

From Boyd, C.]

McVITY v. TRENOUTH.

[Jan. 23.

*Limitation of actions—Title by possession—Registry Act—
Notice—Mortgage—Avoidance of prior unregistered deed—
Relation back to date of deed.*

In 1891 the female defendant, being desirous of conveying to the male defendant in contemplation of her then intended marriage with him an interest in certain land owned by her, conveyed the land in fee simple to a conveyancer who then conveyed to her and her intended husband in fee simple as tenants in common. The conveyancer duly registered the conveyance to himself, but fraudulently omitted to register his conveyance to the defendants, who then were and continued to be down to the time of the bringing of the action in actual possession of the land. The conveyancer, after previously mortgaging the land to other persons, mortgaged it in 1895 to the plaintiffs, who registered their mortgage in good faith, the previous mortgage having been paid off. The fraud was not discovered till 1902, and in 1903 the plaintiffs brought this action to enforce their mortgage;

Held, that the avoidance by virtue of the Registry Act of the prior unregistered deed by the conveyancer to the defendants related back to the time of its execution; that from the time of the execution of the deed by the female defendant to the conveyancer the legal title was in him and that the statute then began to run against him; that the mortgage by him in 1895 to the plaintiffs did not give a new starting point to the statute as against the defendants, and therefore that the action was barred. Judgment of Boyd, C., reversed.

Cameron v. Walker (1890), 19 O.R. 212, must, in view of the decision to the contrary of the Court of Appeal in *Thornton v. France*, [1897] 2 Q.B. 143, be regarded as no longer of authority.

Watson, K.C., and *Ruddy*, for appellants. *H. J. Scott*, K.C., for respondents.

HIGH COURT OF JUSTICE.

W. L. Scott, Local Master.]

[Nov. 24, 1904.

OTTAWA STEEL CASTING CO. v. DOMINION SUPPLY CO.,
AND THE CITY OF OTTAWA.

*Mechanic's lien—Assignment—Debt "due"—Lien holder—Priority—When lien attaches—Mechanic's Lien Act—
(R.S.O. c. 152)—ss. 4, 13—Jud. Act, s. 58 (5).*

Where E., sub-contractor, commenced work August 29, 1903, and completed his contract Oct. 11, 1904, and registered his lien Oct. 12, 1904, and on November 14, 1893, the contractor by