

Board of Railway Commissioners.]

[June 13.]

MONTREAL STREET RY. CO. v. MONTREAL TERMINAL RY. CO.

Board of Railway Commissioners—Jurisdiction—Railway Act, 1903, ss. 23, 184—Use of highway—Consent of municipality—By-law.

In the case of a street railway, or of any railway to be operated as such upon the highways of any city or incorporated town, the consent of the municipal authority required by s. 184 of the Railway Act, 1903, must be by a valid by-law approved and sanctioned in the manner provided by the provincial municipal law, and in the absence of evidence of such consent having been so obtained the Board of Railway Commissioners for Canada have no jurisdiction to enforce an order in respect to the construction and operation of any such railway. Appeal allowed and order of Board set aside.

Camibell, K.C., for appellants. *Dandurand*, K.C., and *Belcourt*, K.C., for respondents. *A. G. Blair, jr.*, for the Board.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

PHELAN v. FRANKLIN.

[July 25.]

Mechanics' lien—Personal remedy against owner.

Defendant Shinbane employed defendant Franklin to execute certain repairs to a house for a sum payable on completion. Franklin did not complete the work but Shinbane voluntarily paid him \$55 on account.

The plaintiff was a workman under Franklin, and his unpaid wages amounted to \$25.50.

Held, 1, following *Carroll v. McVicar*, that, under R.S.M. 1902, c. 110, ss. 9, 12, the plaintiff was entitled to a lien on the building for his claim to the extent of the twenty per cent. of the payments made that the owner should have held back from Franklin.

2. Having brought his action under the above Act, the plaintiff could not in this action avail himself of the personal remedy given by R.S.M. 1902, c. 14, s. 4, against the proprietor for the whole of his claim in cases where pay list is not kept and the proprietor neglects to see that the workmen are paid.