William Laidlaw, K.C., for the appellants.
R. J. McLaughlin, K.C., for the plaintiff, respondent.

RIDDELL, J., in a written judgment, said that the Bank of Hamilton in May, 1914, had judgment against Richman and another for $1,451.92 and interest. Richman was the owner of land which, in April, 1914, he leased to Sheridan for three years from the 1st April, 1914, at a rental of $400 per annum due on the 1st November, 1914, 1915, and 1916. The bank on the 15th May, 1914, issued a writ of fi. fa. goods and lands and placed it in the sheriff's hands. In September, 1915, the bank obtained an attaching order and served it upon Sheridan. On the return of the summons, the Master in Chambers made an order for payment into Court of the rent due to Richman by Sheridan on the 1st November, 1915; and the money was paid into Court and paid out to the bank. In January, 1916, Richman assigned the rent to Holliday, who gave notice of the assignment to Sheridan. In September, 1916, the bank obtained a new attaching order and served it. In January, 1917, Holliday appeared to contest the bank's claim to the rent, and an issue was directed to try the rights of the parties, the tenant having paid the rent-money into Court. The Judge who tried the issue held that Holliday, the plaintiff therein, was entitled as against the bank, the defendants; and the defendants appealed.

The previous attaching order was effete and could have no effect in the present case. The fi. fa. lands had no effect as binding the rent—being an ordinary rent-seck, it was not exigible under the old statutes: Dougall v. Turnbull (1851), 8 U.C.R. 622. Section 34 of the Execution Act, R.S.O. 1914 ch. 80, introducing sec. 10 of the Conveyancing and Law of Property Act, R.S.O. 1914, ch. 109, into the definition of "land," is not far-reaching enough to cover rent. That being so, and the rent being free from the operation of the fi. fa., there was no reason why the debtor should not assign it.

Overdue rent is a debt attachable: Mitchell v. Lee (1867), L.R. 2 Q.B. 259. Before the Apportionment Act (now R.S.O. 1914 ch. 156, sec. 4), rent not yet due was not attachable: McLaren v. Sudworth (1858), 4 U.C.L.J. O.S. 233; Commercial Bank v. Jarvis (1859), 5 U.C.L.J. O.S. 66. The general trend of authority in this Province is in favour of the pro rata part of the rent being attachable: Massie v. Toronto Printing Co. (1887), 12 P.R. 12; Patterson v. King (1895), 27 O.R. 56; and other cases. In England it has been held that the rent pro rata is not attachable: Barnett v. Eastman (1898), 67 L.J.N.S. Q.B. 517, by Day, J.