If the defendants, within 10 days, pay the amount into the bank as ordered, filing at the same time a statement under oath verifying the amount, and pay the costs of the motion and appeal, within 10 days after taxation thereof, the appeal will be dismissed; otherwise, the appeal will be allowed with costs here and below.

NOVEMBER 4TH, 1915.

*ANDERSON v. FORT WILLIAM COMMERCIAL CHAMBERS CO.

Mechanics' Liens—Lien of Sub-contractor—Estoppel by Conduct—Mechanics and Wage-Earners Lien Act, sec. 6 — "Abandonment"—Sec. 22 (1).

Appeal by the defendants from the judgment of a County Court Judge in favour of the plaintiff, a sub-contractor for placing heating apparatus in a building which one Stewart contracted to erect for the defendants upon their land. The plaintiff completed the work under his sub-contract, and registered a claim of lien under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, which he sought in this action to enforce. Stewart did not finish the work under his contract, and it appeared that it would cost $1,500 to finish it. The County Court Judge gave judgment for the plaintiff for $915.18 and $125 costs.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

W. N. Tilley, K.C., for the appellants.

Christopher C. Robinson (for C. A. Moss, absent on active service with His Majesty's forces), for the plaintiff, respondent.

RIDDELL, J., who delivered the judgment of the Court, said that it was argued that the plaintiff had estopped himself from claiming a lien by his conduct. Whether or not the conduct disclosed would effect an estoppel was a matter which would require further consideration; but it was not necessary to pass upon that point, because sec. 6 of the Act prevented any such effect following from such conduct—"Unless he signs an express agreeemnt to the contrary . . . any person . . . shall . . . . have a lien . . ." It would emasculate this section to hold that an estoppel in pais would do what the section declares only a signed agreement can do.