

1937

38298

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KENYA

DISTRESS FOR RENT LEGISLATION

Previous

Subsequent

R. 297 9/2/37

R. 309 1/12

R. 297 2/2

R. 309 9/3

Mutakin 20/3

M: Dale 22

M: Flood 23

Room 308 24

299 29/3

297 3/3

~~the~~ 7/4

R 297

yes: this doesn't affect natives & as it has been called
by leading officials we need not comment.

Signify non-disallowance L.P.

W.D. 26/11/37
21-5
same

Labrador
2/11/37

3. Inkenya - 264 - (2 acks) 8/3 - 27/3/37

Noted
R. G. G.
7/12/37

MOLE ST. FULL

2

KENYA.
No. 59



GOVERNMENT HOUSE,
NAIROBI,
KENYA.

RECEIVED
23 FEB 1937
C. O. REGY.

23 January, 1937.

Sir,

I have the honour to forward two authenticated and twelve printed copies of Ordinance No. I of 1937 entitled "An Ordinance Relating to Distress for Rent", together with a Legal Report thereon by the Attorney General.

2. The Ordinance passed its third reading in the Legislative Council on the 5th day of January, 1937, and I assented to it in His Majesty's name on the 20th January, 1937.

I have the honour to be,
Sir,

Your most obedient humble servant,

Admhead
ACTING GOVERNOR.

THE RIGHT HONOURABLE
W. ORMSBY GORE, P.C. M.P.,
SECRETARY OF STATE FOR THE COLONIES,
DOWNING STREET,
LONDON, S.W.1.

Original (3)

No. I

1937



Colony and Protectorate of Kenya

IN THE FIRST YEAR OF THE REIGN OF
HIS MAJESTY KING GEORGE VI

ARMIGEL DE VINS WADE, C.M.G., O.B.E.,
Acting Governor.

Assented to in His Majesty's
name this 20th day of January
1937.

A. de V. WADE

Acting Governor.

AN ORDINANCE RELATING TO DISTRESS
FOR RENT

ORDINANCE No. I of 1937

An Ordinance Relating to Distress for Rent.

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Distress for Rent Ordinance, 1937, and shall come into force on such date as the Governor may, by proclamation in the Gazette, appoint. Short title and commencement

2. In this Ordinance, unless the context otherwise requires— Interpretation.

"agricultural holding" means any land in the Colony which is used for agricultural or pastoral purposes;

"superior landlord" includes a landlord in cases where the goods seized are not those of an under-tenant or lodger;

"tenant" and "under-tenant" do not include a lodger.

3. (1) Subject to the provisions of this Ordinance, every person having any rent or rent service in arrear and due upon any grant, lease, demise, or contract whatsoever shall have the same remedy by distress for the recovery of such rent or rent service as is given by the Common Law of England in the like case. Right of distress.

(2) No distress shall be levied between sunset and sunrise or on any Sunday.

4. (1) Where any goods or chattels shall be distrained for any rent reserved and due upon any grant, demise, lease, or contract whatsoever, and the tenant or owner of the goods or chattels so distrained shall not, within ten days next after such distress has been made, and notice thereof (with the cause of the making of such distress) left on the premises charged with the rent distrained for, pay such rent together with the costs of the distress, or replevy the same (with sufficient security to be Distrained goods may be sold under certain circumstances.

given to the bailiff according to law) then and in such case, after such distress and notice as aforesaid, and expiration of the said ten days, the person distraining may lawfully sell on the said premises or remove and sell the goods and chattels so distrained for the best price which can be obtained for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, removal and sale, handing over the surplus (if any) to the owner.

(2) If, before the expiration of the ten days above mentioned, the tenant or owner of the goods distrained shall, in writing, so request, the goods and chattels distrained shall be removed to a public auction room or to some other fit and proper place specified in such request, and be there sold by public auction towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress and sale, and the surplus (if any) shall be handed over to the owner. The costs and expenses of such removal, and any damage to the goods and chattels arising therefrom, shall be borne and paid by the person requesting the removal.

