

with any restrictive clauses against nuisances, unless the same be contrary to the constitution or laws of this state.

12. The funds of such company, after payment of expenses, shall be invested in the purchase or payment of the bonds secured by mortgage as aforesaid, or in loans to actual settlers, to assist them in improving the lands sold or disposed of to them, but no dividend or division of the profits shall be made until all the said bonds are paid.

Investment of funds.  
P. L. 1865, p. 707, § 7.

13. All matters not herein provided for shall be regulated by the constitution and by-laws of said company.

By-laws.  
Ib. § 8.

14. Every such company shall furnish to the secretary of state, when by him required, an annual statement of the condition and business of the company, duly attested under oath or affirmation by the proper officers of the company.

Annual statement.  
Ib. § 9.

15. Any corporation organized under or specially incorporated by any law of this state, for either of the purposes mentioned in the first section of this act, with the written consent of three-fourths in amount of its stockholders, duly acknowledged as in conveyances of land, may file their certificate, under their corporate seal, signed by their president and directors, with such written consent in the office of the secretary of state, thereby declaring their desire that said corporation shall be possessed of the powers and subject to the provisions of this act; and it shall be the duty of said secretary of state to record the same, whereupon the said corporation shall be thereafter possessed of all the powers conferred by this act, and subject to its provisions, as fully as if originally organized under the same.

Corporations organized or specially incorporated for either purposes of this act may file certificate, etc.

16. The legislature may at any time repeal or amend this act, or annul the charter of any association created under the same.

Legislature may repeal or amend.

**Supplement.**

Approved April 9, 1875.

17. SEC. 1. That all corporations organized now or hereafter under the act to which this is a supplement, shall have and possess all powers conferred in the first section of the "act concerning corporations," passed at the present session of the legislature, anything in any other law to the contrary notwithstanding.

To have powers conferred in Sec. 1 of act concerning corporations.

**Landlord and Tenant.**

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## An act concerning landlords and tenants.

R. S., 85.

P. L. 1847, p. 42.  
 " 1848, p. 185.  
 " 1860, p. 485.

Revision—Approved March 27, 1874.

## I. Suits for rent.

Debt for rent on  
 lease for life.

R. S. 85, § 1.

When tenant for  
 life dies, remedy.  
 Ib. § 2.

Action for use  
 and occupation.  
 Ib. § 3.

1. That it shall and may be lawful for any person or persons, having any rent in arrear or due upon a lease for life or lives, to bring an action or actions of debt for such arrears of rent, in the same manner as he, she, or they might have done in case such rent was reserved and due upon a lease for years.

2. That where any tenant for life shall happen to die before or on the day on which any rent was reserved or made payable, upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of any tenant for life, that the executors or administrators of such tenant for life shall and may, in an action on the case, recover of and from such undertenant or undertenants of such lands, tenements or hereditaments, if such tenant for life die on the day on which the same was made payable, the whole, or if before such day, then a proportion of such rent, according to the time such tenant for life lived of the last year, or quarter of a year, or other time in which the said rent was growing due, as aforesaid, making all just allowances, or a proportionable part thereof, respectively.

3. That it shall and may be lawful to and for the landlord or landlords, his, her, or their heirs or assigns, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement (not being by deed), whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefor be nonsuited, but may make use thereof as an evidence of the quantum of the damages to be recovered.<sup>(a)</sup>

## II. Landlord's lien on tenant's goods.

Landlord's lien  
 for rent.  
 Ib. § 4.

Proviso.

4. No goods or chattels whatsoever, lying or being, or which shall lie or be in or upon any messuage, lands or tenements, which are, or shall be leased for term of life or lives, year or years, at will or otherwise, shall be liable to be taken, by virtue of any execution, attachment or other process, unless the party at whose suit the said execution or other process is sued out, shall, before the removal of such goods from off the said premises, by virtue of such process, pay to the landlord of the said premises, or his bailiff, all rent due for the said premises, at the time of the taking such goods or chattels by virtue of such process, or which shall have accrued up to the day of the removal of the goods from off the said premises, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum, the time of payment of which, by the terms of the lease shall not have come; <sup>(b)</sup> provided, the said arrears of rent do not amount to more than one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit such process is sued out, paying the said landlord or his bailiff one year's rent, may proceed to execute his process, as he might have done before the making of this act; and the sheriff or other officer is hereby empowered and required to levy and pay to the plaintiff, as well

