

certiorari may be properly granted upon any ground which impeaches the jurisdiction of the magistrate.

Reg. v. Starkey, 7 M.R. 43, followed.

Ormond, for applicant. *Haggart*, K.C., for prosecutor.

Mathers, J.]

[Nov. 26, 1906.]

NATIONAL SUPPLY CO. v. HORROBIN.

Mechanics' and Wage Earners' Lien Act—Effect on lien of taking promissory note for claim.

The short point for which this case should be noted is that where a contractor or sub-contractor takes a promissory note for or on account of his claim for work done or materials supplied, and discounts such note, he forfeits pro tanto his right to a lien on the building or erection under R.S.M. 1902, c. 110, notwithstanding the provision in sub-s. (c) of s. 24 of the Act, which provides that "the acceptance of any promissory note for . . . the claim shall not merge, waive, pay, satisfy, prejudice or destroy any lien created" by that Act, "unless the lien-holder agrees in writing that it shall have that effect."

The discounting or transferring of a promissory note is not within the protection of the statute. *Edmonds v. Tiernan*, 21 S.C.R. 406, followed.

Bowles, for plaintiff. *Whitla and Sullivan*, for defendants.

Macdonald, J.]

ABELL v. HARMS.

[Nov. 20, 1906.]

Charge on land executed under seal—Implied covenant to pay debt.

Defendant gave plaintiffs a written order for an engine, the price, \$700, to be paid on delivery in cash or in lieu thereof "notes on approved security." He afterwards by instrument under seal created a charge or lien on certain land in favour of the plaintiffs for said price and interest to be paid in instalments. The instrument further provided that if notes should be given by defendant for the several instalments, such notes should not be a satisfaction of the said lien and charge, but the same should continue until payment in full of such notes and any