

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 landlord may distrain.

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

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

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

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

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

#### Regularity of proceedings.

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

In levying distress, outside door cannot be broken open, but may be opened by key, latch or bolt. An unlawful entry makes distress void and 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 necessary to satisfy 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 law is complied with, proceedings are void. In avowry for rent, warrant and proceedings under it are facts to be found by 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 hands of receivers is not liable to distress without permission of court having jurisdiction over receivership. *Everett v. Neff*, 28 Md. 176. And see *Cromwell v. Owings*, 7 H. & J. 58.

Landlord has *quasi* lien on goods upon demised premises for arrearages of rent, and if attaching creditor has taken the goods, though they cannot be distrained upon, landlord's lien prevails and he must be first paid out of proceeds of sale. *Thompson 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. Slingsluff*, 63 Md. 55.

Where the warrant is directed to the sheriff, the distress may be levied by a deputy. *Myers v. Smith*, 27 Md. 113. *Giles v. Ebsworth*, 10 Md. 344.

#### Generally.

All property on the demised premises, save such as is exempt by law, is liable to distress. *Giles v. Ebsworth*, 10 Md. 344. *Swartz v. Gottlieb, etc., Brewing Co.*, 109 Md. 399. *Kennedy v. Lange*, 50 Md. 94.