[Reference to Bunyon's Law of Fire Insurance, 5th ed., pp 389, 400; Lees v. Whitely, L. R. 2 Eq. 143; Columbia Insurance Co. v. Laurance, 10 Peters at p. 511; Lynch v. Dalyell, 3 Bro. P. C. 497; Marshall on Insurance, p. 803.]

The fact that the moneys in the assignee's hands are the proceeds of the insurance effected by the tenant upon the chattels which had been distrainable by the landlord, at least up to the time of the assignment, gives to the landlord no right to a lien thereon; and the question involved in this appeal is whether, irrespective of the source from which the assignee in fact derived the fund in question, the landlord is, under the other circumstances of the case, entitled to a preferential lien thereon.

It was argued that the effect of the assignment was to place the estate in custodia legis, and, as in the case of an estate in the hands of a receiver, to deprive the landlord of his right to distrain, and In re McCracken, 4 A. R. 486, is relied on in support of this proposition. That case, however, can have no application here, as it turned largely upon the effect of sec. 125 of the Insolvent Act of 1875. . . . The Act under which the debtor here made the assignment contains no such provision. . . .

[Reference to Linton v. Imperial Hotel Co., 16 A. R. at p. 346.]

I am, therefore, of opinion that the goods upon which the plaintiff might have levied did not, upon the assignment, pass in custodia legis.

The remaining point for consideration is whether, the plaintiff not having distrained, and the goods having ceased to exist, the plaintiff has a preferential lien within the meaning of sub-sec. 1 of sec. 34 of the Landlord and Tenant Act. . . .

[Reference to Mason v. Hamilton, 22 C. P. 190, 411, 413, 416; Re McCracken, 4 A. R. at p. 492.]

It appears to me that the intention of the sub-section under consideration was merely to limit the amount of rent in respect of which the landlord should retain his lien, and not to enlarge his right by entitling him to resort to property not distrainable by him. . . .

The sub-section, in my opinion, makes no change in the law except to the extent of cutting down the landlord's common law right to a lien from six years' rent to one year's, and rent subsequent to the assignment. In other respects the rights of parties are not affected by the sub-section. It would thus follow that, the only funds in the assignee's hands being the insurance moneys, which are not the proceeds of the tenant's goods subject to the landlord's lien, there is no fund to which the lien applies; and,