

radical a change in the law as was contended for." [The learned Chief Justice then referred to sec. 3, sub-sec. 4, as showing that its presence in the Act was consistent only with the intention to retain the right of distress, and proceeds.] "The section is, with the exception of its saving clause, substantially in the same words as section 3 of the Landlord and Tenant Law Amendment Act (Ireland), 1860, 23 & 24 Vict., c. 154. It is highly probable that if the framer of the Ontario Act had had before him the caustic criticism which the Irish Act, as a whole, and its several parts, including section 3, received, as would appear from the reports of the cases to which I shall afterwards refer, from the Judges of the Courts of that country during the short time the Act was in force there, he would have chosen different language to express the idea which he probably had—that of doing away with the necessity of the having of the immediate reversion to entitle one to distrain who had let lands to another. The right of the plaintiff to distrain may also, I think, be supported upon the ground that the provisions of section 4 are not retrospective in the sense of their applying to tenancies existing at the time the Act was passed, and for this proposition *Busteed v. Chute*, 16 Irish Chy. R. (1865) 222, is, I think, a sufficient authority. But, even if section 4 of the Ontario Act apply to existing cases, I do not think that it has the effect of taking away the common law right of distress of the landlord. I am inclined to think that it will be found that the section, instead of curtailing, has enlarged the right of distress by extending it to all cases in which there is an agreement of the nature mentioned in it; but, however that may be, I ought not, I think, without a much clearer expression of the will of the Legislature, to give to its enactment such a construction as would practically sweep away the whole body of the law (common and statute) affecting the relations of landlord and tenant, and the rights, interests and obligations arising out of that relation, without substituting for it anything but the bald provisions of this section." Notwithstanding this judgment, however, which will probably be sustained on the main point, it would be well for the profession still to act on their guard in drawing leases.