

to the court where said suit is depending, by affidavit, or be proved upon the trial in case the defendant appears, that half a year's rent was due before the said declaration was served and that the lessor or landlord had power to re-enter, then and in every such case the lessor or landlord shall recover judgment and execution in the same manner as if the rent in arrear had been legally demanded and a re-entry made; and in case the lessee, or his assignee, or other person claiming or deriving under the said lease shall permit and suffer judgment to be had and recovered on such trial in ejectment and execution to be executed thereon, without paying the rent and arrears, together with full costs, and without proceeding for relief in equity within six calendar months after such execution executed; in every such case the said lessee, his assigns, and all other persons claiming and deriving under the said lease shall be barred and foreclosed from all relief or remedy in law or equity other than by bringing error or appeal for reversal of such judgment, in case the same shall be erroneous; and the said lessor or landlord shall from thenceforth hold the said demised premises discharged from such lease; and if, on such ejectment, a verdict shall pass for the defendant, or the plaintiff shall be non-suited therein, then, and in every such case, the defendant shall have and recover his costs; provided that nothing herein contained shall extend to bar the right of any mortgagee of such lease, or any part thereof, who shall not be in possession, so as such mortgagee shall and do, within six calendar months after such judgment obtained and execution executed, pay all costs and damages sustained by such lessor or person entitled to the remainder or reversion as aforesaid, and perform all the covenants and agreements which, on the part and behalf of the first lessee, are and ought to be performed.

As to landlord and tenant, see art. 53.

The provision of this section as to the filing of affidavit does not deny the plaintiff the right to produce evidence in open court that rent was in default. *Brandt, Inc. v. Y. W. C. A.*, 169 Md. 607.

In a proceeding under this section, rent falling due subsequent to filing of declaration cannot be recovered, *qua* rent; such rent may, however, be considered in fixing plaintiff's damages. The right to rent and taxes due prior to filing of declaration is not extinguished by action of ejectment. As this section does not provide what shall be included in declaration, sec. 76 must be looked to for that purpose; declaration held sufficient. Not only plaintiff's right of possession, but damages and *mesne* profits may be recovered under this section as well as under sec. 76. *Res adjudicata*. History of this section. *Gibbs v. Didier*, 125 Md. 495.

This section is a modification of second section of statute of 4 George II, ch. 28, providing how and in what manner process shall be served. The fourth section of last named statute is in force in Maryland and has not been modified; discontinuance of proceeding under latter section upheld. *Chesapeake Realty Co. v. Patterson*, 138 Md. 248.

This section is a substantial re-enactment of second section of statute of 4 George II, ch. 28. The latter statute applies to a perpetual lease and dispenses with a previous demand of rent and re-entry, and substitutes service of a copy of declaration in ejectment, in all cases where landlord has right by law to re-enter. *Campbell v. Shipley*, 41 Md. 93 (see also dissenting opinion, page 101).

To make a judgment by default a bar to a lease under the statute of 4 George II, ch. 28 (of which this section is a substantial re-enactment), record must disclose such facts and circumstances as show that court designed to exercise the authority conferred by statute. Proceedings have no connection with statute. When the required affidavit should be filed. *Walter v. Alexander*, 2 Gill, 204.

The practice under sec. 76, differentiated from that under this section. *MacKenzie v. Renshaw*, 55 Md. 296.

The act of 1872, ch. 346, referred to in deciding that where a lease provided that if rent were more than ninety days in arrear landlord should be entitled to immediate possession, ejectment might be brought without a previous demand. *Shanfelter v. Horner*, 81 Md. 628.

As to the effect of ejectment proceedings by the landlord upon the rights of a mortgagee of the leasehold interest, see *Abrahams v. Tappe*, 60 Md. 317.

See notes to sec. 76.