G. F. Shepley, K.C., and W. Bell, Hamilton, for plaintiff.

The judgment of the Court (MEREDITH, C.J., LOUNT, J.) was delivered by

MEREDITH, C.J.—Mr. Shepley conceded that unless this case could be distinguished from Gearing v. Robinson, 27 A. R. 364, he could not support the judgment; and he contended that the existence of the obligation imposed on the company to erect the buildings and of the provision as to their becoming the property of the appellant, neither of which existed in Gearing v. Robinson, made the cases distinguishable.

I am, however, not of that opinion.

As I understand the decision in Gearing v. Robinson, it is necessary in order to charge the interest of the appellant in the land, that the respondent should shew not only that the work was done and the materials were furnished on behalf of the appellant or with his privity or consent or for his direct benefit, but also at his request either express or implied.

Mr. Justice Maclennan said (p. 372): "Mrs. Robinson had an interest in the land, and the work was done for her at her request and upon her credit and on her behalf, etc., and there is no evidence of any request by the sub-lessors nor of any dealing of any kind between them and the plaintiff."

Substituting for "Mrs. Robinson" the "company" and for "sub-lessors" "the appellant," this statement of the learned Judge seems to me to apply exactly to the facts of this case.

In Graham v. Williams, 8 O. R. 478, 9 O. R. 458, cited with approval, it was decided that mere knowledge of or mere consent to the work being done is not sufficient, and that there must be something in the nature of a direct dealing between the contractor and the person whose interest is sought to be charged, to entitle the contractor to a charge on that interest.

In some of the American States a construction more favourable to the contractor has been given to Mechanics' Lien Acts, the provisions of which were somewhat like those of our Act, which are in question here, though not identical with them, but we are, of course, bound to follow the decision of the Court of Appeal of this Province in preference to those decisions; and following it the appeal must be allowed and the judgment appealed from be varied by directing the action as against the appellant to be dismissed with costs, and the respondent must pay the costs of the appeal.

Bell & Pringle, Hamilton, solicitors for plaintiff.