States, where it is held that malice is no element of tort. *Clemmitt* v. *Watson*, 14 Ind. App. 38.

In New York the question may be said to be undecided, though a late decision of the Appellate Division of the Supreme Court has been rendered conforming to this view. *Curran* v. *Galen*, 152 N.Y. 331; *Davis* v. *Engineers*, 28 N.Y. App. New York Appellate Division 396; *Protective Association* v. *Cumming*, 53 N.Y. Appellate Division, 227; but in Massachusetts, on a state of facts similar to those in *Allen* v. *Flood*, supra, it was held that an action will lie. *Plant* v. *Woods*, (Mass. 1900) 57 N.E. Rep. 1011. It has also been held in Massachusetts, that if the members of a labour combination, by striking and refusing to return to work until a penalty imposed by the union upon the employer is paid, force the employer to pay such penalty, he may maintain an action for its recovery. *Carew* v. *Rutherford*, 106 Mass. 1.

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MECHANICS' LIENS.

The rights of lien holders in the percentage required by the Mechanics' Lien Act to be retained by owners has been the subject of a good deal of litigation, and some difference of judicial opinion.

In the recent case of *Price* v. *Rathbone*, 4 O.W.R. 602, the Court of Appeal has determined that a sub-contractor, though not a wage earner, is entitled to a lien on the percentage in priority to any right of set-off the owner may have against the contractor by reason of his default in the performance of his contract, and in arriving at that conclusion have virtually overruled *Farrell* v. *Gallagher*, 23 O.L.R. 130; and have followed in preference *Russell* v. *French*, 28 Ont. 215. The latter case was decided in 1898, and in 1905 it was discussed by Mr. Hodgins, K.C. (now Mr. Justice Hodgins), in a very able article to be found ante vol. 41, p. 733.