(3) If, before the expiration of the ten days notice above mentioned, the tenant or owner of the goods and chattels distrained shall by writing require that the value of such goods and chattels shall be ascertained, then and in such case the person distraining shall cause the said goods and chattels to be valued by an approved valuer appointed under the Estate Duty (Consolidation) Ordinance, 1926, and, after such valuation and the expiration of such ten days as aforesaid, may, unless the goods are sold by public auction as hereinbefore mentioned, lawfully sell the goods and chattels so distrained for the best price which can be obtained for the same, towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, valuation and sale, handing over the surplus (if any) to the owner. The costs and expenses of valuation, when required by the tenant or owner, shall be borne and paid by him.

(4) The period of ten days hereinbefore provided within which the tenant or owner of goods and chattels distrained may replevy the same, shall be extended to a period of not more than fifteen days if the tenant or such owner shall make a request in writing in that behalf to the landlord or other person levying the distress, and also give security for any additional cost that may be occasioned by such extension of

time: Provided that the landlord or person levying the distress may, at the written request, or with the written consent of the tenant or such owner as aforesaid, sell the goods and chattels distrained, or part of them, at any time before the expiration of such extended period as aforesaid.

5. Any person having any rent in arrear, or due upon any demise, lease, or contract whatsoever after the ending or determination of such demise, lease, or contract, may distress for such arrears after such ending or determination in the same manner as he might have done if such demise, lease, or contract, had not been ended or determined: Provided that such distress shall be made within the space of six months after the determination of such demise, lease, or contract and during the continuance of such landlord's title or interest, and during the possession of the tenant from whom such arrears became due.

Rent in arrear upon a lease expired may be distrained for after the determination of the lease.

6. (1) Any person having rent in arrear and due upon any grant, demise, lease, or contract whatsoever may seize and secure any crops loose and not attached to the land or lying and being in any barn or granary, or in any place or building used for the storage of crops or otherwise, upon any part of the land or ground charged with such rent, and may lock up or detain the same in the place where the same shall be found, for or in the nature of a distress, until the same shall be replevied and in default of the same being replevied upon such security to be given as aforesaid within ten days from the seizure thereof the said crops may be sold for the best price which can be obtained for them:

Crops may be detained and sold.

Provided that such crops so distrained shall not be removed by the person distraining to the damage of the owner thereof out of the place where the same shall be found and seized, but be kept there (as impounded) until the same shall be replevied or sold in default of replevying the same within the ten days aforesaid.

(2) The provisions of sub-sections (2), (3) and (4) of section 4 of this Ordinance shall apply to all crops seized and secured under this section.

7. If any person shall in any unauthorized manner remove or cause to be removed any goods, chattels, stock, or crops distrained upon for rent from any place where they or any of them are lawfully stored or detained, such person shall, on conviction, be liable to pay to the person or persons

Treble damages for pound breach.

aggrieved by such removal, three times the value of the goods, chattels, stock or crops so removed, in addition to any costs incurred by the person or persons so aggrieved in the prosecution of the offender, and the tenant or owner of the goods, chattels, stock or crops or any of them so removed shall be liable to the same penalties as are hereby imposed upon the person removing or causing to be removed such goods, chattels, stock or crops as aforesaid, in case the same or any of them are afterwards found to have come into his use or possession.

Double damages and costs against wrongful distraint.

8. If any distress and sale shall be made under this Ordinance for rent pretended to be in arrear and due, when in truth no rent is in arrear or due to the person distraining, or to him in whose name or right, such distress shall be taken as aforesaid, then and in such case the owner of such goods or chattels distrained and sold as aforesaid, his executors or administrators shall be entitled to recover double the value of such goods and chattels so distrained and sold together with full costs of suit from the person so distraining, or his executors or administrators, and such double value and costs of suit may be recovered as a civil debt in a summary manner under the Civil Debts (Summary Recovery) Ordinance.

Cap. 6.

Landlords may distrain and sell goods fraudulently carried off premises within thirty days unless sold to any person not privy to the fraud.

