

III. In *R. v. Middlehurst*, 1 Burr. 399, an order of justices under the succeeding section for assisting in fraudulently removing or concealing, &c., was held good, though it would have been otherwise in an indictment. *If the tenant be privy to the removal he is within the Act and so **746** of a third party, *Lyster v. Brown*, 1 C. & P. 121; and the plaintiff may lay before the jury circumstances of suspicion to show fraudulent co-operation, *Stanley v. Wharton*, 10 Price, 138; see 9 Price, 301, S. C., from which it appears also, that the goods need not have been withdrawn from sight; it is enough that there has been such a removal as will cause the landlord difficulty in finding them, nor need any attempt or intention on the part of the landlord to distrain be proved. But if a creditor remove the goods of his debtor, with his consent, for a *bona fide* debt, even under an apprehension that the landlord will distrain, this is not such a fraudulent removal as will render him liable to the penalty, unless indeed the tenant had urged the creditor to seek this remedy, *Bach v. Meats*, 5 M. & S. 200. As to the double value, a variance between the amount of rent stated in the declaration and the amount proved is immaterial, for the measure of damages is not the quantity of rent but the value of the goods removed, *Gwinnet v. Phillips*, 3 T. R. 643. In other respects, however, the section being highly penal,⁴ the case must be brought within it, and strictly so as against a third party assisting in the removal, for not only his assistance but his guilty knowledge must be shown, *Brooke v. Noakes*, 8 B. & C. 537. The action is within 21 Jac. 1, c. 4, s. 4, and *nil debet*, or, as it seems, *not guilty* is a good plea, *Jones v. Williams*, 4 M. & W. 375.

IV. V. As to the jurisdiction of the magistrates, even if the title to the land be disputed, see *Coster v. Wilson*, 3 M. & W. 411.

That the party has in the first instance complained to a magistrate does not prevent him from afterwards maintaining an action, it being held that the party has his option to select either, *Stanley v. Wharton supra*; *Horsefall v. Davy*, 1 Stark. 169. If the goods are removed from one county into another, the proceedings may be before the justices of either, *R. v. Morgan*, Caldec. 156. It is said in *Burns' Just. tit. Distress*, that the complaint need not be upon oath, though the examination must be, *Coster v. Wilson supra*. The order need not enumerate the goods removed, *R. v. Rabbits*, 6 Dowl. & R. 341. And, as it is not a conviction, *R. v. the Justices of Cheshire*, 5 B. & Ad. 439, it is not necessary to set out the evidence. But it must show on its face that the complainant is the landlord or his bailiff, &c., and that the party removing the goods is the tenant, *R. v. Davis*, 5 B. & Ad. 551. And as to the commitment, the magistrates must show that they had jurisdiction, and hence a commitment, omitting to state a complaint in writing by the landlord or his bailiff, was held bad, though the order of adjudication stated that the defendant had been duly charged in writing, *Ex parte Fuller*, 13 L. J. M. C. 142. The form followed there was taken from *Burns' Justice*, but the Court observed that a form may be in use a long time as apparently correct but at last a blot in it may be hit, see, however, *Coster v. Wilson supra*. The appeals⁵ mentioned

⁴ *Hobbs v. Hudson*, 25 Q. B. D. 232.

⁵ See *Reg. v. Justices*, 6 Q. B. D. 669.