Presently the defendant reached the conclusion that his warrant of distress had been premature, and would not be valid nor justified by the terms of the lease. So he notified plaintiff to come and take possession of the store and goods, which he did on the 18th, and instantly he entered possssion, the defendant's bailiff, under a new warrant, dated January 16th, seized the said goods and took possession of the building. The warrant was for $160, which embraced not only the month's rent in advance, $40, which became due the 7th of January, but the next three months' rent as provided for in the lease. Under this warrant the goods were appraised and sold at auction for $116.

The plaintiff, acting under a resolution of Bentham's creditors, now brings this action claiming a conversion of goods to which plaintiff, as assignee, was entitled.

Several interesting questions of law arise in respect of this transaction. First of all nothing is heard respecting Wainwright, one of the lessees. It does not appear that he has violated the terms of the lease or received any notification of distress or re-entry. For the present I shall ignore this fact, and assume that his relation to the lease is only formal or nominal.

The first matter that is clear to me is that defendant had no right to issue his warrant for three months' rent on the 5th of January and re-enter and hold the goods of Bentham, and it is clear that he is liable to plaintiff for the unlawful detention of these goods between January 7th and 18th. But if defendant's subsequent proceedings are regular and lawful the damages in such a case would be simply nominal.

Defendant's second warrant of distraint, dated January 16th, is directed against the goods of Bentham; but Bentham had no goods, the goods were then vested in the plaintiff. The first question is, "Can defendant exercise the power of distress against the assignee for three months' advance rent; I think, as a matter of law, the official assignee is not bound to accept a leasehold estate included in the assignment and, if he does not elect to do so, is not liable as assignee of the assignor's lease.

But still another question arises. Since the defendant entered and terminated the lease without any breach on the part of the lessee, does he not thereby lose his remedy of distress? There are several English and Ontario cases which determine that an acceleration clause in a lease is valid, and if there has been a breach the lessor may, if the terms warrant,