

ANNO PRIMO & SECUNDO

VICTORIÆ REGINÆ.

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CAP. LXXIV.

An Act to facilitate the Recovery of Possession of Tenements after due Determination of the Tenancy. [10th *August* 1838.]

WHEREAS it is expedient to provide for the more speedy and effectual Recovery of the Possession of Premises unlawfully held over after the Determination of the Tenancy: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, when and so soon as the Term or Interest of the Tenant of any House, Land, or other corporeal Hereditaments held by him at Will or for any Term not exceeding Seven Years, either without being liable to the Payment of any Rent or at a Rent not exceeding the Rate of Twenty Pounds a Year, and upon which no Fine shall have been reserved or made payable, shall have ended or shall have been duly determined by a legal Notice to quit or otherwise, and such Tenant or (if such Tenant do not actually occupy the Premises, or only occupy a Part thereof,) any Person by whom the same or any Part thereof shall be then actually occupied shall neglect or refuse to quit and deliver up Possession of the Premises or of such Part thereof respectively, it shall be lawful for the Landlord of the said Premises or his Agent to cause the Person so neglecting or refusing to quit and deliver

When Tenant or Occupier of Premises where there is no Rent, or where the Rent does not exceed 20*l.* a Year, refuses to give Possession, the Landlord may give him Notice of his Intention to proceed to

recover Possession, under the Authority of this Act.

If Tenant does not appear, or fails to show Cause why he does not give Possession, the Justices may issue their Warrant directing the Constables to give the Landlord Possession.

deliver up Possession to be served (in the Manner herein-after mentioned) with a written Notice, in the Form set forth in the Schedule to this Act, signed by the said Landlord or his Agent, of his Intention to proceed to recover Possession under the Authority and according to the Mode prescribed in this Act; and if the Tenant or Occupier shall not thereupon appear at the Time and Place appointed, and show to the Satisfaction of the Justices herein-after mentioned reasonable Cause why Possession should not be given under the Provisions of this Act, and shall still neglect or refuse to deliver up Possession of the Premises or of such Part thereof of which he is then in Possession to the said Landlord or his Agent, it shall be lawful for such Landlord or Agent to give to such Justices Proof of the holding and of the End or other Determination of the Tenancy, with the Time or Manner thereof, and where the Title of the Landlord has accrued since the letting of the Premises, the Right by which he claims the Possession, and upon Proof of Service of the Notice, and of the Neglect or Refusal of the Tenant or Occupier, as the Case may be, it shall be lawful for the Justices acting for the District, Division, or Place within which the said Premises, or any Part thereof shall be situate, in Petty Sessions assembled, or any Two of them, to issue a Warrant under their Hands and Seals to the Constables and Peace Officers of the District, Division, or Place within which the said Premises or any Part thereof shall be situate, commanding them, within a Period to be therein named, not less than Twenty-one nor more than Thirty clear Days from the Date of such Warrant, to enter (by Force if needful) into the Premises, and give possession of the same to such Landlord or Agent: Provided always, that Entry upon any such Warrant shall not be made on a *Sunday*, *Good Friday*, or *Christmas Day*, or at any Time except between the Hours of Nine in the Morning and Four in the Afternoon: Provided also, that nothing herein contained shall be deemed to protect any Person on whose Application and to whom any such Warrant shall be granted from any Action which may be brought against him by any such Tenant or Occupier, for or in respect of such Entry and taking Possession, where such Person had not at the Time of granting the same lawful Right to the Possession of the same Premises: Provided also, that nothing herein contained shall affect any Rights to which any Person may be entitled as out-going Tenant by the Custom of the Country or otherwise.

The Manner in which such Summons shall be served.

II. And be it enacted, That such Notice of Application intended to be made under this Act may be served either personally or by leaving the same with some Person being in and apparently residing at the Place of Abode of the Persons so holding over as aforesaid, and that the Person serving the same shall read over the same to the Person served or with whom the same shall be left as aforesaid, and explain the Purport and Intent thereof: Provided that if the Person so holding over cannot be found, and the Place of Abode of such Person shall either not be known or Admission thereto cannot be obtained for serving such Summons, the posting up of the said Summons on some conspicuous Part of the Premises so held over shall be deemed to be good Service upon such Person.

