

Or (2) that, assuming that McCrea's indebtedness to the respondent was not put an end to, the appellants took over the work, and the promise to the respondent was to pay the indebtedness out of the moneys coming to McCrea from the appellants, or which might come to the hands of the appellants from the other persons whose logs formed part of the drive. These moneys, according to the evidence, were turned over by McCrea to the appellants upon the express promise by them that they would pay the men who agreed to remain and did remain on the drive until it was put through or they were discharged, as the respondent did, not only the wages thereafter earned by them, but what was coming to them for the work they had done while McCrea had had charge of the drive.

In either view, the promise of the appellants was not within sec. 4 of the Statute of Frauds: De Colyar on Guarantees, 3rd ed., p. 81 et seq., 103; Clark v. Wendell, 16 U. C. R. 352.

The judgment should, therefore, be affirmed, and the appeal from it dismissed with costs.

T. H. Grout, Arnprior, solicitor for plaintiff.

Thompson & Hunt, Arnprior, solicitors for defendants,

MAY 3RD, 1902.

DIVISIONAL COURT.

WEBB v. GAGE.

Mechanics' Lien — "Owner"—Lease—Covenant by Lessee to Erect Buildings on Land.

Gearing v. Robinson, 27 A. R. 364, followed.

Appeal by defendant Gage from judgment of Master at Hamilton in action to realize a lien. In 1899 defendant Gage leased certain land to defendants the Hoepfner Company for 99 years, by indenture, which contained a covenant by lessees to build works and plant to the value of \$100,000, which, when completed, were to become the property of the defendant Gage. The plaintiff claims a lien in respect of work done and materials furnished to the buildings, and the question raised is whether, by reason of the terms of the lease, the defendant Gage is an owner within the meaning of sec. 2, sub-sec. 3, of the Mechanics' and Wage-earners' Lien Act. There was no evidence outside of the lease of any request by defendant Gage to plaintiff.

G. Lynch-Staunton, K.C., and W. S. McBrayne, Hamilton, for appellant.

G. H. Levy, Hamilton, for defendants the Hoepfner Company.