

Laws of Her Majesty's Province of Upper Canada, passed in the year 1838. York: Robert Stanton, 1838.

1 Victoria – Chapter 16

An Act to regulate the Costs of levying Distresses for small Rents and Penalties. Passed 6th March, 1838.

Whereas divers persons acting as Brokers, Constables or Bailiffs, and Distraing on the Goods and Chattels of others, or employed in the course of such Distresses, are not limited by law in the amount of their fees: And whereas it is proper to prevent unreasonable Fees being levied on poor Tenants and others: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, entitled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's reign, entitled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act, no person whatsoever making any Distress, either for Rent or for any Penalty, imposed by the laws of this Province, when the sum demanded and due shall not exceed the sum of Twenty Pounds, for and in respect of such Rent or Penalty, nor any person whatsoever employed in any manner in making such Distress, or doing any act whatsoever in the course, of such Distress, or for carrying the same into effect, shall have, take or receive, out of the produce of the Goods or Chattels distrained upon and sold, or from the Tenant or other person distrained, or from the Landlord, or from any other person whatsoever, any other, or more costs and charges, for and in respect of such Distress, or any matter, or thing done therein, than such as are fixed and set forth in the Schedule hereunto annexed and appropriated to each act, which shall have been done in the course of such Distress; and no person or persons whatsoever shall make any charge whatsoever, for any act, matter or thing, mentioned in the said Schedule, unless such act shall have been really done.

II. And be it further enacted by the authority aforesaid, That if any person or persons whatsoever shall in any manner levy, take or receive, from any person or persons whatsoever, or retain or take from the produce of any Goods sold for the payment or satisfaction of any such Rent or Penalty, any other or greater costs and charges than are mentioned and set down in the said Schedule, or make any charge whatsoever for any acts, matter or thing, mentioned in the said Schedule, and not really done, it shall be lawful for the party or parties aggrieved by any such practice, to apply to any one Justice of the Peace for the District, City or Town, where such Distress shall have been made, or in any manner proceeded in, for the redress of his, her or their grievance, so occasioned, whereupon such Justice shall summon the person or persons complained of to appear before him, at a reasonable time to be fixed in such summons, and such Justice shall examine into the matter of such complaint by all legal ways and means, and also hear in like manner the defence of the person or persons complained of; and if it shall appear to such Justice that the person or persons complained of shall have levied, taken or received, or had other and

greater costs and charges than are mentioned and fixed in the Schedule hereunto annexed, or made any charge for any matter or thing mentioned in the said Schedule, such act, matter or thing, not having been really done, such Justice shall order and adjudge treble the amount of the monies so unlawfully taken, to be paid by the person or persons so having acted, to the person or persons who shall have thus preferred his, her or their complaint thereof, together with full costs; and in case of non-payment of any monies or costs so ordered and adjudged to be paid, such Justice shall forthwith issue his warrant to levy the same by Distress and sale of the Goods and Chattels of the party or parties ordered to pay such monies or costs, rendering the overplus, if any, to the owner or owners, after payment of the charges of such Distress or Sale; and in case no sufficient distress can be had, such Justice shall, by warrant under his hand, commit the party or parties to the Common Gaol within the limits of the jurisdiction of such Justice, there to remain until such order or judgment be satisfied.

III. And be it further enacted by the authority aforesaid, That it shall be lawful for such Justice, at the request of the party complaining or complained against, to summon all persons as witnesses, and to administer an oath to them, touching the matter of such complaint, or the defence against it; and if any person or persons so summoned shall not obey such summons, without any reasonable or lawful excuse, or refuse to be examined upon oath or affirmation, (being a person by the laws of this Province entitled to affirm) then every such person so offending shall forfeit and pay a sum not exceeding Forty Shillings, to be ordered, levied and paid, in such manner, and by such means, and with such power of commitment, as is herein-before directed as to such orders and Judgment to be given the party or parties in the original complaint, excepting so far as regards the form of the order, as hereinafter provided for.

IV. And be it further enacted by the authority aforesaid, That it shall and may be lawful for such Justice, if he shall find that the complaint of the party or parties aggrieved is not well founded, to order and adjudge costs, not exceeding Twenty Shillings, to be paid to the party or parties complained against, which order shall be carried into effect and levied and paid in such manner as is herein-before directed as to the order and judgment founded on such original complaint: Provided always, that nothing herein contained shall empower such Justice to make any order or judgment against the Landlord for whose benefit any such Distress shall have been made, unless such Landlord shall have personally levied such Distress: And provided further, that no person or persons who shall have been aggrieved by any Distress for any Rents or Penalty, or by any proceedings had in the course thereof, or by any costs or charges levied upon them in respect of the same, shall be barred from any legal or other suit or remedy, which he, she or they, might have had before the passing of this Act, excepting so far as any complaint to be preferred by this Act shall have been determined by the order and judgment of the Justice before whom it shall have been heard and determined, and which order and judgment shall and may be given in evidence, under the plea of the general issue, in all cases where the matter of such complaint shall be made the subject of any action.

V. And be it further enacted by the authority aforesaid, That such orders and judgments on such complaints shall be made in the form in the Schedule hereunto annexed, and may be proved before any Court, by proof of the signature of the Justice to such orders and judgment; and such

orders as regard persons who may have been Summoned as Witnesses, shall be made in such form as to such Justice shall seem fit and convenient.

VI. And be it further enacted, by the authority aforesaid, That every Broker, Constable, Bailiff or other person, who shall make and levy any Distress whatsoever, shall give a copy of his charges and of all the costs and charges of any Distress whatsoever, signed by him, to the person or persons on whose Goods and Chattels any Distress shall be levied, although the amount of the Rent or Penalty demanded shall exceed the said sum of Twenty Pounds.

Schedule Referred to in This Act.

Form of the Order and Judgment of the Justice before whom complaint is preferred when the Order and Judgment is for the complaint.

In the matter of complaint of A. B. against C. D. for the breach of the Provisions of an Act passed in the _____ year of the reign of Her Majesty Queen Victoria, entitled, "An Act [insert the title of this Act,] I, E. F. a Justice of the Peace for the _____, do order and adjudge, that the said C. D. shall pay to A. B. the sum of _____, as a compensation and satisfaction for unlawful charges and costs levied and taken from the said A. B. under a Distress for [as the case may be,] and the further sum of _____ for costs in this complaint.

(Signed) E. F.

Form of the Order and Judgment of the Justice when he dismisses the complaint as unfounded, with or without costs, as the case may be.

In the matter of complaint of A. B. against C. D. for the breach of the Provisions of an Act passed in the _____ year of the reign of Her Majesty Queen Victoria, entitled, "An Act [insert the title of this Act,] I, E.F. a Justice of the Peace in and for the _____, do order and adjudge, that the complaint of the said A. B. is unfounded; [if costs are given] and I do further order and adjudge, that the said A. B. shall pay unto the said C. D. the sum of _____.

(Signed) E. F.

Schedule of Costs and Charges on Distresses for small Rents and Penalties.

Levying Distresses under Ten Pounds: Five Shillings.

Man keeping possession, per diem: Three Shillings and Nine-pence.

Appraisal, whether by one Appraiser or more: Four-pence in the Pound on the value of the Goods.

If any printed advertisement: not to exceed in all, Five Shillings.

Catalogues, Sale and Commission, and delivery of Goods: One Shilling in the Pound on the net produce of the Sale.