

MECHANICS' LIENS AND THE REGISTRY ACT.

rather that the registration of the lien is to be a means by which that priority is to be preserved and continued.

For the period which intervenes between the date at which the lien first accrues, and the time within which it is registered (assuming the registration to take place within the period prescribed by the Act), the lien is to be dealt with as though the Registry Act did not exist. Any other construction, we think, fails to give due effect to the 26th section.

The earliest reported case in which the effect of the Registry Act in its relation to mechanics' liens is considered is *Douglas v. Chamberlain*, 25 Gr. 288, but that case went off on a question of pleading, the allegations in the plaintiff's bill being held to be insufficient to support his claim. The bill was filed by a lienholder under section 7, to obtain priority over a mortgagee in respect of the increase in the selling value of the mortgaged property occasioned by the lienholder's improvements. The effect of the 26th section upon the point actually involved was not very material. There is, however, a doubt thrown out by the learned judge who disposed of that case as to whether mortgagees, under deeds executed during the progress of the work, would be affected by any notice of lien. Whether he means to doubt whether actual notice of the lien would affect the mortgagee so acquiring title, or merely that the performance of the work would not of itself be notice to the mortgagee, is not very clear. In any case it is clear the solution of the doubt there thrown out, but not attempted to be solved, must depend very largely on the effect of the 26th section, which, however, is not referred to in that case.

The case in which the point in question was first directly raised is *Richards v. Chamberlain*, 25 Gr. 402. This was an attempt on the part of a lienholder to establish his priority over a mortgagee

whose mortgage was dated prior to the lien, in respect of so much of the mortgage debt as had not been actually advanced, until after the accruer of the lien of the plaintiff. The plaintiff in this case failed, but neither in the argument of counsel as reported, nor in the reasons of Spragge, C., for his judgment, do we find the 26th section once mentioned, or its effect anywhere noticed, but the case is argued and discussed as though it had no existence. This case came before the court on motion for decree; the bill alleged that the advances made after the lien accrued were made with notice of the lien, but this allegation was denied by the answer. The plaintiff's counsel, according to the judgment, appears to have relied on the mortgagees having had a constructive notice of the lien, on the ground that they must be assumed to have known that the work was being done in respect of which the lien was claimed. The learned judge (Spragge, C.) held that the plaintiff was not entitled to the priority he sought, and he based his judgment on the fact that the plaintiff had not registered his lien before the advances were made; but notwithstanding the vital importance of section 26, he did not consider in any way the bearing of that section upon the question before him. The decision arrived at may possibly be correct, and we are inclined to think it may be supported on the ground that the mortgagees, having made their advances without actual notice of the plaintiff's lien, had an equal equity with the plaintiff, and having, moreover, the legal title which their mortgage gave them, the maxim that "when the equities are equal the law must prevail" applied, and, therefore, quite irrespective of the Registry Act, the mortgagees were entitled to priority. There may be a difficulty, however, in supporting the judgment even on this ground, arising from the fact that it assumes that the plaintiff's claim is an