

animals, where they are impounded on the premises, the distrainor has to feed them, but otherwise when they are in a public pound. *Cotsworth v. Bettison*, *Parrett Navigation Co. v. Stover*, and *Jones v. Burnstein*, are all cases in which the impounding was made on the premises; and in them the doctrine of the goods being "in custodia legis" by reason of such impounding was established—a doctrine founded on the need for the peaceable enforcement of legal process, and for the prevention of lawless rescue, and as needful, if not more so, when the chattels are impounded upon private premises, as when in a parish pound.

In the other case cited, *Berry v. Huckstable*, the decision does not support defendants' contention. It went no further than to hold that a plea traversing the allegation in the declaration that the plaintiff was landlord was good as shewing that defendant did not hold of plaintiff as tenant, and therefore that plaintiff was not a "person aggrieved" under Statutes II. Wm. & M., ch. 5, and 11 Geo. II., ch. 19. It decided nothing more than that a plea similar to those pleaded here is good in law.

I think it is equally clear that the matters urged by the defendants as a justification for his pound breach could not be given in evidence under the plea pleaded by him. *Castleman v. Hicks*, 2 M. & Rob. 422, *Myers v. Smith*, 9 N. B. 207. Such issues could only be raised by special pleas which, had they been pleaded must under the authorities quoted, have been held bad on demurrer.

It is not necessary, taking this view of the case, to consider whether there was or was not a breaking by the landlord, or an eviction of his tenant by him. But it may be advisable to consider these questions.

After a careful review of the evidence and the authorities, I am of the opinion that there was neither.

The first is a matter of law, the facts being undisputed, and the two comparatively recent cases of *Nash v. Lucas*, L. R. 2 Q. B. 590, and *Long v. Clarke*, L. R. 1894, 1 Q. B. D. 119, wherein the case of *Sandon v. Jarvis*, 28 L. J. Ex. 156, is cited and approved, settle I think the law as to what is a lawful entry in making a distress.

The sole question is, what limitations the law imposes on a landlord in making it. He is a trespasser but is so permitted by the law of distress, but he must break nothing. He can enter through any opening, an unfastened door, an