

PROPOSED
LANDLORD AND TENANT ACT
OF 1951

A
Report
of the
SUBCOMMITTEE ON LANDLORD
AND TENANT LAW



of the
JOINT STATE GOVERNMENT COMMISSION
of the
GENERAL ASSEMBLY
of the
COMMONWEALTH OF PENNSYLVANIA

SEPTEMBER, 1950

The Joint State Government Commission was created by Act of 1937, July 1, P. L. 2460, as amended 1939, June 26, P. L. 1084; 1943, March 8, P. L. 13, as a continuing agency for the development of facts and recommendations on all phases of government for the use of the General Assembly.

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INTRODUCTION

Pursuant to House of Representatives Concurrent Resolutions No. 6 and No. 74 of the 1949 Session of the General Assembly, the Joint State Government Commission was directed to study, revise and codify laws relating to landlord and tenant, eviction proceedings, rent control and kindred statutes.

In accordance with the Act of 1943, March 8, P. L. 13, Section 1, the Commission created a subcommittee to aid in the study of landlord and tenant laws. An interim report in the form of a proposed Landlord and Tenant Act, compiled by the Legislative Reference Bureau, is herewith submitted, with pertinent comments, for consideration. This draft is submitted as a codification of existing law upon the subject, modified where indicated to remove obsolete terminology, eliminate duplication, clarify ambiguities, and arrange the subject matter logically.

It is the intention of the Joint State Government Commission, through its subcommittee on Landlord and Tenant Laws, to give careful consideration to suggestions and recom-

mendations concerning this draft before it is finally submitted to the General Assembly.

Suggestions and recommendations should be addressed to the Joint State Government Commission, Post Office Box 61, Harrisburg, Pennsylvania.

SUBCOMMITTEE ON LANDLORD AND TENANT
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**PROPOSED
LANDLORD AND TENANT ACT
OF 1951**

AN ACT

Relating to landlord and tenant and amending, revising,
changing and consolidating the law relating thereto.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

ARTICLE I

PRELIMINARY PROVISIONS

SECTION 101. *Short Title.*—This act shall be known and may be cited as "The Landlord and Tenant Act of 1951."

SECTION 102. *Definitions.*—As used in this act:

(a) "Person" shall include natural persons, copartnerships, associations, private corporations, fiduciaries, the United States and its governmental agencies, the Commonwealth of Pennsylvania and its political subdivisions.

(b) "Justice of the peace" shall include justices of the peace, aldermen and magistrates.

(c) "Personal property" shall include goods and chattels, including fixtures and buildings erected by the tenant and which he has the right to remove, agricultural crops, whether harvested or growing, and livestock and poultry.

Comment:—The definition of "personal property" is based on 1772, March 21, §§ 1, 7, 1 Sm. L. 370, 68 PS §§ 291, 261; *Furbush v. Campbell*, 105 Pa. 187, 190, (1884); *Thorpp's App.*, 70 Pa. 395, (1872); *Becker v. Werner*, 98 Pa. 555, 556, (1881).

(d) "Real property" shall include messuages, lands, tenements, real estate, buildings, parts thereof, or any estate or interest therein, and shall include any personality on real property which is demised with the real property.

Comment:—By any "interest" is meant the right to extract oil, coal, stone, iron, ore, etc.

SECTION 103. *Provisions Excluded from Act.*—Nothing contained in this act shall be construed to include, or in any manner repeal or modify any existing law:

(a) Providing for preference of rent in case personal property, liable to distress, is taken and sold by virtue of any execution,¹ and providing for the payment of such rent from the proceeds of such execution.²

(b) Denying to a plaintiff the right to stay an execution without the consent of the landlord having a preference for rent due, payable from the proceeds of such execution.³

(c) Providing that a sale on distress shall be stayed, where the personal property distrained upon is levied upon by a sheriff, or where a receiver or a trustee or receiver in bankruptcy is appointed for the person whose property was distrained, and providing for a lien for the rent on the proceeds of the sale of such personal property by such officer, and the payment of such rent, together with the costs of executing the landlord's warrant, from the proceeds of such sale.⁴

(d) Providing for preference of rent in cases of insolvency and assignment for the benefit of creditors, and in bankruptcy proceedings.⁵

(e) Providing for preference of rent in the settlement of estates of decedents.⁶

(f) Fixing the liability of the tenant to pay taxes assessed against real property occupied by him, and permitting the tenant to recover the amount of the tax so paid from the landlord, or to defalcate such amount against rent due or becoming due.⁷

(g) Providing for the issuing of writs of estrepement to stay waste committed by a tenant or by others allowed by a tenant to commit waste, and for the procedure in such cases.⁸

(h) Fixing the duties and liabilities of tenants and the rights of landlords in connection with actions of ejectment brought by third parties.⁹

(i) Prescribing special proceedings for the obtaining of possession of real property purchased at tax or judicial sales, and providing for and defining the rights, remedies, duties and liabilities of such purchasers and tenants affected thereby.¹⁰

(j) Except as herein specially provided, fixing fees of justices of the peace, aldermen, magistrates, sheriffs or constables in any proceedings affecting the relationship of landlord and tenant.¹¹

Comment:—The following numbered references relate to the statutes excluded specifically from this draft:

¹ 1836, June 16, P. L. 755, § 83, 68 PS § 321.

² 1836, June 16, P. L. 755, § 84, 68 PS § 324.

³ 1836, June 16, P. L. 755, § 85, 68 PS § 325.

⁴ 1929, May 7, P. L. 1589, § 1, as amended 1931, June 22, P. L. 889, 68 PS § 322.

⁵ 1901, June 4, P. L. 404, § 31 as amended 1911, June 19, P. L. 1069, 39 PS §§ 94, 95, 97, 98; 1891, May 26, P. L. 122, § 1, 39 PS § 216; 1919, July 17, P. L. 1029, § 1, 39 PS § 96, and the Federal Bankruptcy Law.

