

of doing work and furnishing materials is the creature of the statute and does not arise, nor is it created by any "instrument" as that word is defined by the Registry Act, sec. 2 (d).

"S. 73. No equitable lien charge or interest affecting land shall be valid as against a registered instrument executed by the same person, his heirs or assigns; and tacking shall not be allowed in any case to prevail against the provisions of this Act."

This section obviously has no application because a mechanic's lien is a legal statutory lien and not in any sense an "equitable lien."

It has been assumed, perhaps without sufficient consideration, that a mechanic's lien is in some way created by an "instrument," whereas, as we have said, it is created by the operation of a statute on a certain state of facts, viz., the doing of work or furnishing materials for, or with the privity or consent of some person having an interest in the land on which such work is done, or materials furnished. It exists without any registration of the claim during the progress of the work or the furnishing of the materials and for thirty days after the last work is done or materials furnished and need not be and often is not evidenced by any instrument whatever.

It will then expire if the claim of lien is not registered. Registration of the claim of lien is required, not to create the lien, but to continue its existence. If registered in due time as prescribed by the Mechanics' Lien Act its prior unregistered life is not destroyed as if it had never existed, but it is simply prolonged and extended into a registered state of existence. If the registration is by a certificate of *lis pendens* it can only then be put an end to by a judicial sentence. If, on the other hand, the registration be merely of the claim, it will expire by effluxion of time unless an action be brought and a certificate of *lis pendens* registered within the prescribed time. The apparent intention of the Mechanics' Lien Act therefore is that a lien shall attach without registration, and cannot be defeated by any sale or transfer of the interest of the person whose interest is bound by the lien, but if that interest is sold or