

MECHANICS' LIENS.

enforce them, expired when the attaching order was obtained. In the former case *Maddougall, Co. J.*, York, held the lienholders were entitled to priority over the attaching creditor, but in the latter case *Hughes, Co. J.*, Elgin, held that they were not.

The point in question is by no means free from difficulty; and the difficulty arises from the wording of the section of the Act conferring the right of lien. The third section of the Mechanics' Lien Act gives a mechanic, in the position of a sub-contractor, a lien on the land on which his work is done, or for which materials are provided, by "virtue of being employed or furnishing" materials; but his lien against the land is limited to the amount due from the owner of the land to the contractor through whom he claims. Under this section the lien is not created by its registration, or by the bringing a suit to enforce it. On the contrary the lien is created and exists without registration, or any suit, for the space of thirty days from the completion of the work or the furnishing of the materials for which the lien is claimed, simply by virtue of the sub-contractor being employed, or furnishing materials. But it will be observed that this section is in terms confined to giving a lien on the land on which the work is done, or on which the materials are supplied. It says nothing about giving a lien on the moneys in the hands of the owner due to the contractor, except indirectly. It does do so indirectly, by limiting the lien on the land to the amount due by the owner to the contractor, so that if the owner, having notice of the liens, would discharge the lien on his land, he must apply the money due to the contractor, in paying the claims of the sub-contractors having such liens, so far as it will extend.

By section 8 of the Act, however, the sub-contractor is also expressly given a

charge upon the money coming from the owner to the contractor, through whom such sub-contractor claims; but then under that section this charge seems to be confined to those sub-contractors "who notify the owner of the premises sought to be affected thereby, within thirty days after such material is furnished or labour performed" of their claims. But the object of this section, we think, is explained by section 11, which, as amended, protects all payments, up to ninety per cent. of the price to be paid for the work, which are made by the owner without notice in writing of the lien of the sub-contractor. Taking these three sections together I am inclined to think that the proper construction of the Act leads to the conclusion that the lien of the sub-contractor under section 3 is not to be understood as simply confined to the land, but that under that section his lien also extends to the money due by the owner to the contractor through whom such sub-contractor claims; but the right to the lien on the money is subject to the provision that the owner may discharge it by *bona fide* payments to the contractor before he, the owner, has written notice of the existence of the lien of the sub-contractor. If, as the writer is inclined to think is the case, the lien of the sub-contractor under section 3 extends both to the land and the money, then it follows that the case of *Lang v. Gibson* is the more correct exposition of the statute.

That section 3 does, in fact, create a lien in favour of a sub-contractor on the money due by the owner to the contractor through whom the sub-contractor claims, notwithstanding the terms in which it is worded we think, after all, is reasonably clear. Suppose by any deed or instrument it was declared that A. should have a lien on the lands of B. for the amount due by B. to C. could it be contended that A. had no lien on the money due by B. to C? We