

did so at the risk of being cut out under the provisions of the Registry Act. The lien may be registered before or during the performance of the contract or within 30 days after the completion or abandonment of it, or before or during the furnishing or placing of the materials or within 30 days after the last of them is furnished or placed: see *McVean v. Tiffin* (1885), 13 A.R. 1.

Though the circumstances, the learned Chief Justice continued, naturally aroused suspicion as to the good faith of the transaction which, if upheld, gave priority to Lucas, enough could not be found in the evidence to warrant a reversal of the Referee's finding that Lucas was a subsequent purchaser for valuable consideration without actual notice, and so, having registered his instrument first, the liens were ineffectual against him; except, it might be, as to the amount not yet advanced of the \$1,300 secured by the mortgage assumed by him at that amount: see *Ross v. Hunter* (1882), 7 S.C.R. 289; *Rose v. Peterkin* (1885), 13 S.C.R. 677.

If the lien-holders so desired, they might elect, within 10 days, to have the matter referred back to the Referee to deal with all questions respecting the mortgage-money; in other respects the appeal should be dismissed with costs.

LENNOX, J., agreed in the result, stating reasons in writing.

RIDDELL and MASTEN, JJ., concurred.

Judgment below varied.

SECOND DIVISIONAL COURT.

MARCH 17TH, 1916.

*COLLERAN v. GREER.

Appeal—County Court Appeal—Appellant Absent from Trial—Motion for New Trial—Forum—Appellate Division—Rules 499, 768—County Courts Act, R.S.O. 1914 ch. 59, secs. 39, 40—Fatal Irregularity at Trial—New Trial Ordered—Costs.

Appeal by the defendant Dunn from the judgment of the District Court of the District of Thunder Bay in favour of the plaintiff in an action to recover a balance of the price of goods sold to the defendant. The judgment was given in the absence of the appellant, and he asked to have it set aside and a new trial ordered.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.