the King's High-way, nor in the common Street, but only to the King or his Officers, having special Authority to do the same.

strata, nisi domino regi & ministris suis specialem authoritatem ad hoc habentibus.

8 Co. 60. 7 H. 7, 1. 22 Ed. 4, 49. Fitz. Bar. 281. Fitz. Trespass, 188. Fitz. Brief, 511, 842. Fitz. Avowry, 87, 232. 2 Inst. 133. Rast. 226. Regist. 98, 183. 9 Ed. 2, Stat. 1, c. 9. 2 Inst. 131. Cro. El. 710.

Where distress to be made.—The general rule is that distresses for rent must be made on the land out of which the rent issues, but goods removed by the tenant to avoid a distress may now be followed under 11 Geo. 2, c. 19, s. 1, and our Acts of Assembly; see the note to that Statute. Where lands in different counties are held under the same demise at one entire rent, it not appearing that they were separate, it was held that it should be intended they were contiguous and a distress might be lawfully made in either county for the entire rent, Walter v. Rumbal, 1 Ld. Raym. 53. But if two parcels of land are leased by separate demises though in the same lease, separate distresses must be made upon them, for the effect of a joint distress would be to make the rent of one issue out of the other, see Phillips v. Whitsed, 29 L. T. Q. B. 164.

In Capel v. Buszard, 8 B. & C. 141, in error, 3 M. & Payne, 480, after a decision the other way between nearly the same parties, 4 Bing. 137, it was decided that where barges were moored over land between high and low water mark, which was not demised, they could not be distrained, although attached to land that was demised. However, in Gillingham v. Guyer, 16 L. T. N. S. 640, where a tenant rented a stable and was in the habit of keeping his cart on a part of the road, adjoining the stable, which had been paved for that purpose by the landlord, it was held in an action against the landlord for seizing his tenant's cart while standing in the road as a distress for rent, that the paved part of the road might be considered a part of
46 the demised *premises, and that the landlord might lawfully seize the cart there as a distress for the rent of the stable.

With respect to distraining on the highway, the rule was always with the reservation that taking the distress there in the first instance is the thing forbidden, for if the landlord coming to distrain sees the beasts on the premises and before he can distrain they are driven into the highway, he may distrain them there; and the Statute does not apply to things that can only be taken on the highway, as toll-travers, &c., Smith v. Shepherd, Cro. El. 710. The prohibition, too, does not make the taking utterly unlawful so as to take advantage of it in bar to an avowry, but only to this purpose that the tenant may, if the landlord distrain in the highway, have an action on the Statute, 2 Inst. 131; Woodcroft v. Thompson, 3 Lev. 48. For distraining off the demised premises the tenant may rescue the distress, or have an action of trespass at common law or upon the Statute, Co. Litt. 161 a; 1 Inst. 131.

When distress to be made.—It may be observed also that the distress must be made by day and not after dark, Aldenburgh v. People, 6 C. & P.