

MEREDITH, C.J., ROSE, J., }
MCMAHON, J. }

[Feb. 10.]

PATRICK ET AL. v. WALBOURNE ET AL.

Mechanics' lien—Increased value—Destruction of—Rights of lienholder and mortgagee—When increased value to be ascertained.

In a mechanics lien proceeding, where it was found by an official referee that the lienholders had increased the selling value of the land to an amount equal to their claims, and to that extent were declared prior to mortgages on the premises, although pending the proceedings the buildings were burned down and the increased value gone.

Held, (on an appeal to a Divisional Court, affirming FALCONBRIDGE, J., who had reversed the Referee) that the policy of the Act is to take from the mortgagee the benefit which at common law he was entitled to, of the work and materials, which after the making of his mortgage had been employed in the improvement of the property, and which had not been paid for by the mortgagor, and to leave his security otherwise unimpaired. The lienholder gets priority to the mortgage on the increased value, and the mortgagee retains his priority over the lienholder as to all that his security embraces, except that increased value, and any loss or depreciation in value of that which gives the increased value to the land must fall on the lienholder, the increased value, and that only, is his security as against the mortgagee.

Semble, the question of what is the increased value to which the lienholder is entitled as against the mortgagee to resort for the satisfaction of his lien, cannot be finally determined until the lands have been sold, and it is with reference to the result of the sale, and the condition of the property at the time of the sale that the respective rights of the mortgagee and the lienholder are to be finally ascertained.

James Bicknell, for the appeal.

Aylesworth, Q.C., contra.

ARMOUR, C. J.)
STREET, J.)

Feb. 27.

BEATTIE v. DINNICK.

Statute of Frauds—Promise to answer for the debt of another—Guarantee or indemnity.

The plaintiff was a holder of a note of a company of which the defendant was president, and was pressing for payment when the defendant verbally promised to see him paid.

Held, (reversing the judgment of FALCONBRIDGE, J.) that a promise, whether unconditional or not, to pay a debt for which another remains liable is within the fourth section of the Statute of Frauds, while a promise to indemnify is not; and that as the defendant's promise was really a guarantee and not an indemnity, the plaintiff could not recover.

Guild & Co. v. Conrad, (1894) 2 Q.B. 885, cited, considered and followed.

Aylesworth, Q.C., for the appeal.

J. W. Elliott, contra.