<sup>(a)</sup> In justices courts suit for use and occupation must be in debt, *Lanning v. Howell*, Pen. \*256, *Cox v. Baird*, 6 Hal. 106. It will not lie by a widow because she is entitled to dower, unless the tenant is in possession by her permission, or at his own request, *Andrews v. Andrews*, 2 Gr. 141. The law implies a contract to pay rent from the fact of occupation, *Chambers v. Ross*, 1 Dutch. 293. *Conover v. Conover*, Sax. 403. But not where the defendant entered under a contract of sale, *Brewer v. Conover*, 3 Harr. 214. It must be on a contract express or implied, *Stewart v. Fitch*, 2 Vr. 17. In suit upon the contract the plaintiff need not show that defendant actually occupied the premises, *Hunt v. Young*, 2 South. \*813. It lies although the tenant refused to enter, *Birckhead v. Cummins*, 4 Vr. 44. Proof of a demise or agreement, unless by deed, will not prevent recovery, *Perrine v.*

*Hankinson*, 6 Hal. 181. The rent reserved in any parol lease is conclusive evidence of the amount of damages, *Holmes v. Stockton*, 2 Dutch. 93.

<sup>(b)</sup> The landlord has no remedy against a constable unless he gives him notice, *Ayres v. Johnson*, 2 Hal. 119. A levy and sale of the goods by a sheriff, is a removal, *Ryerson v. Quackenbush*, 2 Dutch. 236. A sheriff by leaving the tenant's goods on the premises after levy, does not become himself a tenant, nor liable for the rent, *Hamilton v. Hamilton*, 1 Dutch. 544. At common law the sheriff was not liable for the rent if it was not due, *Schenck v. Vannest*, 1 South. \*329. An action will not lie by the landlord against a third person for advising or procuring the sheriff to remove the goods before the rent was paid, *Princeton Bank v. Gibson*, Spen. 138.

the money so paid for rent as the money to be made by virtue of such process.<sup>(a)</sup>

5. If any goods and chattels lying or being, or which shall lie or be in or upon any messuages, lands or tenements which are or shall be leased for term of life or lives, year or years, at will or otherwise, shall be taken by virtue of any execution, attachment or other process, and removed off said premises, the same shall not be sold by the sheriff or other officer so taking and removing the same until ten days after such removal, and then not unless the plaintiff or party at whose suit such goods or chattels are taken as aforesaid, shall, before the sale thereof, pay to the landlord of the said premises, or his or her bailiff, all rent due for the said premises, or which shall have accrued at the time of said sale, whether by the terms of lease the day of payment shall have come or not, making a rebate of interest on the sum the time of payment of which shall not have come; *provided*, the same do not exceed one year's rent; and in case the said arrears shall exceed one year's rent, then the said party at whose suit execution or other process is sued out paying the said landlord, or his or her bailiff one year's rent, may proceed to execute his process as he might have done before the passing of this act; *provided*, the landlord or his bailiff shall, before the expiration of the said ten days from the time of said removal, give notice to the sheriff or other officer holding such execution, or other process, of the amount of the rent in arrear, and claim the same; which notice may be served by delivering the same to said officer, or leaving a copy thereof at his usual place of abode.<sup>(b)</sup>

Goods taken,  
when sold.  
Ib. § 5.

Rent to be first  
paid.

But one year's  
rent payable.

Proviso.

6. No such goods and chattels shall be removed off said premises by said sheriff or other officer, but openly and in the day time, and then not unless the sheriff or other officer shall, at the time of removing the said goods and chattels, give notice thereof to the defendant, or, in his absence, to some person of his family residing on said premises, of the removal of said goods and chattels.

Removal by day,  
and notice.  
Ib. § 6.

