also be open. The evidence to be given upon the one branch must largely cover both. The Court remained of that opinion.

The motion should be dismissed; costs of all parties to be costs in the cause.

HIGH COURT DIVISION.

MIDDLETON, J. JUNE 19TH, 1916.

JOHNSON & CAREY CO. v. CANADIAN NORTHERN R. W. CO.

Trial—Order for Separate Trial of Preliminary Issues of Law—Constitutional Law—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140—Power of Ontario Legislature to Create Lien Effective against Dominion Railway—Power to Confer upon Referee Jurisdiction to Try Action—Scope of Proceeding under Act—Questions of Account.

Motion by the defendant railway company for an order under Rule 122 directing that the issue as to the right of the plaintiffs to claim a lien against a railway company incorporated by the Dominion and subject to the provisions of the Dominion Railway Act, and also a subsidiary issue, should be separately tried before the trial of the other issues.

The motion was heard in the Weekly Court at Toronto.

W. N. Tilley, K.C., for the defendant railway company.

A. C. McMaster, for the plaintiff company.

H. S. White, for the defendants Foley Welch & Stewart.

MIDDLETON, J., read a judgment in which he said that the plaintiffs were sub-contractors under the defendants Foley Welch & Stewart, contractors with the defendant railway company, for the construction of a railway line. The plaintiffs sought to recover: (1) $250,000, the balance due upon their sub-contract; (2) $19,000, a force account, for which they claimed direct liability on the part of both defendants; and (3) $47,000 for extra cost of contract work occasioned by delay in the preparation of the site etc., and for this they sought also to hold both defendants liable on contract. For the first item, and possibly the last, the plaintiffs could have no claim against the railway company save by virtue of the Mechanics and Wage-Earners Lien Act. The expense of a reference to take the accounts would be very great; and the case was one of those in which the preliminary question ought to be authoritatively determined before the incuring of that expense.

If there was a contract by the railway company in respect of