

LAWS

OF THE

STATE OF DELAWARE,

TO THE YEAR OF OUR LORD, ONE THOUSAND EIGHT HUNDRED AND TWENTY
NINE INCLUSIVE : TO WHICH ARE PREFIXED THE DECLARATION
OF INDEPENDENCE AND CONSTITUTION OF
THE UNITED STATES.

REVISED EDITION.

ARRANGED AND PUBLISHED UNDER THE AUTHORITY

OF THE

GENERAL ASSEMBLY.

Wilmington, Del.

PRINTED BY R. PORTER AND SON, MARKET-STREET.

1829.

ERRATA.

Page 463—*Title*—erase the words *Religious Societies*.

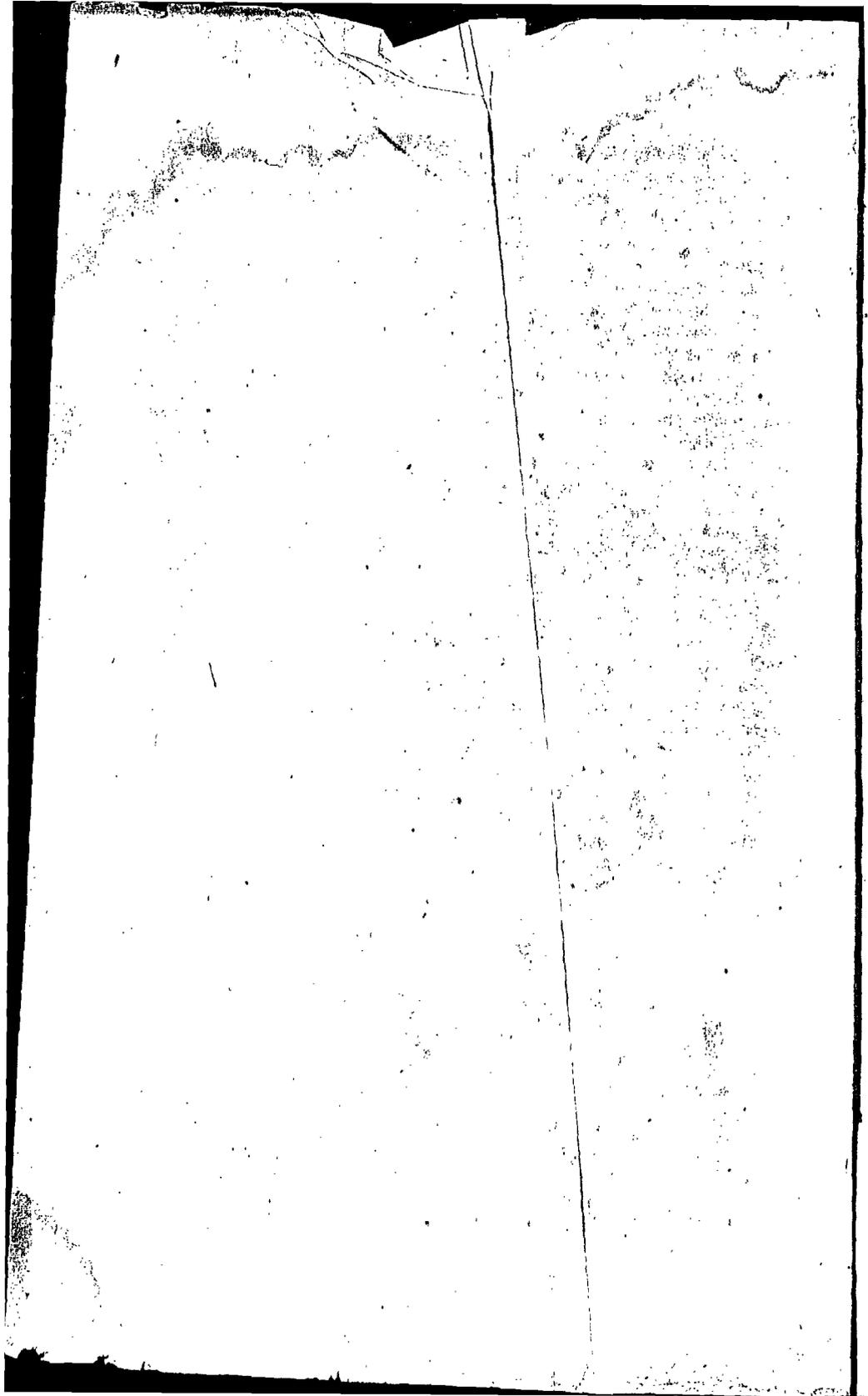
Page 539—on the top in bracket—erase *Lancaster* and substitute *Elkton*.

