

But here a lien was also claimed by the appellants on their own goods. These had been sold to the contractors, who had since failed. They were delivered in the street, in front of the building and land in question, but never actually reached the latter.

The appellants asked for whatever lien they were entitled to. But no case had yet decided that a lien under the Act, either on the land or on the material itself, existed by mere appropriation of goods to a contract or on delivery to the owner or contractor, unless they were placed upon or reached the land to be affected. The difficulties in the way of any other method of establishing a lien were many. With regard to the lien upon the materials themselves, the statute is explicit in creating it only when they have reached the land to which it is intended to attach them, and from which they cannot be removed (sec. 16 (2)) to the prejudice of any lien.

The general lien under sec. 6, and the special one in the nature of a vendor's lien upon the material itself (sec. 16 (2)), depend upon the same condition, i.e., the placing upon the land to be affected of the material in question. Proximity to the land is not enough; it must be on it, so that either in fact or in contemplation of law the value of the land itself is enhanced by its presence.

The damages suffered by an owner owing to non-completion, while not available to him as a set-off against claims for wages, nor to diminish the statutory percentage required to be retained by him, may be and in some cases must be gone into before the Master or Judge trying a case under the Act. To ascertain the sum justly due from the owner to the contractor necessitates an inquiry, where a case is made for it, as to the value of the work done under the contract as well as the damages suffered, and to be set off or deducted, for work undone or improperly done or for delay.

If this inquiry is proper, then the provisions of sec. 37, sub-sec. 3, of the Act seem wide enough to allow the result to be put in the judgment directed to be pronounced by the Master or Judge trying the action.

*Appeal dismissed with costs.*