the claimant is nonsuited therein, such defendant shall recover his costs.

Rights of mortgagee not in possession unprejudiced for six months after judgment.

(5) Nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear and all costs and damages sustained by such landlord or lessor, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21, s. 162.

9. (1) In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the said lease within the time aforesaid proceeds for relief in equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment unless within forty days after the claimant in such ejectment has filed his defence, such person brings into Court and lodges with the Master in Equity such sum of money as the lessor or landlord in his defence swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said action, there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security, subject to the decree of the Court.

(2) If such proceedings in equity are taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what is so made by the lessor or landlord be less than the rent reserved on the said lease, then the said lessee or his assignee, before he is restored to his possession, shall pay such lessor or landlord the difference between the money so made by him and the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs, proceedings to cease.
Ibid. s. 163.

10. (1) If the tenant or his assignee at any time before the trial in such ejectment pays or tenders to the lessor or landlord, his executors, or administrators, or his or their attorney in that cause, or pays into Court all the rent and arrears, together with the costs, all further proceedings on the said ejectment shall cease and be discontinued.

(2) If such lessee, his executors, administrators, or assigns, upon such proceedings as aforesaid, is relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Ibid. ss. 164, 175.

11. (1) Where the term or interest of any tenant holding under a lease or agreement in writing any lands for any term or number of years certain, or from year to year, has expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, refuses to deliver

deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

Rule or summons for the tenant to give bail.

(2) Upon the appearance of the party, on an affidavit of service of the writ and notice, the landlord producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

(3) The Court or Judge upon cause shown (or upon affidavit of the service of the rule or summons in case no cause is shown) may make the same absolute in the whole or in part, and may order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute.

(4) If the party neglects or refuses to find such bail as aforesaid, and lays no ground to induce the Court or Judge to enlarge the time for obeying such order of the Court or Judge, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with may sign judgment for recovery of possession and costs of suit in the form contained in Schedule D to this Act, or to the like effect, or in such other form as the Judges of the Supreme Court may order.

Schedule D.

In ejectment between landlord and tenant mesne profits down to the verdict or to a day specified therein may be recovered.

Ibid. s. 165.

12. (1) Wherever it appears on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney has been served with due notice of trial the Judge before whom such cause comes on to be tried shall, whether the defendant appears upon such trial or not, permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration

expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein.

(2) The jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury.

(3) Nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security.
Ibid. s. 166.

13. (1) In all cases in which such security has been given as aforesaid if upon the trial a verdict passes for the claimant, unless it appears to the Judge before whom the same has been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such Judge shall not (except by consent) make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge directs, conditioned not to commit any waste or act in the nature of waste or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict has been given to the day on which execution is finally made upon the judgment, or the same be set aside as the case may be.

Recognisances to be taken as the Judges direct.
Ibid. s. 167.

(2) All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner, and by and before such persons as the Judges direct, and shall be filed with the prothonotary, for which respectively the sum of two shillings and sixpence and no more shall be paid.

(3) No action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof has actually been delivered to the landlord.

Saving of former remedies.
Ibid. s. 168.

14. Nothing in this part of this Act contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Rules may be made and times altered.
Ibid. s. 174.

15. The Judges of the Supreme Court may make all such general rules and orders for the effectual execution of this Part of this Act,

Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters in this Part contained, and the performance thereof; and also for altering the number of days by this Part of this Act limited for the doing of anything by this Part of this Act prescribed or authorised to be done, and substituting other days for the same as in their judgment is necessary or proper.

PART III.

Tenements recovery in the District Courts.

Definition of "landlord." 22 Vic. No. 18, s. 1.

16. In the construction of this Part of this Act the term "landlord" means the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, anyone of the persons entitled to such reversion.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined. 22 Vic. No. 18, s. 19.

17. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him is actually occupying such land or any part thereof and neglects or refuses to give up possession thereof, the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing.

(2) If the defendant does not at the time named in the summons show good cause to the contrary, then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the Judge of the Court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge thinks fit to name.

Issue of warrant.

(3) If such order be not obeyed the Registrar of the Court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. *Ibid.* s. 20.

(4) In any such plaint against a tenant as in this section is specified, the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.
Ibid. s. 21.

18. (1) When the rent of any corporeal hereditaments, where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year, is for one-half year in arrear, and the landlord has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the District Court nearest to the premises for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry.

(2) If the tenant five clear days before the return day of such summons pays into Court all the rent in arrear and the costs the said action shall cease.

(3) If the tenant does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises and of the fact that one-half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to satisfy such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear (and of the service of the summons if the defendant does not appear thereto), the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing as the Judge thinks fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

(4) If such order is not obeyed, and such rent and costs are not so paid, the Registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

(5) The plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons.
Ibid. s. 106.

19. (1) A summons under this Part of this Act may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and either his place of dwelling is unknown or admission thereto cannot be obtained for serving such summons, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Bailiff's powers under warrant.
Ibid. s. 107.

(2) A warrant under this Part of this Act shall justify the bailiff therein named in entering upon the premises therein named, with

with such assistants as he may deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

(3) Every such warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order as aforesaid, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up or served.

Currency of warrants. *Ibid.* s. 108.

20. (1) Where any summons under this Part of this Act is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which the summons has issued.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend. *Ibid.* s. 22.

(2) Such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

21. (1) If any action is brought against any person for anything done in pursuance of this Part of this Act, he may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said Court previous to the issuing of such warrant.

Indemnity to persons acting under this Part. 22 Vic. No. 18, s. 111.

(2) If the plaintiff in such action has a verdict pass against him, or is non-suited, or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

PART IV.

Tenements recovery before justices of the peace.

22. In the construction of this part of this Act:—

Interpretation. 17 Vic. No. 10, s. 10.

(*a*) The word "land" means land, houses, or other corporeal hereditaments:

(*b*) The word "agent" means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord.

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired

Possession of tenements may be recovered before justices.

expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may exhibit his information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which such land is situated usually sit to show cause why such landlord should not be put into possession of such land.

17 Vic. No. 10, s. 2.

Information to be exhibited and summons issued.

Proceedings at the hearing.

(2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the creation and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may—

(*a*) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land; and

(*b*) award to the said landlord or to such agent by whom such information is exhibited his costs to be assessed by the said justices or the majority of them; and

(*c*) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him, within a period to be therein named, not less than seven nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he may deem necessary, and to give possession accordingly.

(3)

(3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his information, and award to the person against whom such information is exhibited, his costs to be assessed by such justices or the majority of them.

(5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.

(6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall, by themselves, their counsel, or attorneys, have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Power to justices to suspend proceedings on adjudication for fifteen days. *Ibid.* s. 3.

24. The justices by whom such adjudication is made may, postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication, either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices seems meet.

Mode of service of summon. *Ibid.* s. 4

25. (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the wife or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

26.

Execution of warrant to be suspended upon security to defend an action for recovery of the land.
Ibid. s. 5.

26. (1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the land in question in the Supreme Court or any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such lastmentioned costs or otherwise.

Bond to be approved and certified by justices.
Ibid. s. 6.

27. (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.

Mode for parties to bond to obtain relief in case of delay on the part of the landlord or otherwise.

(2) The Court in which any such action of ejectment or other action for the recovery of the land in question is brought, or any Judge of such Court, may, upon application of any party bound by such bond, his heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every rule or order made by such Court or Judge thereupon shall have the nature and effect of a defeasance to such bond.

(3) If any unreasonable delay occurs in the bringing or prosecuting such action of ejectment, or other action for recovery of such land, then the Court in which such action is brought, or any Judge

Judge thereof, or in case no such action has been brought and been depending, then any Court having competent jurisdiction to entertain any such action or any Judge of any such Court, may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.

(4) If a rule or order is thereupon made by any such Court or Judge ordering such bond to be cancelled, then such bond shall, upon the making of such rule or order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

Protection of justices, constables, &c. *Ibid.* s. 7.

28. It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

Where landlord's title good not to be deemed a trespasser, but be liable by action on the case for any irregularity. *Ibid.* s. 8.

29. In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in possession of such land, lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part of this Act, but the party aggrieved may bring an action on the case for any such irregularity or informality.

Act not to protect persons who have no legal right. *Ibid.* s. 9.

30. (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.

And in such case landlord to be deemed a trespasser.

(2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him, or by his direction, without the authority of any such warrant.

(3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

31.

Conduct of proceedings where no express provision. *Ibid.* s. 11.

31. (1) In all proceedings under this Part of this Act not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part of this Act not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part of this Act.

And provisions therein as to prohibition to apply to proceedings under this Act.

(2) Any person who feels aggrieved by any order, adjudication, or warrant made or issued under the provisions of this Part of this Act, shall have the like power of applying to the Supreme Court or any Judge thereof, in order to obtain a prohibition to restrain any justice of the peace by whom any such order, adjudication, or warrant may be made or issued, and the landlord or agent, or tenant or occupier, or other person interested in maintaining the same, from proceeding (or from further proceeding as the case may be) upon or in respect of the same as by the Act *fourteenth Victoria number forty-three*, or by any other Act in force for the time being, is given to any person feeling aggrieved by the summary convictions or orders of justices of the peace.

(3) All the provisions of the said last-recited Act, or any other Act in force for the time being, in reference to applying for and obtaining a prohibition in respect of such summary convictions and orders, shall apply to and be in force in respect to every such order, adjudication, and warrant made or issued under the provisions of this Part of this Act, and shall be applied in like manner, as far as practicable, as if every such order, adjudication, or warrant were such a summary conviction or order as aforesaid.

Power of amendment. *Ibid.* s. 12.

32. No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part of this Act for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Forms. *Ibid.* s. 13. Schedule E.

33. (1) The forms in Schedule E to this Act, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part of this Act.

(2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

PART

PART V.

Distress for rent and replevin.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11, s. 1. Schedule F.

34. (1) No person to whom any rent is due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted, such warrant to be in the form or to the effect of Schedule F to this Act.

(2) Whenever the person signing such warrant is unable to write his name his signature shall be attested by a justice of the peace, a solicitor, or a clerk of petty sessions.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. *Ibid.* s. 2.

35. (1) Every person making any such distress as the agent or bailiff of another, shall first procure from such person two copies of the before-mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him resident at the place where the said distress is made.

(2) If there is no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Person distraining to forthwith make out and deliver inventory. *Ibid.* s. 3. Schedule G.

36. (1) Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of Schedule G to this Act of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him resident at the place where the said distress is made.

(2) If there is no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Goods distrained for rent may be sold after the expiration of five days. *Ibid.* s. 4.

37. (1) Where any goods or chattels are distrained for any rent, and the tenant or owner of the goods so distrained does not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law, then in such case after the expiration of the said five days the person distraining shall cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer, or by a sheriff's bailiff or a bailiff of some Court of petty sessions or District Court for the best price that can be got for the same towards satisfaction of the said rent and the charges of the said distress and sale.

(2)

(2) The overplus (if any) shall be forthwith handed over to the said tenant or owner, and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand.

Not to apply to corn, grass, hops, &c., growing at time of seizure.

(3) Nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever growing at the time of the same being seized as a distress.

Tenant or owner may direct order of sale.

Ibid. s. 5.

38. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers' goods not to be seized for rent.

Ibid. s. 6.

39. (1) No distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sewing-machine, type-writing machine, or mangle exempt from distress.

No. 43, 1898, s. 1.

(2) No distress shall be made on any sewing-machine, type-writing machine, or mangle the property of or under hire to any female person for any rent claimed in respect of the premises or place in which such sewing-machine, type-writing machine, or mangle may be:

Provided that any one such person shall not be entitled to have more than one sewing-machine, one type-writing machine, or one mangle protected from distress under the provisions of this subsection.

Sheriff or deputy may grant replevin.

7 Vic. No. 13, s. 4.

40. The sheriff and any deputy specially appointed by him for that purpose may grant replevin in all cases where a sheriff in England had power to grant replevin on the eighth day of December, in the year one thousand eight hundred and forty-three, being the day on which the Act seventh Victoria number thirteen came into force.

Justices may grant replevin in certain cases.

15 Vic. No. 11, s. 8.

41. (1) In all cases in which any distress is made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid, any justice of the peace may grant a replevin of the goods distrained, and for that purpose may take a replevin bond with sufficient sureties.

(2) Neither such justice of the peace, nor the sheriff, nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he has acted bonâ fide and with reasonable care and caution.

Security to be taken before deliverance of any distress.

Ibid. s. 9.

42. (1) The said sheriff or deputy or justice of the peace as aforesaid shall, before deliverance is made by him of any distresses, take from the person to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness

witness or witnesses (which oath the person granting replevin is hereby authorised to administer) conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded.

(2) The sheriff, deputy, or justice of the peace taking any such bond shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness.

(3) If the bond so taken and assigned is forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name.

(4) The Court where such action is brought may, by rule or order, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule or order shall have the nature and effect of a defeasance to such bond.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe.

Ibid. s. 10.

43. (1) Every action of replevin, except those over which jurisdiction is hereinafter given to District Courts and Courts of Petty Sessions, shall be commenced in the Supreme Court by writ of summons in such form as the Judges shall prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with.

(2) The laws and statutes in force in England on the nineteenth day of December, in the year one thousand eight hundred and fifty-one (being the date on which the Act fifteenth Victoria number eleven came into force), applicable to actions of replevin shall be in force in this Colony, and be applied in the administration of justice so far as the same can be applied within New South Wales.

Forms of precept to replevy, and of replevin and assignment bonds.

Ibid. s. 11.

Schedules I, K, L.

44. Every precept to replevy shall be in the form or to the effect of Schedule I to this Act, and every replevin bond shall be taken in the form or to the effect of Schedule K to this Act, and every assignment of such bond shall be in the form or to the effect of Schedule L to this Act.

Fees to be charged.

Ibid. s. 12.

45. The sheriff and every such deputy as aforesaid, and every justice of the peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

District Courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds.

Ibid. s. 19.

22 Vic. No. 18, s. 29.

46. (1) The respective Courts of Petty Sessions established, or hereafter to be established in any part of New South Wales, other than the county of Cumberland, and the District Courts shall hear and determine within their respective jurisdictions all actions of replevin relating

relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress is or ought to have been made does not exceed thirty pounds in amount or value.

(2) All proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner and shall be subject to the same rules as other actions in the said District Courts or Courts of Petty Sessions.

As to form of plaint in such actions. *Ibid.* s. 14. Schedule M.

47. The plaint in actions of replevin in the said District Courts or Courts of Petty Sessions shall be in the form or to the effect of Schedule M to this Act.

Court may award damages or may order replevin bond to be given up. *Ibid.* s. 15.

48. (1) If at the hearing of any such action of replevin before any of the said District Courts or Courts of Petty Sessions it appears that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said Court, such Court may give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress.

(2) If it appears that no rent was due at the time of such distress, or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, such Court may order the replevin bond to be delivered up to the party complaining of the distress, and also may give judgment for the plaintiff for such damages as the Court thinks fit, and if necessary may order that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due.

Court may order goods distrained on to be sold. *Ibid.* s. 16.

49. (1) Every such District Court or Court of Petty Sessions on the hearing of any such action of replevin may order that the goods distrained shall be returned to the party who distrained the same, and in every such case where the goods distrained are actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond.

(2) All such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Charges of distress defined. *Ibid.* s. 17. Schedule H.

50. Where any distress is made by the person to whom the rent is due, or by any bailiff or agent as aforesaid, the charges in Schedule H to this Act and no other shall be made in respect thereof.

Distress may be secured and sold on premises. *Ibid.* s. 18.

51. (1) Any person lawfully taking any distress for rent may impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as are most fit and convenient for the impounding and securing such distress, and may sell and dispose of the same upon the premises.

(2) Any person whatsoever after the expiration of the five days hereinbefore mentioned may come and go to and from such place

or

or part of the said premises where any distress for rent is impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof.

(3) If any pound breach or rescous is made of any goods or chattels distrained for rent the person grieved thereby shall in a special action on the case for the wrong thereby sustained recover his treble damages and costs of suit against the offender 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 to his use or possession. Treble damages for pound breach.

52. In case any such distress and sale as aforesaid is made by virtue or colour of this Act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person distraining or to him in whose name or right such distress is taken as aforesaid, then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall by action of trespass or upon the case to be brought against the person so distraining, his executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. Double damages and costs against unlawful distrainer. *Ibid.* s. 19.

53. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof. No appraisement necessary in distress for rent. *Ibid.* s. 20.

54. If any person— Penalty for distraining, &c., contrary to law. *Ibid.* s. 22.

(*a*) knowingly and wilfully distrains for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate; or

(*b*) neglects or refuses to deliver one of such duplicates to the tenant or owner as hereinbefore directed; or

(*c*) when distraining for rent neglects or refuses to make out and deliver or post up such inventory as aforesaid; or

(*d*) charges more for any distress or sale than is authorised by this Act; or

(*e*) refuses to give such account in writing of any sale as hereinbefore provided,

he shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved before any two justices of the peace.

55. For the purposes of this Part of this Act the word "rent" shall be held to mean any rent reserved upon any demise lease or contract whatsoever. Interpretation clause. *Ibid.* s. 24.

56. (1) The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done, and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined. Executors of lessor may distrain. 5 Vic. No. 9, s. 27.

(2)

(2) Provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due, and that all provisions in force by law, relating to distresses for rent, shall be applicable to every distress so made.

PART VI.

Restriction of effect of waiver and license by lessor.

Restriction on effect of license to alien. 26 Vic. No. 12, s. 1.

57. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease, is, at any time after the passing of this Act, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses. *Ibid.* s. 2.

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases. *Ibid.* s. 3.

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the

the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction of effect of waiver. *Ibid.* s. 4.

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Preceding provisions to apply to leases for a term of years absolute, &c. *Ibid.* s. 10.

61. The provisions contained in this Part of this Act shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULES.

SCHEDULE A.

Date of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice	Section 27.
7 Vic. No. 13 ...	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic. No. 28 ..	Leases Facilitation	The whole Act.
15 Vic. No. 11 ...	Distress for Rent	The whole Act.
17 Vic. No. 10 ..	Tenements Recovery	The whole Act.
17 Vic. No. 21 ...	Common Law Procedure	Sections 160–168 (both inclusive), and so much of s. 174 as refers to ss. 160–168.
22 Vic. No. 18 .	District Courts	Sections 19–23 (both inclusive), 106–108 (both inclusive), and so much of s. 1 as refers to ss. 19–23 and 106–108.
26 Vic. No. 12 ...	Trust Property	Sections 1–4 (both inclusive).
No. 43, 1898 ...	Distress for Rent Restriction Act, 1898 ...	The whole Act.

SCHEDULE B.

This indenture made the day of one thousand eight hundred and ninety (*or other year*), in pursuance of the Landlord and Tenant Act of 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c., (*parcels*) from the day of for the term of thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C.

Directions as to the forms in this Schedule.

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms four and five in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants one to ten shall be taken to be made with, and the proviso eleven to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1.	Column 2.
1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes.	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
And to repair.	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the

Column 1—*continued.*	Column 2—*continued.*
	the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [ ] year.	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [ ] year.	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner, and also will re-paper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid
7. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice.	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly,

Column 1—*continued.*	Column 2—*continued.*
8. That the said (*lessee*) will not use premises as a shop.	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave.	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair.	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12 The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE

SCHEDULE D.

In the Supreme Court of New South Wales.—

The day of A.D. 18 .

[*Date of writ.*]

Cumberland } to wit. }

On the day and year above written, a writ of our Lady the Queen issued forth of this Court with a notice thereunder written, the tenor of which writ and notice follows in these words, that is to say:—

[*Here copy the writ and notice, which latter may be as follows*—]

"Take notice that you will be required if ordered by the Court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action."

And C.D. has appeared by his attorney [*or* in person], to the said writ, and has been ordered to give bail pursuant to the statute, and has failed so to do. Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances, together with £ for costs of suit.

SCHEDULE E.

Form of information.

District of (*the district in which the land of which possession is sought to be recovered is situate*) to wit. } Be it remembered that on the day of in the year of our Lord one thousand eight hundred and at in the Colony of New South Wales (A.B.) *or* (C.D. the agent of A.B.) the landlord of the land hereinafter described, informed me Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years *or* from year to year, *or* from month to month, *or* from week to week, *or* at will *or* at sufferance, *or otherwise as the case may be*) (all that parcel of land *or* all that messuage or dwelling-house *or otherwise according to the fact*) situate in the (*city, town, parish, or other locality*) in the district of in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) *or* (was determined by notice to quit *or* demand of possession) on or about the day of (then instant *or* last past *or otherwise according to the fact*), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) *or* (G.H., a person claiming under the said E.F.), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) *or* (G.H.) to the possession of such land, and thereupon the said (A.B.) *or* (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid on the day and year first above written before me. }

J.P.
The Justice above named.

Form

Form of summons.

To [E.F.] *or* [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) *or* (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*), which (expired by effluxion of time *or otherwise as averred in the information*) on or about the day of (now instant *or* last past *or otherwise as averred in the information*), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the day of now (instant) *or* (next ensuing) at the hour of of the clock in the forenoon at (*the place where the petty sessions of the district in which the land in question is situated usually sit*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the day of in the year of our Lord one thousand eight hundred and .

J.P.

The justice above named.

Form of adjudication in favour of landlord and award of costs to him or his agent.

District of (*as in information*) to wit. } WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.), praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) *or* (E.F., under whom it was also therein alleged the said G.H. claimed), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*) which (expired by effluxion of time *or otherwise as in the information*) on or about the day of (then instant *or* last past *or otherwise as averred in the information*), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of now (instant) *or* (last past) at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) *or* (G.H.) should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid been duly heard by and before us (*the justices making adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices by whom the matter is heard*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid,

aforesaid, we being (all) *or* (a majority of) the justices then and there sitting. And the said (A.B.) *or* (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) *or* (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) *or* (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) *or* (G.H.) to the possession of the said land, and that the said (E.F.) *or* (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) *or* (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself touching the matter of the said information, but did not show any reasonable cause to us], *or* [and whereas the said (E.F.) *or* (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the day of (*here name a day not less than seven clear days from the date of the warrant*), and ending on the day of (*here name a day not more than thirty clear days from the date of the warrant*). (*Here add in case costs shall be awarded to the landlord or his agent*)—And we do assess the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of which said sum of money we do award to the said (A.B.) *or* (C.D.) for his said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.)

Witness our hands and seals the day of in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

J.P. (L.S.)

Form of warrant of possession.

District of (*as in information*) to wit. } [To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter mentioned and to each of them.

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of , and ending

ending on the day of (*as in adjudication*): Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add* "or Christmas Day" or "Good Friday" *as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) *or* (C D.), or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) *or* (C.D. as such agent as aforesaid on behalf of the said A.B.)

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.

J.P.

Form of bond as security to defend action and supersede execution of warrant.

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself, his heirs, executors, and administrators severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord, one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on the day now (instant) *or* (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) *or* (C.D. the agent of the abovenamed A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his agent*], and the said justices assessed the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (*as in the adjudication*), which sum they did award to the said (A.B.) *or* (C.D.) for his said costs; and the said justices did order and adjudge that the same should be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) *or* (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said Part of the said Act should be given should be the above-named sum of pounds; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved hereof as such bond as aforesaid: Now, the condition of the above-written bond is such that (in case the said A.B., his heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) *or* (G.H.), his executors or administrators, or any person on his or their behalf, shall pay to the said A.B., his heirs, executors, or administrators, all such costs of suit as shall be awarded to

or

or recovered by the said A.B., his heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)
M.N. (L.S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

Form of memorandum to be written on or annexed to such bond and signed by the justices.

We, the justices named in this (*or* the annexed) bond, do hereby certify that we approve thereof.

As witness our hands the day of , in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of adjudication in favour of tenant or occupier and award of costs to him.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served, whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of , now (instant) *or* (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there, to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid, we being (all) *or* (a majority of) the justices then and there sitting, and the said (E.F.) *or* (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) *or* (C.D.) (having failed to appear) *or* (having also appeared but having failed to give proof to our satisfaction) in support of his said information, we do, therefore, adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier*—). And we do assess the costs of the said (E.F.) *or* (G.H.) of appearing and defending and opposing the said information at the sum of , which said sum of money we do award to the said (E.F.) *or* (G.H.) for his said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) *or* (C.D.).

Witness our hands and seals the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L.S.)

Form

Form of distress warrant for non-payment of costs.

[**To** a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a person specially named for the purposes hereinafter mentioned.]