⁶ 1949, April 18, P. L. 512, § 622 (5), 20 PS § 320.622.

⁷ 1804, April 3, P. L. 517, § 6, 72 PS § 5791, repealed in so far as applying to taxing districts coming within provisions of and operating under 1947, July 7, P. L. 1368; 1945, May 25, P. L. 1050, § 18, 72 PS § 5511.18; 1802, April 6, P. L. 178, § 8, 72 PS § 5664.

⁸ 1822, March 29, P. L. 86, §§ 1-2, 12 PS §§ 1465, 1466; 1850, April 22, P. L. 549, §§ 2-3, 12 PS §§ 1471, 1472; and 1871, June 2, P. L. 290, § 1, 12 PS § 1482.

⁹ 1772, March 21, §§ 8-9, Sm. L. 370, 12 PS §§ 1512-1513.

¹⁰ 1905, April 20, P. L. 239, §§ 10, 13, 14, as amended in part, 12 PS §§ 2581, 2584, 2585 as suspended by the Rules of Civil Procedure. Also see § 304 of this draft.

¹¹ 1893, May 23, P. L. 117, § 1, 42 PS § 214; and 1917, July 20, P. L. 1158, § 1, 13 PS § 61, as amended 1947, June 21, P. L. 773, 13 PS § 61.

ARTICLE II

CREATION OF LEASES; STATUTE OF FRAUDS; MORTGAGING OF LEASEHOLDS

SECTION 201. *Power to Lease Real Property.*—
Real property may be leased by a landlord or his agent¹ to a

tenant or his agent² by oral or written contract or agreement. Any such leasing may include any personality upon the premises leased.

Comment:—This section is based on case law as indicated by the references that follow:

¹ M'Gunnagle v. Thornton, 10 S. & R. 251, (1823); McDowell v. Simpson, 3 Watts 129, 135, (1834); Lewis v. Bradford, 10 Watts 67, 74, (1840).

² Gailbraith v. Bridges, 168 Pa. 325, (1895).

SECTION 202. *Leases for More Than Three Years to be in Writing; Otherwise¹ to be Construed as Leases at Will.*—Any lease of real property for a term of more than three years² from the making thereof³ must be in writing and signed by the parties making or creating the same; otherwise it shall have the force and effect of a lease at will only, and shall not be given any greater force or effect, either in law or equity, notwithstanding any consideration therefor unless the tenancy has continued for more than one year, and the landlord and tenant have recognized its rightful existence by claiming and admitting liability for the rent, in which case the tenancy shall become one from year to year.⁴

Comment:—This section is drafted from part of § 1, 1772, March 21, 1 Sm. L. 389, 33 PS § 1, as construed by the cases to which reference is made as follows:

¹ Hertzog v. Hertzog, 34 Pa. 418, 438, (1859); Davis v. Hillman, 288 Pa. 16, 21, 22, (1927).

² Bentz v. Barclay, 294 Pa. 300, 304, (1928); Sahm v. Long, 51 Pa. Superior Ct. 428, 433, (1912); Watson v. Slaughenkaupt, 64 Pa. Superior Ct. 581, (1916).

³ Wheeler v. Conrad, 6 Phila. 209, (1867); Whiting & Co. v. Pittsburgh Opera House Co., 88 Pa. 100, (1878).

⁴ Walter v. Transue, 22 Pa. Superior Ct. 617, 621, (1903).

SECTION 203. *Assignment, Grant and Surrender of Leases to be in Writing; Exception.*—No lease of any

real property made or created for a term of more than three years shall be assigned, granted or surrendered, except in writing signed by the party assigning, granting or surrendering the same or his agent, unless such assigning, granting or surrendering shall result from operation of law.

Comment:—This section is drafted from part of § 1, 1772, March 21, 1 Sm. L. 389, 33 PS § 1. See *M'Kinney v. Reader*, 7 Watts 123, 124, (1838), and *Kiester v. Miller*, 25 Pa. 481, 483, (1854), as to terms of less than three years.

SECTION 204. *Mortgaging of Leaseholds*.—Every tenant of real property may mortgage¹ his lease or term in the demised premises, together with all buildings, fixtures and machinery thereon and appurtenant² thereto belonging to the tenant.

Any such mortgaging of the tenant's interest and title shall have the same effect with respect to lien, notice, evidence and priority of payment as is provided by law in the case of the mortgaging of a freehold interest and title.

Any such mortgage shall be acknowledged and placed on record in the proper county, together with the lease, as in the case of mortgages on freehold interests. If the lease is recorded in the office of the recorder of deeds of the proper county at or before the time of the recording of the mortgage, such recording shall be deemed sufficient compliance with this section, if full and distinct reference is made in said mortgage to the book and page where the lease is recorded.

Any such mortgage of a tenant's interest and title may be enforced in the same manner as mortgages on freehold interests.

No such mortgage shall in any wise interfere with the landlord's rights, priority or remedies for rent.

Comment:—This section is drafted from 1855, April 27, P. L. 368, § 8, 21 PS § 838; 1876, May 13, P. L. 160, § 1, 21 PS § 839; 1868, April 3, P. L. 57, § 1, 21 PS § 840. The Act of May 13, 1876 was held not to repeal the Act of April 27, 1855; *Gill v. Weston*, 110 Pa. 305, 312, (1885).

¹*Hilton's App.*, 116 Pa. 351, 358, (1887); *Lefever v. Armstrong*, 15 Pa. Superior Ct. 565, (1901).

²*Stock v. Press Co.*, 230 Pa. 127, 131, (1911).

ARTICLE III

RECOVERY OF RENT BY ASSUMPSIT AND DISTRESS

SECTION 301. *Recovery of Rent by Assumpsit.*—Any landlord may recover, from a tenant, rent in arrear, in an action of assumpsit, as debts of similar amount are by law recoverable. In any such action, interest at the legal rate on the amount of rent due may be allowed if deemed equitable under the circumstances of the particular case.

