

If, for example, a share in a canal company upon which 100*l.* has been paid is sold in the market for 98*l.*, the value of the share is stated to be at 2 per cent. discount.

DISCOUNT BROKER. [BROKER.]

DISCOVERY. [EVIDENCE.]

DISPENSATION. [BENEFICE.]

DISSEISIN. [SEISIN.]

DISTRESS, "districtio," in the jurisprudence of the Middle Ages, denotes legal compulsion generally, whether ecclesiastical or civil. One mode of compulsion extensively adopted among the nations of Teutonic origin was the taking possession of the whole or a part of the property of the offender or defaulter, and withholding it from him until the requirements of the law had been complied with. This species of distress was called "naam," from *nyman*, *nehmen*, to take—a verb common to the Anglo-Saxon, German, and other cognate languages. The modern distress is the "naam," restricted in the taking of *personal* chattels; and in its most simple form it may be stated to be—the taking of personal chattels out of the possession of an alleged defaulter or wrong-doer for the purpose of compelling him, through the inconvenience resulting from the withholding of such personal chattels, to perform the act in respect of which he is a defaulter, or to make compensation for the wrong which he has committed.

Some rights to which the law annexes the remedy by distress, have been considered too important to be left to the protection afforded by the mere detention of the *distress* (by which term the thing taken is also designated), and more efficacious means of dealing with it have been introduced; and in certain cases a sale of the property taken by way of distress is allowed, if, after a certain interval, the party distrained upon continues to be unwilling or unable to do the act required.

Distresses are either for some duty omitted, some default or nonfeasance,—or they are in respect of some wrongful act done by the distrainee. The subject of distress is one of great extent, and in the English law involves a great number of particular cases. Under the head of

Distress for Omissions, the most important among the feudal duties for which a distress may be taken is Rent Rent, in its original and still most usual form, is a payment agreed to be made by the tenant to his landlord as an equivalent or a compensation for the occupation of land or a house. Such rent is denominated rent-service. It comes in lieu of and represents the profits of the land granted or demised, and is therefore said to *issue* out of the land. To rent-service the law annexes the power of distress, although there may be no agreement between the parties as to distress. But a rent reserved upon a grant or demise ceases to be a rent-service if it be separated from the ultimate property in the land, generally called the reversion. Thus, if the owner of land in fee demises it for a term of years, reserving rent, and afterwards assigns the rent to a stranger, retaining the reversion, or grants the reversion, retaining the rent, the rent being disconnected from the reversion is considered as a branch severed from the trunk, and is called a dry rent or rent-seck, to which the common law annexed no power of distress. In like manner, if the owner of the land, without parting with the land, grants to another a rent out of the land, the grantee having no reversion had only a rent-seck, unless the grant expressly created a power of distress, in which case the rent would be a rent-charge. But now, by statute 4 Geo. II. c. 28, § 5, the like remedy by distress is given in cases of rent-seck, as in the case of rent reserved upon lease.

All rents, though distinguished by a variety of names derived from some particular circumstance attached to them, are resolvable into Rent-service, Rent-seck, or Rent-charge, and there may now be a distress for every species of rent, though a practical difference still subsists as to the mode of dealing with distresses taken for the one or for the other.

There may also be distress for Heriots and Tolls.

There is also Distress for Damage done, which is called Distress for Damage-feasant. Cattle or dead chattels may be taken and be detained to compel the payment of a reasonable sum of money by

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way of satisfaction for the injury sustained from such cattle or dead chattels being wrongfully upon property in the occupation of the party taking them, and doing damage there, either by acts of spoliation or merely by incumbering such property. This is called a distress of things taken damage-feasant (doing damage).

The occupier of land is allowed not only to defend himself from damage by driving out or removing the cattle, but also to detain the thing which did the injury till compensation be made for the trespass. Upon referring to Spelman and Ducange, it will be seen that a similar practice obtained on the Continent amongst the Angli, Werini, Ripuarii, and Burgundians.

