The Act of 1845, ch. 401, repealed the Act of 1845, ch. 209, so far as related to the City of Baltimore.

The Act of 1831, ch. 318, provided for the City of Baltimore, that when a tenant after notice failed to quit the premises, he might be held at the election of his landlord as tenant and bound to pay double rent, recoverable as if the double rent were the originally reserved rent. This is confirmed by the Code of Public Local Laws, Art. 4, sec. 899.[34]

The Act of 1846, ch. 217, relating to the City of Baltimore, provided that one justice of the peace of said City might exercise all the powers of two justices and a jury under the Acts of 1793, ch. 43, and 1831, ch. 318. But by the Code of Public Local Laws, Art. 4, sec. 890, one justice may only exercise the powers bestowed on two justices by the general law. The Act of 1861, ch. 96, however, repeals this section and restores the Act of 1846, ch. 217.[35]

XIX.[36]

XXI. The defendant may shew under this section that he entered under a warrant of distress for rent, and was forcibly turned out of possession, whereupon he broke open the doors, and entered to take the goods, Eagleton v. Gutteridge, 11 M. & W. 465. But the section is confined to cases where the distress is made on the *premises chargeable with the rent, and so where the goods were clandestinely removed from the premises, and the landlord seized them within the thirty days, it was held, on trespass brought by the tenant against him, that if he intended to have relied on the special matter, he should have pleaded it, Vaughan v. Davis, 1 Esp. 257. **757**

XXII. See 2 Wms. Saund. 285, 285 a. b., Poole v. Longuevill *in notis*. As to an avowry in a replevin against the assignee of the reversion of part of the premises, see Roberts v. Snell, 1 Man. & G. 577.[37]

XXIII. See note to 13 E. 1, Stat. 1, c. 2.

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[34] Balto. City Code, sec. 859.

[35] Balto. City Code, sec. 852. Knell v. Briscoe, 49 Md. 417. But now under the general law, as under the law of Baltimore City, these powers are exercised by one justice without a jury. Code 1911, Art. 53, secs. 1-7. See on the construction of these sections, Mears v. Remare, 33 Md. 246; 34 Md. 333; Burrell v. Lamm, 67 Md. 580; Clark v. Vannort, 78 Md. 221; Hopkins v. Holland, 84 Md. 84; Benton v. Stokes, 109 Md. 117. Cf. Josselson v. Sonneborn, 110 Md. 546.

[36] There is a marked distinction between a distress being illegal from the beginning and becoming so by matter subsequent. Where the party levying the distress is a trespasser *ab initio*, section 19 does not apply and the matter remains as at common law. Cate v. Schaum, 51 Md. 310; Poe's Pleading, sec. 504. See note 6 *supra*.

[37] Where chattels distrained for rent are replevied and the landlord, the defendant in replevin, instead of making a general avowry under this section of the Statute that the plaintiff, or other tenant of the land on which the distress was made, held it under a lease at a certain specified rent during the time when the rent distrained for accrued, pleads the lease specially in the avowry, then, as the pleading is in effect a declaration, the proof must correspond with the plea and evidence of any other lease will be excluded. Smith v. Heldman, 93 Md. 343, 351.