of the whole of his interest by a lessee for years, the assignee is entitled to the benefit of all the covenants on the part of the lessor, though the assignment reserve a rent, and a power of re-entry for its non-payment, to the lessee, and contain covenants different from those in the original lease, Palmer v. Edwards, Doug. 187 *n.*, see however Hintze v. Thomas *infra.*

Possession not necessary to bind assignee—Trustee for creditors may refuse term.—It is also settled that where a party takes an absolute assignment of a lease the whole legal estate passes, and he thereby becomes liable on the real covenants, whether he becomes possessed of or occupies the premises in fact or not, Mayhew v. Hardesty *supra*,[33] where the principle was applied to a mortgagee of a term who never took possession, in accordance with the determination in Williams v. Bosanquet, 1 Brod. & Bing. 238, from which case it also appears, that it is immaterial as to the mortgagee's liability, whether the assignment become absolute by breach of the condition for non-payment, or not.[34] In Horwitz v. Davis, 16 Md. 313, where a general assignment was made to a trustee of all the property of a lessee for the benefit of creditors, it was held that the words were comprehensive enough to pass the grantor's interest in a term; but the trustee was not bound to accept the assignment of the term; he had his election to take it or not as he might deem it for the benefit of creditors, and he would not be liable for rent as tenant, unless he elected to take *it, or went into possession and occupied the premises under the **351** assignment.[35] But the trustee there having entered and taken possession of and used the premises for the purpose of selling the goods assigned to him, it was considered such an entry and acceptance of the assignment of the term, as made him liable for the rent as assignee of the lease. Under the Bankrupt Act, approved March 2, 1867, the assignees of a bankrupt have a like right of election, see James' Bankrupt Act, 40 *et seq.*[36] The rule is likewise applicable to a conventional trustee for a specific purpose, as to one holding in trust for securing an annuity, Gretton v. Diggles, 4 Taunt. 766.

Assignee only liable on covenants broken during his holding—Assignment to man of straw.—But the assignee of a term is not liable for covenants broken by the lessee before the assignment, Grescot v. Green stated *supra.*

---

[33] Commercial Asso. v. Robinson, 90 Md. 615, 618.

[34] But this must be understood as applying to a case where the mortgage does not contain a provision for the mortgagor's retaining possession until default. Where the mortgage does contain such a provision, the mortgagee is not liable until a default has occurred. Commercial Asso. v. Robinson, 90 Md. 615.

[35] Parlett v. Dugan, 85 Md. 413. Cf. Glenn v. Howard, 65 Md. 40. But a receiver, who is only the hand of the court, does not, by entering the premises and selling goods of the insolvent concern, make himself liable for the rent. Gaither v. Stockbridge, 67 Md. 222.

[36] The present Bankrupt Act of 1898 is silent on the subject; but it is nevertheless the duty of the trustee to elect or reject burdensome property, a reasonable time being allowed him for this purpose. Collier on Bankruptcy 832.