

to get it to work properly. The plaintiff was to have only one day to try the press. The defendants by their conduct in sending an agent to plaintiff, by suggestion and persuasion, threw him off his guard as to his strict legal position. I think defendants have waived their right to hold plaintiff to the strict letter of the contract, and that they should accept the press. Substantial justice will be done by allowing the verdict to stand.

Motion refused. Costs in the action.

White & Williams, Pembroke, solicitors for plaintiff.

J. G. Forgie, Pembroke, solicitor for defendants.

JANUARY 18TH, 1902.

DIVISIONAL COURT.

BOOTH v. BOOTH.

Mechanic's Lien—Work Done to Houses of Different Owners—Lien Attaches to Interest of Each Owner—Amount may be Proportioned—Recoverable if Proved—Discretion of Master—Interference with—R. S. O. ch. 153, secs. 7 (1), 2 (3).

Appeal by Mary E. Hess and others, served with notice of trial in a summary proceeding to enforce a mechanic's lien, from the judgment of the Master at Belleville, allowing plaintiff's lien. The lien is claimed by plaintiff against property on Ridgeway street, in the town of Trenton, belonging to his wife, and is for a balance due in respect of repairs to the value of \$895.50 done by him to the property in question, and the property adjoining it, both of which are covered by the same roof, but the latter property is owned by the defendant's mother.

The Master found the plaintiff entitled to a lien for \$295.50, and that that amount had been expended by him upon the property out of his own moneys.

T. A. O'Rourke, Trenton, for appellants.

H. L. Drayton, for plaintiff.

Judgment of the Court (MEREDITH, C.J., and BRITTON, J.) was delivered by MEREDITH, C.J.—I think a lien may attach on the land of each owner where the buildings are repaired under their joint contract, as in this case, for one entire price, provided a separate account has been kept. R. S. O. ch. 153, sec. 4, creates the lien, and by sec. 7 it attaches upon the estate of the owner as defined by sec. 2 (3). The Master has properly found that the plaintiff has brought himself within these provisions. The work, etc., was done at the request of the wife, and plaintiff is entitled to a lien on her estate, limited to the amount justly due. The price