Comment:—This section is drafted from 1814, March 22, P. L. 190, § 6, 42 PS § 272; 1879, July 7, P. L. 194, § 1, 42 PS § 241; *Beatty v. Rankin*, 139 Pa. 358, 362, (1891); *Harvey v. Gunzberg*, 148 Pa. 294, 298, (1892).

Assumpsit is a proper form of action for breach of contract contained in a lease: Vol. 1 Standard Pa. Practice 328.

SECTION 302. *Power to Distrain for Rent, Notice.*—Personal property located upon premises occupied by a tenant shall, unless exempted by article four of this act be subject to distress for any rent reserved and due. Such distress may be made by the landlord or by his agent duly authorized thereto in writing. Such distress may be made on any day except Sunday between the hours of seven ante meridian and seven post meridian and not at any other time, except where the tenant through his act prevents the execution of the warrant during such hours.

Notice in writing of such distress, stating the cause of such taking, specifying the date of levy and the personal property distrained sufficiently to inform the tenant or owner

what personal property is distrained, and the amount of rent in arrear, shall be given within five days after making the distress to the tenant and any other owner, personally or by leaving the same at the principal building upon the premises or by posting the same conspicuously on the premises charged with the rent.

A landlord or such agent may also, in the manner above provided, distrain personal property located on the premises but only that belonging to the tenant, for arrears of rent, due on any lease which has ended and terminated, if such distress is made during the continuance of the landlord's title or interest in the property.

Comment:—This section is drafted from the common law and 1772, Mar. 21, § 1, 1 Sm. L. 370, 68 PS 291, and the preamble to said section. The second paragraph is from § 14, of said act, 68 PS 251.

SECTION 303. *Collection of Rent in Special Cases.*—

(a) The following persons shall have the right to collect all rent due, by assumpsit or by distraint on personal property located on the real property subject to such rent:

- (1) The owner of a ground rent;
- (2) The personal representative of a deceased landlord, or deceased tenant for life who has demised the real property subject to his estate or a deceased landlord whose real property has escheated to the Commonwealth, whether such rent accrued prior to or after the death of the decedent and until the termination of the administration of the estate;
- (3) The escheator appointed for the purpose of collecting rents;
- (4) The spouse of a deceased landlord to whom real property has been set aside as his or her allowance by law; and

(5) A widow who is the party named in a deed, agreement or decree of court under which a charge is made upon such real estate for the payment of instalments of dower.

(b) Any person given the right by this section to collect and distrain for rent shall be deemed, for the purposes of this article, to be a landlord.

Comment:—As to ground rents—see *Kenege v. Elliott*, 9 Watts 258, 262, (1840).

As to powers of personal representative, see § 501 of the *Fiduciaries Act of 1949*.

As to spouse's allowance, see § 10 of the *Intestate Act of 1947*.

As to instalments of dower, see *Borland v. Murphy*, 4 W. N. C. 472, (1877); *Murphy v. Borland*, 92 Pa. 86, (1879).

SECTION 304. *Collection of Rent by Purchasers at Sheriffs' and Judicial Sales.*—In the case of a tenant whose right of possession is not paramount to that of the purchaser at a sheriff's, or other judicial sale, the latter shall have the right as a landlord to collect by assumpsit or to distrain for rent from the date of the acknowledgment of his deed, except for such fractional part of a quarter as the tenant, if a farmer or one engaged in raising crops or produce, or such fractional part of a month in other cases, as the tenant may, in accordance with the terms of his letting, have paid as an advance payment prior to the date of delivery of said deed. In the case of a tenant whose right of possession is paramount to that of such purchaser, advance rent, paid prior to the date of delivery of the purchaser's deed, shall be deemed properly paid, though paid prior to its due date, unless it is so paid with the actual notice of the pendency of the proceedings resulting in the sale, or with intent to defeat the rights of a purchaser thereat.

The right of possession of a tenant for years shall not be deemed paramount to that of a purchaser at a tax sale.

The right of possession of a tenant shall be deemed paramount to that of a purchaser at a judicial sale if and only if, the letting to him shall precede in point of date the entry of the judgment, order or decree on which such sale was had, and also shall precede the recording or registering of the mortgage deed or will, if any, through which by legal proceedings the purchaser derives title, and shall not be paramount if the letting is made with actual notice to such tenant of the contemplated entry of such judgment, order or decree, or of the fact of the execution of such mortgage, deed or other instrument of writing, and with intent to avoid the effect thereof.

Comment:—This section is drafted from 1905, April 20, P. L. 239, § 13, 12 PS § 2584; and § 14 thereof as amended 1945, March 21, P. L. 47, No. 25, § 1, 12 PS § 2585. However, the provisions of these sections are suspended by Rules of Civil Procedure in so far as the practice and procedure in actions to quiet title are concerned.

SECTION 305. *Distress of Property Fraudulently Removed.*—In case any tenant of any real property shall fraudulently or clandestinely remove from the demised premises, his personal property, with intent to prevent the landlord from distraining the same for arrears of rent, it shall be lawful for the landlord or his agent within the space of thirty days next ensuing such removal, to take and seize such personal property, wherever the same may be found, in distress for said arrears of rent, and to proceed to sell the same as hereinafter provided, as if the personal property had actually been distrained upon on the demised premises.

Comment:—This section is drafted from 1772, March 21, § 5, 1 Sm. L. 370, 68 PS § 271.

SECTION 306. *Replevin by Tenant or Owner.*—

The tenant or owner of any personal property distrained on may, within five days next after notice of such distress, replevy the same. All proceedings in replevin shall be conducted in accordance with general law and applicable rules of procedure governing actions of replevin.

Comment:—This section is based on 1772, March 21, § 1, 1 Sm. L. 370, 68 PS § 291, redrafted to conform with the Rules of Civil Procedure.

