

THE LOCAL MASTER held that Ellard's lien related back to the commencement of his work, and under sec. 13 of the Mechanics' Lien Act it was entitled to priority over Drummond & Co.'s assignment for the full amount of the lien, and not merely for that portion thereof actually earned by Ellard up to the date of the assignment; also, that the assignment was valid and bound the debt assigned, though it was not payable at the date of the assignment; also, that a debt due and owing is a sufficient consideration for an assignment of a chose in action, and that the assignment was, therefore, not revocable or impeachable as being voluntary.

---

JANUARY 23RD, 1905.

C.A.

HAMILTON v. MUTUAL RESERVE LIFE INS. CO.

*Appeal to Supreme Court of Canada—Leave to Appeal after Time Expired—Application to Judge in Chambers—Subsequent Application to Court—Election of Forum—Appeal—Discretion.*

Motion by defendants, under sec. 42 of the Supreme and Exchequer Courts Act, for an order allowing an appeal to the Supreme Court of Canada from the judgment of the Court of Appeal (3 O. W. R. 851), notwithstanding that the time for appealing had elapsed, and, in the alternative, by way of appeal from the order of MACLAREN, J.A., in Chambers (4 O. W. R. 299), refusing a motion for the same order.

W. M. Douglas, K.C., for defendants.

D. L. McCarthy, for plaintiff.

THE COURT (MOSS, C.J.O., MACLENNAN, GARROW, J.J.A.), held that where a party has two forums to choose from, a Judge in Chambers and the Court, and elects to apply to a Judge, he cannot afterwards come to the Court upon a substantive application. If an appeal lay from the order of Maclaren, J.A., it was not a case in which the Court should interfere with the discretion exercised on the material before him.

Motion dismissed with costs.