The right to distrain damage-feasant is given to all persons who have an immediate possessory interest in the soil or in its produce, and whose rights are therefore invaded by such wrongful intrusion. Thus, not only the occupier of the land trespassed upon, but other persons entitled to share in the present use of the land or of the produce, as commoners, &c., may distrain. But though a commoner may always distrain cattle, &c. of a stranger found upon the common, it would seem that he cannot, unless authorized by a special custom, distrain the cattle, &c. of the person who has the actual possession of the soil. Nor can he distrain the cattle of another commoner who has stocked beyond his proportion, unless the common be stinted, *i. e.* unless the proportion be limited to a certain number. In the more ordinary case of rights of common in respect of all the cattle which the commoner's enclosed land can support during the winter, cattle exceeding the proportion cannot be distrained.

Cattle found trespassing may be distrained damage-feasant, although they have come upon the land without the knowledge of their owner and even through the wrongful act of a stranger. But if they are there by the default of the occupier of the land, as by his neglecting to repair his fences, or to shut his gates against a road or a close in which the cattle lawfully were, such negligent occupier cannot distrain unless the owner

of the cattle suffer them to remain on the land after notice and time given to him to remove them; and if cattle trespass on one day and go off before they are distrained, and are taken trespassing on the same land on another day, they can be detained only for the damage done upon the second day.

Cattle, if once off the land upon which they have trespassed, though driven off for the purpose of eluding a distress, cannot be taken even upon immediate pursuit. The occupier must get satisfaction for the damage by action.

Things necessary for the carrying on of trade, as tools and utensils,—or for the maintenance of tillage, as implements of husbandry, beasts of the plough, and sheep as requisite to manure the land, are privileged from Distress whilst other sufficient distress can be found. But this rule does not extend to a distress for a toll or duty arising in respect of the thing taken as a distress, or of things connected with it; as a distress of two sheep for market-toll claimed in respect of the whole flock, or of the anchor of a ship for port-duty due in respect of such ship.

For the protection of tradesmen and their employers, property of which the distrainee has obtained the possession with a view to some service to be performed upon it by him in the way of his trade, is absolutely privileged from distress; as a horse standing in a smith's shop to be shod, or put up at an inn, or cloth sent to a tailor's shop to be made into clothes, or corn sent to a mill or market to be ground or sold. The goods of a guest at an inn are privileged from distress; but this exemption does not extend to the case of a chariot standing in the coach-house of a livery-stable keeper; nor does it protect goods on other premises belonging to the inn but at a distance from it; and even within the inn itself the exemption does not extend to the goods of a person dwelling there as a tenant rather than a guest. Goods in the hands of a factor for sale are privileged from distress; and also goods consigned for sale, landed at a wharf, and placed in the wharfinger's warehouse.

Beasts of the plough may be distrained where no other distress can be found;

and it is sufficient if the distrainer use diligence to find some other distress. A distress is not said to be found unless it be accessible to the party entitled to distrain, by the doors of the house being open, or the gates of the fields unlocked. Beasts of the plough may be distrained upon where the only other sufficient distress consists of growing crops, which though now subjected to distress, are not, as they cannot be sold until ripe, immediately available to the landlord.

A temporary privilege from distress arises when the chattel is in actual use, as an axe with which a man is cutting wood, or a horse on which a man is riding. Implements in trade, as frames for knitting, weaving, &c., are absolutely privileged from distress whilst they are in actual use, otherwise they may be distrained upon if no other sufficient distress can be found.

Rent is not due until the last moment of the day on which it is made payable. No distress therefore can be taken for it until the following day.

A distress for rent or other duties or services can be taken only between sunrise and sunset; but cattle or goods found damage-feasant may be distrained at any time of the day or night.

No distress can be taken for more than six years' arrears of rent; nor can any rent be claimed where non-payment has been acquiesced in for twenty years (3 and 4 Wm. IV. c. 27).

A distress for rent or other service could at common law be taken only upon the land charged therewith, and out of which such rent or services were said to issue.

But this restriction did not apply to the king, who might distrain upon any lands which were in the actual occupation of his tenant, either at the time of the distress or when the rent became due.

