

traint warrant made and sworn to as aforesaid by any agent of any landlord, directed to any constable, sheriff or bailiff, shall be as valid and effectual to all intents and purposes as if made and executed by the landlord himself or in person.

When the landlord may distrain.

Where a note is given for the rent, the landlord may distrain if it is not paid at maturity. *Giles v. Ebsworth*, 10 Md. 344.

Since a landlord in the absence of a covenant to repair is not bound to repair, he may distrain for rent retained by the tenant for repairs. *Bonaparte v. Thayer*, 95 Md. 548.

A landlord may distrain for rent in arrears during the term, after the death of the tenant and before administration granted. *Keller v. Weber*, 27 Md. 661.

Where an agreement of rental does not state when the tenancy expires, when the rent accrues nor whether the rent was for past or future occupation, the terms thereof are too vague to authorize a distress. Distress as applicable when a tenant is to make certain improvements in lieu of rent. Surrender of the premises. *Dailey v. Grimes*, 27 Md. 450.

No demand is necessary before distress. *Offutt v. Trail*, 4 H. & J. 20.

Regularity of proceedings.

If the person signing the warrant is in fact the landlord's agent, the warrant is valid though the agent does not sign as such. The landlord's subsequent ratification makes the distress valid though it was originally unauthorized. *Jean v. Spurrier*, 35 Md. 110.

In levying a distress, the outside door can not be broken open, but may be opened by key, latch or bolt. An unlawful entry makes the distress void and the landlord a trespasser *ab initio*. *Cate v. Schaum*, 51 Md. 299. And see *Dent v. Hancock*, 5 Gill, 120.

No action lies for distraining for more rent than is due, even though it be done maliciously; *contra* if more goods are sold than are necessary to satisfy the true claim and costs. *Hamilton v. Windolf*, 36 Md. 306. And see *Bonaparte v. Thayer*, 95 Md. 548. *Jean v. Spurrier*, 35 Md. 110.

Unless the law is complied with, the proceedings are void. In an avowry for rent, the warrant and proceedings under it are facts to be found by the jury, and they must appear to be correct. *Giles v. Ebsworth*, 10 Md. 344.

A more liberal rule of construction applies to distraint proceedings than to attachments. *De Bebian v. Gola*, 64 Md. 271.

The affidavit.

A typographical omission in the affidavit, may be cured by the account. *Jean v. Spurrier*, 35 Md. 116.

The affidavit is essential. Object of this section. *State v. Timmons*, 90 Md. 11.

The affidavit is sufficient if it substantially follows this section. Object and general construction of this section. *Cross v. Tome*, 14 Md. 257.

Custodia legis.

There can be no distraint of goods *in custodia legis*. *Cromwell v. Owings*, 7 H. & J. 58. And see *Fisher v. Johnson*, 6 Gill, 354.

Property in the hands of receivers is not liable to distress without the permission of the court having jurisdiction over the receivership. *Everett v. Neff*, 28 Md. 176. And see *Cromwell v. Owings*, 7 H. & J. 58.

The landlord has a *quasi* lien on goods upon the demised premises for arrearages of rent, and if an attaching creditor has taken the goods, though they cannot be distrained upon, the landlord's lien prevails and he must be first paid out of the proceeds of sale. *Thomson v. Baltimore, etc., Co.*, 33 Md. 319. *Cf. Fisher v. Johnson*, 6 Gill, 354.

Practice.

Distraint proceedings cannot be amended. The avowant is entitled to open and close at the trial. *Waring v. Slingluff*, 63 Md. 55.