

THE DISTRESS ACT, 1875.

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[Price three annas and six pies.]

VII. Miscellaneous.

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ACT No. I OF 1875.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th
January 1875).

An Act to regulate Distresses for Rents in the Presidency Towns.

FOR the purpose of regulating distresses for rents Preamble.
in the Towns of Calcutta, Madras and Bombay;
It is hereby enacted as follows:—

I. Preliminary.

1. This Act may be called "The Distress Act, Short title.
1875," and it shall come into force at once. Commence-
ment.

It extends to every place within the local limits Local extent.
of the ordinary original civil jurisdictions of the High
Courts of Judicature at Fort William, Madras and
Bombay;

But nothing herein contained applies—

(a) to any rent due to Government;

(b) to any rent which has been due for more than
twelve months before the application mentioned in
section six.

2. The enactments specified in the second sched- Enactments
repealed.
ule hereto annexed are repealed to the extent men-
tioned in the third column of the same schedule.

All appointments made and securities given under
any of the said enactments shall be deemed to be
respectively made and given under this Act.

The reference to Act No. VII of 1847 made in
Act XXIII of 1850, section three, shall be read as
if made to this Act.

3. In this Act, "Court of Small Causes" means "Court of
Small
Causes"
defined.
the Court of Small Causes for the time being estab-
lished by law in Calcutta, Madras or Bombay, as
the case may be.

II. Bailiffs

II. Bailiffs and Appraisers.

Appointment
of bailiffs and
appraisers.

4. The Judges of the Court of Small Causes may appoint four or more persons to be bailiffs and appraisers for the purpose of this Act, and may from time to time, with the previous sanction of the Local Government, fix such remuneration for the services of such officers as the said Judges think fit, and may suspend or remove them.

Security to
be given by
appointees.

5. The persons so appointed shall give security to be approved by the said Judges faithfully to discharge the duties of their office, and they shall be deemed to be public servants within the meaning of the Indian Penal Code.

III. Issue of Distress-Warrants.

Application
for distress-
warrant.

6. Any person claiming to be entitled to arrears of rent of any house or premises to which this Act extends, or his duly constituted attorney, may apply to any Judge of the Court of Small Causes for such warrant as hereinafter mentioned.

The application shall be supported by an affidavit or affirmation to the effect of the form (marked A) in the first schedule hereto annexed.

Issue of
distress-
warrant.

7. The Judge may thereupon issue a warrant under his hand and seal and returnable within six days, to the effect of the form contained in the same schedule (marked B) addressed to any one of such bailiffs.

The Judge may at his discretion, upon personal examination of the person applying for such warrant, decline to issue the same.

IV. Of the making of Distresses.

Time for
distress.

8. Every distress under this Act shall be made after sunrise and before sunset, and not at any other time.

What places
bailiff may
force open.

9. The bailiff directed to make the distress may force open any stable, out-house, or other building, and may also enter any dwelling-house, the outer door of which may be open and may break open the door of any room in such dwelling-house for the purpose of seizing property liable to be seized under this Act.

Provided

Provided that he shall not enter or break open the door of any room appropriated for the zanáná or residence of women, which by the usage of the country is considered private.

10. In pursuance of the warrant aforesaid the bailiff shall seize the moveable property found in or upon the house or premises mentioned in the warrant and belonging to the person from whom the rent is claimed (hereinafter called the debtor), or such part thereof as may in the bailiff's judgment be sufficient to cover the amount of the said rent, together with the costs of the said distress.

Property which may be seized.

Provided that the bailiff shall not seize—

(a) things in actual use; or

(b) tools and implements not in use, where there is other moveable property in or upon the house or premises sufficient to cover such amount and costs; or

(c) the debtor's necessary wearing apparel; or

(d) goods in the custody of the law.

11. The bailiff may impound or otherwise secure the property so seized in or on the house or premises chargeable with the rent.

Impounding distress.

12. On seizing any property under section ten, the bailiff shall make an inventory of such property and shall give a notice in writing to the effect of the Form in the first schedule hereto annexed (marked C) to the debtor, or to any other person upon his behalf in or upon the said house or premises.

Inventory.

Notice of intended appraisement and sale.

The bailiff shall, as soon as may be, file in the Court of Small Causes copies of the said inventory and notice.

Copies of inventory and notice to be filed.

V. Of Applications to discharge Distresses, and of Compensation.

13. The debtor, or any other person alleging himself to be the owner of any property seized under this Act, may, at any time within five days from such seizure, apply to any Judge of the said Court to discharge or suspend the warrant, or to release a distrained article, and such Judge may discharge or suspend

Application to discharge or suspend warrant.

suspend such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the Judges of the said Court may in his discretion give reasonable time to the debtor to pay the rent due from him.

Upon any such application, the costs attending it and attending the issue and execution of the warrant shall be in the discretion of the Judge, and shall be paid as he directs.

