

from the clause above set out, the daughter took in fee, subject to the widow's rights, and that failure to make a will was a condition precedent to this clause taking effect.

Judgments of BOYD, C., in *Coatsworth v. Carson*, 24 O.R. 185, and *In re Ferguson, Bennett v. Coatsworth*, 25 O.R. 591, set aside upon grounds not argued before him.

Macklem, for the appellant.

Moss, Q.C., *W. Mortimer Clark*, Q.C., *J. W. McCullough*, *J. R. L. Starr*, and *F. E. Hodgins*, for different classes interested.

HIGH COURT OF JUSTICE.

MEREDITH, C.J., ROSE, J.,
MACMAHON, J. }

[Jan. 12.

RUSSELL v. FRENCH.

Mechanics' liens—Materials—Extent of lien—Drawback—59 Vict., c. 35, s. 6.

In an action to enforce a mechanics' lien for materials, it appeared that \$373.20 was due to the plaintiff by the contractors. The contract price was \$2,358. After work had been done under the contract to the certified value of \$1,593.75, of which the owners had paid \$1,275 to the contractors and \$21.20 to wage-earners on preferred claims, the contractors were dismissed under the terms of the contract, and the owners completed the work at a cost of \$933.

Held, that the plaintiff was entitled under s. 10 of the Mechanics and Wage-Earners' Lien Act, 1896, 59 Vict., c. 35, to a charge upon a fund calculated at twenty per cent. on \$1,593.75, after deducting \$23.20.

Since the alteration in the law by s. 6, the cases of *Goddard Coulson*, 10 A.R. 9; *Re Cornish*, 6 O. R. 259, and *Re Sear and Woods*, 25 J. R. 474, are no longer applicable.

J. H. Denton, for the plaintiff.

Snow, for the defendants Carroll et al.

MEREDITH, C.J., MACMAHON, J.]

[Jan. 12.

COUSINS v. CRONK.

Amendment—Order of court—Accidental slip or omission—Rules 536, 780—Carelessness—Delay—Terms.

In an action for the recovery of land, one of the defendants alleged that he was not and never had been in possession, and disclaimed title. At the trial the action was dismissed as against all the defendants with costs. This was reversed by a Divisional Court upon appeal, and all of the defendants except an infant, were ordered to pay the plaintiff's costs. The disclaiming defendant was not represented upon the appeal, being advised that he was not concerned in or affected by it. His position was not brought to the notice of the Court, and the order proceeded upon the hypothesis that the position of all the adult defendants was the same. His solicitors were served with minutes of the order containing the above direction as to costs, but he was not