

that if, as provided in the contract, the contractors were dismissed, and the company took the work out of their hands, and completed it, such plant, etc., was to remain the property of the company for the purposes, etc., contained in paragraph 10. The contractors were dismissed, and the company are proceeding with the work, and an action brought by the contractors against the company for damages has been dismissed. The County Judge held that nothing was due to the contractors under the contract; and that the lien of plaintiffs attached only upon the 15 per cent. to be retained under R. S. O. ch. 153, sec. 11, which percentage was not to be computed upon the plant taken possession of by the company.

G. F. Shepley, K.C., for plaintiffs.

A. B. Aylesworth, K.C., for defendants.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by MEREDITH, C.J.—The County Judge was clearly right. . . . The language of sec. 11 (1) that the value is to be “calculated on the basis of the price to be paid for the whole contract” can have no possible application to the plant supplied by the contractor to execute the work, and which remains his property (in the absence of special agreement), to be removed by him when the work has been completed. . . . The County Judge was not asked to postpone the trial, so as to await the completion of the work, to see if anything might be due to the contractors . . . and nothing will ever become due to them in any event by reason of the dismissal of their action. Whether or not the judgment in that action is binding on the lienholders, we express no opinion, but this action, in view of the course taken at the trial, ought not to be retried in order to determine the liability of Brewder & Co., because it is almost certain the same result would be reached. Appeal is dismissed with costs.

Christie, Greene, & Greene, solicitors for plaintiffs.

McVeity & Culbert, Code & Burritt, C. Murphy, Latchford, McDougall, & Daly, Code & Beament, all of Ottawa, solicitors for respective defendants.

MEREDITH, J.

JANUARY 21ST, 1902.

CHAMBERS.

RE POWELL v. DANCYGER.

Division Court—Prohibition—Transfer of Action to High Court—Lease—Covenant to Leave in Repair—Breach—Damages—Jurisdiction of Division Court.

Motion by defendants for order transferring action from