

The appellants sold the land sought to be made subject to the lien to the defendant Irving, and advanced money to him to enable him to build. The position of the appellants in respect of mechanics' liens was fixed by the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, sec. 14(2), as that of mortgagees; but the Referee determined their status as owners by an application of sec. 2(c) of the Act—because, as he said, the plaintiffs' materials were supplied at their request and with their privity and consent.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

B. N. Davis and W. Cook, for the appellants.

C. L. Fraser, for the plaintiffs, respondents.

MEREDITH, C.J.C.P., delivering judgment, said that the appellants could not be deemed "owners." Nothing was done or supplied by contractor, sub-contractors, or workmen at their request or on their credit; Irving was in no sense their agent in making his contract—the work was done at his request and upon his credit solely; so too on his behalf; the appellants were strangers to the building contracts of Irving with the builders; there was no privity and consent; and plainly it was not for their direct benefit—it was for Irving's direct benefit; all that the appellants could get would be an indirect benefit in the additional security they would have if the value of the lands were increased by the buildings more in amount than the sums they paid to Irving, under their agreement with him, towards the erection of the buildings; and so they were without sec. 8 of the Act, and within secs. 14 and 8(3).

The appeal should be allowed with costs, and the action be dismissed without costs, as the case stood at present; but, notwithstanding the abandonment of all claims against the appellants as prior mortgagees only, the respondents should have leave to apply to the Court, within a week, for a reference of the case again, so that the claims of the respondents might be renewed on the basis of the appellants being only prior mortgagees, or for leave to redeem as subsequent incumbrancers.

RIDDELL, J., was also of opinion, for reasons stated in writing, that mere knowledge and non-interference will not render a mortgagee liable as an owner. He referred to and explained the decision in *Orr v. Robertson* (1915), 34 O.L.R. 147; and referred