### III. Ejectment under right to re-enter.

7. In all cases between landlord and tenant, as often as it shall happen that one-half year's rent shall be in arrear, and the landlord or lessor, to whom the same is due, hath right by law, to re-enter for the non-payment thereof, such landlord or lessor shall and may, without any formal demand or re-entry, serve a summons in ejectment for the recovery of the demised premises, or in case the same cannot be legally served, or no tenant be in actual possession of the premises, then to affix the same upon the door of any demised messuage, or in case such ejectment shall not be for the recovery for any messuage, then upon some notorious place of the lands, tenements or hereditaments comprised in said summons in ejectment, and such affixing shall be deemed legal service thereof; which service or affixing shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant by default, it shall be made to appear to the court where the said suit is depending, by affidavit, or be proved upon the trial, in case the defendant appears, that half a year's rent was due before the summons was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the plaintiff had power to re-enter, then and in every such case, the plaintiffs in ejectment shall have judgment and execution, in the same manner as if the rent in arrear had been legally demanded and re-entry made; and in case the lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming or deriving title under the said lease, shall suffer judgment on such ejectment and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without filing any bill or bills for relief in equity, within six calendar months after such execution executed, then and in such case, the said lessee or lessees, his, her or their assignee or assignees, and all other persons claiming and deriving title under the said lease shall

Ejectment, and  
proceedings  
therein.  
Ib. § 9.  
Amended.

Judgment and  
execution.

<sup>(a)</sup> If no certain rent is fixed, the landlord has no right to have his rent paid before the tenant's goods are removed. *Central Bank v. Peterson*, 4 Zab. 668. It must be upon such a lease as would give the landlord a right to distrain, *Kirkpatrick v. Cason*, 1 Vr. 331.

<sup>(b)</sup> Previous to this act the landlord could not follow the goods beyond the demised premises, *Peacock v. Hammett*, 3 Gr. 165.

When lessee barred. . be barred and foreclosed from all relief or remedy in law or equity, other than by writ of error for reversal of such judgment, in case the same shall be erroneous, and the said landlord or lessor shall, from thenceforth hold the same demised premises discharged from such lease; and if on such ejection, verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuited therein, then and in every such case, the defendant or defendants shall have and recover his, her or their full costs; *provided always*, that nothing herein contained shall extend to bar the right of any mortgagee or mortgagees of such lease or any part thereof, who shall not be in possession, so as such mortgagee or mortgagees shall and do within six calendar months after such judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor, or person or persons entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which on the part and behalf of the first lessee or lessees are and ought to be performed.(a)

How lessee relieved in equity. Ib. § 10. Amended.

Must bring money due into court.

And pay deficiency.

Suit discontinued on payment and tender. Ib. § 11.

Will hold under old lease.

Remedy if premises deserted. Ib. § 12.

Notice.

8. In case the said lessee or lessees, his, her or their assignee or assignees, or other person or persons, claiming any right, title or interest in law or equity, of, in or to the said lease, shall, within the time aforesaid, file one or more bill or bills for relief, in any court of equity, such person or persons shall not have or continue any injunction against the proceedings at law on such ejection, unless he, she or they do or shall, within twenty days next after a full and perfect answer shall be filed, by the plaintiff in such ejection, bring into court and lodge with the proper officer, such sum and sums of money as the plaintiff in the said ejection shall, in his, her or their answer, swear to be due and in arrear, over and above all just allowances, and also the costs taxed in the said suit, there to remain till the hearing of the cause, or to be paid out to the said plaintiff in ejection on good security, subject to the decree of the court; and in case such bill or bills shall be filed within the time aforesaid, and after the execution is executed, the plaintiff shall be accountable only for so much and no more as he, she or they shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises, from the time of his, her or their entering into the actual possession thereof; and if what shall be so made by the plaintiff happen to be less than the rent reserved on the said lease, then the said lessee or lessees, his, her or their assignee or assignees, before he, she or they shall be restored to his, her or their possession or possessions, shall pay such plaintiff, what the money, so by them respectively made, fell short of the reserved rent, for the time such plaintiff held the said lands.

9. If the tenant or tenants, his, her, or their assignee or assignees, do or shall, at any time before the trial in such ejection, pay or tender to the lessor or landlord, his or her executors or administrators, or his, her, or their attorney in that cause, or pay into the court, where the same cause is or shall be depending, all the rent and arrears, together with the costs, then and in such case, all further proceedings on the said ejection shall cease and be discontinued; and if such lessee or lessees, his, her or their executors, administrators or assigns, shall, upon such bill filed as aforesaid, be relieved in equity, he, she, or they shall have, hold and enjoy the demised lands, according to the lease thereof made, without any new lease to be thereof made to him, her or them.

