

The case is, therefore, on all fours with the cases put in the passages from the Institutes above quoted, and according to Roman law C. would be entitled to get back the picture on paying for the canvas, unless A. chose to pay for the picture, in which case he would be entitled to retain his canvas.

Should such a case ever arise we should not be surprised if a British judge should declare that to be English law too—and hold that C. has a lien on the canvas for his work performed in such circumstances. But whether it be English law or not we have no hesitation whatever in saying if it is not, it ought to be.

We may observe that the principle of giving a man a lien for lasting improvements made by him on the land of another under a mistake that the land is his own has been affirmed by our statute law, R.S.O. c. 119, s. 30, and it would not be a very long step to say that the same rule equally applies in the case of chattels, especially when it is remembered that this statutory enactment was merely affirmatory of a previously well-established equitable right. The Act allowing improvements under a mistake of title was not passed until 1873, but many cases are to be found in which the Court of Chancery, prior to that date, had give effect to claims of that kind. The most familiar case is that of a trustee or person standing in a fiduciary character assuming to become the purchaser of the trust estate, there, though the Court would set aside such a purchase, it would, nevertheless, allow to the purchaser compensation for improvements made by him of a permanent and lasting character: see *Fox v. Mackreth*, 2 White & Tud. Lg. Cas. in Eq., p. 757; so also where a purchaser of land had gone into possession and made improvements and owing to defects in his vendor's title he was entitled to rescind the contract: see *Brunskill v. Clark*, 9 Gr. 430.

In the same volume, p. 255, there is a case of *Kilborn v. Workman*, where Spragge, V.C., refused the relief, basing himself on *McKinnon v. Burrows**, but in the later case of *Gummerson v. Banting*, 18 Gr. 516, the same judge granted the relief, remarking that the point decided in *McKinnon v. Bur-*

*The reporter omits to give any reference to the report where this case is to be found. It is probably that reported in 3 O.S. 590; 4 O.S. 7.