

with a specified term in the contract. Of the \$470 instalment, there was still \$270 unpaid; the amount for which the plaintiffs were entitled to a lien was \$221.66, and there were several other liens registered against the property.

Held, 1. Sub-contractors supplying materials are not entitled to the benefit of the provisions of section 12 of the Act by which, in the event of a contract not being completed, wage-earners may enforce liens against the percentage of the contract price which the owner is required to hold back under section 9 of the Act.

2. When the contract price is payable by instalments, as the work progresses, the general lien-holders may enforce their claims to the extent of any earned instalments in so far as the same remain unpaid in the hands of the owner: *Brydon v. Lutes*, 9 M.R. 463.

3. The occupation of the house and the mortgaging of it by the proprietor did not stop her from setting up that the house had not been completed, and that, consequently, no more money was owing by her under the contract. *Pattinson v. Iuckley*, L.R. 10 Ex. 330, and *Sumpter v. Hedges* (1898) 1 Q.B. 673 followed.

4. Plaintiffs and the other lien-holders were entitled to share pro rata in the unpaid balance of the \$470 instalment.

Robson and Harvey, for plaintiffs. *Elliott*, for defendant Niebert.

Perdue, J.]

IN RE ALEXANDER AYOTTE.

[Feb. 4.

Contempt of Court—Refusal of witness to answer question on investigation before magistrate—Materiality of question—Habeas corpus—Criminal Code, s. 585.

Application for a writ of habeas corpus for the release of Ayotte, who had, under s. 585 of the Criminal Code, been committed to gaol for a week for contempt of court in refusing to answer a question put to him on the preliminary investigation before a magistrate, of a charge laid against one Rittson, under section 503 of the Code, for having erased a name from a voters' list in his hands as deputy returning officer at the last Dominion election. Ayotte was the returning officer for the electoral district, and deposed that he had received from Ottawa the voters' lists, and had transmitted the list in question to the accused deputy, but stated that he could not tell by what means the lists had reached him from Ottawa. He was then asked from whom he had received the lists, but, on advice of counsel, refused to answer, on the ground that the question was not relevant. Further questions were then asked, when he stated that when he first received the lists there were red lines struck through some of the names on them. He was again asked from whom he