by a lease under seal, the term to commence from the expiry of the defendant's lease, and the defendant held over but never paid rent to the plaintiff nor recognized him as landlord, it was held that the latter could not maintain the action, and see Gelston v. Sigmund, 27 Md. 345. In Harcourt v. Wyman, 3 Exch. 817, a lease of the wife's property was made by the husband expressly in his own right and the wife was no party to it, and the Court said that the husband, having an interest in the estate during the joint lives of himself and wife, might create a term in that interest, that the reversion therefore was in him alone, and the wife was improperly joined on an action under the Statute; though this would with us in most instances be otherwise under Art. 45, secs. 1 & 2 of the Code;[4] and see Wilkinson v. Hall, 1 Bing. N. C. 713, that tenants in common cannot sue jointly for the double value where there has been no joint demise. But one tenant in *common, after notice to the lessee of his co-tenant **711** to quit his moiety, may maintain the action if the latter drive off cattle which the plaintiff has put on the lands, though not if he merely retain the possession to which he is entitled in respect of holding in common, Cutting v. Derby *supra*, and see Cowper v. Fletcher, 6 Best & S. 464.

On the other hand, in Lake v. Smith, 1 N. R. 174, a woman, tenant from year to year, received from her landlord notice to quit and afterwards married, and it was held that the action for the double value lay against the husband, and the wife need not be joined, for the offence was in not complying with the demand for possession when it ought to be complied with and he was then in possession, and it was also held that no new demand on the husband was necessary. Doubtless the last branch of the decision would be law here; but as the husband does not now take the wife's leases for years, *quære* whether she would not be a necessary party in such an action.[5]

The Statute gives the *double value* of the premises, and not the *double rent*, which indeed in some leases would be no penalty,[6] and the remedy therefore is not by distress, but by an action of debt, Timmins v. Rowlinson *supra*,[7] which is within Stat. 21 Jac. 1, c. 4, s. 4, *q. v.* The landlord too may bring his suit after succeeding in ejectment for the holding down to his recovery of possession, Soulsby v. Neving, 9 East, 310. But the double value can only be recovered of "lands, tenements and hereditaments," and so in Robinson v. Learoyd, 7 M. & W. 48, where the plaintiff, who was owner of a mill and steam-engine, let to the defendant a room in the mill with a supply of power from the engine, by means of a revolving shaft in the room, it was held that the value of this power could not be included in the calculation of the double value; though the value is the value of the ground, and everything annexed to it, in ordinary cases, being what the landlord would otherwise have received from an occupier. The landlord may waive his right to the double value, but the acceptance of single rent instead of double rent is *per se* no such waiver, Doe v. Batten, Cowp.

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[4] See now Code 1911, Art. 45, secs. 1, 4, 5.

[5] See note 4 *supra*.

[6] Cross v. McClenahan, 54 Md. 23.

[7] An action of debt is the sole remedy. Cross v. McClenahan, 54 Md. 23.