To this the plaintiff demurred, and the court held that the mere statement of the taking of a distress, without saying how long the same was detained, is not a satisfaction. The argument in support of the plea was that it stated that distress was taken on the premises, and the distress was *prima facie* lawful, and that after taking the remedy by distress, the tenant ought not to be harassed by an action for the rent.

The legality of a second distress was definitely raised in the case of *Lee* v. *Cooke*, 3 H. & N. 203, in the Exchequer Chamber. In that case the defendants, who were the commissioners for draining certain lands, distrained a bean stack of the plaintiff for a rate due from him, and sold the stack by auction, one of the conditions of sale being that the purchaser was to take possession and pay for the same at the fall of the hammer. At the time of the sale the plaintiff said that it would be one thing to buy the stack, and another to take it away, and when the purchaser attempted to remove the stack from the plaintiff's premises, he was forcibly prevented by the plaintiff. The purchaser did not pay for the stack, and the commissioners levied a second distress for the same. The present action was accordingly brought for illegal distress. At the trial the jury found that the purchaser had not at any time an opportunity of taking the stack away, and the judge thereupon directed a verdict for the defendant. The Court of Exchequer had refused to grant a rule to show cause. On appeal it was argued on behalf of the plaintiff that the sale under the first distress was sufficient to satisfy the rates, that as between the defendant and the plaintiff there was a valid distress, and that the illegal conduct of the plaintiff did not divest the property from the purchaser, who might maintain an action of trover against the plaintiff for the value of the stack. The true test, it was said, was whether there was such a delivery of the stack to the purchaser as would satisfy the Statute of Frauds. The decision of the court below was upheld. "The whole question," said Chief Justice Cockburn, "turns upon whether the first distress could have been carried out to its complete accomplishment. It is argued that while the stack stood on the ground of the plaintiff there was a constructive delivery to the purchaser, and that the fact of possession being resisted with violence, did not justify him in rescinding the contract, but that the remedy was by trover against the plaintiff. In my opinion this is not the correct view. I think that the right of the commissioners was the same as if, having distrained, they had gone to take possession of the stack for the purpose of selling it, and the plaintiff had interposed with violence and prevented them from completing the distress." The rule of law was stated by Mr. Justice Crompton to be that a person cannot distrain a second time for the same cause if he has had an opportunity of making available the first distress; but if by the unlawful act of the distrainee, the distrainor is prevented from realizing, he may distrain again. *Bagge* v. *Mawby* was distinguished on the ground that there a third person threatened the landlord, and thereby caused him to withdraw the distress; so here, if the purchaser had never made any attempt to get possession of the stack, this case would have come within the same principle. The first distress was rendered fruitless by the wrongful act of the plaintiff.

In the case before Mr. Serjeant Atkinson, it was contended by the counsel for the trustee that the case fell within the principle of the decision; that where there has been a withdrawal from the distress by the landlord, there having been sufficient goods to satisfy his claim for rent, the power to distrain a second time for the same rent is gone. There was another contention with which we are not here concerned. The judge decided in favor of the society, holding that the second distress was valid, on the ground that the withdrawal of the first distress was at the request of the debtor and for their accommodation, and that the second distress was consequently valid in law. The *ratio decidendi* here adopted is clearly supported by the expressions used by Baron Parke in *Bagge* v. *Mawby*.—*Law Times* (London).

—It may be interesting to lawyers to learn the source of that hackneyed line in "Pinafore," "And so do his sisters, and his cousins, and his aunts." The exact collocation of these relationships may be found in Blackstone's chapter on Coparcenery, and as Mr. Gilbert, the author of the *libretto*, is a lawyer, he has probably been consciously or unconsciously pilfering from Sir William.