

SECOND DIVISIONAL COURT.

APRIL 17TH, 1919.

*READ v. WHITNEY.

Mechanics' Liens—Claim of Assistant Architect Employed by Architect—Superintendence of Building—Drawing Plans—"Work and Service"—Mechanics and Wage-Earners Lien Act, sec. 6—Contractor—Sub-contractor—Sec. 2 (a), (f)—Payment on Account Made by Architect to Assistant—Appropriation to Item not Chargeable upon Land.

Appeal by the defendant Whitney from the judgment of the Assistant Master in Ordinary in favour of the plaintiff in an action to enforce a lien under the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140.

The appeal was heard by MEREDITH, C.J.C.P., BRITTON, RIDDELL, and LATCHFORD, JJ.

J. H. Cooke, for the appellant.

J. M. Ferguson, for the plaintiff, respondent.

RIDDELL, J., read a judgment in which he said that the defendant, a theatre proprietor, desiring to rebuild a theatre building in Toronto, employed the defendant Crane, an architect of Detroit, to draw the plans, supervise the construction, etc., for 5 per cent. of the cost. The plaintiff, a Toronto architect, was, according to the usual (if not universal) custom, employed by Crane to superintend the building and act as assistant architect, the remuneration being fixed at \$1,500 if the building cost \$125,000, and 1½ per cent. of any excess cost.

The defendant Whitney and his manager knew that the plaintiff was so superintending the building etc. (at least in part) and knew that he was employed by Crane for that purpose.

A change being determined on in the front of the theatre, so that it would be two storeys instead of one, the plaintiff was instructed by Crane to draw the plans for the change. He did so, and these plans were used.

The building cost at least \$133,000. The plaintiff rendered his bill for..... \$1,500
 1½ per cent. of excess..... 120
 Plans..... 200
 Travelling expenses to Detroit..... 20

.....
 \$1,840
 The defendant Crane paid on account..... 500

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 Leaving unpaid..... \$1,340

* This case and all others so marked to be reported in the Ontario Law Reports.