

SUPREME COURT OF JUDICATURE
FOR ONTARIO.*Queen's Bench Division.*

Divisional Court.]

[March 7.]

TRUAX v. DIXON.

Mechanics' Lien—Material men—Extent of lien—Cross claim by owner against contractor—Set-off—Payment—Registered claim of lien, requirements of—R.S.O. c. 126, ss. 9, 10 16, and schedule—Affidavit—Commissioner.

The last of the materials in respect of which the plaintiffs as sub-contractors claimed a lien under the Mechanics' Lien Act, upon the estate of the land-owner, were delivered on the 16th September, 1887, and the claim of lien was not registered, nor was notice in writing given until the 11th October, 1887, and this action to enforce the lien was not brought till the 29th October, 1887.

Held, that under ss. 9 and 10 of R.S.O. c. 126, the lien claimed did not attach so as to make the owner liable to a greater sum than the sum payable by the owner to the contractor.

Goddard v. Coulson, 10 A.R.I., followed.

The owner had an old account against the contractor for bread supplied, which account with interest he charged against the sums due to the contractor under the contract.

Held, upon the evidence, that the account and interest should be treated not as a matter of set-off, but as a payment of so much of the contract price.

S. 16 of R.S.O. c. 126, requires that the claim of lien shall state the time or period within which the materials were furnished. The claim registered in this case did not state the year, but only the months and days of the months, in which the materials were furnished. It stated, however, that the materials were furnished on or before the 17th September, 1887, and in this and all respects it followed form I. in the schedule to the Act; and ss. 2 of s. 16 provides that the claim may be in one of the forms given in the schedule to the Act.

Held, that the statement that the materials were furnished on or before a named day was a sufficient statement of the time or period within which they were furnished, according to the true intent and meaning of s. 16.

Roberts v. McDonald, 15 O.R. 80, overruled.

The question of the authority of schedules to Acts of Parliament discussed.

The land upon which the lien was claimed was in the County of Wellington, but the affidavit of the plaintiffs verifying the claim of lien registered, was made in the County of Bruce, and before a commissioner for taking affidavits in that county.

Held, that the affidavit satisfied s. 16, ss. 2 of the Act.

H. P. O'Connor, for the plaintiffs.

W. H. Kingston, for defendant, George Dickson.

Chancery Division.

BOYD, C.]

[Jan. 16.]

RE McMILLAN.

Agreement—Power of those for whose benefit it is made to enforce same—Release.

In consideration of a conveyance to him of a certain farm, H.M. agreed with his mother, M.J.M., that he would during her life provide her with a house on the farm, and with necessities, and support his brothers and sisters thereon, until they reached sixteen years of age, so long as they remained at home on the said farm and assisted him so far as they were able in the management of it.

Held, that M.J.M. had no right or power to release H.M. from the obligations undertaken by him with reference to his brothers and sisters under the above agreement, and if the children did their part they could hold their brother to his promises, though the agreement was not in terms made with them as parties.

Hoyle, for petitioner.

ROBERTSON, J.

[Feb. 14.]

Re SPROULE, SHARP v. SPROULE.

Will—Construction—Devise "if my father does not alter his will—Legacies—Vesting.

A testator by his will provided that in case his father did not revoke his will and so deprive him (the testator) of certain lands therein devised to him, then he (the testator) devised to S. certain