

On the 12th February, 1909, the bank caused a claim of lien to be registered . . . against the lands and the interests therein of the railway and elevator companies, and on the 14th April, 1909, commenced proceedings under the Act . . . claiming a lien on the lands of the railway and elevator companies and judgment for payment by the Canadian Stewart Company.

On the 11th February, 1909, the plaintiffs commenced this proceeding against the . . . Canadian Stewart Company and the railway and elevator companies, wherein claim was made for \$21,834.87, and for a lien for that amount and for judgment against the defendants the Canadian Stewart Company for that amount, and that, in default of payment . . . the lands might be sold. On the following day the plaintiffs caused a claim of lien to be registered . . . against the lands for the whole sum of \$21,834.87.

Neither in the statement of claim . . . nor in the registered claim of lien was any reference made to the assignment to the Union Bank, nor did either of them contain any offer to deduct or make any deduction in respect of the . . . \$5,371.79. . . .

It is more than doubtful whether there can be an assignment of a part of a claim so as to entitle the assignee to maintain an action for the recovery of such part from the debtor, under sec. 58 (5) of the Judicature Act. There is no binding authority to that effect, and the better opinion seems opposed to such a conclusion. . . .

[Forster v. Baker, [1910] 2 K.B. 636, preferred to Skipper v. Holloway, ib. 630.]

But to extend the right of the holder of a part assignment of a claim, the nature of which entitles the assignor to assert a lien under the Mechanics' Lien Act so as to enable the assignee to register a lien and proceed under the Act, is a much further step. It is true that sec. 26 of the Act declares that the right of a lien-holder may be assigned. But what is referred to is obviously an absolute assignment of what the lien-holder has, not a part or parcel of it. . . .

Proceedings were necessary in order to free the lands. . . . Upon the 17th April, 1909, an order was made by the District Court Judge, in pursuance of which the defendants deposited the sum of \$24,000 in a chartered bank to the credit of this action and of the action of the Union Bank . . ., and thereupon, by another order of the same date, it was ordered that the claims of the plaintiffs and the Union Bank to a lien upon the estate of the railway and elevator companies for . . .