

whom he was employed assigned \$2,558 of the amount due to him from the owners on his contract to D., another sub-contractor, who duly gave notice thereof to the owners; and there was at the time of the assignment \$2,558 earned under the contract, which did not become payable until giving of the architect's certificate on Nov. 4, 1904,

Held, 1. Under the Mechanic's Lien Act, s. 14, E.'s lien related back to the commencement of his work, and under s. 13, it was entitled to priority over D.'s assignment for the full amount of the lien, and not merely for that portion thereof actually earned by E. up to the date of assignment.

2. The assignment was valid and bound the debt assigned, though it was not payable at the date of assignment.

3. The debt due and owing is a sufficient consideration for the assignment of a chose in action and the assignment was therefore not revocable or impeachable as being voluntary.

The following cases were cited: *Hall v. Prittie*, 17 O.A.R. 306; *Bank B.N.A. v. Gibson*, 21 O.R. 613; *Lane v. Dungannon A. P. Assn.*, 22 O.R. 264; *Re McRae*, 6 O.L.R. 238; *Graham v. Bourque*, 6 O.L.R. 428 and 700; *Mitchell v. Goodall*, 5 O.A.R. 164; *Quick v. Colchester*, 30 O.R. 645; *Encyc. of Law of England*, vol. 1, p. 375; *Shirlock v. Powell*, 26 A.R. 407; *Re European L. Ass. Co.*, 39 L.J. Chy. 326; *McBean v. Kinnear*, 23 O.R. 313.

McDougal, *Henderson*, *Beament*, *McColl*, *Fripp*, and *McVeity* for the various parties interested.

Meredith, C.J., MacMahon, J., Teetzal, J.]

[Nov. 25, 1904.

BELL v. LOTT.

Trespass—Searching for liquor without warrant in private dwelling house by county constable—Notice of action—Bona fide conduct—Leave and license—Jury.

Defendant, a county constable appointed by a police magistrate, searched the dwelling house for liquor without a warrant and without any special authority. In an action for trespass the trial judge held that the defendant was acting in the discharge of his duty and there being no evidence of malice he was entitled to notice of action and withdrew the case from the jury and directed a non-suit.

On an appeal to a Divisional Court, it was

Held, that the question as to whether the defendant was acting bona fide in the discharge of his duty as a constable in searching a private house as being a house of public entertainment for liquor was a question for the jury; and that leave and license,