

approach by gong or whistle? The question admits of but one answer.

New trial with costs.

LATCHFORD, J., concurred.

DIVISIONAL COURT.

NOVEMBER 11TH, 1909.

MILLER v. TEW.

*Landlord and Tenant—Assignment for Benefit of Creditors—
Preferential Lien—Landlord and Tenant Act, R. S. O. 1897
ch. 170, sec. 34—Destruction of Tenant's Goods by Fire after
Assignment—Substitution of Insurance Moneys for Goods in
Hands of Assignee.*

Appeal by the defendant from the judgment of BOYD, C., 14 O. W. R. 207, upon a stated case.

The question was whether the plaintiff, a creditor of S. E. Mitchell for \$300, being the amount of rent owing by him for one year immediately preceding his assignment for the benefit of his creditors, was entitled to a preferential lien therefor on moneys in the hands of the assignee, the defendant.

On the 2nd November, 1908, the defendant, as assignee, entered into possession of the demised premises, and on the 4th November, 1908, the goods on the premises, the stock in trade of Mitchell, assigned to the defendant, were destroyed by fire. At the time of the execution of the assignment the goods were insured against loss by fire, and the policies were assigned to the defendant, who collected the insurance moneys, \$6,450.

The Chancellor allowed the claim of the plaintiff to rank as a preferred creditor in respect of the \$300, holding that the landlord's preferential lien attached to the insurance moneys in the assignee's hands.

The appeal was heard by MULOCK, C.J.Ex.D., MACLAREN, J.A., and CLUTE, J.

M. H. Ludwig, for the defendant.

Featherston Aylesworth, for the plaintiff.

MULOCK, C.J.:— . . . With all respect, I find myself unable to accept the Chancellor's conclusion. Nor, in my opinion, are the right of the parties affected by the circumstance that the moneys in the assignee's hands are the proceeds of the insurance of the insolvent's goods upon which the landlord had a lien for rent. . . .