9. If the tenant or lessee or persons in possession or occupation of any premises in respect of which any rent is reserved, due, or made payable, shall fraudulently or clandestinely remove or carry away, or cause or permit to be removed or carried away, from the premises any goods or chattels liable to be seized for such rent to prevent the landlord or lessor from distraining the same for arrears of rent so reserved, due, or made payable, it shall be lawful for every landlord or lessor or for any person or persons by him for that purpose lawfully empowered, within the space of thirty days next following such removal or carrying away of such goods or chattels as aforesaid, to take and seize such goods and such chattels, wherever the same shall be found, as a distress for the said arrears of rent; and the same to sell or otherwise dispose of in such manner as if such goods and chattels had actually been distrained by such landlord or lessor upon such premises for such arrears of rent:

Provided that no landlord or lessor or other person entitled to such arrears of rent as aforesaid, shall take or seize any such goods or chattels as a distress for the same, which shall be sold bona fide, and for a valuable consideration, before such

seizure made, to any person or persons not privy to such fraud as aforesaid, anything herein contained to the contrary notwithstanding.

10. If any such tenant or lessee as above mentioned shall fraudulently remove and convey away his goods or chattels as aforesaid, or if any person shall wilfully and knowingly aid or assist any such tenant or lessee in such fraudulent conveying away or carrying off of any part of his goods or chattels, or in concealing the same, any such tenant or lessee and any such person as aforesaid shall be liable to pay to the landlord or lessor from whose estate such goods and chattels were fraudulently carried off as aforesaid, double the value of the goods so carried off or concealed as aforesaid, and such liability shall be deemed to be a debt recoverable under the Civil Debts (Summary Recovery) Ordinance.

Penalty on the said fraud, or assisting therein.

Cap. 6.

11. Where any goods or chattels fraudulently or clandestinely conveyed or carried away by any tenant or lessee or his servant or agent, or other person or persons aiding or assisting therein, shall be put, placed, or kept in any house, barn, stable, outhouse, yard, close or place locked up, fastened or otherwise secured, so as to prevent such goods or chattels from being taken and seized as a distress for arrears of rent, it shall be lawful for the landlord or lessor or his bailiff to take and seize, as a distress for rent, such goods and chattels (first calling to his assistance a police officer not below the rank of assistant inspector, second grade, who is hereby required to aid and assist therein, and in case of a dwelling house, oath being first also made before a magistrate empowered to hold a subordinate court of the first, second, or third class or before a justice of the peace of a reasonable ground to suspect that such goods or chattels are therein) in the day time to break open and enter into such house, barn, stable, outhouse, yard, close and place, and to take and seize such goods and chattels for the said arrears of rent, as he might have done by virtue of this Ordinance if such goods or chattels had been put in any open field or place.

Landlords may break open houses to seize goods fraudulently secured therein.

12. (1) It shall be lawful for every lessor or landlord or his bailiff to take and seize, as a distress for arrears of rent, any cattle or stock of any lessee or tenant feeding or depasturing upon any part of the premises demised or holden, or upon any unalienated Crown land; and also to take and seize all sorts of crops of whatsoever description which shall be growing on any part of the premises so demised

Power to distrain stock or cattle on premises for arrears of rent.

or holden, as a distress for arrears of rent, and the same to cut, gather, make, cure, carry and lay up, when ripe, in the barns, or other proper place on the premises so demised or holden; and in case there shall be no barn or proper place on the premises so demised or holden, then in any other barn or proper place which such lessor or landlord shall hire or otherwise procure for that purpose, and as near as may be to the premises, and thereafter to sell such cattle and crops in the manner provided by section 4 of this Ordinance:

Provided that in the event of any valuation of such crops being made, such valuation shall be made when such crops are cut, gathered, cured, and made and not before.

(2) Notice of the place where the goods and chattels so distrained shall be lodged or deposited shall, within the space of seven days after the lodging or depositing thereof in such place, be given to such lessee or tenant, or left at the demised premises, and if, after any distress for arrears of rent so taken of any crops which shall be growing as aforesaid, and at any time before the same shall be ripe and cut, cured, or gathered, the tenant or lessee, his executors, administrators or assigns shall pay or cause to be paid to the lessor or landlord, for whom such distress shall be taken, or to the person usually employed to receive the rents of such lessor or landlord, the whole rent which shall be then in arrear, together with the full costs and charges of making such distress, and which shall have been occasioned thereby, then and in such case and upon such payment or lawful tender thereof actually made, whereby the object of such distress will be fully answered, the same and every part thereof shall cease, and the crops so distrained shall be delivered up to the lessee or tenant, his or her executors, administrators, or assigns, anything hereinbefore contained to the contrary notwithstanding.

