

respondent. Gagnon abandoned the work on the 16th February, 1913, leaving the work he had contracted to do uncompleted, and it was afterwards completed by the appellant, whose outlay in doing so exceeded the amount of the contract price, which had not been paid to Gagnon.

The respondent had by the 1st February, 1913, completed the work he had undertaken to do, except such patching as it was his duty to do after the carpenters had completed their work, and on 18th April following he sent men to do this patching. The men did some little work, when they were stopped from continuing what they had been sent to do, by the appellant. The lien was registered on the 15th May, 1913.

The Master gave judgment for the respondent upon the ground that sec. 6 of the Mechanics and Wage Earners Lien Act (10 Edw. VII. ch. 69) gave to the respondent a lien for the price of his work on the land of the appellant; that this lien continued to exist until the expiry of 30 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 20 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 20 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.