

in possession so holding over; any tenant who shall feel himself aggrieved by such judgment of said justice shall have the right of appeal therefrom to the circuit court for the county, or the Baltimore City court, upon giving notice of his desire so to appeal within ten days from the rendition of said judgment; and if said defendant shall file with said justice, to be by him transmitted with the papers in said case to said court, an affidavit made by the person so appealing before said justice, or before some officer empowered by law to take acknowledgments of deeds, that said appeal is not taken for delay, and also a good and sufficient bond with one or more securities conditioned that he will prosecute said appeal with effect and well and truly pay all rent in arrear and all costs in said case before the justice of the peace and in the appellate court and all loss or damage which the landlord or lessor, his heirs, personal representatives or assigns may suffer by reason of said tenant's holding over, including the value of said premises during the time he shall so hold over, then the tenant or person in possession of said premises may retain possession thereof until the determination of said appeal; and in case the judgment of said justice shall be affirmed, a warrant as aforesaid shall be issued to the sheriff by the court so determining the same, who shall proceed forthwith to execute the same; if the judgment of the justice shall be against the lessor he shall have the right of appeal at any time within ten days after said judgment shall have been rendered, and the court to which such appeal is taken shall review said cause and render such judgment as the justice ought to have rendered; and if the judgment of said court shall be in favor of the lessor, it shall issue a warrant to the sheriff for the restitution of the possession of said premises as hereinbefore provided; in case of appeal under this section the papers in the case shall be immediately transmitted by the justice to the appellate court.

Landlord's acceptance of rent accruing subsequent to expiration of lease is not a waiver of his right to enforce his judgment of restitution. *Hopkins v. Holland*, 84 Md. 93.

In case tenant appeals, he and his appeal bond are liable for rent as long as he occupies the premises. *Hopkins v. Holland*, 84 Md. 93.

No appeal will lie from judgment of circuit court or Baltimore City court in exercise of its appellate jurisdiction as conferred by this section, provided magistrate had jurisdiction. *Benton v. Stokes*, 109 Md. 119. *Roth v. State*, 89 Md. 526. *Clark v. Vannort*, 78 Md. 218. *Burrell v. Lamm*, 67 Md. 530; *Mears v. Remare*, 33 Md. 246.

Proper method of raising in court of appeals (on appeal from circuit court), question of constitutionality of statutes conferring jurisdiction on magistrate, is by a writ of *certiorari* founded on that specific ground. *Roth v. State*, 89 Md. 527.

On the landlord's appeal, the appellate court has no jurisdiction unless the tenant is summoned. *Mears v. Remare*, 33 Md. 246.

The tenant may assert by way of defense, any equitable right or claim he may have. *Gelston v. Sigmund*, 27 Md. 344.

The fixing of the amount of the appeal bond and the approval of the sureties, are judicial acts. *Knell v. Briscoe*, 49 Md. 420.

An. Code, 1924, sec. 5. 1912, sec. 4A. 1912, ch. 534.

5. The Appellate Court, being then in session, shall, upon the application of either party, set a day for the hearing of said appeal, not less than five days nor more than fifteen days after such application; and notice of such order for hearing shall be served on the opposite party or his counsel at least five days before such hearing.

An. Code, 1924, sec. 6. 1912, sec. 5. 1904, sec. 5. 1888, sec. 5. 1882, ch. 355.

6. If the tenant or person in possession shall allege that the title to the premises so leased or demised is disputed and claimed by some person whom