13. It shall be lawful for any person or persons lawfully taking any distress for any kind of rent, to impound or otherwise secure the distress so made, of whatever nature or kind it may be, in such place or on such part of the premises chargeable with the rent as shall be most fit and convenient for the impounding and securing such distress, and to value, sell and dispose of the same upon the premises in like manner and under the like directions and restraints to all intents and purposes as any person taking a distress for rent may now do off the premises under this Ordinance; and it shall be lawful for any person or persons whatsoever to come and go to and

Tenants to have notice of place where distress is lodged.

Distress of crops to cease if rent is paid before they are cut.

Distress may be secured and sold on the premises.

from such place or part of the said premises, where any distress for rent shall be impounded and secured as aforesaid, in order to view, value, and buy and also in order to carry off or remove the same, on account of the purchaser thereof.

14. If any tenant shall give notice to his landlord of his intention to quit the premises by him holden, at a time mentioned in such notice, and shall not accordingly deliver up the possession thereof at the time in such notice contained, then and in such case the said tenant or his executors or administrators shall from thenceforward pay to the landlord double the rent or sum which he 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 of such notice could be levied, sued for, or recovered; and such double rent or sum shall continue to be paid during all the time such tenant shall continue in possession as aforesaid and such double rent may be distrained for in the same manner as is provided in this Ordinance for distraint for rent.

Tenants holding premises after the time they notify for quitting them, to pay double rent.

15. Where any distress shall be made for any kind of rent justly due, and any irregularity or unlawful act shall be afterwards done by the party distraining, or by his agents, the distress itself shall not be therefore deemed to be unlawful nor the party making it be deemed a trespasser *ab initio*, but the party aggrieved by such unlawful act or irregularity shall or may recover full satisfaction for the special damage he shall have sustained thereby, and no more, in a suit for that purpose:

Distresses for rent not unlawful for any irregularity in them.

Provided always that when the plaintiff shall recover in such suit, he shall be paid his full costs of suit and have all the like remedies for the same as in other cases of costs:

Provided further that no tenant or lessee shall recover in any suit for any such unlawful act or irregularity as aforesaid, if tender of amends has been made by the party distraining or his agent before such suit is brought.

16. (1) The following goods and chattels shall be exempt from distress for rent, namely—

Articles, etc., exempted from distress.

- (a) the property of the Crown;
- (b) goods or chattels in the possession of the law;
- (c) things delivered to a person exercising a public trade, to be carried, wrought, worked up, or managed in the way of his trade;

- (d) things in actual use or occupation of the person distrained upon at the time of the distress;
- (e) things of a perishable nature, or such as cannot be restored again in the same state and condition that they were before being taken or must necessarily be damaged by removal or severance;
- (f) animals *feræ naturæ*;
- (g) wearing apparel and bedding of the persons whose goods and chattels are being distrained upon and the tools and implements of his trade to the total value of five pounds;
- (h) things exempted from distress under the provisions of the Electric Power Ordinance (Chapter 165 of the Revised Edition) or any Ordinance amending or replacing the same; and
- (i) any meter (together with any fittings thereto) supplied and let on hire by any corporation or company supplying water to the premises on which the distress is levied for the purpose of ascertaining the quantity of water consumed on or supplied to such premises.

(2) A subordinate court of the first, second or third class, on complaint that goods or chattels exempt under this section from distress for rent, have been taken under such distress, may, by summary order direct that the goods and chattels so taken, if not sold, be restored; or, if they have been sold that such sum as the Court may determine to be the value thereof shall be paid to the complainant by the person who levied the distress or directed it to be levied.

Bailiff to give copy of charges to person distrained.

17. Every person who shall make and levy any distress shall, if requested to do so by the person or persons on whose goods and chattels distress shall be levied, give a copy of his charges, and of all the costs and charges of any distress, signed by him, to such person, and, in default of doing so, shall be liable, on conviction, to a penalty not exceeding five pounds.

Distress to be levied by certified bailiff.

18. (1) No person shall act as a bailiff to levy any distress for rent unless he shall be authorized to act as a bailiff by a certificate in writing to that effect, and such certificate may be

general or apply to a particular distress or distresses, and may be granted at any time in such manner as may be prescribed by Rules under this Ordinance.

