

B.C.]

O'BRIEN v. MACKINTOSH.

[Nov. 30, 1903.

*Contract—Agreement in writing—Construction—Sale of timber—Terms of payment.*

The appellant held rights in unpatented lands and agreed to sell the timber thereon to respondent, one of the conditions as to payment therefor being that, as soon as the Crown grant issued, the respondent should settle a judgment against the appellant which they both understood could at that time be purchased for \$500. On the issue of the grant, about six months afterwards, the judgment creditor refused to accept \$500 as full settlement at the latter date and he took proceedings to enforce execution for the full amount. The execution was opposed on behalf of the appellant, the respondent becoming surety for the costs and being also made a party to the proceedings.

*Held*, affirming the judgment appealed from (10 B.C.R. 84), that the agreement to settle the outstanding judgment was not made unconditionally by the respondent, but was limited to settling it for \$500, after the issue of the Crown grant for the land.

*Held*, also, DAVIES, J., dissenting, that the costs incurred in unsuccessfully opposing the execution of the judgment, upon being paid by the respondent, were properly chargeable against the appellant. Appeal dismissed with costs.

*Shepley*, K.C., for appellants.  *Davids*, K.C., for respondent.

B.C.]

HASTINGS v. LE ROI, No. 2.

[Nov. 30, 1903.

*Negligence—Mining operations—Contract for special works—Engagement by contractor—Control and direction of mine owner—Defective machinery—Notice—Failure to remedy defect—Injury to miner.*

The sinking of a winze in a mine belonging to the defendants was let to contractors who used the hoisting apparatus which the defendants maintained, and operated by their servants, in the excavation, raising and dumping of materials, in working the mine under the direction of their foreman. The winze was to be sunk according to directions from defendants' engineer, and the contractors' employees were subject to the approval and direction of the defendants' superintendent, who also fixed the employees' wages and hours of labour. The plaintiff, a miner, was employed by the contractors under these conditions and was paid by them through the defendants. While at his work in the winze the plaintiff was injured by the fall of a hoisting bucket which happened in consequence of a defect in the hoisting gear, which had been reported to the defendants' master-mechanic and had not been remedied.

*Held*, affirming the judgment appealed from (10 B.C.R. 9), TASCHEE-EAT, C.J., dissenting, that the plaintiff was in common employ with the