

counsel began his re-examination thus: "Take, for example, the larger contract, the Johnson contract was the larger?" And after a few questions regarding the method of working it out, counsel for the bank intervened, saying: "It might facilitate matters if I say the bank does not claim anything that does not represent materials taken from the yard." That statement, having regard to the context, applies, I think, to both the Johnson and the Saunders' contracts, and the learned trial Judge has declared the bank entitled to payment out of those contracts in respect of the pledged materials, thus giving the bank all it claimed at the trial in respect of the Johnson and Saunders' contracts. It cannot now recede from that position and claim all the moneys payable under those contracts. I therefore think that that portion of the cross-appeal should be dismissed.

As to the cross-appeal in respect of the book debts, the learned trial Judge was apparently of opinion that at the trial the bank had abandoned any claim to the book debts, but the notes of the trial do not support this view. To the extent that these book debts represent materials pledged to the bank, the latter, as against the plaintiff, a mere volunteer, is, I think, entitled to follow the proceeds, and to that extent the cross-appeal is allowed. If the parties cannot agree as to the amount, there will be a reference to the Master, who will dispose of the costs of the reference.

No costs of the appeal or cross-appeal to either party.

CLUTE, J.:—I agree.

RIDDELL, J., concurred in dismissing the appeal, giving reasons in writing, but thought the dismissal should be with costs.

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DIVISIONAL COURT.

DECEMBER 24TH, 1912.

VOLCANIC GAS & OIL CO. v. CHAPLIN.

*Water and Watercourses—Crown Grant of Land Bounded by Highway Running near Bank of Lake—Encroachment of Water upon Highway and Land beyond—Right of Grantee to Land Covered by Water—Trespass—Injunction—Damages.*

Appeal by the defendants from the judgment of FALCONBRIDGE, C.J.K.B., reported 27 O.L.R. 34, where the facts are set forth.