III. And

How Execution of Warrants of Possession may be stayed.

III. And be it enacted, That in every Case in which the Person to whom any such Warrant shall be granted had not at the Time of granting the same lawful Right to the Possession of the Premises, the obtaining of any such Warrant as aforesaid shall be deemed a Trespass by him against the Tenant or Occupier of the Premises, although no Entry shall be made by virtue of the Warrant; and in case any such Tenant or Occupier will become bound with Two Sureties as herein-after provided, to be approved of by the said Justices, in such Sum as to them shall seem reasonable, regard being had to the Value of the Premises and to the probable Costs of an Action, to sue the Person to whom such Warrant was granted with Effect and without Delay, and to pay all the Costs of the Proceeding in such Action in case a Verdict shall pass for the Defendant, or the Plaintiff shall discontinue or not prosecute his Action or become non-suit therein, Execution of the Warrant shall be delayed until Judgment shall have been given in such Action of Trespass; and if upon the Trial of such Action of Trespass a Verdict shall pass for the Plaintiff, such Verdict and Judgment thereupon shall supersede the Warrant so granted, and the Plaintiff shall be entitled to Double Costs in the said Action of Trespass.

Proceedings on the Bond in Actions of Trespass.

IV. And be it enacted, That every such Bond as herein-before mentioned shall be made to the said Landlord or his Agent, at the Costs of such Landlord or Agent, and shall be approved of and signed by the said Justices; and if the Bond so taken be forfeited, or if upon the Trial of the Action for securing the Trial of which such Bond was given, the Judge by whom it shall be tried shall not indorse upon the Record in Court that the Condition of the Bond hath been fulfilled, the Party to whom the Bond shall have been so made may bring an Action, and recover thereon: Provided always, that the Court where such Action as last aforesaid shall be brought may, by a Rule of Court, give such Relief to the Parties upon such Bond as may be agreeable to Justice, and such Rule shall have the Nature and Effect of a Defeazance to such Bond.

Protection of Justices, Constables, &c.

V. And be it enacted, That it shall not be lawful to bring any Action or Prosecution against the said Justices by whom such Warrant as aforesaid shall have been issued, or against any Constable or Peace Officer by whom such Warrant may be executed, for issuing such Warrant or executing the same respectively, by reason that the Person on whose Application the same shall be granted had not lawful Right to the Possession of the Premises.

Where Landlord has a lawful Title, he shall not be deemed a Trespasser by reason of Irregularity, but be liable in an Action on the Case for special Da-

VI. And be it enacted, That where the Landlord at the Time of applying for such Warrant as aforesaid had lawful Right to the Possession of the Premises, or of the Part thereof so held over as aforesaid, neither the said Landlord nor his Agent, nor any other Person acting in his Behalf, shall be deemed to be a Trespasser by reason merely of any Irregularity or Informality in the Mode of proceeding for obtaining Possession under the Authority of this Act, but the Party aggrieved may if he think fit bring an Action on the Case for such Irregularity or Informality, in which the Damage alleged to be sustained thereby shall be specially laid, and may recover full Satisfaction for

mage proceeding from Irregularity.

for such special Damage, with Costs of Suit: Provided, that if the special Damage so laid be not proved, the Defendant shall be entitled to a Verdict, and that if proved, but assessed by the Jury at any Sum not exceeding Five Shillings, the Plaintiff shall recover no more Costs than Damages, unless the Judge before whom the Trial shall have been held shall certify upon the Back of the Record that in his Opinion full Costs ought to be allowed.

Interpretation Clause.

