

484, a tenant was evicted by a superior landlord during a quarter. His lessor claimed to recover a proportionate part of the quarter for the period he had had possession, but it was held that the eviction was a bar to his recovering any part of the quarter's rent.

Even in the Division Courts, where legal questions are not too rigidly considered, a difference exists on this point, in part due to the difference between the wording of the Division Court Act and the Consolidated Rules; the former only authorizing the attachment of debts due and owing, while the Consolidated Rules enable debts "due and accruing due" to be attached. Dean, Co. J., in the case of *Birmingham v. Malone*, 32 C.L.J. 717, thought this difference in wording ought to make no difference in the construction of the Act and Rules, but Ketchum, Co. J., in *Christie v. Casey*, 31 C.L.J. 35, thought it a vital point of difference. In the latter case it was decided that rent between gale days could not be attached, and in *Birmingham v. Malone*, it was held that it could. A recent case of *Barnett v. Eastman*, 61 L.J. Q.B. 517, seems to support the view of Ketchum, Co. J., even though the Division Court Act is construed as being to the same effect as the Rules, for there Day, J., held that under the English Supreme Court Rules, which are the same in effect as the Ontario Consolidated Rules, rent cannot be attached before the day of payment. So far as the Courts of Ontario are concerned the foundation of attaching rent before the day of payment is *Massie v. Toronto Printing Co.*, *supra*, a decision of the late Mr. Dalton (certainly a lawyer of no mean rank), affirmed by Galt, J., and acquiesced in by Boyd, C., in *Patterson v. King*. But as we have already pointed out, the very case on which the practice is founded seems also to contain a refutation of its soundness, rather shows that rent not yet payable is within the decision of the Court of Appeal in *Webb v. Stentou*, 11 Q.B.D. 518. The point is deserving of the attention of a Divisional Court as soon as possible.