

LONGLEY, J.:—The plaintiff is an official assignee for Cape Breton county, and as such the assignee of George H. Bentham, who, prior to January 6th, 1909, was doing business at Glace Bay. On the 6th of January he made an assignment to plaintiff of all he possessed under the Nova Scotia Assignment Act. Next day plaintiff went to Glace Bay to take possession of Bentham's effects. He was prevented by defendant from taking possession of the goods in Bentham's store, which, accepting the valuation of the sworn appraisers, I value at \$152.67.

The circumstances are as follows: Bentham and one, Robert Wainwright, entered into a written lease of certain premises belonging to defendant. The lease was for five years, and the rental \$40 a month, payable monthly in advance. The rent became payable on the 7th of each month, and had been paid up to January 7th, 1909. No rent was due until January 7th, when one month's rent became payable in advance. There was a special provision or condition in the lease, the essential part of which, so far as this action is concerned, is as follows: "If the said lessees shall make an assignment for the benefit of creditors, or becoming bankrupt or insolvent debtors, &c., then and in every such case, it shall be lawful for the lessor, his heirs, etc., into and upon the said premises or any part thereof in the name of the whole to re-enter and the same to have again, re-possess and enjoy as if these presents had never been executed, and the then current rent shall become immediately due and payable, and the next succeeding three months' rent shall also be at once due and payable, and the said term shall immediately become forfeitable and void."

On the 5th of January, before any rent was due, and before either of the lessees had made an assignment, or become bankrupt within the meaning of the Act, defendant issued a warrant of distress for three months' rent against the goods of Bentham in the premises so leased, and his bailiff entered said store and took possession of it and all the goods in it.

When Bentham was driven out of his store by defendant he went to Sydney and made his assignment to plaintiff the next day, the 6th. I cannot find that this act alone caused or justified the assignment, but no doubt it was the immediate cause of this step. Under this warrant the defendant on the 7th refused to allow plaintiff to take possession as assignee of Bentham's goods in this store.