

On the 21st February, 1917, the insolvent company signed and sealed an assignment for the benefit of its creditors and left the document with its solicitor—the intention being that some small debts should first be paid, and that the solicitor should then make the assignment effective by giving the document to the assignee on the 22nd. Owing to some delay or misunderstanding on the part of a clerk of the solicitor, the assignment did not come to the hands of the assignee until the 23rd. The assignee promptly went into possession. At that time there were distrainable assets sufficient to pay the rent.

The winding-up order was made on the 2nd March, 1917.

The month's rent due in advance on the day of the assignment, the 21st February, was not paid. The landlord claimed a preference for that rent and for the rent for the three months following. The Master held that the preference extended only to the rent for three months, *including* the rent due on the 21st February.

Section 38 of the Landlord and Tenant Act, R.S.O. 1914 ch. 155, provides: "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 during the period of one year next preceding and for three months following the *execution of the assignment*"

The learned Judge said that to his mind it was clear that the assignment was not *executed* on the 21st. In order that a deed shall be effective it must be "delivered"—that is to say, the party whose deed the document is expressed to be, having first sealed it, must by words or conduct expressly or impliedly acknowledge his intention to be immediately and unconditionally bound by the expressions contained therein: Halsbury's Laws of England, vol. 10, p. 386, art. 691. While he need not part with the possession of the document, he must intend to be bound by it: *Barlow v. Heneage* (1702), Prec. in Ch. 210; *Evans v. Grey* (1882), 9 L.R. Ir. 539; *Doe d. Garnons v. Knight* (1826), 5 B. & C. 671.

Sometimes the "execution" of a document means the signing or signing and sealing of it; but "execution" in its proper sense means "carrying out some act to its completion;" in the case of a written instrument, the signing, sealing, and delivery: 17 Cyc. 875-77.

Nothing in the statute indicates that "execution" is used in any other than its strict legal sense, viz., completion; and there was no evidence of any intention that the assignment should be complete on the 21st.