Under Rule 1073 (b) of the R. C. P. the plaintiff may begin an action of replevin without a bond, in which case the sheriff does not replevy the property, hence property may continue in the custody of the landlord under his levy.

SECTION 307. *Proceeding by Tenant to Determine*

Set-Off.—Any court of record or court not of record, having jurisdiction in civil actions at law, may entertain an action to defalcate by a tenant against a landlord, where the landlord has distrained for arrears of rent, to compel the landlord to set-off any account which the tenant may have against the landlord. No such court shall entertain any such action, where the rent or set-off claimed is in excess of its civil jurisdiction. Proceedings in such actions shall be the same as in actions of *assumpsit*.

The court shall determine the amount of rent in arrears and the amount of the set-off, if any, and enter judgment in favor of the proper party for the balance due.

If such judgment is in favor of the landlord, he may in lieu of issuing execution thereon, proceed with his distress for the amount of such judgment. If the landlord shall sell more personal property than necessary to satisfy such judgment and costs and fail to pay the overplus to the tenant, he shall be liable in trespass to double the amount of the sum so detained, together with the costs of suit. If the landlord shall proceed to sell any personal property after

notice of any such proceeding to defalcate and before judgment in his favor thereon, he shall be liable in trespass to double the amount by which the sum, realized from such sale, exceeds the sum to which he shall be found to be entitled by the final judgment in the defalcation proceeding, together with the costs of suit in the defalcation proceeding, if such judgment be in his favor.

If the landlord proceeds with the distress, he shall satisfy the judgment to the extent of the amount realized on the sale, less the costs of the distress, or on his failure to do so, the tenant may proceed by rule to have such satisfaction entered.

Comment:—This section is based on 1810, March 20, P. L. 208, § 20, 42 PS § 271 under which justices of the peace (aldermen and magistrates) have power to compel landlord to defalcate or set-off claims of tenant in cases of rent. 1879, July 7, P. L. 194, 42 PS § 241, increased jurisdiction of justices of peace and aldermen to \$300.

The amount claimed, and not the amount of the judgment, determines jurisdiction, i.e., justices of peace \$300 and magistrates \$100 *Neel v. Cann*, 158 Pa. Superior Ct. 426, (1946).

SECTION 308. *Appraisal of Property Levied Upon.*—If the tenant or owner of the personal property distrained upon fails to replevy the same within said five days next after distress and notice thereof, the person distraining may, with the sheriff or his deputy, or any constable or his deputy, which officer upon demand of the landlord shall aid and assist, cause the personal property so distrained to be appraised by two disinterested and competent persons appointed by said officer.

The appraisers shall each take the following oath or affirmation to be administered by the assisting officer.

“I do solemnly swear (or affirm) that I will well and truly, according to my understand-

ing, appraise the personal property of
 distrained on for rent by”

Each appraiser shall receive two dollars (\$2) per diem for his services in making the appraisal, to be paid out of the proceeds of the sale.

Comment:—This section is drafted from part of § 1, 1772, March 21, 1 Sm. L. 370, 68 PS § 291. An appraisal fee of two dollars has been substituted for the “two shillings” specified in the act of 1772.

SECTION 309. *Sale and Notice Thereof; Distribution of Proceeds.*—After the appraisal has been completed, the sheriff, deputy sheriff, constable or deputy constable shall fix a day, time and place of sale, of which at least six days public notice in writing shall be given by handbills. The notice of sale shall specify the personal property to be sold sufficiently to inform the tenant or owner and to induce bidders to attend the sale. On the day and at the time fixed for the sale, or on any day and time to which said sale may be adjourned, the sheriff, deputy sheriff, constable or deputy constable, shall publicly sell the personal property so distrained for the best price that can be obtained for the same.

The proceeds of the sale shall be paid out in the following order: First, for the payment of any wages, due by the tenant, which by law are given preference and to the same extent and upon the same conditions of notice being given as required by the wage preference law and notice of the claim to the officer executing the landlord’s warrant; second, for the payment of the charges and costs for making the distress, appraisal and sale; third, for the satisfaction of the rent for which the personal property was distrained; fourth, any overplus for the use of the owner.

Comment:—This section is drafted from part of § 1, 1772, March 20, 1 Sm. L. 370, 68 PS § 291, and 1872, April 9, P. L. 47, § 2, 43 PS § 222.

SECTION 310. *Rights of Purchasers of Growing Agricultural Crops.*—The purchaser of any growing agricultural crops at a sale on distress for rent shall, at all times, have free ingress and egress to and from the premises where the same may be growing and the right to repair fences. He shall have the right to dig, cut, gather, lay up and thresh the same in the same manner as the tenant might legally have done, and thereafter to carry the same away from the premises.

Comment:—This section is drafted from the last 6 lines of § 7, 1772, Mar. 21, 1 Sm. L. 370, 68 PS § 261.

The right of the landlord to distrain upon growing crops is covered by the general language of § 302—"Personal property located upon the premises shall be subject to distress." The term "personal property" as defined in § 102 includes agricultural crops whether harvested or growing and livestock and poultry.

SECTION 311. *Damages for Removal of Property Distraigned On.*—Any landlord having distrained upon personal property for rent due, who is aggrieved by the unlawful removal thereof, shall, in an action of trespass, recover treble damages together with the costs of suit against the offender, or against the owner if it be afterwards found that the personal property has come into his use or possession.

Comment:—This section is drafted from 1772, Mar. 21, § 2, 1 Sm. L. 370, 68 PS § 302.