(2) The Registrar, a Deputy Registrar, or a District Registrar of the Supreme Court of Kenya may exercise the power of granting certificates in cases in which such officers may be authorized to do so by Rules made under this Ordinance.

(3) If any person not holding a certificate under this section shall levy a distress contrary to the provisions of this section, the person so levying shall be guilty of an offence, and shall be liable on conviction, to a penalty not exceeding ten pounds or to imprisonment for any term not exceeding three months, in addition to any other liability which he may have incurred by his proceedings.

(4) Any person who shall authorize any person not holding a certificate under this section to levy a distress contrary to the provisions of this Ordinance shall be guilty of an offence, and shall be liable, on conviction, to a fine not exceeding ten pounds in addition to any other liability which he may have incurred by his proceedings.

(5) A certificate granted to a bailiff under this section may at any time be cancelled or declared void by a judge.

19. (1) If any superior landlord shall levy, or authorize to be levied, a distress on any furniture, goods, or chattels of—

(a) any under-tenant liable to pay by equal instalments not less often than every quarter of a year a rent which would return in any whole year the full annual value of the premises or of such part thereof as is comprised in the under-tenancy; or

(b) any lodger; or

(c) any other person whatsoever not being a tenant of the premises or of any part thereof, and not having any beneficial interest in any tenancy of the premises or of any part thereof,

for arrears of rent due to such superior landlord by his immediate tenant such under-tenant, lodger, or other person aforesaid may serve such superior landlord, or the bailiff or other agent employed by him to levy such distress, with a declaration in writing made by such under-tenant, lodger, or

Under-tenant or lodger, if distress levied, to make declaration that immediate tenant has no property in goods distrained.

other person aforesaid, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property of or in the lawful possession of such under-tenant, lodger, or other person aforesaid, and are not goods or live stock to which this section is expressed not to apply; and also, in the case of an under-tenant or lodger, setting forth the amount of rent (if any) then due to his immediate landlord, and the times at which future instalments of rent will become due, and the amount thereof, and containing an undertaking to pay to the superior landlord any rent so due or to become due to his immediate landlord, until the arrears of rent in respect of which the distress was levied or authorized to be levied have been paid off, and to such declaration shall be annexed a correct inventory subscribed by the under-tenant, lodger or other person aforesaid, of the furniture, goods, and chattels referred to in the declaration, and if any such tenant, lodger, or other person aforesaid, shall make or subscribe such declaration and inventory knowing the same or either of them to be untrue in any material particular, he shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding two years, or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

(2) The provisions of this section shall not apply—

- (a) to goods belonging to the husband or wife of the tenant whose rent is in arrear, nor to goods comprised in any bill of sale, chattels mortgage, hire purchase agreement, or settlement made by such tenant, nor to goods in the possession, order, or disposition of such tenant by the consent and permission of the true owner under such circumstances that such tenant is the reputed owner thereof; nor to any live stock to which section 25 of this Ordinance applies;
- (b) (i) to goods of a partner of the immediate tenant;
- (ii) to goods (not being goods of a lodger) upon premises where any trade or business is carried on in which both the immediate tenant and the under-tenant have an interest;
- (iii) to goods (not being goods of a lodger) on premises used as offices or warehouses where the owner of the goods neglects for one calendar month after notice

(which shall be given in a like manner as a notice to quit) to remove the goods and vacate the premises; (iv) to goods belonging to and in the offices of any company or corporation on premises the immediate tenant whereof is a director or officer, or in the employment of such company or corporation:

Provided that a subordinate court of the first, second or third class, upon application by the superior landlord, or any under-tenant or other such person as aforesaid, upon hearing the parties may determine whether any goods are in fact goods covered by sub-section (2) of this section.

20. If any superior landlord, or any bailiff or other agent employed by him shall, after being served with the before-mentioned declaration and inventory, and in the case of an under-tenant or lodger after such undertaking as aforesaid has been given, and the amount of rent (if any) then due has been paid or tendered in accordance with that undertaking, levy or proceed with a distress on the furniture, goods, or chattels, of the under-tenant, lodger or other person aforesaid, such superior landlord, bailiff, or other agent shall be deemed guilty of an illegal distress, and the under-tenant, lodger, or other person aforesaid may apply to a magistrate of the first or second class for an order for the restoration to him of such goods, and such application shall be heard before a magistrate of the first or second class, and such magistrate shall inquire into the truth of such declaration and inventory, and shall make such order for the recovery of the goods or otherwise as to him may seem just, and the superior landlord shall also be liable to an action at law at the suit of the under-tenant, lodger, or other person aforesaid, in which action the truth of the declaration and inventory may likewise be inquired into.

