

FIRST DIVISIONAL COURT.

JANUARY 31ST, 1921.

*ST. CLAIR CONSTRUCTION CO. LIMITED v. FARRELL.

Mechanics' Liens—Claim of Sub-contractors—Proceeding to Enforce Lien—Registration of Certificate—Time—Last Delivery of Materials—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, secs. 22 (5), 24, 25—Abandonment—Sec. 22 (1)—Judgment against Contractor—Sec. 49—Damages for Non-completion—Costs of Appeal.

Appeal by the defendants Robert C. Hamilton and Charles D. Daniels from the judgment of the Assistant Master in Ordinary in favour of the plaintiffs in an action to enforce a mechanics' lien.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

H. P. Edgar, for the appellants.

G. H. Gilday, for the defendant Farrell, respondent.

Alexander MacGregor, for the plaintiffs, respondents.

HODGINS, J.A., reading the judgment of the Court, said that the Referee had held the plaintiffs, sub-contractors and lien-holders, entitled to enforce their lien for \$529.25 and costs, by sale of the property in default of payment into Court of that amount by the appellants, the owners. The defendant Farrell, the contractor, was primarily liable to pay this sum. The judgment required him only to pay the deficiency, if any, after sale. The contract was not completed by Farrell, but was taken over by the appellants and finished at a loss, having regard to the payments made to the contractor.

The lien was registered on the 8th January, 1918; a certificate of proceedings having been taken, registered on the 23rd May, 1918; the last delivery of material was on the 4th October, 1917.

Reference to secs. 24 and 25 of the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140.

Under sec. 24, the registered lien expires in case a certificate of proceedings having been taken has not been registered: (1) 90 days after completion or after the last furnishing of materials or after the expiry of the period of credit if mentioned in the registered lien; (2) 30 days after registration of the lien where it has been registered under sec. 22 (5), which states the time for registration when an architect refuses a final certificate.

The certificate here was out of time under this section, as the 90 days from the last delivery of materials and the 30 days after registration (if sec. 22 (5) applied) expired long before the 23rd May, 1918.