SECTION 312. *Remedy in Cases of Improper Distress.*—The landlord and his agent shall be liable to the tenant or the owner of the personal property distraigned on in an action of trespass: (1) If the distress is for more rent than is due; (2) or if the amount of personal property distraigned is unreasonably great; (3) or if made after a

proper tender of the rent due was rejected; (4) or if the distress is conducted irregularly or oppressively; (5) or if any personal property taken in distress was to the knowledge of the landlord or his agent not distrainable; (6) or if the distress is made at an improper time; (7) or if the landlord or his agent receives notice, after the distress from the owner or his agent, or from the tenant having possession of the property, that the personal property distrained on was not subject to distress and nevertheless proceeds with the sale without affording the owner a five day period after such notice, to replevy such personal property.

Comment:—This section is based wholly on case law. *Thomas v. Gibbons*, 21 Pa. Superior Ct. 635, (1902); *Harrison v. Van Gunten*, 15 Pa. Superior Ct. 491, (1901); *Brown v. Stackhouse*, 155 Pa. 582, (1893). See also the cases referred to under § 313 of this draft.

SECTION 313. *Remedy Where Distress and Sale Made and No Rent Due.*—In case any distress and sale of personal property shall be made for rent, when no rent is due to the person distraining or to the person in whose name the distress has been taken, then the owner of the personal property shall, by action of trespass, brought against the person distraining recover double the value of the personal property so distrained and sold, together with the costs of suit.

Comment:—This section is drafted from 1772, March 21, § 3, 1 Sm. L. 370, 68 PS § 301. Purdon's notes on decisions carries reference to two cases decided since 1931 and the first case cited, namely, *Givens v. Gilmore Drug Co.*, 337 Pa. 278, (1940), is not a case within the provisions of this section, since there was rent due. The case involved excessive distraint, that is a distraint for more rent than due. The second case, namely, *Thompson v. Swank*, 317 Pa. 158, (1934) is not clear on the facts, beyond the fact that a "wilful distraint" had been made and a reduced verdict of \$1500 (seven times real damage) had been affirmed. No mention is made as to whether or not there was a sale following the distraint where no rent due.

ARTICLE IV

EXEMPTIONS FROM DISTRESS AND SALE

SECTION 401. *Tenant's Exemption; Appraisalment.* Unless the right of exemption has been waived by the tenant in writing, personal property to the value of three hundred dollars (\$300), in addition to any other personal property specifically exempted by this article, shall be exempt from levy and sale by distress for rent.

The officer charged with the execution of any landlord's warrant, shall, if requested by the tenant, summon two disinterested and competent persons, who shall be sworn or affirmed by such officer, to appraise personal property, including bank notes, money, stocks, judgments or other indebtedness due the tenant, to the value of three hundred dollars (\$300), which the tenant may elect to retain, and the property so elected and appraised shall be exempt from levy and sale in such distress proceedings.

Each appraiser shall be entitled to receive two dollars (\$2.00) for his services.

Comment:—This section is drafted from 1849, April 9, P. L. 533, §§ 1-2, 12 PS §§ 2161 and 2162; and in part from 1857, April 8, P. L. 170, 12 PS § 2163; and 1859, April 8, P. L. 425, 12 PS § 2166. An appraisal fee of \$2.00 has been substituted for the "fifty cents" specified in the act of 1849.

SECTION 402. *Wearing Apparel, Bibles, School Books, Sewing Machines and Military Accoutrements to be Exempt.*—All wearing apparel of the tenant and his family, all Bibles and school books in use in the tenant's family, all sewing machines belonging to seamstresses or used and owned by private families, and all uniforms, arms, ammunition and accoutrements of any commissioned officer or enlisted man of the National Guard, or of the armed forces of the United States, shall be exempt from levy and

sale on any landlord's warrant. Nothing contained in this section shall be construed to exempt sewing machines kept for sale or hire.

Comment:—This section is drafted from 1849, April 9, P. L. 533, § 1, 12 PS § 2161; 1869, April 17, P. L. 69, § 1, 12 PS § 2167; 1870, March 4, P. L. 35, § 1, 12 PS § 2168, 1949, May 27, P. L. 1903, § 840, 51 PS § 1-840. The words "or of the armed forces of the United States" have been added.

SECTION 403. *Exemption of Property on Premises Under Lease or Conditional Sale Contract.*—The following personal property loaned to, or leased or hired by any person or conditionally sold to any such person under a contract of sale, reserving title in the vendor until paid for, shall be exempt from levy and sale on distress for rent so long as the title thereto remains in the owner, lessor or conditional vendor, if written notice, specifically describing the personal property leased, hired or conditionally sold, shall be given to the landlord, or his agent at the time the said personal property is placed upon the demised premises or within ten days thereafter, which notice shall contain a statement of the respective amounts due on each article named in the notice, and, when so given, shall be effective as to such landlord and any future owner or owners of said premises, that is to say:

- (1) All pianos, melodeons and organs;
- (2) All soda water apparatus and the appurtenances thereto;
- (3) All sewing machines and typewriting machines;
- (4) All electric motors, electric fans and dynamos;
- (5) All ice cream cabinets, and ice cream containers and the appurtenances thereto;

(6) All household furniture and household goods;

(7) All patented shoe repairing machinery and tools;

(8) All beauty and barber shop furniture and equipment;

(9) All cigarette vending machines.

In the case of personal property enumerated in clauses (2) and (5) of this section, notice may be given in the manner above provided, or in lieu thereof, the name and address of the owner, lessor or conditional vendor may be marked on or attached to said property in a conspicuous part thereof.

Upon request, at any reasonable time, the owner, lessor or conditional vendor of any personal property enumerated in this section shall advise the landlord or his agent as to the status of his account with the tenant.

Any landlord may levy upon and sell on distress for rent, any right or interest of the tenant in any personal property mentioned in this section, subject to the rights therein of the owner, lessor or conditional vendor.

