

4. Sections 85-88 of the Land Registry Act providing for the cancellation of a *lis pendens* are not available in practice where, as in this case, the nature and extent of the interest affected by the *lis pendens* are not ascertained.

5. The plaintiff was entitled to a declaration of right only and the Court declared that he was within his rights in making the payments before notice of the adverse claim; that the *lis pendens* did not affect the interest acquired by the plaintiff under his contract and that the defendant company has a charge on the lands for the amount of purchase money unpaid.

So long as there remains anything to be done to work out the judgment in an action the action is pending.

Upon a contract for the sale of land the purchase price of which is payable by instalments the vendor retains an interest in the land proportional to the amount of purchase money unpaid which interest is capable of being affected by *lis pendens*

Semble, generally a cause of action imperfect at the issue of the writ is not perfected, either at law or in equity, by subsequent events.

Judgment of IRVING, J., varied.

Bloomfield, for appellants. *Reid*, for respondents.

Full Court.]

[April 28.

CENTRE STAR MINING CO. v. ROSSLAND-KOOTENAY MINING CO.

Practice—Appeal to Privy Council—Leave—Amount in controversy—Privy Council Rules, 1887.

Motion for leave to appeal to the Privy Council. The parties were owners of adjoining mines and by the judgment of the Full Court the defendants were restrained from permitting water to flow through certain artificial openings into plaintiffs' mine and defendants were also ordered to pay plaintiffs \$10 damages. It appeared from affidavits used in support of the motion that the defendants would be put to an expense of over £300 in obeying the injunction.

Held, that in determining the question of the value of the amount involved, upon which the right to appeal to the Privy Council depends according to the terms of the Privy Council Rules of 1887, the Court will look at the judgment as it affects the parties; and as it appeared on affidavit that defendants in obeying an injunction would be put to an expense of over £300, they were granted leave to appeal.

C. R. Hamilton, K.C., for the motion. Sir Charles Hibbert Tupper, K.C., contra.