of the lease. On his cross-examination, after stating that the lease was in writing but that he did not know whether it was under seal or not, Mr. Carter, the defendant's counsel, produced his copy of the lease, which a few moments before he had refused to produce under the notice, and said, "Is that the lease?" A. "Yes." Q. "Is it under seal?" A. "I don't know." Mr. Carter: "I offer it for identification" The Court: "Is this your counterpart of the lease?" Mr. Carter: "Yes." It was then marked, Mr. Carter saying that he intended to offer it in evidence in his own case. What took place subsequently when the defendant was giving evidence for the defence is thus reported in the minutes. Mr. Carter, who was examining the defendant, said: "Tell the Court the terms of the lease" (Objected to and ruled out as being secondary evidence of the contents of a written document). Mr. Carter: "The plaintiff gave secondary evidence of the contents of the lease." The Court: "That was because you refused to produce the duplicate copy in your possession." Mr. Carter: "I have the right and I now tender the evidence of the witness to shew that he took the place with the option of surrendering it at the end of any month." The Court: "You should have produced the lease at the proper time. You are paying the penalty which law imposes on you for your non-production. In any case it would not help you, as you do not rely on a notice to quit. Refused." Mr. Carter: "Then I propose to prove and I offer in evidence a duplicate agreement between the parties as to the rent of the demised premises in question." This was also rejected.

I think the Judge of the County Court was quite right. The counterpart of the lease was better evidence of the lease than any mere copy of the original and certainly better than mere recollection of its contents: Munn v. Godbold, 3 Bing. 292. If the defendant with the duplicate original in his possession refused to produce it and compelled the plaintiff to give secondary evidence of the contents, it would seem to be giving the defendant great advantages if he could afterwards produce the document if it suited his purpose to do so. The rule as I have always understood it is laid down in Doe dem. Thompson v. Hodgson, 12 A. & E 135, where Lord Denman, C J., gave the considered judgment of the Court as follows, (p. 138): "In this case the question was, whether a party, who, at the trial, had refused to produce a writing which he possessed and thereby had drawn the other party