Comment:—This section is drafted from the following laws:

1. 1876, May 13, P. L. 171; 12 PS § 2170.
2. 1899, April 28, P. L. 117; and 1909, May 3, P. L. 423; 12 PS § 2171.
3. 1895, June 25, P. L. 282, 12 PS § 2169.
4. 1909, May 3, P. L. 407, 12 PS § 2173.
5. 1927, April 22, P. L. 351, 12 PS § 2172.
6. 1933, June 2, P. L. 1417, 12 PS § 2178.
7. 1933, June 2, P. L. 1419, 12 PS § 2179.
8. 1943, May 26, P. L. 634, 68 PS § 262.
9. 1947, July 5, P. L. 1355, 12 PS § 2180.

SECTION 404. *Exemption of Other Property Located on Premises.*—The following personal property, located on premises occupied by a tenant, shall be exempt from levy and sale on distress for rent, i.e., personal property:

- (1) Necessarily put in possession of the tenant in the course of his business by those with whom the tenant deals, or by those who employ the tenant;
- (2) Actually held by the tenant for someone else in the course of trade as agent or as consignee;
- (3) Sold for a valuable consideration by the tenant before distress to any bona fide purchase not privy to any fraud;
- (4) Of any guest at an inn or hotel, or of a boarder at a boarding house where such property is in the exclusive use of such boarder;
- (5) Of a decedent;
- (6) Of the United States and its governmental agencies, or of the Commonwealth of Pennsylvania or of any political subdivision thereof;
- (7) Of any public service company essential to the performance of its public functions; or
- (8) Cattle or stock taken by the tenant to be fed or cared for on the leased premises for a consideration to be paid by the owner.

Comment:—Under 1772, March 21, § 1, 1 Sm. L. 370, 68 PS § 251, all "goods and chattels" on the demised premises were subject to distraint for arrears of rent. However, while this general principle is well established it is subject to a number of exceptions as set forth in the above section and these exceptions are based either on statutory law or case law as noted:

(1) *Karns v. McKinney*, 74 Pa. 387, 390, (1873); *Sowers v. Willig*, 97 Pa. Superior Ct. 197, (1929).

(2) *Brown v. Stackhouse*, 155 Pa. 582, (1893).

(3) 1772, Mar. 21, § 6, 1 Sm. L. 370, 68 PS 272.

(4) *Riddle v. Welden*, 5 Wh. 9, (1839).

(5) *Gandy v. Dickson*, 166 Pa. 422, (1895).

(6) *National Cash Register Co. v. Miller*, 88 Pa. Superior Ct. 550, (1926).

(7) This clause is new.

(8) *Cadwalader v. Tindall*, 20 Pa. 422, (1853).

ARTICLE V

RECOVERY OF POSSESSION

SECTION 501. *Notice to Quit*.—A landlord, desirous of repossessing real property from a tenant, may notify in writing¹ the tenant to remove from the same, at the expiration of the time specified in the notice under the following circumstances, namely: (1) Upon the termination of a term of the tenant, (2) or upon forfeiture of the lease for breach of its conditions², (3) or upon the failure of the tenant upon demand to satisfy any rent reserved and due, where there is not personal property on the premises adequate to satisfy the rent in arrears except such property as is by this act exempt from levy and sale on distress for rent.³

In case of the expiration of a term or of a forfeiture for breach of the conditions of the lease, where the lease is for any term of less than one year or for an indeterminate time, the notice shall specify that the tenant shall remove within thirty days from the date of service thereof⁴ and when the lease is for one year or more, then within three months from the date of service thereof.⁵ In case of failure of the tenant upon demand to satisfy any rent reserved and due, the notice, if given on or after April first and before September first, shall specify that the tenant shall remove within fifteen days from the date of the service thereof and if given on or after September first and before April first, then within thirty days from the date of the service thereof.⁶

The notice above provided for may be for a lesser time or may be waived by the tenant if the lease so provides.

The notice provided for in this section may be served personally on the tenant or by leaving the same at the principal building upon the premises or by posting the same conspicuously on the leased premises.⁷

Comment:—This section is drafted from the following acts with the corresponding provisions indicated by the figures as shown:—

¹ 1905, March 31, P. L. 87, § 1, 68 PS § 366.

² "Forfeiture of the lease for breach of conditions" is based on case law, Chapter XXII, Stern's Trickett, 3rd Ed.

³ 1830, April 3, P. L. 187, 68 PS § 391, 392.

⁴ 1905, March 31, P. L. 87, 68 PS § 366.

⁵ 1772, March 21, § 12, 1 Sm. L. 370, 68 PS § 364. 1863, December 14, § 1, (1864), P. L. 1125, 68 PS § 364.

⁶ 1830, April 3, P. L. 187, § 1, 68 PS § 391.

⁷ 1913, May 20, P. L. 238, 68 PS § 370.

SECTION 502. *Complaint.*—If the tenant shall fail to remove from the real property in compliance with such notice, the landlord or his agent may complain in writing under oath or affirmation to any justice of the peace in the county in which the real property is situated.

The landlord's complaint shall set forth with particulars, dates and amounts: (1) that he was quietly and peaceably possessed of the real property from which the tenant was notified to remove, (2) that he demised the same for a specified or indeterminate term to the tenant, or to some other person under whom the tenant claims, (3) that due notice to remove has been given to the tenant, or that no notice was required under the terms of the lease, (4) that the term for which the same was demised is fully ended, or that a forfeiture has resulted by reason of a breach of the conditions of the lease, or that any rent reserved and due has, upon demand, remained unsatisfied, as the case may be, (5) that the tenant retains the real property and refuses to give up possession of the same and (6) the amount of rent, if any,

which remains due and unpaid and the amount of damages claimed for unjust detention of the real property, if any.

Comment:—This section is drafted from the following acts:

1772, March 21, § 12, 1 Sm. L. 370, 68 PS § 361.

1863, December 14, P. L. [1864] 1125, § 1, 68 PS § 364.

1830, April 3, P. L. 187, § 1, 68 PS § 391.

