

plaintiff was furnishing the materials, or that any moneys were due to him in respect of the materials, for which he now claims a lien.

The evidence as to notice is at best only constructive notice, and is, I think, insufficient to affect his title under the cases to which I have referred; and I must therefore hold that the defendant McCausland's mortgage is not affected by such notice and is prior to the lien claimed by the plaintiff.

At the close of the argument, as to the validity of the deed from the defendant Sinclair to his wife, I intimated—no counsel then appearing for the Sinclairs—that on the evidence given in this case I must find that Mrs. Sinclair took it with actual notice of the plaintiff's claim, and that her title is therefore void as against the plaintiff's lien.

See also *Re Wallis and Vokes*, 18 O.R. 8.

## Early Notes of Canadian Cases.

### SUPREME COURT OF JUDICATURE FOR ONTARIO.

#### COURT OF APPEAL.

WARD *v.* CALEDON.

ALGIE *v.* CALEDON.

[Jan. 8.]

*License—Liability of licensor for negligence of licensee—Damage by breaking of mill dam—Rights and liabilities of riparian proprietors for damage.*

A mill owner having a license from the township to construct his mill dam in such a way as to flood a part of the highway constructed it so negligently that it gave way, causing damage to proprietors below.

*Held*, that the license to dam water back upon the highway was (except in so far as it might be a public nuisance affecting travellers on the road) a lawful thing, and the damage being caused by the negligence of the mill-owner the township was not liable.

Judgment of MACMAHON, J., at the trial reversed.

*Morvat*, Attorney-General, *Robinson*, Q.C., and *Langton*, Q.C., for the township of Caledon.

*Moss*, Q.C., and *W. L. Walsh* for plaintiff *Algie*.

*E. Meyers* for plaintiff *Ward*.

*J. Reeve*, Q.C., for the *McLellands* (third parties).

### THE ATTORNEY-GENERAL FOR CANADA *v.* THE ATTORNEY-GENERAL OF ONTARIO.

*Constitutional law—Royal prerogative—Commuting and remitting sentences—Powers of Lieutenant-Governors—51 Vict., c. 5 (O.).*

The Act 51 Vict., c. 5 (O.), which declares that in matters within the jurisdiction of the legislature of the Province all powers, etc., which were vested in or exercisable by the Governors or Lieutenant-Governors of the several Provinces before Confederation shall be vested in and exercisable by the Lieutenant-Governor of this Province, is valid and within the power of the provincial legislature to enact.

The power of commuting and remitting sentences for offences against the laws of this Province, or offences over which the legislative authority of the Province extends, which by the terms of the Act is included in the powers above mentioned, does not affect offences against the criminal laws of this Province which are the subject of Dominion legislation, but refers only to offences which are within the jurisdiction of the provincial legislature, and in that sense this enactment is *intra vires* the provincial legislature.

Judgment of the Chancery Division affirmed.

*Robinson*, Q.C., and *Lefroy* for the appellant.

*E. Blake*, Q.C., and *Irring*, Q.C., for the respondent.

### WATEROUS *v.* PALMERSTON.

*Corporation—Contract—Sale—Corporate Act—Necessity of by-law.*

Section 282 of the Municipal Act, R.S.O., c. 184, enacts that the powers of municipal councils shall be exercised by by-law when not otherwise authorized or provided for. Section 480 of the Act authorizes the council to purchase fire apparatus, etc., but says nothing about passing a by-law for the purpose.

The plaintiffs here sued upon an alleged contract for the sale by them to the defendants, the corporation of the town of Palmerston, of a fire engine and hose. The alleged contract was signed by the mayor of the town and by the clerk of the council, and the seal of the