

The Ontario Weekly Notes

VOL. XIV.

TORONTO, MARCH 30, 1918.

No. 3

APPELLATE DIVISION.

FIRST DIVISIONAL COURT.

MARCH 19th, 1918.

*MILTON PRESSED BRICK CO. v. WHALLEY.

Mechanics' Liens—Lien of Material-men—Materials Delivered to the Contractor but not upon the Land Sought to be Affected—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, secs. 6, 16—Lien upon Goods—Proximity to Land—Damages Suffered by Owner by Non-completion—Inclusion in Judgment—Sec. 37 (3).

Appeal by Hepburn & Disher Limited (material-men) from the judgment of the Local Judge at Welland declaring the appellants not entitled to enforce a lien under the Mechanics and Wage-Earners Lien Act.

The appeal was heard by MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

W. Proudfoot, K.C., for the appellants.

G. H. Pettit, for the owners and mortgagees Whalley and Toyn, respondents.

The assignee of the company was not represented.

The judgment of the Court was read by HODGINS, J.A., who said that, while the Act gives extensive protection to material-men who supply materials "to be used," the lien so declared is upon the land and erection which it is intended to benefit. In the case of materials supplied it is given upon the land "upon which such materials are placed or furnished to be used" (sec. 6).

The extent of this protection is discussed in *Larkin v. Larkin* (1900), 32 O.R. 80; *Ludlam-Ainslie Lumber Co. v. Fallis* (1909), 19 O.L.R. 419; and *Kalbfleisch v. Hurley* (1915), 34 O.L.R. 268.

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