Or [To and persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the day of now (instant) *or* (last past) at (*the place where the adjudication took place*) in the district of in the Colony of New South Wales, the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.), under and by virtue of the provisions of Part IV of The Landlord and Tenant Act, 1899, was duly heard and adjudicated upon by (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the said Colony (*describing the jurisdiction of the justices making the adjudication*), and such adjudication was in favour of the said (A.B.) *or* (C.D. on behalf of the said A.B.) *or* (E.F.) *or* (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) in the premises at the sum of (*as in the adjudication*), and did award to the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) the said sum of money for his said costs, and did order and adjudge that the same should be paid forthworth by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) [or by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.). And whereas the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.), and if within the period of clear days after the making of such distress, the said sum of money above mentioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the clerk of the petty sessions of the justices of the peace for the said district of , in order that he may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.)

Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

SCHEDULE F.

Warrant to distrain.

I, A.B., of , do hereby authorise 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 pounds, being the amount of rent due to me for the same on the day of last [*or* instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18 .

A.B.

[*or* A.B. by his attorney G.H.]

SCHEDULE

SCHEDULE G.

Inventory.

I have this day [*if distress made by a bailiff here add* by virtue of the warrant a copy of which is hereunder written] 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 pounds, being the amount of rent due to me [*or if the distress be made by a bailiff* to A.B., of] for the same on the day last [*or* instant].

Dated this day of A.D. 18 .

A.B., landlord,
[*or* C.D., bailiff.]

[*And if distress made by a bailiff, enumerate the goods and chattels at full length, then insert a copy of the warrant to distrain.*]

SCHEDULE H.

Charges of distress.

	£	s.	d.
Costs of levy where made by an agent or bailiff under the authority of a warrant to distrain according to the following scale—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 2½ per cent.

Advertisements—the money paid for their insertion if such advertisements be required by the person whose goods are distrained.

SCHEDULE I.

Precept to replevy.

A.B., Esquire, sheriff [*or* deputy specially appointed by the sheriff or one of Her Majesty's justices assigned to keep the peace], to C.D., my bailiff—Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels, to wit [*specifying them*], and also for making a return thereof if return thereof shall be adjudged, therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels, which the said G.H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of A.D. 18 .

A.B., sheriff
[*or* sheriff's deputy *or* justice of the peace.]

SCHEDULE K.

Replevin bond.

Know all men by these presents that we, J.P., of [*place of abode and addition*], C.D., of [*place of abode and addition*], and L.H., of [*place of abode and addition*], are held and firmly bound to A.B., Esquire, sheriff of New South Wales [*or* deputy specially appointed by the sheriff *or* one of Her Majesty's justices assigned to keep the peace], in the sum of [*insert double the value of the goods and chattels*] of lawful money of

of Great Britain, to be paid to the said A.B., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this day of A.D. 18

Whereas the above A.B., upon the complaint of the above J.P., hath consented to deliver and replevy to the said J.P. the goods and chattels following, to wit [*enumerate the whole of the property*], which J.N., of [*place of abode and addition*], hath taken and wrongfully withheld as the said J.P. alleges—

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of New South Wales, or in some competent District Court or court of petty sessions, and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A.B. against the said J. N. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered in the presence of }

J.P. (L.S.)
C.D. (L.S.)
L.H. (L.S.)

SCHEDULE L.

Assignment of bond.

Know all men by these presents, that I, the within-named A.B., have at the request of the within-named J.N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18 .

Signed, sealed, and delivered in the presence of }

A. B. (L.S.)

SCHEDULE M.

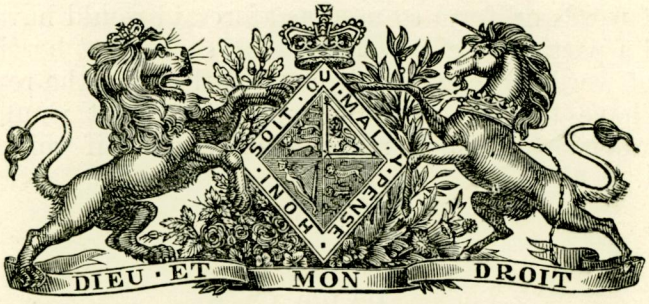
Plaint.

A.B. of [*insert place of residence*], complains of C.D. of [*insert place of residence*], for that the said C.D. did on the day of last [*or* instant] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B., that is to say [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C.D. alleged to be due to him for rent.

By Authority: Reprinted by WILLIAM APPLEGATE GULLICK, Government Printer, Sydney, 1920.

[1s. 7d.]

New South Wales.



ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

* *

Act No. 18, 1899.

An Act to consolidate the Statutes relating to the law of Landlord and Tenant. [Assented to, 20th November, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall be called the "Landlord and Tenant Act of 1899," and is divided into Parts, as follows:—

PART I.—*Facilitation of leases*—*ss.* 3–6.
PART II.—*Tenements recovery by ejectment in the Supreme Court*—*ss.* 7–15.
PART III.—*Tenements recovery in the District Courts*—*ss.* 16-21.
PART IV.—*Tenements recovery before Justices of the Peace*—*ss.* 22–33.
PART V.—*Distress for rent and replevin*—*ss.* 34–56.
PART VI.—*Restriction of effect of waiver and license by lessor*—*ss.* 57–61.

Schedule A.

2. (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed.

(2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.

(3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

PART I.

Facilitation of leases.

Where the words of column 1 of Schedule C employed, the deed to have the same effect as if words of column 2 were inserted.

11 Vic. No. 28, s. 1.

Schedules B, C.

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B to this Act, or whenever any party to any other deed which is expressed to be made in pursuance of this Act employs in such deed respectively any of the forms of words contained in column 1 of Schedule C to this Act, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Ibid. s. 2.

4. Every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

Remuneration for deed under the Act not to be by length only.

Ibid. s. 3.

5. In taxing any bill for preparing and executing any deed under this Part of this Act, or which might be prepared under this Part of this Act, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof.

6.

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Deed not taking effect by this Act to be valid. *Ibid.* s. 4.

PART II.

Tenements recovery by ejectment in the Supreme Court.

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord. 17 Vic. No. 21, s. 160.

8. (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord or lessor to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or if the same cannot be legally served, or no tenant be in actual possession of the premises, may affix a copy thereof upon the door of any demised messuage, or if such action in ejectment is not for the recovery of any messuage, then upon some notorious place of the land comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry.

Proceedings in ejectment by landlord for non-payment of rent. *Ibid.* s. 161.

(2) If judgment is recovered against the defendant for non-appearance, and it is proved to the Court by affidavit (or if the defendant appears and it is proved at the trial) that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

Landlord to recover judgment and execut on.

(3) If the lessee, or his assignee or other person claiming or deriving under the said lease, suffers judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, such lessee, assignee, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease.

If judgment unsatisfied or proceedings not taken in equity, lease to be discharged.

(4)

Successful lessee to recover costs.

(4) If on such ejectment a verdict passes for the defendant, or the claimant is nonsuited therein, such defendant shall recover his costs.

Rights of mortgagee not in possession unprejudiced for six months after judgment.

(5) Nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear and all costs and damages sustained by such landlord or lessor, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21, s. 162.

9. (1) In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the said lease within the time aforesaid proceeds for relief in equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment unless within forty days after the claimant in such ejectment has filed his defence, such person brings into Court and lodges with the Master in Equity such sum of money as the lessor or landlord in his defence swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said action, there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security, subject to the decree of the Court.

(2) If such proceedings in equity are taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what is so made by the lessor or landlord be less than the rent reserved on the said lease, then the said lessee or his assignee, before he is restored to his possession, shall pay such lessor or landlord the difference between the money so made by him and the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs, proceedings to cease.
Ibid. s. 163.

10. (1) If the tenant or his assignee at any time before the trial in such ejectment pays or tenders to the lessor or landlord, his executors, or administrators, or his or their attorney in that cause, or pays into Court all the rent and arrears, together with the costs, all further proceedings on the said ejectment shall cease and be discontinued.

(2) If such lessee, his executors, administrators, or assigns, upon such proceedings as aforesaid, is relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Ibid. ss. 164, 175.

11. (1) Where the term or interest of any tenant holding under a lease or agreement in writing any lands for any term or number of years certain, or from year to year, has expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, refuses to deliver

deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

Rule or summons for the tenant to give bail.

(2) Upon the appearance of the party, on an affidavit of service of the writ and notice, the landlord producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

(3) The Court or Judge upon cause shown (or upon affidavit of the service of the rule or summons in case no cause is shown) may make the same absolute in the whole or in part, and may order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute.

(4) If the party neglects or refuses to find such bail as aforesaid, and lays no ground to induce the Court or Judge to enlarge the time for obeying such order of the Court or Judge, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with may sign judgment for recovery of possession and costs of suit in the form contained in Schedule D to this Act, or to the like effect, or in such other form as the Judges of the Supreme Court may order.

Schedule D.

In ejectment between landlord and tenant mesne profits down to the verdict or to a day specified therein may be recovered.

Ibid. s. 165.

12. (1) Wherever it appears on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney has been served with due notice of trial the Judge before whom such cause comes on to be tried shall, whether the defendant appears upon such trial or not, permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration

expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein.

(2) The jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury.

(3) Nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security.

Ibid. s. 166.

13. (1) In all cases in which such security has been given as aforesaid if upon the trial a verdict passes for the claimant, unless it appears to the Judge before whom the same has been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such Judge shall not (except by consent) make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge directs, conditioned not to commit any waste or act in the nature of waste or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict has been given to the day on which execution is finally made upon the judgment, or the same be set aside as the case may be.

Recognisances to be taken as the Judges direct.

Ibid. s. 167.

(2) All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner, and by and before such persons as the Judges direct, and shall be filed with the prothonotary, for which respectively the sum of two shillings and sixpence and no more shall be paid.

(3) No action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof has actually been delivered to the landlord.

Saving of former remedies.

Ibid. s. 168.

14. Nothing in this part of this Act contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Rules may be made and times altered.

Ibid. s. 174.

15. The Judges of the Supreme Court may make all such general rules and orders for the effectual execution of this Part of this Act,

Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters in this Part contained, and the performance thereof; and also for altering the number of days by this Part of this Act limited for the doing of anything by this Part of this Act prescribed or authorised to be done, and substituting other days for the same as in their judgment is necessary or proper.

PART III.

Tenements recovery in the District Courts.

Definition of "landlord." 22 Vic. No. 18, s. 1.

16. In the construction of this Part of this Act the term "landlord" means the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, anyone of the persons entitled to such reversion.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined. 22 Vic. No. 18, s. 19.

17. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him is actually occupying such land or any part thereof and neglects or refuses to give up possession thereof, the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing.

(2) If the defendant does not at the time named in the summons show good cause to the contrary, then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the Judge of the Court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge thinks fit to name.

Issue of warrant.

(3) If such order be not obeyed the Registrar of the Court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. *Ibid.* s. 20.

(4) In any such plaint against a tenant as in this section is specified, the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.
Ibid. s. 21.

18. (1) When the rent of any corporeal hereditaments, where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year, is for one-half year in arrear, and the landlord has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the District Court nearest to the premises for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry.

(2) If the tenant five clear days before the return day of such summons pays into Court all the rent in arrear and the costs the said action shall cease.

(3) If the tenant does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises and of the fact that one-half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to satisfy such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear (and of the service of the summons if the defendant does not appear thereto), the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing as the Judge thinks fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

(4) If such order is not obeyed, and such rent and costs are not so paid, the Registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

(5) The plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons.
Ibid. s. 106.

19. (1) A summons under this Part of this Act may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and either his place of dwelling is unknown or admission thereto cannot be obtained for serving such summons, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Bailiff's powers under warrant.
Ibid. s. 107.

(2) A warrant under this Part of this Act shall justify the bailiff therein named in entering upon the premises therein named, with

with such assistants as he may deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

(3) Every such warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order as aforesaid, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up or served.

Currency of warrants. *Ibid.* s. 108.

20. (1) Where any summons under this Part of this Act is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which the summons has issued.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend. *Ibid.* s. 22.

(2) Such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

21. (1) If any action is brought against any person for anything done in pursuance of this Part of this Act, he may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said Court previous to the issuing of such warrant.

Indemnity to persons acting under this Part. 22 Vic. No. 18, s. 111.

(2) If the plaintiff in such action has a verdict pass against him, or is non-suited, or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

PART IV.

Tenements recovery before justices of the peace.

22. In the construction of this part of this Act:—

(*a*) The word "land" means land, houses, or other corporeal hereditaments:

(*b*) The word "agent" means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord.

Interpretation. 17 Vic. No. 10, s. 10.

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired

Possession of tenements may be recovered before justices.

expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may exhibit his information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which such land is situated usually sit to show cause why such landlord should not be put into possession of such land.

17 Vic. No. 10, s. 2.

Information to be exhibited and summons issued.

Proceedings at the hearing.

(2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the creation and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may—

(*a*) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land; and

(*b*) award to the said landlord or to such agent by whom such information is exhibited his costs to be assessed by the said justices or the majority of them; and

(*c*) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him, within a period to be therein named, not less than seven nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he may deem necessary, and to give possession accordingly.

(3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his information, and award to the person against whom such information is exhibited, his costs to be assessed by such justices or the majority of them.

(5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.

(6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall, by themselves, their counsel, or attorneys, have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Power to justices to suspend proceedings on adjudication for fifteen days.
Ibid. s. 3.

24. The justices by whom such adjudication is made may, postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication, either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices seems meet.

Mode of service of summons.
Ibid. s. 4

25. (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the wife or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

26.

Execution of warrant to be suspended upon security to defend an action for recovery of the land.
Ibid. s. 5.

26. (1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the land in question in the Supreme Court or any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such lastmentioned costs or otherwise.

Bond to be approved and certified by justices.
Ibid. s. 6.

27. (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.

Mode for parties to bond to obtain relief in case of delay on the part of the landlord or otherwise.

(2) The Court in which any such action of ejectment or other action for the recovery of the land in question is brought, or any Judge of such Court, may, upon application of any party bound by such bond, his heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every rule or order made by such Court or Judge thereupon shall have the nature and effect of a defeasance to such bond.

(3) If any unreasonable delay occurs in the bringing or prosecuting such action of ejectment, or other action for recovery of such land, then the Court in which such action is brought, or any Judge

Judge thereof, or in case no such action has been brought and been depending, then any Court having competent jurisdiction to entertain any such action or any Judge of any such Court, may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.

(4) If a rule or order is thereupon made by any such Court or Judge ordering such bond to be cancelled, then such bond shall, upon the making of such rule or order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

Protection of justices, constables, &c. *Ibid.* s. 7.

28. It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

Where landlord's title good not to be deemed a trespasser, but be liable by action on the case for any irregularity. *Ibid.* s. 8.

29. In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in possession of such land, lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part of this Act, but the party aggrieved may bring an action on the case for any such irregularity or informality.

Act not to protect persons who have no legal right. *Ibid.* s. 9.

30. (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.

And in such case landlord to be deemed a trespasser.

(2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him, or by his direction, without the authority of any such warrant.

(3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

Conduct of proceedings where no express provision.
Ibid. s. 11.

31. (1) In all proceedings under this Part of this Act not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part of this Act not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part of this Act.

And provisions therein as to prohibition to apply to proceedings under this Act.

(2) Any person who feels aggrieved by any order, adjudication, or warrant made or issued under the provisions of this Part of this Act, shall have the like power of applying to the Supreme Court or any Judge thereof, in order to obtain a prohibition to restrain any justice of the peace by whom any such order, adjudication, or warrant may be made or issued, and the landlord or agent, or tenant or occupier, or other person interested in maintaining the same, from proceeding (or from further proceeding as the case may be) upon or in respect of the same as by the Act *fourteenth Victoria number forty-three*, or by any other Act in force for the time being, is given to any person feeling aggrieved by the summary convictions or orders of justices of the peace.

(3) All the provisions of the said last-recited Act, or any other Act in force for the time being, in reference to applying for and obtaining a prohibition in respect of such summary convictions and orders, shall apply to and be in force in respect to every such order, adjudication, and warrant made or issued under the provisions of this Part of this Act, and shall be applied in like manner, as far as practicable, as if every such order, adjudication, or warrant were such a summary conviction or order as aforesaid.

Power of amendment.
Ibid. s. 12.

32. No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part of this Act for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Forms.
Ibid. s. 13.
Schedule E.

33. (1) The forms in Schedule E to this Act, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part of this Act.

(2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

PART V.

Distress for rent and replevin.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11, s. 1. Schedule F.

34. (1) No person to whom any rent is due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted, such warrant to be in the form or to the effect of Schedule F to this Act.

(2) Whenever the person signing such warrant is unable to write his name his signature shall be attested by a justice of the peace, a solicitor, or a clerk of petty sessions.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. *Ibid.* s. 2.

35. (1) Every person making any such distress as the agent or bailiff of another, shall first procure from such person two copies of the before-mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him resident at the place where the said distress is made.

(2) If there is no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Person distraining to forthwith make out and deliver inventory. *Ibid.* s. 3. Schedule G.

36. (1) Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of Schedule G to this Act of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him resident at the place where the said distress is made.

(2) If there is no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

Goods distrained for rent may be sold after the expiration of five days. *Ibid.* s. 4.

37. (1) Where any goods or chattels are distrained for any rent, and the tenant or owner of the goods so distrained does not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law, then in such case after the expiration of the said five days the person distraining shall cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer, or by a sheriff's bailiff or a bailiff of some Court of petty sessions or District Court for the best price that can be got for the same towards satisfaction of the said rent and the charges of the said distress and sale.

(2)

(2) The overplus (if any) shall be forthwith handed over to the said tenant or owner, and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand.

Not to apply to corn, grass, hops, &c., growing at time of seizure.

(3) Nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever growing at the time of the same being seized as a distress.

Tenant or owner may direct order of sale.

Ibid. s. 5.

38. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers' goods not to be seized for rent.

Ibid. s. 6.

39. (1) No distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sewing-machine, type-writing machine, or mangle exempt from distress.

No. 43, 1898, s. 1.

(2) No distress shall be made on any sewing-machine, type-writing machine, or mangle the property of or under hire to any female person for any rent claimed in respect of the premises or place in which such sewing-machine, type-writing machine, or mangle may be:

Provided that any one such person shall not be entitled to have more than one sewing-machine, one type-writing machine, or one mangle protected from distress under the provisions of this subsection.

Sheriff or deputy may grant replevin.

7 Vic. No. 13, s. 4.

40. The sheriff and any deputy specially appointed by him for that purpose may grant replevin in all cases where a sheriff in England had power to grant replevin on the eighth day of December, in the year one thousand eight hundred and forty-three, being the day on which the Act seventh Victoria number thirteen came into force.

Justices may grant replevin in certain cases.

15 Vic. No. 11, s. 8.

41. (1) In all cases in which any distress is made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid, any justice of the peace may grant a replevin of the goods distrained, and for that purpose may take a replevin bond with sufficient sureties.

(2) Neither such justice of the peace, nor the sheriff, nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he has acted bonâ fide and with reasonable care and caution.

Security to be taken before deliverance of any distress.

Ibid. s. 9.

42. (1) The said sheriff or deputy or justice of the peace as aforesaid shall, before deliverance is made by him of any distresses, take from the person to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness

witness or witnesses (which oath the person granting replevin is hereby authorised to administer) conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded.

(2) The sheriff, deputy, or justice of the peace taking any such bond shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness.

(3) If the bond so taken and assigned is forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name.

(4) The Court where such action is brought may, by rule or order, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule or order shall have the nature and effect of a defeasance to such bond.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe.

Ibid. s. 10.

43. (1) Every action of replevin, except those over which jurisdiction is hereinafter given to District Courts and Courts of Petty Sessions, shall be commenced in the Supreme Court by writ of summons in such form as the Judges shall prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with.

(2) The laws and statutes in force in England on the nineteenth day of December, in the year one thousand eight hundred and fifty-one (being the date on which the Act fifteenth Victoria number eleven came into force), applicable to actions of replevin shall be in force in this Colony, and be applied in the administration of justice so far as the same can be applied within New South Wales.

Forms of precept to replevy, and of replevin and assignment bonds.

Ibid. s. 11.

Schedules I, K, L.

44. Every precept to replevy shall be in the form or to the effect of Schedule I to this Act, and every replevin bond shall be taken in the form or to the effect of Schedule K to this Act, and every assignment of such bond shall be in the form or to the effect of Schedule L to this Act.

Fees to be charged.

Ibid. s. 12.

45. The sheriff and every such deputy as aforesaid, and every justice of the peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

District Courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds.

Ibid. s. 19.

22 Vic. No. 18, s. 29.

46. (1) The respective Courts of Petty Sessions established, or hereafter to be established in any part of New South Wales, other than the county of Cumberland, and the District Courts shall hear and determine within their respective jurisdictions all actions of replevin relating

relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress is or ought to have been made does not exceed thirty pounds in amount or value.

(2) All proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner and shall be subject to the same rules as other actions in the said District Courts or Courts of Petty Sessions.

As to form of plaint in such actions. *Ibid.* s. 14. Schedule M.

47. The plaint in actions of replevin in the said District Courts or Courts of Petty Sessions shall be in the form or to the effect of Schedule M to this Act.

Court may award damages or may order replevin bond to be given up. *Ibid.* s. 15.

48. (1) If at the hearing of any such action of replevin before any of the said District Courts or Courts of Petty Sessions it appears that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said Court, such Court may give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress.

(2) If it appears that no rent was due at the time of such distress, or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, such Court may order the replevin bond to be delivered up to the party complaining of the distress, and also may give judgment for the plaintiff for such damages as the Court thinks fit, and if necessary may order that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due.

Court may order goods distrained on to be sold. *Ibid.* s. 16.

49. (1) Every such District Court or Court of Petty Sessions on the hearing of any such action of replevin may order that the goods distrained shall be returned to the party who distrained the same, and in every such case where the goods distrained are actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond.

(2) All such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Charges of distress defined. *Ibid.* s. 17. Schedule H.

50. Where any distress is made by the person to whom the rent is due, or by any bailiff or agent as aforesaid, the charges in Schedule H to this Act and no other shall be made in respect thereof.

Distress may be secured and sold on premises. *Ibid.* s. 18.

51. (1) Any person lawfully taking any distress for rent may impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as are most fit and convenient for the impounding and securing such distress, and may sell and dispose of the same upon the premises.

(2) Any person whatsoever after the expiration of the five days hereinbefore mentioned may come and go to and from such place

or

or part of the said premises where any distress for rent is impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof.

(3) If any pound breach or rescous is made of any goods or chattels distrained for rent the person grieved thereby shall in a special action on the case for the wrong thereby sustained recover his treble damages and costs of suit against the offender 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 to his use or possession.

Treble damages for pound breach.

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

Double damages and costs against unlawful distrainer.
Ibid. s. 19.

53. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof.

No appraisement necessary in distress for rent.
Ibid. s. 20.

54. If any person—

(*a*) knowingly and wilfully distrains for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate; or

(*b*) neglects or refuses to deliver one of such duplicates to the tenant or owner as hereinbefore directed; or

(*c*) when distraining for rent neglects or refuses to make out and deliver or post up such inventory as aforesaid; or

(*d*) charges more for any distress or sale than is authorised by this Act; or

(*e*) refuses to give such account in writing of any sale as hereinbefore provided,

he shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved before any two justices of the peace.

Penalty for distraining, &c., contrary to law.
Ibid. s. 22.

55. For the purposes of this Part of this Act the word "rent" shall be held to mean any rent reserved upon any demise lease or contract whatsoever.

Interpretation clause.
Ibid. s. 24.

56. (1) The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done, and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined.

Executors of lessor may distrain.
5 Vic. No. 9, s. 27.

(2)

(2) Provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due, and that all provisions in force by law, relating to distresses for rent, shall be applicable to every distress so made.

PART VI.

Restriction of effect of waiver and license by lessor.

Restriction on effect of license to alien. 26 Vic. No. 12, s. 1.

57. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease, is, at any time after the passing of this Act, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses. *Ibid.* s. 2.

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases. *Ibid.* s. 3.

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the

the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction of effect of waiver. *Ibid.* s. 4.

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Preceding provisions to apply to leases for a term of years absolute, &c. *Ibid.* s. 10.

61. The provisions contained in this Part of this Act shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULES.

SCHEDULE A.

