

the price of his work on the land of the appellant; that this lien continued to exist until the expiry of thirty days from the completion of the respondent's work; that the work was not completed until the 18th April, 1913; and that the lien, having been registered on the 15th May, 1913, was registered in due time.

The Master appears to have overlooked the fact that, by sec. 10, the lien of the respondent did not attach so as to make the appellant liable for a greater sum than the sum payable by him to Gagnon, and that, as there is nothing owing by the appellant to Gagnon, unless the respondent is entitled to look to the twenty per cent. which, by sec. 12, it was the duty of the appellant to retain, there is nothing upon which the lien can attach.

All that the appellant was required by sec. 12 to do was to retain for the period of thirty days after the completion or abandonment of the contract twenty per cent. of the value of the work, service, and materials actually done, placed, or furnished, as mentioned in sec. 6, such value to be calculated on the basis of the contract price; and at the expiration of thirty days from the abandonment by Gagnon of his contract the duty of the appellant to retain the percentage was at an end unless in the meantime proceedings had been commenced "to enforce any lien or charge against" it (sub-sec. 5).

The fact, if it be a fact, that the appellant did not retain any percentage of the value of Gagnon's work for thirty days cannot put him in any worse position than if he had done so. The percentage which the appellant was required to retain was a fund to answer the liens of such of the sub-contractors and wage-earners as should take within the prescribed time proceedings to enforce their liens, but not to answer any other liens; and, not having taken proceedings to enforce his lien within thirty days after the abandonment of the contract by Gagnon, the appellant has no right to resort to the fund.

The appeal should be allowed with costs, and the judgment against the appellant should be reversed, and judgment be entered dismissing the action as against him with costs.