Page 732—erase this line, *power of two commissioners* 552, and insert the same in page 734, as the third line.

~~June~~

1829 Code

Part 2



the case, and if he find the said party guilty, shall limit a reasonable fine according to the circumstances but in no case exceeding ten dollars, and shall give judgment, that said party pay to the State said fine and costs and stand committed till payment; and the said Justice shall immediately charge a constable present with said party, and shall enter the name of such constable upon the docket of the case; and the said constable, if the fine and costs be not paid, shall have power to convey said party to the common gaol of the county to be therein detained by the keeper thereof, until the fine and cost be paid: for which a copy of said judgment (which copy the Justice shall make, certify and deliver to the constable on request,) shall be a sufficient warrant.

215 fine not to exceed \$10

216 commitment

It shall not be lawful for the Justice in any case to receive the fine by him imposed or the costs.

217 Justice not to receive fine or costs

In such case as mentioned in this section, the Justice shall have power for sufficient cause to adjourn the hearing, taking security for the appearance of the party complained against, at the time adjourned to.

218 Adjournment

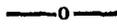
It shall be lawful for a Justice of the Peace in every case of assault and battery to permit the parties to settle the matter and either to discontinue any proceedings or to annul any recognizance upon payment of costs.

219 settlers'

If the Justice shall consider, that a case submitted to him ought to be subjected to higher authority, he shall refuse to determine it and shall require sureties for the appearance of the party complained against and the witnesses at the court having jurisdiction of the matter; and in case of failure to give sureties as required, he shall commit the party failing.

220 cases proper for higher tribunal

Passed at Dover, January 30, 1829.



LANDLORD AND TENANT.

I.

AN ACT concerning Landlords and Tenants.

