

SECOND DIVISIONAL COURT.

DECEMBER 27TH, 1918.

\*JOHNSON & CAREY CO. v. CANADIAN NORTHERN  
R. W. CO.

*Constitutional Law—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140—Power of Ontario Legislature to Create Lien Effective against Dominion Railway—Jurisdiction of Court to Award Personal Judgment where Lien-claim not Enforceable—Secs. 6 and 49 of Act—Charge on Percentage to be Retained by Owner—Sec. 12 (3) of Act.*

Appeal by the defendants the Canadian Northern Railway Company and cross-appeal by the plaintiffs from the judgment of MASTEN, J., 43 O.L.R. 10, 14 O.W.N. 159.

The appeal and cross-appeal were heard by MULOCK, C. J. Ex., RIDDELL, LATCHFORD, SUTHERLAND, and KELLY, JJ.

W. N. Tilley, K.C., and A. J. Reid, K.C., for the defendants the Canadian Northern Railway Company.

A. C. McMaster, for the plaintiffs.

H. S. White, for the defendants Foley Welch & Stewart.

J. R. Cartwright, K.C., for the Attorney-General for Ontario.

The Attorney-General for Canada did not appear.

SUTHERLAND, J., read a judgment in which he said that the three questions before Masten, J., were: (a) Can a lien claimed under the Mechanics and Wage-Earners Lien Act, R. S. O. 1914 ch. 140, exist or be enforced against the property of the Canadian Northern Railway Company? (b) If not, can the plaintiffs proceed to obtain judgment under sec. 49 of the Act, or otherwise, in these proceedings? (c) Are the provisions of the Act conferring jurisdiction on the special officers referred to in sec. 33 of the Act *intra vires*?

The learned Judge below answered the first question in the negative, following Crawford v. Tilden (1907), 14 O.L.R. 572; and his decision was right.

In regard to the second question, Sutherland, J., said, after referring to the judgment of Masten, J., and the cases therein cited, that the prime purpose of the Act was to enable a person who had supplied labour or materials to establish a lien and thus acquire authority to sell so as to realise his claim therefor. The lien is created by statute; it was non-existent at common law.

Reference to King v. Alford (1885), 9 O.R. 643, 647, and to secs. 6 and 49 of the Act.