moved until long afterwards when rent has accrued, Gwilliam v. Barker, 1 Price 274. But the *dictum* of Thompson C. B. there, that the landlord's remedy in such a case was by distress, was overruled in Peacock v. Purvis, 2 Brod. & Bing. 362, and Wharton v. Naylor, 12 Q. B. 673, denying like *dicta* in Smallman v. Pollard, 6 Man. & G. 1001; goods so taken being until removal *in custodia legis*, and equally so, whether in the hands of the Sheriff or his vendee, and the removal without payment of the rent, though wrongful and subjecting the Sheriff to an action, not invalidating the execution. If there be several executions the landlord can have but one year's rent, Dod v. Saxby, 2 Str. 1024, but this was upon motion.

Proceedings of sheriff.—The execution-creditor is directed by the Statute to pay the rent, and the Sheriff is then to levy and repay him. The Court observed in Henchett v. Kimpson *supra*, that, after notice to the Sheriff, the landlord is to have the benefit of distress for one year's rent as if there had been no execution at all: unless the rent is paid the Sheriff must quit, and if he does not quit a special action on the case lies against him after notice of the rent due, but there is a shorter way by motion to the Court that the landlord may have restitution to the amount of the goods sold by the Sheriff. Lord Tenterden in Calvert v. Jolliffe, 2 B. & Ad. 418, points out that, if the Statute be not strictly followed, the landlord may be put to the expense of an action against the Sheriff to recover his rent. But in Risely v. Ryle, 11 M. & W. 16, it was doubted whether any action lay against the execution-creditor, and, at all events, it is not necessary to give him notice. Accordingly, the rent is universally, in practice, paid by the Sheriff (or other officer, see Palgrave v. Windham *supra*) and not by the execution-creditor, and the Sheriff is always treated as the party liable to the landlord, who may either bring his action on the case where the liability of the Sheriff has accrued (for *assumpsit* for money had and received does not lie, Green v. Austin, 3 Camp. 260), or apply to the Court by motion, where the goods are not removed from the premises, or where their proceeds are in the hands of the Sheriff, Washington v. Williamson, 23 Md. 244.[7]

The duty of the Sheriff under an execution is to seize as many goods as may be reasonably sufficient, if sold, to satisfy the sum indorsed on the writ, and his duty to seize in respect of rent does not arise until the landlord has made a claim, when, on the refusal of the tenant to pay, the Sheriff is bound to levy for it under the writ and of course to seize to a larger amount, Gawler v. Chaplin, 2 Exch. 503. And he is not bound to seek out the landlord and inform him of the levy, Smith v. Russell, 3 Taunt. 400.[8] But though the Sheriff must have notice of the rent, the Statute prescribes no form of it, nor does the law of Maryland, except in requiring, Code, Art. 53, sec. 21,[8a] that whenever any landlord shall give notice of rent due, there shall be appended *to such notice an **686** *affidavit* of the amount of his rent claimed to be in arrear, Washington

[7] Thomson v. Baltimore Co., 33 Md. 319. For a clear explanation of the sheriff's proceedings under this section, see *In re* Mackenzie, (1899) 2 Q. B. 566.

[8] *In re* Mackenzie, (1899), 2 Q. B. 566.

[8a] Code 1911, Art. 53, sec. 21.