tractor, etc., before notice in writing by the person claiming the lien has been given such owner, etc., etc., shall operate as a discharge *pro tanto* of the lien credited by the statute.

Sec. 1 of cap. 17, 1878, Ont., restricts this payment to ninety per cent. of the price to be paid for the work; and allows the remaining ten per cent. to be paid after the expiration of ten days from the completion of the work, unless the owner is meanwhile notified in writing of the existence of a claim or lien.

The Act of 1882, cap. 15, gives workmen a lien for thirty days' wages, and in case there is a contract for the work in question, gives such lien for wages to the extent of ten per cent. of the contract price, priority over other liens.

Now, here, the claim is not for wages—nor is there a contract.

It is a well settled principle of law, that a garnishing or attaching creditor can acquire no higher or better rights to the property or assets attached or garnished than the defendant had when the attachment took place; unless he can show some fraud or collusion by which his rights are impaired. Garnishment is a purely statutory proceeding and cannot be pushed in its operation beyond the statutory authority under which it is resorted to. It is a proceeding *in rem*. It is, in effect, a suit by the defendant in the plaintiff's name against the garnishee, without reference to the defendant's concurrence, and indeed in opposition to his will. Hence the plaintiff usually occupies as against the garnishee just the position of the defendant, with no more rights than the defendant had, and liable to be met by any defence which the garnishee might make against an action by the defendant.—(Drake on Attachment, 432.)

If the property, when attached, is subject to a lien *bona fide* placed upon it by the defendant, or subject to a lien by express statutory enactment, that lien must be respected and the garnishment postponed to it. The statute says that nothing shall avail the owner as against the lien-holder, except *bona fide* payment before notice of the lien. An attachment or a garnishee proceeding does not amount to an assignment of the debt. It is not in effect an execution. It is merely a plaint or claim, and amounts to nothing beyond tying up the fund until it is crystalized into a judgment.

Under our Mechanics' Lien Act, the lien commences from the furnishing of the materials—is good for thirty days after supplying the articles *without registration*, and is then extended sixty days farther by registration before the expiration of the thirty days. It can only be defeated in one way—that is by payments made *bona fide* and without notice of the lien. Here there is no pretence that there has been any payment, and the point to be decided is narrowed to this: Is the service of garnishing process or the attachment of the debt (before notice of the lien has been served on the owner, and before the expiration of the thirty days), at the instance of a creditor of the contractor equivalent in effect to the payment *bona fide* allowed by the statute?

I was at first under the impression that it might be so contended; but, under the authority of *ex parte Greenway*, *Re Adams*, L. R, 16 Eq. 619, and *Re Pillers*, L. R. 17 Ch. Div. 653, I am compelled to hold that, as the lien is a statutory claim it cannot be defeated except in the manner pointed out by the statute itself. The garnishees no doubt could, had they chosen to do so, have paid the primary creditor's claim with Gibson's assent or upon his request, and have been discharged had such payment been made before they received notice of Harris & Co.'s lien or claim, but here they did not do so, and before the date when a judgment could have been obtained (18th November was Court day, I believe), they received notice of the lien. This notice—no payment having been previously made—at once perfected Harris & Co.'s claim and effectually prevented thereafter any payment to Gibson or to any one claiming (as the primary creditor in this case) through him.

Upon the other branch of the case, I have no doubt but that Harris & Co. had a lien under sec. 3, R. S. O. cap. 120. The material supplied was to be used in the repair of a building, the property of Trinity College—and they supplied it for such purpose.

I cannot conclude this judgment without adding that I heartily concur with the opinions of the many judges who have been called upon to interpret the various clauses of the Mechanics' Lien Act, and the amendments thereto, that the whole treatment of the subject is a "mass of complicated and embarrassing legislation." The conclusions I have arrived at, however, after careful consideration of the various clauses are those which I think are clearly deducible from the authorities.

My finding is that there is nothing due from the garnishees to the primary debtor available to the primary creditor, as the lien which I find has priority absorbs the whole fund garnished. The action will be dismissed against the garnishees with costs.