

and the bank at once gave notice of this assignment to the company. The company thereafter made payments of progressive estimates for the work to the bank and paid nothing to the plaintiff. When the bank took its assignment from Garson, it had no notice of the plaintiff's position, but, from about the time the first estimate was paid, it knew that the plaintiff was doing the work and that Garson from time to time transferred to him the progressive payments, with the understanding that they were to be handed over to the plaintiff.

Held, 1. The agreement between Garson and the plaintiff at most amounted to an equitable assignment of the money to be earned and the bank, having acquired priority for its assignment by first giving notice to the company, was not affected by its subsequent knowledge of the plaintiff's position, and was entitled to retain all money received and to receive the balance still unpaid by the company.

2. The plaintiff could, under the circumstances, have no claim against the railway company in respect of the work. *Burck v. Taylor*, 152 U.S. 649, and *In re Turcon*, 40 Ch. D. 5. followed.

George A. Elliott and Macnail, for plaintiff. *Curle and Bond*, for the company. *Fullerton and Foley*, for the Imperial Bank.

Province of British Columbia.

COURT OF APPEAL.

Full Court.]

[Nov. 8.

REX v. DAY.

Criminal law—Speedy trial—Election—Change—Sheriff.

1. A person committed for trial and out on bail, appearing voluntarily with his counsel before a county judge and electing to be tried speedily cannot afterwards change his election so as to be tried by a jury.

2. The fact that the sheriff was not present on such occasion or that he did not notify the judge of the accused coming before him for election, does not invalidate such election.

3. An objection to a conviction by a civil court of a person for receiving property stolen from the navy, on the ground that such an offence should be dealt with by the naval authorities, is bad.