1829

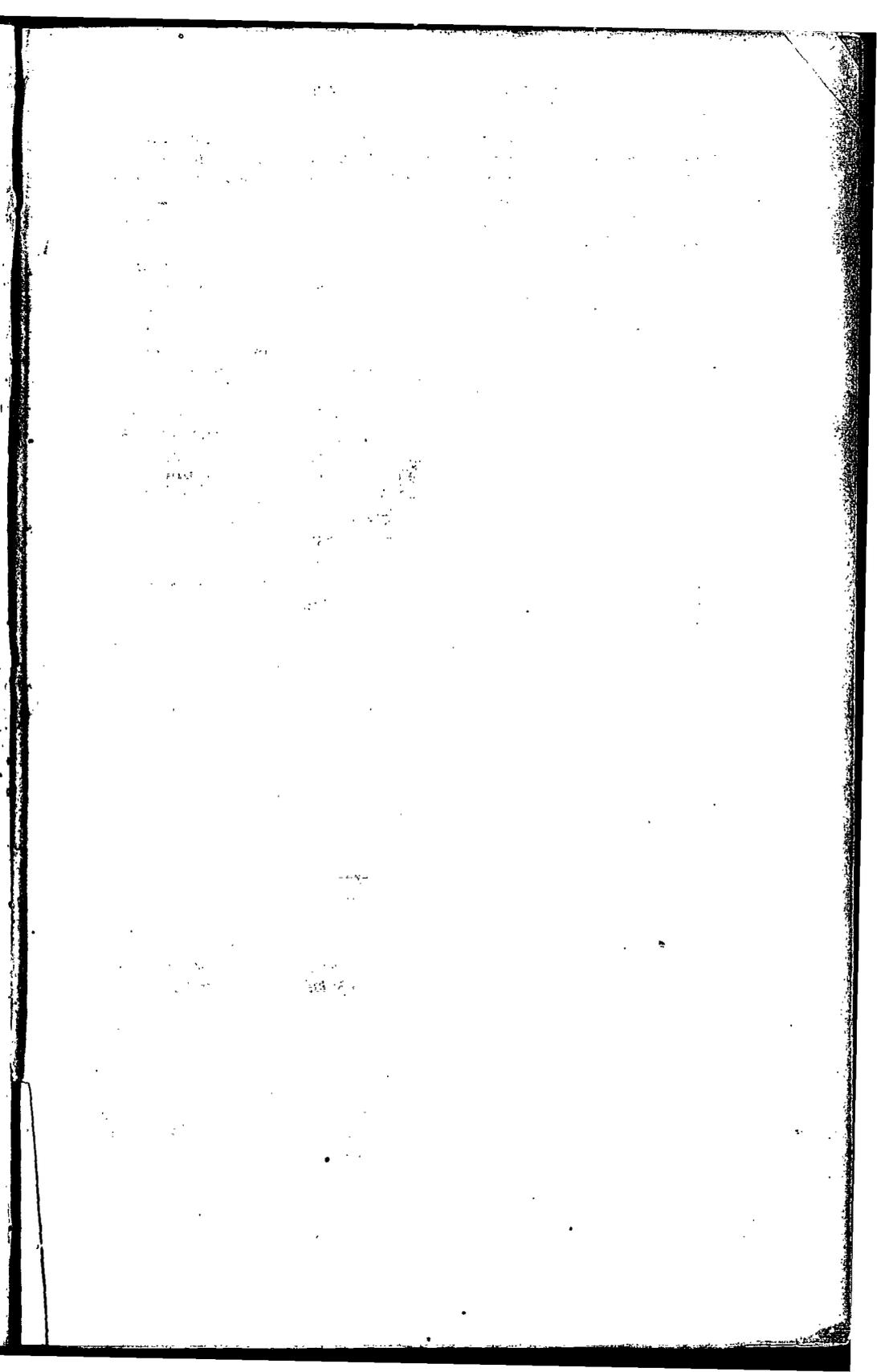
Section 1. Whenever any rent, whether of money or a quantity or share of grain or other produce or of any thing certain or that can be reduced to certainty, is in arrear upon a demise of lands, tenements, or hereditaments for life or a term of one or more years or a less time or at will; the person entitled to such rent, whether the original lessor or an assignee, heir, executor or administrator, either personally or by his bailiff, may, during the demise and afterwards while the tenant or any person coming into possession by or under him shall continue to hold the demised premises and the title to said premises shall remain in the person to whom the rent accrued or his heirs, devisees, executors or administrators or be in his immediate reversioner or remainder-man, distrain for the said rent in arrear as well the grain, grass and other produce found upon the demised premises, whether growing or sever-

