

HON. MR. JUSTICE RIDDELL.

OCTOBER 9TH, 1912.

DICK v. STANDARD UNDERGROUND CABLE
COMPANY.

4 O. W. N. 111.

Appeal — Leave to Appeal — To Divisional Court from Judge of Chambers — Con. Rule 777 (3) (a), (c) — Action — Stay of Proceedings — Mechanics' Lien — Independent Action.

BOYD, C., 23 O. W. R. 19; 4 O. W. N. 57, *held*, that where a contractor has a claim against an owner of land larger than the value of the land and wishes to prove his claim in an action, independently of Mechanics' Lien proceedings, s. 37 of the Mechanics' Lien Act, 10 Edw. VII. c. 69, does not give the officer charged with the trial of the lien proceedings power to stay his independent action.

Judgment of MONCK, Co.C.J., reversed, and stay vacated.

RIDDELL, J., refused defendants leave to appeal to Divisional Court.

Motion by the defendants for leave to appeal from a judgment of HON. SIR JOHN BOYD, C., 23 O. W. R. 19; 4 O. W. N. 57, whereby he allowed an appeal from the local Judge at Hamilton—forever staying the action.

G. H. Levy, for the defendants' motion.

E. C. Cattnach, for the plaintiffs.

HON. MR. JUSTICE RIDDELL:—It is, I think, admitted—at all events it is plain, that the conditions of Consolidated Rule (1278) i.e., 777 (3) (a), are not present here, and as I agree with the Chancellor in the disposition he has made of the matter (3) (c), does not apply either.

The motion will be dismissed with costs to the plaintiff in any event.

WEEKLY COURT.

HON. MR. JUSTICE RIDDELL.

OCTOBER 10TH, 1912.

MOSHIER v. TOWNSHIP OF EASTNOR.

4 O. W. N. 114.

Drains — Municipal Corporation — Negligence of — Non-completion of Work — Damages — Mandatory Order — Referee's Report — Appeal Dismissed.

An appeal by the defendant township from a report of A. B. Klein, Esq., of Walkerton, as a Special Referee, who