out his title completely, he will not be deemed an executor *de son tort: Densler* v. *Edwards*, 5 Ala 31.

So when a deceased had mortgaged certain chattels but the chattels had remained in the mortgagor's possession up to the time of his death, and the defendant then took and sold them; it was held that the taking of the chattels into his possession under a fair claim of right did not charge upon such person any liability as an executor *de son tort: Smith* v. *Porter*, 35 Me. 287. See also *Claussen* v. *Lafrenz*, 4 Greene 224.

The cases referred to and many others also show that the administrator Pritchard is shut out by the fraud or criminal act of the testator from impeaching the validity of these warehouse receipts.

On the evidence before me I find that after the testator's death Herson took possession of these goods; that he claimed such possession of them as the warehouseman who had given warehouse receipts for them; that he told the bank's officers that they might take the goods; that thereupon and by virtue of their warehouse receipts the banks took and disposed of the goods; that they had a fair claim of right to take the goods, and in no way took them as characteristic of the office of an executor, or so as to make them chargeable with the liability of executors *de son tort*.

I am still inclined to think that when the question of jurisdiction is further considered, it will be found that the new action of account under R. S. O. c. 107 s. 30 by one set of creditors against another set of creditors who have obtained the proceeds of a testator's estate beyond their *pari passu* proportions, and by virtue of securities which are valid against the personal representative cannot be prosecuted under a Chamber order for administration and on oral pleadings in the Master's office. If it can, then every fraudulent conveyance of property made by a debtor to a creditor in his lifetime, and not impeached, may be set aside under similar Chamber orders for the administration of such debtor's estate. The cases where this action of account has been enforced show that it lies where creditors have realized their claims out of the assets of the estate under judgments against the personal representative: *Bank of British North America* v. *Mallory*, 17 Gr. 102; *Taylor* v. *Brodie*, 21 Gr. 607.

The claims made by the unsecured creditors and the administrator under the order on appeal, are dismissed with costs.

COUNTY COURT OF YORK.

LANG V. GIBSON.

Mechanics' lien—Garnishment—Priority.

One G. did some repairing for T. and furnished the materials which he purchased from H. After the completion of the work, T. was garnished in the Division Court for the amount of a note held by one L. against G., L. having learned that T. had not fully paid G. for his work. After the service of the garnishee summons, but within thirty days after furnishing the last of the material, H. filed his lien under R. S. O. cap. 120, and intervened in the garnishee suit, claiming to be entitled under his lien to the money in T.'s hands.

Held, that the lien took priority, and that garnishee must fail.

[McDOUGALL, JJ.—Toronto, Feb. 11.

McDOUGALL, JJ.—This is an action against the primary debtor for a note, Trinity College garnishees. Judgment has been given against the P. D. and the contest is between the primary creditor and Harris & Co., who claim to have a lien against the garnishees. The contest is as to which of them is entitled to the fund admitted to be due Gibson by the garnishees, Trinity College.

The work was completed on the 13th October, 1884, and Harris & Co., in their lien, as filed, state that the last material was supplied on the 13th October. Their lien was not filed until the 3rd November, 1884, and the garnishing process was served on the garnishees on the 20th October, 1884. *Query*—Which has priority? The material furnished here by Harris & Co. was not supplied to Trinity College, but to Gibson, the P. D., who was making certain repairs to the College buildings. There was no contract between the College authorities and Gibson. What he did was jobbing work only, to be paid for by the day and according to its value.

R. S. O. cap. 120, sec. 3, gives a lien to every mechanic, etc., etc., "or other person doing work upon or furnishing materials to be used in the construction, alteration or repairs of any building," etc., "by virtue," etc., "of furnishing," etc.

Sec. 8 is to the following effect: All persons furnishing materials to or doing labour for the person claiming the lien, in respect of the subject of such lien, who notify the owner of the premises sought to be affected thereby, within thirty days after such material supplied, etc., etc., shall be entitled to a charge therefor *pro rata* upon any amount payable by such owner under said lien.

Sec. 4, as to the lien under sec. 3, enacts: That the statement of claim (for the lien) may be filed *before* or *during the progress* of the work aforesaid, or *within thirty days thereafter*.

Sec. 11 enacts: That all payments made in good faith by the owner to the contractor or sub-con-