The assumption of a similar power by other lords was considered oppressive, and it was ordained by the statute of Marlbridge, that no one should make distress for any cause out of his fee, except the king and his ministers thereunto specially authorized. The privilege of distraining in all lands occupied by the party chargeable, is communicated by 22

Car. II. c. 6; 26 Geo. III. c. 87; 30 Geo. III. c. 50; and 34 Geo. III. c. 75, to the purchasers of certain crown rents.

Under 8 Ann. c. 14, and 11 Geo. II. c. 19, where a lessee fraudulently or clandestinely carries off his goods in order to prevent a distress, the landlord may within five days afterwards distrain them as if they had still continued on the demised premises; provided they have not been (*bonâ fide*) sold for a valuable consideration.

And by the 7th section of the latter statute, where any goods fraudulently and clandestinely carried away by any tenant or lessee, or any person aiding therein, shall be put in any house or other place, locked up or otherwise secured, so as to prevent such goods from being distrained for rent, the landlord or his bailiff may, in the day time, with the assistance of the constable or peace officer (and in case of a dwelling-house, oath being also first made of a reasonable ground to suspect that such goods are therein), break open and enter into such house or place, and take such goods, for the arrears of rent, as he or they might have done if such goods had been put in an open field or place.

To entitle the landlord to follow the goods, the removal must have taken place after the rent became due, and for the purpose of eluding a distress. It is not however necessary that a distress should be in progress, or even contemplated: nor need the removal be clandestine. Although the goods be removed openly, yet if goods sufficient to satisfy the arrears are not left upon the premises, and the landlord is turned over to the barren remedy by action, the removal is fraudulent and the provisions of these statutes may be resorted to. These provisions apply to the goods of the tenant only. The goods of a stranger or of an under-tenant may be removed at any time before they are actually distrained upon, and cannot be followed.

The landlord may enter a house to distrain if the outer door be open, although there be other sufficient goods out of the house. It is not lawful to break open outer doors or gates; but if the outer door be open, an inner door may be forced.

If the landlord, having distrained, is forcibly expelled, he may break open outer doors or gates in order to retake the distress. If a window be open, a distress within reach may be taken out at it.

At common law a distress might be taken for rent in a street or other highway being within the land demised. But now, by the statute of Marlbridge, private persons are forbidden to take distresses in the highway. This statute applies only to distresses for rent or for services, and not to toll. Nor does the statute make the distress absolutely void; for though the tenant may lawfully rescue cattle distrained in the highway, or may bring his action on the case upon the statute, yet if he brings trespass or replevin, it seems to be no answer to a justification or an avowry made in respect of the rent.

A distress may be made either by the party himself or his agent, and as distresses in manors were commonly made by the bailiff of the manor, any agent authorized to distrain is called a bailiff. The authority given to the bailiff is usually in writing, and is then called a warrant of distress; but a verbal authority, and even the subsequent adoption of the act by the party on whose behalf the distress is made, is sufficient. In order that the distrainee may know what is included in the distress, an inventory of the goods should be delivered, accompanied, in the case of a distress for rent, by a notice stating the object of the distress, and informing the tenant that unless the rent and charges be paid within five days, the goods and chattels will be sold according to law. This notice is required by 2 W. & M. sess. i. c. 5, § 2, which enacts, "where any goods shall be distrained for rent due upon any demise, lease, or contract, and the tenant or owner of the goods shall not, within five days next after such distress taken, and notice thereof with the cause of such taking, left at the chief mansion house, or other most notorious place on the premises, replevy the same, with sufficient security to be given to the sheriff,—that after such distress and notice and expiration of the five days, the person dis-

training shall and may, with the sheriff or under-sheriff, or with the constable of the place, cause the goods to be appraised by two sworn appraisers, and after such appraisement may sell the goods distrained towards satisfaction of the rent, and of the charges of distress, appraisement, and sale, leaving any surplus in the hands of the sheriff, under-sheriff, or constable, for the owner's use."