Date of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice	Section 27.
7 Vic. No. 13 ...	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic. No. 28 ...	Leases Facilitation	The whole Act.
15 Vic. No. 11 ...	Distress for Rent	The whole Act.
17 Vic. No. 10 ...	Tenements Recovery	The whole Act.
17 Vic. No. 21 ...	Common Law Procedure	Sections 160–168 (both inclusive), and so much of s. 174 as refers to ss. 160–168.
22 Vic. No. 18 .	District Courts	Sections 19–23 (both inclusive), 106–108 (both inclusive), and so much of s. 1 as refers to ss. 19–23 and 106–108.
26 Vic. No. 12 ...	Trust Property	Sections 1–4 (both inclusive).
No. 43, 1898 ...	Distress for Rent Restriction Act, 1898 ...	The whole Act.

SCHEDULE

SCHEDULE B.

This indenture made the day of one thousand eight hundred and ninety (*or other year*), in pursuance of the Landlord and Tenant Act of 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c., (*parcels*) from the day of for the term of thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C.

Directions as to the forms in this Schedule.

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms four and five in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants one to ten shall be taken to be made with, and the proviso eleven to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1.	Column 2.
1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes.	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
And to repair.	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the

Column 1—*continued.*	Column 2—*continued.*
	the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [ ] year.	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [ ] year.	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner, and also will re-paper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid
7. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice.	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice. well and sufficiently repair and make good accordingly,

Column 1—*continued.*	Column 2—*continued.*
8. That the said (*lessee*) will not use premises as a shop.	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave.	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair.	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12 The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE

SCHEDULE D.

In the Supreme Court of New South Wales.—

The day of A.D. 18 .

[*Date of writ.*]

Cumberland } to wit. }

On the day and year above written, a writ of our Lady the Queen issued forth of this Court with a notice thereunder written, the tenor of which writ and notice follows in these words, that is to say:—

[*Here copy the writ and notice, which latter may be as follows*—]

"Take notice that you will be required if ordered by the Court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action."

And C.D. has appeared by his attorney [*or* in person], to the said writ, and has been ordered to give bail pursuant to the statute, and has failed so to do. Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances, together with £ for costs of suit.

SCHEDULE E.

Form of information.

District of (*the district in which the land of which possession is sought to be recovered is situate*) } to wit. } Be it remembered that on the day of in the year of our Lord one thousand eight hundred and at in the Colony of New South Wales (A.B.) *or* (C.D. the agent of A.B.) the landlord of the land hereinafter described, informed me Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years *or* from year to year, *or* from month to month, *or* from week to week, *or* at will *or* at sufferance, *or otherwise as the case may be*) (all that parcel of land *or* all that messuage or dwelling-house *or otherwise according to the fact*) situate in the (*city, town, parish, or other locality*) in the district of in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) *or* (was determined by notice to quit *or* demand of possession) on or about the day of (then instant *or* last past *or otherwise according to the fact*), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) *or* (G.H., a person claiming under the said E.F.), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) *or* (G.H.) to the possession of such land, and thereupon the said (A.B.) *or* (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid } on the day and year first above written before me. }

J.P.

The Justice above named.

Form

Form of summons.

To [E.F.] *or* [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) *or* (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*), which (expired by effluxion of time *or otherwise as averred in the information*) on or about the day of (now instant *or* last past *or otherwise as averred in the information*), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the day of now (instant) *or* (next ensuing) at the hour of of the clock in the forenoon at (*the place where the petty sessions of the district in which the land in question is situated usually sit*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the day of in the year of our Lord one thousand eight hundred and

J.P.

The justice above named.

Form of adjudication in favour of landlord and award of costs to him or his agent.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.), praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) *or* (E.F., under whom it was also therein alleged the said G.H. claimed), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*) which (expired by effluxion of time *or otherwise as in the information*) on or about the day of (then instant *or* last past *or otherwise as averred in the information*), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of now (instant) *or* (last past) at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) *or* (G.H.) should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid been duly heard by and before us (*the justices making adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices by whom the matter is heard*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid,

aforesaid, we being (all) *or* (a majority of) the justices then and there sitting. And the said (A.B.) *or* (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) *or* (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) *or* (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) *or* (G.H.) to the possession of the said land, and that the said (E.F.) *or* (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) *or* (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself touching the matter of the said information, but did not show any reasonable cause to us], *or* [and whereas the said (E.F.) *or* (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the day of (*here name a day not less than seven clear days from the date of the warrant*), and ending on the day of (*here name a day not more than thirty clear days from the date of the warrant*). (*Here add in case costs shall be awarded to the landlord or his agent*)—And we do assess the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of which said sum of money we do award to the said (A.B.) *or* (C.D.) for his said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.)

Witness our hands and seals the day of in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L.S.)

Form of warrant of possession.

District of (*as in information*) to wit. } [To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter mentioned and to each of them.

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of , and ending

ending on the day of (*as in adjudication*) : Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add* " or Christmas Day " or " Good Friday " *as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) *or* (C.D.), or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) *or* (C.D. as such agent as aforesaid on behalf of the said A.B.)

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.

J.P.

Form of bond as security to defend action and supersede execution of warrant.

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself, his heirs, executors, and administrators severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord, one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on the day now (instant) *or* (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) *or* (C.D. the agent of the abovenamed A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his agent*], and the said justices assessed the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (*as in the adjudication*), which sum they did award to the said (A.B.) *or* (C.D.) for his said costs ; and the said justices did order and adjudge that the same should be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) *or* (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said Part of the said Act should be given should be the above-named sum of pounds ; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved thereof as such bond as aforesaid : Now, the condition of the above-written bond is such that (in case the said A.B., his heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) *or* (G.H.), his executors or administrators, or any person on his or their behalf, shall pay to the said A.B., his heirs, executors, or administrators, all such costs of suit as shall be awarded to

or

or recovered by the said A.B., his heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)
M.N. (L.S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

Form of memorandum to be written on or annexed to such bond and signed by the justices.

We, the justices named in this (*or* the annexed) bond, do hereby certify that we approve thereof.

As witness our hands the day of , in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of adjudication in favour of tenant or occupier and award of costs to him.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served, whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of , now (instant) *or* (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there, to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid, we being (all) *or* (a majority of) the justices then and there sitting, and the said (E.F.) *or* (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) *or* (C.D.) (having failed to appear) *or* (having also appeared but having failed to give proof to our satisfaction) in support of his said information, we do, therefore, adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier*—). And we do assess the costs of the said (E.F.) *or* (G.H.) of appearing and defending and opposing the said information at the sum of , which said sum of money we do award to the said (E.F.) *or* (G.H.) for his said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) *or* (C.D.).

Witness our hands and seals the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L.S.)

Form

Form of distress warrant for non-payment of costs.

[To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a person specially named for the purposes hereinafter mentioned.]

Or [To and persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the day of now (instant) *or* (last past) at (*the place where the adjudication took place*) in the district of in the Colony of New South Wales, the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.), under and by virtue of the provisions of Part IV of The Landlord and Tenant Act, 1899, was duly heard and adjudicated upon by (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the said Colony (*describing the jurisdiction of the justices making the adjudication*), and such adjudication was in favour of the said (A.B.) *or* (C.D. on behalf of the said A.B.) *or* (E.F.) *or* (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) in the premises at the sum of (*as in the adjudication*), and did award to the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) the said sum of money for his said costs, and did order and adjudge that the same should be paid forthworth by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) [or by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.). And whereas the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.), and if within the period of clear days after the making of such distress, the said sum of money above mentioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the clerk of the petty sessions of the justices of the peace for the said district of , in order that he may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.)

Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

SCHEDULE F.

Warrant to distrain.

I, A.B., of , do hereby authorise 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 pounds, being the amount of rent due to me for the same on the day of last [*or* instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18 .

A.B.

[*or* A.B. by his attorney G.H.]

SCHEDULE

SCHEDULE G.

Inventory.

I have this day [*if distress made by a bailiff here add* by virtue of the warrant a copy of which is hereunder written] 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 pounds, being the amount of rent due to me [*or if the distress be made by a bailiff* to A.B., of] for the same on the day last [*or* instant].

Dated this day of A.D. 18 .

A.B., landlord,
[*or* C.D., bailiff.]

[*And if distress made by a bailiff, enumerate the goods and chattels at full length, then insert a copy of the warrant to distrain.*]

SCHEDULE H.

Charges of distress.

	£	s.	d.
Costs of levy where made by an agent or bailiff under the authority of a warrant to distrain according to the following scale—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 2½ per cent.

Advertisements—the money paid for their insertion if such advertisements be required by the person whose goods are distrained.

SCHEDULE I.

Precept to replevy.

A.B., Esquire, sheriff [*or* deputy specially appointed by the sheriff or one of Her Majesty's justices assigned to keep the peace], to C.D., my bailiff—Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels, to wit [*specifying them*], and also for making a return thereof if return thereof shall be adjudged, therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels, which the said G.H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of A.D. 18 .

A.B., sheriff
[*or* sheriff's deputy *or* justice of the peace.]

SCHEDULE K.

Replevin bond.

Know all men by these presents that we, J.P., of [*place of abode and addition*], C.D., of [*place of abode and addition*], and L.H., of [*place of abode and addition*], are held and firmly bound to A.B., Esquire, sheriff of New South Wales [*or* deputy specially appointed by the sheriff *or* one of Her Majesty's justices assigned to keep the peace], in the sum of [*insert double the value of the goods and chattels*] of lawful money of

of Great Britain, to be paid to the said A.B., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this day of A.D. 18

Whereas the above A.B., upon the complaint of the above J.P., hath consented to deliver and replevy to the said J.P. the goods and chattels following, to wit [*enumerate the whole of the property*], which J.N., of [*place of abode and addition*], hath taken and wrongfully withheld as the said J.P. alleges—

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of New South Wales, or in some competent District Court or court of petty sessions, and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A.B. against the said J. N. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered in the presence of

J.P. (L.S.)
C.D. (L.S.)
L.H. (L.S.)

SCHEDULE L.

Assignment of bond.

Know all men by these presents, that I, the within-named A.B., have at the request of the within-named J.N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18 .

Signed, sealed, and delivered in the presence of

A. B. (L.S.)

SCHEDULE M.

Plaint.

A.B. of [*insert place of residence*], complains of C.D. of [*insert place of residence*], for that the said C.D. did on the day of last [*or* instant] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B., that is to say [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C.D. alleged to be due to him for rent.

By Authority: William Applegate Gullick, Government Printer, Sydney, 1899.

[1*s.* 6*d.*]

I Certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE COUNCIL, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Legislative Council Chamber,
Sydney, 8th November, 1899.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

* *

Act No. 18, 1899.

An Act to consolidate the Statutes relating to the law of Landlord and Tenant. [Assented to, 20th November, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall be called the "Landlord and Tenant Act of 1899," and is divided into Parts, as follows:—

PART I.—*Facilitation of leases*—*ss.* 3–6.
PART II.—*Tenements recovery by ejectment in the Supreme Court*—*ss.* 7–15.
PART III.—*Tenements recovery in the District Courts*—*ss.* 16-21.
PART IV.—*Tenements recovery before Justices of the Peace*—*ss.* 22–33.
PART V.—*Distress for rent and replevin*—*ss.* 34–56.
PART VI.—*Restriction of effect of waiver and license by lessor*—*ss.* 57–61.

Schedule A.

2. (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed.

(2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.

(3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

PART I.

Facilitation of leases.

Where the words of column 1 of Schedule C employed, the deed to have the same effect as if words of column 2 were inserted.

11 Vic. No. 28, s. 1.

Schedules B, C.

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B to this Act, or whenever any party to any other deed which is expressed to be made in pursuance of this Act employs in such deed respectively any of the forms of words contained in column 1 of Schedule C to this Act, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Ibid. s. 2.

4. Every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

Remuneration for deed under the Act not to be by length only.

Ibid. s. 3.

5. In taxing any bill for preparing and executing any deed under this Part of this Act, or which might be prepared under this Part of this Act, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof.

6.

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Deed not taking effect by this Act to be valid. *Ibid.* s. 4.

PART II.

Tenements recovery by ejectment in the Supreme Court.

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord. 17 Vic. No. 21, s. 160.

8. (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord or lessor to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or if the same cannot be legally served, or no tenant be in actual possession of the premises, may affix a copy thereof upon the door of any demised messuage, or if such action in ejectment is not for the recovery of any messuage, then upon some notorious place of the land comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry.

Proceedings in ejectment by landlord for non-payment of rent. *Ibid.* s. 161.

(2) If judgment is recovered against the defendant for non-appearance, and it is proved to the Court by affidavit (or if the defendant appears and it is proved at the trial) that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

Landlord to recover judgment and execution.

(3) If the lessee, or his assignee or other person claiming or deriving under the said lease, suffers judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, such lessee, assignee, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease.

If judgment unsatisfied or proceedings not taken in equity, lease to be discharged.

(4)

Successful lessee to recover costs.

(4) If on such ejectment a verdict passes for the defendant, or the claimant is nonsuited therein, such defendant shall recover his costs.

Rights of mortgagee not in possession unprejudiced for six months after judgment.

(5) Nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear and all costs and damages sustained by such landlord or lessor, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21, s. 162.

9. (1) In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the said lease within the time aforesaid proceeds for relief in equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment unless within forty days after the claimant in such ejectment has filed his defence, such person brings into Court and lodges with the Master in Equity such sum of money as the lessor or landlord in his defence swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said action, there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security, subject to the decree of the Court.

(2) If such proceedings in equity are taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what is so made by the lessor or landlord be less than the rent reserved on the said lease, then the said lessee or his assignee, before he is restored to his possession, shall pay such lessor or landlord the difference between the money so made by him and the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs, proceedings to cease.
Ibid. s. 163.

10. (1) If the tenant or his assignee at any time before the trial in such ejectment pays or tenders to the lessor or landlord, his executors, or administrators, or his or their attorney in that cause, or pays into Court all the rent and arrears, together with the costs, all further proceedings on the said ejectment shall cease and be discontinued.

(2) If such lessee, his executors, administrators, or assigns, upon such proceedings as aforesaid, is relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Ibid. ss. 164, 175.

11. (1) Where the term or interest of any tenant holding under a lease or agreement in writing any lands for any term or number of years certain, or from year to year, has expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, refuses to deliver

deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

Rule or summons for the tenant to give bail.

(2) Upon the appearance of the party, on an affidavit of service of the writ and notice, the landlord producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

(3) The Court or Judge upon cause shown (or upon affidavit of the service of the rule or summons in case no cause is shown) may make the same absolute in the whole or in part, and may order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute.

(4) If the party neglects or refuses to find such bail as aforesaid, and lays no ground to induce the Court or Judge to enlarge the time for obeying such order of the Court or Judge, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with may sign judgment for recovery of possession and costs of suit in the form contained in Schedule D to this Act, or to the like effect, or in such other form as the Judges of the Supreme Court may order. Schedule D.

In ejectment between landlord and tenant mesne profits down to the verdict or to a day specified therein may be recovered. *Ibid.* s. 165.

12. (1) Wherever it appears on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney has been served with due notice of trial the Judge before whom such cause comes on to be tried shall, whether the defendant appears upon such trial or not, permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration

expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein.

(2) The jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury.

(3) Nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security.

Ibid. s. 166.

13. (1) In all cases in which such security has been given as aforesaid if upon the trial a verdict passes for the claimant, unless it appears to the Judge before whom the same has been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such Judge shall not (except by consent) make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge directs, conditioned not to commit any waste or act in the nature of waste or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict has been given to the day on which execution is finally made upon the judgment, or the same be set aside as the case may be.

Recognisances to be taken as the Judges direct.

Ibid. s. 167.

(2) All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner, and by and before such persons as the Judges direct, and shall be filed with the prothonotary, for which respectively the sum of two shillings and sixpence and no more shall be paid.

(3) No action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof has actually been delivered to the landlord.

Saving of former remedies.

Ibid. s. 168.

14. Nothing in this part of this Act contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Rules may be made and times altered.

Ibid. s. 171.

15. The Judges of the Supreme Court may make all such general rules and orders for the effectual execution of this Part of this Act,

Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters in this Part contained, and the performance thereof; and also for altering the number of days by this Part of this Act limited for the doing of anything by this Part of this Act prescribed or authorised to be done, and substituting other days for the same as in their judgment is necessary or proper.

PART III.

Tenements recovery in the District Courts.

Definition of "landlord." 22 Vic. No. 18, s. 1.

16. In the construction of this Part of this Act the term "landlord" means the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, anyone of the persons entitled to such reversion.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined. 22 Vic. No. 18, s. 19.

17. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him is actually occupying such land or any part thereof and neglects or refuses to give up possession thereof, the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing.

(2) If the defendant does not at the time named in the summons show good cause to the contrary, then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the Judge of the Court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge thinks fit to name.

Issue of warrant.

(3) If such order be not obeyed the Registrar of the Court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. *Ibid.* s. 20.

(4) In any such plaint against a tenant as in this section is specified, the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.
Ibid. s. 21.

18. (1) When the rent of any corporeal hereditaments, where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year, is for one-half year in arrear, and the landlord has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the District Court nearest to the premises for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry.

(2) If the tenant five clear days before the return day of such summons pays into Court all the rent in arrear and the costs the said action shall cease.

(3) If the tenant does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises and of the fact that one-half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to satisfy such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear (and of the service of the summons if the defendant does not appear thereto), the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing as the Judge thinks fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

(4) If such order is not obeyed, and such rent and costs are not so paid, the Registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

(5) The plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons.
Ibid. s. 106.

19. (1) A summons under this Part of this Act may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and either his place of dwelling is unknown or admission thereto cannot be obtained for serving such summons, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Bailiff's powers under warrant.
Ibid. s. 107.

(2) A warrant under this Part of this Act shall justify the bailiff therein named in entering upon the premises therein named, with

with such assistants as he may deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

(3) Every such warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order as aforesaid, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up or served.

Currency of warrants. *Ibid.* s. 108.

20. (1) Where any summons under this Part of this Act is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which the summons has issued.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend. *Ibid.* s. 22.

(2) Such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

21. (1) If any action is brought against any person for anything done in pursuance of this Part of this Act, he may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said Court previous to the issuing of such warrant.

Indemnity to persons acting under this Part. 22 Vic. No. 18, s. 111.

(2) If the plaintiff in such action has a verdict pass against him, or is non-suited, or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

PART IV.

Tenements recovery before justices of the peace.

22. In the construction of this part of this Act:—

Interpretation.

(*a*) The word "land" means land, houses, or other corporeal hereditaments:

(*b*) The word "agent" means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord. 17 Vic. No. 10, s. 10.

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired

Possession of tenements may be recovered before justices.

17 Vic. No. 10, s. 2.

expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may exhibit his information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which such land is situated usually sit to show cause why such landlord should not be put into possession of such land.

Information to be exhibited and summons issued.

Proceedings at the hearing.

(2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the creation and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may—

(*a*) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land; and

(*b*) award to the said landlord or to such agent by whom such information is exhibited his costs to be assessed by the said justices or the majority of them; and

(*c*) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him, within a period to be therein named, not less than seven nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he may deem necessary, and to give possession accordingly.

(3)

(3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his information, and award to the person against whom such information is exhibited, his costs to be assessed by such justices or the majority of them.

(5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.

(6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall, by themselves, their counsel, or attorneys, have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Power to justices to suspend proceedings on adjudication for fifteen days.
Ibid. s. 3.

24. The justices by whom such adjudication is made may, postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication, either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices seems meet.

Mode of service of summons.
Ibid. s. 4

25. (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the wife or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

26.

Execution of warrant to be suspended upon security to defend an action for recovery of the land.
Ibid. s. 5.

26. (1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the land in question in the Supreme Court or any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such lastmentioned costs or otherwise.

Bond to be approved and certified by justices.
Ibid. s. 6.

27. (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.

Mode for parties to bond to obtain relief in case of delay on the part of the landlord or otherwise.

(2) The Court in which any such action of ejectment or other action for the recovery of the land in question is brought, or any Judge of such Court, may, upon application of any party bound by such bond, his heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every rule or order made by such Court or Judge thereupon shall have the nature and effect of a defeasance to such bond.

(3) If any unreasonable delay occurs in the bringing or prosecuting such action of ejectment, or other action for recovery of such land, then the Court in which such action is brought, or any Judge

Judge thereof, or in case no such action has been brought and been depending, then any Court having competent jurisdiction to entertain any such action or any Judge of any such Court, may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.

(4) If a rule or order is thereupon made by any such Court or Judge ordering such bond to be cancelled, then such bond shall, upon the making of such rule or order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

Protection of justices, constables, &c. *Ibid.* s. 7.

28. It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

Where landlord's title good not to be deemed a trespasser, but be liable by action on the case for any irregularity. *Ibid.* s. 8.

29. In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in possession of such land, lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part of this Act, but the party aggrieved may bring an action on the case for any such irregularity or informality.

Act not to protect persons who have no legal right. *Ibid.* s. 9.

30. (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.

And in such case landlord to be deemed a trespasser.

(2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him, or by his direction, without the authority of any such warrant.

(3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

31.

Conduct of proceedings where no express provision.
Ibid. s. 11.

31. (1) In all proceedings under this Part of this Act not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part of this Act not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part of this Act.

And provisions therein as to prohibition to apply to proceedings under this Act.

(2) Any person who feels aggrieved by any order, adjudication, or warrant made or issued under the provisions of this Part of this Act, shall have the like power of applying to the Supreme Court or any Judge thereof, in order to obtain a prohibition to restrain any justice of the peace by whom any such order, adjudication, or warrant may be made or issued, and the landlord or agent, or tenant or occupier, or other person interested in maintaining the same, from proceeding (or from further proceeding as the case may be) upon or in respect of the same as by the Act *fourteenth Victoria number forty-three*, or by any other Act in force for the time being, is given to any person feeling aggrieved by the summary convictions or orders of justices of the peace.

(3) All the provisions of the said last-recited Act, or any other Act in force for the time being, in reference to applying for and obtaining a prohibition in respect of such summary convictions and orders, shall apply to and be in force in respect to every such order, adjudication, and warrant made or issued under the provisions of this Part of this Act, and shall be applied in like manner, as far as practicable, as if every such order, adjudication, or warrant were such a summary conviction or order as aforesaid.

Power of amendment.
Ibid. s. 12.

32. No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part of this Act for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Forms.
Ibid. s. 13.
Schedule E.

33. (1) The forms in Schedule E to this Act, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part of this Act.

(2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

PART

PART V.

Distress for rent and replevin.

34. (1) No person to whom any rent is due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted, such warrant to be in the form or to the effect of Schedule F to this Act.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11, s. 1. Schedule F.

(2) Whenever the person signing such warrant is unable to write his name his signature shall be attested by a justice of the peace, a solicitor, or a clerk of petty sessions.

35. (1) Every person making any such distress as the agent or bailiff of another, shall first procure from such person two copies of the before-mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him resident at the place where the said distress is made.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. *Ibid.* s. 2.

(2) If there is no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

36. (1) Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of Schedule G to this Act of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him resident at the place where the said distress is made.

Person distraining to forthwith make out and deliver inventory. *Ibid.* s. 3. Schedule G.

(2) If there is no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

37. (1) Where any goods or chattels are distrained for any rent, and the tenant or owner of the goods so distrained does not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law, then in such case after the expiration of the said five days the person distraining shall cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer, or by a sheriff's bailiff or a bailiff of some Court of petty sessions or District Court for the best price that can be got for the same towards satisfaction of the said rent and the charges of the said distress and sale.

Goods distrained for rent may be sold after the expiration of five days. *Ibid.* s. 4.

(2)

(2) The overplus (if any) shall be forthwith handed over to the said tenant or owner, and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand.

Not to apply to corn, grass, hops, &c., growing at time of seizure.

(3) Nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever growing at the time of the same being seized as a distress.

Tenant or owner may direct order of sale.

Ibid. s. 5.

38. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers' goods not to be seized for rent.

Ibid. s. 6.

39. (1) No distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sewing-machine, type-writing machine, or mangle exempt from distress.

No. 43, 1898, s. 1.

(2) No distress shall be made on any sewing-machine, type-writing machine, or mangle the property of or under hire to any female person for any rent claimed in respect of the premises or place in which such sewing-machine, type-writing machine, or mangle may be:

Provided that any one such person shall not be entitled to have more than one sewing-machine, one type-writing machine, or one mangle protected from distress under the provisions of this subsection.

Sheriff or deputy may grant replevin.

Vic. No. 13, s. 4.

