

was proved he could not be held liable for the damage to the cofferdam.

Judgment of the Appellate Division (37 Ont. L.R. 17), reversing that at the trial (31 Ont. L.R. 204), affirmed.

*Tilley, K.C., and Wentworth Greene, for appellant. McKay, K.C., for respondent.*

Ont.]

[Feb. 19.

JOHN A. MARSHALL BRICK CO. v. YORK FARMERS COLONIZATION Co.

*Mechanic's lien—Loan company—Agreement for sale—Advances for building—"Owner"—Request—Privy and consent—Mortgagee—R.S.C. 1914, c. 149, ss. 2 (1), (3) and 14 (2) Mechanics' Lien Act.*

The owners of four lots in Toronto executed an agreement to sell them to one I., who was to make a cash deposit and undertake to build four houses on the lots, the vendors to advance \$6,400 for building purposes. On completion of the houses and on receipt of the balance of price and amount of advances, the vendors to execute a deed of the lots. I. gave contracts for the building which was partly completed and \$3,400 was advanced by the vendors when I. became insolvent and the vendors, under the terms of their agreement, gave notice of forfeiture and took possession of the property. Prior to this liens had been filed for labour and materials supplied and the lien-holders brought action for enforcement thereof against the vendors.

*Held*, affirming the judgment of the Appellate Division (35 Ont. L.R. 542), Davies and Brodeur, JJ., dissenting, that the vendors were not owners of the property according to the definition of the term "owner" in sec. 2 (c) of the "Mechanics' Lien Act" and, therefore, were not liable to pay for the labour and materials supplied for the building of the houses for I.

*Per Anglin, J.*—To make the vendors "owners" because the work was done with their privy and consent, a direct dealing between them and the materialmen was requisite and of this there was no evidence.

By sec. 14 (2) of said Act, the vendors, under the agreement for sale, became mortgagees of the land sold with their rights as such postponed to those of the lien-holders in respect of any "increased value" given to the land by erection of the houses thereon.

*Held*, that, though they had refused it at a former stage of the