open window, a hole in the wall, or over the wall, provided he does not break and enter, Long v. Clarke.

The evidence in this case shews that the door was opened for the landlord by the servant of the tenant, without any collusion with him, voluntary opened, and that he went in without breaking. In Sandon v. Jarvis, cited with approval in Nash v. Lucas, the officer touched the execution debtor by putting his hand through a pane of glass in a window which had been broken in a scuffle to which the officer was a party, though the pane was not broken by him, and it was held a legal arrest. The window being open the arrest was held lawful; and because it was opened, or broken open by some one, not in privity with the officer—by some trespasser maybe—the officer was justified in using such opening in making the arrest.

To hold that it is a breaking for a landlord making a distress to enter a door opened by the tenant's servant, without privity of intent—for of course with privity the act of the agent would be the act of the principal—to my mind could only be done confusing a trespass with a breaking. The act of entry is a trespass, but a lawful one by a landlord making a distress without a breaking; and once in without such breaking the landlord could enter and re-enter at his pleasure with or without a breaking, Sandon v. Jarvis (supra), and Mahomed v. The Queen, 4 Moore, P. C. 239.

That there was no eviction or intent to evict I think the evidence shews plainly, but that is a matter which if material to the issue, the jury should determine not I. Not being a matter of justification in the action I withdrew it from their consideration.

The want of inventory and notice I only refer to—as it is not a matter of justification in this suit, that it might not be thought I had any doubt upon the matter.

Our Statute 12 Edw. VII. ch. 12, sec. 1—in part a transcript of (Imp.) 2 Geo. II. ch. 19, sec. 19—covers all irregularities made or done after the distress had been made. The delivery of the inventory, and affixing of the notice of distress are undoubtedly both acts required to be done in making a distress, as well when the landlord distrains in person as when by bailiff. Both of these acts must necessarily be done after the distress has been made, but since the Act the irregularity of not performing them does not make the distress unlawful, nor the party making it a trespasser, the