

had never wholly completed his work, but that it was understood between him and Cleveland that the work was not finished and that, when the rest of the elevator should be so far finished as to allow the machinery put in by plaintiff to be tested, his workmen would have to go back and test and complete it, and that, when plaintiff's workmen did return, less than thirty days before the filing of the lien, and attempt to complete, they were prevented by the company from so doing.

*Held*, that the lien was registered in time and should be enforced.

*Campbell* K.C., A.G., and *Hoskin*, for plaintiff. *Knott*, *Taylor*, and *Ferguson*, for other lienholders. *Phippen* and *Minty*, for defendants.

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Richards, J.] NOBLE v. TURTLE MOUNTAIN. [Sept. 11.

*Municipal law—Repairs to highway—Bridge carried away by flood—Municipal Act, R.S.M. 1902, c. 116, s. 667—Damages, from what date—Continuing cause of action—King's Bench Act, Rule 566—Mandamus—Remedy by indictment—Costs.*

Action for a mandamus to compel the defendants to rebuild a bridge over a stream which crosses the road allowance along the north side of the plaintiff's farm and runs diagonally through the farm dividing it into two parts, and for damages suffered by plaintiff by reason of defendant's refusal to rebuild or repair the bridge which had been carried away in the spring of 1902 by the high water. The banks of the stream were so steep that the plaintiff could only get from one part of his farm to the other by making use of the bridge on the road allowance, and after it was carried away he had to drive several miles further than before to get across the stream.

The defendants had prior to 1902 at various times done work on the bridge and on adjoining portions of the highway of which it formed part.

*Held*. (1) That, under s. 667 of the Municipal Act, R.S.M. 1902, c. 116, the defendants were liable to the plaintiff for the special damages suffered by him by reason of their non-repair of the highway in question. *Iveson v. Moore*, 1 Ld. Raymond 495, 12 Mod. 262, followed.

(2) The mandamus asked for should not be granted, as there was another adequate remedy, viz., to proceed by indictment, but the refusal of the mandamus is to be without prejudice to plaintiff's right to so proceed.