

JUNE 15TH, 1910.

GENERAL CONTRACTING CO. v. CITY OF OTTAWA.

*Mechanics' Liens—Municipal Lands and Buildings—Right of Lien
—Summary Dismissal of Action by County Court Judge—
Appeal—Remittal for Trial.*

Appeal by the defendants from an order of a Divisional Court allowing an appeal from the judgment of a County Court Judge dismissing an action to enforce a mechanics' lien, and remitting the action to the County Court Judge for trial.

The appeal was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, J.J.A.

T. McVeity, for the defendants.

G. H. Kilmer, K.C., and W. H. Irving, for the plaintiffs.

MOSS, C.J.O. :—The effect of the order of the Divisional Court from which the defendants appeal is merely to remit this action for trial in the ordinary course of procedure as provided by secs. 31, 33, 34, 35, et seq., of the Mechanics' Lien Act; and, in my opinion, that order should not be disturbed. Assuming, without determining, that the learned County Court Judge has jurisdiction to deal with a claim under the Act in a summary manner, it is a jurisdiction to be sparingly exercised. This case presents features which seem to render it quite inadvisable to make a premature ending of it at the present stage.

Whether there is or is not, in the present state of legislation, a right of lien upon property of every description held by a municipal corporation in respect of work done and materials furnished in and about erections, buildings, or other works upon it, is not so entirely clear as to make it proper to so hold without investigation of the facts. The language of some of the sections of the Act seems to imply an intention to bring at least some classes of municipal property within its provisions. And, until all the facts appear, it cannot be said that the property in question here is not subject to a lien. If it be subject, then comes the question whether this is a proper case for the enforcement of such a remedy. And that, too, must depend upon the facts proved. It may turn out that the plaintiffs are unable to bring themselves within its provisions owing to the nature of the contract and what was done or not done under