

custody the exhibits then are, shall endorse upon exhibits 5 and 6 "Cancelled by order of the Court," and sign the same.

I will give further directions as to the form of the judgment if difficulty arises in settling the minutes.

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HON. MR. JUSTICE RIDDELL.

OCTOBER 5TH, 1912.

CHAMBERS.

SALTSMAN v. BERLIN R. & C. CO.

4 O. W. N. 88.

*Action — Stay of Proceedings — Action by Workmen to Recover Wages — Building Contract — Plaintiffs' Right should not be Determined on Interlocutory Application.*

Application by defendants the Berlin R. & C. Co. to stay this action as against themselves. The action is brought by workmen for wages against the applicants, the owners of a building in course of erection and the W. A. Nicheill Contracting Co., who had contracted to put up the building in question, but who had been unable to complete the work owing to financial troubles. The applicants claimed that under their contract with their co-defendants they were to pay 80 % of the cost of the work done as the work progressed which they had done, but that they could not arrive at the balance due their co-defendants until the contract which they were completing themselves by day labour was finished.

COUNTY JUDGE made order staying plaintiff's action until completion of work.

RIDDELL, J., *held*, on appeal from above order that plaintiffs' rights should not be determined on an interlocutory application and that in any case the applicants could not be prejudiced by plaintiffs being allowed to prove their case at the trial.

Appeal allowed and order vacated, costs of application and appeal to be paid to plaintiffs forthwith.

An appeal by the plaintiffs from an order of the Deputy Judge of the County Court of the county of Waterloo, staying all proceedings in this action, which was brought for the enforcement of mechanics' liens.

M. A. Secord, K.C., for the plaintiffs, appellants.

J. C. Haight, for the defendants, the Berlin Robe and Clothing Company.

HON. MR. JUSTICE RIDDELL:—The plaintiffs are workmen who were employed by the defendants, W. A. McNeill Contracting Co., in the erection of a brick building, which that company had contracted to build for their co-defendants the Berlin R. & C. Co. The contract provides for payment