Held, further, that the proper construction of the lease in question implied that the lessee was at liberty to bring further parts of the demised premises into cultivation without the landlord's assent, and to fence the same without his assent. That is to say, if it was a reasonable and proper thing to do in the course of good and judicious husbandry so to enlarge the arable area of the farm, the right to do this existed without the lessor's assent.

Judgment below affirmed with costs.

J. K. Kerr, Q.C., for the plaintiff.

Falconbridge, for the defendant.

Full Court.] [May 21.

GRAHAM v. WILLIAMS.

Mechanics' lien—Right of lien-holder against tenant to charge the land of the landlord—R.S.O., c. 120.

Judgment of BOYD, C., noted *supra* p. 36, affirmed.

It requires something more than mere knowledge of the work being done to bind the owner under R. S. O. c. 120. The priority and assent must be in pursuance of an agreement, for otherwise a reversioner after a long lease might be held bound by the contracts of the tenants if he saw and did not disapprove of the buildings being erected by the tenants.

R. S. O. c. 120, gives priority to the lien-holder to the extent of the increased value over a mortgage existing or created before the commencement of the work, but not over subsequent mortgages, so as to create a lien against the interest of a subsequent mortgagee.

J. Maclennan, Q.C., for the appeal.

J. J. Gormully, contra.

Full Court.] [May 21.

MAGEE v. KANE.

Contract of sale—Statute of Frauds—Possession as evidence of part performance.

When a person came into possession of property as tenant, and it was shown by unequivocal facts that his tenancy was afterwards relinquished, and that his possession being changed by parol contract to purchase, was continued as that of vendee.

Held, that the possession thus changed was such part performance as took the contract out of the Statute of Frauds.

The new fact showing the change in the character of the possession in this case was part payment of the purchase money evidenced by the receipt in terms therefor; and the possession continuing under the newly created relationship between the parties was held to be an act of part performance affecting the land, solely referable to the contract to purchase, operating by and against both, and to enforce which either one could be the actor.

Judgment below affirmed with costs.

W. Cassels, Q.C., for defendant.

J. J. Gormully, for plaintiff.

Boyd, C.] [May 23.

COLEMAN v. KING.

Deed—Mortgage—Construction according to true intent—Family arrangement—Inconsistency.

When W. H. conveyed his farm to his son, and took back from him a mortgage on it, which contained a proviso for redemption on payment of $4,000, in manner following: to pay W. H. and A. H., his wife, during their joint lives $300 a year, and to continue to make the said payments to the survivor after the death of either during the life of the said survivor; and one year after the death of both to pay his brothers and sisters $300 each at the times therein mentioned, which words were inserted in writing, the rest of the instrument being printed.

Held, that it being impossible to give literal effect to all the parts of the mortgage, the defeazance clause upon payment of $4,000 without interest being quite irreconcilable with the particulars regarding the payments, the Court must regard the general intent of the deed, and give it such construction as supported that general intent. The primary intention evidently was to arrange the terms of an annuity for the joint lives of the father or mother and of the survivor. But the $4,000 would be consumed at the end of thirteen years, and the instrument could not be construed as embodying such an improvident arrangement as that no further maintenance