seal, made between them, dated 21st July, 1863, in which the above-mentioned lease was in part recited, White assigned McLean the six months' rent to become due on the lease on the first day of October, 1864, and the six months' rent to become due on the first day of October, 1865. White, by the same agreement, authorized McLean to distrain for the rent, if necessary. He also signed a notice to Hope and Banks of this assignment, which, as appeared by other witnessses, plaintiff received.

On the 13th of April, 1865, the rent so assigned being in arrear and unpaid, McLean issued a distress warrant in the name of White, requiring Keller, the other defendant, to distrain the goods, &c., on the said leased premises, for $100, being the half-year's rent due on the first day of October, 1864. On the 22nd April, 1865, Keller distrained a pair of horses, nineteen sheep, and four cows. On the 3rd May he sold three cows, seventeen sheep and twelve lambs, for $122.62, the distress with costs being $116.48.

To establish his case plaintiff called the defendant Keller, who proved the warrant of distress, which was signed in the name of White by McLean, as his attorney He also proved the sale of the cattle, sheep and lambs under it, and that they realized $122.62 He said the plaintiff had denied that McLean had given him notice of the assignment, but admitted that he heard of it.

The plaintiff also called the other defendant, White. He said Banks was made one of the lessees that he might be made surety for the plaintiff. He was shewn a receipt, dated 26th August, 1864, which he said was his, for rent in full from plaintiff up to the first of April, 1865. He looked at a promissory note for $67 50, dated 26th August, 1864, and said this note plaintiff had paid him on account of rent. He looked at another promissory note for $87.50, and said this had also been given him on account of rent. He stated that he had rented part of the place back for $25 a-year, which was to be deducted from the rent on the lease; that the note for $87.50, with the $12.59 deducted, was rent for one half year, and the other note, 67.50, was the balance of the other half year; that the plaintiff had paid him at the house $20, and he had allowed his rent, $12 50, which made up the $100, and that in this way the rent was paid up to the 1st April, 1866. He said that he had negotiated these notes not long after he got them; that he had signed a notice to the lessees that he had assigned the rent to McLean; that he had been in the bankrupt court; that he liked every one to have his rights: McLean had not had his: that he had borrowed money from him and assigned the rent for its payment. He could not say whether he had told Hope of the assignment of the rent; McLean had agreed to wait before he distrained, saying he was not particular how long he waited, if he was secure; but this was said after White had settled with plaintiff in August for the rent, of which he told McLean at the time, when he said he would wait

Another witness valued the cattle and sheep at $181, and others gave general evidence that they were worth this amount.

At the close of the plaintiff's case counsel for McLean & Keller objected that as to McLean it was not shewn he had anything to do with the seizure, excepting that he signed the warrant as White's attorney, which did not make him liable for the distress; that as to the first count, that was an action against a landlord, and others could not be made liable for double value, which was a punishment to the landlord personally; and as it was against White, as landlord, the other defendants were not liable.

The plaintiff's counsel contended, in reply, that McLean had put Keller in motion and got the proceeds of the sale for his own benefit; that the second count was trespass against the landlord and the persons actually distraining, who were both liable. He referred to Arch. L. & T. 276.

The learned judge reserved leave to the defendants to move to enter a nonsuit on the first count.

The defendants called Alexander Muir, who said that he had written the assignment and witnessed its execution, and had drawn the notice of the assignment which was to be given to Hope, and White signed it.

Preston McLean, the brother of the defendant, McLean, said he took this notice of the assignment of the rent to McLean, shewed it to Hope, and offered to give him a copy of it, but he said he had heard of it from White himself, and that White's wife had told him not to accept of any paper; but he would as soon pay the rent to McLean as to White. This was in the end of July or beginning of August, 1863.

Another witness proved that plaintiff said he would not pay McLean, for he had not signed anything, but he knew of the transfer to McLean.

Another witness asked plaintiff if he had got a notice from McLean. He replied "Yes:" Preston had brought a paper which he would not look at, but White had told him he had made the transfer of the rent.

The learned judge submitted the following questions to the jury:

1st. Had the plaintiff notice of the assignment of the rent by White to McLean before or at the time when the note was given for $67 50? If he had not, then, had he notice at all before the distress?

2nd. Were the giving of this note and the settlement spoken of about the rent in October, 1864, made in fraud of McLean's right?

3rd. Was this note for $67 50 paid by Hope in full before the time of the distress on the 13th April, 1865?

To the first questions they answered, "No;" to the last, "Yes."

They found the value of the goods sold $162, which, doubled, made $324.

The verdict was accordingly for the plaintiff, with $324 damages.

In Michaelmas Term last, *D McMichael*, for the defendants McLean & Kellor, obtained a rule *nisi* calling upon the plaintiff to shew cause why the verdict should not be set aside and a nonsuit entered for these defendants, pursuant to leave reserved; or, why a new trial should not be had between the parties, on the ground that the verdict was contrary to law and evidence; and for misdirection, in charging the jury that the defendant White was the owner of the rent distrained for and entitled to receive and settle for