Note that under 1863, Dec. 14, P. L. [1864] 1125, 68 PS § 364, complaint was made to the justice of the peace. 1866, April 11, P. L. 97, 68 PS § 365, extended the jurisdiction to aldermen and 1875, Feb. 5, P. L. 56 now supplied by 1927, May 10, P. L. 866, 42 PS § 1058 extended the jurisdiction to magistrates. 1861, March 22, P. L. 181, 68 PS § 393 reduced the number of aldermen or justices from two to one as required by 1830, April 3, P. L. 187, § 1, 68 PS § 391.

SECTION 503. *Summons and Service.*—Upon the filing of the complaint, the justice of the peace shall issue his summons reciting substantially the complaint and directed to any constable, or the sheriff of the county commanding him to summon the tenant to appear before such justice of the peace, to answer said complaint on a day not less than five nor more than eight days from the date of the summons and at a time fixed therein.

Such summons may be served personally on the tenant, or by leaving the same at the principal building upon the premises or by posting the same conspicuously on the leased premises.

Comment:—The first paragraph of this section is drafted by combining the provisions relating to summons from the following acts:

1772, March 21, § 12, 1 Sm. L. 370, 68 PS § 361 in which the provision reads:—"within four days next after issuing the same summons."

1863, December 14, P. L. [1864] 1125, § 1, 68 PS § 364 in which the provision reads:—" . . . summon the defendant to appear at a day fixed, as in other civil actions."

1830, April 3, P. L. 187, § 1, 68 PS § 391 in which the provision reads: ". . . not less than three, nor more than eight days thereafter."

The last paragraph is drafted from 1913, May 20, P. L. 238, No. 163, § 1, 68 PS § 370.

SECTION 504. *Hearing; Judgment; Writ of Possession; Payment of Rent by Tenant.*—On the day and at the time appointed, or on any day to which the case may be adjourned, the justice of the peace shall proceed to hear the case. If it shall appear that the complaint has been sufficiently proven, the justice of the peace shall enter judgment against the tenant that the real property be delivered up to the landlord, and for damages, if any, for the unjust detention of the demised premises, as well as for the amount of rent, if any, which remains due and unpaid, and for costs of the proceeding.

At the request of the landlord, he shall, after the fifth day after the rendition of such a judgment, issue a writ of possession, directed to the constable or sheriff, commanding him forthwith to deliver actual possession of the real property to the landlord and also to levy the costs and amount of judgment for damages and rent, if any, on the tenant in the same manner as judgments and costs are levied and collected on writs of execution.

If, however, it shall appear that the said complaint is vexatious and unfounded, then the justice of the peace shall dismiss the case and assess the costs against the landlord.

At any time before any writ of possession is actually executed, the tenant may, in any case, for the recovery of possession solely because of failure to pay rent, supersede and render the writ of no effect, by paying to the constable or sheriff the rent actually in arrear and the costs.

Comment:—This section is drafted from 1830, April 3, P. L. 187, § 1, 68 PS §§ 391, 392.

Authority for the assessment of damages for the landlord is based on 1863, Dec. 14, P. L. [1864] 1125, § 1. 1772, March 21, § 12, 1 Sm. L. 370, 68 PS § 361 also authorized the assessing of damages.

Note that under the provisions of 1772, March 21, § 1, 1 Sm. L. 370, 68 PS § 361, the sheriff was commanded to deliver possession of the prem-

ises to the landlord, whereas under the provisions of 1863, Dec. 14, P. L. [1864] 1125, 68 PS § 364 and 1830, April 3, P. L. 187, 68 PS § 391, the constable was commanded to deliver possession of the premises to the landlord.

SECTION 505. *Return of Constable or Sheriff.*—

The constable or sheriff shall make return of said writ of possession to the justice of the peace within ten days after receiving the same. He shall be answerable in default of executing said writ according to its terms and for failure to pay over the amount received by him in satisfaction of the judgment, or the rent and costs paid to him by the tenant in the same manner as such officers are now by law answerable on other writs of execution.

Comment:—This section is drafted from 1830, April 3, P. L. 187, § 1, 68 PS § 391.

SECTION 506. *Appeal; Certiorari.*—Within five days after the rendition of judgment, either party may appeal to the next court of common pleas, upon filing in that court a bond with one or more sufficient sureties, conditioned for the payment of all costs and rent that have accrued or may accrue up to the time of final judgment and for damages assessed, if any, in case the judgment shall be affirmed. Any such appeal shall be tried in the same manner as other suits are tried. Such appeal shall not be a supersedeas to the writ of possession in any case, except upon special allowance of the court to which the appeal is taken.

If upon the appeal the jury shall find in favor of the tenant, they shall also assess any damages which he may have sustained by reason of his removal from the premises, and judgment shall be entered for such damages and costs, and that the tenant shall retain or recover possession of the demised real estate, as the case may be. The tenant shall have

the necessary writ or writs of execution to enforce said judgment.

A writ of certiorari to remove the proceedings before the justice of the peace may be had, as in other cases.

Comment:—This section is drafted from part of § 1, 1830, April 3, P. L. 187, 68 PS §§ 391-392, and 1863, Dec. 14, P. L. [1864] 1125, § 1, 68 PS § 364. Under the latter statute the tenant was given ten days within which to take an appeal. Under 1772, March 21, § 12, 1 Sm. L. 370, 68 PS § 361, no right of appeal was given to tenant unless question of title was in dispute, in which case the tenant proceeded under § 13 of said act.

SECTION 507. *Proceeding Where Title to Real Property Is in Dispute.*—If, in any such proceeding by a landlord to reposses real property, the tenant shall declare in writing on oath or affirmation that the title to the real property is disputed and claimed by some other person named by the tenant by virtue of a right or title accruing since the commencement of the lease by descent from, or deed or will of the landlord, and if the person so named and claiming does not forthwith appear voluntarily, then the justice of the peace shall immediately issue a summons, returnable in six days, commanding such person to appear before him.

