

1892 HENRY V. EDMONDS (PLAINTIFF).....APPELLANT:
 *Oct. 19 AND

W. W. TIERNAN AND EDWARD }
 WALTERS (DEFENDANTS).....} RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF BRITISH
 COLUMBIA.

*Mechanic's lien—Materials supplied to contractor—Payment by promissory
 note—Suspension of lien—Waiver.*

E. supplied a contractor with materials for building a house for W. and took the contractor's note for \$1,100 at thirty days for his account. The note was discounted but dishonoured at maturity and E. took it up and registered a mechanic's lien against the property of W. While the note was running W. paid the contractor \$500 and afterwards, but when was uncertain, \$600 more. In an action by E. to enforce his lien :

Held, affirming the judgment of the court below, that as the lien was suspended during the currency of the note it was absolutely gone there being nothing in the Lien Act to show that it could be abandoned for a time only, and this result would follow even if part of the amount only had been paid to the contractor.

APPEAL from a decision of the Supreme Court of British Columbia (1) in favour of the defendants.

The defendant, Tiernan, is a contractor who was building a house for his co-defendant Walters, and was supplied with lumber therefor by the plaintiff. Tiernan gave plaintiff his note for \$1,100, at thirty days, which was dishonoured at maturity and taken up by plaintiff. During the currency of the note Walters paid Tiernan \$500 and he paid him \$600 more, but when was not proved. The plaintiff registered a mechanic's lien against the property of Walters and

*PRESENT :—Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

brought his action under the statute which was tried before the Divisional Court and resulted in judgment for the defendants the court holding that the lien was extinguished by the plaintiff taking the note from Tiernan. The plaintiff appealed.

1892
EDMONDS
v.
TIERNAN.
—

Cassidy for the appellant.

Chrysler Q.C. for the respondent.

The judgment of the court was delivered by :

STRONG J.—We are all of opinion that this appeal should be dismissed. In the first place the lien was waived by taking the promissory note from the contractor and by its negotiation, inasmuch as, under ordinary circumstances, that would have been at least a suspension of the debt, and therefore the lien, for the time being, was as if it had never existed. The statute does not give the lien but only a potential right of creating it, and during the thirty days the note was running it having been discounted it was impossible that the lien could have been created and the potentiality of creating it was, therefore, gone. It is quite clear that when a statute gives a privilege in favour of a creditor the creditor must bring himself strictly within its terms, and there is nothing in the statute in question here which provides that if a lien has once been abandoned it is to be considered as being abandoned merely for a time. If we should hold that it was to be so considered we should be adding a clause to the act.

It follows, that if the evidence was that only \$500 of the \$1,100 was paid by the respondent to the contractor during the currency of the note, and whilst it was outstanding in the hands of a *bonâ fide* indorsee for value, the lien would be absolutely gone. I am satisfied, however, that the whole amount was paid

1892
EDMONDS ^{v.}
TIERNAN. during that time. Had the note not been negotiated
by the appellant different considerations might have
prevailed.

Strong J. The appeal must be dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellant: *Corbould, McColl, Wilson &
Campbell.*

Solicitors for respondents: *McPhillips & Williams.*