Penalty on superior landlord disregarding lodger's declaration.

21. For the purposes of the recovery of any sums payable by an under-tenant or lodger to a superior landlord under such an undertaking as aforesaid, or under notice served in accordance with section 23 of this Ordinance the under-tenant or lodger shall be deemed to be the immediate tenant of the superior landlord, and the sums payable shall be deemed to be rent; but where the under-tenant or lodger has in pursuance of any such undertaking or notice as aforesaid, paid any sums to the superior landlord, he may deduct the amount thereof from any rent due or which may become due from him to his immediate landlord, and any person (other than the tenant for whose rent the distress is levied or authorized to be levied)

Payments by lodger to superior landlord.

from whose rent a deduction has been made in respect of such a payment may make the like deductions from any rent due or which may become due from him to his immediate landlord.

Exclusion of certain tenants.

22. The provisions of sections 19, 20 and 21 of this Ordinance shall not apply to any under-tenant where the under-tenancy has been created in breach of any covenant or agreement in writing between the landlord and his immediate tenant or where the under-tenancy has been created under a lease existing at the date of the passing of this Ordinance contrary to the wish of the landlord in that behalf, expressed in writing and delivered at the premises within a reasonable time after the circumstances had come or with due diligence would have come, to his knowledge.

To avoid distress.

23. In cases where the rent of the immediate tenant of the superior landlord is in arrear it shall be lawful for such superior landlord to serve upon any under-tenant or lodger a notice (by registered post addressed to such under-tenant or lodger upon the premises) stating the amount of such arrears of rent, and requiring all future payments of rent, whether the same has already accrued due or not, by such under-tenant or lodger to be made direct to the superior landlord giving such notice until such arrears shall have been duly paid, and such notice shall operate to transfer to the superior landlord the right to recover, receive, and give a discharge for such rent.

No goods, etc., to be taken in execution unless the party before the removal of the goods, etc., pay the landlord the rent due up to one year's arrears.

24. No goods or chattels whatsoever, lying or being in or upon any land which is or shall be leased for life or lives, term of years, at will or otherwise, shall be liable to be taken by virtue of any execution on any pretence whatsoever, unless the party at whose suit the said execution is levied shall, before the removal of such goods from off the said premises, by virtue of such execution, pay to the landlord of the said premises or his bailiff (provided that a request for such payment is made by such landlord or his bailiff before the removal of such goods) all such sum or sums of money as are or shall be due for rent for the said premises at the time of the taking such goods or chattels by virtue of such execution:

Provided that 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 execution is levied, paying the said landlord or his bailiff one year's rent, may proceed to execute his judgment as he might

have done before the passing of this Ordinance, and the bailiff or other officer is hereby empowered and required to levy and pay to the plaintiff as well the money so paid for rent as the execution money.

25. (1) Where live stock belonging to another person has been taken in by the tenant of an agricultural holding to be fed at a fair price, the stock shall not be distrained by the landlord for rent where there is other sufficient distress to be found, and, if so distrained by reason of other sufficient distress not being found, there shall not be recovered by that distress a sum exceeding the amount of the price agreed to be paid for the feeding, or any part thereof which remains unpaid.

Limitation of distress in respect of things to be distrained.

(2) The owner of the stock may, at any time before it is sold, redeem the stock by paying to the distrainer a sum equal to such amount as aforesaid, and any payment so made to the distrainer shall be in full discharge as against the tenant of any sum of the like amount which would be otherwise due from the owner of the stock to the tenant in respect of the price of feeding.

(3) Any portion of the stock so long as it remains on the agricultural holding shall continue liable to be distrained for the amount for which the whole of the stock is distrainable.

(4) Agricultural or other machinery which is the property of a person other than the tenant, and is on the agricultural holding under an agreement with the tenant for the hire or use thereof in the conduct of his business, and live stock which is the property of a person other than the tenant and is on the agricultural holding solely for breeding purposes, shall not be distrained for rent.