#### IV. Summary proceedings if premises deserted, or rent unpaid, or term ended.

10. If any tenant, holding any lands, tenements or hereditaments, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for two or more justices of the peace of the county in which the demised premises lie, and who have no interest in the same, at the request of the landlord or landlords, lessor or lessors, or his, her or their bailiff or agent, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice in writing what day

(a) See *Farley v. Craig*, 6 Hal. 262; 3 Gr. 191. *Dcn v. McShane*, 1 Gr. 35.

(at the distance of fourteen days, at least) they will return to take a second view thereof, and if upon such second view the tenant, or some person is his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the said landlord or landlords, lessor or lessors, into the possession of the said demised premises, and the lease thereof to such tenant, as to any demise therein contained, shall from thenceforth become void; *provided always*, that such proceedings of the said justices, shall be examinable in a summary way by the justices of the supreme court, who are hereby empowered to order restitution to be made to such tenants together with his or her expenses and costs, to be paid by the landlord or landlords, lessor or lessors, if they shall see cause for the same; and in case they shall affirm the act of the said justices, to award costs to be paid by such tenant, and the costs as well in the instance of restitution as of affirmance aforesaid, shall be levied and recovered against the body or bodies, or goods and chattels, lands and tenements, of such landlord or tenant as the case may be.

Landlord put in possession.

Proviso.

[SEC. 11 amended and supplied by *Sec. 29 post*].

11. SEC. 12. Any landlord or lessor, his legal representatives, agents or assigns, may make oath(a) in writing, of the facts which, according to the preceding section, authorize the removal of a tenant, describing therein the premises claimed, and may present the same to any justice of the peace of the county where the premises are situated.

Landlord's affidavit.

P. L. 1847, p. 142, § 2.

12. SEC. 13. On receiving and filing such affidavit, such justice shall issue a summons, describing the premises of which possession is claimed, and requiring any person in possession of said premises, or claiming the possession thereof,(b) forthwith to remove from the same, or to show cause before the said justice at a certain place and time therein to be specified, not less than five nor more than fifteen days from the date of such summons, why possession of such premises should not be delivered to such claimant.

Summons to be issued.  
Ib. § 3.

13. SEC. 14. Previous to issuing such summons in a case of tenancy at will, or at sufferance, or from year to year, the justice shall be satisfied, by due proof, that such tenancy has been terminated by giving notice in the manner prescribed by law.(c)

Proof that tenancy has ended.  
Ib. § 4.

[SEC. 15 amended and supplied by *Sec. 30, post*].

14. SEC. 16. If at the time appointed in the said summons, or at the time to which said suit may be adjourned, no sufficient cause be shown to the contrary, and it shall appear to the said justice or jury that the summons has been duly served, the said justice shall issue his warrant to any constable of the county, or marshal of the city or town in which the premises are situated, commanding him to remove all persons from the said premises, and to put the said claimant into full possession thereof, and to levy and make the costs out of the goods and chattels of such person or persons in possession; *provided*, it shall be necessary for said claimant, if required by the defendant, to prove to the satisfaction of the justice, or of the jury, if there be a trial by jury, the facts which, according to the eleventh section of this act, authorize the removal of a tenant.

Writ of possession.

P. L. 1847, p. 142, § 6.

Proviso.

P. L. 1848, p. 185.

15. SEC. 17. If, upon the said trial mentioned in the next preceding section of this act, the said plaintiff shall not be able to prove, by lease or other evidence of right of possession, his right to the possession of the said premises claimed by him, without proving title to lands, tenements and hereditaments, that then it shall be the duty of the said justice to dismiss the said action.

Right of possession without proving title to be proved.  
Ib. § 2.

16. SEC. 18. The proceedings had by virtue of the eleventh section of this act shall not be appealed from or removed by *certiorari*; but the landlord shall remain liable in an action of trespass for any unlawful proceedings under this act.(d)

Proceedings not to be appealed from or removed by certiorari.

(a) What constitutes a sufficient affidavit, *State, Brahn v. Jersey City Forge Co.*, 9 Vr. 74.

(b) The act makes no provision for admitting other parties to defend, *Ibid.*

(c) The proof must be by some competent witness, *Stanley v. Horner*, 4 Zab. 511. An affidavit by the plaintiff that such notice had been served, with a copy annexed,

although it does not state by whom served, is sufficient, *Morris Canal Co. v. Mitchell*, 2 Vr. 100.

