

NOTES OF CANADIAN CASES.

PUBLISHED IN ADVANCE BY ORDER OF THE LAW SOCIETY.

CHANCERY DIVISION.

SEGSWORTH V. MERIDEN SILVER PLATING CO.
Interpleader issue—Chattel mortgage—Description of property—Pressure—Preference—R. S. O. c. 118—Costs.

R. being a creditor of A., applied to him to give security for his debt, and under threat of suing him procured from him a chattel mortgage on his stock in trade. Although R. knew A. to be in difficulties, and had also the means of learning that he was insolvent, it did not appear that he actually knew that it was insolvent when he obtained the mortgage.

Held, that the mortgage given under such circumstances was not a fraudulent preference within R. S. O. c. 118.

The goods and chattels were described in a chattel mortgage as follows:—Certain specific articles were first enumerated; the description then proceeded, "also the stock of gold and silver watches, jewelry, and electro silver plate which, at the date hereof, is in the possession of the mortgagor in his said store, and also all such stock of gold and silver watches, jewelry, and electro silver plate which the mortgagor may hereafter, during the currency of this indenture or of any renewal thereof, get, take and receive into his possession in his said store, either to replenish such stock or otherwise howsoever."

The evidence showed that the electro plated goods and watches were numbered, and might have been identified thereby. There was no evidence that any of the goods claimed by the mortgagee had been acquired by the mortgagor after the date of the mortgage.

Held, the description of the goods was sufficient.

Where a mortgagee claimed all the goods seized by a sheriff under execution, but it appeared, on the trial of an interpleader issue between the mortgagee and the execution creditor, that some of the goods seized, amounting to one-sixth of the total value, were not covered by the mortgage.

Semble, although the mortgagee would be entitled to the general costs of the issue, a deduction

tion of one-sixth should be made in respect of the goods as to which he failed.

The Chancellor.]

[Dec. 1.

PETRIE V. HUNTER.

GUEST V. HUNTER.

Mechanics' lien—Contractor—Sub-contractor—Novation—Condition precedent—Architect's certificate.

Where a contractor for the building of a house makes default in carrying on the work, and in consequence the owner, acting under a clause in the contract to that effect, dismisses him, and agreed verbally with a sub-contractor, who had been employed by the contractor, that if the latter will go on and finish the work he, the owner, would pay him.

Held, that an agreement made with a sub-contractor, under such circumstances, is a new and independent contract, and is not a contract to answer for the debt, default or miscarriage of another within the Statute of Frauds, and is therefore valid and binding although not in writing. *Bond v. Treahy*, 37 U. C. Q. B. 360, distinguished.

Held, that from the making of such agreement the sub-contractor was entitled to a lien as a "contractor," and was no longer in the position of a sub-contractor.

Held, that the sub-contractor, acting under such an agreement, was not bound by clauses contained in the original contract with the dismissed contractor, providing for forfeiture, etc.

Held also, that the non-production of an architect's certificate approving of the work done, though required by the original contract with the dismissed contractor as a condition precedent to payment, even if it were binding on the sub-contractor under the new agreement, could not preclude the sub-contractor from recovering if the work was so done as morally to entitle the sub-contractor to such certificate, following *Lewis v. Hoare*, 44 L. T. N. S. 66.

Davidson Black, for plaintiffs in both actions.
J. Reeve, for defendant Hunter.