26. (1) Where any dispute arises—

- (a) in respect of any distress having been levied on an agricultural holding contrary to the provisions of this Ordinance; or
- (b) as to the ownership of any live stock distrained or as to the price to be paid for the feeding of that stock; or
- (c) as to any other matter or thing relating to a distress on an agricultural holding,

Remedy for wrongful distress.

the dispute may be heard and determined by a subordinate court of the first, second or third class, and any such court may make an order for restoration of any live stock or things unlawfully distrained, or may declare the price agreed to be paid for feeding, or may make any other order which justice requires.

(2) Any person aggrieved by any decision of a subordinate court under this section may appeal to the Supreme Court.

Power to
make Rules.

27. The Chief Justice may from time to time make, alter and revoke Rules—

- (a) for regulating the security (if any) to be required from bailiffs;
- (b) for regulating the fees, charges and expenses in and incidental to distresses;
- (c) for establishing pounds and pound-masters, for the purposes of this Ordinance, and for regulating the fees, charges and expenses in connection therewith;
- (d) for carrying into effect the objects of this Ordinance.

Passed in the Legislative Council the fifth day of January, in the year of our Lord one thousand nine hundred and thirty-seven.

This printed impression has been carefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and assent as a true and correct copy of the said Bill.

R. W. BAKER-BEALL

Acting Clerk of the Legislative Council.

LEGAL REPORT
THE DISTRESS FOR RENT BILL, 1937

This Bill meets a long-felt want, in that it lays down what the law relating to distress shall be in this Colony.

Hitherto the position has been unsatisfactory seeing that some doubt has always existed as to whether or not the English law on the subject applied here in default of specific enactment, and difficulties in that connection have arisen from time to time. This Bill puts the position with regard to distress in this Colony on a sound footing, and makes adequate provisions for the enforcement of a landlord's rights with regard to his rent.

The Bill is modelled on the law in force in England and embodies provisions contained in Acts of Parliament ranging from 1689 to 1923.

I enclose herewith a Comparative Table. It is regretted that no copies of the United Kingdom Acts are available to be forwarded to the Secretary of State.

In my opinion, His Excellency the Governor may properly assent to this Bill in the name and on behalf of His Majesty.

Nairobi,
5th January, 1937.

William G.
ATTORNEY GENERAL

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COMPARATIVE TABLE
THE DISTRESS FOR RENT BILL, 1937

Clause of the Bill.	Remarks.
1.	Short title and commencement.
2.	"Agricultural holding" is new.
	"Superior landlord", "tenant" and "under-tenant" Cf. section 9 of the Law of Distress Amendment Act, 1908 (of the United Kingdom).
3.	Cf. section 8 of the Trinidad Landlord and Tenant Ordinance (Chapter 166 of the Revised Edition).
4.	Cf. section 1 of the Sale of Goods Distrained for Rent Act, 1689 (W. and M. Cap. 5) and sections 5 and 6 of the Law of Distress Amendment Act, 1888 (51 and 52 Vict. Cap. 21).
5.	Cf. sections 6 and 7 of the Landlord and Tenant Act, 1709 (8 Ann. Cap. 14).
6.	Cf. section 2 of the Sale of Distress Act, 1689 (2 Will. and M. Cap. 5).
7.	Cf. section 3 -do-
8.	Cf. section 4 -do-
9.	Cf. sections 1 and 2 of the Distress for Rent Act, 1737 (11 Geo. 2, Cap. 19).
10.	Cf. section 3 -do-
11.	Cf. section 7 -do-
12.	Cf. sections 8 and 9 -do-
13.	Cf. section 10 -do-
14.	Cf. section 18 -do-
15.	Cf. section 19 -do-
16.	Cf. section 4 of the Law of Distress Amendment Act, 1888, and section 147 of the County Courts Act, 1888. See also page 459 et seq. of Volume 10 of the Halsbury Laws of England, second edition.
17.	Cf. section 35 of the Trinidad Landlord and Tenant Ordinance (Chapter 166 of the Revised Edition).
18.	Cf. section 7 of the Law of Distress Amendment Act, 1888 (51 and 52 Vict. Cap. 21). And section 1 of the Law of Distress Amendment Act, 1895 (58 and 59 Vict. Cap. 24).
19.	Cf. section 1 of the Law of Distress Amendment Act, 1908 (8 Edw. 7, Cap. 53).

