

Gordon v. Great Western R.W. Co., 6 P.R. 300; *Sievwright v. Lewis*, 9 P.R. 201; *Lewis v. Talbot Street Gravel Road Co.*, 10 P.R. 15; *Langdon v. Robertson*, 12 P.R. 139, referred to.

R. M. Meredith, for the plaintiff.

D. W. Saunders, for the defendants.

Court of Appeal]

[April 30.

COLE v. HALL.

Mechanics' liens—Parties—Priorities—Subsequent incumbrancers—Master's office—R.S.O. c. 116, ss. 25, 29.

The appellant's execution against lands was placed in the sheriff's hands shortly after the registration of a mechanic's lien by the plaintiff, who began his action to enforce such lien, and registered his *lis pendens* within the ninety days prescribed by s. 23 of the Mechanics' Lien Act, R.S.O., c. 126, but did not cause the appellant to be added as a party till the case had got into the Master's office, which was after the expiry of the ninety days.

The appellant contended that, as against him proceedings to realize the plaintiff's lien had not been instituted within the proper time, and therefore his execution had gained priority over the lien, and he was improperly added as a subsequent incumbrancer in the Master's office. S. 29 of the Act provides that the lien may be realized in the High Court according to the ordinary procedure of that Court.

Held, that the effect of ss. 23 and 29 is that the lien shall cease after ninety days unless in the meantime proceedings are instituted in the High Court, according to its ordinary procedure, to realize the claim; the practice or procedure of the Court is as much the law of the land as any other part of the law; and the making the appellant a party to the proceedings in the Master's office was a regular step in the action, authorized and prescribed by the practice and procedure of the Court for nearly forty years, of which the appellant could not complain, the action having been regularly commenced within the ninety days.

White v. Beasley, 2 Gr. 666; *Moffatt v. March*, 3 Gr. 163; and *Jackson v. Hammond*, 8 P.R. 157, referred to.

Junon v. Gardiner, 11 Gr. 23; *Shaw v. Cunningham*, 12 Gr. 101; *McDonald v. Wright*, 14 Gr. 284; and *Bank of Montreal v. Haffner*, 10 A.R. 597, distinguished.

Decision of FERGUSON, J., 12 P.R. 584, affirmed.

C. Millar, for the appellant.

Hoyles, for the respondent.

STREET, J.]

[May 1.

REGINA *ex rel* WHYTE v. MCCLAY.

Municipal elections—Quo warranto proceeding—Reference to take evidence—Jurisdiction of County Judge—Jurisdiction of Master in Chambers to refer—R.S.O., c. 184, s. 212—Rule 30.

Section 212 of the Municipal Act, R.S.O., c. 184, has not been affected by the Consolidated Rules, and under it a reference may be directed to a County Court Judge to take evidence where in a *quo warranto* application, a violation of s. 209 or 210, is charged; and, as by Rule 30 the Master in Chambers has in *quo warranto* matters the jurisdiction of a Judge of the High Court, he has power to direct a reference under s. 212 to a County Court Judge.

Aylesworth, for the relator.

W. R. Meredith, Q.C., for the respondent.

MR. DALTON.]

May 2.

ASHLEY v. BRENTON.

Discovery—Examination of plaintiff by defendant after interlocutory judgment—Rule 489.

After the plaintiff had signed interlocutory judgment against the defendant in an action of tort, the defendant sought to examine the plaintiff for discovery, the action being about to come on at the assizes for assessment of damages.

Rule 40 shows that the examination of a plaintiff by a defendant may take place at any time after such defendant has delivered his statement of defence.

Held, that the defendant could not examine the plaintiff.

D. Armour, for plaintiff.

C. J. Holman, for defendant.

BOYD, C.]

[May 7

MCKAY v. MAGEE.

Costs—Scale of—Action to set aside the conveyance as fraudulent—Judgment under \$200—Other claims against judgment debtor—Creditors' Relief Act.

In an action by a judgment creditor seeking payment out of land alleged to have been conveyed away by the debtor in fraud of the plain-