

MECHANICS' LIENS—RECENT ENGLISH DECISIONS.

are disposed to think that it could not, and that is exactly the position in which a sub-contractor is placed under section 3. He is declared to have a lien on the land of the owner to the extent of the money due by the owner to the contractor by whom he (the sub-contractor) is employed. If this be the proper view of section 3, then it is plain that the decision in *McCully v. Ross* has proceeded on a wrong basis in assuming the attaching creditor to be prior in point of time, because the lien created by section 3 in favour of the sub-contractor was, according to the statement of the case, plainly prior in time to the obtaining of the attaching order.

No doubt under section 8, if money were attached and paid over under order by the owner before he had written notice of the liens of the sub-contractors upon it, he would be protected. Possibly, however, the money even in such a case could be recovered by the lienholder from the attaching creditor to whom it had been paid. If the owner had written notice of the lien of the sub-contractor it is clear that he would be bound to set up this *jus tertii*, and if he neglected to do so and suffered an order to be made for payment of the money to the attaching creditor, it would be no discharge to him as against the claim of the lienholder.

RECENT ENGLISH DECISIONS.

The *Law Reports* for December comprise 15 Q. B. D. pp. 561-711; 10 P. D. pp. 137-199; 30 Chy. D. pp. 191-657; and 10 App. Cas. pp. 437-679.

WILL—CONSTRUCTION—SUPPLYING BLANK IN WILL.

The case of *In re Harrison, Turner v. Hellard*, 30 Chy. D. 390, arose out of the negligent use of a blank form in drawing a will. The will, after providing for payment of debts by the executrix thereafter named, gave all the tes-

atrix' real and personal property "unto — to and for her own use and benefit absolutely; and I nominate and constitute and appoint my niece, Catharine Hellard, to be executrix of this my last will and testament."

Both Kay, J., and the Court of Appeal held that the original will might be looked at for the purpose of aiding the construction, and looking at the will and seeing that it was a printed form with blank spaces left by the printer, one of which occurred after the word "unto," which the testatrix had not cancelled or drawn her pen through but left as she found it, they came to the conclusion that the will might be read as elliptically conferring a gift on Catharine Hellard. Lord Esher, M.R., laid down what he termed a golden rule of construction, viz., "that when a testator has executed a will in solemn form, you must assume that he did not intend to make it a solemn farce—that he did not intend to die intestate when he has gone through the form of making a will. You ought, if possible, to read the will so as to lead to a testacy, not an intestacy."

EQUITABLE MORTGAGE BY DEPOSIT—VOLUNTARY PAROL TRANSFER OF CHARGE.

In re Richardson, Shillitto v. Hobson, 30 Chy. D. 396, was a case in which an equitable mortgage by deposit of a deed had handed over the deed as a gift to his nephew, and by parol assigned him the money due in respect of it, and the question was whether this amounted to a valid assignment of the equitable mortgage, and Kay, J. (who was affirmed by the Court of Appeal), held that it did not, and that as the transferee of the deed had not a valid transfer of the charge he was not entitled to retain the deed as against the administrator of the deceased equitable mortgagee.

UNDER-LEASE — EFFECT OF AGREEMENT THAT UNDER-LEASE SHALL CONTAIN THE SAME COVENANTS AS ORIGINAL LEASE.

The Court of Appeal in *Haywood v. Silber*, 30 Chy. D. 404, had to consider the effect of an agreement between the plaintiff and defendant whereby the plaintiff agreed to grant the defendant an under-lease of certain property "to contain all usual covenants (including a covenant not to assign or underlet without the consent of the plaintiff, such consent not to be withheld if the proposed assignee or