

KEENAN BROTHERS, LIMITED (DE- }  
FENDANT) ..... } APPELLANT;

1928  
\*Mar. 6.  
\*Mar. 27.

AND

WILLIAM LANGDON (PLAINTIFF) ..... RESPONDENT.

AND

ALEXANDER KING AND ALEXANDER KING & SON  
(DEFENDANTS).

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME  
COURT OF ONTARIO

*Timber—Lien—Woodman's Lien for Wages Act, R.S.O. 1914, c. 141, s. 6  
(2)—Claim of lien by sub-contractor.*

Subs. 2 of s. 6 of *The Woodman's Lien for Wages Act*, R.S.O. 1914, c. 141, which, in effect, gives a lien to a "contractor," applies only in favour of a person who has made a contract directly with the owner of the timber, and does not give a lien to a sub-contractor for moneys owing to him under a contract made by him with the person who contracted with the owner.

Judgment of the Appellate Division of the Supreme Court of Ontario (32 O.W.N. 407) reversed.

APPEAL by the defendant Keenan Brothers, Limited, from the judgment of the Appellate Division of the Supreme Court of Ontario (1), which affirmed the judgment of His Honour, Judge Powell, Judge of the District Court of the District of Parry Sound, who held that the

\*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Lamont and Smith JJ.

(1) (1927) 32 O.W.N. 407.

1928  
KEENAN  
BROS. LTD.  
v.  
LANGDON.

respondent (plaintiff) was entitled, under *The Woodman's Lien for Wages Act*, R.S.O. 1914, c. 141, to a lien on certain logs or timber owned by the appellant, for the amount owing to the respondent by the defendants Alexander King and Alexander King & Son for cutting, skidding and hauling logs or timber under a contract made by the respondent with the said Alexander King and Alexander King & Son, who had contracted with the appellant to cut and deliver certain timber for the appellant. The point in question was whether the effect of subs. 2 of s. 6 of the said Act was to give to the respondent the lien claimed. The appeal was allowed with costs.

*N. W. Rowell K.C.* for the appellant.

*R. S. Robertson K.C.* for the respondent.

The judgment of the court was delivered by

MIGNAULT J.—This is an appeal from the First Appellate Divisional Court of Ontario.

In 1925, the appellant, Keenan Brothers, Limited, a company carrying on business as a dealer in and a manufacturer of lumber, was the owner or licensee of a timber berth, and, in September of that year, made a contract with Alex. King & Son to cut and deliver a certain quantity of this timber. Alex. King & Son subsequently entered into an agreement with the respondent to cut, skid and haul a portion of the wood comprised in their contract. The respondent, not having been paid the full amount of his sub-contract, claims against Alex. King & Son payment of the balance due him, and asserts against the appellant, the owner of the timber, a lien on the wood cut by him. His action is based upon *The Woodman's Lien for Wages Act*, R.S.O. 1914, ch. 141, and was tried before Judge Powell of the District Court of Parry Sound. The learned judge found that the respondent's agreement with Alex. King & Son was to take out 25,000 pieces of timber at \$14 per thousand feet for logs 8 inches or over, and 1½ cents per lineal foot for logs 6 inches to 8 inches, and that this agreement was made without the knowledge or consent of Keenan Brothers. He gave the plaintiff judgment against Alex. King & Son for a balance of \$2,198.76, and also granted him

a lien for this amount upon the logs cut by him, which are the property of Keenan Bros. From this judgment Keenan Bros. alone appealed, and having failed before the Appellate Divisional Court, they now bring the case before this Court, seeking to free their timber from the respondent's alleged lien.

1928  
v.  
KEENAN  
BROS. LTD.  
v.  
LANGDON.  
Mignault J.

The enactment on which the respondent relies reads as follows:

6. (1) A person performing labour shall have a lien upon the logs or timber in connection with which the labour is performed for the amount due for such labour, and the same shall have precedence over all other claims or liens thereon, except a claim or lien of the Crown for any dues or charges or which a timber slide company or any owner of a slide or boom may have thereon for tolls.

(2) A contractor who has entered into any agreement under the terms of which he himself or by others in his employ has cut, removed, taken out or driven logs or timber, shall be deemed to be a person performing labour upon logs or timber within the meaning of this section, and such cutting, removal, taking out and driving shall be deemed to be the performance of labour within the meaning of this section.

The contention of the appellant in short is that the respondent is a sub-contractor, and that as such he does not come within the intendment of subs. 2 of s. 6 which is restricted to a "contractor," that is to say a person making an agreement to cut timber directly with the owner of the wood.

