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 *Oct. 16.
 *Nov. 30.

SAMUEL K. CHAMPION AND
 ANOTHER (PLAINTIFFS) } APPELLANTS;

AND

THE WORLD BUILDING COM-
 PANY AND OTHERS (DEFENDANTS) . . } RESPONDENTS.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH
 COLUMBIA.

*Appeal—Case originating in Superior Court—Supreme Court Act, s.
 37(b)—Concurrent jurisdiction—“Mechanics’ Lien Act” (B.C.)
 —Action to enforce lien.*

For an appeal to lie to the Supreme Court in a case not originating in a superior court, as provided in sec. 37, sub-sec. (b) of the “Supreme Court Act,” it is not sufficient that the inferior court has concurrent jurisdiction with a superior court in respect to its general jurisdiction; there must be concurrent jurisdiction as respects the particular action, suit, cause, matter or other judicial proceeding in which the appeal is sought.

In British Columbia the County Court alone may maintain an action to enforce a mechanic’s lien. In such action, so far as the parties or any of them stand in the relation of debtor and creditor, the court may give judgment for the debt due whatever its amount and if it exceeds \$250 there may be an appeal to the Court of Appeal.

Held, Duff J. dissenting, that though an action for the debt could be brought in the Supreme Court the foundation for the County Court action is the enforcement of the lien as to which there is no concurrent jurisdiction and no appeal lies to the Supreme Court of Canada from the judgment of the Court of Appeal in such an action.

APPEAL from a decision of the Court of Appeal for British Columbia(1) dismissing an appeal and cross-

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

appeal from the judgment of Grant Co. J. in the County Court(1).

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The plaintiffs, contractors for constructing a building for the defendants the World Building Co. having obtained the architect's certificate for \$6,000 while the work was in progress, filed a lien against the property and brought action in the County Court to enforce it. When the work was finished they filed another lien for the balance claimed and brought a second action. The actions were consolidated.

By the "Mechanics' Lien Act" of British Columbia the action to enforce a lien must be brought in the County Court and on the trial the court may give judgment for the amount found due even if it exceeds the jurisdiction given in an ordinary action. In these cases judgment was given for the plaintiffs for the \$6,000 claimed in the first action and the second action was dismissed on the ground that there was no architect's certificate covering the amount claimed therein. The plaintiffs appealed to the Court of Appeal for the amount so refused and the defendants cross-appealed for dismissal of the first action. Both appeals were dismissed and both parties appealed to the Supreme Court of Canada.

Christopher C. Robinson moved to quash the appeal of the plaintiffs for want of jurisdiction.

Lafleur K.C. contra.

THE CHIEF JUSTICE.—This is an application to dismiss for want of jurisdiction.

The action was brought in the County Court to en-

(1) 6 West. W.R. 233.

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force a mechanics' lien under the Act R.S.B.C. (1911), ch. 154. To that claim was joined a demand for a personal condemnation in a sum exceeding the ordinary jurisdiction of the court. It is admitted that in such an action the jurisdiction of the County Court is exclusive. The Act also provides, section 34, that in so far as the parties before the court are debtor and creditor the court may give judgment for

the sum actually found to be due notwithstanding such sum may exceed the ordinary jurisdiction of the County Court.

The question is not free from difficulty, but on the whole I am of the opinion that the claim to enforce the mechanic's lien in such an action as this is the foundation of the jurisdiction of the County Court, and it is by reason and as a consequence of the existence of that lien that the County Court has jurisdiction to deal with the personal obligation of the defendant. The jurisdiction of the Supreme Court on the other hand is dependent merely upon the amount of the indebtedness or liability and in that respect is exclusive. So that in so far as the action seeks the enforcement of the mechanic's lien the jurisdiction of the County Court *is* exclusive, and in so far as it is a personal claim the jurisdiction of the Supreme Court *would be* exclusive were it not for the statute which confers upon the County Court a special jurisdiction in this particular case.

