

4. The effect of s. 17 of the Act is that only substantial compliance with the directions as to the contents of the claim and the registration of it is required, and no failure in such compliance, in however substantial a degree, is to invalidate the lien unless some other party is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

5. The lien for materials supplied as against a mortgage has priority over the mortgage only to the extent of the materials actually placed on the ground before the mortgage money was advanced.

6. Under s. 11, if a mortgagee has notice in writing of the fact that there is an indebtedness for which a lien may be claimed, that is, *prima facie* notice of the lien itself, and he cannot claim priority for money advanced after such notice.

7. The first mortgagee having applied his last advance in payment of the purchase money of the lots to the unpaid vendor who then conveyed the land in fee to the defendant "owner," and having thus secured the title to the property, claimed to be entitled to be subrogated to the position of the original vendor in respect of such purchase money; but, having had actual notice of one of the liens and constructive notice of the other before making this payment, following *Paity v. Wright*, 1 Sim. & St. 369, 3 Russ. 142, it was held that he could not have priority over either lien holder for such advance. *Brown v. McLean*, 18 O.R. 533, and *Abell v. Morrison*, 19 O.R. 672, distinguished.

*Gratford*, Q.C., for plaintiff. *Huggard*, for defendant. *Phippen*, *Perdue* and *McPherson*, for the other parties respectively.

Killam, C. J.]

SHRIMPTON v. WINNIPEG.

[April 23.]

*Municipality—Injunction against carrying out illegal contract—Ultra vires—Costs—Municipal Act, R.S.M. c. 100, s. 396.*

This was a motion for an injunction to prevent the City of Winnipeg from entering into a contract which was in the nature of an agreement of purchase of certain land to be paid for in five yearly instalments, which the city council had by resolution approved of, notwithstanding the provisions of s. 396 of The Municipal Act, R.S.M. c. 100.

After several adjournments of the motion, and before it finally came on for hearing, a new arrangement was entered into so far varying the original proposition that the injunction was not pressed on the argument, and the only question argued was as to the disposition of the costs.

It was contended on behalf of the defendants that the agreement if entered into would have been wholly void, and no injunction to prohibit it was necessary; also, that an individual ratepayer could not sue for an injunction.

*Held*, following *Hoole v. The Great Western Railway Co.*, 1 L.R. 3 Ch. 262, that a suit for an injunction was proper in such a case, and that the