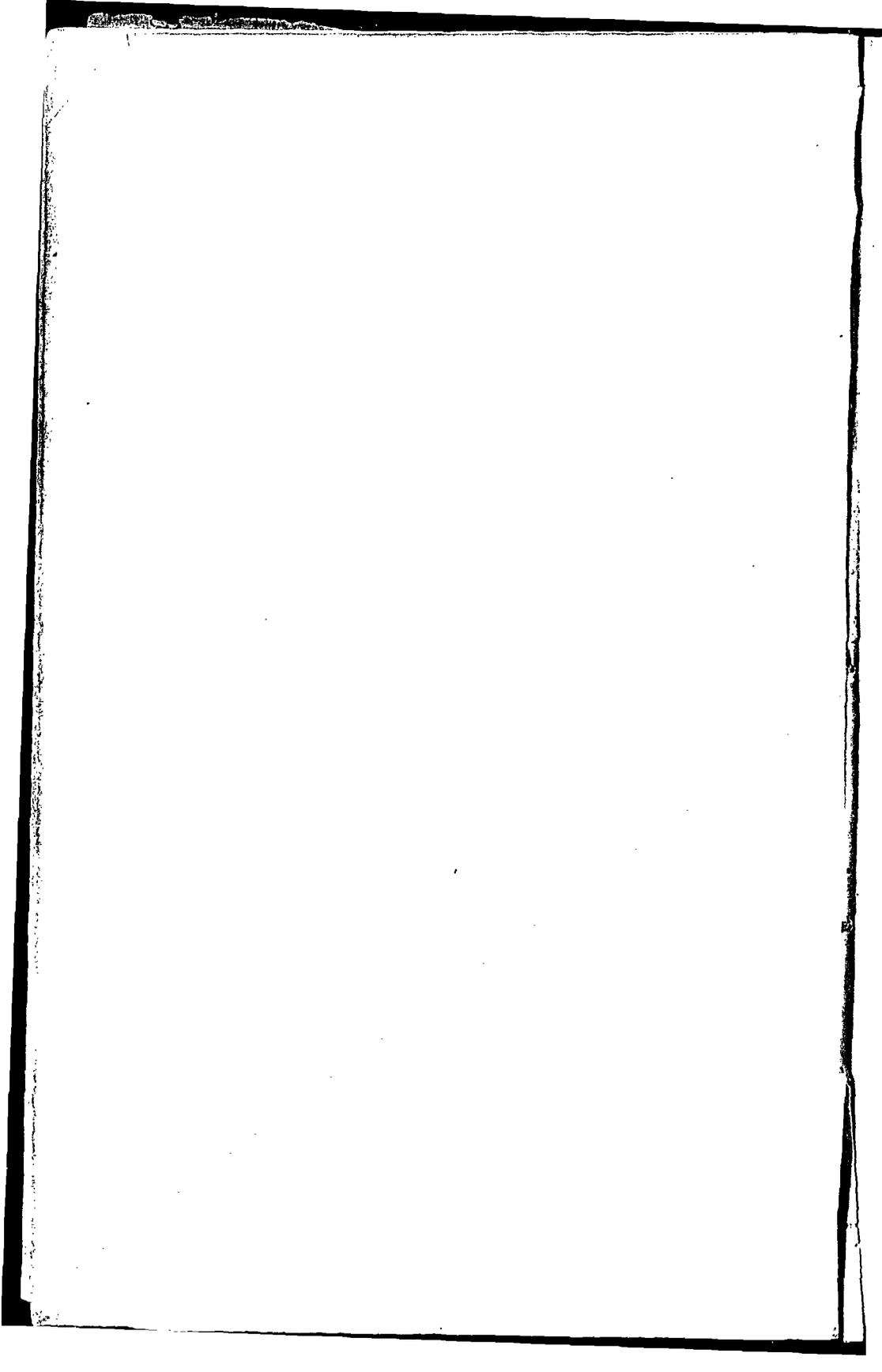
1 Rent distrained for
3 Blac. Com 6-15
Bac. Abridg't distress, A.
2 who may distrain