(d) If not "by virtue of this act," as by proceeding when the case is not within the jurisdiction of the justice, &c., *certiorari* lies, *Stanley v. Horner*, 4 Zab. 511. *Powder v. Roe*, 1 Dutch. 549. *Morris Canal Co. v. Mitchell*, 2 Vr. 100. *Shepherd v. Sliker*, 2 Vr. 432.

17. SEC. 19. The same fees shall be allowed to the justice, constable, witnesses and jurors, as are provided for like services by the act constituting courts for the trial of small causes; and the constable, for executing the process of possession, shall receive the sum of one dollar.
- Proceedings may be removed to circuit court. Revision. 18. SEC. 20. At any time after a summons has been issued according to the thirteenth section of this act, and before the return thereof, either the landlord, or the party in possession, may apply to a justice of the supreme court, who, if he shall deem the case of sufficient importance, may issue an order, under his hand, directing the said justice of the peace to file, forthwith, the said oath or complaint of the landlord, and the other papers appertaining to the proceedings, in the office of the clerk of the circuit court of the county in which such proceedings were commenced; and thereupon said circuit court shall have full and exclusive cognizance of the case; and said court shall be always open for such purpose.
- Venire to issue. Revision. 19. SEC. 21. That, immediately upon such papers being filed in said clerk's office, the judge of said circuit court shall cause a *venire facias* for a jury to be issued, returnable into said court in not more than one week from the time of issuing the same; and which said writ shall be served by the sheriff, or other officer, according to the practice of said court in like cases; and on the day of the return of the said writ the case shall be tried, unless, for good cause shown, the said trial shall be adjourned; that said adjournment, and all other adjournments, shall be for the shortest periods practicable, and the seventeenth section of this act shall not apply to said trial.
- Trial on return day. Adjourned to. 20. SEC. 22. That such notice of the trial shall be given as the said judge may direct; the parties, if they shall agree so to do, may waive a trial by jury, and submit the case to the judge on the law and facts.
- Notice of trial. Revision. Jury may be waived. Judgment. Revision. 21. SEC. 23. A judgment shall be entered upon the finding of the judge or the jury, and if the same be in favor of the landlord a writ shall issue to the sheriff of the county, commanding him to put the landlord in full possession of the premises in question, and to levy and make the costs out of the goods, chattels, and lands of the person in possession; if judgment be rendered for the defendant he shall have an execution in like manner for his costs.
- Writ of possession. 22. SEC. 24. That the said circuit court shall have the same power with respect to said proceedings, and the same control over the verdict and judgment as it has in other cases within its jurisdiction, and from the judgment so entered a writ of error shall lie to the supreme court; but such writ shall not stay the execution of such judgment unless upon an order to the effect endorsed on said writ by the said circuit judge, and upon a bond, with sufficient surety, being given in an amount which he shall designate, conditioned to indemnify the party in whose favor said judgment was rendered, against all losses and damages which he may sustain by reason of final process being stayed.
- Power of court. Revision. Writ of error. Not a stay unless on order of judge and bond.

#### V. General provisions.

- Surrender and renewal of chief lease not to invalidate under leases. R. S. 85, § 18. 23. SEC. 25. That in case any lease shall be duly surrendered in order to be renewed, and a new lease made and executed by the chief landlord or landlords, the same new lease shall, without a surrender of all or any of the under leases, be as good and valid, to all intents and purposes, as if all the under leases, derived thereout, had been likewise surrendered at or before the taking of such new lease, and all and every person or persons, in whom any estate for life or lives, or for years, shall, from time to time, be vested by virtue of such new lease, and his, her and their executors and administrators, shall be entitled to the rents, covenants and duties, and have like remedy for recovery thereof, and the under lessees shall hold and enjoy the messuages, lands and tenements, in the respective under leases comprised, as if the original leases, out of which the respective under leases are derived, had been still kept on foot and continued; and the chief landlord or landlords shall have and be entitled to such and the same remedy, by distress or entry in and upon the messuages, lands, tenements and hereditaments, comprised in any such under lease, for the rents and duties reserved by such new lease, so far as the same exceed not the rents and duties reserved in the lease out of which such under lease was

derived, as he, she or they would have had, in case such former lease had been still continued, or as he, she or they would have had in case the respective under leases had been renewed under such new principal lease.

