

terminate the lease and distrain for current rent, three months before it is due. But in this case there had been no breach of the covenants of the lease on the lessee's part when the entry was made. This entry was abandoned afterwards in favor of the assignee, who was put in possession. Does the defendant's right assume another phase after he had put the assignee in possession? Can he distrain upon the assignee's goods for four months' rent in advance? Can he take the assignee's goods under a warrant of distress against Bentham, issued after the assignee had become possessed of Bentham's goods? I have not been able to find satisfactory authority covering the exact points of this case. I do find authority that if a lessor enter and evict the lessee the rent is suspended, and the eviction will become a bar to subsequently accruing rent. Can this unlawful entry of defendant on the 5th of January be regarded as an eviction within the meaning of these authorities? Woodfall, *Ld. & Ten.*, 18th ed., 467.

Again the entry of defendant on the 5th of January may be said to have forced Bentham to make an assignment. Can defendant issue an illegal distress against his lessee when no rent is due, enter into his premises, and thus force him to an act of bankruptcy, and then by virtue of this act, to which he had forced him, secure his right to three months' advance rent?

All these questions are to me difficult and in a large degree novel. After a careful examination of the authorities and exercising my best judgment, I have reached the conclusion that defendant's warrant for four months' rent is not effective against the assignee. As, however, a month's rent became due on the 7th, when the plaintiff came to take possession of the premises, I think the defendant has a fair claim against the assignee for this amount.

I think the plaintiff is entitled to the value of the goods illegally seized under warrant on the 18th of January, and subsequently sold. I think the valuation of the sworn appraisers is a fairer guide than the proceeds of a forced sale. I therefore give judgment for the plaintiff for \$152.67, less \$40 rent due, \$112.67 with costs of action.

If it should be held by the court of review that defendant's second warrant was effective against the goods of the assignee, I fix the damages for the unlawful detention between January 7th and January 18th at one dollar, and I think plaintiff should have costs.