

I therefore find that no notice in writing of the plaintiff's lien was given to the defendant Company prior to the advance of the last \$400.00 to Larose. As will be observed, I am treating the handing of the cheque to Larose, as the payment of the money to him, it having been so treated on the argument; and I am not considering whether, as a matter of law, the actual payment was not the cashing of the cheque by the bank, the Company's agents in that behalf. The point was not raised by counsel and, moreover, in my view of the facts, its determination could make no difference in the result. Larose's story which I am adopting, is that on receipt of the cheque he went direct with it to the bank, and there is no evidence to shew that the notice was received in the interval.

Such being the facts, it becomes necessary to decide whether the registration of the plaintiff's lien before the paying over of the \$400.00 is sufficient to give him priority over the defendant's mortgage to the extent of that payment, and this of course involves the construction of s. 99 (1) of the Registry Act (R. S. O. ch. 136) and of s. 13 (1) of the Mechanics' and Wage Earners' Lien Act (R. S. O. ch. 153). The question is discussed by Mr. Holmsted at pp. 16, 74 of his work on "The Mechanics' Lien Acts." The proper construction of s. 99 (1) of the Registry Act and its application to Mechanics' Liens is also dealt with at page 605 of Hunter's Real Property Statutes, but the present Mechanics' Lien Act was passed after the publication of the latter book. Sec. 99 (1) of the Registry Act reads as follows:—

"99—(1) Every mortgage duly registered against the lands comprised therein is, and shall be, deemed as against the mortgagor, his heirs, executors, administrators, assigns and every other person claiming by, through or under him, to be a security upon such lands to the extent of the moneys or money's worth actually advanced or supplied to the mortgagor under the said mortgage (not exceeding the amount for which such mortgage is expressed to be a security), notwithstanding that the said moneys or money's worth, or some part thereof, were advanced or supplied after the registration of any conveyance, mortgage or other instrument affecting the said mortgaged lands, executed by the mortgagor or his heirs, executors or administrators and registered subsequently to such first-mentioned mortgage, unless before advancing or supplying such moneys or money's worth the mortgagee in such first-mentioned mortgage had actual notice of the execution and registration of such conveyance, mortgage or other instrument; and the registration of such conveyance, mortgage or other instrument after the registration of such first-mentioned mortgage, shall not constitute actual notice to such mortgagee of such conveyance, mortgage or other instrument."

The section when first enacted formed s. 1 of 57 Vict., c. 34, and was prefaced by the words, "To remove doubts." It was no doubt passed in consequence of the decision in *Pierce v. C. P. L. & S. Co.*, 24 O. R. 426, to the effect that where a second mortgage was registered prior to advances