Excessive distress—Remedies.—The preceding Statute provides that distresses shall be reasonable, &c., and excessive distresses are said to have been illegal at common law. However it has been held that a man is not liable to an indictment for taking an excessive distress, R. v Ledgingham, 1 Mod. 288, the remedy being in general by an action on the Statute, Hutchins v. Chambers, 1 Burr. 579, except where, as in Moir v. Munday cited *ibid.* 590, a distress of 6 ounces of gold and 100 ounces of silver was taken for 6s. 8d. which appeared upon the face of it and upon the pleadings to be excessive, gold and silver being of a certain known value, and trespass was adjudged to lie, see Crowther v. Ramsbottom, 7 T. R. 654. If to the taking of the excessive distress there is added a distinct trespass in turning a man out of his house, or if the excessive distress be abused, it is a separate cause of action, Etherton v. Popplewell, 1 East, 149; Lynne v. Moody, 1 Str. 851. And if there has been a tender of the rent, the plaintiff may bring either case or trespass, Branscomb v. Brydes, 2 Dowl. & R. 256; S. C. 1 B. & C. 145; Holland v. Bird, 10 Bing. 15. It appears too that if the plaintiff have recovered in replevin he cannot afterwards bring an action on the Statute, for the recovery in replevin shews that there was no cause of distress, and moreover damages were recoverable in the replevin for the taking, Phillips v. Berryman, 3 Doug. 286, and see 2 Inst. 107.

The landlord need not calculate nicely the value of the distress, but must observe some proportion between its value and the amount of rent distrained for, Willoughby v. Backhouse, 2 B. & C. 821. A trifling excess will not render the distrainor liable under the Statute. The distress is to be reasonable, says the Act. Thus if the landlord distrain an ox or a horse for **43** a penny, if there were no other distress on the *land it is not excessive, but if there were sheep or swine then such taking is excessive because there were beasts of less value, 2 Inst. 107; otherwise if he distrain two or three oxen for 12d. or the like small sum, *ibid.* So taking a single chattel, where the distrainor had no opportunity of taking but that one, was held not to be excessive though of greater value than the rent due, Avenell v. Croker, Moo. & Malk. 172, see Field v. Mitchell, 6 Esp. 71, and Clarke v. Tucket, 2 Ventr. 182, where it is said that a cart and horses may be distrained for even a small demand, for they are not severable. The general rule may be laid down to be, that if the landlord take an unreasonable quantity or number of goods beyond what would produce the rent and expenses at such a sale as is usually made of a distress, it will be deemed excessive, and being so excessive the plaintiff may recover the fair value of them, Wells v. Moody, 7 C. & P. 59. Corn or hay, loose and growing corn or other products are within the Statute, if an unreasonable quantity of such subjects are taken, either alone or conjointly with other chattels, but though the landlord is liable to some damages in this case, for the probable produce of growing crops may be estimated at the time of seizure, the measure of damages will not be their full value beyond what ought to have been taken, but compensation for the additional expense of the distress and of keeping possession of that part of the crops which it was unnecessary to distrain during the time of possession, and some compensation for the loss of the absolute ownership and power of disposition over them for the same time, and for the expense the tenant is put to in replevying to a larger amount, if