

to his heirs. Should my son, J. C., die without heirs then the estate . . . My daughters shall get their maintenance of said estate during . . . I also bequeath the sum of \$80 to each of my daughters . . . To be paid out of the said estate by my said son, J. C." In an application under the Vendor and Purchaser Act it was

Held, that J. C. took an estate in fee tail in remainder after an implied life estate in his mother, M. E., subject however to the charges of the several legacies to each of the testator's daughters.

W. H. Moore, for the vendor.

L. M. Hayes, for the purchaser.

Full Court.]

[Mar. 1.

WANTY *v.* ROBINS *et al.*

Mechanics' lien—Equitable interest in the land—Fraudulent scheme to evade lien—Notice—Registry Act—Innocent Purchaser.

A. and P. agreed to sell certain land to R., and one of the terms of the agreement was that R. should start building on the said lot at once. R. commenced to build, and W., the plaintiff, was his contractor, who did certain work, but had to cease working because he was not paid; the last of the work being done August 22nd. While this work was going on C. W. entered into negotiations with R. to purchase the rear part of the land, which fell through, but an understanding was subsequently arrived at by which R. was to release to A. and P. his right of purchase, and C. W. was to purchase the whole of the land from them, and at the expiration of thirty days convey the front part to R. The release was executed, and the deed from A. and P. was taken, not to C. W., but to the defendant, A. M. W., who was C. W.'s wife. The deed was dated August 30th, and registered the following day, and plaintiff's lien was registered September 15. It was found by the trial judge that C. W. and A. M. W. had notice of the plaintiff's claim before the date of the deed, and that the deed to A. M. W. was a scheme to defeat the plaintiff's claim.

Held (affirming ROBERTSON, J.), that the plaintiff's lien attached on the interest of A. M. W.

The law that a lien which arises by virtue

of being employed, and doing work on land is, if not registered, liable to be defeated by the owner conveying to a subsequent purchaser, who registers his conveyance, must be restricted to an *innocent purchaser*, who is entitled to the protection of the Registry Act.

T. P. Galt, for the plaintiff.

Arch. McLean and R. L. Fraser, for defendant Wood.

Full Court.]

[Mar. 1.

MCLEAN *v.* BROWN.

Contract for sale of goods—Material condition of shipment—Refusal to accept—Action for deposit and damages.

McL. Purchased lambs from B. to be shipped to McL., B. & McL., which condition he says he inserted "to help our business . . . and to help build the firm up," the firm being a new one. B. disregarded this condition, and shipped them to another name, and McL. refused to accept. In an action for the deposit paid at the time of the contract, and for damages, it was

Held (affirming ROSE, J.), that the term of the bargain as to the manner of consignment was a material part of it, material to the plaintiff, as the defendant well knew, and following *Bowes v. Shand*, L. R. 2 App. Cas. 455, that the plaintiff must succeed.

Mornington v. Wright, 115 U. S. Rep. 188, referred to and quoted.

McCarthy, Q.C. for the appeal.

Aylesworth, contra.

Divisional Court.]

[Mar. 1.

BOYD *v.* SULLIVAN.

Contract—Goods not all deliverable at once—Payment—When due—Refusal to pay for part delivered—Refusal to deliver remainder.

Plaintiff and defendant entered into the following contract:—

"To G. M. B. (plaintiff): Please deliver me, at Port Arthur, five head good steers on first 'City' up (first trip up to Port Arthur of boat 'City of Owen Sound'), and six steers and heifers on second trip 'City' up, and four cows on same trip; also 100 good lambs in