

currency of this lease, the rental to be paid for all the premises leased while the same is in force shall be determined by arbitrators under the Arbitration Act."

On the 27th April, 1916, the Ontario Temperance Act, 6 Geo. V. ch. 50, was passed; it came into force (sec. 149) at 7 o'clock in the afternoon of Saturday the 16th September, 1916; and it was not open to question that the effect of the Act was to bring into operation the above-quoted proviso.

The quarter's rent which was payable in advance on the 1st August, 1916, was not paid when it became payable; and, it not having been paid afterwards, the respondent distrained for it. The appellant thereupon applied for relief under sec. 65 of the Landlord and Tenant Act, and was ordered to pay into Court the quarter's rent pending the disposition of his application.

The question for decision was, whether the effect of the lease and of what had happened was to entitle the appellant to refuse to pay the quarter's rent that fell due on the 1st August, 1916, and to suspend the right of the respondent to distrain for it.

There was nothing to interfere with the respondent's common law right to distrain for the rent that was in arrear and unpaid when he made the distress. It was not the case of rent falling due after the Act had come into force; and even as to such rent it was at least doubtful whether, until after award, there would be anything to prevent the landlord distraining for it, whatever right the tenant might have, in the event of the result of the arbitration being to reduce the rent payable by the terms of the lease, to have repaid to him what he had paid in excess of the reduced rent.

None of the cases cited supported the appellant's contention. Reference to *Bickle v. Beatty* (1859), 17 U.C.R. 465; *Mitchell v. McDuffy* (1880), 31 U.C.C.P. 266; *Hessey v. Quinn* (1910), 20 O.L.R. 442.

Until the event mentioned in the proviso happened, the reservation of the rent of \$800 continued; and the landlord had the right to require payment of the rent which fell due before the happening of the event, and, if not paid, to distrain for it either before or after the event happened.

The language of the proviso, "the rental to be paid . . . shall be determined," was consistent only with the application of the proviso to rent which by the terms of the lease should become payable after the happening of the event.

The Apportionment Act, R.S.O. 1914 ch. 156, is not applicable to rent payable in advance: *Ellis v. Rowbotham*, [1900] 1 Q.B. 740; *Linton v. Imperial Hotel Co.* (1889), 16 A.R. 337, 343.

Appeal dismissed with costs.