40. The sheriff and any deputy specially appointed by him for that purpose may grant replevin in all cases where a sheriff in England had power to grant replevin on the eighth day of December, in the year one thousand eight hundred and forty-three, being the day on which the Act seventh Victoria number thirteen came into force.

Justices may grant replevin in certain cases.

15 Vic. No. 11, s. 8.

41. (1) In all cases in which any distress is made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid, any justice of the peace may grant a replevin of the goods distrained, and for that purpose may take a replevin bond with sufficient sureties.

(2) Neither such justice of the peace, nor the sheriff, nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he has acted bonâ fide and with reasonable care and caution.

Security to be taken before deliverance of any distress.

Ibid. s. 9.

42. (1) The said sheriff or deputy or justice of the peace as aforesaid shall, before deliverance is made by him of any distresses, take from the person to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness

witness or witnesses (which oath the person granting replevin is hereby authorised to administer) conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded.

(2) The sheriff, deputy, or justice of the peace taking any such bond shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness.

(3) If the bond so taken and assigned is forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name.

(4) The Court where such action is brought may, by rule or order, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule or order shall have the nature and effect of a defeasance to such bond.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe.

Ibid. s. 10.

43. (1) Every action of replevin, except those over which jurisdiction is hereinafter given to District Courts and Courts of Petty Sessions, shall be commenced in the Supreme Court by writ of summons in such form as the Judges shall prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with.

(2) The laws and statutes in force in England on the nineteenth day of December, in the year one thousand eight hundred and fifty-one (being the date on which the Act fifteenth Victoria number eleven came into force), applicable to actions of replevin shall be in force in this Colony, and be applied in the administration of justice so far as the same can be applied within New South Wales.

Forms of precept to replevy, and of replevin and assignment bonds.

Ibid. s. 11.

Schedules I, K, L.

44. Every precept to replevy shall be in the form or to the effect of Schedule I to this Act, and every replevin bond shall be taken in the form or to the effect of Schedule K to this Act, and every assignment of such bond shall be in the form or to the effect of Schedule L to this Act.

Fees to be charged.

Ibid. s. 12.

45. The sheriff and every such deputy as aforesaid, and every justice of the peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

District Courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirt pounds.

Ibid. s. 19.

22 Vic. No. 18, s. 29.

46. (1) The respective Courts of Petty Sessions established, or hereafter to be established in any part of New South Wales, other than the county of Cumberland, and the District Courts shall hear and determine within their respective jurisdictions all actions of replevin relating

relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress is or ought to have been made does not exceed thirty pounds in amount or value.

(2) All proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner and shall be subject to the same rules as other actions in the said District Courts or Courts of Petty Sessions.

As to form of plaint in such actions.
Ibid. s. 14.
Schedule M.

47. The plaint in actions of replevin in the said District Courts or Courts of Petty Sessions shall be in the form or to the effect of Schedule M to this Act.

Court may award damages or may order replevin bond to be given up.
Ibid. s. 15.

48. (1) If at the hearing of any such action of replevin before any of the said District Courts or Courts of Petty Sessions it appears that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said Court, such Court may give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress.

(2) If it appears that no rent was due at the time of such distress, or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, such Court may order the replevin bond to be delivered up to the party complaining of the distress, and also may give judgment for the plaintiff for such damages as the Court thinks fit, and if necessary may order that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due.

Court may order goods distrained on to be sold.
Ibid. s. 16.

49. (1) Every such District Court or Court of Petty Sessions on the hearing of any such action of replevin may order that the goods distrained shall be returned to the party who distrained the same, and in every such case where the goods distrained are actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond.

(2) All such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Charges of distress defined.
Ibid. s. 17.
Schedule H.

50. Where any distress is made by the person to whom the rent is due, or by any bailiff or agent as aforesaid, the charges in Schedule H to this Act and no other shall be made in respect thereof.

Distress may be secured and sold on premises.
Ibid. s. 18.

51. (1) Any person lawfully taking any distress for rent may impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as are most fit and convenient for the impounding and securing such distress, and may sell and dispose of the same upon the premises.

(2) Any person whatsoever after the expiration of the five days hereinbefore mentioned may come and go to and from such place

or

or part of the said premises where any distress for rent is impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof.

(3) If any pound breach or rescous is made of any goods or chattels distrained for rent the person grieved thereby shall in a special action on the case for the wrong thereby sustained recover his treble damages and costs of suit against the offender 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 to his use or possession. Treble damages for pound breach.

52. In case any such distress and sale as aforesaid is made by virtue or colour of this Act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person distraining or to him in whose name or right such distress is taken as aforesaid, then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall by action of trespass or upon the case to be brought against the person so distraining, his executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. Double damages and costs against unlawful distrainer. *Ibid.* s. 19.

53. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof. No appraisement necessary in distress for rent. *Ibid.* s. 20.

54. If any person— Penalty for distraining, &c., contrary to law. *Ibid.* s. 22.

(*a*) knowingly and wilfully distrains for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate; or

(*b*) neglects or refuses to deliver one of such duplicates to the tenant or owner as hereinbefore directed; or

(*c*) when distraining for rent neglects or refuses to make out and deliver or post up such inventory as aforesaid; or

(*d*) charges more for any distress or sale than is authorised by this Act; or

(*e*) refuses to give such account in writing of any sale as hereinbefore provided,

he shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved before any two justices of the peace.

55. For the purposes of this Part of this Act the word "rent" shall be held to mean any rent reserved upon any demise lease or contract whatsoever. Interpretation clause. *Ibid.* s. 24.

56. (1) The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done, and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined. Executors of lessor may distrain. 5 Vic. No. 9, s. 27.

(2)

(2) Provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due, and that all provisions in force by law, relating to distresses for rent, shall be applicable to every distress so made.

PART VI.

Restriction of effect of waiver and license by lessor.

Restriction on effect of license to alien. 26 Vic. No. 12, s. 1.

57. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease, is, at any time after the passing of this Act, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses. *Ibid.* s. 2.

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases. *Ibid.* s. 3.

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the

the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction of effect of waiver. *Ibid.* s. 4.

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Preceding provisions to apply to leases for a term of years absolute, &c. *Ibid.* s. 10.

61. The provisions contained in this Part of this Act shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULES.

SCHEDULE A.

Date of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice	Section 27.
7 Vic. No. 13 ...	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic. No. 28 ...	Leases Facilitation	The whole Act.
15 Vic. No. 11 ...	Distress for Rent	The whole Act.
17 Vic. No. 10 ...	Tenements Recovery	The whole Act.
17 Vic. No. 21 ...	Common Law Procedure	Sections 160–168 (both inclusive), and so much of s. 174 as refers to ss. 160–168.
22 Vic. No. 18 .	District Courts	Sections 19–23 (both inclusive), 106–108 (both inclusive), and so much of s. 1 as refers to ss. 19–23 and 106–108.
26 Vic. No. 12 ...	Trust Property	Sections 1–4 (both inclusive).
No. 43, 1898 ...	Distress for Rent Restriction Act, 1898 ...	The whole Act.

SCHEDULE B.

This indenture made the day of one thousand eight hundred and ninety (*or other year*), in pursuance of the Landlord and Tenant Act of 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c., (*parcels*) from the day of for the term of thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C.

Directions as to the forms in this Schedule.

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms four and five in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants one to ten shall be taken to be made with, and the proviso eleven to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1.	Column 2.
1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes.	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
And to repair.	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the

Column 1—*continued.*	Column 2—*continued.*
	the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [ ] year.	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [ ] year.	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner, and also will re-paper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid
7. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice.	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly,

Column 1—*continued.*	Column 2—*continued.*
8. That the said (*lessee*) will not use premises as a shop.	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave.	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair.	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12 The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE

SCHEDULE D.

In the Supreme Court of New South Wales.—

The day of A.D. 18 .

[*Date of writ.*]

Cumberland } to wit. }

On the day and year above written, a writ of our Lady the Queen issued forth of this Court with a notice thereunder written, the tenor of which writ and notice follows in these words, that is to say :—

[*Here copy the writ and notice, which latter may be as follows*—]

"Take notice that you will be required if ordered by the Court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action."

And C.D. has appeared by his attorney [*or* in person], to the said writ, and has been ordered to give bail pursuant to the statute, and has failed so to do. Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances, together with £ for costs of suit.

SCHEDULE E.

Form of information.

District of (*the district in which the land of which possession is sought to be recovered is situate*) to wit. } Be it remembered that on the day of in the year of our Lord one thousand eight hundred and at in the Colony of New South Wales (A.B.) *or* (C.D. the agent of A.B.) the landlord of the land hereinafter described, informed me Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years *or* from year to year, *or* from month to month, *or* from week to week, *or* at will *or* at sufferance, *or otherwise as the case may be*) (all that parcel of land *or* all that messuage or dwelling-house *or otherwise according to the fact*) situate in the (*city, town, parish, or other locality*) in the district of in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) *or* (was determined by notice to quit *or* demand of possession) on or about the day of (then instant *or* last past *or otherwise according to the fact*), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) *or* (G.H., a person claiming under the said E.F.), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) *or* (G.H.) to the possession of such land, and thereupon the said (A.B.) *or* (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid } on the day and year first above written before me. }

J.P.
The Justice above named.

Form

Form of summons.

To [E.F.] *or* [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) *or* (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*), which (expired by effluxion of time *or otherwise as averred in the information*) on or about the day of (now instant *or* last past *or otherwise as averred in the information*), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the day of now (instant) *or* (next ensuing) at the hour of of the clock in the forenoon at (*the place where the petty sessions of the district in which the land in question is situated usually sit*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the day of in the year of our Lord one thousand eight hundred and .

J.P.

The justice above named.

Form of adjudication in favour of landlord and award of costs to him or his agent.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.), praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) *or* (E.F., under whom it was also therein alleged the said G.H. claimed), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*) which (expired by effluxion of time *or otherwise as in the information*) on or about the day of (then instant *or* last past *or otherwise as averred in the information*), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of now (instant) *or* (last past) at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) *or* (G.H.) should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid been duly heard by and before us (*the justices making adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices by whom the matter is heard*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid,

aforesaid, we being (all) *or* (a majority of) the justices then and there sitting. And the said (A.B.) *or* (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) *or* (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) *or* (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) *or* (G.H.) to the possession of the said land, and that the said (E.F.) *or* (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) *or* (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself touching the matter of the said information, but did not show any reasonable cause to us], *or* [and whereas the said (E.F.) *or* (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the day of (*here name a day not less than seven clear days from the date of the warrant*), and ending on the day of (*here name a day not more than thirty clear days from the date of the warrant*). (*Here add in case costs shall be awarded to the landlord or his agent*)—And we do assess the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of which said sum of money we do award to the said (A.B.) *or* (C.D) for his said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.)

Witness our hands and seals the day of in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L S.)

Form of warrant of possession.

District of (*as in information*) to wit. } [To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter mentioned and to each of them.

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of , and ending

ending on the day of (*as in adjudication*) : Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add* " or Christmas Day " or " Good Friday " *as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) *or* (C D.), or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) *or* (C.D. as such agent as aforesaid on behalf of the said A.B.)

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.

J.P.

Form of bond as security to defend action and supersede execution of warrant.

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself, his heirs, executors, and administrators severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord, one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on the day now (instant) *or* (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) *or* (C.D. the agent of the abovenamed A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his agent*], and the said justices assessed the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (*as in the adjudication*), which sum they did award to the said (A.B.) *or* (C.D.) for his said costs ; and the said justices did order and adjudge that the same should be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) *or* (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said Part of the said Act should be given should be the above-named sum of pounds ; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved hereof as such bond as aforesaid : Now, the condition of the above-written bond is such that (in case the said A.B., his heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) *or* (G.H.), his executors or administrators, or any person on his or their behalf, shall pay to the said A.B., his heirs, executors, or administrators, all such costs of suit as shall be awarded to

or

or recovered by the said A.B., his heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)
M.N. (L.S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

Form of memorandum to be written on or annexed to such bond and signed by the justices.

We, the justices named in this (*or* the annexed) bond, do hereby certify that we approve thereof.

As witness our hands the day of , in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of adjudication in favour of tenant or occupier and award of costs to him.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served, whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of , now (instant) *or* (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there, to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid, we being (all) *or* (a majority of) the justices then and there sitting, and the said (E.F.) *or* (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) *or* (C.D.) (having failed to appear) *or* (having also appeared but having failed to give proof to our satisfaction) in support of his said information, we do, therefore, adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier*—). And we do assess the costs of the said (E.F.) *or* (G.H.) of appearing and defending and opposing the said information at the sum of , which said sum of money we do award to the said (E.F.) *or* (G.H.) for his said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) *or* (C.D.).

Witness our hands and seals the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L.S.)

Form

Form of distress warrant for non-payment of costs.

[To a constable or peace officer of or acting for the district of *(or other place as the case may be)* in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district *(or other place as the case may be)* and to each of them.]

Or [To all constables and peace officers of or acting for the district of *(or other place as the case may be)* in the Colony of New South Wales and to each of them.]

Or [To a person specially named for the purposes hereinafter mentioned.]

Or [To and persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the day of now (instant) *or* (last past) at *(the place where the adjudication took place)* in the district of in the Colony of New South Wales, the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.), under and by virtue of the provisions of Part IV of The Landlord and Tenant Act, 1899, was duly heard and adjudicated upon by *(the justices making the adjudication)* of Her Majesty's justices of the peace in and for the said Colony *(describing the jurisdiction of the justices making the adjudication)*, and such adjudication was in favour of the said (A.B.) *or* (C.D. on behalf of the said A.B.) *or* (E.F.) *or* (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) in the premises at the sum of *(as in the adjudication)*, and did award to the said (A.B.) *or* (C D.) *or* (E.F.) *or* (G.H.) the said sum of money for his said costs, and did order and adjudge that the same should be paid forthworth by the said (E.F.) *or* (G.H.) to the said (A B.) *or* (C.D.) [or by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G H.) *or* (A.B.) *or* (C.D.). And whereas the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.), and if within the period of clear days after the making of such distress, the said sum of money above mentioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the clerk of the petty sessions of the justices of the peace for the said district of , in order that he may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.)

Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

SCHEDULE F.

Warrant to distrain.

I, A.B., of , do hereby authorise 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 pounds, being the amount of rent due to me for the same on the day of last [*or* instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18 .

A.B.

[*or* A.B. by his attorney G.H.]

SCHEDULE

SCHEDULE G.

Inventory.

I have this day [*if distress made by a bailiff here add* by virtue of the warrant a copy of which is hereunder written] 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 pounds, being the amount of rent due to me [*or if the distress be made by a bailiff* to A.B., of] for the same on the day last [*or* instant].

Dated this day of A.D. 18 .

A.B., landlord,
[*or* C.D., bailiff.]

[*And if distress made by a bailiff, enumerate the goods and chattels at full length, then insert a copy of the warrant to distrain.*]

SCHEDULE H.

Charges of distress.

	£	s.	d.
Costs of levy where made by an agent or bailiff under the authority of a warrant to distrain according to the following scale—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 2½ per cent.

Advertisements—the money paid for their insertion if such advertisements be required by the person whose goods are distrained.

SCHEDULE I.

Precept to replevy.

A.B., Esquire, sheriff [*or* deputy specially appointed by the sheriff or one of Her Majesty's justices assigned to keep the peace], to C.D., my bailiff—Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels, to wit [*specifying them*], and also for making a return thereof if return thereof shall be adjudged, therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels, which the said G.H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of A.D. 18 .

A.B., sheriff
[*or* sheriff's deputy *or* justice of the peace.]

SCHEDULE K.

Replevin bond.

Know all men by these presents that we, J.P., of [*place of abode and addition*], C.D., of [*place of abode and addition*], and L.H., of [*place of abode and addition*], are held and firmly bound to A.B., Esquire, sheriff of New South Wales [*or* deputy specially appointed by the sheriff *or* one of Her Majesty's justices assigned to keep the peace], in the sum of [*insert double the value of the goods and chattels*] of lawful money of

of Great Britain, to be paid to the said A.B., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this day of A.D. 18

Whereas the above A.B., upon the complaint of the above J.P., hath consented to deliver and replevy to the said J.P. the goods and chattels following, to wit [*enumerate the whole of the property*], which J.N., of [*place of abode and addition*], hath taken and wrongfully withheld as the said J.P. alleges—

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of New South Wales, or in some competent District Court or court of petty sessions, and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A.B. against the said J. N. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered in the presence of

J.P. (L.S.)
C.D. (L.S.)
L.H. (L.S.)

SCHEDULE L.

Assignment of bond.

Know all men by these presents, that I, the within-named A.B., have at the request of the within-named J.N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18 .

Signed, sealed, and delivered in the presence of

A. B. (L.S.)

SCHEDULE M.

Plaint.

A.B. of [*insert place of residence*], complains of C.D. of [*insert place of residence*], for that the said C.D. did on the day of last [*or* instant] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B., that is to say [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C.D. alleged to be due to him for rent.

In the name and on the behalf of Her Majesty I assent to this Act.

BEAUCHAMP,
Governor.

Government House,
Sydney, 20th November, 1899.

Memo. and Certificate to accompany the Landlord and Tenant Bill.

THIS Bill consolidates the whole or parts of the following Acts:—

5 Vic. No. 9;
7 Vic. No. 13;
11 Vic. No. 28;
15 Vic. No. 11;
17 Vic. No. 10;
17 Vic. No. 21;
22 Vic. No. 18;
26 Vic. No. 12;
No. 43, A.D. 1898.

Clause 2 (3). The object of this provision is to protect the inadvertent use of the forms prescribed under the repealed Acts.

Clause 8 (5). In the Act 17 Vic. No. 21, sec. 161, which is taken from the English Common Law Procedure Act, which, again, was taken from an old English Act, 4 Geo. II, c. 28, sec. 2, the words, "or person entitled to the remainder or reversion as aforesaid" have been left in, it would appear clearly by inadvertence. In the old original Act, which referred, *inter alia*, to tenants for lives, they had a meaning: in the Common Law Procedure Act they had none. They are, therefore, omitted, and the section confined to "landlord or lessor."

Clause 9. Some of the technical legal words in this section are modernised.

Clause 11 (2). In the English Common Law Procedure Act, and in our own, it is necessary to apply by summons for a summons. This was a mistake, and entailed useless delay and expense, and is now corrected.

Clause 22. The definition of the word "land" has been retained because it is exclusive: that in the Interpretation Act is inclusive. The definition of the word "person" has been omitted, the word "collegiate" being considered to have no particular effect.

Clause 23 (2). The original section, taken with the original Schedule forms of adjudication and warrant, raises considerable difficulties. (*See exparte Cahill*, 7 *W.N.*, *p.* 138.) The Schedules have been altered to remove these difficulties and obscurities, and to agree more clearly with the law in the Act.

Clause 40. On inquiry of the Sheriff it has been found that sec. 7 of 15 Vic. No. 11 is practically obsolete. The powers given in the present clause, taken from 7 Vic. No. 13, appear to be amply sufficient. No case is known in which the Sheriff has had to appoint a deputy in replevin cases, which are rare.

Schedule C, proviso, column 2. The word "herein" has been substituted for "hereinafter" to correct what appears to have been an inaccuracy in the Schedule to 55 Vic. No. 28 and in the Imperial Act from which that Act was copied; see Cole on ejectment, p. 411.

Schedule E.—Form of distress warrant for non-payment of costs. The clause in the original form directing imprisonment was illegal—see the original sec. 11—and is now omitted.

Except as above noted, I certify that this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Landlord and Tenant Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	5 VICTORIA No. 9.	
27	56	
	7 VICTORIA No. 13.	
4	40	
	11 VICTORIA No. 28.	
1	3	
2	4	
3	5	
4	6	
5	.....	Unnecessary; see Interpretation Act.
6	.....	Unnecessary.
Schedules 1, 2 ...	Schedules B and C.	
	15 VICTORIA No. 11.	
1	34	
2	35	
3	36	
4	37	
5	38	
6	39	
7	.....	Obsolete.
8	41	
9	42	
10	43	
11	44	
12	45	
13	46	
14	47	
15	48	
16	49	
17	50	
18	51	
19	52	
20	53	
21	.....	Spent.
22	54	
23	.....	Similar provision contained in 16 Vic. No. 1, s. 15.
24	55	
Schedules A–G ...	Schedules F–M.	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	17 Victoria No. 10.	
1	.....	Repealing section; spent.
2	23	
3	24	
4	25	
5	26	
6	27	
7	28	
8	29	
9	30	
10	22	Partly unnecessary. See Interpretation Act.
11	31	
12	32	
13	33	
Schedule	Schedule E.	
	17 Victoria No. 21.	
160	7	
161	8	
162	9	
163	10	
164	11	
165	12	
166	13 (1)	
167	13 (2)	
168	14	
174	15	Only partially repealed.
	22 Victoria No. 18.	
1	16	Unrepealed portion will be dealt with in District Courts Act.
19	17	
20	17 (4)	
21	18	
22	19	
23	46	
106	19 (1)	
107	19 (2)	
108	19 (3)	
	26 Victoria No. 12.	
1	57	
2	58	
3	59	
4	60	
10	61	
	No. 43, 1898.	
1	39 (2)	
2	.....	Short title.

This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE ASSEMBLY *for its concurrence.*

Legislative Council Chamber,
Sydney, 2nd August, 1899.

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.

ANNO SEXAGESIMO TERTIO

VICTORIÆ REGINÆ.

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2. (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed. Schedule A.

(2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.

(3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

PART I.

Facilitation of leases.

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B to this Act, or whenever any party to any other deed which is expressed to be made in pursuance of this Act employs in such deed respectively any of the forms of words contained in column 1 of Schedule C to this Act, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number. Where the words of column 1 of Schedule C employed, the deed to have the same effect as if words of column 2 were inserted.

11 Vic. No. 28, s. 1.

Schedules B, C.

4. Every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining. Deed to include all houses, &c.

Ibid. s. 2.

5. In taxing any bill for preparing and executing any deed under this Part of this Act, or which might be prepared under this Part of this Act, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof. Remuneration for deed under the Act not to be by length only.

Ibid. s. 3.

6.

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Deed not taking effect by this Act to be valid. *Ibid.* s. 4.

PART II.

Tenements recovery by ejectment in the Supreme Court.

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord. 17 Vic. No. 21, s. 160.

8. (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord or lessor to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or if the same cannot be legally served, or no tenant be in actual possession of the premises, may affix a copy thereof upon the door of any demised messuage, or if such action in ejectment is not for the recovery of any messuage, then upon some notorious place of the land comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry.

Proceedings in ejectment by landlord for non-payment of rent. *Ibid.* s. 161.

(2) If judgment is recovered against the defendant for non-appearance, and it is proved to the Court by affidavit (or if the defendant appears and it is proved at the trial) that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

Landlord to recover judgment and execut on.

(3) If the lessee, or his assignee or other person claiming or deriving under the said lease, suffers judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, such lessee, assignee, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease.

If judgment unsatisfied or proceedings not taken in equity, lease to be discharged.

(4)

(4) If on such ejectment a verdict passes for the defendant, or the claimant is nonsuited therein, such defendant shall recover his costs. Successful lessee to recover costs.

(5) Nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear and all costs and damages sustained by such landlord or lessor, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed. Rights of mortgagee not in possession unprejudiced for six months after judgment.

9. (1) In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the said lease within the time aforesaid proceeds for relief in equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment unless within forty days after the claimant in such ejectment has filed his defence, such person brings into Court and lodges with the Master in Equity such sum of money as the lessor or landlord in his defence swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said action, there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security, subject to the decree of the Court. Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21, s. 162.

(2) If such proceedings in equity are taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what is so made by the lessor or landlord be less than the rent reserved on the said lease, then the said lessee or his assignee, before he is restored to his possession, shall pay such lessor or landlord the difference between the money so made by him and the reserved rent for the time such lessor or landlord held the said lands.

10. (1) If the tenant or his assignee at any time before the trial in such ejectment pays or tenders to the lessor or landlord, his executors, or administrators, or his or their attorney in that cause, or pays into Court all the rent and arrears, together with the costs, all further proceedings on the said ejectment shall cease and be discontinued. Tenant paying all rent with costs, proceedings to cease.
Ibid. s. 163.

(2) If such lessee, his executors, administrators, or assigns, upon such proceedings as aforesaid, is relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made without any new lease.

11. (1) Where the term or interest of any tenant holding under a lease or agreement in writing any lands for any term or number of years certain, or from year to year, has expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, refuses to deliver Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Ibid. ss. 164, 175.

deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

Rule or summons for the tenant to give bail.

