

JUDGE'S CHAMBERS.

HON. SIR JOHN BOYD, C.

SEPTEMBER 24TH, 1912.

DICK v. STANDARD UNDERGROUND CABLE
COMPANY.

4 O. W. N.

Action—Stay of Proceedings—Mechanic's Lien—Independent Action.

BOYD, C., *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.J., reversed, and stay vacated.

An appeal by plaintiffs from an order of His Honour J. F. MONCK, local Judge for county of Wentworth, in chambers, on September 12th, 1912, perpetually staying this action on the ground that the matters in controversy in this action are at present being tried in another action.

E. C. Cattnach, for the plaintiff.

G. H. Levy, for the defendants.

HON. SIR JOHN BOYD, C.:—The plaintiff Dick claims a large amount of damages, \$100,000, against the defendants for breach of contract in not supplying materials to carry on a construction contract made by the plaintiff with the owners of the land, the defendants. This action was begun after mechanics' lien proceedings were begun by an alleged lien-holder on behalf of himself and all others against the contractor and the owner. To determine what should be paid for liens it may be necessary to consider the rights of the contractor, and owner *inter se*, but the contractor does not propose to claim any lien on the property, and refuses to bring in any such claim in the mechanics' lien proceedings. He is claiming a much larger sum than the value of the land by way of damages against the owners, and his claim, if successful, will not interfere with the right of those having liens to be paid under the Act. Dick does not propose to make any claim under the Act, and I do not think the statute is of sufficient stringency to enable the judicial officer charged with the mech-