Claim to goods distrained made by a stranger.

14. If any claim be made to, or in respect of, any property seized under this Act, or in respect of the proceeds or value thereof, by any person not being the debtor, the Chief Clerk of the Court of Small Causes, upon the application of the bailiff who seized the property, may issue a summons calling before the Court the claimant and the person who obtained the warrant.

And thereupon any suit which may have been brought in the High Court in respect of such claim shall be stayed, and any Judge of the High Court, on proof of the issue of such summons and that the property was so distrained, may order the plaintiff to pay the costs of all proceedings in such suit after the issue of such summons.

And a Judge of the Court of Small Causes shall adjudicate upon such claim and make such order between the parties in respect thereof and of the costs of the proceedings as he thinks fit;

and such order shall be enforced as if it were an order made in a suit brought in such Court.

The procedure in Courts of Small Causes in cases under this section shall conform, as far as may be, to the procedure in an ordinary suit in such Courts.

Power to award compensation to debtor or claimant.

15. In any case under section thirteen or section fourteen the Judge by whom the case is heard may award such compensation by way of damages to the applicant or claimant (as the case may be) as the Judge thinks fit,

and may for that purpose make any enquiry he thinks necessary;

and

and the order of the Judge awarding or refusing such compensation shall bar any suit in respect of injury caused by the distress.

16. In any application under section thirteen or any claim under section fourteen, if the value of the subject-matter in dispute exceeds one thousand rupees, the applicant or claimant may apply to the High Court to transfer the case to itself, and the High Court on being satisfied that it is expedient that the case should be disposed of by itself, may direct the case to be transferred accordingly, and may thereupon alter or set aside any order passed in the case by a Judge of the Court of Small Causes, and may make such order therein as the High Court thinks fit.

Power to transfer to High Court cases involving more than Rs. 1,000.

Every application under this section shall be made within seven days from the date of the seizure of the subject-matter in dispute.

In granting applications under this section, the High Court may impose such terms as to payment of, or giving security for, costs or otherwise as it thinks fit.

The procedure in cases transferred under this section shall conform as far as may be to the procedure in suits before the High Court in the exercise of its ordinary original civil jurisdiction; and orders made under this section may be executed as if they were made in the exercise of such jurisdiction; and every such order awarding or refusing compensation shall bar any suit in respect of injury caused by the distress which gave rise to the case wherein such order was made.

VI. Appraisement and Sale of Distress.

17. In default of any order to the contrary by a Judge of the Court of Small Causes, or by the High Court, any two of the said bailiffs may, at the expiration of five days from a seizure of property under this Act, appraise the property so seized, and give the debtor notice in writing to the effect of the Form in the first schedule hereto annexed (marked D).

Appraisement.

Notice of sale.

The

The bailiffs shall file in the same Court a copy of every notice given under this section.

Sale.

18. In default of any such order to the contrary, the distrained property shall be sold on the day mentioned in such notice, and the said bailiffs shall on realizing the proceeds pay over the amount thereof to the Chief Clerk of the Court of Small Causes, and such amount shall be applied first in payment of the costs of the said distress and then in satisfaction of the debt; and the surplus, if any, shall be returned to the debtor:

Application of proceeds.

Provided that the debtor may direct that the sale shall take place in any other manner, first giving security for any extra costs thereby occasioned.

VII. Miscellaneous.

Costs of distresses.

19. No costs of any distress under this Act shall be taken or demanded except those mentioned in the part of the first schedule hereto annexed (marked E).

The Judges of the Court of Small Causes may apply the sum so raised as costs towards the payment of the contingent charges and remuneration of the said bailiffs, as appears to the said Judges expedient.

Account of costs and proceeds.

20. The Chief Clerk of the Court of Small Causes shall keep a book in which all sums received as costs upon distresses made under this Act, and all sums paid as remuneration to the said bailiffs, and all contingent charges incurred in respect of such distresses shall be duly entered.

He shall also enter in the said book all sums realized by sale of the property distrained and paid over to landlords under the provisions of this Act.

Bar of distresses except under this Act.

21. No distress shall be levied for arrears of rent, except under the provisions of this Act;

Penalty for making illegal distresses.

And any person, except a bailiff appointed under section four, levying or attempting to levy any such distress shall, on conviction before a Magistrate of Police, be liable to be punished by fine not exceeding five hundred rupees and imprisonment for a term not exceeding three months, in addition to any other liability he may have incurred by his proceedings.

THE FIRST SCHEDULE.

1875.]

Distresses.

THE FIRST SCHEDULE.

A.

[See section 6.]

In the Court of Small Causes for

A. B. _____ (Plaintiff).

versus

C. D. _____ (Defendant),

A. B. of _____, in the town of _____, maketh oath [*or affirms*] and saith that C. D. _____, of _____, is justly indebted to _____ in the sum of Rs. _____ for arrears of rent of the house and premises No. _____, situated at _____, in the town of _____, due for _____ month, to wit from _____ to _____, at the rate of Rs. _____ per mensem.

