

meaning of the Statute. *S. P. Jones v. Jones*, 3 B. & Ad. 967. But the law is now altered in England by 3 & 4 W. 4, c. 42, ss. 37, 38.

The point does not appear to have been raised in Maryland. However, in *Longwell v. Ridinger*, 1 Gill, 57, it was held that the executor of a landlord may claim a preference to be paid out of the assets of his deceased tenant for rent due and payable at the time of his (the landlord's) death, because the rent up to the last day of payment before his death (the tenant having pre-deceased him) might have been distrained for by him. This was under the Act of 1836, ch. 192, which gave a preference to claims for rent in arrear against deceased persons for which a distress might be levied by law, after the death of such deceased, *without the levying of a distress therefor*. The Code, Art. 93, sec. 116,³ merely gives a preference to such claims for rent in arrear against deceased persons for which a distress might be levied by law. It has been holden in England, that if a landlord give another authority to distrain, but die before the distress is taken and it is afterwards taken in his name, and his executrix before probate ratifies the acts of the bailiff, the latter may make cognizance as bailiff of the executrix, *Whitehead v. Taylor*, 10 A. & E. 210. By Art 53, sec. 19^{3a} of the Code, the rents of real estate of minors, or of leasehold estates that may not be due at the death of such minor, shall for the year in which such minor may die, be paid to the guardian who may maintain distress or suit to recover such rent. Art 93, sec. 162,⁴ provides that the rents of all real estate of an infant dying before such rents become due shall for the year in which such infant dies be paid to his guardian, and shall be accounted for by the guardian, &c. And sec. 163⁵ provides that if the guardian die before the recovery of such rent, his administrator may recover the same, to be accounted for, &c.

In *Meriton v. Gilbee*, 8 Taunt. 159, however, it was held not to be necessary for the defendant, in avowing as executor or administrator under this Statute, to state *for what terms the tenant held the premises, and **360** there, as the tenancy did not appear to be for years, and it was unnecessary to show how the plaintiff became entitled to or held the premises, the avowry was determined to be sufficient; see *Prescott v. Boucher supra*, where the demise for years was pleaded in bar. This case was affirmed in *Martin v. Burton*, 1 Brod. & Bing. 279, where it was held that it could not be objected after verdict that the record did not show the executrix to be entitled to distrain under the Statute. And see *Staniford v. Sinclair*, 2 Bing. 193.

If lessee for years under-lets the land and dies, his personal representative may distrain at common law for the arrears accrued in the life-time of the deceased, because these arrears were never severed from the reversion, but the personal representative has the reversion and the rent annexed thereto in the same plight as the deceased himself had it; and it is not like a reversion which descends to the heir, while the arrears go to the personal representative, *Wade v. Marsh*, cited in 2 Wms. Executors, 833, and see *ibid.* 838.

³ Code 1911, Art. 93, sec. 115.

^{3a}. Code 1911, Art. 53, sec. 19.

⁴ Code 1911, Art. 93, sec. 162.

⁵ Code 1911, Art. 93, sec. 163.