tresses for rent by it and Stat. 11 Geo. 2, c. 19, a landlord ought not to sell the goods distrained after tender of the rent and costs made at any time within the five days, and though after impounding, and an action is accordingly maintainable, on the equity of the Statute, if the landlord do so sell, Johnson v. Upham, 28 L. J. Q. B. 252, overruling Ellis v. Taylor, 8 M. & W. 415, and other cases to the contrary.

The sale is generally a public sale, and the presence of the sheriff or constable is not required at it, Walter v. Rumbal, in 4 Mod. 390; and by the construction of the Act, the price at which the goods were appraised will be presumed the best price until the contrary appear. An improper manner of sale, or an improper exhibition or lotting of the goods is within the Statute, Poynter v. Buckley, 5 C. & P. 512.[8] Where the landlord distrained hay and manure on the premises, and sold them subject to the condition by the purchaser that they should be consumed on the premises, whereby the sale produced less than the usual price, he was held liable for not selling at the best price, though the tenant was under a covenant to consume such hay on the premises, the Court holding that a covenant to expend produce on the land cannot run with the chattel, Ridgeway v. Lord Stafford, 6 Exch. 404, which overrules Abbey v. Petch, 8 M. & W. 419; and see Frusher v. Lee, 10 M. & W. 709.

With regard to the surplus proceeds of sale, if any, Lord Ellenborough observed in Moore v. Pyrke, 11 East, 52, where an under-tenant, whose goods had been distrained and sold by the original landlord for rent due from his immediate tenant, had brought an action against the latter for money paid to the use of the latter, which was held not to lie, that the money produced by the sale did not vest in the tenant, but was an instantaneous, executed satisfaction of the rent under the Statute, vesting to that amount in the landlord, and the tenant has only an interest in the surplus, if any; see Lyon v. Tomkies, 1 M. & W. 603, as to the surplus, which means the surplus after deducting reasonable charges. The Code, Art. 53, sec. 14,[9] provides that the tenant shall be liable to the landlord for the costs. In Yates v. Eastwood, 6 Exch. 805, this case is treated as an authority that the proceeds of the *sale are not the tenant's, but **572** in custody of the law. There it was held, that assumpsit for money had and received would not lie against a landlord, not guilty of any misconduct, to recover the overplus of proceeds of sale after deducting the rent and charges, but the proper remedy was an action on the case under the Statute for not leaving the overplus in the hands of the Sheriff or other officer, the landlord being under no obligation to find out the true owners

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[8] The manner of sale is not prescribed either by the Statute or by our Code; but an action will lie against the landlord upon the equity of the Statute for improper management of the property taken and an improper offering it for sale so that it does not sell for the "best price" within the meaning of the Statute. What will constitute such mismanagement as will make the distrainor liable depends on the circumstances of each case and on the character of the property in question. Cahill v. Lee, 55 Md. 320; Hawkins v. Waldron, 1 C. P. D. 280.

[9] Code 1911, Art. 53, sec. 14.