(2) Upon the appearance of the party, on an affidavit of service of the writ and notice, the landlord producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

(3) The Court or Judge upon cause shown (or upon affidavit of the service of the rule or summons in case no cause is shown) may make the same absolute in the whole or in part, and may order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute.

(4) If the party neglects or refuses to find such bail as aforesaid, and lays no ground to induce the Court or Judge to enlarge the time for obeying such order of the Court or Judge, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with may sign judgment for recovery of possession and costs of suit in the form contained in Schedule D to this Act, or to the like effect, or in such other form as the Judges of the Supreme Court may order.

Schedule D.

In ejectment between landlord and tenant mesne profits down to the verdict or to a day specified therein may be recovered.

Ibid. s. 165.

12. (1) Wherever it appears on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney has been served with due notice of trial the Judge before whom such cause comes on to be tried shall, whether the defendant appears upon such trial or not, permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration

expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein.

(2) The jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury.

(3) Nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security. *Ibid.* s. 166.

13. (1) In all cases in which such security has been given as aforesaid if upon the trial a verdict passes for the claimant, unless it appears to the Judge before whom the same has been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such Judge shall not (except by consent) make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge directs, conditioned not to commit any waste or act in the nature of waste or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict has been given to the day on which execution is finally made upon the judgment, or the same be set aside as the case may be.

Recognisances to be taken as the Judges direct. *Ibid.* s. 167.

(2) All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner, and by and before such persons as the Judges direct, and shall be filed with the prothonotary, for which respectively the sum of two shillings and sixpence and no more shall be paid.

(3) No action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof has actually been delivered to the landlord.

Saving of former remedies. *Ibid.* s. 168.

14. Nothing in this part of this Act contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Rules may be made and times altered. *Ibid.* s. 174.

15. The Judges of the Supreme Court may make all such general rules and orders for the effectual execution of this Part of this Act,

Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters in this Part contained, and the performance thereof; and also for altering the number of days by this Part of this Act limited for the doing of anything by this Part of this Act prescribed or authorised to be done, and substituting other days for the same as in their judgment is necessary or proper.

PART III.

Tenements recovery in the District Courts.

Definition of "landlord." 22 Vic. No. 18, s. 1.

16. In the construction of this Part of this Act the term "landlord" means the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, anyone of the persons entitled to such reversion.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined. 22 Vic. No. 18, s. 19.

17. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him is actually occupying such land or any part thereof and neglects or refuses to give up possession thereof, the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing.

(2) If the defendant does not at the time named in the summons show good cause to the contrary, then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the Judge of the Court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge thinks fit to name.

Issue of warrant.

(3) If such order be not obeyed the Registrar of the Court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. *Ibid.* s. 20.

(4) In any such plaint against a tenant as in this section is specified, the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent. *Ibid.* s. 21.

18. (1) When the rent of any corporeal hereditaments, where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year, is for one-half year in arrear, and the landlord has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the District Court nearest to the premises for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry.

(2) If the tenant five clear days before the return day of such summons pays into Court all the rent in arrear and the costs the said action shall cease.

(3) If the tenant does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises and of the fact that one-half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to satisfy such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear (and of the service of the summons if the defendant does not appear thereto), the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing as the Judge thinks fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

(4) If such order is not obeyed, and such rent and costs are not so paid, the Registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

(5) The plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons. *Ibid.* s. 106.

19. (1) A summons under this Part of this Act may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and either his place of dwelling is unknown or admission thereto cannot be obtained for serving such summons, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Bailiff's powers under warrant. *Ibid.* s. 107.

(2) A warrant under this Part of this Act shall justify the bailiff therein named in entering upon the premises therein named, with

with such assistants as he may deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

(3) Every such warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order as aforesaid, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up or served.

Currency of warrants. *Ibid.* s. 108.

20. (1) Where any summons under this Part of this Act is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which the summons has issued.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend. *Ibid.* s. 22.

(2) Such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

21. (1) If any action is brought against any person for anything done in pursuance of this Part of this Act, he may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said Court previous to the issuing of such warrant.

Indemnity to persons acting under this Part. 22 Vic. No. 18, s. 111.

(2) If the plaintiff in such action has a verdict pass against him, or is non-suited, or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

PART IV.

Tenements recovery before justices of the peace.

22. In the construction of this part of this Act:—

Interpretation.

(*a*) The word "land" means land, houses, or other corporeal hereditaments:

(*b*) The word "agent" means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord. 17 Vic. No. 10, s. 10.

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired

Possession of tenements may be recovered before justices.

expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may exhibit his information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which such land is situated usually sit to show cause why such landlord should not be put into possession of such land. 17 Vic. No. 10, s. 2. Information to be exhibited and summons issued.

(2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the creation and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may— Proceedings at the hearing.

(*a*) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land; and

(*b*) award to the said landlord or to such agent by whom such information is exhibited his costs to be assessed by the said justices or the majority of them; and

(*c*) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him, within a period to be therein named, not less than seven nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he may deem necessary, and to give possession accordingly.

(3)

(3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his information, and award to the person against whom such information is exhibited, his costs to be assessed by such justices or the majority of them.

(5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.

(6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall, by themselves, their counsel, or attorneys, have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Power to justices to suspend proceedings on adjudication for fifteen days.
Ibid. s. 3.

24. The justices by whom such adjudication is made may, postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication, either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices seems meet.

Mode of service of summons.
Ibid. s. 4

25. (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the wife or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

26.

Execution of warrant to be suspended upon security to defend an action for recovery of the land. *Ibid.* s. 5.

26. (1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the land in question in the Supreme Court or any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such lastmentioned costs or otherwise.

Bond to be approved and certified by justices. *Ibid.* s. 6.

27. (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.

Mode for parties to bond to obtain relief in case of delay on the part of the landlord or otherwise.

(2) The Court in which any such action of ejectment or other action for the recovery of the land in question is brought, or any Judge of such Court, may, upon application of any party bound by such bond, his heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every rule or order made by such Court or Judge thereupon shall have the nature and effect of a defeasance to such bond.

(3) If any unreasonable delay occurs in the bringing or prosecuting such action of ejectment, or other action for recovery of such land, then the Court in which such action is brought, or any

Judge

Judge thereof, or in case no such action has been brought and been depending, then any Court having competent jurisdiction to entertain any such action or any Judge of any such Court, may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.

(4) If a rule or order is thereupon made by any such Court or Judge ordering such bond to be cancelled, then such bond shall, upon the making of such rule or order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

Protection of justices, constables, &c.

Ibid. s. 7.

28. It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

Where landlord's title good not to be deemed a trespasser, but be liable by action on the case for any irregularity.

Ibid. s. 8.

29. In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in possession of such land, lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part of this Act, but the party aggrieved may bring an action on the case for any such irregularity or informality.

Act not to protect persons who have no legal right.

Ibid. s. 9.

30. (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.

And in such case landlord to be deemed a trespasser.

(2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him, or by his direction, without the authority of any such warrant.

(3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

31.

31. (1) In all proceedings under this Part of this Act not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part of this Act not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part of this Act.

Conduct of proceedings where no express provision. *Ibid.* s. 11.

(2) Any person who feels aggrieved by any order, adjudication, or warrant made or issued under the provisions of this Part of this Act, shall have the like power of applying to the Supreme Court or any Judge thereof, in order to obtain a prohibition to restrain any justice of the peace by whom any such order, adjudication, or warrant may be made or issued, and the landlord or agent, or tenant or occupier, or other person interested in maintaining the same, from proceeding (or from further proceeding as the case may be) upon or in respect of the same as by the Act *fourteenth Victoria number forty-three*, or by any other Act in force for the time being, is given to any person feeling aggrieved by the summary convictions or orders of justices of the peace.

And provisions therein as to prohibition to apply to proceedings under this Act.

(3) All the provisions of the said last-recited Act, or any other Act in force for the time being, in reference to applying for and obtaining a prohibition in respect of such summary convictions and orders, shall apply to and be in force in respect to every such order, adjudication, and warrant made or issued under the provisions of this Part of this Act, and shall be applied in like manner, as far as practicable, as if every such order, adjudication, or warrant were such a summary conviction or order as aforesaid.

32. No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part of this Act for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Power of amendment. *Ibid.* s. 12.

33. (1) The forms in Schedule E to this Act, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part of this Act.

Forms. *Ibid.* s. 13. Schedule E.

(2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

PART

PART V.

Distress for rent and replevin.

34. (1) No person to whom any rent is due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted, such warrant to be in the form or to the effect of Schedule F to this Act.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11, s. 1. Schedule F.

(2) Whenever the person signing such warrant is unable to write his name his signature shall be attested by a justice of the peace, a solicitor, or a clerk of petty sessions.

35. (1) Every person making any such distress as the agent or bailiff of another, shall first procure from such person two copies of the before-mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him resident at the place where the said distress is made.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. *Ibid.* s. 2.

(2) If there is no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

36. (1) Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of Schedule G to this Act of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him resident at the place where the said distress is made.

Person distraining to forthwith make out and deliver inventory. *Ibid.* s. 3. Schedule G.

(2) If there is no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

37. (1) Where any goods or chattels are distrained for any rent, and the tenant or owner of the goods so distrained does not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law, then in such case after the expiration of the said five days the person distraining shall cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer, or by a sheriff's bailiff or a bailiff of some Court of petty sessions or District Court for the best price that can be got for the same towards satisfaction of the said rent and the charges of the said distress and sale.

Goods distrained for rent may be sold after the expiration of five days. *Ibid.* s. 4.

(2)

(2) The overplus (if any) shall be forthwith handed over to the said tenant or owner, and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand.

Not to apply to corn, grass, hops, &c., growing at time of seizure.

(3) Nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever growing at the time of the same being seized as a distress.

Tenant or owner may direct order of sale. *Ibid.* s. 5.

38. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers' goods not to be seized for rent. *Ibid.* s. 6.

39. (1) No distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sewing-machine, type-writing machine, or mangle exempt from distress. No. 43, 1898, s. 1.

(2) No distress shall be made on any sewing-machine, type-writing machine, or mangle the property of or under hire to any female person for any rent claimed in respect of the premises or place in which such sewing-machine, type-writing machine, or mangle may be:

Provided that any one such person shall not be entitled to have more than one sewing-machine, one type-writing machine, or one mangle protected from distress under the provisions of this subsection.

Sheriff or deputy may grant replevin. 7 Vic. No. 13, s. 4.

40. The sheriff and any deputy specially appointed by him for that purpose may grant replevin in all cases where a sheriff in England had power to grant replevin on the eighth day of December, in the year one thousand eight hundred and forty-three, being the day on which the Act seventh Victoria number thirteen came into force.

Justices may grant replevin in certain cases. 15 Vic. No. 11, s. 8.

41. (1) In all cases in which any distress is made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid, any justice of the peace may grant a replevin of the goods distrained, and for that purpose may take a replevin bond with sufficient sureties.

(2) Neither such justice of the peace, nor the sheriff, nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he has acted bonâ fide and with reasonable care and caution.

Security to be taken before deliverance of any distress. *Ibid.* s. 9.

42. (1) The said sheriff or deputy or justice of the peace as aforesaid shall, before deliverance is made by him of any distresses, take from the person to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness

witness or witnesses (which oath the person granting replevin is hereby authorised to administer) conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded.

(2) The sheriff, deputy, or justice of the peace taking any such bond shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness.

(3) If the bond so taken and assigned is forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name.

(4) The Court where such action is brought may, by rule or order, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule or order shall have the nature and effect of a defeasance to such bond.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe.

Ibid. s. 10.

43. (1) Every action of replevin, except those over which jurisdiction is hereinafter given to District Courts and Courts of Petty Sessions, shall be commenced in the Supreme Court by writ of summons in such form as the Judges shall prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with.

(2) The laws and statutes in force in England on the nineteenth day of December, in the year one thousand eight hundred and fifty-one (being the date on which the Act fifteenth Victoria number eleven came into force), applicable to actions of replevin shall be in force in this Colony, and be applied in the administration of justice so far as the same can be applied within New South Wales.

Forms of precept to replevy, and of replevin and assignment bonds.

Ibid. s. 11.

Schedules I, K, L.

44. Every precept to replevy shall be in the form or to the effect of Schedule I to this Act, and every replevin bond shall be taken in the form or to the effect of Schedule K to this Act, and every assignment of such bond shall be in the form or to the effect of Schedule L to this Act.

Fees to be charged.

Ibid. s. 12.

45. The sheriff and every such deputy as aforesaid, and every justice of the peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

District Courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds.

Ibid. s. 19.

22 Vic. No. 18, s. 29.

46. (1) The respective Courts of Petty Sessions established, or hereafter to be established in any part of New South Wales, other than the county of Cumberland, and the District Courts shall hear and determine within their respective jurisdictions all actions of replevin

relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress is or ought to have been made does not exceed thirty pounds in amount or value.

(2) All proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner and shall be subject to the same rules as other actions in the said District Courts or Courts of Petty Sessions.

As to form of plaint in such actions. *Ibid.* s. 14. Schedule M.

47. The plaint in actions of replevin in the said District Courts or Courts of Petty Sessions shall be in the form or to the effect of Schedule M to this Act.

Court may award damages or may order replevin bond to be given up. *Ibid.* s. 15.

48. (1) If at the hearing of any such action of replevin before any of the said District Courts or Courts of Petty Sessions it appears that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said Court, such Court may give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress.

(2) If it appears that no rent was due at the time of such distress, or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, such Court may order the replevin bond to be delivered up to the party complaining of the distress, and also may give judgment for the plaintiff for such damages as the Court thinks fit, and if necessary may order that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due.

Court may order goods distrained on to be sold. *Ibid.* s. 16.

49. (1) Every such District Court or Court of Petty Sessions on the hearing of any such action of replevin may order that the goods distrained shall be returned to the party who distrained the same, and in every such case where the goods distrained are actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond.

(2) All such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Charges of distress defined. *Ibid.* s. 17. Schedule H.

50. Where any distress is made by the person to whom the rent is due, or by any bailiff or agent as aforesaid, the charges in Schedule H to this Act and no other shall be made in respect thereof.

Distress may be secured and sold on premises. *Ibid.* s. 18.

51. (1) Any person lawfully taking any distress for rent may impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as are most fit and convenient for the impounding and securing such distress, and may sell and dispose of the same upon the premises.

(2) Any person whatsoever after the expiration of the five days hereinbefore mentioned may come and go to and from such place

or

or part of the said premises where any distress for rent is impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof.

(3) If any pound breach or rescous is made of any goods or chattels distrained for rent the person grieved thereby shall in a special action on the case for the wrong thereby sustained recover his treble damages and costs of suit against the offender 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 to his use or possession. Treb'e damages for pound breach.

52. In case any such distress and sale as aforesaid is made by virtue or colour of this Act for rent pretended to be arrear and due, where in truth no rent is arrear or due to the person distraining or to him in whose name or right such distress is taken as aforesaid, then the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators, shall by action of trespass or upon the case to be brought against the person so distraining, his executors or administrators, recover double of the value of the goods or chattels so distrained and sold, together with full costs of suit. Double damages and costs against unlawful distrainer. *Ibid.* s. 19.

53. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof. No appraisement necessary in distress for rent. *Ibid.* s. 20.

54. If any person— Penalty for distraining, &c., contrary to law. *Ibid.* s. 22.

(*a*) knowingly and wilfully distrains for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate; or

(*b*) neglects or refuses to deliver one of such duplicates to the tenant or owner as hereinbefore directed; or

(*c*) when distraining for rent neglects or refuses to make out and deliver or post up such inventory as aforesaid; or

(*d*) charges more for any distress or sale than is authorised by this Act; or

(*e*) refuses to give such account in writing of any sale as hereinbefore provided,

he shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved before any two justices of the peace.

55. For the purposes of this Part of this Act the word "rent" shall be held to mean any rent reserved upon any demise lease or contract whatsoever. Interpretation clause. *Ibid.* s. 24.

56. (1) The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done, and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined. Executors of lessor may distrain. 5 Vic. No. 9, s. 27.

(2)

(2) Provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due, and that all provisions in force by law, relating to distresses for rent, shall be applicable to every distress so made.

PART VI.

Restriction of effect of waiver and license by lessor.

Restriction on effect of license to alien. 26 Vic. No. 12, s. 1.

57. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease, is, at any time after the passing of this Act, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses. *Ibid.* s. 2.

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases. *Ibid.* s. 3.

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the

the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction of effect of waiver. *Ibid.* s. 4.

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Preceding provisions to apply to leases for a term of years absolute, &c. *Ibid.* s. 10.

61. The provisions contained in this Part of this Act shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULES.

SCHEDULE A.

Date of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice	Section 27.
7 Vic. No. 13 ...	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic. No. 28 ...	Leases Facilitation	The whole Act.
15 Vic. No. 11 ...	Distress for Rent	The whole Act.
17 Vic. No. 10 ...	Tenements Recovery	The whole Act.
17 Vic. No. 21 ...	Common Law Procedure	Sections 160–168 (both inclusive), and so much of s. 174 as refers to ss. 160–168.
22 Vic. No. 18 ...	District Courts	Sections 19–23 (both inclusive), 106–108 (both inclusive), and so much of s. 1 as refers to ss. 19–23 and 106–108.
26 Vic. No. 12 ...	Trust Property	Sections 1–4 (both inclusive).
No. 43, 1898 ...	Distress for Rent Restriction Act, 1898 ...	The whole Act.

SCHEDULE B.

This indenture made the day of one thousand eight hundred and ninety (*or other year*), in pursuance of the Landlord and Tenant Act of 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c., (*parcels*) from the day of for the term of thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C.

Directions as to the forms in this Schedule.

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms four and five in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants one to ten shall be taken to be made with, and the proviso eleven to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1.	Column 2.
1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes.	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
And to repair.	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the

Column 1—*continued.*	Column 2—*continued.*
	the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [ ] year.	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [ ] year.	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner, and also will re-paper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid
7. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice.	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly,

Column 1—*continued.*	Column 2—*continued.*
8. That the said (*lessee*) will not use premises as a shop.	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave.	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair.	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12. The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE

SCHEDULE D.

In the Supreme Court of New South Wales.—

The day of A.D. 18 .

[*Date of writ.*]

Cumberland } to wit. }

On the day and year above written, a writ of our Lady the Queen issued forth of this Court with a notice thereunder written, the tenor of which writ and notice follows in these words, that is to say:—

[*Here copy the writ and notice, which latter may be as follows*—]

"Take notice that you will be required if ordered by the Court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action."

And C.D. has appeared by his attorney [*or* in person], to the said writ, and has been ordered to give bail pursuant to the statute, and has failed so to do. Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances, together with £ for costs of suit.

SCHEDULE E.

Form of information.

District of (*the district in which the land of which possession is sought to be recovered is situate*) to wit. } Be it remembered that on the day of in the year of our Lord one thousand eight hundred and at in the Colony of New South Wales (A.B.) *or* (C.D. the agent of A.B.) the landlord of the land hereinafter described, informed me Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years *or* from year to year, *or* from month to month, *or* from week to week, *or* at will *or* at sufferance, *or otherwise as the case may be*) (all that parcel of land *or* all that messuage or dwelling-house *or otherwise according to the fact*) situate in the (*city, town, parish, or other locality*) in the district of in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) *or* (was determined by notice to quit *or* demand of possession) on or about the day of (then instant *or* last past *or otherwise according to the fact*), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) *or* (G.H., a person claiming under the said E.F.), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) *or* (G.H.) to the possession of such land, and thereupon the said (A.B.) *or* (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid } on the day and year first above written before me. }

J.P.

The Justice above named.

Form

Form of summons.

To [E.F.] *or* [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) *or* (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*), which (expired by effluxion of time *or otherwise as averred in the information*) on or about the day of (now instant *or* last past *or otherwise as averred in the information*), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the day of now (instant) *or* (next ensuing) at the hour of of the clock in the forenoon at (*the place where the petty sessions of the district in which the land in question is situated usually sit*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the day of in the year of our Lord one thousand eight hundred and .

J.P.

The justice above named.

Form of adjudication in favour of landlord and award of costs to him or his agent.

District of (*as in information*) to wit. } WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.), praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) *or* (E.F., under whom it was also therein alleged the said G.H. claimed), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*) which (expired by effluxion of time *or otherwise as in the information*) on or about the day of (then instant *or* last past *or otherwise as averred in the information*), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of now (instant) *or* (last past) at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) *or* (G.H.) should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid been duly heard by and before us (*the justices making adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices by whom the matter is heard*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid,

aforesaid, we being (all) *or* (a majority of) the justices then and there sitting. And the said (A.B.) *or* (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) *or* (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) *or* (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) *or* (G.H.) to the possession of the said land, and that the said (E.F.) *or* (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) *or* (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself touching the matter of the said information, but did not show any reasonable cause to us], *or* [and whereas the said (E.F.) *or* (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the day of (*here name a day not less than seven clear days from the date of the warrant*), and ending on the day of (*here name a day not more than thirty clear days from the date of the warrant*). (*Here add in case costs shall be awarded to the landlord or his agent*)—And we do assess the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of which said sum of money we do award to the said (A.B.) *or* (C.D.) for his said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.)

Witness our hands and seals the day of in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L.S.)

Form of warrant of possession.

District of (*as in information*) to wit. } [To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter mentioned and to each of them.

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of , and ending

ending on the day of (*as in adjudication*) : Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add* "or Christmas Day" or "Good Friday" *as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) *or* (C.D.), or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) *or* (C.D. as such agent as aforesaid on behalf of the said A.B.)

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of bond as security to defend action and supersede execution of warrant.

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself, his heirs, executors, and administrators severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord, one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on the day now (instant) *or* (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) *or* (C.D. the agent of the abovenamed A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his agent*], and the said justices assessed the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (*as in the adjudication*), which sum they did award to the said (A.B.) *or* (C.D.) for his said costs ; and the said justices did order and adjudge that the same should be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) *or* (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said Part of the said Act should be given should be the above-named sum of pounds ; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved hereof as such bond as aforesaid : Now, the condition of the above-written bond is such that (in case the said A.B., his heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) *or* (G.H.), his executors or administrators, or any person on his or their behalf, shall pay to the said A.B., his heirs, executors, or administrators, all such costs of suit as shall be awarded to

or

or recovered by the said A.B., his heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)
M.N. (L S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

Form of memorandum to be written on or annexed to such bond and signed by the justices.

We, the justices named in this (*or* the annexed) bond, do hereby certify that we approve thereof.

As witness our hands the day of , in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of adjudication in favour of tenant or occupier and award of costs to him.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served, whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of , now (instant) *or* (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there, to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid, we being (all) *or* (a majority of) the justices then and there sitting, and the said (E.F.) *or* (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) *or* (C.D.) (having failed to appear) *or* (having also appeared but having failed to give proof to our satisfaction) in support of his said information, we do, therefore, adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier*—). And we do assess the costs of the said (E.F.) *or* (G.H.) of appearing and defending and opposing the said information at the sum of , which said sum of money we do award to the said (E.F.) *or* (G.H.) for his said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) *or* (C.D.).

Witness our hands and seals the day of , in the year of our Lord one thousand eight hundred and .

J.P. (L.S.)
J.P. (L.S.)

Form

Form of distress warrant for non-payment of costs.

[To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a person specially named for the purposes hereinafter mentioned.]

Or [To and persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the day of now (instant) *or* (last past) at (*the place where the adjudication took place*) in the district of in the Colony of New South Wales, the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.), under and by virtue of the provisions of Part IV of The Landlord and Tenant Act, 1899, was duly heard and adjudicated upon by (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the said Colony (*describing the jurisdiction of the justices making the adjudication*), and such adjudication was in favour of the said (A.B.) *or* (C.D. on behalf of the said A.B.) *or* (E.F.) *or* (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) in the premises at the sum of (*as in the adjudication*), and did award to the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) the said sum of money for his said costs, and did order and adjudge that the same should be paid forthworth by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) [or by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.). And whereas the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.), and if within the period of clear days after the making of such distress, the said sum of money above mentioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the clerk of the petty sessions of the justices of the peace for the said district of , in order that he may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.)

Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

SCHEDULE F.

Warrant to distrain.

I, A.B., of , do hereby authorise 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 pounds, being the amount of rent due to me for the same on the day of last [*or* instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18 .

A.B.

[*or* A.B. by his attorney G.H.]

SCHEDULE

SCHEDULE G.

Inventory.

