

THE



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*Separate paging is given to this part, in order that it may be filed as a separate compilation.*

## PART VI.

### BILLS OF THE GOVERNMENT OF INDIA.

#### LEGISLATIVE DEPARTMENT.

The following Report of a Select Committee, together with the Bill as settled by them, was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the 25th November 1874:—

We, the undersigned Members of the Select Committee to which the Bill to regulate Distresses for Rents in the Presidency Towns was referred, have the honour to report that we have considered the Bill and the papers noted in the margin.

- From Officiating Registrar, High Court, Calcutta, No. 1975, dated 27th July 1874.  
 „ Government of Bengal, No. 3311, dated 21st August 1874.  
 „ Government of Madras, No. 1628, dated 2nd September 1874.  
 „ Honorary Secretary, British Indian Association, dated 11th September 1874.  
 „ Government of Bombay, No. 6110, dated 29th October 1874.
2. We have excluded from the operation of the proposed Act arrears of rent due for more than twelve months before the application for the distress-warrant. For arrears due for more than that time, we think that the landlord may fairly be left to his remedy by ordinary suit.
  3. In clause 3, we have altered the definition of Court of Small Causes, so as to make it apply to Courts for the time being established by law.
  4. We have provided that distress-warrants shall be returnable within six days.
  5. In clause 10, we have exempted from seizure (a) things in actual use, (b) tools and implements not in use when there is other moveable property on the premises sufficient to cover the amount distrained for and the costs, (c) the debtor's necessary wearing apparel, and (d) goods in the custody of the law.
  6. At the suggestion of the learned First Judge of the Calcutta Court of Small Causes, we have introduced a clause, resembling Section 88 of Act IX. of 1850, providing for the adjudication of claims by strangers to goods distrained under the proposed Act. This is intended as a substitute for the cumbrous and circuitous remedy of a suit in replevin.

7. Where an application is made to discharge or suspend a distress-warrant, or where a claim to goods distrained is made by a stranger, we have empowered the Judge to order compensation by way of damages to the successful party, and we have declared that such compensation shall bar a subsequent suit in respect of injury caused by the distress.

8. We have altered clause 18 and schedule E so as to provide for fees in distresses for rent exceeding 100 rupees.

9. We have been urged in the paper marginally noted as received from the British Indian Association to alter the law respecting tiled huts. What is said in that paper seems to us deserving of careful consideration; but it is connected rather with the law of executions than with that of distresses, and we have therefore not thought it right to suggest any alteration in the present Bill on such a subject.

10. We have made no other substantial changes: we think the Bill had better be republished, and its passing delayed for a short time.

A. HOBHOUSE.  
E. C. BAYLEY.  
JOHN INGLIS.  
RAMA'NA'TH TAGORE.

The 14th November 1874.

THE DISTRESS BILL, 1874.

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*A Bill to regulate Distresses for Rents in the Presidency Towns.*

[AS AMENDED BY THE SELECT COMMITTEE.]

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

*I.—Preliminary.*

- |               |   |
|---------------|---|
| Short title.  | 1. This Act may be called "The Distress Act, 1874," and it shall come into force at once. |
| Commencement. |   |

It extends to every place within the local limits 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 schedule hereto annexed are repealed to the extent mentioned 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" "Court of Small Causes" means the Court of Small Causes for the time being established by law in Calcutta, Madras, or Bombay, as the case may be.

*II.—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.

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.

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.

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.

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

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 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.

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.

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.

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

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

13. The debtor 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 such warrant or release such article accordingly, upon such terms as he thinks just,

and any of the said Judges 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.

14. If any claim be made to, or in respect of, any property distrained under the provisions of 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.

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 debtor or claimant (as the case may be) as the Judge thinks fit,

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

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

VI.—Appraisement and Sale of Distress.

16. In default of any order to the contrary by a Judge of the said Court, any two of such bailiffs may, at the expiration of five days from such seizure, appraise the property so seized, and give notice in writing to the effect of the Form in the first schedule hereto annexed (marked D).

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

17. 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 said Court, 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 :

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.

18. 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.

19. 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.

20. No distress shall be levied for arrears of Bar of distresses except rent, except under this Act. provisions of this Act ;

and any person, except a bailiff appointed under section four, levying or attempting to levy any Penalty for making such distress shall, on illegal distresses. 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.

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, 1874, 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, 1874. Dated the day of 18 \_\_\_\_\_

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

To C. D.

D.

[See Section 16.]

*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, 1874, 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.

(Signed) E. F.,  
" G. H.,  
Bailiffs and Appraisers.

To C. D.

E.

[See Section 18.]

*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. a. p.	Rs. a. p.	Rs. a. p.	Rs. a. p.
Rs. 1 and under	Rs. 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.

## 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 Eschehere</i> between c. 13 and c. 14 of 17 Edw. 2.	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.

WHITLEY STOKES,

*Secretary to the Government of India.*