

Chan. Div.]

NOTES OF CANADIAN CASES.

[Chan. Div.]

farm at that valuation, after which the proceeds were to be divided amongst all the other children.

On the death of the widow the executors did proceed to value the farm, but they asked E., who had made up his mind to keep the farm, to aid them in nominating three valuers, while none of the other children were notified of what was going on or asked to be present at the fixing of the valuers. There was no evidence that the valuers had reached their conclusion, other than in a legitimate and upright way. Certain of the children now impeaching the valuation and asking for administration:

*Held*, that there should be another valuation of the farm, and if the parties desired it, it might be referred to the master for that purpose, or the executors might on notice to all interested proceed to do what was needful in that behalf.

The three valuers who were called in were required to exercise in some sense judicial functions, and it would be contrary to first principles to let the one who was to purchase suggest or appoint his own nominees to fix the value without notice to those interested in getting the best price.

*W. Cassels, Q.C.*, for the plaintiff.

Boyd, C.]

[Dec. 17, 1884.]

GRAHAM V. WILLIAMS.

*Mechanics' lien—R. S. O. c. 120—Right of lienholder against tenant to charge the land of the landlord.*

G. supplied bricks to W., who had leased certain land from H., with the right to purchase on certain terms. The contract for the supply of the bricks was made between G. and W. and on W.'s credit; although H. was aware that they were being supplied and that a building was being erected on his property and he had agreed to supply two-thirds of the money required for the building by way of loan to W. on the security of the property. W. did not exercise his right of purchase and G. filed his lien against both W. and H. and brought an action to charge the interest of H. with the lien.

*Held*, that the Mechanics' Lien Act, R. S. O. c. 120, intended something more than the landlord's quiescence or acquiescence while the building is being erected in order to subject

his land to the payment of his tenants' debts, and that in such a case the fee may be charged, but only when consent thereto is given in writing by the owner in fee. Under the circumstances it cannot be said the bricks were furnished on behalf of H. Without a consent in writing as provided by s. 6, s.-s. 2, his mere knowledge of what was being done would not make his estate liable if it turned out that the tenant W. was not able to complete his purchase. The work was not done "for his direct benefit." The Act contemplates direct dealing between the contractor and the owner, and the words, "touching privity and consent" in the interpretation clause are referable to the relations existing between the owner and sub-contractors and are not to be so expanded as to embrace the case of a proprietor who is cognizant of and encourages the improvement of the property by a person holding under him who has yet such an estate in the land that he is the owner within the meaning of the Act as to the contractor whom he employs. The agreement to supply money by way of a loan does not change the character of the transaction so as to place W. in the position of a mere agent of H.

*O'Gara, Q.C.*, for the plaintiff.

*Gormully*, for the defendant Henry.

Full Court.]

[Dec. 18, 1884.]

BROOKES V. CONLEY ET AL.

*Verbal agreement—Action to have same expressed in writing—Jurisdiction—Declaratory judgment.*

In this action B. set up a verbal agreement entered into between himself and C., they being adjoining proprietors of land, to the effect that C. should build a house in such a position that the southern wall would encroach nine inches upon B.'s land, and B. was to be allowed at any time to use that wall as a party wall upon payment of half the expenses of its original erection by C. This agreement was verbal and was made in 1873, and shortly afterwards C. erected his building as agreed upon. B. began this action before the expiration of ten years from the date of the verbal agreement, and B. claimed that he was entitled to have the bargain put into writing and executed by C. so as to enable him to register it, and