27 (4) of the Act, vacated the registration; and the reservation of the right "to prove their claim to the said lien" must be read as meaning their right to a lien at the time of taking proceedings, with the legal consequences flowing therefrom in respect of the money paid into Court. In this respect the judgment was wrong and should be amended.

(3) A personal judgment was given against Roelofson and his company. The plaintiffs' contention was, that they did not deal with him as an agent or know him as such. In such cases, both principal and agent may be sued, but only one to judgment: Pollock on Contracts, 8th ed., p. 109; M. Brennen & Sons Manufacturing Co. Limited v. Thompson (1915), 33 O.L.R. 465, 472; Campbell Flour Mills Co. Limited v. Bowes (1914), 32 O.L.R. 270. [Imrie v. Eddy Advertising Service Limited and E. B. Eddy (1917), 12 O.W.N. 27, 289, distinguished.] The plaintiffs elected to hold Roelofson; they should be allowed to do so, and the judgment should be amended accordingly.

(4) A counterclaim was set up by the defendants for damages for breach of an alleged contract to finish in a particular time. The evidence was contradictory, and the plaintiffs' denial of such a contract was rightly accepted by the County Court Judge.

(5) This Court could not interfere on the question of costs—the County Court Judge had not exercised the jurisdiction given him by sec. 42 of the Act.

The appellants succeeded only on two minor points and failed on every matter of real substance. They should pay the costs of the appeal.

Appeal allowed in part.

HIGH COURT DIVISION.

MIDDLETON, J. NOVEMBER 20TH, 1917.

*McKAY v. HUTCHINGS.

Limitation of Actions—Mortgage—Payments of Interest by Son and Daughter of Mortgagor—Sufficiency to Keep Mortgage Alive as against all Persons Claiming under Mortgagor—Limitations Act, R.S.O. 1914 ch. 75, sec. 24.

Action upon a mortgage, dated the 16th September, 1888, payable 5 years after its date, with interest at 7 per cent.