Sworn [*or Affirmed*] before me the _____ day of _____ 187 _____.

Judge.

B.

[See section 7.]

In the Court of Small Causes for

FORM OF WARRANT.

I hereby direct you to distrain the moveable property of C. D., on the house and premises situate at No. _____, in the town of _____, for the sum of _____ Rs. and the costs of the distress, according to the provisions of The Distress Act, 1875. Dated _____ day of _____

(Signed and sealed)

To E. F., Bailiff and Appraiser.

C.

[See section 12.]

In the Court of Small Causes for

FORM OF INVENTORY AND NOTICE.

(State particulars of property seized.)

Take notice that I have this day seized the moveable property contained in the above inventory for the sum of _____ Rs., being the amount of _____ months' rent due to A. B. at _____ last, and that unless you pay the amount thereof, together with the costs of this distress, within five days from the date hereof, or obtain an order from one of the Judges of the Court of Small Causes to the contrary, the same will be appraised and sold pursuant to the provisions of The Distress Act, 1875. Dated the _____ day of _____

187 _____.

To C. D.

*(Signed) E. F.,
Bailiff and Appraiser.*

D.

B.

D.

[See section 17.]

In the Court of Small Causes for

Take notice that we have appraised the moveable property seized on the _____ day of _____, under the provisions of The Distress Act, 1875, of which a notice and inventory were duly served upon you [or upon _____ on your behalf, as the case may be] under date the _____, and that the said property will be sold on the _____ [two clear days at least after the date of the notice] at _____ pursuant to the provisions of the said Act. Dated this _____ day of _____ 187—.

(Signed) *B. F.**G. H.**Bailiffs and Appraisers.*

To C. D.

E.

[See section 19.]

In the Court of Small Causes for

SCALE OF FEES TO BE LEVIED IN DISTRAINTS FOR HOUSE RENT.

Sums sued for.		Affidavit and warrant to distrain.	Order to sell.	Commission.	Total.
Rs.	Rs.	Rs. A. P.	Rs. A. P.	Rs. A. P.	Rs. A. P.
1 and under	5 ...	0 4 0	0 8 0	0 8 0	1 4 0
5	" 10 ...	0 8 0	0 8 0	1 0 0	2 0 0
10	" 15 ...	0 8 0	0 8 0	1 8 0	2 8 0
15	" 20 ...	0 8 0	1 0 0	2 0 0	3 8 0
20	" 25 ...	0 12 0	1 0 0	2 8 0	4 4 0
25	" 30 ...	1 0 0	1 0 0	3 0 0	5 0 0
30	" 35 ...	1 0 0	1 0 0	3 8 0	5 8 0
35	" 40 ...	1 0 0	1 8 0	4 0 0	6 8 0
40	" 45 ...	1 4 0	2 0 0	4 8 0	7 12 0
45	" 50 ...	1 8 0	2 0 0	5 0 0	8 8 0
50	" 60 ...	2 0 0	2 0 0	6 0 0	10 0 0
60	" 80 ...	2 8 0	2 8 0	6 8 0	11 8 0
80	to 100 ...	3 0 0	3 0 0	7 0 0	13 0 0
Upwards of Rs. 100...		3 0 0	3 0 0	7 per centum	

The above scale is intended to include all expenses, except in suits where the tenant disputes the landlord's claim, and witnesses have to be subpoenaed, in which case each subpoena for sums under Rs. 40 must be paid for at four annas each, and twelve annas above that amount; and also where peons were kept in charge of property distrained, four annas per day must be paid per man.

THE SECOND SCHEDULE.

1875.]

Distresses.

THE SECOND SCHEDULE.

I.—STATUTES.

Year and Chapter.	Subject.	Extent of repeal.
52 Hen. 3, c. 1	Distress	The whole.
c. 3	Resisting replevins	Ditto.
c. 4	Distress	Ditto.
c. 15	Ditto	Ditto.
c. 21	Replevin	Ditto.
13 Ed. 1, c. 2	Replevins	Ditto.
c. 37	Distress to be by bailiffs	Ditto.
<i>Les Estatuz del Esche- kere, between c. 13 and c. 14 of 17 Edw. 2.</i>	Distresses	Ditto.
1 & 2 Phil. & M., c. 12	Impounding distresses	Ditto.
17 Char. 2, c. 7	Distresses	Ditto.
2 Wm. & Mary, c. 5	Sale of distresses	Ditto.

II.—ACTS.

Number and Year.	Subject.	Extent of repeal.
VII of 1847 ...	Distresses for small rents in Calcutta...	The whole.
IX of 1850 ...	Extension of Act VII of 1847 ...	Section eighty-nine.
XXVI of 1864 ...	Extending jurisdiction of Presidency Small Cause Courts.	Section four.