recoverable in the case of a continuing rent when the entire portion, of which such apportioned part forms part, becomes due and payable, and not before."

The rent is a daily accruing debt, and the Judicature Act makes a debt accruing attachable. The question here is, Is this accruing debt a debt "owing" within the meaning of the Division Court Act?

I find only two Division Court judgments dealing with the attachment of apportioned rent. The first is *Patterson* v. *Richmond*, 17 C. L. J. N. S. 324, in which rent so accrued was held to be attachable, but though the judgment seems to be fully reported, this point is not considered. It was probably not raised. The other case is *Christie* v. *Casey*, 31 C. L. J. N. S. 35, in which it is held that such rent cannot be attached.

Whilst I have very great respect for the opinion of the learned and careful Judge who decided the latter case, I feel compelled to dissent from the conclusions reached by him. As the point is one of great importance I quote the judgment. Unfortunately it is not reported as fully as its importance deserves.

"Rent accruing, but not yet payable, cannot be attached in the Division Courts. In *Massie* v. *Toronto Printing Co.*, 12 P.R. 12, it was held that rent which had accrued by virtue of R.S.O. ch. 136 (1877), (now ch. 143 of R.S.O. 1887), up to the date of the attaching order, could be atatched under Rule 370 (now 935), by which debts 'owing or accruing,' are made attachable; but I think that decision conflicts with *Webb* v. *Stenton*, L.R. 11 Q.B.D., 518. In the Division Courts, debts, to be attachable, must be 'due or owing,' and there must be a 'debt,' 'debitum in presenti,' though it may be 'solvendum in futuro." Accruing rent is not such a debt (per Crompton, J. in *Jones* v. *Thompson*, E. B. & E. 63, as cited in *Webb* v. *Stenton*, at p. 523). The Act, R.S.O. ch. 143, sec. 2, does not make it such a debt, nor does it make it "a debt" "due or owing," but "accruing" de die in diem. See *In re United Club and Hotel Company*, W.N. 1889, p. 67."

Massie v. *Toronto Printing Co.* was decided in 1887; *Webb* v. *Stenton*, in 1883. Even if we were at liberty to follow the earlier decision, it will be found on examination that *Webb* v. *Stenton* is itself not in point. It is valuable here only for the quotation it contains from Crompton, J., in *Jones* v. *Thompson*, referred to above, p. 523, which is as follows: "I, myself, at Chambers have always acted on the supposition that the garnishing clauses apply only to cases in which there is an existing debt, though it may be only accruing; on that principle I have refused to make orders attaching rent before it becomes due, and instalments of an annuity not yet due, because they were not yet debts."

This was a mere obiter dictum, *Jones* v. *Thompson* not being a case about rent, though at the time the dictum was good law; but this case was decided in 1858, and the Apportionment of rent Act, of which ours is a transcript, was not passed in England until 1870, so that it throws no light upon the effect of the apportionment of rent.

In re United Club and Hotel Company, was a matter under the English Winding-up Company's Act, 1862 (25 & 26 Vict., ch. 89, sec. 821), and was a petition for the winding up of the company presented by the landlord of the premises in which the company's business was carried on, as a creditor in re-