VII. And be it enacted, That in construing this Act the Word "Premises" shall be taken to signify Lands, Houses, or other corporeal Hereditaments; and that the Word "Person" shall be taken to comprehend a Body Politic, Corporate, or Collegiate as well as an Individual; and that every Word importing the singular Number shall, where necessary to give full Effect to the Enactments herein contained, be deemed to extend and be applied to several Persons or Things as well as one Person or Thing; and that every Word importing the Masculine Gender shall where necessary extend and be applied to a Female as well as a Male; and that the Term "Landlord" shall be understood as signifying the Person entitled to the immediate Reversion of the Premises, or, if the Property be held in Joint-tenancy, Coparcenary, or Tenancy in Common, shall be understood as signifying any one of the Persons entitled to such Reversion; and that the Word "Agent" shall be taken to signify any Person usually employed by the Landlord in the letting of the Premises or in the Collection of the Rents thereof, or specially authorized to act in the particular Matter by Writing under the Hand of such Landlord.

Not to extend to Scotland or Ireland.

VIII. And be it enacted, That this Act shall not extend to *Scotland* or *Ireland*.

Act may be repealed or altered.

IX. And be it enacted, That this Act may be amended or repealed by any Act to be passed in the present Session of Parliament.

SCHE-

SCHEDULE to which this Act refers.

FORM, No. 1.

NOTICE of OWNER'S INTENTION to apply to JUSTICES to recover POSSESSION.

I [Owner, *or* Agent to the Owner, *as the Case may be,*] do hereby give you notice, That unless peaceable Possession of the Tenement [*shortly describing it*] situate which was held of me, *or* of the said [*as the Case may be*] under a Tenancy from Year to Year, *or* [*as the Case may be*], which expired [*or* was determined] by Notice to quit from the said *or otherwise* [*as the Case may be*] on the Day of , and which Tenement is now held over and detained from the said be given to [the Owner *or* Agent] on or before the Expiration of Seven clear Days from the Service of this Notice, I shall on next the Day of at of the Clock of the same Day, at , apply to Her Majesty's Justices of the Peace acting for the District of [*being the District, Division, or Place in which the said Tenement, or any Part thereof, is situate*], in Petty Sessions assembled, to issue their Warrant directing the Constables of the said District to enter and take possession of the said Tenement, and to eject any Person therefrom.

Dated this

(Signed)

To Mr. [Owner *or* Agent.]

FORM, No. 2.

COMPLAINT before TWO JUSTICES.

THE Complaint of [Owner *or* Agent, *&c., as the Case may be,*] made before us Two of Her Majesty's Justices of the Peace acting for the District of , in Petty Sessions assembled, who saith that the said did let to a Tenement, consisting of , for under the Rent of , and that the said Tenancy expired [*or* was determined by Notice to quit, given by the said , *as the Case may be,*] on the Day of and that on the Day of the said did serve on [*the Tenant overholding*] a Notice in Writing of his Intention to apply to recover Possession of the said Tenement (a Duplicate of which Notice is hereto annexed), by giving, *&c.* [*describing the Mode in which the Service was effected*] ; and that notwithstanding the said Notice the said refused [*or* neglected] to deliver up Possession of the said Tenement, and still detains the same.

(Signed)

Taken the Day of before us

(Signed)

A Duplicate of the Notice of Intention to apply is to be annexed to this Complaint.

FORM, No. 3.

WARRANT to PEACE OFFICERS to take and give POSSESSION.

WHEREAS [*set forth the Complaint*], We Two of Her Majesty's Justices of the Peace, in Petty Sessions assembled, acting for the of , do authorize and command you, on any Day within Days from the Date hereof [except on Sunday, Christmas Day, and Good Friday, *to be added if necessary*], between the Hours of Nine in the Forenoon and Four in the Afternoon, to enter (by force, if needful,) and with or without the Aid of the Owner *or* Agent, *as the Case may be*, or any other Person or Persons whom you may think requisite to call to your Assistance, into and upon the said Tenement, and to eject thereout any Person, and of the said Tenement full and peaceable Possession to deliver to the said [the Owner *or* Agent].

Given under our Hands and Seals this Day of

To and all other Constables and Peace Officers acting for the District of

LONDON: Printed by GEORGE EYRE and ANDREW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1838.