

LAWYERS' REPORTS, ANNOTATED. Book XIX. All Current Cases of General Value and Importance decided in the United States, State and Territorial Courts, with full annotation. By BURDETT A. RICH and HENRY P. FARNHAM (Cited 19 L. R. A). Rochester, N. Y.: The Lawyers' Co-Operative Publishing Co., 1893.

TREATISE ON EXTRAORDINARY RELIEF, IN EQUITY AND AT LAW. By THOMAS CARL SPELLING. Covering Injunction, Habeas Corpus, Mandamus, Prohibition, Quo Warranto, Certiorari. Containing an exposition of the principles governing these several forms of relief, and of their practical use, with citations of all the authorities up to date. Two volumes. 8vo. Boston, Mass.: Little, Brown & Co.

BOOK REVIEWS.

OBSERVATIONS ON THE LAW OF PENNSYLVANIA RELATING TO MECHANICS' LIENS. By RICHARD C. MCMURTRIE.

In a pamphlet of twenty-nine pages Mr. McMurtrie discusses three questions in regard to the Mechanics' Lien Law of Pennsylvania:

(1) "The right or power of the owner of land to exclude the lien."
 (2) The holding of the lessor's estate liable for claims of material men, "where a lessee for years contracted to erect a house on the demised premises, for doing which the rent was diminished": *Woodward v. Leiby*, 36 Pa., 441.

(3) The decision "that where materials are in good faith delivered for a building to a contractor, though not used in the building, the seller has a lien": *Hinchman v. Graham*, 2 S. & R., 170; *Odd Fellows' Hall v. Masser*, 24 Pa., 510; *Linden v. Imp. Ref. Co.*, 146 Pa., 4.

The criticism of the decisions of the Supreme Court of Pennsylvania on the second and third points is logically sound. These decisions, however, illustrate the long time tenderness of the Supreme Court toward the mechanics' lien claimant.

The greater part of the pamphlet is taken up by a discussion of the first question and a consideration of the case of *Schroeder v. Galland*, 134 Pa., 277, in which the court first announced the doctrine that the owner could exclude the lien of every one by a stipulation against liens in his contract with the contractor. Certainly this doctrine does not breathe any spirit of kindness toward the mechanic or material man. Mr. McMurtrie clearly shows that from the time of the first mechanics' lien law in Pennsylvania up to the year 1890, a period of over eighty years, no such rule had been laid down by the Supreme Court of this State. He further shows that the lien is purely statutory, and is not made by the statutes to depend upon the agency of the contractor for the owner: "The contractor mentioned in the Act of Assembly is not an agent in any sense of the word—he is a principal and the only one. It is not he that binds the owner's property, it is the statute." The argument of Mr. McMurtrie seems to us unanswerable.

At the conclusion of the pamphlet Mr. McMurtrie refers to the Act

of June 8, 1891, passed "to correct the mistake in *Schroeder v. Galland*." This act provides that the sub-contractor shall be entitled to a lien and the contractor be deemed the agent of the owner in ordering work or materials, despite a stipulation in the owner's contract against liens, "unless such sub-contractor shall have consented in writing to be bound by the provisions of such contract." This act has not yet been passed upon by the Supreme Court; but in a decision by HEMPHILL, J., of Chester County, rendered September 25, 1893, in the case of *McMasters v. West Chester State Normal School*, 2 Dist. Rep., 753, the act is declared unconstitutional on the ground that it is an interference with the right of contract and with the absolute and natural right which every person has to use his own property in his own way, citing the Pennsylvania Bill of Rights, which declares that among those rights which are inalienable is that of "acquiring, possessing and protecting property."

It is believed that no decision of the Supreme Court of Pennsylvania on the subject of mechanics' liens has been so far reaching as that of *Schroeder v. Galland*. Its effect and limits are not easy of determination, even by the Supreme Court itself: *Nice v. Walker*, 153 Pa., 123. But the general doctrine the Supreme Court seem determined to adhere to. To the writer this rule would only seem justifiable on the ground that a mechanics' lien statute which purported to give a right of lien to sub-contractors where the owner had expressly refused to make his contractor an agent to pledge the building, would in itself be unconstitutional; and that, therefore, mechanics' lien statutes must be construed as having inherently the limitation that they will not confer any lien where the owner has inserted a provision against liens in his contract. This does not seem reasonable. It is difficult to understand how a man can be said to have his inherent right of property interfered with, or to be deprived of his property "without due process of law," by the operation of an Act of Assembly which provides that an owner cannot enjoy as his own a building erected on his lot, without taking care that those who actually furnished the work and materials are paid.

BENJ. H. LOWRY.

SELECT CASES ON EVIDENCE AT THE COMMON LAW, WITH NOTES.

By JAMES BRADLEY THAYER, LL.D., Professor of Law at Harvard University. Cambridge: Charles W. Sever, 1892.

Professor Thayer has added to the value of this excellent work (a review of which has heretofore appeared in these pages),¹ by preparing a complete index which will be of assistance not only to the student who is using the book in connection with his investigation of the law of evidence, but also to the lawyer who desires to utilize the collection of cases for reference during the conduct of a cause in court. The index can be obtained free by owners of the first edition from the publisher, Charles W. Sever, Cambridge, Mass., through the dealer of whom the book was purchased.

¹ *Supra*, p. 72, Jan. number.