I have this day [*if distress made by a bailiff here add* by virtue of the warrant a copy of which is hereunder written] 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 pounds, being the amount of rent due to me [*or if the distress be made by a bailiff* to A.B., of] for the same on the day last [*or* instant].

Dated this day of A.D. 18 .

A.B., landlord,
[*or* C.D., bailiff]

[*And if distress made by a bailiff, enumerate the goods and chattels at full length, then insert a copy of the warrant to distrain.*]

SCHEDULE H.

Charges of distress.

	£	s.	d.
Costs of levy where made by an agent or bailiff under the authority of a warrant to distrain according to the following scale—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 2½ per cent.

Advertisements—the money paid for their insertion if such advertisements be required by the person whose goods are distrained.

SCHEDULE I.

Precept to replevy.

A.B., Esquire, sheriff [*or* deputy specially appointed by the sheriff or one of Her Majesty's justices assigned to keep the peace], to C.D., my bailiff—Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels, to wit [*specifying them*], and also for making a return thereof if return thereof shall be adjudged, therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels, which the said G.H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of A.D. 18 .

A.B., sheriff
[*or* sheriff's deputy *or* justice of the peace.]

SCHEDULE K.

Replevin bond.

Know all men by these presents that we, J.P., of [*place of abode and addition*], C.D., of [*place of abode and addition*], and L.H., of [*place of abode and addition*], are held and firmly bound to A.B., Esquire, sheriff of New South Wales [*or* deputy specially appointed by the sheriff *or* one of Her Majesty's justices assigned to keep the peace], in the sum of [*insert double the value of the goods and chattels*] of lawful money of

of Great Britain, to be paid to the said A.B., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this day of A.D. 18

Whereas the above A.B., upon the complaint of the above J.P., hath consented to deliver and replevy to the said J.P. the goods and chattels following, to wit [*enumerate the whole of the property*], which J.N., of [*place of abode and addition*], hath taken and wrongfully withheld as the said J.P. alleges—

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of New South Wales, or in some competent District Court or court of petty sessions, and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A.B. against the said J. N. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered in the presence of }

J.P. (L.S.)
C.D. (L.S.)
L.H. (L.S.)

SCHEDULE L.

Assignment of bond.

Know all men by these presents, that I, the within-named A.B., have at the request of the within-named J.N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18 .

Signed, sealed, and delivered in the presence of }

A. B. (L.S.)

SCHEDULE M.

Plaint.

A.B. of [*insert place of residence*], complains of C.D. of [*insert place of residence*], for that the said C.D. did on the day of last [*or* instant] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B., that is to say [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C.D. alleged to be due to him for rent.

Sydney: William Applegate Gullick, Government Printer.—1899.

[1*s.* 6*d.*]

Memo. and Certificate to accompany the Landlord and Tenant Bill.

THIS Bill consolidates the whole or parts of the following Acts :—

5 Vic. No. 9 ;
7 Vic. No. 13 ;
11 Vic. No. 28 ;
15 Vic. No. 11 ;
17 Vic. No. 10 ;
17 Vic. No. 21 ;
22 Vic. No. 18 ;
26 Vic. No. 12 ;
No. 43, A.D. 1898.

Clause 2 (3). The object of this provision is to protect the inadvertent use of the forms prescribed under the repealed Acts.

Clause 8 (5). In the Act 17 Vic. No. 21, sec. 161, which is taken from the English Common Law Procedure Act, which, again, was taken from an old English Act, 4 Geo. II, c. 28, sec. 2, the words, "or person entitled to the remainder or reversion as aforesaid" have been left in, it would appear clearly by inadvertence. In the old original Act, which referred, *inter alia*, to tenants for lives, they had a meaning: in the Common Law Procedure Act they had none. They are, therefore, omitted, and the section confined to "landlord or lessor."

Clause 9. Some of the technical legal words in this section are modernised.

Clause 11 (2). In the English Common Law Procedure Act, and in our own, it is necessary to apply by summons for a summons. This was a mistake, and entailed useless delay and expense, and is now corrected.

Clause 22. The definition of the word "land" has been retained because it is exclusive: that in the Interpretation Act is inclusive. The definition of the word "person" has been omitted, the word "collegiate" being considered to have no particular effect.

Clause 23 (2). The original section, taken with the original Schedule forms of adjudication and warrant, raises considerable difficulties. (*See ex parte Cahill*, 7 *W.N.*, *p.* 138.) The Schedules have been altered to remove these difficulties and obscurities, and to agree more clearly with the law in the Act.

Clause 40. On inquiry of the Sheriff it has been found that sec. 7 of 15 Vic. No. 11 is practically obsolete. The powers given in the present clause, taken from 7 Vic. No. 13, appear to be amply sufficient. No case is known in which the Sheriff has had to appoint a deputy in replevin cases, which are rare.

Schedule C, proviso, column 2. The word "herein" has been substituted for "hereinafter" to correct what appears to have been an inaccuracy in the Schedule to 55 Vic. No. 28 and in the Imperial Act from which that Act was copied; see Cole on ejectment, p. 411.

Schedule E.—Form of distress warrant for non-payment of costs. The clause in the original form directing imprisonment was illegal—see the original sec. 11—and is now omitted.

Except as above noted, I certify that this Bill solely consolidates, and in no way alters, adds to, or amends the law as contained in the Acts therein consolidated.

CHAS. G. HEYDON,
Commissioner for the Consolidation of the Statute Law.

Landlord and Tenant Bill.

TABLE showing how the sections of Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	5 VICTORIA No. 9.	
27	56	
	7 VICTORIA No. 13.	
4	40	
	11 VICTORIA No. 28.	
1	3	
2	4	
3	5	
4	6	
5	.....	Unnecessary; see Interpretation Act.
6	.....	Unnecessary.
Schedules 1, 2 ...	Schedules B and C.	
	15 VICTORIA No. 11.	
1	34	
2	35	
3	36	
4	37	
5	38	
6	39	
7	.....	Obsolete.
8	41	
9	42	
10	43	
11	44	
12	45	
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14	47	
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16	49	
17	50	
18	51	
19	52	
20	53	
21	.....	Spent.
22	54	
23	.....	Similar provision contained in 16 Vic. No. 1, s. 15.
24	55	
Schedules A–G ...	Schedules F–M.	

Section of Repealed Acts.	Section of Consolidated Act.	Remarks.
	17 Victoria No. 10.	
1	.....	Repealing section; spent.
2	23	
3	24	
4	25	
5	26	
6	27	
7	28	
8	29	
9	30	
10	22	Partly unnecessary. See Interpretation Act.
11	31	
12	32	
13	33	
Schedule	Schedule E.	
	17 Victoria No. 21.	
160	7	
161	8	
162	9	
163	10	
164	11	
165	12	
166	13 (1)	
167	13 (2)	
168	14	
174	15	Only partially repealed.
	22 Victoria No. 18.	
1	16	Unrepealed portion will be dealt with in District Courts Act.
19	17	
20	17 (4)	
21	18	
22	19	
23	46	
106	19 (1)	
107	19 (2)	
108	19 (3)	
	26 Victoria No. 12.	
1	57	
2	58	
3	59	
4	60	
10	61	
	No. 43, 1898.	
1	39 (2)	
2	.....	Short title.

Legislative Council.

No. , 1899.

A BILL

To consolidate the Statutes relating to the law of Landlord and Tenant.

[Mr. Hughes;—27 *July*, 1899.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall be called the "Landlord and Tenant Act of 1899," and is divided into Parts, as follows:—

PART I.—*Facilitation of leases*—*ss.* 3–6.

PART II.—*Tenements recovery by ejectment in the Supreme Court*—*ss.* 7–15.

PART III.—*Tenements recovery in the District Courts*—*ss.* 16-21.

PART IV.—*Tenements recovery before Justices of the Peace*—*ss.* 22–33.

PART V.—*Distress for rent and replevin*—*ss.* 34–56.

PART VI.—*Restriction of effect of waiver and license by lessor*—*ss.* 57–61.

Schedule A.

2. (1) The Acts in Schedule A to this Act, to the extent to which the same are there expressed to be repealed, are hereby repealed.

(2) All rules and orders made or enacted under any of the enactments hereby repealed and in force at the commencement of this Act shall be deemed to have been made and enacted under the corresponding provisions of this Act.

(3) Where any form of words or form used after the commencement of this Act refers to any enactment hereby repealed, such reference shall be taken to be a reference to this Act, and where any form of words or form so used as aforesaid would have been valid or have had a particular effect under any enactment hereby repealed, such form of words or form shall, notwithstanding the repeal of such enactment, have the same validity and effect as it would have had under the provisions of such repealed enactment if this Act had not been passed.

PART I.

Facilitation of leases.

Where the words of column 1 of Schedule C employed, the deed to have the same effect as if words of column 2 were inserted.

11 Vic. No. 28, s. 1.

Schedules B, C.

3. Whenever any party to any deed made according to the tenor and effect of the form set forth in Schedule B to this Act, or whenever any party to any other deed which is expressed to be made in pursuance of this Act employs in such deed respectively any of the forms of words contained in column 1 of Schedule C to this Act, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such party had inserted in such deed the form of words contained in column 2 of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such party, but it shall not be necessary in any such deed to insert any such number.

Deed to include all houses, &c.

Ibid. s. 2.

4. Every such deed, unless any exception be specially made therein, shall be held and construed to include all out-houses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, water-courses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever to the lands and tenements therein comprised, belonging, or in anywise appertaining.

Remuneration for deed under the Act not to be by length only.

Ibid. s. 3.

5. In taxing any bill for preparing and executing any deed under this Part of this Act, or which might be prepared under this Part of this Act, the taxing officer of the Supreme Court, in estimating the proper sum to be charged for such transaction, shall consider not the length of such deed, but only the skill and labour employed and responsibility incurred in the preparation thereof.

6.

6. Any deed, or part of a deed, which fails to take effect by virtue of this Part of this Act shall nevertheless be as valid and effectual, and shall bind the parties thereto so far as the rules of law and equity permit, as if this Act had not been made.

Deed not taking effect by this Act to be valid. *Ibid.* s. 4.

PART II.

Tenements recovery by ejectment in the Supreme Court.

7. Every tenant to whom any writ in ejectment is delivered, or to whose knowledge it comes, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years' improved or rack rent of the premises demised or held in the possession of such tenant to the person of whom he holds to be recovered by action in the Supreme Court.

Tenants to give notice of ejectment to landlord. 17 Vic. No. 21, s. 160.

8. (1) In all cases between landlord and tenant whenever one half-year's rent is in arrear and the landlord or lessor to whom the same is due is entitled to re-enter for the non-payment thereof, such landlord or lessor may, without any formal demand or re-entry, serve a writ in ejectment for the recovery of the demised premises, or if the same cannot be legally served, or no tenant be in actual possession of the premises, may affix a copy thereof upon the door of any demised messuage, or if such action in ejectment is not for the recovery of any messuage, then upon some notorious place of the land comprised in such writ in ejectment, and such affixing shall be deemed legal service thereof, which service or affixing such writ in ejectment shall stand in the place and stead of a demand and re-entry.

Proceedings in ejectment by landlord for non-payment of rent. *Ibid.* s. 161.

(2) If judgment is recovered against the defendant for non-appearance, and it is proved to the Court by affidavit (or if the defendant appears and it is proved at the trial) that half a year's rent was due before the said writ was served, and that no sufficient distress was to be found on the demised premises countervailing the arrears then due, and that the lessor had power to re-enter, the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made.

Landlord to recover judgment and execution.

(3) If the lessee, or his assignee or other person claiming or deriving under the said lease, suffers judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after such execution executed, such lessee, assignee, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity, and the said landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease.

If judgment unsatisfied or proceedings not taken in equity, lease to be discharged.

(4)

Successful lessee to recover costs.

(4) If on such ejectment a verdict passes for the defendant, or the claimant is nonsuited therein, such defendant shall recover his costs.

Rights of mortgagee not in possession unprejudiced for six months after judgment.

(5) Nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who is not in possession, provided that, within six months after such judgment obtained and execution executed, he pays all rent in arrear and all costs and damages sustained by such landlord or lessor, and performs all the covenants and agreements which on the part and behalf of the first lessee are and ought to be performed.

Lessee proceeding in equity not to have injunction or relief without payment of rent and costs.
17 Vic. No. 21, s. 162.

9. (1) In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity of, in, or to the said lease within the time aforesaid proceeds for relief in equity, such person shall not have or continue any injunction against the proceedings at law on such ejectment unless within forty days after the claimant in such ejectment has filed his defence, such person brings into Court and lodges with the Master in Equity such sum of money as the lessor or landlord in his defence swears to be due and in arrear over and above all just allowances, and also the costs taxed in the said action, there to remain till the hearing of the cause or to be paid out to the lessor or landlord on good security, subject to the decree of the Court.

(2) If such proceedings in equity are taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable only for so much as he shall really and bonâ fide, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof, and if what is so made by the lessor or landlord be less than the rent reserved on the said lease, then the said lessee or his assignee, before he is restored to his possession, shall pay such lessor or landlord the difference between the money so made by him and the reserved rent for the time such lessor or landlord held the said lands.

Tenant paying all rent with costs, proceedings to cease.
Ibid. s. 163.

10. (1) If the tenant or his assignee at any time before the trial in such ejectment pays or tenders to the lessor or landlord, his executors, or administrators, or his or their attorney in that cause, or pays into Court all the rent and arrears, together with the costs, all further proceedings on the said ejectment shall cease and be discontinued.

(2) If such lessee, his executors, administrators, or assigns, upon such proceedings as aforesaid, is relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made without any new lease.

Ejectment by landlord against tenant holding over after expiration of term or determination of tenancy by notice to quit.
Ibid. ss. 164, 175.

11. (1) Where the term or interest of any tenant holding under a lease or agreement in writing any lands for any term or number of years certain, or from year to year, has expired or been determined either by the landlord or tenant by regular notice to quit, and such tenant, or any one holding or claiming by or under him, refuses to deliver

deliver up possession accordingly after lawful demand in writing made and signed by the landlord or his agent, and served personally upon or left at the dwelling-house or usual place of abode of such tenant or person, and the landlord thereupon proceeds by action of ejectment for the recovery of possession, he may, at the foot of the writ in ejectment, address a notice to such tenant or person requiring him to find such bail if ordered by the Court or a Judge, and for such purposes as are hereinafter next specified.

Rule or summons for the tenant to give bail.

(2) Upon the appearance of the party, on an affidavit of service of the writ and notice, the landlord producing the lease or agreement or some counterpart or duplicate thereof, and proving the execution of the same by affidavit, and upon affidavit that the premises have been actually enjoyed under such lease or agreement, and that the interest of the tenant has expired or been determined by regular notice to quit, as the case may be, and that possession has been lawfully demanded in manner aforesaid, may apply to the Court or a Judge for a rule or summons for such tenant or person to show cause within a time to be fixed by the Court or Judge on a consideration of the situation of the premises why such tenant or person should not enter into a recognisance by himself and two sufficient sureties in a reasonable sum conditioned to pay the costs and damages which shall be recovered by the claimant in the action.

On rule or summons absolute if tenant shall not conform judgment to be for the landlord.

(3) The Court or Judge upon cause shown (or upon affidavit of the service of the rule or summons in case no cause is shown) may make the same absolute in the whole or in part, and may order such tenant or person within a time to be fixed upon a consideration of all the circumstances to find such bail with such conditions and in such manner as shall be specified in the said rule or summons or such part of the same so made absolute.

(4) If the party neglects or refuses to find such bail as aforesaid, and lays no ground to induce the Court or Judge to enlarge the time for obeying such order of the Court or Judge, then the lessor or landlord filing an affidavit that such rule or order has been made and served and not complied with may sign judgment for recovery of possession and costs of suit in the form contained in Schedule D to this Act, or to the like effect, or in such other form as the Judges of the Supreme Court may order.

Schedule D.

In ejectment between landlord and tenant mesne profits down to the verdict or to a day specified therein may be recovered.

Ibid. s. 165.

12. (1) Wherever it appears on the trial of any ejectment at the suit of a landlord against a tenant that such tenant or his attorney has been served with due notice of trial the Judge before whom such cause comes on to be tried shall, whether the defendant appears upon such trial or not, permit the claimant on the trial after proof of his right to recover possession of the whole or of any part of the premises mentioned in the writ in ejectment to go into evidence of the mesne profits thereof which have or might have accrued from the day of the expiration

expiration or determination of the tenant's interest in the same down to the time of the verdict given in the cause or to some preceding day to be specially mentioned therein.

(2) The jury on the trial finding for the claimant shall in such case give their verdict upon the whole matter both as to the recovery of the whole or any part of the premises, and also as to the amount of the damages to be paid for such mesne profits, and in such case the landlord shall have judgment within the time hereinbefore provided not only for the recovery of possession and costs but also for the mesne profits found by the jury.

(3) Nothing hereinbefore contained shall be construed to bar any such landlord from bringing any action for the mesne profits which shall accrue from the verdict or the day so specified therein down to the day of the delivery of possession of the premises recovered in the ejectment.

On trials after bail found Judge shall not stay the execution except by consent or on tenant's finding security.

Ibid. s. 166.

13. (1) In all cases in which such security has been given as aforesaid if upon the trial a verdict passes for the claimant, unless it appears to the Judge before whom the same has been had that the finding of the jury was contrary to the evidence, or that the damages given were excessive, such Judge shall not (except by consent) make any order to stay judgment or execution, except on condition that within four days from the day of the trial the defendant shall actually find security by the recognizance of himself and two sufficient sureties in such reasonable sum as the Judge directs, conditioned not to commit any waste or act in the nature of waste or other wilful damage, and not to sell or carry off any standing crops, hay, straw, or manure produced or made (if any) upon the premises, and which may happen to be thereupon, from the day on which the verdict has been given to the day on which execution is finally made upon the judgment, or the same be set aside as the case may be.

Recognisances to be taken as the Judges direct.

Ibid. s. 167.

(2) All recognizances and securities entered into as last aforesaid shall be taken respectively in such manner, and by and before such persons as the Judges direct, and shall be filed with the prothonotary, for which respectively the sum of two shillings and sixpence and no more shall be paid.

(3) No action or other proceeding shall be commenced upon any such recognizance or security after the expiration of six months from the time when possession of the premises or any part thereof has actually been delivered to the landlord.

Saving of former remedies.

Ibid. s. 168.

14. Nothing in this part of this Act contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for otherwise than hereinbefore expressly enacted.

Rules may be made and times altered.

Ibid. s. 174.

15. The Judges of the Supreme Court may make all such general rules and orders for the effectual execution of this Part of this Act,

Act, and of the intention and object hereof, and for fixing the costs to be allowed for and in respect of the matters in this Part contained, and the performance thereof; and also for altering the number of days by this Part of this Act limited for the doing of anything by this Part of this Act prescribed or authorised to be done, and substituting other days for the same as in their judgment is necessary or proper.

PART III.

Tenements recovery in the District Courts.

Definition of "landlord." 22 Vic. No. 18, s. 1.

16. In the construction of this Part of this Act the term "landlord" means the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, anyone of the persons entitled to such reversion.

Possession of tenements may be recovered in District Courts by landlords where terms have expired or been determined. 22 Vic. No. 18, s. 19.

17. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him is actually occupying such land or any part thereof and neglects or refuses to give up possession thereof, the landlord may enter a plaint at his option either against such tenant or against such person so neglecting or refusing in the District Court nearest to the premises for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing.

(2) If the defendant does not at the time named in the summons show good cause to the contrary, then on proof of such neglect or refusal to deliver up possession of the premises and of the holding and of the expiration or other determination of the tenancy with the time and manner thereof (and of the service of the summons if the defendant does not appear thereto), the Judge of the Court may order that possession of the premises mentioned in the plaint be given to the plaintiff either forthwith or on or before such day as the Judge thinks fit to name.

Issue of warrant.

(3) If such order be not obeyed the Registrar of the Court, whether such order can be proved to have been served or not, shall at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

In plaint for recovery of possession plaintiff may claim for rent and mesne profits. *Ibid.* s. 20.

(4) In any such plaint against a tenant as in this section is specified, the plaintiff may add a claim for rent or mesne profits or both down to the day appointed for the hearing or to any preceding day named in the plaint so as the same shall not exceed two hundred pounds.

Possession of small tenements may be recovered in District Court by landlords for non-payment of rent.
Ibid. s. 21.

18. (1) When the rent of any corporeal hereditaments, where neither the value of the premises nor the rent payable in respect thereof exceeds two hundred pounds by the year, is for one-half year in arrear, and the landlord has right by law to re-enter for the non-payment thereof, he may, without any formal demand or re-entry, enter a plaint in the District Court nearest to the premises for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in lieu of a demand and re-entry.

(2) If the tenant five clear days before the return day of such summons pays into Court all the rent in arrear and the costs the said action shall cease.

(3) If the tenant does not make such payment, and does not at the time named in the summons show good cause why the premises should not be recovered, then on proof of the yearly value and rent of the premises and of the fact that one-half year's rent was in arrear before the plaint was entered, and that no sufficient distress was then to be found on the premises to satisfy such arrear, and of the landlord's power to re-enter, and of the rent being still in arrear (and of the service of the summons if the defendant does not appear thereto), the Judge may order that possession of the premises mentioned in the plaint be given to the plaintiff on or before such day, not being less than fourteen days from the day of hearing as the Judge thinks fit to name, unless within that period all the rent in arrear and the costs be paid into Court.

(4) If such order is not obeyed, and such rent and costs are not so paid, the Registrar shall, whether such order can be proved to have been served or not, at the instance of the plaintiff issue a warrant authorising and requiring the bailiff of the Court to give possession of such premises to the plaintiff.

(5) The plaintiff shall from the time of the execution of such warrant hold the premises discharged of the tenancy, and the defendant and all persons claiming by, through, or under him shall, so long as the order of the Court remains unreversed, be barred from all relief in equity or otherwise.

Service of summons.
Ibid. s. 106.

19. (1) A summons under this Part of this Act may be served like other summonses to appear to plaints in District Courts, and if the defendant cannot be found, and either his place of dwelling is unknown or admission thereto cannot be obtained for serving such summons, a copy thereof shall be posted on some conspicuous part of the premises sought to be recovered, and such posting shall be deemed good service on the defendant.

Bailiff's powers under warrant.
Ibid. s. 107.

(2) A warrant under this Part of this Act shall justify the bailiff therein named in entering upon the premises therein named, with

with such assistants as he may deem necessary, and in giving possession accordingly, but no entry upon any such warrant shall be made except between the hours of nine in the morning and four in the afternoon.

(3) Every such warrant shall, on whatever day it is issued, bear date on the day next after the last day named by the Judge in his order as aforesaid, and shall continue in force for three months from such date, and no longer; but no order for delivery of possession need be drawn up or served.

Currency of warrants. *Ibid.* s. 108.

20. (1) Where any summons under this Part of this Act is served on or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant being an occupier of the whole or of part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord under penalty of forfeiting three years' rack-rent of the premises held by such sub-tenant to such landlord, to be recovered by such landlord by action in the Court from which the summons has issued.

Sub-tenant served with summons to recover possession must give notice to his immediate landlord who may come in and defend. *Ibid.* s. 22.

(2) Such landlord on the receipt of such notice if not originally a defendant may be added or substituted as a defendant to defend possession of the premises in question.

21. (1) If any action is brought against any person for anything done in pursuance of this Part of this Act, he may plead the general issue, and give the special matter in evidence; and the warrant under the seal of the District Court being produced in any such action shall be deemed sufficient proof of the authority of the said Court previous to the issuing of such warrant.

Indemnity to persons acting under this Part. 22 Vic. No. 18, s. 111.

(2) If the plaintiff in such action has a verdict pass against him, or is non-suited, or discontinues the action, the defendant shall be allowed full costs as between attorney and client.

PART IV.

Tenements recovery before justices of the peace.

22. In the construction of this part of this Act:—

Interpretation.

(*a*) The word "land" means land, houses, or other corporeal hereditaments:

(*b*) The word "agent" means any person usually employed by the landlord in the letting of the land or in the collection of the rents thereof, or specially authorised to act in the particular matter by writing under the hand of such landlord. 17 Vic. No. 10, s. 10.

23. (1) When the term or interest of the tenant of any land held by him for any term of years, or for any less estate or interest, either with or without being liable to the payment of any rent, has expired

Possession of tenements may be recovered before justices.

