

Special case.]

FERGUSON, J.]

[May 2.]

IN RE EATON.

Life insurance -- Insurance for benefit of wife -- Death of beneficiary -- Lapse.

John Eaton insured his life, the policy being made payable "to his wife Sarah, her executors, administrators, or assigns."

The wife Sarah died before the testator, who himself died in 1892.

Held, that the provision in the payment for the policy to her, her executors, etc., became void on her death in the lifetime of the testator, and the insurance money was personal estate of John Eaton.

The words "executors, administrators, or assigns" used in the policy made no difference, and the policy was one under R.S.O., c. 136, s. 1, for securing to wives and children the benefit of life insurance, and under s. 9, the person entitled under it having died in the lifetime of the insured, the insurance money formed part of the estate of the latter.

W. H. Blake for the administratrix of John Eaton.

Shepley, Q.C., for the administrator *ad litem* of the estate of John Eaton.

BOYD, C.]

[May 5.]

COCK & T. BELSHAW.

Mechanics' lien -- "Prior mortgage" -- R.S.O., c. 126, s. 5, s-s. 3.

Held, that "prior mortgage" in s. 5, s-s. 3, of the Mechanics' Lien Act means the existing in fact before the lien arises, though not necessarily prior in point of registration.

If, however, improvements are put on the land after the mortgage, the increase of value derived therefrom is to be saved for the mechanic who improves as against the prior mortgage by virtue of the Act.

But in this case, where under the mortgage advances were to be made from time to time as the work progressed, and the mortgage was registered, and such further advances were made before a lien was registered.

Held, that as the mortgage was registered each payment attracted to itself the advantage of the Registry Act, so as to gain priority over the concurrent unregistered lien.

Hoyle, Q.C., for the Freehold Loan & Savings Company

Jarvis for the plaintiff.

Mills for George Phillips, a lienholder.

BOYD, C.]

[May 8.]

MC CALLUM & RIDDELL.

Will -- Construction -- Gift to firm -- Condition rendered impossible of performance by act of God -- Lapse.

A testator bequeathed as follows: "I direct that as soon as conveniently may be after my decease a partnership be formed by my two sons, Peter and Charles, under the name of 'P. McCallum & Bro.'; in which partnership and firm my two sons shall be equal partners in every particular, and sharing equally in the profits of the same. To the said firm, so to be formed, I give and bequeath," etc.