24. SEC. 26. *And whereas*, the possession of estates in lands, tenements and hereditaments is rendered very precarious, by the frequent and fraudulent practice of tenants in attorning to strangers, who claim title to the estates of their respective landlord or landlords, lessor or lessors, who by that means are turned out of possession of their respective estates, and put to the difficulty and expense of recovering the possession thereof by actions or suits at law; for remedy whereof, *be it enacted*, that all and every such attornment or attornments of any tenant or tenants of any messuages, lands, tenements or hereditaments, shall be absolutely null and void, to all intents and purposes whatsoever, and the possession of their respective landlord or landlords, lessor or lessors, shall not be deemed or construed to be in anywise changed, altered or affected, by any such attornment or attornments; *provided always*, that nothing herein contained shall extend to vacate or affect any attornment made pursuant to, or in consequence of some judgment at law, or decree or order of a court of equity, or made with the privity and consent of the landlord or landlords, lessor or lessors, or to any mortgagee after the mortgage has become forfeited.*(a)*

Attornment of defendant void. *Ib.* § 14.

Proviso.

25. SEC. 27. That in case any tenant or tenants for any term of life or lives, year or years, or other person or persons who are or shall come into possession of any lands, tenements or hereditaments by, from or under, or by collusion with such tenant or tenants, shall wilfully hold over any lands, tenements or hereditaments, after the determination of such term or terms, and after demand made and notice in writing<sup>(b)</sup> given for delivering the possession thereof by his, her or their landlord or landlords, lessor or lessors, or the person or persons to whom the remainder or reversion of such lands, tenements or hereditaments shall belong, his, her or their agent or agents, thereunto lawfully authorized, then and in such case, such person or persons so holding over, shall, for and during the time he, she or they shall so hold over, or keep the person or persons entitled out of possession of the said lands, tenements or hereditaments as aforesaid, pay to the person or persons so kept out of possession, his, her or their executors, administrators or assigns, at the rate of double the yearly value of the lands, tenements or hereditaments so detained, for so long a time as the same are detained; to be recovered in any court of record in this state, by action of debt, whereunto the defendant or defendants shall be obliged to give special bail, and against the recovering of which said penalty there shall be no relief in equity.

Penalty for holding over. *Ib.* § 7.

Pay double rent.

Give bail, &c.

26. SEC. 28. In case any tenant or tenants shall give notice of his, her or their intention to quit the premises by him, her or them holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, that then the said tenant or tenants, his, her or their executors or administrators, shall from thenceforward pay to the landlord or landlords, lessor or lessors, his, her or their heirs or assigns, double the rent or sum which he, she or they should otherwise have paid, to be levied, sued for and recovered at the same times and in the same manner as the single rent or sum before the giving such notice could be levied, sued for and recovered; and such double rent or sum shall continue to be paid during all the time such tenant or tenants shall continue in possession as aforesaid.

Penalty for holding over after notice of quitting. *Ib.* § 8.

27. SEC. 29. In all cases where any tenant is, or may be entitled by law to notice to quit the premises by him holden, in order to determine his

Notice to quit. *Ib.* § 17.

*(a)* A tenant under a lease made prior to a mortgage, may be sued or distrained upon by the mortgagee for rent, after notice not to pay it to the landlord, *Souders v. Van Sickle*, 3 *Hal.* 313; overruled, *Hal. Dig.* 860. *Aliter*, where the lease is made after the mortgage, *Ibid.* *Price v. Smith*, 1 *Gr. Ch.* 516. If the mortgagee obtain possession of the land from a tenant holding under a lease made subsequent to the mortgage, he is entitled to mesne profits only from the time of actual entry by the mortgagee, *Sanderson v. Price*, 1 *Zab.* 637. The mortgagee in such case is entitled to the crops sown by tenant, *Howell v. Schenck*, 4 *Zab.* 89. See *Bloom v. Welsh*, 3 *Dutch.* 177. If a party claims to hold lands under

a lease made before the mortgage, equity will not assist the mortgagee to obtain possession, *Thomas v. De Baum*, 1 *McCart.* 37. An assignment of the rent is valid without the attornment of the tenant, but it cannot be apportioned by the landlord to different persons without the tenant's consent, *Ryerson v. Quackenbush*, 2 *Dutch.* 237. See *Potts v. Del. Water Power Co.*, 1 *Stock.* 592.

