and an acceptance of same, and the right of the landlord to distrain ceased.

4. That the alleged distress was void because when made no inventory and notice of distress was delivered or affixed as required by the provisions of the Statute, 51 Vict. ch. 3, intituled the Distress Act.

5. That the alleged distress was void because to effect same the plaintiff broke open the outer door of the premises.

6. That if a distress was made by the plaintiff at the time he first entered upon the premises on the day the alleged distress was made, the distress made on the second entry on the same day was illegal and void, as there cannot be a second distress for the same rent.

Or in the alternative for a new trial for non-direction.

The learned Judge having withdrawn from the jury and refused to charge the jury,—

1. On the question whether the entry made by the plaintiff to distrain was a breaking in of the outer door of the premises, and if the jury so found the distress was void.

2. The question whether the acceptance of the key by the plaintiff, and the first entry made by him on the premises, was a termination of the tenancy, and if the jury so found the distress was void.

The declaration contained the usual allegation of rent due, the taking of the goods in distress therefor, the impounding, and the pound breach by defendant.

There were three pleas, not guilty, a denial that the plaintiff had taken the goods as alleged, and a traverse of the impounding by the plaintiff.

At the trial I declined to nonsuit on the grounds set out in the rule, and withdrew from the consideration of the jury the two matters therein upon which a new trial is now asked, and upon which defendant sought to give evidence in justification of his pound breach; confining him to his pleadings and to the issue raised on the record.

There does not appear to be any question as to the law in this matter. It may be taken to be settled law, that in an action for pound breach the defendant cannot justify the breach on the ground either that the distress was without cause or that the plaintiff had no title to distrain; "the reason being, that the goods once impounded are then in custodia legis," and the defendant has no right to retake them, and if he does, he becomes a wrong-doer.