

affirmed, and the appeal and cross-appeal both dismissed with costs.

MACLAREN, J.A., concurred.

HODGINS, J.A., read a judgment in which he said that he took the view of the majority of the Court in *Langley v. Meir*, that sec. 38(1) was intended to prevent priority for accelerated rent beyond 3 months from the execution of the assignment—the intention was to restrict, and not to enlarge or accumulate, rights of distress.

On the facts of this case, and on the assumption that the assignee gave up possession, the landlord should be held entitled to a preferential lien for so much of the accelerated rent as did not extend beyond 3 months after the date of the assignment. This would give him the rent from the 1st January, 1915, to 7th September, 1915, and for 3 months thereafter—more than 11 months. This was practically the same period for which GARROW, J.A., thought the defendant entitled; and HODGINS, J.A., agreed in the dismissal of both appeals, and in the direction for payment into Court.

MEREDITH, C.J.O., read a judgment in which he expressed the opinion that the defendant was entitled to distrain for the two years' rent as rent which became in arrear "during" the year next preceding the execution of the assignment; but also the opinion that the acceleration clause was void against the plaintiff, as a fraud upon the Assignments and Preferences Act, R.S.O. 1914 ch. 134—referring to *In re Hoskins and Hawley*, 1 A.R. 379; *Baker v. Atkinson*, 11 O.R. 735, 752, per Armour, J.; *In re Murphy* (1803), 1 Sch. & Lef. 44; *Ex p. Mackay* (1873), L.R. 8 Ch. 643; *Ex p. Barter* (1884), 26 Ch.D. 510.

The defendant's appeal should be dismissed, and the plaintiff's appeal allowed.

MAGEE, J.A., agreed that the defendant was entitled to distrain for the two years' rent, but did not agree that the acceleration clause was void. He was, therefore, in favour of allowing the defendant's appeal and dismissing the plaintiff's appeal.

*Judgment as stated by GARROW, J.A.*