*(b)* After the ordinary demand and notice in writing have been given, no further notice is necessary, *Townley v. Rutan*, 1 *Zab.* 674. Three days' notice in writing must be given, *Schwytler v. Trefern*, 2 *Dutch.* 213.

tenancy, three months' notice to quit as aforesaid shall be deemed and taken to be sufficient.(a)

P. L. 1874, p. 27.

In case of fire without fault of lessee, rent to cease until building repaired; if building destroyed lease to end.

Proviso.

**Supplement.**

Approved March 5, 1874.

28. SEC. 1. That whenever any building or buildings erected on leased premises shall be injured by fire without the fault of the lessee, the landlord shall repair the same as speedily as possible, or in default thereof, the rent shall cease until such time as such building or buildings shall be put in complete repair; and in case of the total destruction of such building or buildings by fire or otherwise, the rent shall be paid up to the time of such destruction, and then, and from thenceforth, the lease shall cease and come to an end; *provided always*, that this section shall not extend to or apply to cases where the parties have otherwise stipulated in their agreement of lease. (See WASTE, Sec. 8).

P. L. 1876, p. 76.

Amendment to section 11.

**Supplement.**

Approved April 5, 1876.

29. SEC. 1. That the eleventh section of the act entitled "An act concerning landlords and tenants," which act was approved March twenty-seventh, Anno Domini eighteen hundred and seventy-four, and which section reads as follows:

"11. Any tenant or lessee, at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands, or tenements, and the assignees, under tenants, or legal representatives of such tenant or lessee, may be removed from such premises by any justice of the peace of the county where such premises are situated, in the manner hereinafter prescribed, in the following cases:

I. Where such person shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his or her term, and after demand made, and notice in writing given for delivering the possession thereof by the landlord, or his agent, for that purpose;(b)

II. Where such person shall hold over after any default in the payment of the rent, pursuant to the agreement under which such premises are held, and satisfaction for such rent cannot be obtained by distress of any goods, and a demand of such rent shall have been made, by three days' notice in writing, requiring the payment of such rent or possession of the premises, shall have been served by the person entitled to such rent upon the person owning the same.

The notices required in this section shall be served either personally on the tenant, by giving him a copy thereof, or by leaving a copy thereof at his usual place of abode, with some member of his family above the age of fourteen," be and the same is hereby amended so that the same shall read as follows, viz.:

Remedy if rent unpaid or term ended.

Proviso.

11. Any tenant, or lessee at will or at sufferance, or for part of a year, or for one or more years, of any houses, lands or tenements, and the assigns, under tenants or legal representatives of such tenant or lessee, may be removed from such premises by any justice of the peace of the county where such premises are situated, in the manner hereinafter prescribed, in the following cases; *provided*, that this act shall not be construed so as to give justices of the peace jurisdiction in cities where district courts are now established by law.

I. Where such person shall hold over and continue in possession of the demised premises, or any part thereof, after the expiration of his or her

(a) The tenant is bound to quit the premises without notice, when his lease expires, *Decker v. Adams*, 7 Hal. 99. Unless he remains by the consent of the landlord, shown by the latter accepting rent, &c., *Ibid.* *Adams v. Decker*, 6 Hal. 87. In all cases of tenancies from year to year, or of uncertain duration, the tenant must have notice, *Den v. Drake*, 2 Gr. 523. *Van Campen v. Depue*, 6 Hal. 409. *Den, Mackay v. Mackay*, Pen. \*4190. *Den, Snowhill v. Snowhill*, 3 Zab. 448. But not where he disclaims his landlord's title, *Den, Hankinson v. Blair*, 3 Gr. 181. His right to notice is not forfeited where he contests the claim of executors to the whole premises, when as heirs they are only entitled to an undivided share thereof, *Den, Snowhill v. Snowhill*, 3 Zab. 448. Where a lock-tender on a canal occupied a house of the company under a standing rule known to him that if discharged he was to vacate the house, he is not entitled

to three months' notice, *Morris Canal Co. v. Mitchell*, 2 Vr. 190. So, where a lease was determinable if the manufacture of salt was abandoned by the tenant, *Hornor v. Leeds*, 1 Dutch. 106. A mortgagor in possession or his grantee is not entitled to notice, *Den v. Wade, Spen*, 291. Nor, a party who enters under an agreement to purchase the lands occupied by him, *Thackray v. Den, Cheeseman*, 3 Harr. 1. See *Den v. Westbrook*, 3 Gr. 371. Nor where he holds under a mortgagor by lease subsequent to the mortgage, *Den v. Stockton*, 7 Hal. 322. So where no rent has been paid for twenty years, *Den, Crowther v. Lloyd*, 2 Vr. 395. Where the tenancy has expired the landlord may take possession even by force, *Todd v. Jackson*, 2 Dutch. 525.

