

conditions and within the time thereafter stipulated, and that the work should be done according to plans and specifications governing the work, and applying thereto, set forth in the contract with the Grand Trunk Pacific Terminal Elevator Company, to the satisfaction of the latter's engineer and according to his directions and the stakes and marks furnished and set up by him. Then follow conditions and stipulations, none of which need be referred to at present, except the stipulations that the work should be commenced immediately and be begun at the south side by an excavation across the whole width of the south side of a strip 70 feet wide, which strip was to be completed within three weeks from the date of the agreement, and that the whole work should be fully completed within 60 days from the date of the agreement; and a provision appointing one James Whalen sole referee between the defendants and plaintiffs as to the progress of the work . . . with the right to the referee, should he deem it necessary in order to have the work done within the times thereinbefore specified, to take over the work absolutely from the plaintiffs, on giving them three days' notice in writing, and that the referee's . . . determination should, in every case therein provided for, be final.

The plaintiffs entered upon the work, and in the course thereof procured advances from the Union Bank of Canada to the extent of \$5,371.79. On the 16th January the work was taken out of the plaintiffs' hands, and was thereafter continued to completion by and under the direction of Whalen. By an instrument dated the 10th February, 1909, signed and sealed by the plaintiffs, and setting forth that they claimed to be entitled to \$21,834.87 from the defendants in respect of work done and materials supplied in the excavation, for which they claimed . . . a lien under the . . . Act, and were indebted to the bank for the advances, and were desirous of granting, assigning, and transferring to the bank the sum of \$5,371.79 by way of a first charge out of the said money . . . the plaintiffs purported to . . . assign and set over unto the bank the . . . \$5,371.79, "out of and by way of first charge on any moneys now due or which may or shall hereafter accrue due to us as aforesaid, together with all our right title and interest to a lien therefor under the Mechanics' and Wage Earners' Lien Act on the lands of the Grand Trunk Pacific Railway Company aforesaid. This is given and accepted as collateral security only."

Notice of this instrument was given, not only to the defendants, but also to the Grand Trunk Pacific Railway Company, the Grand Trunk Pacific Terminal Railway Elevator Company, and James Whalen. . . .