

spect of rent payable for the current quarter on the 25th of March, 1889; the petition was presented and argued on the 23rd of March. Under the Apportionment Act, rent apportioned is payable when the entire portion of which such apportioned part forms part becomes due and payable, and not before; so that although the rent was accrued it was not due; and by the English Company's Winding-up Act a petition can be presented only by a creditor to whom the company is indebted in a sum then due (see secs. 79, 80, 82). All that was held in that case was that the accrued rent was not a debt then due.

This does not touch the point as to whether it may be "owing" though not "due." We are therefore left without authority to interpret the statute.

If a man has money borrowed at interest, with the right to repay it at any time, though the lender had the right to call it in only at some future fixed date, the debtor would be "owing" the accrued interest from day to day, and if he went to pay his debt in advance of the time fixed he would pay the accrued interest because he was "owing" it. If from any cause any rent, annuity or dividend ceases in the middle of a term, the accrued amount is "owing," though not due and payable till the end of the term. Nothing could afterwards happen to make it any more "owing," for all consideration has ceased, only judgment is postponed.

The words in the Apportionment Act "accruing from day to day" mean that the rent shall become from day to day the property of the person who at the time has the right to it, and if it is his property it is owing to him, notwithstanding the modes prescribed by the Act for its recovery.

I think the difference in the wording of the Acts has come from inadvertence, and not from any intention of the Legislature to give a different effect in the different Courts to the same state of facts.

Judgment against garnishee.

## Province of Prince Edward Island.

### SUPREME COURT.

Full Court.]

[Nov. 3.]

ROBINS *v.* MOTHERSILL.

#### *Absent debtor attachment—Abuse of process of the Court.*

The defendant left the Province of Prince Edward Island, as he alleged, temporarily, and the plaintiff, after the defendant left, issued an absent debtor attachment against his property in pursuance of the Absent Debtor Act, 1873 (Stats. of P.E.I.) That statute enables an attachment to be issued when the defendant is either absent or absconding.

When the defendant returned he applied upon affidavits to have the attachment set aside on the ground that he was not an absent debtor within the meaning of the Act.

The plaintiff resisted the application, claiming that in fact the defendant was absent at the time the attachment issued, and that he had reasonable grounds for issuing it.

The Court refused to set aside the attachment, and discharged the appli-