(b) The affidavit must set out the facts which constitute the tenancy, *Fowler v. Roe*, 1 Dutch. 519. Sufficient averments, *Shepherd v. Sliker*, 2 Vr. 432.



term, and after demand made, and notice in writing given for delivering the possession thereof by the landlord, or his agent for that purpose ;

II. Where such person shall hold over after any default in the payment of the rent, pursuant to the agreement under which such premises are held, and satisfaction for such rent cannot be obtained by distress of any goods, and a demand of such rent shall have been made, by three days' notice in writing, requiring the payment of such rent, or the possession of the premises, shall have been served by the person entitled to such rent, or his agent, upon the person owing the same.<sup>(a)</sup>

The notices required in this section shall be served either personally on the tenant, by giving him a copy thereof, or by leaving a copy thereof at his last usual place of abode, with some member of his family above the age of fourteen years ; or where, from any reason, such service cannot be had, then the same may be served by affixing a copy of such notice to the door of any dwelling, or such demised premises, occupied by such tenant.

30. SEC. 2. That the fifteenth section of said act, which section reads as follows, namely : Amendment to section 15.

"15. The summons shall be served in the manner prescribed in the act constituting courts for the trial of small causes ; the suit may be adjourned, and either party may demand and have a trial by jury of twelve men," be and the same are hereby amended so as to read as follows, namely :

15. The summons shall be served in the manner prescribed by the act constituting courts for the trial of small causes, except in cases where the tenant denies admission to the dwelling occupied by such tenant to the officer attempting to serve such summons, and in such case it shall be a lawful service of such summons if the said officer affix a copy of such summons to the door of said dwelling ; and the suit may be adjourned, and either party may demand and have a trial by jury of twelve men, and if such jury fail to agree the justice may discharge them and summon a new jury before whom the matter shall again be tried. How summons served ; trial and jury, &c.

31. SEC. 3. That when any warrant shall be issued under the provisions of the sixteenth section of the act to which this is a supplement, to any constable or marshal it shall be the duty of said constable or marshal to obey the command of such warrant and to faithfully execute such warrant, and in such execution of such warrant the said constable or marshal shall have power if necessary to the execution of such warrant, to break in any door of any dwelling or other building so in possession of such tenant, and to use whatever force may be necessary to effect an entrance into such building to execute his said warrant. Constable or marshal to execute warrant.  
How executed.

<sup>(a)</sup> A statement that according to deponent's belief satisfaction cannot be obtained by distress, is bad, *Schuyler v. Trejern*, 2 Dutch. 213.

## Learning.

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| 1. Formation of societies for promotion of learning. | 9. Property to continue vested.                             |
| 2. Corporate name and powers.                        | 10. Act to extend to library companies.                     |
| 3. Election of officers.                             | 11. By-laws of library companies.                           |
| 4. Time and manner of electing trustees.             | 12. Power to create capital stock.                          |
| 5. Annual reports.                                   | 13. Consent to be attested.                                 |
| 6. By-laws.  | 14. Methodist or other educational institutions authorized. |
| 7. Record of proceedings to be kept.                 | 15. Duty of trustees, etc.                                  |
| 8. Corporation not dissolved for failure to elect.   | 16. Conferences, etc., subject to this act.                 |

### An act to incorporate societies for the promotion of learning. R. S. 393.

Revision—Approved April 9, 1875. P. L. 1850, p. 158.  
" 1859, p. 255.

1. That each and every association of persons in this state for the promotion of learning, which now or hereafter may be, are hereby authorized and empowered, respectively, to meet together, at their usual place of meeting, at any time hereafter by them to be agreed upon, giving at least ten days' notice of the time and purpose of meeting, by an advertisement, Formation of societies for promotion of learning.  
R. S. 393, § 1.