

Canada Law Journal.

VOL. LVI.

TORONTO, MARCH, 1920.

No. 3

OF CERTAIN ASPECTS OF THE MECHANICS AND WAGE-EARNERS' LIEN ACT.

As we purpose saying various uncharitable things about this Act, it will probably be of advantage in clearing the ground if we adopt the time-honored practice of the pleader, and begin by admitting anything in our power in its favour.

It is well known that at common law the lien in respect of work done upon property, commonly known in law as a "particular" lien, applied only to personal estate.

That species of lien has been defined to be "a right in one man to retain that which is in his possession belonging to another, until certain demands of him, the person in possession, are satisfied." *Hammonds v. Barclay* (1802), 2 East 227, 235.

This lien, as distinguished from a general lien, which, as is well understood, is the lien which attaches to property to secure a general balance of account due from the owner to the possessor, whether in respect of that property or not (*Anglo-Indian Bank v. Davies*, L.R. 9 Ch. D. 289) has always found favour in the eye of the law. *Houghton v. Matthews*, 1803, 3 B. & P. 485.

While it is quite clear therefore, that, though, in the case of personal property, a lien exists in favour of the mechanic in respect of labour expended upon it (*Houghton v. Matthews*, *sup.*) no smaller lien (independent of statute) exists in the case of realty.

An effort was made to establish a lien of that latter character so long ago as the year 1835, (*Johnson v. Crew*, 5 U.C.Q.B. (O.S.) 200), in which case a builder, having performed work on a house, withheld possession, insisting that he was entitled to a lien, and to be paid his account.

The claim failed, however, Robinson, C.J., in delivering judg-