I read the statute as conferring jurisdiction upon the County Court to give judgment upon the personal claim merely in so far as it is incidental to the enforcement of the mechanics' lien. In that view I come to the conclusion with much hesitation because of³ the dissent of Duff J. that the jurisdiction is not concur-

rent and that the application must be granted with costs.

DAVIES J.—A motion to quash this appeal was made and argued before us by Mr. Robinson on the ground that this action was one originating in the County Court of British Columbia under the “Mechanics’ Lien Act,” and that in such actions the jurisdiction of the County Court was exclusive and not concurrent with the Supreme Court of that province.

Our jurisdiction to hear appeals not originating in a Superior Court is defined in section 37 of the “Supreme Court Act” and an appellant must, of course, bring himself within that section in order to justify his appeal.

The two conditions necessary to give us jurisdiction are first that “the sum or value of the matter in dispute” should amount to \$250 or upwards; and, secondly, that the court of first instance, in the present case the County Court, should possess concurrent jurisdiction with a Supreme Court.

The amount in dispute is large, several thousands of dollars, and it is contended that so far as defendants’ personal liability is concerned there is concurrent jurisdiction in both courts.

In one sense that may be true, because as an incident to successfully maintaining his action for a lien the County Court must adjudge the amount for which the lien shall be declared to exist or apply and the Supreme Court of the province had, apart from the lien, undoubted jurisdiction in a personal action for any amount.

But it seems to me that the true construction of

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section 37 of the Act establishing this court is that the "concurrent jurisdiction" there spoken of as essential to our entertaining an appeal is one in all the essentials of the action.

Now this action is one for a lien for whatever amount might be found due the plaintiff. The County Court possessed exclusive jurisdiction under the "Mechanics' Lien Act" to entertain such an action. The determination of the amount for which the lien was to stand was no doubt a most important incident in the action and by section 35 of that Act an appeal was given from the County Court judge where the judgment exceeded \$250, as in ordinary cases to the appeal court of the province.

By virtue of this appeal the Court of Appeal has jurisdiction over the whole case and may deliver the judgment which the County Court judge should have given. But such an appellate jurisdiction does not interfere in any way with the exclusive jurisdiction of the County Court over the lien action up to the time of the appeal.

The essential ingredient therefore necessary to give an appeal to this court is wanting, namely, the possession by a superior court of jurisdiction concurrent with the County Court in suits to give effect to mechanics' liens.

I think the motion to quash should be granted with costs.

IDINGTON J.—These suits were instituted under the "Mechanics' Lien Act" in a County Court in British Columbia to enforce an alleged mechanic's lien under the said Act.

The 34th section of that Act is as follows:—

34. Upon the hearing of any claim for a lien, the court or judge may, so far as the parties before him, or any of them, are debtor and creditor, give judgment against the former in favour of the latter for any indebtedness or liability arising out of the claim, in the same manner as if such indebtedness or liability had been sued upon in the County Court in the ordinary way, without reference to this Act.

And judgment may be given for the sum actually due, notwithstanding such sum may exceed the ordinary jurisdiction of the County Court.

The County Court gave judgment for the sum of \$6,000 against the respondent and also declared the plaintiffs entitled to a mechanic's lien to secure said sum and costs in one of the actions now before us but dismissed the other action and a cross action.

Thereupon appellants appealed to the Court of Appeal, which dismissed the appeal with costs.

The appellants appeal from that judgment to this court and respondents move to quash the appeal on the ground that the appeal cannot fall within section 37, sub-sec. (b) of the "Supreme Court Act" which is as follows:—

(b) In the Provinces of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, if the sum or value of the matter in dispute amounts to two hundred and fifty dollars or upwards, and in which the court of first instance possesses concurrent jurisdiction with a superior court.

The question thus raised turns upon the meaning of the phrase:—

In which the court of first instance possesses concurrent jurisdiction with a superior court.

