

RECENT ENGLISH DECISIONS.

Smith, in which he argues that registration of the lien is necessary to protect the lienholder as against registered incumbrances is cited, apparently with approval. *McVean v. Tiffin* may, equally with *Richards v. Chamberlain*, be possibly supported on the grounds we have suggested, or on other grounds which might be mentioned; but the actual reasons given for the judgment appear to us, with all due deference to the Court of Appeal, quite untenable.

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The English *Law Reports* for September comprise 17 Q. B. D., pp. 413-493; and 32 Chy. D., pp. 525-642.

MASTER AND SERVANT—DEFECTIVE CONDITION OF WAY OR PLANT—EMPLOYERS' LIABILITY ACT, 1880—49 VICT. C. 28 s. 1 (O.).

Proceeding first to the consideration of the cases in the Queen's Bench Division, we think *Thomas v. Quartermaine*, 17 Q. B. D. 414, deserving of attention. The case was one under the English Employers' Liability Act, 1880, 43 & 44 Vict. c. 42, from which 49 Vict. c. 28 (O.) has been adapted. The facts of the case were that the plaintiff was an employee of the defendant in his brewery, and was engaged in the cooling room, in which were a boiling vat and a cooling vat, and between them was a passage which was in part only three feet wide. The cooling vat had a rim rising sixteen inches from the floor of this passage, but it was not protected by any rail or fence. The plaintiff went along this passage in order to get, from under the boiling vat, a board which was used as a lid. As this board stuck, the plaintiff gave an extra pull, when it came away suddenly, and the plaintiff, falling back into the cooling vat, was severely scalded; and for the injuries thus sustained, the plaintiff in the present action sought to recover compensation; but it was held by Wills and Grantham, JJ., that there was no evidence of any defect in the ways, works, or plant of the brewery within the meaning of the Act, and therefore, that the action should be dismissed. The case was

distinguished from *Webbin v. Ballard*, 17 Q. B. D. 122, which we noted *ante*, p. 239, on the ground that in the latter case the ladder was found to be not in a proper condition for the purpose for which it was used, which amounted to a defect in the plant, whereas the court found in the present case that the passage and the vats were in a proper state. Wills, J. says at p. 417:

Now the test whether machinery or plant be defective or not within the meaning of the statute, laid down in the case of *Heske v. Samuelson*, 12 Q. B. D. 30, and adopted by the Court of Appeal in *Cripps v. Judge*, 13 Q. B. D. 583, was whether the machine was fit or unfit for the purpose for which it was applied. The same test must of course apply to a "way," and following that test, I am of opinion that there was in this case no defect within the meaning of sec. 1.

ASSIGNMENT OF CHOSE IN ACTION—RIGHT OF ASSIGNEE TO SUE.

In *Harding v. Harding*, 17 Q. B. D. 442, the plaintiff claimed to recover from the defendants, who were executors and trustees under a will, a balance appearing to be due to a residuary legatee upon the footing of an account which they had rendered to him, and upon which the legatee had written the following direction: "I hereby instruct the trustees in power to pay to my daughter Laura Harding, the balance shown in the above statement." Notice in writing having been given to the trustees, they at first assented to the assignment, but subsequently refusing to be bound by it, the action was brought by Laura Harding to enforce payment. For the defendants it was argued that the assignment, being of a *chose in action*, was invalid, and could not be enforced because it appeared to have been made without consideration. But the court (Wills and Grantham, JJ.) were of opinion that the assignment was valid, and the plaintiff was entitled to recover under it. With regard to the argument that the plaintiff was a mere volunteer, and therefore, equity would not enforce the assignment in her favour. Wills, J., says at p. 444:

The rule in equity comes to this; that so long as a transaction rests in expression of intention only, and something remains to be done by the donor to give complete effect to his intention, it remains uncompleted, and a Court of Equity will not enforce what the donor is under no obligation to fulfil. But when the transaction is completed, and the donor has created a trust in favour of the object of his bounty, equity will interfere to enforce it.