The woodman's lien in question here is essentially a lien for wages. This is shown by the title of the Act, as well as by subs. 6 of s. 12, which states that the judgment shall declare that "the same is for wages." The lien is granted for labour, and "labour" is defined as meaning and including

cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber, and any work done by cooks, blacksmiths, artisans and others usually employed in connection therewith.

Then subs. 1 of s. 6 gives to "a person performing labour" a lien "upon the logs or timber in connection with which the labour is performed for the amount due for such labour." The object of subs. 2 is to extend the meaning of the words "person performing labour" to "a contractor who has entered into any agreement under the terms of which he himself or by others in his employ has cut, removed, taken out or driven logs or timber." And "such cutting, removal, taking out and driving shall be deemed to be the performance of labour."

1928

KEENAN  
BROS. LTD.

v.

LANGDON.

Mignault J.

Except in so far as subs. 2 may contain a definition of the word "contractor," that expression is not defined in the Act. The contractor contemplated is a contractor who has entered into any agreement to do this work. An agreement with whom? Obviously with the person for whom the wood is to be cut, that is to say, in my opinion, with the owner of the timber. Thus the firm of Alex. King & Son was a "contractor" within the meaning of subs. 2, and undoubtedly would have had a lien for anything due it for the work it performed. But it is a totally different proposition to say that the "contractor" can give a sub-contractor, and that the sub-contractor has the same lien as the contractor. Were that the true construction of the subsection, it would follow that, although the owner had paid the contractor, or discharged any lien belonging to him, he would not be secure against a claim made by a sub-contractor. In effect, this is what has been decided in the present case.

The history of the statute, I think, shows that subs. 2 cannot be so extended. As first enacted in 1891, by 54 Vict., c. 22, *The Woodman's Lien for Wages Act* gave a lien merely for labour performed. In 1896, by 59 Vict., c. 36, s. 4, a provision was added to the Act stating that

any contractor who has entered into any agreement under the terms of which he has cut, removed, taken out and driven, *for any licensee of the Crown*, by himself or others in his employ, any logs or timber \* \* \* shall be deemed to be a person performing labour \* \* \* .

The agreement mentioned there was obviously an agreement made with the licensee of the Crown, that is to say with the owner of the timber. And although the words I have italicized are no longer in the subsection, I think the agreement must be with the owner of the timber, for it is an agreement entered into by a contractor, and a "contractor" in matters of this kind, and according to the ordinary meaning of the word, is a person who undertakes work for the owner, any other undertaker who deals solely with the contractor, being a "sub-contractor."

As I have already pointed out, the lien granted by this statute—and it is a statute subject to strict construction—is primarily a lien for wages. If the sub-contractor performs himself labour, he has a lien for his wages under subs. 1 of s. 6. But he has not a contractor's lien.

The construction I place on subs. 2 fully protects the owner, for the agreement contemplated by subs. 2 is an agreement made with himself. Were the subsection extended so as to include sub-contracts and sub-contractors, the owner would be at the mercy of his contractor, for no notice of a sub-contract need be given him, nor has he any control over the price stipulated in the sub-contract. And the owner might have fully settled with his contractor only to find out afterwards that there are unpaid sub-contractors he knew nothing of.

1928  
KEENAN  
BROS. LTD.  
v.  
LANGDON.  
Mignault J.

The present case is an illustration of the danger of the construction which has been upheld in the courts below. The appellant paid Alex. King & Son all it owed them under their agreement, with the exception of \$1,782 which the appellant stated it was prepared to pay according to the direction of the court. The learned trial judge maintained the lien for \$2,198.76 and the costs, while finding as a fact that the contract between Alex. King & Son and the respondent was made without the knowledge or consent of the appellant. As a consequence, the appellant, to obtain the release of his timber, would have to pay several hundred dollars more than it agreed to pay to its contractor. In my opinion, such a result is not authorized by the statute.

It follows that the respondent has not succeeded in bringing himself within the terms of subs. 2 of s. 6, and cannot assert a lien under his sub-contract. In so deciding I would, however, reserve him any right he may have to claim the actual balance due by the appellant to Alex. King & Sons.

The appeal should be allowed with costs here and in the appellate court, and the respondent's action should be dismissed with costs in so far as the appellant is concerned.

*Appeal allowed with costs.*

Solicitors for the appellant: *Rowell, Reid, Wright & McMillan.*

Solicitor for the respondent: *G. E. Buchanan.*