

## CHAPTER 59.

### Of Ejectment as against Tenants, and for non-payment of Rent.

#### SECTION

- 1.—Tenant to give notice to landlord when action taken.
- 2.—Proceedings by landlord for possession for non-payment of rent. Proviso as to mortgages.
- 3.—Lessee not to have injunction except on payment of rent and costs.

#### SECTION

- 4.—Tenant paying rent and costs proceedings to cease.
- 5.—Saving of other remedies.
- 6.—Action for possession by mortgagee.
- 7.—Proviso for certain cases.
- 8.—Jurisdiction of Court and Judges.

1. Every tenant to whom any writ for the recovery of possession of the property or tenement of which he is a tenant shall be delivered or to

whose knowledge it shall come, shall forthwith give notice thereof to his landlord, or his bailiff or receiver, under penalty of forfeiting the value of three years improved or rack rent of the premises demised or holden in the possession of such tenant to the person of whom he holds, to be recovered by action in any Court having jurisdiction for the amount.

2. 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 may without any formal demand or re-entry serve a writ in an action 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 such landlord or lessor may affix a copy thereof upon the door of any demised messuage, or in case such action shall not be for the recovery of any messuage, then upon some notorious place of the lands, tenements and hereditaments comprised in such writ, and such affixing shall be legal service thereof, which service or affixing such writ shall stand in the place and stead of a demand and re-entry; and in case of judgment against the defendant for non-appearance, if it be made to appear to the Court by affidavit, or be proved upon the trial in case the defendant appears, that a half-year's rent was due before the writ was served, and that no sufficient distress was to be found on the demised premises, countervailing the arrears then due, and that the lessor had power to re-enter, then and in every such case the lessor shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded, and a re-entry made; and in case the lessee or his assignee, or other person claiming or deriving under the said lease, shall permit and suffer judgment to be had and recovered on such trial, and execution to be executed thereon without paying the rent and arrears together with full costs, and without proceeding for relief in equity within six months after execution executed, then and in such case the said lessee, his assignee, and all other persons claiming and deriving under the said lease, shall be barred and foreclosed from all relief or remedy in law or equity, and such landlord or lessor shall from thenceforth hold the said demised premises discharged from such lease; and if in such action a verdict shall pass for the defendant, or the claimant shall be non-suited therein, then and in every such case such defendant shall recover his costs: Provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do within six months after judgment obtained and execution executed, pay all rent in arrear and all costs and damages sustained by such lessor or person 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, are or ought to be performed.

3. In case the said lessee, his assignee, or other person claiming any right, title, or interest in law or equity, of, in, or to the said lease, shall within the time aforesaid proceed for relief in any Court of equity, such

person shall not have or continue any injunction against the proceedings at law in such action, unless he does or shall within ten days next after a full and perfect answer shall be made by the claimant in such action, bring into Court and lodge with the proper officer, such sum of money as the lessor or landlord shall in his 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 lessor or landlord on good security, subject to the decree of the Court; and in case such proceedings for relief in equity shall be taken within the time aforesaid, and after execution is executed, the lessor or landlord shall be accountable for so much and no more as he shall really and *bona fide*, without fraud, deceit, or wilful neglect, make of the demised premises from the time of his entering into the actual possession thereof; and if what shall be so made by the lessor or landlord so happen to be less than the rent reserved on the said lease, then the said lessee or his assignee, before he shall be restored to his possession, shall pay such lessor or landlord what the money so by him made fell short of the reserved rent for the time such lessor or landlord held the said lands.

4. If the tenant or his assignee at any time before the trial in such action pay or tender to the lessor or landlord, his executors or administrators, or his or their attorney in that cause, or pay into Court all the rent and arrears, together with the costs, then and in such case all further proceedings in the action shall cease and be discontinued; and if such lessee, his executors, administrators, or assigns, shall, upon such proceedings as aforesaid, be relieved in equity, he and they shall have, hold, and enjoy the demised lands according to the lease thereof made, without any new lease.

5. Nothing herein contained shall be construed to prejudice or affect any other right of action or remedy which landlords may possess in any of the cases hereinbefore provided for, otherwise than hereinbefore expressly enacted.

6. Where an action shall be brought by any mortgagee, his executors, administrators, or assigns, for the recovery of the possession of any mortgaged lands, tenements, or hereditaments, and no suit shall be then depending for or touching the foreclosing or redeeming of such mortgaged lands, tenements, or hereditaments, if the person having right to redeem such mortgaged lands, tenements, or hereditaments, and who shall appear and become defendant in such action shall at any time pending such action pay unto such mortgagee, or, in case of his refusal to receive the same, shall bring into Court, the principal money and interest due on such mortgage, and all such costs as have been expended in any suit at law or in equity upon such mortgage, such money for principal, interest and costs, to be ascertained and computed by the Court, or by the proper officer thereof to be appointed for that purpose, the money so paid to such mortgagee or brought into Court shall be deemed to be in full satisfaction and

discharge of such mortgage, and the Court shall discharge every such mortgagor or defendant of and from the same accordingly: and shall by rule compel such mortgagee, at the costs and charges of such mortgagor, to assign, surrender, or re-convey such mortgaged lands, tenements and hereditaments, and such estate and interest as such mortgagee has therein, and to deliver up all deeds, evidences and writings in his custody relating to the title of such mortgaged lands, tenements and hereditaments, unto such mortgagor who shall have paid or brought such money into Court, his executors or administrators, or to such other person as he or they shall for that purpose appoint.

7. Nothing herein contained shall extend to any case where the person against whom the redemption is or shall be prayed, shall (by writing under his hand or the hand of his attorney, agent or solicitor, to be delivered, before the money shall be brought into Court, to the attorney or solicitor for the other side) insist either that the party praying a redemption has not a right to redeem, or that the premises are chargeable with other and different sums than what appear on the face of the mortgage, or shall be admitted on the other side; or to any case where the right to redemption to the mortgage lands and premises in question, in any cause or suit, shall be controverted or questioned by or between different defendants in the same cause or suit; or shall be any prejudice to any subsequent mortgage or any subsequent incumbrance.

8. The Supreme Court and the Judges thereof respectively shall exercise over the proceedings the like jurisdiction as heretofore exercised in the action of ejectment, so as to insure a trial of the title, and of actual ouster, when necessary only, and for all other purposes for which such jurisdiction may at present be exercised.