At common law, goods distrained were, within a reasonable time, to be removed to and confined in an enclosure called a pound, which is either a pound covert, *i. e.* a complete enclosure, or a pound overt, an enclosure sufficiently open to enable the owner to see, and if necessary, to feed the distress, the former being proper for goods easily removed or injured, the latter for cattle; and by 5 & 6 Will. IV. c. 59, § 4, persons impounding cattle or animals in a common open or close pound, or in enclosed ground, are to supply them with food, &c., the value of which they may recover from the owner. By 11 Geo. II. c. 19, § 10, goods distrained for any kind of rent may be impounded on any part of the tenant's ground, to remain there five days, at the expiration of which time they are to be sold, unless sooner replevied. The landlord is not however bound to remove the goods immediately after the expiration of the five days; he is allowed a reasonable time for selling. After the lapse of a reasonable time he is a trespasser if he retain the goods on the premises without the express assent of the tenant, which assent is generally given in writing.

The 1 & 2 Ph. & M. c. 12, requires that no distress of cattle be removed out of the hundred, except to a pound overt in the same county, not above three miles from the place where such distress is taken, and that no cattle or other goods distrained at one time be impounded in several places, whereby the owner would be obliged to sue out several replevins.

The 2 Will. & Mary, sess. 1, c. 5, § 3, directs that corn, grain, or hay distrained be not removed, to the damage of the owner, out of the place where the same shall be found or seized, but be kept there until replevied or sold; and 11

Geo. II. c. 19, which gives a distress for rent-service upon growing crops, directs, §§ 8 and 9, that they shall be cut, gathered, and laid up, when ripe, in the barn or other proper place on such premises, or if none, then in some other barn, &c., to be procured for that purpose, and as near as may be to the premises, giving notice within one week of the place where such crops are deposited; and if the tenant, his executors, &c., at any time before the crops distrained are ripe and cut, pay or tender the rent, costs, and charges, the goods distrained are to be restored. In all other cases, if the rent or other duty be paid, or performed, or tendered to be paid or performed before the distress is impounded, a subsequent detainer is unlawful, and a subsequent impounding or driving to the pound is a trespass.

The statutes authorising the sale of distresses extend only to those made for rent. At common law distresses cannot in general be either sold or used for the benefit of the party distraining. But a distress for fines and amerciaments in a court leet, or for other purposes of public benefit, may be sold; and a special custom or prescription will warrant the sale of a distress in cases where the public has no immediate interest.

A distress made by a party who has no right to distrain, or made for rent or other service which the party offers to pay or perform, or made in the public highway, or upon goods privileged from distress either absolutely or temporarily, is called a *wrongful distress*. Where no right to distrain exists, or where the rent or duty is tendered at the time of the distress, the owner of the goods may rescue them or take them forcibly out of the possession of the distrainer, or bring either an action of replevin, or of trespass. In replevin, the cattle or goods taken are to be redelivered to the owner upon his giving security by a replevin bond, for returning them to the distrainer, in case a return shall be awarded by the court; and therefore in this action damages are recovered only for the intermediate detention and the costs of the replevin bond. In the action of trespass the plaintiff recovers damages to the full value of the

goods; because upon such recovery, the property in the goods is transferred to the defendant.

The 2 W. & M. sess. i. c. 5, § 5, provides "that in case of any distress and sale for rent pretended to be due, where in truth no rent is due, the owner of the goods so distrained and sold may, by action of trespass or upon the case, recover double the value of such goods, with full costs of suit."

Whether goods are rightfully or wrongfully distrained, to take them out of the pound is a trespass and a public offence. The proceeding by action is a more prudent course than making a rescue, even before an impounding, where any doubt exists as to the lawfulness of the distress. Independently of the danger of provoking a breach of the peace by the rescuer's thus taking the law into his own hands, he will be liable to an action for the injury sustained by the distrainer by the loss of the security of the distress, should the distress ultimately turn out to be lawful; and in such action, as well as in the action for poundbreach, the rescuer will be liable, under 2 W. & M. sess. i. c. 5, § 4, to the payment of treble damages and treble costs.