17 Vic. No. 10, s. 2.

expired by effluxion of time or has been determined by notice to quit or demand of possession, and such tenant or any person claiming under him who is actually occupying such land or any part thereof neglects to quit and deliver up possession of such land or of such part thereof respectively, the landlord of such land or his agent may exhibit his information before any justice of the peace, who shall thereupon issue a summons, and if required so to do a duplicate thereof, under his hand against the person so neglecting to quit and deliver up possession, requiring such person to appear before any two or more justices of the peace at the place where the petty sessions of the district in which such land is situated usually sit to show cause why such landlord should not be put into possession of such land.

Information to be exhibited and summons issued.

Proceedings at the hearing.

(2) If at the time and place appointed in and by such summons, or at any adjournment thereof (whether the tenant or occupier appears or not), such landlord or such agent gives due proof according to law to the satisfaction of the justices before whom the matter is heard, or the majority of them, of the creation and of the expiration or determination in manner aforesaid of the tenancy, and that such landlord then has and had at the time of the service of the summons upon the tenant or occupier lawful right as against such tenant or occupier to the possession of such land, and that the tenant or occupier against whom such summons is issued was the tenant in possession or the actual occupier of such land at the time of the service of such summons, then (upon proof of the service of the summons in case the tenant or occupier does not appear) the said justices, or the majority of them, unless reasonable cause is shown or appears to them to the contrary, may—

(*a*) adjudge the landlord by or for or on whose behalf such information shall be exhibited entitled to possession of such land; and

(*b*) award to the said landlord or to such agent by whom such information is exhibited his costs to be assessed by the said justices or the majority of them; and

(*c*) issue a warrant under their hands directed to the constables and peace officers of or acting in or for the district or place within which such land is situate, or to any of them, or to any other person as a special bailiff in that behalf, requiring and authorising them or him, within a period to be therein named, not less than seven nor more than thirty clear days from the date of such warrant, to enter (by force if needful) into such land and to give possession of the same to such landlord or such agent on his behalf, and such warrant shall be a sufficient authority to such constables, peace officers, or bailiff to enter upon such land with such assistants as they or he may deem necessary, and to give possession accordingly.

(3)

(3) No entry upon any such warrant shall be made on a Sunday, Good Friday, or Christmas Day, or at any time, except between the hours of nine of the clock in the morning and four of the clock in the afternoon.

(4) If such landlord or agent fails to appear or to give such proofs as aforesaid at the time and place aforesaid, such justices or the majority of them may dismiss his information, and award to the person against whom such information is exhibited, his costs to be assessed by such justices or the majority of them.

(5) All costs awarded under the provisions hereof, together with the reasonable charges of taking and keeping the distress, shall be recoverable by distress and sale of the goods and chattels of the person adjudged or ordered to pay the same.

(6) The proceedings upon the hearing of the matter of any such information as aforesaid shall be conducted as near as may be in accordance with the proceedings upon the trial of an issue of fact in the Supreme Court, and the parties to such information shall, by themselves, their counsel, or attorneys, have the like right of addressing the Court as well in reply as otherwise as the parties upon the trial of any such issue of fact in the Supreme Court would have or be entitled to.

Power to justices to suspend proceedings on adjudication for fifteen days. *Ibid.* s. 3.

24. The justices by whom such adjudication is made may, postpone the issuing of such warrant and other proceedings under such adjudication, or suspend the execution of such warrant and other proceedings for any period not exceeding fifteen clear days from the day of such adjudication, either upon such terms as to security or otherwise or absolutely without imposing any terms as to such justices seems meet.

Mode of service of summons. *Ibid.* s. 4

25. (1) Such summons shall be served three clear days before the day appointed for the hearing of the matter of the information upon which the same issues, and such summons shall be served by delivering the same or a duplicate thereof personally to the person summoned thereby, or in case notwithstanding all due diligence in that behalf such person cannot be personally served as aforesaid, then by leaving the same with the wife or servant of such person or some other competent person, either on the land in respect of which such summons has been issued or at the place of abode of the person so summoned, and in all such cases as aforesaid the person serving such summons shall explain the nature and effect thereof to the person to whom the same or the duplicate thereof is delivered, unless such last-mentioned person shall prevent such explanation from being made.

(2) If notwithstanding all due diligence in that behalf it is from any cause impracticable to serve such summons in any of the ways aforesaid, then the posting of the same or a duplicate thereof on some conspicuous part of the land in respect of which the same has been issued shall be deemed to be good service of such summons.

26.

Execution of warrant to be suspended upon security to defend an action for recovery of the land.
Ibid. s. 5.

26. (1) If any tenant or occupier against whom any such warrant is granted offers at the time when the adjudication in respect thereof is made to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the land in question in the Supreme Court or any other Court having competent jurisdiction in that behalf to be brought by or on behalf of the landlord, by or for or on whose behalf the information upon which such adjudication is made has been exhibited, then the execution of such warrant and all other proceedings under such adjudication shall be suspended for three clear days.

(2) If during that interval such tenant or occupier gives to such landlord, his executors and administrators, security by a joint and several bond of two other responsible persons, to be approved of by the justices by whom the matter of such information is heard, or the majority of them, in such sum of money as to them (regard being had to the value of such land and to the probable cost of such action, and the probable length of time which must elapse before the same can be determined) seems reasonable, and they direct, conditioned to be void (in case such landlord, his heirs, executors, or administrators succeeds in such action), upon payment of all such costs of suit as are awarded to or recovered by such landlord, his heirs, executors, or administrators in such action, and of all mesne profits of the said land accruing between the time of such adjudication and the time when such landlord, his heirs, executors, or administrators obtain possession of such land by virtue of such action, and of all such costs as are awarded by such justices, or the majority of them, to be paid by such tenant or occupier to such landlord or his agent, then such warrant shall not be executed or put in force, but shall be void; and no further proceedings shall be taken under or in pursuance of such adjudication for recovery of such lastmentioned costs or otherwise.

Bond to be approved and certified by justices.
Ibid. s. 6.

27. (1) Every such bond shall be approved of, and certified as so approved of, by the justices by whom the matter of such information is heard, or the majority of them, by a memorandum in writing signed by them, which memorandum shall be on or annexed to such bond.

Mode for parties to bond to obtain relief in case of delay on the part of the landlord or otherwise.

(2) The Court in which any such action of ejectment or other action for the recovery of the land in question is brought, or any Judge of such Court, may, upon application of any party bound by such bond, his heirs, executors, or administrators, in a summary way give such relief to the person making such application, or make such other order in the premises as may be agreeable to justice; and every rule or order made by such Court or Judge thereupon shall have the nature and effect of a defeasance to such bond.

(3) If any unreasonable delay occurs in the bringing or prosecuting such action of ejectment, or other action for recovery of such land, then the Court in which such action is brought, or any Judge

Judge thereof, or in case no such action has been brought and been depending, then any Court having competent jurisdiction to entertain any such action or any Judge of any such Court, may, upon application of the parties bound by any such bond, or either of them, their or either of their heirs, executors, or administrators, in a summary way order such bond to be cancelled and given up to the person making such application, or make such other order in the premises as may be agreeable to justice.

(4) If a rule or order is thereupon made by any such Court or Judge ordering such bond to be cancelled, then such bond shall, upon the making of such rule or order, be thenceforth void, but without prejudice to any action or other remedy thereon for any previous breach of the condition or defeasance thereof.

Protection of justices, constables, &c. *Ibid.* s. 7.

28. It shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid has been issued, or against any constable, peace officer, or bailiff by whom such warrant has been executed for issuing such warrant or executing the same respectively by reason that the landlord, by or for or on whose behalf the same is obtained, had not lawful right to the possession of the land in respect of which such warrant has issued.

Where landlord's title good not to be deemed a trespasser, but be liable by action on the case for any irregularity. *Ibid.* s. 8.

29. In all cases where at the time of executing any such warrant, the landlord, by whom or for or on whose behalf such warrant has been obtained, has, as against the person in possession of such land, lawful right to the possession thereof, then neither such landlord, nor his agent nor any other person acting on his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Part of this Act, but the party aggrieved may bring an action on the case for any such irregularity or informality.

Act not to protect persons who have no legal right. *Ibid.* s. 9.

30. (1) No such warrant, nor anything herein contained, shall protect any landlord by whom, or for or on whose behalf, any such warrant for the delivery of possession of any land is obtained as aforesaid, from any action which may be brought against him by any person in possession of such land, or any part thereof, for or in respect of any entry upon or taking possession thereof, under or by virtue of any such warrant, where such landlord at the time of executing the same has not, as against such person in possession, lawful right to the possession thereof.

And in such case landlord to be deemed a trespasser.

(2) In all such cases as last aforesaid such landlord shall be liable in respect of such entry and taking possession in like manner as if the same had been made or taken by him, or by his direction, without the authority of any such warrant.

(3) Nothing herein contained shall prejudicially affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise.

31.

Conduct of proceedings where no express provision. *Ibid.* s. 11.

31. (1) In all proceedings under this Part of this Act not herein expressly provided for, the same shall be regulated and conducted in accordance with the provisions of the law in force for the time being respecting summary proceedings before justices of the peace out of sessions, and all such provisions shall, so far as the same are applicable, be in force and observed in all proceedings under this Part of this Act not herein expressly provided for; but no person shall be imprisoned for non-payment of any costs awarded under the provisions of this Part of this Act.

And provisions therein as to prohibition to apply to proceedings under this Act.

(2) Any person who feels aggrieved by any order, adjudication, or warrant made or issued under the provisions of this Part of this Act, shall have the like power of applying to the Supreme Court or any Judge thereof, in order to obtain a prohibition to restrain any justice of the peace by whom any such order, adjudication, or warrant may be made or issued, and the landlord or agent, or tenant or occupier, or other person interested in maintaining the same, from proceeding (or from further proceeding as the case may be) upon or in respect of the same as by the Act *fourteenth Victoria number forty-three*, or by any other Act in force for the time being, is given to any person feeling aggrieved by the summary convictions or orders of justices of the peace.

(3) All the provisions of the said last-recited Act, or any other Act in force for the time being, in reference to applying for and obtaining a prohibition in respect of such summary convictions and orders, shall apply to and be in force in respect to every such order, adjudication, and warrant made or issued under the provisions of this Part of this Act, and shall be applied in like manner, as far as practicable, as if every such order, adjudication, or warrant were such a summary conviction or order as aforesaid.

Power of amendment. *Ibid.* s. 12.

32. No objection shall be taken or allowed to any information, complaint, summons, conviction, or warrant made or preferred under or by virtue of this Part of this Act for any alleged defect in substance or in form, or for any variance between it and the evidence adduced on the part of the complainant, but if any such variance or defect appears to the justices present at and acting in the hearing of the case, they may, upon such terms as they think fit, cause the said proceedings to be amended and to adjourn the hearing of the case to some future day if necessary.

Forms. *Ibid.* s. 13. Schedule E.

33. (1) The forms in Schedule E to this Act, or any other forms to the like effect, may be used in the carrying out of the provisions of this Part of this Act.

(2) This enactment shall not invalidate any information, summons, adjudication, order, bond, warrant, or other proceeding which may be laid or drawn in any other appropriate form or manner.

PART

PART V.

Distress for rent and replevin.

34. (1) No person to whom any rent is due shall distrain any goods or chattels for such rent except by himself personally or by his agent or bailiff then duly authorised by warrant under his hand or under the hand of his attorney duly constituted, such warrant to be in the form or to the effect of Schedule F to this Act.

No landlord to distrain except personally or by bailiff authorised by written warrant. 15 Vic. No. 11, s. 1. Schedule F.

(2) Whenever the person signing such warrant is unable to write his name his signature shall be attested by a justice of the peace, a solicitor, or a clerk of petty sessions.

35. (1) Every person making any such distress as the agent or bailiff of another, shall first procure from such person two copies of the before-mentioned warrant, both of which shall be signed as aforesaid, and shall deliver one of such copies at the time of making the distress to the tenant or owner of the goods distrained, or to some person for him resident at the place where the said distress is made.

Bailiff to procure warrant in duplicate and give one copy to person distrained on. *Ibid.* s. 2.

(2) If there is no person at such place with whom such copy can be left as aforesaid, then such bailiff or agent shall give such copy to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

36. (1) Every person making any distress for rent shall forthwith make out a written inventory in the form or to the effect of Schedule G to this Act of the goods distrained, which inventory shall be dated on the day of such distress, and shall be signed by the person making the same, and shall be thereupon delivered to the tenant or owner of the goods so distrained, or to some person for him resident at the place where the said distress is made.

Person distraining to forthwith make out and deliver inventory. *Ibid.* s. 3. Schedule G.

(2) If there is no person at such place with whom such inventory can be left as aforesaid, then such inventory shall be posted on some conspicuous part of the premises on which the distress is made, and such person so distraining shall give such inventory to the said tenant or owner at any time afterwards on demand within one month after the making of such distress.

37. (1) Where any goods or chattels are distrained for any rent, and the tenant or owner of the goods so distrained does not within five days next after such distress taken replevy the same with sufficient security to be given to the sheriff or his deputy or to any justice of the peace according to law, then in such case after the expiration of the said five days the person distraining shall cause the goods and chattels so distrained to be sold by public auction by a duly licensed auctioneer, or by a sheriff's bailiff or a bailiff of some Court of petty sessions or District Court for the best price that can be got for the same towards satisfaction of the said rent and the charges of the said distress and sale.

Goods distrained for rent may be sold after the expiration of five days. *Ibid.* s. 4.

(2)

(2) The overplus (if any) shall be forthwith handed over to the said tenant or owner, and a full and true account in writing of every such sale shall in every case be given by the person making the distress to the tenant or owner on demand.

Not to apply to corn, grass, hops, &c., growing at time of seizure.

(3) Nothing herein contained as to the time of sale shall apply to any corn, grass, hops, roots, fruits, pulse, or other product whatsoever growing at the time of the same being seized as a distress.

Tenant or owner may direct order of sale.

Ibid. s. 5.

38. The tenant or owner of any goods so distrained as aforesaid may at his option direct and specify the order in which the said goods and chattels shall be successively sold, and the said goods and chattels shall in such case be put up for sale according to such directions of the tenant or owner as aforesaid.

Visitors' and lodgers' goods not to be seized for rent.

Ibid. s. 6.

39. (1) No distress shall be made on the goods of any casual visitor in any house, nor on the goods (other than furniture) of any lodger in any house or apartment ordinarily let or used as a lodging house or apartment.

Sewing-machine, type-writing machine, or mangle exempt from distress.

No. 43, 1898, s. 1.

(2) No distress shall be made on any sewing-machine, type-writing machine, or mangle the property of or under hire to any female person for any rent claimed in respect of the premises or place in which such sewing-machine, type-writing machine, or mangle may be:

Provided that any one such person shall not be entitled to have more than one sewing-machine, one type-writing machine, or one mangle protected from distress under the provisions of this subsection.

Sheriff or deputy may grant replevin.

7 Vic. No. 13, s. 4.

40. The sheriff and any deputy specially appointed by him for that purpose may grant replevin in all cases where a sheriff in England had power to grant replevin on the eighth day of December, in the year one thousand eight hundred and forty-three, being the day on which the Act seventh Victoria number thirteen came into force.

Justices may grant replevin in certain cases.

15 Vic. No. 11, s. 8.

41. (1) In all cases in which any distress is made at any place distant more than ten miles from the office of the sheriff or from the residence of any deputy appointed as aforesaid, any justice of the peace may grant a replevin of the goods distrained, and for that purpose may take a replevin bond with sufficient sureties.

(2) Neither such justice of the peace, nor the sheriff, nor any such deputy as aforesaid shall be liable to any action for taking insufficient security if he has acted bonâ fide and with reasonable care and caution.

Security to be taken before deliverance of any distress.

Ibid. s. 9.

42. (1) The said sheriff or deputy or justice of the peace as aforesaid shall, before deliverance is made by him of any distresses, take from the person to whom such replevin is granted, and two sufficient sureties, a bond in double the value of the property distrained, such value to be ascertained by the oath of one or more credible witness

witness or witnesses (which oath the person granting replevin is hereby authorised to administer) conditioned for commencing within one calendar month from the date of such bond, and prosecuting with effect and without delay an action for the taking and detaining the property distrained, and for returning such property in case a return should be awarded.

(2) The sheriff, deputy, or justice of the peace taking any such bond shall, at the request of the avowant or person making cognizance, assign such bond to the avowant or person making cognizance by indorsing the same and attesting it under his hand and seal in the presence of one credible witness.

(3) If the bond so taken and assigned is forfeited the avowant or the person making cognizance may bring an action and recover thereupon in his own name.

(4) The Court where such action is brought may, by rule or order, give such relief to the parties upon such bond as may be agreeable to justice and reason, and such rule or order shall have the nature and effect of a defeasance to such bond.

Actions of replevin to be commenced by writ of summons in such form as the judges shall prescribe. *Ibid.* s. 10.

43. (1) Every action of replevin, except those over which jurisdiction is hereinafter given to District Courts and Courts of Petty Sessions, shall be commenced in the Supreme Court by writ of summons in such form as the Judges shall prescribe, and be thenceforward prosecuted and dealt with in like manner as other actions in the said Court may be prosecuted and dealt with.

(2) The laws and statutes in force in England on the nineteenth day of December, in the year one thousand eight hundred and fifty-one (being the date on which the Act fifteenth Victoria number eleven came into force), applicable to actions of replevin shall be in force in this Colony, and be applied in the administration of justice so far as the same can be applied within New South Wales.

Forms of precept to replevy, and of replevin and assignment bonds. *Ibid.* s. 11. Schedules I, K, L.

44. Every precept to replevy shall be in the form or to the effect of Schedule I to this Act, and every replevin bond shall be taken in the form or to the effect of Schedule K to this Act, and every assignment of such bond shall be in the form or to the effect of Schedule L to this Act.

Fees to be charged. *Ibid.* s. 12.

45. The sheriff and every such deputy as aforesaid, and every justice of the peace shall be entitled to demand and receive for the making of every replevin, including the taking of the bond thereon, a fee of ten shillings, and for the making of every such assignment a fee of two shillings and sixpence.

District Courts and petty sessions empowered to adjudicate in actions of replevin as to distresses for rent not exceeding thirty pounds. *Ibid.* s. 19. 22 Vic. No. 18, s. 29.

46. (1) The respective Courts of Petty Sessions established, or hereafter to be established in any part of New South Wales, other than the county of Cumberland, and the District Courts shall hear and determine within their respective jurisdictions all actions of replevin relating

relating to distresses for rent between landlord and tenant where the rent for or in respect of which any distress is or ought to have been made does not exceed thirty pounds in amount or value.

(2) All proceedings in such actions of replevin shall be taken, and all such actions shall be tried and determined in the same manner and shall be subject to the same rules as other actions in the said District Courts or Courts of Petty Sessions.

As to form of plaint in such actions. *Ibid.* s. 14. Schedule M.

47. The plaint in actions of replevin in the said District Courts or Courts of Petty Sessions shall be in the form or to the effect of Schedule M to this Act.

Court may award damages or may order replevin bond to be given up. *Ibid.* s. 15.

48. (1) If at the hearing of any such action of replevin before any of the said District Courts or Courts of Petty Sessions it appears that any sum was due for rent and that no tender of the sum so due was made before the filing of the plaint in the said Court, such Court may give judgment for the defendant for the sum ascertained to be due for rent and the costs of defending the action and making the distress.

(2) If it appears that no rent was due at the time of such distress, or that a tender was made of the amount due and the costs of distress previous to the filing of the plaint, such Court may order the replevin bond to be delivered up to the party complaining of the distress, and also may give judgment for the plaintiff for such damages as the Court thinks fit, and if necessary may order that such damages and costs shall be set off against or deducted from any rent then due or thereafter to accrue due.

Court may order goods distrained on to be sold. *Ibid.* s. 16.

49. (1) Every such District Court or Court of Petty Sessions on the hearing of any such action of replevin may order that the goods distrained shall be returned to the party who distrained the same, and in every such case where the goods distrained are actually returned to the party who distrained the same and the costs of the proceedings paid no further proceedings shall be had on the replevin bond.

(2) All such goods if returned or recovered under any such order as aforesaid may be sold for the recovery of the rent due and expenses at the expiration of four days after the return thereof.

Charges of distress defined. *Ibid.* s. 17. Schedule H.

50. Where any distress is made by the person to whom the rent is due, or by any bailiff or agent as aforesaid, the charges in Schedule H to this Act and no other shall be made in respect thereof.

Distress may be secured and sold on premises. *Ibid.* s. 18.

51. (1) Any person lawfully taking any distress for rent may impound or otherwise secure the distress so made of what nature or kind soever it may be in such places or on such part of the premises chargeable with the rent as are most fit and convenient for the impounding and securing such distress, and may sell and dispose of the same upon the premises.

(2) Any person whatsoever after the expiration of the five days hereinbefore mentioned may come and go to and from such place

or

or part of the said premises where any distress for rent is impounded and secured as aforesaid in order to view and buy and in order to carry off or remove the same on account of the purchaser thereof.

Treble damages for pound breach.

(3) If any pound breach or rescous is made of any goods or chattels distrained for rent the person grieved thereby shall in a special action on the case for the wrong thereby sustained recover his treble damages and costs of suit against the offender 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 to his use or possession.

Double damages and costs against unlawful distrainer. *Ibid.* s. 19.

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

No appraisement necessary in distress for rent. *Ibid.* s. 20.

53. In no case of distress for rent shall any appraisement whatever be necessary nor shall any costs or expenses be charged or allowed in respect thereof.

Penalty for distraining, &c., contrary to law. *Ibid.* s. 22.

54. If any person—

(*a*) knowingly and wilfully distrains for rent as the agent or bailiff of another without having first obtained the warrant hereinbefore mentioned in duplicate; or

(*b*) neglects or refuses to deliver one of such duplicates to the tenant or owner as hereinbefore directed; or

(*c*) when distraining for rent neglects or refuses to make out and deliver or post up such inventory as aforesaid; or

(*d*) charges more for any distress or sale than is authorised by this Act; or

(*e*) refuses to give such account in writing of any sale as hereinbefore provided,

he shall on conviction be liable to a penalty not exceeding fifty pounds, to be recovered in a summary way by the party aggrieved before any two justices of the peace.

Interpretation clause. *Ibid.* s. 24.

55. For the purposes of this Part of this Act the word "rent" shall be held to mean any rent reserved upon any demise lease or contract whatsoever.

Executors of lessor may distrain. 5 Vic. No. 9, s. 27.

56. (1) The executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for arrears of rent due to such lessor or landlord in his lifetime in like manner as such lessor or landlord might have done, and such arrears may be distrained for after the end or determination of such term or lease in the same manner as if it had not been determined.

(2)

(2) Provided that such distress be made within six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears became due, and that all provisions in force by law, relating to distresses for rent, shall be applicable to every distress so made.

PART VI.

Restriction of effect of waiver and license by lessor.

Restriction on effect of license to alien. 26 Vic. No. 12, s. 1.

57. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease, is, at any time after the passing of this Act, given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given or to any specific breach of any proviso or covenant made, or to be made, or to the actual assignment under lease or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license), and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and shall be available as against any subsequent breach of covenant or condition assignment under lease or other matter not specifically authorised or made dispunishable by such license in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses. *Ibid.* s. 2.

58. Where in any lease there is a power or condition of re-entry on assigning, or under-letting, or doing any other specified act without license, and a license at any time after the passing of this Act is given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or is given to any lessee or owner, or any one of several lessees or owners, to assign or under-let part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by co-lessees or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, as the case may be, over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

Apportionment of conditions of entry in certain cases. *Ibid.* s. 3.

59. Where the reversion upon a lease is severed and the rent or other reservation is legally apportioned, the assignee of each part of the

the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Restriction of effect of waiver. *Ibid.* s. 4.

60. Where any actual waiver of the benefit of any covenant or condition in any lease on the part of any lessor or his heirs, executors, administrators, or assigns is proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed, or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver specially relates, nor to be a general waiver of the benefit of any such covenant or condition unless an intention to that effect appears.

Preceding provisions to apply to leases for a term of years absolute, &c. *Ibid.* s. 10.

61. The provisions contained in this Part of this Act shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons, whether such leases be made before or after the passing of this Act.

SCHEDULES.

SCHEDULE A.

