

On the 11th January, 1915, some days before the date of the lease, but during the term therein mentioned, Goodbrand gave a chattel mortgage, and on the 1st May, 1915, he gave another. The defendant, asserting that, by reason of the acceleration clause, the rent for the last two years of the term (the first having been paid) had become due, distrained for the whole.

Britton, J., held that the defendant was entitled to a preferential lien, but only in respect of one year's rent.

The defendant appealed from that holding; and the plaintiff cross-appealed upon the ground that the allowance should be reduced to six months' rent.

Reference to the statutory provision upon which the case turns, sec. 38(1) of R.S.O. 1914 ch. 155; *Linton v. Imperial Hotel Co.* (1889), 16 A.R. 337; *In re Hoskins and Hawley* (1877), 1 A.R. 379; *Langley v. Meir* (1898), 25 A.R. 372; *Baker v. Atkinson* (1886-7), 11 O.R. 735, 14 A.R. 409.

The decision in *In re Hoskins* was not followed in *Linton v. Imperial Hotel Co.* and *Langley v. Meir*, and the Court was not now bound to follow it, so far as it could be deduced from it that an acceleration clause such as that in question was ipso facto void as against creditors. So to hold would be to treat as a presumption of law that which was properly a presumption of fact; and, if it was to be regarded as a presumption of fact, the presumption failed because there was no evidence before the Court as to the financial condition of the lessee when the lease was executed. The lessee may have been solvent then, or he may have since discharged all his then obligations.

The word "during" in sec. 38(1)—in the phrase "restricted to the arrears of rent *during* the period of one year next preceding"—should be read as meaning "for." The right to distrain is not taken away; but the lien is reduced to one year's rent, if so much or more is owing, that is, that not more than one year's arrears prior to the assignment, whether the arrears are actual or accelerated, can now be claimed.

It would have been a wise precaution to have had the owners of the chattel mortgages before the Court as parties. The assignee may find that he has really been fighting a battle for their benefit rather than for that of the creditors whom he represented.

The money realised from the sale, less the expenses of the sale, should be paid into Court to abide the further order of the Court.

Subject to this variation, the judgment below should be