

family was a valuable consideration for the settlement, and that it could not be impeached.

John Rowe for the plaintiffs.

E. P. Clement for the defendant *Adeline Dopp*.

ORR ET AL. v. DAVIE.

Mechanics' lien—53 Vict., c. 37 (O.)—Jurisdiction of master—Practice—Procedure.

In a proceeding in the Master's office under 53 Vict., c. 37 (O.), in which the Master in Ordinary decided that his jurisdiction was a limited statutory one, and that because the statement of claim did not show the time the work was done, and the certificate issued under section 3 was not served as prescribed by section 6, he had no power to amend or proceed further and set aside the lien,

Held (reversing the Master in Ordinary), that he should have entertained the application to extend the time for prosecuting the reference; and that all the ordinary rules of procedure in the conduct of contested litigation are to be read into the Act which was intended to simplify, but not to introduce new rules of practice.

C. J. Holman for the appeal.

Macklem contra.

BOYD, C.]

[June 15.

JENNINGS v. WILLES.

Mechanics' liens—"Payments"—R.S.O., c. 126, s. 9.

The word "payments" as used in s. 9 of R.S.O., c. 126, is not a technical word, but one in popular use. It should not be limited to the case of actual payments in cash by the owner into the hands of the contractor. It may well cover payments made by the owner at the instance or by the direction of the contractor to those who supply materials to him. It may well cover tripartite arrangements by which an order is given by the contractor on the owner for the payment of the material man out of the fund, and this, when accepted, fixes the owner with direct liability to pay for the materials.

R. McKay for defendant *Willes*.

D. M. Robertson, F. E. Hodgins, and Kilmer for other parties.

Practice.

Q.B. Div'l Court.]

[June 13

IN RE SOLICITOR.

Solicitor and client—Delivery of bill of costs—Supplemental bill—Inadvertence—Special circumstances.

A solicitor is bound by the bill which he delivers, and he cannot as of course withdraw it, or substitute another bill, or reduce his demand, or deliver a bill containing other charges; but if he wishes to do so, he must make a special application for leave.

A solicitor in delivering a bill omitted to make any charge for "days employed in going to and returning from Ottawa" upon professional business. He stated that the omission was through inadvertence.

Held, not a "special circumstance" justifying an order for leave to deliver a supplemental bill.

F. E. Titus for the solicitor.

E. T. Malone for the clients.

PATTERSON v. SMITH.

Pleading—Defence arising after action—Confession—Judgment—Rule 440—"Otherwise order."

In an action against a judgment debtor and his brother to set aside a conveyance by the former to the latter as fraudulent, both defendants pleaded several defences. Afterwards the judgment debtor applied for leave to amend by adding as a defence, without abandoning his other defences, that since the judgment debt had become extinguished by reason of a set-off ordered in another action.

Held, a case in which the plaintiff should not be allowed to confess the new defence and sign judgment for his costs under Rule 440, but one in which the court should otherwise order under the last clause of the Rule.

Construction and history of Rule 440.

Harrison v. Marquis of Abergavanny, 57 L.T.N.S. 360, discussed.

Pepler, Q.C., for the plaintiff.

W. R. Smyth for the defendant *Albert I. Smith*.