from the garnishee, and, as the claimants who set up the liens under the Mechanics' Lien Act are invoking a merely statutory authority, they have no right, in my opinion, to set up that the statute under which they act gives them a superior right to the garnishors, in the absence of any provision of law entitling them to the precedence which they claim.

I, therefore, under the powers conferred upon me by sec. 144 of the Division Courts Act, and the general provisions affecting the question before me, decide and adjudge that the debt due by the garnishee is subject to payment of the respective debts of the primary creditors, Robert McCully and John Patterson, because nothing but the order of the Court can undo the effect of the service of the garnishee summonses: (see O'Brien's D. C. Manual 131, note (*e*).

I do not see that *King* v. *Alford*, 9 O. R. 643, cited by Mr. Farley, in any way affects the question in controversy between these parties.

I therefore order Charles Rowley, the garnishee, to pay into Court, and there will be judgment recorded against him for the sum, due by him to the primary debtors, David Ross and Peter Ross, of $79.

That the Clerk do pay the claim of the garnishor, Robert McCully, the debt due by the primary debtors, amounting to the sum of $21 00
Costs of suit 3 02

$24.02

And to the garnishor, John Patterson, his debt of $18 20
Costs of suit 3 02

$21 22

Total $45 24
Which leaves a balance of $33 76
to be divided ratably amongst the other creditors under the Mechanics' Lien Act as follows, viz.
To Henry Lindop cr. $30 46 ..... $18 99
" James Stewart " 19 44 ..... 12 12
" Mark Bowley " 2 65 ..... 2 65
Total $33 76

And I further order, that upon each of the said Henry Lindop, James Stewart and Mark Bowley executing and filing with the Clerk, a full discharge of the said liens, ready for registry, that the said sums be respectively paid them, as in full of their said liens.

NOTES OF CANADIAN CASES.

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CHANCERY DIVISION.

Divisional Court.] [Dec. 3, 1885.

FERGUSON V. WINSOR.

Vendor and purchaser—Mistake—Sale by plan—Representation—Notice.

The judgment of O'CONNOR, J., reversed.

Per BOYD, C.—The evidence in this case does not come up to the standard laid down in *Dominion Loan Society* v. *Darling*, 5 A. R. 577, by Moss, C.J., that "it must be demonstrated what the true terms of the bargain were, and that by mutual mistake they were not incorporated in the writing. The proof must be clear, satisfactory and conclusive."

The defendant bought lot 7 as contained in S.'s mortgage, and obtained a deed from the executors according to a registered plan which is to be treated as incorporated therewith, and he is even, as against his representation to the plaintiff that the piece in dispute was a portion of the property she was in treaty for and subsequently purchased, entitled to claim the benefit of Gordon's position as purchaser and registered owner for value.

Per PROUDFOOT, J.—Even if the representation were proved, the plaintiff owned no property at the time it was made to be affected by it, and such an expression of opinion should not estop him from purchasing lot 7 eighteen months afterwards. The purchasers at the auction sale got a better bargain than they thought they had made, but they had no knowledge of any right to be interfered with had they chosen to assert their title to the whole lot, this raises no equity against them in the plaintiff's favour.

Even if the defendant had notice of the plaintiff's equity, he is entitled to claim the benefit of the want of notice of the purchasers at the auction sale.

Lash, Q.C., for the appeal.

Moss, Q.C., contra.