A distress for more rent, or greater services than are due, or where the value of the property taken is visibly disproportionate to the rent or other appreciable service, is called an *excessive distress*, for which the party aggrieved is entitled to recover compensation in an action on the case; but he cannot rescue, nor can he replevy or bring trespass.

Upon a distress rightfully taken being afterwards irregularly conducted, the subsequent irregularity at common law made the whole proceeding wrongful, and the party was said to be a trespasser "*ab initio*." But now, by 11 Geo. II. c. 19, where distress is made for rent justly due, and any irregularity or unlawful act is afterwards done by the party distraining or his agent, the distress itself is not to be deemed unlawful nor the party making it a trespasser; but the person aggrieved by such irregularity, &c. may recover satisfaction for the special damage sustained. (Bradby *On Distresses*; Gilbert, *Dist.*; Bracton; Fleta; Coke

upon Littleton; Bacon, Comyns, and Viner's *Abridgments*; Willes's *Reports*; 6 Nevile and Mann, 606.)

DIVIDEND, in commerce, is a word which has two distinct meanings. In its more general employment it is understood to express the money which is divided, *pro rata*, among the creditors of a bankrupt trader, out of the amount realised from his assets. [BANKRUPT.]

The other meaning attached to the word dividend is not so appropriate as that which has just been explained. It is used to signify the half-yearly payments of the perpetual and terminable annuities which constitute the public debt of the country, and does not therefore strictly express that which the word is made to imply. The payment of those so-called dividends is managed on the part of the government by the Bank of England, which receives a compensation from the public for the trouble and expense attending the employment. The exact number of individuals who are entitled to receive these half-yearly payments is not known, as the number of annuitants is not nearly so great as the number of distinct warrants, because many individuals are possessed of annuities due at the same periods of the year, which are included under different heads or accounts in the books of the bank, as bearing different rates of interest, or being otherwise under different circumstances; and besides, many persons hold annuities which are payable at both half-yearly periods. It is certain, however, that the greater part of the public creditors are entitled to annuities for only small sums, more than nine-tenths of the payments being for sums not exceeding 100*l.*, and nearly one-half for sums not exceeding 10*l.* The number of warrants issued for the payment of dividends at each quarter of the year ending 5th January, 1843, was as follows:—5th April, 89,560; 5th July, 191,980; 10th October, 89,379; 5th January, 192,970.

DIVISION OF EMPLOYMENTS,

in political economy, is an important agent in increasing the productiveness of labour. It is by labour alone that wealth is produced. It is a law of man's nature that "by the sweat of his face he shall eat bread," and in return for his labour

he acquires various sources of enjoyment. The ingenuity with which he has been endowed, and the hard necessities of his condition, lead him to discover the most effective means of applying his labour to whatever objects he may be seeking to attain. He desires first to work no more than is necessary, and secondly to obtain the largest return—the most abundant enjoyment, for his industry. He soon finds that his own unaided labour will scarcely provide for him the barest necessities, and that ease or enjoyment is unattainable. Thus instead of each man labouring separately, and independently of all others, many men combine together for securing the various objects of life, by means of their joint labour; and this combination of labour leads to division of employments. Labour is naturally exerted in these two forms in the very earliest stages of society. The first pair whom God's ordinances and their own instinct united, must have combined for the support of themselves and their common family, and diversity of sex alone must have produced distinct employments. Among savages the man engages in the chase, for which he has a natural predilection, and for which his strength adapts him, while his mate rears their children and executes those functions which are suited to her sex, but which are as conducive to the comfort of both as if both performed them. In this manner a division of employments naturally arises, and each family affords an example of its origin and character.

This combination for a common object, succeeded by a division of employments, pervades every process of human industry, and increases in variety and complexity with the growth of civilization. One of the earliest forms of industry is that of fishing, and none, perhaps, exemplifies more aptly the mode in which labour is necessarily applied to the purposes of life. A man desirous of building a fishing-boat may cut down a tree, without any assistance from others, and may even hew it into shape: but if it be larger than a mere canoe he cannot, by his own strength, remove it from the spot on which the tree had fallen, and launch it upon the sea. To effect this, others must combine