

defence raised should not prevail without strict proof of a violation of the Act, and that there was no such proof in this case.

Appeal allowed with costs.

Mathers, for plaintiff. *Aikins*, K. C., and *Robson*, for defendant.

Bain, J.]

SIMPSON v. OAKES.

[Nov. 27, 1902.

Threshers' Lien Act, 57 Vict. (M), c. 36—Lien on grain sold to bona fide purchaser—Seizure of excessive quantity—Notice of claim of lien.

County Court appeal. Plaintiff had, on September 28, threshed for one Riter 100 bushels of wheat, on October 8, 9, 960 bushels, and on November 7, 88 bushels of wheat and 400 bushels of wheat and barley. He did not shew that the first threshing had not been paid for. On October 28, in conversation with Riter, he claimed a lien on 60½ bushels of wheat then in Riter's granary, for the cost of the threshing on the 8th and 9th of that month, but it appeared that the 60½ bushels referred to were part of what had been threshed on September 28.

Held, that a thresher cannot, under the Threshers' Lien Act, 57 Vict. (M), c. 36, maintain a lien on grain for the threshing of which he had been paid to recover the price of a subsequent unpaid threshing.

The Act allows a period of thirty days for the assertion of a right of lien, and the plaintiff took no other steps in that direction until the 21st of November, when he posted a notice on the door of the granary on Riter's farm saying, "that all grain herein is seized by me for cost of threshing under the 'Threshers' Lien Act,'" This was some days after Riter had given possession of the grain to the defendant, a bona-fide purchaser thereof for value. There were then in the granary the 60½ bushels of wheat above referred to, and 195 bushels of barley, of the total value of \$86, whilst plaintiff's claim for the threshing of November 7 was only about \$26, and this was the only threshing for which he could on November 21 have claimed any right of retention. The notice did not mention the amount for which the lien was claimed on the date of the threshing and did not specify any particular quantity of grain as being seized. The statute (s. 2) only allows the retention of a sufficient quantity of grain computed at the fair market value thereof, less the cost of marketing, to pay for the price of any threshing done within thirty days prior to the date of asserting the right.

Held, that the quantity of grain which the plaintiff attempted to retain was unreasonably large for the amount owing, and that he had thereby forfeited his right of retention of any of it. Appeal allowed with costs.

Hudson, for plaintiff. *Wilson*, for defendant.