

Raym. 1424; S. C. 2 Str. 717, before 11 Geo. 2, c. 19, it was determined that trespass might be maintained for suffering the goods, in cases not provided for by the Act, to remain on the premises for an unreasonable time after the five days, and that three days were an unreasonable time; and see *Winterbourne v. Morgan*, 11 East, 395. It is usual, therefore, in such cases, for the landlord, where he gives the tenant further time for payment, to take a written consent from the latter to remain in possession, see *Latrobe's Justice*, sec. 905.

**571 Appraisalment.**—\*The Code, Art. 53, sec. 13,<sup>5a</sup> provides that no more than two appraisers<sup>6</sup> shall be summoned, and prescribes the amount of their compensation. The distrainer ought not to be one of them for he is interested in the business, *Westwood v. Cowne*, 1 Stark. 172; Bull N. P. 81. Where the premises lay partly in the hundred of A. and partly in the hundred of B., and the goods were all impounded in B., the constable of B. was held to be the proper person to administer the oath for the appraisalment of the whole distress, *Walter v. Rumbal*, *supra*. In *Avenal v. Croker*, Moo. & Malk. 172, the constable of the parish where the distress was taken was held to be the proper officer, and see *Wallace v. King* *supra*. The constable must attend with the appraisers at the time the appraisalment is made, and they must be sworn before they make it; they cannot make it, and then go before the constable and attest it, *Kenney v. May*, 1 M. & Rob. 56. The appraisers ought to be reasonably competent, *Roden v. Eyton*, 6 C. B. 427; but it is held that if the tenant dispense with them he cannot afterwards complain, *Bishop v. Bryant*, 6 C. & P. 484, *qu.*, however, under our law. And the goods cannot be sold before appraisalment without subjecting the distrainer to an action by the tenant or owner of the goods, *Biggins v. Goode*, 2 Cr. & J. 364, see *Messing v. Kemble*, 2 Camp. 115.

**Sale.**—As has been before observed the tenant may replevy at any time before sale, but not after, because then the purchaser is entitled to take the goods and retain them, *Jacob v. King* *supra*; the landlord must sell, however, to alter the property in the goods, *King v. England*, 4 Best & S. 782.<sup>7</sup>

It has also been holden, that on an equitable construction of this Statute, and in consequence of the changes introduced into the law relating to dis-

them so to remain for an unreasonable length of time without selling and tenant drives them to another farm and there sells them to a third person who purchases without notice of the distress, the lien of the distress falls as against the title of the purchaser. If, however, the cattle are not in fact sold but are merely left in the possession of such third person, they still remain subject to the lien. *Lamotte v. Wisner*, 51 Md. 543.

<sup>5a</sup> Code 1911, Art. 53, sec. 13.

<sup>6</sup> The phrase in sec. 2 of the Statute, "two sworn appraisers," merely means that two indifferent persons shall be sworn to appraise the goods distrained according to the best of their understandings. They must be reasonably competent but need not be professional appraisers. An auctioneer and the watchman left in charge of lumber distrained in a lumber yard may appraise it. *Cahill v. Lee*, 55 Md. 319.

<sup>7</sup> See *Moore & Co. v. Singer Co.*, (1904) 1 K. B. 820.