the mortgage was not assailable under R.S.O., c. 124, s. 2, notwithstanding the findings of fact, because the mortgagees had requested the debtor to give them the security.

The judgment was reversed in the Divisional Court.

Per FALCONBRIDGE, J. It follows from the findings of fact that the pressure was merely a sham pressure—a piece of collusion.

Per STREET, J. There was *bonâ fide* pressure, but the doctrine of pressure does not apply where the debtor has transferred the whole of his property.

W. Cassels, Q.C., and *J. W. Curry*, for the plaintiffs.

W. F. Walker, Q.C., for the defendants.

MITCHELL *v.* MCCAULEY.

Landlord and tenant—Rent reserved—Acceleration of payment by issue of execution against tenant—Landlord procuring issue of execution—Responsibility of tenant—Right of distress—Payment of amount due under execution—Election—Forfeiture of term—Severance of reversion—Apportionment of rent—Evidence of consent of tenant—Distress on wrong premises—Ratification—Re-entry—Notice—R.S.O., c. 143, s. 11, s-s. 1—Covenant running with reversion—Benefit of acceleration clause—Assignee of part of reversion.

A lease contained a provision that in case any writ of execution should be issued against the goods of the lessee (the plaintiff), the then current year's rent should immediately become due and payable, and the term forfeited. The lessor having assigned part of the reversion to W. and part to the defendant, the latter gave information to a creditor of the plaintiff, which led to the plaintiff's being sued in the Division Court and suffering judgment, on which execution issued, and thereupon the defendant distrained upon the plaintiff's goods by virtue of the acceleration clause, there being no rent otherwise due.

In an action for wrongful distress, the trial judge found that the defendant had procured the obtaining of the judgment against the plaintiff, and that it had been paid before the distress without any seizure, and he was of opinion that the defendant could not treat it as accelerating the payment of the rent, and gave judgment for the plaintiff.

Upon appeal to a Divisional Court, the two judges composing it failed to agree.

Held, per STREET, J., (1) that the recovery of the judgment against the plaintiff was ascribable to his own default in not paying upon being served with the summons, and he alone was responsible for the consequences.

(2) That the payment of the amount of the execution without seizure before the defendant had elected to take advantage of its issue did not take away the right to distrain; for the acceleration of the rent and the forfeiture of the term were two distinct matters, and a lessor, not having elected to forfeit the term, might lawfully distrain for the accelerated rent.

Linton v. *Imperial Hotel Co.*, 16 A.R. 337, followed.

(3) That the rent was properly apportioned between W. and the defendant; for it was sufficient evidence of the plaintiff's consent to the apportionment made by his landlords that he had (though he said he always paid the whole rent to them together), on at least one occasion, made separate arrangements with W. for the payment of his proportion of it.

(4) That the action of the defendant's bailiff in first making a distress upon the part of the demised premises of which the reversion was in W. did not bind the defendant, in the absence of ratification by him, and did not therefore exhaust his right of distress.

Lewis v. *Read*, 13 M. & W. 834, and *Ferrier* v. *Cole*, 15 U.C.R. 561, followed.

(5) That the distress was not so connected with the right of re-entry as to bring it within s. 11, s-s. 1, of R.S.O., c. 143, requiring a notice to be given.

(6) That the acceleration clause was to be read as part of the covenant for the payment of the rent and as qualifying the time fixed for payment, and, as such, it was a covenant running with the reversion.

(7) That the acceleration clause made the rent (upon the happening of the event) payable as rent reserved, and was not to be construed as a condition which had been destroyed by the severance of the reversion.

Per ARMOUR, C.J. The rent distrained for was not payable by virtue of any reservation in the lease, but solely by virtue of the condition, and the benefit of such a condition does not pass to the grantee of a part of the rever-