

Oct. 15, 1882.]

NOTES OF CANADIAN CASES.

Chan. Div.

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CHANCERY DIVISION.

Ferguson, J.]

[Oct. 3.]

BANK OF MONTREAL V. HAFFNER.

Mechanics' Lien Act—R. S. O. c. 120—Parties—Priority.

Where a suit was brought to enforce a mechanics' lien on certain property, and one A., who acquired a similar lien on the said property for work done subsequently to the commencement of the said suit, was made a party thereto in the Master's office, but failed to prove any claim therein.

Held, A. should not have been made a party to the said suit, and the fact of his not proving any claim was no bar to his subsequently commencing a suit to enforce the said lien so acquired by him.

Wallbridge v. Martin, 2 Ch. 275, approved of.

Held also, A. was entitled to priority over a mortgage created on the property, previously to the doing of the work in regard to which he claimed a lien, in respect of the increased value of the lands by reason of the improvements, viz., the work done and the materials provided.

Every lien holder is, under the said Act, entitled to security upon the enhanced value arising by reason of his work and materials.

Broughton v. Smallpiece, 25 Gr. 290, approved of.

Judgment directed to be settled in the light afforded by the case of *Downer v. Mix*, referred to in Mr. Holmested's *Mechanic's Lien Act*, p. 67.

D. McCarthy, Q.C., and *Cameron* for the plaintiff.

W. Cassels and Mowat for defendants.

[NOTE.—*A demurrer in this suit was disposed of some time since, as reported 29 Gr. 319.*]

Ferguson, J.]

[Sept. 26.]

MCDONALD V. OLIVER.

Contract—Construction—Condition precedent.

On February 9, 1875, the defendants entered into a certain contract with the Government for the construction of certain works in connection with the Canada Pacific Telegraph line. On August 2, 1875, the plaintiff entered into a sub-contract with the defendants to construct certain parts of the said works. This latter contract stated that the work to be done by the plaintiff should be done on such route as the Govern-

ment engineer in charge should point out; and the defendants covenanted (subject to the conditions thereafter set out) with the plaintiff that they would pay him for the whole of the work contemplated to be done and performed by him at the rate mentioned per mile. The parties then declared that the contract was entered into upon the express conditions that followed, the first of these stating that the payments should be made to the plaintiff within twenty days after the estimate of the engineer or officers in charge on behalf of the Minister of Public Works to be, from time to time, put in by him to the Minister, specifying the amount of work done to the satisfaction of the Minister, etc., during the month then ended and past, and a copy of such certificate served upon the defendants.

Held, the above first condition alone, apart from the other parts of the contract, was sufficient to make the obtaining of the estimate of the engineer or officer, and service of a copy of it on the defendants, a condition precedent to the plaintiff's right to recover for work done under the contract.

Roaf, for the plaintiff.

Bethune, Q.C., for the defendants.

Boyd, C.]

[Oct. 11.]

STUART V. TREMAINE.

Fraudulent preference—Pressure—R. S. O. ch. 113—Transfer to third party.

Where one creditor sought to set aside a transfer of goods to another creditor as a fraudulent preference, and it appeared that the impelling cause which led to the transfer was the application of the latter to be paid or protected,

Held, the transfer was not "voluntary" in the sense in which that word is used in the statute R. S. O. c. 113.

Where, moreover, it appeared that the latter had transferred the goods for value to a third party before the transaction between the debtor and himself was impeached.

Held, he could not be made to account for the proceeds as if he were a debtor of the plaintiff. Under the statute the plaintiff's only remedy was to have any obstruction removed which impeded the operation of his writs of execution; his pursuit of the goods, exigible in execution, failed when a *bona fide* sale took place. *More-*