Date of Act.	Title of Act.	Extent of Repeal.
5 Vic. No. 9 ...	Advancement of Justice	Section 27.
7 Vic. No. 13 ...	An Act for regulating the powers and duties of Sheriff in New South Wales.	Section 4.
11 Vic. No. 28 ..	Leases Facilitation	The whole Act.
15 Vic. No. 11 ...	Distress for Rent	The whole Act.
17 Vic. No. 10 ...	Tenements Recovery	The whole Act.
17 Vic. No. 21 ...	Common Law Procedure	Sections 160–168 (both inclusive), and so much of s. 174 as refers to ss. 160–168.
22 Vic. No. 18 ...	District Courts	Sections 19–23 (both inclusive), 106–108 (both inclusive), and so much of s. 1 as refers to ss. 19–23 and 106–108.
26 Vic. No. 12 ...	Trust Property	Sections 1–4 (both inclusive).
No. 43, 1898 ...	Distress for Rent Restriction Act, 1898 ...	The whole Act.

SCHEDULE

SCHEDULE B.

This indenture made the day of one thousand eight hundred and ninety (*or other year*), in pursuance of the Landlord and Tenant Act of 1899, between [*here insert the names of the parties and recitals if any*], witnesseth that the said lessor (*or lessors*) doth (*or do*) demise unto the said lessee (*or lessees*), his (*or their*) heirs or executors, administrators, and assigns, as the case may be, all, &c., (*parcels*) from the day of for the term of thence ensuing, yielding and paying therefor during the said term the rent of [*state the rent and mode of payment*].

In witness whereof the said parties hereto have hereunto set their hands and seals.

SCHEDULE C.

Directions as to the forms in this Schedule.

1. Parties who use any of the forms in the first column in this Schedule may substitute for the words "lessee" or "lessor" any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular in the forms in the first column of this Schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may fill up the blank spaces left in the forms four and five in the first column of this Schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the forms embodied.

4. Such parties may introduce into or annex to any of the forms in the first column any express addition to, exceptions from, or express qualifications thereof, respectively, and the like additions, exceptions, or qualifications shall be taken to be made from or in the corresponding forms in the second column.

5. Where the premises demised are of freehold tenure the covenants one to ten shall be taken to be made with, and the proviso eleven to apply to, the heirs, executors, administrators, and assigns of the lessor, and where the premises demised are of leasehold tenure the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns, unless otherwise stated.

Column 1.	Column 2.
1. That the said (*lessee*) covenants with the said (*lessor*) to pay rent.	1. And the said lessee doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns will, during the said term, pay unto the said lessor the rent hereby reserved in manner hereinbefore mentioned without any deduction whatsoever.
2. And to pay taxes.	2. And also will pay all taxes, rates, duties, and assessments whatsoever now charged or hereafter to be charged upon the said demised premises or upon the said lessor on account thereof.
And to repair.	3. And also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises with the

Column 1—*continued.*	Column 2—*continued.*
	the appurtenances in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks and keys, and all other fixtures and things which, at any time during the said term, shall be erected and made when, where, and so often as need shall be.
4. And to paint outside every [ ] year.	4. And also that the said lessee, his executors, administrators, and assigns will, in every year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner.
5. And to paint and paper inside every [ ] year.	5. And also that the said lessee, his executors, administrators, and assigns will, in every year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner, and also will re-paper with paper of a quality as at present such parts of the premises as are now papered, and also wash, stop, whiten, or colour such parts of the said premises as are now plastered.
6. And to insure from fire in the joint names of the said (*lessor*) and the said (*lessee*).	6. And also that the said lessee, his executors, administrators, and assigns will forthwith insure the said premises hereby demised to the full value thereof in some respectable insurance office in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, and assigns, and keep the same so insured during the said term, and will upon the request of the said lessor or his agent show the receipt for the last premium paid for such insurance for every current year, and as often as the said premises hereby demised shall be burnt down or damaged by fire all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators, or assigns for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises or such parts thereof as shall be burnt down or damaged by fire as aforesaid
7. And that the said (*lessor*) may enter and view state of repair, and that the said (*lessee*) will repair according to notice.	7. And it is hereby agreed that it shall be lawful for the said lessor and his agents at all seasonable times during the said term to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises, and further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators, and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly,

8.

Column 1—*continued.*	Column 2—*continued.*
8. That the said (*lessee*) will not use premises as a shop.	8. And also that the said lessee, his executors, administrators, and assigns will not convert, use, or occupy the said premises or any part thereof into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. And will not assign without leave.	9. And also that the said lessee shall not nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises or any of them, to be assigned, transferred, or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators, or assigns first had and obtained.
10. And that he will leave premises in good repair.	10. And further that the said lessee will, at the expiration or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised with the appurtenances, together with all buildings, erections, and fixtures, now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.
11. Proviso for re-entry by the said lessor on non-payment of rent or non-performance of covenants.	11. Provided always and it is expressly agreed that if the rent hereby reserved or any part thereof shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor at any time thereafter into and upon the said demised premises or any part thereof in the name of the whole to re-enter, and the same to have again re-possess and enjoy as of his or their former estate, anything herein contained to the contrary notwithstanding.
12. The said (*lessor*) covenants with the said (*lessee*) for quiet enjoyment.	12. And the lessor doth hereby for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they paying the rent hereby reserved and performing the covenants hereinbefore on his and their part contained shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

SCHEDULE

SCHEDULE D.

In the Supreme Court of New South Wales.—

The day of A.D. 18 .

[*Date of writ.*]

Cumberland } to wit. }

On the day and year above written, a writ of our Lady the Queen issued forth of this Court with a notice thereunder written, the tenor of which writ and notice follows in these words, that is to say :—

[*Here copy the writ and notice, which latter may be as follows*—]

"Take notice that you will be required if ordered by the Court or a judge to give bail by yourself and two sufficient sureties conditioned to pay the costs and damages which shall be recovered in this action."

And C.D. has appeared by his attorney [*or* in person], to the said writ, and has been ordered to give bail pursuant to the statute, and has failed so to do. Therefore it is considered that the said [*here insert name of landlord*] do recover possession of the land in the said writ mentioned with the appurtenances, together with £ for costs of suit.

SCHEDULE E.

Form of information.

District of (*the district in which the land of which possession is sought to be recovered is situate*) } to wit. } Be it remembered that on the day of in the year of our Lord one thousand eight hundred and at in the Colony of New South Wales (A.B.) *or* (C.D. the agent of A.B.) the landlord of the land hereinafter described, informed me Esquire, one of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justice before whom the information is exhibited*) that theretofore E.F. held from the said A.B., by virtue of a tenancy (for a term of years *or* from year to year, *or* from month to month, *or* from week to week, *or* at will *or* at sufferance, *or otherwise as the case may be*) (all that parcel of land *or* all that messuage or dwelling-house *or otherwise according to the fact*) situate in the (*city, town, parish, or other locality*) in the district of in the Colony aforesaid, bounded (*describing the land by name, abuttals, or otherwise with sufficient particularity to identify the same*), and that the said tenancy (expired by effluxion of time) *or* (was determined by notice to quit *or* demand of possession) on or about the day of (then instant *or* last past *or otherwise according to the fact*), and that such land was at the time of my being so informed as aforesaid actually occupied by the said E.F.) *or* (G.H., a person claiming under the said E.F.), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver up possession thereof, and that the said A.B. then had lawful right as against the said (E.F.) *or* (G.H.) to the possession of such land, and thereupon the said (A.B.) *or* (C.D.) prayed that the said A.B. might be put into possession of the said land under and by virtue of the provisions of the statute in such case made and provided.

Exhibited at aforesaid } on the day and year first above written before me. }

J.P.
The Justice above named.

Form

Form of summons.

To [E.F.] *or* [G.H.]

WHEREAS an information has been exhibited this day before me the undersigned [*here describe the justice as in the information*] by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. may, under and by virtue of the provisions of the statute in such case made and provided, be put into possession of [*here describe the land as in the information*] of which it is therein alleged you are now in the actual occupation on the ground that the same was held from the said A.B. by (you) *or* (E.F., under whom it is also therein alleged you claim), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*), which (expired by effluxion of time *or otherwise as averred in the information*) on or about the day of (now instant *or* last past *or otherwise as averred in the information*), and that you neglect to quit and deliver possession of the said land. These are therefore to command you in Her Majesty's name to be and appear on the day of now (instant) *or* (next ensuing) at the hour of of the clock in the forenoon at (*the place where the petty sessions of the district in which the land in question is situated usually sit*), and so from day to day at the same hour of the day until the matter of the said information shall be disposed of, before such two or more of Her Majesty's justices of the peace as may then be there, to show cause why the said A.B. should not be put into possession of the said land, and why you should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and of recovering possession of the said land. And take notice that if you fail to appear and show such cause as aforesaid you will be liable to have a warrant issued against you under which such possession of the said land may be given to the said A.B., and to be adjudged to pay such costs as aforesaid.

Given under my hand the day of in the year of our Lord one thousand eight hundred and .

J.P.

The justice above named.

Form of adjudication in favour of landlord and award of costs to him or his agent.

District of (*as in information*) to wit. } WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.), praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of [*here describe the land as in the information*] of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, on the ground that the same was held from the said A.B. by (the said E.F.) *or* (E.F., under whom it was also therein alleged the said G.H. claimed), by virtue of a tenancy (for a term of years *or otherwise as averred in the information*) which (expired by effluxion of time *or otherwise as in the information*) on or about the day of (then instant *or* last past *or otherwise as averred in the information*), and that the said (E.F.) *or* (G.H.) neglected to quit and deliver possession of the said land. And whereas thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of now (instant) *or* (last past) at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day until the matter of the said information should be disposed of, before such two or more of Her Majesty's justices of the peace as might then be there to show cause why the said (A.B.) should not be put into possession of the said land, and why the said (E.F.) *or* (G.H.) should not be adjudged to pay to the said (A.B.) *or* (C.D.) his costs of proceeding to obtain and recovering possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid been duly heard by and before us (*the justices making adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices by whom the matter is heard*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid,

aforesaid, we being (all) *or* (a majority of) the justices then and there sitting. And the said (A.B.) *or* (C.D.) hath given due proof according to law to the satisfaction of us of the creation and of the (expiration) *or* (determination) in manner aforesaid of the said tenancy, and that the said (A.B.) had at the time of the service of the said summons upon the said (E.F.) *or* (G.H.), and at the time of the said hearing, and now has lawful right as against the said (E.F.) *or* (G.H.) to the possession of the said land, and that the said (E.F.) *or* (G.H.) was the tenant in possession or the actual occupier of the said land at the time of the said service of the said summons [and whereas the said (E.F.) *or* (G.H.) duly appeared in pursuance of the said summons and according to the exigency thereof before us to defend himself touching the matter of the said information, but did not show any reasonable cause to us], *or* [and whereas the said (E.F.) *or* (G.H.) not having appeared in pursuance of the said summons or according to the exigency thereof, due proof of the service of the said summons was given to us], and no reasonable cause was in fact shown or appeared to us why we should not adjudge the said (A.B.) to be entitled to possession of the said land: Now, therefore, we do hereby adjudge that the said (A.B.) is entitled to the possession of the said land, and that a warrant shall issue according to the provisions of the statute in such case made and provided for putting the said (A.B.) into possession of the said land within the period beginning on the day of (*here name a day not less than seven clear days from the date of the warrant*), and ending on the day of (*here name a day not more than thirty clear days from the date of the warrant*). (*Here add in case costs shall be awarded to the landlord or his agent*)—And we do assess the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said land at the sum of which said sum of money we do award to the said (A.B.) *or* (C.D) for his said costs, and we do order and adjudge that the same shall be paid forthwith by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.)

Witness our hands and seals the day of in the year of our Lord one thousand eight hundred and

J.P. (L.S.)
J.P. (L S.)

Form of warrant of possession.

District of (*as in information*) to wit. } [To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a special bailiff for the purposes hereinafter mentioned.]

Or [To and special bailiffs for the purposes hereinafter mentioned and to each of them.

WHEREAS we the undersigned of Her Majesty's Justices of the Peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices making the adjudication*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on this day of in the year of our Lord one thousand eight hundred and upon the hearing of the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. is entitled to the possession of [*here describe the land as in the information*]. And we did also adjudge that a warrant should issue according to the provisions of the said Act for putting the said A.B. into possession of the said land within the period beginning on the day of , and ending

ending on the day of (*as in adjudication*) : Now therefore we do authorise and command you [and (*if directed to more than one person*) each of you] within the period of clear days from the date hereof on any day except on Sunday (*and if either Christmas Day or Good Friday shall occur during the interval add* " or Christmas Day " or " Good Friday " *as the case may require*), between the hours of nine of the clock in the forenoon and four of the clock in the afternoon [with or without the aid of the said (A.B.) *or* (C.D.), or any other person or persons whom you may think requisite to call to your assistance], to enter (by force if needful) into and upon the said land, and to eject all persons thereout and therefrom, and to give possession of the same to the said (A.B.) *or* (C.D. as such agent as aforesaid on behalf of the said A.B.)

Given under our hands the day of in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of bond as security to defend action and supersede execution of warrant.

Know all men by these presents that we, K.L., of , in the Colony of New South Wales , and M.N., of , in the Colony aforesaid , are jointly and severally held and firmly bound unto A.B., of , in the Colony aforesaid , in the sum of pounds of lawful British money, to be paid to the said A.B., his executors or administrators, for which payment, to be well and truly made, we bind ourselves, our heirs, executors, and administrators jointly, and each of us binds himself, his heirs, executors, and administrators severally by these presents. Sealed with our seals.—Dated the day of , in the year of our Lord, one thousand eight hundred and

WHEREAS Esquires, of Her Majesty's justices of the peace in and for the Colony of New South Wales (*describing the jurisdiction of the justices by whom the adjudication was made*), in pursuance of the provisions of Part IV of the Landlord and Tenant Act, 1899, did on the day now (instant) *or* (last past) upon hearing the matter of an information exhibited by (the above-named A.B.) *or* (C.D. the agent of the abovenamed A.B.) against (E.F.) *or* (G.H.) adjudge that the said A.B. was entitled to the possession of [*here describe the land as in the information*], and did also adjudge that a warrant should issue according to the provisions of the said Part of the said Act for putting the said A.B. into possession of the said land [*here add in case costs were awarded to the landlord or his agent*], and the said justices assessed the costs of the said (A.B.) *or* (C.D.) of proceeding to obtain and of recovering possession of the said lands at the sum of (*as in the adjudication*), which sum they did award to the said (A.B.) *or* (C.D.) for his said costs ; and the said justices did order and adjudge that the same should be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.): And whereas at the time when the said adjudication was made the said (E.F.) *or* (G.H.), in pursuance of the provisions in that behalf contained in the said Part of the said Act, offered to give security to defend an action of ejectment or other appropriate action against him for recovery of possession of the said land in the Supreme Court of the said Colony, or any other Court having competent jurisdiction in that behalf, to be brought by or on behalf of the said A.B.: And whereas the said justices, in accordance with the provisions in that behalf contained in the said Part of the said Act, directed that the sum of money in which the bond in that behalf mentioned in the said Part of the said Act should be given should be the above-named sum of pounds ; and the said justices have approved of the above bounden K.L. and M.N. as two responsible persons to enter into the said bond, and the said justices have approved hereof as such bond as aforesaid : Now, the condition of the above-written bond is such that (in case the said A.B., his heirs, executors, or administrators, shall succeed in such action as aforesaid for the recovery of the said land) if the said (E.F.) *or* (G.H.), his executors or administrators, or any person on his or their behalf, shall pay to the said A.B., his heirs, executors, or administrators, all such costs of suit as shall be awarded to

or

or recovered by the said A.B., his heirs, executors, or administrators, in such action, and all mesne profits of the said land accruing between the time of the aforesaid adjudication and the time when the said A.B., his heirs, executors, or administrators shall obtain possession of the said land by virtue of such action [*here add in case costs were awarded to the landlord or his agent*], and the said sum of so ordered and adjudged by the said justices to be paid by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) as aforesaid, then the said above-written bond shall be void.

K.L. (L.S.)
M.N. (L S.)

Signed, sealed, and delivered by the abovenamed K.L. and M.N. in the presence of O.P. (*the attesting witness or witnesses*).

Form of memorandum to be written on or annexed to such bond and signed by the justices.

We, the justices named in this (*or* the annexed) bond, do hereby certify that we approve thereof.

As witness our hands the day of , in the year of our Lord one thousand eight hundred and

J.P.
J.P.

Form of adjudication in favour of tenant or occupier and award of costs to him.

District of (*as in information*) to wit.

WHEREAS an information was exhibited on the day of now (instant) *or* (last past) by (A.B.) *or* (C.D. the agent of A.B.) praying that the said A.B. might under and by virtue of the provisions of the statute in such case made and provided be put into possession of certain lands situate in the district of , in the Colony of New South Wales, therein described or referred to, of which it was therein alleged that (E.F.) *or* (G.H.) was then in the actual occupation, and thereupon a summons to the said (E.F.) *or* (G.H.) was duly issued and served, whereby the said (E.F.) *or* (G.H.) was duly summoned to be and appear on the day of , now (instant) *or* (last past), at the hour of of the clock in the forenoon, at (*as in the summons*) (being the place where the petty sessions of the said district usually sit), and so from day to day, until the matter of the said information should be disposed of before such or two more of Her Majesty's justices of the peace as might then be there, to show cause why the said A.B. should not be put in possession of the said land: And whereas the matter of the said information has in pursuance of such summons to the said (E.F.) *or* (G.H.) as aforesaid, being duly called on before us (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the Colony aforesaid (*describing the jurisdiction of the justices before whom the matter is called on*), at the said place at which the said (E.F.) *or* (G.H.) was so summoned to appear as aforesaid, we being (all) *or* (a majority of) the justices then and there sitting, and the said (E.F.) *or* (G.H.) having then and there appeared before us to defend and oppose the said information, and the said (A.B.) *or* (C.D.) (having failed to appear) *or* (having also appeared but having failed to give proof to our satisfaction) in support of his said information, we do, therefore, adjudge that the said information be dismissed, and the same is hereby dismissed accordingly. (*Here add in case costs shall be awarded to the tenant or occupier*—). And we do assess the costs of the said (E.F.) *or* (G.H.) of appearing and defending and opposing the said information at the sum of , which said sum of money we do award to the said (E.F.) *or* (G.H.) for his said costs. And we do order and adjudge that the same shall be paid by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.), and we do further award and adjudge that if the same be not paid forthwith the same be levied by distress and sale of the goods and chattels of the said (A.B.) *or* (C.D.).

Witness our hands and seals the day of , in the year of our Lord one thousand eight hundred and .

J.P. (L.S.)
J.P. (L.S.)

Form

Form of distress warrant for non-payment of costs.

[To a constable or peace officer of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales, and to all other constables and peace officers of or acting for the said district (*or other place as the case may be*) and to each of them.]

Or [To all constables and peace officers of or acting for the district of (*or other place as the case may be*) in the Colony of New South Wales and to each of them.]

Or [To a person specially named for the purposes hereinafter mentioned.]

Or [To and persons specially named for the purposes hereinafter mentioned and to each of them.]

WHEREAS on the day of now (instant) *or* (last past) at (*the place where the adjudication took place*) in the district of in the Colony of New South Wales, the matter of an information exhibited by (A.B.) *or* (C.D. the agent of A.B.) against (E.F.) *or* (G.H.), under and by virtue of the provisions of Part IV of The Landlord and Tenant Act, 1899, was duly heard and adjudicated upon by (*the justices making the adjudication*) of Her Majesty's justices of the peace in and for the said Colony (*describing the jurisdiction of the justices making the adjudication*), and such adjudication was in favour of the said (A.B.) *or* (C.D. on behalf of the said A.B.) *or* (E.F.) *or* (G.H.), and in and by such adjudication the said justices did assess the costs of the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) in the premises at the sum of (*as in the adjudication*), and did award to the said (A.B.) *or* (C.D.) *or* (E.F.) *or* (G.H.) the said sum of money for his said costs, and did order and adjudge that the same should be paid forthworth by the said (E.F.) *or* (G.H.) to the said (A.B.) *or* (C.D.) [or by the said (A.B.) *or* (C.D.) to the said (E.F.) *or* (G.H.)], and that if the same should not be forthwith paid, the same should be levied by distress and sale of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.). And whereas the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.) hath not paid the said sum of money so ordered and adjudged to be paid by him for the said costs as aforesaid, but therein hath made default. These are, therefore, to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.), and if within the period of clear days after the making of such distress, the said sum of money above mentioned, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale unto the clerk of the petty sessions of the justices of the peace for the said district of , in order that he may pay and apply the same as by law directed, and may render the over-plus (if any) on demand to the said (E.F.) *or* (G.H.) *or* (A.B.) *or* (C.D.)

Given under my hand and seal the day of , in the year of our Lord one thousand eight hundred and

J.P. (L.S.)

SCHEDULE F.

Warrant to distrain.

I, A.B., of , do hereby authorise 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 pounds, being the amount of rent due to me for the same on the day of last [*or* instant], and to proceed thereon for the recovery of the said rent as the law directs.

Dated this day of A.D. 18 .

A.B.

[*or* A.B. by his attorney G.H.]

SCHEDULE

SCHEDULE G.

Inventory.

I have this day [*if distress made by a bailiff here add* by virtue of the warrant a copy of which is hereunder written] 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 pounds, being the amount of rent due to me [*or if the distress be made by a bailiff* to A.B., of] for the same on the day last [*or* instant].

Dated this day of A.D. 18 .

A.B , landlord,
[*or* C.D., bailiff.]

[*And if distress made by a bailiff, enumerate the goods and chattels at full length, then insert a copy of the warrant to distrain.*]

SCHEDULE H.

Charges of distress.

	£	s.	d.
Costs of levy where made by an agent or bailiff under the authority of a warrant to distrain according to the following scale—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 2½ per cent.

Advertisements—the money paid for their insertion if such advertisements be required by the person whose goods are distrained.

SCHEDULE I.

Precept to replevy.

A.B., Esquire, sheriff [*or* deputy specially appointed by the sheriff or one of Her Majesty's justices assigned to keep the peace], to C.D., my bailiff—Because E.F. hath found me sufficient security as well for prosecuting his suit with effect against G.H. for taking his goods and chattels, to wit [*specifying them*], and also for making a return thereof if return thereof shall be adjudged, therefore I command you without delay to replevy and deliver to the said E.F. his said goods and chattels, which the said G.H. hath taken and unjustly detained as alleged. Thereof fail not.

Dated this day of A.D. 18 .

A.B., sheriff
[*or* sheriff's deputy *or* justice of the peace.]

SCHEDULE K.

Replevin bond.

Know all men by these presents that we, J.P., of [*place of abode and addition*], C.D., of [*place of abode and addition*], and L.H., of [*place of abode and addition*], are held and firmly bound to A.B., Esquire, sheriff of New South Wales [*or* deputy specially appointed by the sheriff *or* one of Her Majesty's justices assigned to keep the peace], in the sum of [*insert double the value of the goods and chattels*] of lawful money of

of Great Britain, to be paid to the said A.B., or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each of us, our respective heirs, executors, and administrators, jointly and severally firmly by these presents.

Dated this day of A.D. 18

Whereas the above A.B., upon the complaint of the above J.P., hath consented to deliver and replevy to the said J.P. the goods and chattels following, to wit [*enumerate the whole of the property*], which J.N., of [*place of abode and addition*], hath taken and wrongfully withheld as the said J.P. alleges—

Now the condition of this obligation is that if the said J.P. do within one month now next ensuing commence an action against the said J.N. in the Supreme Court of New South Wales, or in some competent District Court or court of petty sessions, and do prosecute such suit with effect and without delay against the said J.N. for the taking and withholding of the said goods and chattels, and also do make return thereof, if return thereof shall be adjudged by law, and so defend and save harmless the said A.B. against the said J. N. and all other persons from and against all matters and things concerning the premises, then this obligation shall be void, otherwise it is to remain in full force.

Signed, sealed, and delivered in the presence of } J.P. (L.S.) C.D. (L.S.) L.H. (L.S.)

SCHEDULE L.

Assignment of bond.

Know all men by these presents, that I, the within-named A.B., have at the request of the within-named J.N. [*the avowant or person making cognizance*] assigned over this replevin bond unto him the said J.N. pursuant to the Act in such case made and provided. In witness whereof I have hereunto set my hand and seal this day of 18 .

Signed, sealed, and delivered in the presence of } A. B. (L.S.)

SCHEDULE M.

Plaint.

A.B. of [*insert place of residence*], complains of C.D. of [*insert place of residence*], for that the said C.D. did on the day of last [*or* instant] at [*insert place of distress*] unlawfully distrain the following goods and chattels of the said A.B., that is to say [*here describe them at full length*], for the sum of [*here insert amount distrained for*], which he the said C.D. alleged to be due to him for rent.

Sydney : William Applegate Gullick, Government Printer.—1899.

[1*s.* 6*d.*]