3 What may be distrained

- ed, in sheaves, stacks or otherwise as the horses, cattle and other goods and chattels being upon said premises: except goods and chattels not the property of the tenant but being in his possession in the way of his trade or upon the demised premises in the regular course of any occupation or business there carried on: which exception shall extend to horses and carriages at a livery stable, to property of boarders in a boarding house and to the beasts of a drover depastured while passing through the country, as well as to the more obvious cases of exemption (a) according to the common law; and also except stoves not the property of, but hired by, the tenant and beasts not the property of the tenant, escaping into the demised premises through defect of fences, which the tenant or his landlord was bound to repair.
- 3 Blac. Com. 10
4 exceptions
- 3 Burr. 1498
3 Blac. Com. 8 & n. 4
- 5 Goods followed & distrained off the premises
- If the tenant, either during his term or estate or after the end thereof, remove his goods and chattels or any part thereof from the demised premises without payment of the rent due or growing due for the said premises, and without license from the landlord or his agent in writing under hand, the goods and chattels so removed, unless sold fairly for a valuable consideration and delivered to the buyer, shall be liable, wherever found, to be distrained for said rent for forty days after the removal, or if the rent be not in arrear at the time of the removal, for forty days after the rent shall become in arrear. Notice to the tenant to remove from the demised premises shall not be a license within this provision.
- 6 Unreasonable distress
3 Blac. Com. 12
- 7 Notice of distress
- 8 Replevin in five days, or appraisement
- 9 Rent, not of money, valued
- Every distress shall be reasonable and not too great; any person taking an unreasonable distress shall answer the damages to the party injured in an action on the case.
- Sect. 2. The person or bailiff distraining as aforesaid shall either deliver to the tenant or leave at the mansion house, or if there be none at the most notorious place on the demised premises written notice of the property distrained and the cause of the distress. If said property be not replevied in five days after the day of such notice, the sheriff or under sheriff of the county or any constable for the county or place, where the distress is taken, shall upon application summon two judicious and impartial freeholders of said county and administer to them respectively an oath or affirmation to appraise the said property at its true value in money according to the best of their skill and judgment; and they shall certify their appraisement with the date under their hands. If the rent be not of money, the said sheriff, under sheriff or constable shall also summon the said appraisers and another judicious and impartial freeholder of said county to determine the value of said rent in money and shall administer to them respectively an oath or affirmation to inquire diligently concerning the true value in money of the rent, for which the distress was taken, in arrear at the time of distraining and faithfully determine the same. Upon such inquiry the freeholders shall afford such opportunity, as they shall deem reasonable, to the parties to be heard; and they shall severally have power to administer an oath or affirmation to wit-

(a) More obvious cases of exemption at common law are, when a tenant has in possession goods of another in the way of trade; as a horse at a smith's shop to be shod; in a tailor's shop cloth or garments of a customer; horses, cattle or goods of a guest in a tavern; grists in a mill; &c. Co. Lit. 47 a & n 14. Com. Di. Distress C.





nesses; and the said freeholders or any two of them agreeing shall certify under their hands the value of the rent in arrear. The certificate may be according to the following form:

— county, ss. Upon a distress for rent on the demand of — against — We the freeholders summoned to determine the value of said rent in money, upon our oath and affirmation respectively say, that at the time of taking said distress there was rent in arrear from the said — to the said — to the value of

10 Certificate of value

— Witness our hands, the — day of — 18— The value so certified shall not be questioned except upon replevin of the goods distrained. No further certificate, either of the summoning or the swearing or affirming of the freeholders, shall be necessary; if all the freeholders be sworn, or if all be affirmed, the certificate shall be adapted to the case by omitting the words "and affirmation" or the words "oath and."

final unless replevin

The sheriff or under sheriff of the county or any constable for the county or place where the distress is taken, shall have power to sell the property distrained if not replevied or so much thereof, as shall be necessary to satisfy the rent in arrear and all costs, by way of public vendue to the highest and best bidder or bidders at any time after the expiration of six days from the day of the appraisalment of said property, giving notice of said sale by advertisements posted in at least five of the most public and suitable places in said county at least six days before the day of sale. If there be a surplus of the proceeds of such sale over satisfying the rent and costs, it shall be refunded to the owner or applied according to law without delay. If through mistake or other cause a sufficient distress be not taken, distress may be made for the balance of the rent in the same manner, as for the entire sum.

11 Sale

12 Notice of sale

13 Surplus

14 second distress
3 Blac. Com.
11-12

Woodfall 395
2 Sellon 268-269

It shall not be an objection to any officer acting in any of the premises, that he as bailiff made the distress.

