the Sheriff liable. Nor can he get rid of this liability by returning the goods to the premises, for his liability accrued by the act of removal, Lane v. Crockett *supra*. So if the goods be not sufficient to raise more than the rent due the Sheriff generally withdraws, for if he goes on, and the goods sell for less than the rent in arrear, an action against him on the Statute will not be stayed on his bringing into Court the proceeds of the sale, Calvert v. Jolliffe *supra;* Groombridge v. Fletcher, 2 Dowl. P. C. *353.[9] But in Foster v. Hillen, 1 Dowl. P. C. 35, it was intimated **687** that it might be otherwise, as in Henchett v. Kimpson *supra*, where the application was made by motion under the summary jurisdiction of the Court. The rule itself is, however, reasonable enough, for the Sheriff is not bound to take the goods in execution unless the execution-creditor pays the year's rent to the landlord.

In Cloud v. Needles, 6 Md. 501, it was held, following Rotherey v. Wood, 3 Camp. 24, that if the landlord consent to the sale, on the promise of the Sheriff after the levy and before the sale of the goods to pay him the rent claimed, it is a waiver of his right to sue the latter under this Statute. But in Washington v. Williamson *supra*, the landlord, having given notice to the Sheriff, withdrew it and placed a distress warrant in his hands, which was levied by the Sheriff on property privileged from distress, whereupon it was countermanded by the landlord and the notice of claim renewed, and the Court held that the claim for rent was not waived by the proceedings under the distress, though it was insisted that by the latter the landlord had elected his remedy.

II. III. See 11 Geo. 2, c. 19, s. 2.

IV. **Action of debt against life tenant.**—In Webb v. Jiggs, 4 M. & S. 113, the Court observed that from the language both of the title of the Act and of the enacting clause, it appeared that the legislature contemplated only the case of rent due from a tenant holding by lease or demise under his landlord, and that this section therefore did not apply to an action of debt for the arrears of an annuity or yearly rent devised payable out of lands to A. during the life of B., to whom the lands were devised for life, so long as the estate of freehold continues—there being no such privity between the devisee of the land and the devisee of the annuity as between lessor and lessee, (see Townsend v. Duncan, 2 Bl. 53, S. C. *sub. nom.* Robinson v. Townsend, 3 G. & J. 413; Smith v. Smith, 7 Md. 55, for the remedy in such a case). And in Kelly v. Clubbe, 3 Brod. & Bing. 130, it was held that an action of debt would not lie, during the life of the annuitant, for arrears of an annuity for life issuing out of lands, though the declaration avoided stating that the grantor had a freehold in the premises, and alleged that he received the rents of the land to the use of the grantee; the Court saying the case was not distinguishable from Webb v. Jiggs, that it must be taken that the grantor had a fee in the

[9] But in Thomas v. Mirehouse, 19 Q. B. D. 563, it was held that, while the measure of damages in an action against the sheriff for removing goods without paying the landlord's rent was *prima facie* the amount of rent due, it was competent for the sheriff to prove in mitigation of damages that the value of the goods removed was less than the amount of rent due.