

extent of the value of the security before the work is begun in respect of which the lien attaches, and the lien should have priority only to the extent of the additional value given by the subsequent improvements. The Court has always been solicitous to protect mortgagors from being improved out of their property, and under the Mechanics' Lien Law the Court must be equally solicitous to protect mortgagees from being improved out of their security.

C. J. Holman for the mortgagee.

Hoyles, Q.C., for the lien holders.

BOYD, C.]

[April 2.]

RE MCLEAN AND WALKER.

Sale of land—Agreement—When payment to be made—Title—Prior mortgage—Time to take possession—Interest.

In an agreement for the sale of land it was provided that the cash payment should be made and the mortgage for the balance given "so soon as the solicitors for the purchaser shall be satisfied with the title."

Held, that the meaning of the contract was, that payment was not to be required until such title was shown as would justify the purchaser in taking possession; and, following *Wills v. Maxwell*, 32 Beav., 552, that no satisfaction being given as to a prior mortgage affecting the land until two years after the agreement, the purchaser could not prudently take possession until then, and interest on the purchase money should only be allowed from that time.

H. Cassels for the vendor.

Moss, Q.C., for the purchaser.

BOYD, C.]

[April 3.]

Re GOODFELLOW, TRADERS BANK v. GOODFELLOW.

Banks and banking—Warehouse receipt—Wheat, conversion into flour—Following moneys representing such flour—R.S.C., c. 120, s. 56.

The Traders Bank took a warehouse receipt from one G., a miller, on 2,800 bushels of wheat in his mill on August 12th, 1888. G. died June 19th, 1889. Shortly before his death the Bank became aware that there was a shortage of wheat in the mill and took possession of what

was then there, viz., some 700 bushels. It was proved that as a matter of fact there had been a shortage ever since August 27th, amounting to never less than 638 bushels. Subsequently to August 27th some wheat had been manufactured into flour, and sold out of the mill by G., and some \$105 had come into the hands of the administrator of his estate from this source, which sum was a great deal less than the value of 638 bushels of wheat. There was no attempt to prove that this flour was made from the identical 2,800 bushels of wheat in the mill when the receipt was given.

Held, on appeal from the report of the Master at St. Thomas, that the Bank was entitled to follow this sum of \$105 in the hands of the administrator, and to claim the same under their warehouse receipt.

A. H. F. Lefroy for the appeal.

Malone, contra.

Practice.

MACLENNAN, J.A.]

[April 14]

MULOCK v. CAWTHRA.

Money in court—Payment out to next of kin of deceased party—Personal representative—Revivor.

Money in court will not be paid out to the next of kin of deceased parties without a personal representative having been appointed and made a party by revivor, except in simple cases, where the sum in court is small and the circumstances are such that the court can see that it is safe to dispense with administration or revivor or both, in order to save costs.

R. M. Macdonald for the applicants.

MACLENNAN, J.A.]

[April 14]

MCCONNELL v. WAKEFORD.

Security for costs—Residence of one of two plaintiffs out of Ontario—Rule 1242—Indorsement on writ of summons—Order for security—Irregularity—Nullity—Waiver by compliance.

The writ of summons was indorsed with a statement that the plaintiffs resided at the township of Brant, in the County of Bruce, and in the State of Wisconsin, in the United States of America. Upon this an order was issued upon