15 Distress left on premises, or impounded— but not removed from county

16 Demised premises lying, parts in different counties

Sect. 3. The person or bailiff making a distress may suffer the property distrained to remain at large upon the demised premises or may impound the same either on the said premises or in any other convenient place in the same county. A distress shall not be removed out of the county where the demised premises are situate: but if the said premises lie in different counties, a distress taken on any part thereof may be carried to the mansion house or other most notorious place thereon, which shall for all purposes be deemed to be the place of the taking: and grain or other produce growing on any part of such premises shall be subject to be appraised by freeholders and to be sold by the sheriff, under sheriff or constable and to be replevied by writ of replevin directed to the sheriff or coroner, all of the county where the mansion house or other most notorious place on said premises is situate, in the same manner, as if every part of said premises was in said county.

The person, on whose demand a distress is made, shall have a special property in the things distrained until replevin or sale thereof, so that he may take the same wherever found and recover damages for carrying away or injuring them.

17 Distrainer's property in distress

In case of the property distrained remaining or being impounded on the demised premises, the distrainer and every other person shall have right to go upon said premises to view, appraise or pur-

18 Rights of purchasers & others

chase said property, or to take the same when purchased; and if grain or other produce in the ground be sold, the purchaser shall have right to do all acts requisite for saving, cultivating, gathering and taking the same.

19 Pound
breach and
Rescue

Sect. 4. If any pound breach or rescous be made of property distrained, the party injured shall in a special action on the case recover double damages and costs against the persons making such pound breach or rescous or any of them, or against the owner of the property if it have come to his possession or use.

20 Distress &
sale—when
no rent in ar-
rear—penalty

Sect. 5. If any distress and sale be made for rent demanded, when no rent is in arrear, the person, upon whose demand such distress is made, or his executors or administrators shall pay to the owner of the property so distrained and sold or his executors or administrators double the value of said property to be recovered with costs in an action of debt, in which a less sum than that demanded may be recovered.

21 Irregularity
not to viti-
ate distress—
special dama-
ges therefor

Sect. 6. When a distress is taken for rent justly due, no subsequent irregularity shall make it a trespass or vitiate it; but the party injured by such irregularity may recover the damages sustained on occasion of such injury and no more in a special action on the case; unless sufficient amends shall have been tendered before action brought, in which case there shall be no recovery.

22 Bond on
replevin

Sect. 7. The sheriff or his deputy or the coroner having a writ of replevin for property distrained shall before serving the writ take bond from the plaintiff or some substantial person for him, with sufficient surety, to such sheriff or coroner in a penalty double the value of said property (to be estimated by the officer serving the writ, or to be appraised, if either party request it, by two judicious persons to be summoned and sworn or affirmed by such officer,) with condition according to the following form:

23 Condition

The condition of the above written obligation is such, that if —, at whose suit against — a writ of replevin has been issued out of the (describe the court) of the State of Delaware for — county returnable to — term next, or his executors or administrators shall prosecute said suit with effect and shall fully and without delay satisfy any judgment, which shall be given against the said — or his executors or administrators in the said suit, then the said obligation shall be void.

24 Avowry or
cognizance

In every such suit the defendant may avow or make cognizance generally for rent in arrear, stating to whom, for what premises and for what time, without other particulars. Such avowry or cognizance may be entered upon the record by way of suggestion, if in consequence of the plaintiff being nonsuit or judgment being given on demurrer or for other cause, it cannot be entered in the regular course of the pleadings. The jury upon the trial of the action shall find the sum due for rent in arrear; and after issue joined the plaintiff becoming nonsuit, shall not prevent a jury from being drawn or sworn or affirmed or from trying the cause or from giving their verdict.

25 Rent
found by
jury

—determined
when no trial
by jury

If there be judgment of nonsuit or upon demurrer or otherwise without trial by jury, the sum due for the rent in arrear may be found either by a jury drawn and sworn or affirmed and giving their verdict at the bar of the court, as in cases of jury trials, (the