of the goods in order to pay the surplus to them. The principle of this case was affirmed in Evans v. Wright, 2 Hurl. & N. 527, with reference to a residue of the goods themselves. There the plaintiff, a mortagee of chattels with power of sale in case of non-payment after notice, gave notice of his claim to the mortgagor, and also to the landlord distraining the goods. The bailiff answered that he would take care the notice was acted on. The goods were removed, and, a sufficient quantity being sold, the surplus proceeds of sale and the remaining goods were restored to the tenant, the mortgagor, and it was held that there was no conversion of the goods, nor would an action for money had and received lie for the overplus of money. The proper course, said the Court, in such a case is to restore the surplus goods to the premises from whence they were taken, and to leave the surplus money with the Sheriff or other officer.

Damages for illegal sale.—For selling goods without complying with the provisions of the Statute the measure of damages [10] is said to be the value of the goods distrained, less the amount of rent discharged by the produce of sale or the rent due, and of course any special damage that has been sustained, Knotts v. Curtis, 5 C. & P. 322; Wilson v. Nightingale *supra;* Knight v. Egerton, 7 Exch. 407. The *value* of the goods, and not their proceeds, being taken, because the party is guilty of irregularity, and he differs from a trespasser only in his right to deduct the rent, Whitworth v. Maden, 2 Car. & K. 517; see Biggins v. Goode *supra*, and 11 Geo. 2, c. 19, s. 19. But it is now held that the plaintiff is not entitled to a verdict, in an action for selling goods distrained before the expiration of five days, unless he proves actual damage, Rogers v. Parker, 18 C. B. 112; Lucas v. Tarleton, 3 Hurl. & N. 116.[11] Cocks and sheaves of corn, &c., must, under the 3rd section, be impounded and sold, at the end of five days, at the place where they are found and cannot be removed, Piggot v. Birtles, 1 M. & W. 441. But if growing crops, &c. are seized before they are ripe, an action on this Statute will not lie against the landlord for selling them before five days or a reasonable time have elapsed after the seizure, for such sale is wholly void, Owen v. Legh *supra*. The principple of which case will apply in cases where the sale is void for non-compliance with the provisions of the Code, Art. 53. Pound-breaches or rescues (see F. N. B. 100 B. *et seq.* Co. Litt. 47 b,) are rare with us. See Bac. Abr. tit. Rescue; 2 Steph. N. P. 1357; Story v. Finnis, Lownd. M. & P. 198. In Firth v. Purvis, 5 T. R. 432, it was said to be no answer to such an action, that the rent, &c., was tendered after the distress and impounding; nor is the action a penal [12] one within Stat. 21 Jac. 1, c. 4, s. 4, *q. v.*, see Castleman v. Hicks, 2 M. & Rob. 422, and treble costs are recoverable, Lawson v. Story, 1 Ld. Raym. 19. If, however, the distrainor abuse the distress by working it, the owner may interfere and prevent it, and no action will be against him for pound-breach or rescue, for this is a wrongful act and not an irregularity of the distrainor, and takes away the protection

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[10] See Cahill v. Lee, 55 Md. 319, 329.

[11] But see Sharp v. Fowle, 12 Q. B. D. 385.

[12] See Jones v. Jones, 22 Q. B. D. 425.