The only point necessary to be noticed is that bearing on the defendant McLean's liability for the act of his bailiff Keller in seizing plaintiff's sheep.

The jury found that there was other sufficient distress besides the sheep.

The objection was then taken that, granting the seizure of the sheep to be illegal, McLean was not liable.

The evidence was that McLean had given a warrant to seize the goods, chattels, and growing crops. The plaintiff seized all, including the sheep, no one seeming to have any idea that any peculiar exemption attached to them. The bailiff swore McLean told him to distrain plaintiff's goods.

After taking this objection, at the close of plaintiff's case, defendant McLean was called in his own behalf. He was not asked anything on either side as to any knowledge of the kind of property seized, or of his having ratified or repudiated anything done: but he said, "when I signed the warrant, and *sold the distress*, I did not know plaintiff had paid the rent.

It was admitted he was paid his claim by Keller out of the proceeds of sale. Nothing appeared to have been left to the jury as to whether McLean assented to, or ratified, or had knowledge of the sheep being seized; nor did it seem that, although many points were urged to him by counsel, he was asked to submit any such questions.

Damages were assessed against White by default. The jury found the value of the sheep, $150

There was a verdict for defendants, McLean and Keller, and leave was reserved to plaintiff to move to enter a verdict for him against them for $150, if the Court thought him entitled to recover.

In Michaelmas Term, *K. McKenzie*, Q.C., obtained a rule to set aside the verdict for Keller and McLean, or so far as it related to the 4th count, and to enter a verdict for plaintiff on the 4th count for $150 on the leave reserved, on the ground that it was trespass to seize plaintiff's sheep for a distress, while there were other sufficient goods liable to distress on the premises, and the judge should have directed a verdict for plaintiff on the 4th count, and for a new trial on the law and evidence.

McMichael shewed cause, citing *Narget* v. *Nias*, 1 El. & El. 439; Woodf. L. & T. (last ed.) 744; *Dawson* v. *Alford*, 3 Dy. 312 *a*; *Lewis* v. *Read*, 13 M. & W. 834; *Freeman* v. *Rosher*, 13 Q B. 780.

K. McKenzie, Q C., contra, cited *Keen* v. *Priest*, 4 H. & N. 236; Add. Torts. (last ed.) 504, 533: 51 Hen. III., stat 4; *Gauntlet* v. *King*, 3 C. B. N. S. 59; *Haseler* v. *Lemoyne*, 5 C. B. N. S. 530.

HAGARTY, C. J., delivered the judgment of the Court.

There seems to be no doubt that sheep are not distrainable while there are sufficient other goods to satisfy the claim. The stat. 51 Hen. III. ch. 4 so declares, and its curious phraseology is quoted in *Keen* v. *Priest* (4 H. & N. 236.) The prohibition may, we think, be considered universal under the words, "*Nul home de religion ne auter.*"

This case was for taking sheep, the first count averring that the sheep were taken, although there was other sufficient distress. Second count, trespass. Third count, trover.

Watson, B., says, "From the earliest period of our history, it has been the law that sheep are not distrainable, if there are other goods on the premises to satisfy the debt. The seizure was therefore wholly illegal. If the plaintiff had replevied, he would have been entitled to a return of the sheep. The defendant never had any rightful possession of the sheep; therefore the case does not come within 11 Geo. II. ch. 19."

Martin, B. says, "As there were other goods, the sheep might have been rescued."

Narget v. *Nias* (1 El. & El. 439). The action was *quare clausum fregit*, assault, and carrying away the goods and chattels of plaintiff. Plea, not guilty by statute.

It appeared that there was a distress for rent, and defendant seized a spade and fork of plaintiff, being tools used by him in his trade, and the jury found there was other sufficient distress. It was objected that trespass did not lie, the tools not being in actual use. The argument was very full. Lord Campbell, in giving judgment, reviews the authorities, citing Lord Coke, that taking tools of trade, while there was other sufficient distress, was against the ancient common law of England, and adds, that as it is in itself wrongful, "it is difficult to discover any legal principle why it should not be the subject of an action of trespass, seeing that, as a general rule, wherever goods are wrongfully taken, trespass will lie." * * *Dawson* v. *Alford*, 3 Dyer 312 *a*, shews it is not necessary for plaintiff in his declaration to allege that there were other goods of sufficient value which might have been distrained, but the defendant must shew in his answer, when he justifies, that no other sufficient distress could be found."

We are bound by these authorities that the declaration here is sufficient.

It is then objected that McLean is not responsible for his bailiff's alleged acts, unless he is shewn to have authorized or sanctioned them. It was proved he received the money from the bailiff from the sale of the sheep.

Lewis v. *Read* (13 M. & W. 834) is in point. The bailiff had seized goods for the plaintiff's beyond the boundary of the farm called Penybryn, for which rent was due by another person. The defendant received the proceeds of the sale. Parke, B: "There is no doubt that the acts of defendant Read, in directing the sale of the sheep and receiving the proceeds, were a sufficient ratification of the acts of the bailiff in making the distress as to such of the sheep as were taken on the Penybryn sheepwalk, because the taking of them was within the original authority given to the bailiff by O., as the agent of Read. As to the others, not taken in Penybryn, and as to which, therefore, the authority was not followed, Read could not be liable in trover unless he ratified the acts of the bailiff, with knowledge that they took the sheep elsewhere than on Penybryn, or unless he meant to take upon himself, without enquiry, the risk of any irregularity which they might have committed, and to adopt all their acts. There appears to have been evidence quite sufficient to warrant the jury in coming to the conclusion that he did, in this sense, ratify the acts of the other defendants; but as this question was not left to the jury, the defendant is entitled to a new trial." It does not appear from the report than any objection was taken at the