he does replevy, Piggott v. Birtles, 1 M. & W. 441. An action will lie too for an excessive distress and leaving a man in possession, though the goods are not so taken out of the tenant's control as to prevent him from carrying on his business, Baylis v. Usher, 4 M. & Payne, 790; see Hutchins v. Scott, 2 M. & W. 809; Swann v. Earl Falmouth, 8 B. & C. 456; Beck v. Denbigh, 29 L. J. C. P. 273.

It is held not to be necessary in such an action to prove express malice, Field v. Mitchell, 6 Esp. 61, and see Sturch v. Clarke, 4 B. & Ad. 113; nor need the plaintiff allege and prove the precise amount of rent due, Sells v. Hoare, 1 Bing. 401. But the excess ought to be shewn on the record that it may appear to the Court to be a case within the Statute. The right of action accrues upon the taking of the excessive distress, and being so vested can only be destroyed by a release under seal or satisfaction for the wrong done. Hence the tenant does not waive his right of action by entering into an arrangement with the landlord respecting the sale of the goods seized, Sells v. Hoare, Willoughby v. Backhouse, *supra*.

Distress for more rent than is due.—In Taylor v. Henniker, 12 A. & E. 488, overruling Avenell v. Croker *supra*, it was held that an action would lie for distraining for more rent than was due, though the goods distrained were of less value than the arrears. But Taylor v. Henniker was in its turn overruled by Tancred v. Leyland, 16 Q. B. 669, where it was held that the simple fact of making a distress, accompanied by an untrue claim or pretence that more rent was due than actually was so, was not actionable, no obligation being cast by the common law on the landlord to inform the tenant of the amount of rent in arrear for which the distress is made, the latter by intendment being taken to know when a distress is made what is in arrear in his land, though if the tenant had thereby suffered any special damage, as being unable to find a surety in a replevin bond for the pretended amount (while he could have found one who would have joined in it for the amount really due,) and being thereby prevented from a replevin, or if the quantity of goods sold was (and there was an averment to that effect,) more than sufficient to pay the rent actually due, an action would lie; and this case was followed in French v. Phillips, 1 Hurl. & N. 564. After Tancred v. Leyland came *the case of Stevenson v. Newnham, 13 **44** C. B. 285, where a count averring that the defendant *maliciously* distrained for more rent than was due was held bad, because an act not amounting to a legal injury is not actionable because done with a bad intent. In Glynn v. Thomas, 11 Exch. 870, the declaration alleged that the defendant wrongfully distrained the plaintiff's goods for alleged arrears of rent, and wrongfully remained in possession, &c., until the plaintiff was compelled to and did pay the amount of the pretended arrears to defendant to regain possession, &c., part only of the alleged rent being due, and it was held to disclose no ground of action. The Court affirmed Tancred v. Leyland, and observed that the mere taking or selling on an untrue claim of more rent being in arrear than actually is due, without such claim being followed by some special damage, is not actionable; not the taking, because the distrainor is not bound by the amount for which he claims to distrain, and though he takes alleging that he takes for an amount exceeding the real arrears, he may afterwards sell for only what is due; nor the selling, because from a mere allegation that the distrainor sold for the alleged arrears and costs it