

JULY 12TH, 1915.

## \*KALBFLEISCH v. HURLEY

*Mechanics' Liens—Lien of Material-man—Date of Last Delivery—Dispute as to—Finding of Fact of Master—Appeal—Material Delivered on Premises to be Used in Building—Absence of Evidence that Lumber so Used—Mechanics and Wage Earners Lien Act, R.S.O. 1914 ch. 140, sec. 6.*

Appeal by the defendants J. J. Hurley and E. Hurley, the owners, from the judgment of the Local Master at Stratford declaring the plaintiffs and other persons entitled to the enforcement of mechanics' liens against the appellants' lands.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and HODGINS, JJ.A., and KELLY, J.

R. S. Robertson, for the appellants.

F. R. Blewett, K.C., for the plaintiffs and other lienors, respondents.

The judgment of the Court was delivered by HODGINS, J.A., who said that the first question was, whether the Master was right or wrong in holding that the last delivery of material was on the 21st September, 1914. The articles said to have been delivered on the 21st September, 1914, were twenty pieces of pine lumber of the value of \$4.55. The appellate Court should not reverse the Master's finding on a question of fact, unless convinced that he had arrived at a wrong conclusion. It must be taken as established that the delivery of the pine lumber was upon the 21st September, 1914; and, therefore, that the mechanic's lien registered on the 21st October, 1914, was within the 30 days prescribed by the Mechanics and Wage Earners Lien Act.

The second question was, whether the material was furnished or used in such a manner as to entitle the respondents to a lien. The Master found that, although the delivery upon the land now charged was completed on the 21st September, 1914, there was no evidence that the lumber was ever used in the construction of the building. The delivery was made, however, for the purpose of using in the building the materials delivered; and that was sufficient to entitle the respondents to a lien: sec. 6 of the Act referred to, R.S.O. 1914 ch. 140.