

the case fully and ably, the Court felt that it should not overrule the decision in *Jackson v. Kassel*, which was rendered by a strong Court and was exactly in point. It was significant that the Legislature had never seen fit to make any alteration in the statute, so far as the nature of the affidavit was concerned, during the fifty years that had elapsed since that case was decided.

Appeal dismissed with costs.

HIGH COURT DIVISION.

ROSE, J.

SEPTEMBER 29TH, 1917.

*RE METROPOLITAN THEATRES LIMITED.

*MAGEE REAL ESTATE CO. LIMITED'S CASE.

Landlord and Tenant—Assignment by Tenant for Benefit of Creditors—Landlord's Preferential Claim for Rent—Landlord and Tenant Act, R.S.O. 1914 ch. 155, sec. 38—Ascertainment of Period for which Rent Allowed—"Three Months Following the Execution of the Assignment"—"Execution" Including Delivery—Intention to Delay Completion after Signing and Sealing of Instrument—Arrears.

An appeal by the Magee Real Estate Company Limited, the landlord, from an order of the Master in Ordinary, in the matter of the winding-up of the Metropolitan Theatres Limited, disallowing part of the claim of the appellant company as landlord of the insolvent company, in the winding-up.

The appeal was heard in the Weekly Court at Toronto.

H. S. White, for the appellant company.

A. C. McMaster, for the liquidator of the insolvent company.

ROSE, J., in a written judgment, said that the rent reserved by the lease was \$20,000 per annum, payable in even monthly installments of \$1,666.67, in advance, on the 21st day of each month during the term. The lease contained a provision that if the lessee should make an assignment for the benefit of its creditors or should go into liquidation, the then current month's rent, together with the rent for the 11 months next succeeding, should immediately become due and payable.