

HIGH COURT DIVISION.

MASTEN, J.

APRIL 23RD, 1918.

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

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—Jurisdiction of Court to Award Personal Judgment where Lien-claim Unenforceable—Sec. 49 of Act—Jurisdiction of Officers to Try Action to Enforce Lien—District Court Judge—Sec. 33 of Act as Enacted by 6 Geo. V. ch. 30, sec. 1.

Pursuant to the order of MIDDLETON, J., 10 O.W.N. 372, the issues of law arising in this action were tried by MASTEN, J., at Toronto.

A. C. McMaster, for the plaintiffs.

W. N. Tilley, K.C., and A. J. Reid, K.C., for the defendants the Canadian Northern Railway Company.

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

The Attorneys-General for Canada and Ontario were notified of the hearing.

The former did not desire to be heard.

The latter submitted a written memorandum.

MASTEN, J., in a written judgment, said that the action was to enforce a mechanic's lien; and the questions to be determined were:—

(a) Can a lien claimed under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, exist or be enforced against the property of the Canadian Northern Railway Company, in the circumstances alleged in the amended statement of claim?

(b) If not, can the plaintiffs proceed to obtain judgment under sec. 49 of the Act or otherwise in these proceedings?

(c) Are the provisions of the Act conferring jurisdiction on the special officers referred to in sec. 33 *intra vires*?

The learned Judge, in regard to the first question, said that, notwithstanding the able argument of counsel for the plaintiffs, he was unable to distinguish this case from *Crawford v. Tilden* (1907), 14 O.L.R. 572; and the answer to the question must be in the negative.