

v. O'Brien, 18 Man. L.R. 79; *Rockel on Mechanics' Liens* (1909), secs. 49, 64. Once the lien attaches, the statute, being a remedial one, should be construed liberally. Under the authorities and the evidence, justice would be done by deducting the price of one coat of paint from the contract-price, especially as the defendant had admitted that she offered to pay the plaintiff the full amount if another coat of paint were put on. Section 49 of the *Mechanics' Lien Act, 1910*, counsel contended, should be construed liberally in favour of the plaintiff.

Louis M. Singer, for the defendant, contended that it would be impossible to fulfill the contract unless the verandah were rebuilt with new materials. (He was stopped by the Court.)

The judgment of the Court was delivered by MEREDITH, C.J.:—We have no right to enforce moral obligations. We think this appeal fails. It is not a case in which it is necessary to determine how far the doctrine of substantial performance obtains, because, upon the findings of the learned Referee, which are supported by the evidence, there was no performance of the contract. It is not a case of slight defects; but there was a serious failure to perform important terms of the contract.

The learned Referee finds that the lumber used in the construction of the verandah was not as specified in the contract; that the verandah was not properly constructed in respect of the joists; and does not comply with the city by-laws regulating the construction of buildings; the upstairs balustrade was not properly secured; the door sill put in by the plaintiff was not properly secured; the eaves-troughs were not properly hung; the painting was not in accordance with the specifications, and has not been properly applied; and that the downstairs balustrades are not properly connected.

Now, to call these trifling defects in the work seems to me a misuse of the English language. They constitute a serious and substantial failure to perform the contract in its material and important aspects; and I think that no other conclusion could be arrived at than that, according to law, the plaintiff, having failed to perform his work according to the contract, was not entitled, in an action, to recover the amount to which, if he had performed it, he would have been entitled, or to enforce his lien.

The doctrine that Mr. Plaxton has attempted by his argument to set up again, of substantial performance, as far as this Court is concerned is concluded by the decision in *Sherlock*