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*Oct. 18.
*Dec. 9.

JOSEPH LIMOGES (DEFENDANT) ..... APPELLANT;

AND

ACLE C. SCRATCH AND OTHERS (PLAINTIFFS) ..... } RESPONDENTS.

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Mechanics' lien—Construction of statute—Alberta Mechanics' Lien Act—6 Edw. VII. c. 21, ss. 4 and 11—Building erected by lessee—Liability of "owner."

Section 4 of the "Alberta Mechanics' Lien Act" (6 Edw. VII. ch. 21) gives to any contractor or materialman furnishing labour or materials for a building at the request of the owner of the land a lien on such land for the value of such labour or materials. Sub-section 4 of section 2 provides that the term "owner" shall extend to and include a person having any estate or interest "in the land upon or in respect of which the work is done or materials are placed or furnished at whose request and upon whose credit or on whose behalf or with whose privity or consent or for whose direct benefit any such work is done, etc." By section 11 "every building * * * mentioned in the fourth section of this Act, constructed upon any lands with the knowledge of the owner or of his authorized agent * * * shall be held to have been constructed at the request of such owner," unless the latter gives notice within three days after acquiring such knowledge that he will not be responsible.

The lessee of land, as permitted by his lease, had buildings thereon pulled down and proceeded to erect others in their place, but was obliged to abandon the work before it was finished. The owner of the land was aware of the work being done but gave no notice disclaiming responsibility therefor. Mechanics' liens having been filed under the Act:

Held, that the interest of the owner in the land was subject to such liens.

Judgment appealed from, varying that at the trial (2 Alta. L.R. 109) in favour of the lienholders, affirmed.

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*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Anglin JJ.

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APPEAL from the judgment of the Supreme Court of Alberta, affirming, with some variation, the judgment of Beck J.(1), at the trial, by which the respondents' action was maintained with costs.

The appellant was the registered owner of property used as a hotel in the Town of High River, Alta., which he leased to persons named Anderson and Skead for a term of years, giving the lessees an option to purchase the property within a time limited and granting them permission to remove certain buildings constructed on the land and build others in their stead. The lessees took possession of the premises and, pursuant to the terms of the lease, removed several of the buildings then on the land and proceeded to construct new ones, but, after they had been partially constructed the tenants failed in business, the building operations were discontinued and the appellant re-entered the demised premises for breach of the covenant to pay rent. The respondents filed mechanics' liens against the property for work and labour done and materials furnished in constructing the new buildings and instituted actions against the owner and his lessees to enforce their liens, these actions being, subsequently, consolidated by order of a judge. The principal ground of defence urged by the appellant was that the liens claimed attached only to the interest of the lessees, which had determined, and that his interest as owner could not, in the circumstances, be affected by the charges sought to be imposed under the "Mechanics' Lien Act" of the Province of Alberta.

At the trial, Beck J. held that the appellant's title was affected to the extent to which the improvements

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made had benefited his property, and, by the judgment appealed from, the full court in effect affirmed the judgment of the trial judge but varied it by declaring that the estate of the owner was liable generally for the claims for which the liens were sought to be enforced.

Perron K.C. for the appellant.

Bennett K.C. for the respondents.

THE CHIEF JUSTICE.—I would dismiss this appeal for the reason that, as the trial judge found, the appellant, owner of the property, allowed the improvements in connection with which the mechanic's lien arises to be made without notice or protest.

GIROUARD J.—In my opinion this appeal should be dismissed for the reasons stated in the court below.

DAVIES J.—For the reasons given by the Appeal Court of Alberta delivered by Mr. Justice Harvey, and to which I do not desire to add anything, I think this appeal should be dismissed with costs.

IDINGTON J.—In this appeal arising out of a judgment of the Supreme Court of Alberta to enforce mechanics' liens under the "Mechanics' Lien Act" of that province, otherwise known as chapter 21 of the statutes of that province for 1906, there is nothing involved but the construction of sections 4 and 11 of that Act.

Sub-section 4 of section 2 declares a lien in favour of every contractor and sub-contractor, and other named classes furnishing labour or material of the

classes specified "at the request of the owner of such land."

Sub-section 4 of that section declares that the term "owner" shall extend to and include a person having any estate or interest, etc.,

> in the land upon or in respect of which the work is done or materials are placed or furnished at whose request and upon whose credit or on whose behalf or with whose priority or consent or for whose direct benefit any such work is done or materials are placed or furnished, etc.

Section 11 declares

> every building, etc., mentioned in the fourth section of this Act, constructed upon any lands with the knowledge of the owner or his authorized agent, or the person having or claiming any interest therein, shall be held to have been constructed at the request of such owner, etc., unless such owner, etc., shall within three days after he shall have obtained knowledge of the construction, alteration or repair give notice that he will not be responsible for the same, in manner specified.

The owner here in question is admitted to have known and to have omitted to give any such notice.

I am unable to understand how on such clear and explicit language declaring he must in such case be held to have requested the construction for which a lien is created on certain things having been done, could ever have given rise to difficulty.

The proviso at the end of section four limiting the charge to the interest of the owner and the definition of the word "owner" have been made a source of confusion.

Neither of these conflict with the plain, imperative language of the remaining parts of this section 4, and are left operative in proper cases to which they respectively may be applicable.

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The owner's interest has been herein properly reached.

The appeal should be dismissed with costs.

ANGLIN J.—The question for determination in this appeal is the liability of the interest of the owner of leased land to a mechanic's lien in favour of a contractor employed by the lessee. It is conceded that the work done upon the land is such as would entitle the plaintiff to a lien under section 4 of the Alberta "Mechanics' Lien Act" (6 Edw. VII. ch. 21), if done at the request of the owner. By section 11 it is provided that every such work if

> constructed upon any lands with the knowledge of the owner or his authorized agent or the person having or claiming any interest therein, shall be held to have been constructed at the request of such owner or person having or claiming any interest therein,

unless, within three days after obtaining knowledge of the construction, he gives notice that he will not be responsible for the same, etc.

The knowledge by the owner of the construction and his failure to give the statutory notice are admitted. The contention for the appellants is that the word "owner" in section 11 is subject to the defining provision contained in sub-section 4 of section 2. Apart from the fact that in this sub-section it is provided not that the word "owner" shall "mean," but only that it shall "extend to and include," a person, having any estate, etc., it is obvious from a mere perusal of section 11 that the definition of "owner" in sub-section 4 of section 2, as a person at whose request and upon whose credit, or on whose behalf, etc., work is done, can have no application to that section which provides that in certain circumstances a build-

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ing, not constructed at the request, etc., of the owner shall, nevertheless, be deemed to have been constructed at his request. The context in section 11 precludes the application to it of the definition of the word "owner" in section 2, sub-section 4. I have no doubt that section 11 was intended to provide for just such a case as the present.

The judgment in appeal was, in my opinion, entirely correct and should be affirmed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *J. E. Varley.*

Solicitor for the respondents: *R. B. Bennett.*