

The appeal was heard by RIDDELL and LENNOX, JJ., FERGUSON, J.A., and ROSE, J.

Peter White, K.C., for the appellants.

J. H. Hancock, for the plaintiffs, respondents.

The judgment of the Court was read by RIDDELL, J., who said that the Roelofson Machine and Tool Company Limited was incorporated in November, 1915, by the defendant Roelofson, who held practically all the shares and managed the business as though it was his own. In June, 1916, he entered into a contract with the plaintiffs, builders, that they should build a factory. The plaintiffs alleged that the terms were, "15 per cent. time and materials; the defendant Roelofson, that the terms were, "15 per cent. time and the materials supplied by the builders." The story of the plaintiffs was accepted by the County Court Judge, and should now be accepted by the Court.

The plaintiffs believed that they were to build for Roelofson, knowing nothing of any company. Roelofson, however, was acting for his company, and the company was the owner of the land upon which the building was to be erected.

There was nothing to indicate that the builders were not to furnish all the materials.

Some time after the contract was entered into, Roelofson said to one of the plaintiffs that he could get bricks cheaper than they could, and asked whether it would make any difference; the builder said it would not. Roelofson did, however, buy and furnish some bricks.

On the completion of the building, a contest arose as to whether the plaintiffs were entitled to commission on the materials furnished by Roelofson; and this action was begun under the Mechanics and Wage-Earners Lien Act against both Roelofson and the company.

The company applied to the Court, and KELLY, J., made an order that, upon payment into Court of the amount claimed, the lien should be vacated, reserving the right to the plaintiffs to prove their claim to the lien and to the moneys paid into Court.

It was contended (1) that the plaintiffs were not entitled to 15 per cent. on the material furnished by Roelofson. However the case would have been had it been in contemplation from the beginning that the defendants should supply part of the material, the County Court Judge was right in holding that the plaintiffs were entitled to the 15 per cent. on the material furnished by the defendants.

(2) It was urged that the judgment improperly declared a lien on the property. The order of KELLY, J., made under sec.