

BOYD, C.

MARCH 9TH, 1915.

*RE FASHION SHOP CO.

Company—Winding-up—Landlord's Preferential Lien for Rent—Landlord and Tenant Act, R.S.O. 1914 ch. 155, sec. 38—Existence of Statutory Lien Irrespective of Distress or Possession—Voluntary Assignment for Benefit of Creditors before Winding-up Order—Winding-up Act, R.S.C. 1906 ch. 144, secs. 5, 23, 133.

Appeal by the liquidator of the company, in process of winding-up under the Winding-up Act, R.S.C. 1906 ch. 144, from the finding of the Master in Ordinary, in the course of the reference, that the company's landlord was entitled in the distribution of the assets to priority in respect of his claim for rent.

The appeal was heard in the Weekly Court at Toronto.

A. C. McMaster, for the liquidator, the appellant.

L. F. Heyd, K.C., for the landlord.

BOYD, C.:—"In case of an assignment for the general benefit of creditors by a tenant the preferential lien of the landlord for rent shall be restricted to the arrears of rent due during the period of one year next preceding, and for three months following, the execution of the assignment:" Landlord and Tenant Act, R.S.O. 1914 ch. 155, sec. 38.

The phrase "the preferential lien of the landlord for rent" means, as construed by decisions binding on me, that the landlord has a statutory lien upon goods available for distress, independent of actual distress or possession, for the amount of the rent as limited by the section: *Lazier v. Henderson* (1898), 29 O.R. 673, at p. 679; *Tew v. Toronto Savings and Loan Co.* (1898), 30 O.R. 76.

This was the condition of the assets in the hands of the voluntary assignee under the debtor's general assignment of the 28th December, 1914, and such was the plight of affairs when the notice was served on the 31st December of a petition to wind up the company. At that date the winding-up proceedings "shall be deemed to commence:" R.S.C. 1906 ch. 144, sec. 5.

After the winding-up order is made (in this case on the 8th January, 1915), every attachment . . . distress or execution put in force against the effects of the company shall be void: