

Burke's Falls, the previous residence of the plaintiff—this was done by one Hutton acting for and on the instructions of the defendant. Hutton was instructed by the defendant to find out if there was such a judgment; and, "if there was such a judgment, I was to have an execution or transcript issued, the execution issued and then issue a warrant," he says. He did this and had the goods of the plaintiff seized accordingly, as the defendant contends. The plaintiff says that there was no taking in execution, that the Division Court bailiff accepted a payment on account, and went away without seizure. The landlord then issued his warrant to his bailiff for the current year's rent, which he claimed to be due by virtue of the acceleration clause, under which the goods of the plaintiff were seized and sold.

The tenant sued, and the action came on for trial before the Chief Justice of the Exchequer Division and a jury at Brompton.

Cases of this kind in recent years have almost invariably been tried by a Judge without a jury; but, as no motion was made to have the jury dispensed with, the learned Chief Justice indulged the parties in their apparent desire to have a jury pass upon the questions in issue.

The jury found answers to a great many questions submitted to them, most of which are not now in controversy. On the question of damages the jury ultimately found \$522 in respect of goods, \$20 for board of one Smith, and \$600 because of interruption to the plaintiff's farming business. They found the defendant, however, entitled to a counterclaim of \$378, and judgment was accordingly directed to be entered for the difference . . . \$764 and costs.

There can be no doubt that the landlord cannot give himself any rights under the acceleration clause in a lease by procuring the seizure of the tenant's goods either by an execution of his own or that of another. It is consequently quite immaterial whether there was or was not an actual seizure by the Division Court bailiff before the warrant of the landlord: in any case, the seizure by the landlord was illegal. But I see no sufficient ground for saying that the jury were wrong in finding, as they did, that the landlord's seizure was first.

No rent being due otherwise, it is plain that the seizure was wholly illegal.

In addition to the \$20 for board, the plaintiff has been found entitled to the value of the goods and also to special damages. The findings on both these heads are disputed: and it becomes necessary to examine the evidence.

First, as to the value of the goods—it cannot be contended