Clause of
the Bill.

Remarks.

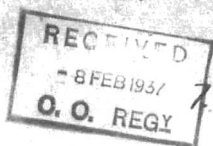
- 20. Cf. section 2 of the Law of Distress Amendment Act, 1908 (8 Edw.7., Cap.53).
- 21. Cf. section 3 -do-
- 22. Cf. section 5 -do-
- 23. Cf. section 6 -do-
- 24. Cf. section 1 of the Landlord and Tenant Act, 1709 (8 Anne, Cap.14).
- 25. Cf. section 35 of the Agricultural Holdings Act, 1923 (13 and 14 Geo.5., Cap.9).
- 26. Cf. section 36 -do-
- 27. Cf. section 8 of the Law of Distress Amendment Act, 1888 (51 and 52 Vict. Cap.21).



THE SECRETARIAT,
NAIROBI,
KENYA.

WHEN REPLYING
PLEASE QUOTE
NO. AND DATE

No. / Leg: Co. 26/3/7/61



January, 1937

The Acting Colonial Secretary
of the Colony and Protectorate
of Kenya presents his compliments
to the Under Secretary of State
for the Colonies, and has the
honour to transmit twelve copies
of the undermentioned publication:

Report of Select Committee of
Legislative Council on the
Distress for Rent Bill

16
R E P O R T

OF
THE SELECT COMMITTEE OF LEGISLATIVE COUNCIL
APPOINTED TO CONSIDER AND REPORT UPON THE
PROVISIONS OF A BILL RELATING TO DISTRESS
FOR RENT

Your Excellency,

We, the members of the Select Committee of Legislative Council appointed to consider and report upon the provisions of the above Bill, have the honour to recommend that the Bill be amended in the following respects -

1. That Clause 2 be amended by deleting therefrom the definition of "chattels".

2. That Clause 2 be renumbered as Clause 3(1) and that the following new sub-clause be added thereto -

"(2) No distress shall be levied between sunset and sunrise or on any Sunday."

3. That sub-clause (1) of Clause 4 be amended by inserting immediately after the word "goods" which occurs in the third line thereof the words "or chattels".

4. That Clause 5 be amended -

(i) by inserting therein between the word "any" and the word "dancer" which occur in the first line thereof the word "unauthorized"; and

(ii) by inserting therein immediately after the word "chattels" wherever it occurs therein the word "stock".

5. That Clause 11 be amended by deleting the words "agent, bailiff, receiver or other person or persons empowered" which occur in the eighth and ninth lines thereof and by substituting therefor the word "bailiff".

6. That Clause 12 be amended -

(i) by deleting the words "steward, bailiff, receiver, or other person or persons empowered by him" which

occur in the second and third lines of sub-clause (1) thereof and by substituting therefor the word "bailiff"; and

(ii) by deleting the word "appraisement" wherever it occurs in the proviso to sub-clause (1) thereof and by substituting therefor the word "valuation".

7. That Clause 13 be amended -

(i) by deleting the word "appraise" whenever it occurs therein and by substituting the word "value"; and

(ii) by substituting a full stop for the semi colon which occurs in the fifteenth line thereof and by deleting all the words thereafter.

8. That Clause 17 be amended by deleting the words "bailiff, agent or other" which occurs in the first line thereof.

9. That Clause 18 be amended by deleting the word "Ordinance" which occurs in the third line of sub-clause (3) thereof and by substituting therefor the word "section".

10. That Clause 24 be amended by substituting a comma for the semi colon which occurs in the second line of the proviso thereto.

We have the honour to be,

Your Excellency's most obedient servants,

- SD. W.M. LOGAN (CHAIRMAN)
- SD. H.B. WATERS (MEMBER)
- SD. T.D. WALLACE (MEMBER)
- SD. F.A. BEMISTER (MEMBER)
- SD. H.E. SCHMARTZE (MEMBER)
- SD. W.K. TUCKER (MEMBER)
- SD. ISHER DASS (MEMBER)

Nairobi,

29th December, 1936