

Ferguson, J.]

[Dec. 14, 1898.]

TEW v. TORONTO LOAN AND SAVINGS COMPANY.

*Landlord and tenant—Assignment for the benefit of creditors—Future rent—Preferential lien—Accelerating clause—R.S.O., 1897 C. 170, S. 34.*

A lease under which the rent was payable quarterly in advance contained a provision that if the lessees should make an assignment for the benefit of creditors, the then current and next ensuing quarters' rent and the current year's taxes etc., should immediately become due and payable as rent in arrear, and recoverable as such.

*Held*, on the lessee making such an assignment, that the lessor was entitled to recover—in addition to a quarter's rent due and in arrear for the quarter proceeding the making of the assignment—the current quarter's rent, being the quarter during which the assignment was made, which was also due and in arrear, as well as a further quarter's rent, together with the taxes for the current year. *Langley v. Meir* (1898) 34 C.L.J. 467; *Lazier v. Henderson*, (1898) 29 O.R. 673, 34 C.L.J. 698 commented on.

*C. D. Scott*, for defendants, *D. W. Drumbell* for plaintiffs.

Armour, C.J.]

HASLEM v. SCHNARR.

[Dec. 28, 1898.]

*Liquor License Act—License—Granting of, by commissioners—Rescinding resolution—Discretion—Exercise of—Jurisdiction of Court—Mandamus—Notice of action.*

An action for a mandamus to compel license inspectors and license commissioners to perform their respective duties and for damages as subsidiary relief is not within the terms of R.S.O. c. 88, and no notice of action is necessary.

In an action to enforce the issue of a license which by resolution of the commissioners has been granted to the plaintiff, but which resolution was afterwards rescinded in order to grant a license to a subsequent applicant when his hotel should be built and which was then granted to him.

*Held*, that the license commissioners appointed under the Liquor License Act have in the exercise of their functions a wide discretion, but it must be exercised judicially, and the Court has power to compel them to so exercise it, and that the commissioners were not acting judicially but unfairly and contrary to the spirit and interest of the Liquor License Act in rescinding their resolution granting the plaintiff a license in order to grant it to a subsequent applicant, but as the license had been issued to the subsequent applicant and the ordering of the issue of a license to the plaintiff would be ordering the issue of a license in excess of the number limited by law, no relief could be granted and the action was dismissed but without costs. See *Leeson v. The Board of License Commissioners of the County of Dufferin* (1890) 19 O.R. 67.

*W. N. Ferguson*, for the motion. *N. W. Rowell*, contra