

R. J. Gibson, for the defendants Lucas and Armstrong.

D. Urquhart, for the defendants Newton, Fabian, and Alexander.

MEREDITH, C.J.C.P., read a judgment in which he said that the defendant Lucas, having a contract for the sale to him of the land in question, entered into a contract with the defendant McCracken to sell it to him. McCracken bought for speculative purposes—to build upon the land and then to sell it at a profit. He did build upon it; and the plaintiff's and other claims of lien under the Mechanics and Wage-Earners Lien Act arose out of that work, which was done for him and on his credit. Of McCracken's purchase-money, \$1,300 was unpaid; and, in addition to that, McCracken put a mortgage for \$1,300 upon the property; nearly all the money received upon this mortgage was used in building. The speculation proving a failure, McCracken conveyed to Lucas all his interest in the land in consideration of the \$1,300 due to Lucas and of Lucas assuming at its full amount the mortgage made by McCracken. No lien was registered against the land until some time after the later transaction between Lucas and McCracken had been carried out and the conveyance from McCracken to Lucas had been duly registered. The Referee found that Lucas had no actual notice of any of the liens until after the registration of his conveyance from McCracken.

In the first transaction between Lucas and McCracken, the learned Chief Justice said, Lucas, in so far as the Mechanics and Wage-Earners Lien Act was applicable, was to be treated as if mortgagee, and McCracken as if mortgagor, of the land; and so—if within the provisions of that enactment—the later transaction had the effect of a release by the mortgagor to the mortgagee of the former's equity of redemption in the land. And, under the provisions of the enactment, the plaintiff and other lien-holders had unregistered liens upon the land existing when the later transaction between Lucas and McCracken took place—liens which still existed, having been duly registered in time—unless they were cut out by the registration of the deed from McCracken to Lucas.

The main question was, which had priority?

The learned Chief Justice then referred to the interpretation clauses (sec. 2) of the Registry Act, R.S.O. 1914 ch. 124, and to sec. 21 of the Mechanics and Wage-Earners Lien Act, and stated the effect of the two enactments to be, in such a case as this, that, if the lien-holder delayed registration of his lien, he