

E. C. Cattnach, for the plaintiffs.

G. H. Levy, for the defendants.

BOYD, C.:—The plaintiffs claim 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 plaintiffs with the owners of the land, the defendants. This action was launched after mechanics' lien proceedings had been begun by an alleged lien-holder, on behalf of himself and all others, against the contractors and the owners. To determine what should be paid for liens, it may be necessary to consider the rights of the contractors and owners inter se; but the contractors do not propose to claim any lien on the property, and refuse to bring in any such claim in the mechanics' lien proceedings. They are claiming a much larger sum than the value of the land, by way of damages against the owners; and their claim, if successful, will not interfere with the right of those having liens to be paid under the Act. The plaintiffs do 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 mechanics' lien contest to bar the plaintiffs in their independent action and stay all proceedings therein perpetually. All things necessary to work out the liens quoad the land are within his jurisdiction, but I do not think a wider scope should be given to the provisions of the Act 10 Edw. VII. ch. 69, sec. 37.

I vacate the order to stay proceedings, with all costs of motion and appeal to be in the cause to the plaintiffs.

DIVISIONAL COURT.

SEPTEMBER 28TH, 1912.

*CITY OF TORONTO v. WILLIAMS.

Municipal Corporations—Prohibition of Erection of Apartment House—By-law—2 Geo. V. ch. 40, sec. 10—Permit for Erection—Revocation—Bona Fides—"Location" before Statute—Building not Actually Begun.

Appeal by the plaintiffs from the judgment of BRITTON, J.,
3 O.W.N. 1643.

*To be reported in the Ontario Law Reports.