

injunction, and who followed *Mitchell v. McGaffey*, 6 Gr. 361, referred to in *McLean v. Burton*, 24 Gr. 1, by Spragge, C., at p. 136, in preference to *McCarthy v. Oliver*, 14 C. P. 290, and held that plaintiff was entitled to a lien. *Lavery v. Pursill*, 39 Ch. D. 508, *Summers v. Cooke*, 28 Gr. 179, and *McNeill v. Haines*, 17 O. R. 479, were also referred to. The local Judge also held that defendant had notice because he claimed title to the wood only through the contract, and he must therefore be assumed to have had notice of all it contained, and it showed \$200 of the purchase money (two of the notes) not to be then due, and that the taking of the notes was not an abandonment of the lien, referring to *Dart V. & P.* at p. 829, and cases there cited, and to *Mitchell v. McGaffey, supra*.

W. R. Riddell, K.C., for defendant.

R. J. McLaughlin, Lindsay, for plaintiff.

The judgment of the Divisional Court (BOYD, C., FERGUSON, J.) was delivered by BOYD, C.—The appeal is concluded by authorities, binding on this court, in favour of the judgment pronounced at the trial. The sale of the timber, to be removed in three years by the purchaser, was of an interest in land, and in respect of which a vendor's lien arose by operation of law. This was not displaced by the cutting or sale of the timber as long as it could be identified and remained on the land. The remedy is by way of injunction and enforcement of lien on the property so identified, as was held in *Summers v. Cook*, 28 Gr. 179, and the earlier cases therein cited. Appeal dismissed with costs.

McLaughlin, McDiarmid, & Peel, Lindsay, solicitors for plaintiffs.

G. H. Hopkins, Lindsay, solicitor for defendants.

MEREDITH, J. . . .

FEBRUARY 13TH, 1902.

CHAMBERS.

RE NEWBORN, TORONTO GENERAL TRUSTS CORPORATION v. NEWBORN.

Will — Construction — Election — Dower — Annuitant — Lapse — Intestacy — "Balance."

Summary application, under Rule 938, by the corporation, administrators with the will annexed of the estate of Richard Robinson Newborn, late of the township of Etobicoke, farmer, for an order declaring the true construction of the will, which was executed in 1892, and was in the testator's own handwriting, except some formal parts, which were printed in a common form, filled up by the testator, who died in 1900. In the will he gave annuities to his wife and