

Chan. Div.]

NOTES OF CANADIAN CASES.

[Prac.]

Full Court.]

[May 21.]

## KING V. ALFORD.

*Mechanic's lien—Railway buildings—Engine house.*

*Held*, following *Breeze v. The Midland Railway Co.*, 26 Gr. 225 (PROUDFOOT, J., dissenting), that a mechanics' lien does not attach upon an engine house and turn-table built for a railway company, and confessedly necessary for the proper working of the railway; and such engine house and turn-table, and the land whereon they are erected, cannot be sold under a proceeding for the purpose of enforcing payment of a mechanics' lien.

There is nothing in the Mechanic's Lien Act to indicate that it was intended to be operative to a greater extent than as giving a statutory lien, issuing in process of execution of efficacy equal to, but not greater than, that possessed by the ordinary writs of execution, and *ESTEN, V.C.*, decided in 1862 that no sale of lands and buildings of a railway could be effected under process of execution: *Peto v. Welland Railway Co.*, 9 Gr. 458. That has ever since been deemed well settled law in this Province. It is not correct to say that a mechanic's lien is analogous to a vendor's lien—it more closely resembles the lien of an execution creditor.

*Per PROUDFOOT, J.*, the statute was intended to place mechanics on a more favourable footing than other creditors. General creditors have a right to sue for their debts upon the common law liability of the company, but they had no specific charge. Mechanics were given a specific lien on the property. Their case is not the same then as that of general creditors, and their right ought not to be measured by what could be realized upon an execution. The true gauge of their right I think is that which the name expresses, a lien, and their remedies such as a lien-holder might enforce, and it is immaterial whether the lien be created by mortgage or contract or imposed by statute. There seems no distinction in principle between their position and that of an unpaid vendor for land sold to the railway. And it has been settled by numerous decisions that to enforce such a lien an order may be made for the sale of the railway.

## RICHARD ET AL V. STILLWELL.

*Guarantee—Form of—How sent and received—Names of parties.*

C. A. E. carried on business under the name of S. P. Co., became indebted to the plaintiffs and sold out to the defendant. The defendant then ordered goods from the plaintiffs which were supplied, and at the same time a demand was made for an acknowledgment of C. A. E.'s indebtedness to the plaintiffs. The defendant subsequently gave a further order for goods, but the plaintiffs declined to supply them until the acknowledgment was forthcoming. Soon afterwards the plaintiffs received in an envelope, addressed to their firm, an acknowledgment in these words:

"LAKE SUPERIOR, ONT.

"July 4th, 1883.

"Gentlemen,—I beg to inform you that I have assumed all liabilities of the 'S. P. Co.' lately carried on by Mr. C. A. E., and am responsible to the amount contracted by him up to July 24th, 1882. Kindly ship cases immediately.

Respectfully yours.

"(Signed) C. J. S."

The envelope was lost but its receipt, superscription and subsequent loss were proved.

*Held*, that the plaintiffs were entitled to recover from the defendant the price of the goods sold to C. A. E.

W. M. Hall, for the plaintiff.

G. H. Watson, for the defendant.

## PRACTICE.

Osler, J. A.]

[Dec. 19, 1884.]

## EXCHANGE BANK V. BARNES.

*Security for costs—Case in Court of Appeal.*

The plaintiffs having recovered judgment in the action, the defendant appealed to the Court of Appeal, and there moved to compel the plaintiffs to give security for costs, on the ground that the latter resided out of the jurisdiction, and had since the recovery of judgment ceased to carry on business in, and withdrawn their assets from this Province.