ance with the provisions of the agreement . . . . The claim to recover for the amount of the estimate of the 19th July, 1909, must, therefore, be disallowed.

The Master charged the plaintiffs with $991 paid by the defendants for fire insurance on the building subsequent to the 1st January, 1908, and in this we think he erred. Paragraph 13 of the agreement provides that the defendants will pay "the cost and expense" of the insurance after the 1st January, 1908, but the plaintiffs have been charged with the $991 because they had not completed the first and second flats and basement . . . by that date . . . and because of the opening words of the paragraph, which provides that the insurance shall be maintained during the progress of the work by the defendants, but at the cost and expense of the plaintiffs. We do not think that there is anything in the paragraph which warrants cutting down the clearly expressed provision at the end of it, that "the company will pay the cost and expense of said insurance from and after the 1st January, 1908." . . .

It was contended that, under sec. 4 of the Act, the lien is given in respect of the work or service performed and the materials furnished, and for the value of these, irrespective altogether of the terms of the contract under which the work or service is performed or the materials are furnished and of the conditions it contains as to payment, and that the plaintiffs are, therefore, entitled to a lien for the value of the work performed and the materials furnished by them after deducting the payments that have been made. . . . This contention is not well founded. . . . [Reference to the provisions of secs. 4 and 9 of the Mechanics' Lien Act.] It would be most extraordinary if it were otherwise, and that, although by the terms of the agreement the contractor was not entitled to more than a stipulated sum or was not entitled to any payment unless he had performed some condition precedent to his right to call for payment, the terms of the contract are to be disregarded, and the contractor entitled to be paid on a quantum meruit.

Nor, in our opinion, does the mere failure of the defendants to pay the amount which the plaintiffs were entitled to present payment of, in respect of the progress estimates, entitle the plaintiffs to claim present payment of the percentage which was to be retained until the final completion of the agreement, and to enforce their lien for the percentage. . . . The plaintiffs may have a lien for it, but a lien not presently enforceable. The plaintiffs' right to enforce their lien . . . can stand on no higher ground than does their right to sue for the amount they have earned under