If the person so summoned shall declare in writing on oath or affirmation that he verily believes that he is entitled to the real property in dispute and shall give bond as hereinafter provided, then the justice of the peace, upon notice of the filing of such bond,¹ shall not enter judgment.

Any such bond shall be filed in the court of common pleas of the county, shall be in such sum as the court shall fix, shall have thereon one or more sufficient sureties, and shall be conditioned that the person claiming title to such real property shall prosecute his claim by ejectment at the next term of the court of common pleas.² If said claim is not so prosecuted, the bond shall be forfeited³ to the land-

lord and the justice of the peace shall proceed to give judgment and cause the judgment to be executed as hereinbefore provided.

Comment:—This section is drafted from 1772, March 21, § 13, 1 Sm. L. 370, 68 PS § 362. *Neumoyer v. Andreas*, 57 Pa. 446, 449, (1868); *Koontz v. Hammond*, 62 Pa. 177, (1869). The adverse party, who shall not be the tenant, is compelled to commence an action in ejectment. This conforms with Rule 1061, Rules of Civil Procedure.

1. "Recognizance" has been changed to bond.

2. *Cunningham v. Gardner*, 4 W. & S. 120, 126, (1842); *Holmes v. Lewis*, 70 Pa. Superior Ct. 67, 70, (1918).

3. "It shall be forfeited" in the original presumably refers to the recognizance (bond), rather than to the claim.

SECTION 508. *Proceedings Where Tenant Claims Title as Joint Tenant or Tenant in Common.*—If, in any such proceeding by a landlord to repossess real property, the tenant or person in possession shall declare in writing, on oath or affirmation, that the real property in dispute is held and claimed by him as joint tenant or tenant in common with the landlord, and that he verily believes that the real property so held does not exceed in quantity or value the just proportion of the tenant's share¹ as joint tenant or tenant in common, and shall file a bond² in the court of common pleas, with one or more sufficient sureties in such sum as the court shall fix, conditioned to prosecute his claim by ejectment at the next term of court of common pleas,³ then the said justice of the peace, upon notice of the filing of such bond, shall not enter judgment. If the said claim is not so prosecuted, the bond shall be forfeited to the landlord and the justice of the peace shall proceed to give judgment and cause the judgment to be executed as hereinbefore provided.

Comment:—This section was drafted from 1814, Mar. 22, P. L. 179, § 1, 68 PS § 363. *Holmes v. Lewis*, 70 Pa. Superior Ct. 67, 71, (1918).

¹The interpretation of the original clause is not clear. It is believed to cover cases where the tenant holds only part of the real property and contends that the value of the part held is not in excess of his share in the whole.

²"Recognizance" has been changed to "bond." There is no provision in the act above cited for a forfeiture of the bond in case the claim is not prosecuted.

³Cunningham v. Gardner, 4 W. & S. 120, 126, (1842); Holmes v. Lewis, 70 Pa. Superior Ct. 67, 70, (1918).

SECTION 509. *Return Where Tenant Retains Forcible Possession; Notice to Tenant that Alias Writ Will be Issued; Requiring Use of Force and Service Thereof.*—In any case brought by a landlord before a justice of the peace for the recovery of the possession of real property, if there is no supersedeas ¹ to the writ of possession, and the tenant or occupant forcibly detains the real property against the officer serving the writ of possession, the constable or sheriff ² shall ³ make return of the writ as follows: "Unserved because the tenant or occupant forcibly detains possession of the real property."

Whereupon, after the expiration of ten days from the rendition of judgment by the justice of the peace, as in this article provided, and the issuing of the writ of possession to the officer, such officer shall notify in writing ⁴ the tenant or occupant that an alias writ of possession will be issued, setting forth his duty to use such force as may be necessary by the breaking in of any door, or otherwise to enter upon the real property for the purpose of executing a writ of possession in accordance with the judgment obtained.

Any such notice may be served personally on the tenant or occupant, or by leaving same at the principal building upon the premises, or by posting the same conspicuously on the leased premises.

Comment:—This section is drafted from 1905, April 10, P. L. 135, §§ 1, 2, 68 PS §§ 368, 369.

¹ "Certiorari" is used in § 1 of the act from which drafted. *Eisenberg v. Sietzner*, 23 Dist. 921, (1913), s.c. 61 Pitts. 563, 31 Lanc. 46.

² The "sheriff" has been inserted to cover cases where he is the officer executing the writ under the Act of 1772.

³ Since it is mandatory on the constable to serve notice that an alias writ will be issued and to use force to gain possession, it appears to follow that it should be his duty to make return of the original writ as the draft provides.

⁴ "In writing" has been inserted. Since service may be made by posting, it follows that the notice must be in writing.

SECTION 510. *Alias Writ of Possession; Forcible Ejection of Tenant or Occupant.*—If the tenant or occupant fails to deliver up possession of the real property within ten days after the service of the notice, as provided in the last preceding section, the justice of the peace shall issue an alias writ of possession, and the officer shall thereupon use such force as may be necessary by the breaking in of any door, or otherwise to enter upon the real property and to eject the tenant or occupant, and shall deliver possession of the real property to the landlord or his agent.

Comment:—This section is drafted from 1905, April 10, P. L. 135, § 1, 68 PS § 368.

SECTION 511. *Remedy to Recover Possession by Ejectment Preserved.*—Nothing contained in this article shall be construed, as abolishing the right of any landlord to recover possession of any real property from a tenant by action of ejectment, or from instituting any amicable action of ejectment to recover possession of any real property by confessing judgment in accordance with the terms of any written contract or agreement.

Comment:—This section is founded on existing case law and practice. *McLaughlin v. McGee*, 79 Pa. 217, (1875); *Transue v. Lesoine*, 4 D. & C. 196, (1923).

ARTICLE VI

REPEALS

Comment:—Acts and parts of acts to be cited specifically for repeal will be set forth as Section 601 of this draft, and the general repealer will appear as Section 602.

