

terest, though reserving a rent, he is not within it, *Pluck v. Digges*, 2 Dow. & Clark, 182, but a formal lease is not required; it is sufficient if there be such a holding as gives a right to distrain, *Anderson v. Midland Railw. Co.*, 3 E. & E. 614. And if the landlord convey away his reversion before the removal of the goods, he is also excluded from the benefit of this section, *Ashmore v. Hardy*, 7 C. & P. 501.

Contrary decisions having taken place as to whether the rent, for which the goods removed could be distrained, must be actually due, and whether a removal in the day-time was a clandestine removal, the Act of 1826, ch. 266, enacted that any removal by a tenant of his property from the premises within thirty days before the rent should accrue, whether by night or day, should be considered clandestine, and the property might be followed and distrained. The Act of 1842, ch. 208, provided that when property should be removed from the premises within sixty days prior or subsequent to the expiration of the lease or tenancy, whether by night or day, the landlord, in all cases where he could make distress, might follow and distrain it at any time within sixty days after the determination of the tenancy. And now by the Code, Art. 53, sec. 18,<sup>1</sup> whenever property shall be removed from the premises within sixty days prior or subsequent to the time when the rent has or shall become due, whether such removal be by day or night, the landlord may follow and seize and sell such property under distress for the rent due, at any time within sixty days \*after **745** the time when the rent becomes due, provided the goods have not been sold to a *bona fide* purchaser without notice, nor taken in execution, see *Neale v. Clautice*, 7 H. & J. 372. Under the old law, it was held that the goods might be followed though the tenant's term had ended, and he was no longer in possession of the premises, *Dorsey v. Hays*, 7 H. & J. 370.<sup>2</sup> The present provision confines the remedy to a period of sixty days after the accrual of the rent, whenever that may happen. It may be observed that it contains no reference to the intention with which the tenant may remove his goods, though of course he may remove them at his will if he leave a sufficient distress on the premises, *Parrey v. Duncan*, 7 Bing. 243;

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<sup>1</sup> Code 1911, Art. 53, sec. 18. The right under this section to pursue property removed from leased premises only exists for rent *actually due* and as against property that belonged to the tenant *at the time of the removal*. *Gaither v. Stockbridge*, 67 Md. 228. The removal contemplated by the section is a removal by the tenant or some one in privity with him. When therefore goods are removed by the sheriff under an attachment on original process against the tenant, no rent being due at the time, the landlord has no right of following distress. If, however, rent is due at the time of such removal, the landlord, though unable to distrain by reason of the property being *in custodia legis*, is nevertheless, under the decision in *Thomson v. Baltimore Co.*, 33 Md. 319, entitled to his rent just as if the tenant's goods had been taken on execution. *White v. Hoeninghaus*, 74 Md. 127. (See note 4 to 8 Anne c. 14). A trustee for the benefit of creditors of the tenant is not a *bona fide* purchaser within the meaning of this section. *Burnett v. Bealmer*, 79 Md. 36.

<sup>2</sup> But the contrary was expressly ruled in *Gray v. Stait*, 11 Q. B. D. 668.