It occurs to me that in every case one can think of the superior court would have jurisdiction to hear and try the causes within the general jurisdiction of the County Court and thus in a sense they have con-

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current jurisdiction in all cases falling within the general jurisdiction of the County Court.

It happens that when a suitor goes into the superior court with a claim suable in a County Court he is in some cases punished by deprivation of costs for so doing, but that does not deprive the superior court of jurisdiction even if the County Court has jurisdiction.

It would seem that this sort of concurrent jurisdiction limited to claims over \$250 was what was *primâ facie* aimed at in the 37th section of the "Supreme Court Act."

Then we find two special subjects in probate and equitable jurisdiction assigned to the County Courts, but in the delimitation of the nature of the actions these courts may so entertain they are specially declared to have as to such actions concurrent jurisdiction with the Supreme Court of the province.

When we turn to the "County Courts Act" we find in the 40th section thereof the following:—

40. The said County Courts shall also respectively have and exercise, concurrently with the Supreme Court, all the power and authority of the Supreme Court in the actions or matters hereinafter mentioned, that is to say:—

This is followed by twelve sub-sections defining a great many classes of matters and suits in respect thereof to be dealt with thereunder.

A mechanics' lien is not one of these. There is in sub-section (3) the following:—

(3) In all suits for foreclosure or redemption, or for enforcing any charge or lien, where the mortgage, charge, or lien shall not exceed in amount the sum of two thousand five hundred dollars.

The words "or lien" so used do not imply a mechanics' lien I imagine. And if they did it would only be one up to \$2,500, which would not help in this case to give jurisdiction here.

Then we have section 34 of the "Mechanics' Lien Act," which is quoted above and shews clearly a special jurisdiction not falling within the general jurisdiction of the County Court or within this sub-section (3) or related thereto in any way.

I think we must conclude that this special jurisdiction not expressly designated as are others "concurrent" was not intended to be a concurrent jurisdiction or what was aimed at in section 37, sub-sec. (b) of the "Supreme Court Act" as being an exercise of a concurrent jurisdiction.

The power to award a judgment for the debt forms a mere incident to the creation of a special jurisdiction or mode of procedure to be followed out thereunder and not otherwise, but confined within the provision of the Act giving same.

Only such appeals as the special jurisdiction and remedy given permit can be availed of by those resorting thereto for the benefits to be got by invoking same.

I think the point well taken and that the motion ought to prevail with costs.

DUFF J. (dissenting).—Section 34 of the "Mechanics' Lien Act" (R.S.B.C., ch. 154), is as follows:—

Upon the hearing of any claim for a lien, the court or judge may, so far as the parties before him, or any of them, are debtor and creditor, give judgment against the former in favour of the latter for any indebtedness or liability *arising out of the claim*, in the same manner as if such indebtedness or liability had been sued upon in the County Court in the ordinary way, without reference to this Act.

And judgment may be given for the sum actually due, notwithstanding such sum may exceed the ordinary jurisdiction of the County Court.

The effect of this section is that a plaintiff suing to enforce a mechanics' lien may at the same time, and

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under the same summons, proceed with his action to enforce the pecuniary obligations *in personam* arising out of the contract express or implied upon which his claim to a mechanics' lien is based. It is a condition of the jurisdiction of the County Court that the "indebtedness or liability" thus sought to be enforced should arise "out of the claim" which is alleged to be the foundation of the mechanics' lien; but, the conditions being satisfied, the jurisdiction, having once arisen, is a jurisdiction concurrent with that of the Supreme Court in respect of the like action.

Here we seem clearly enough to have a case in which the "court of first instance possesses concurrent jurisdiction with a superior court" within the meaning of section 37 of the "Supreme Court Act."

ANGLIN J.—The plaintiffs sued in the County Court of Vancouver to recover the sum of \$9,930 and for the establishment and enforcement of a mechanics' lien in respect thereof. Jurisdiction to entertain such an action is conferred on the County Courts of British Columbia by the R.S.B.C. (1911), chapter 154. Judgment was awarded the plaintiffs for \$6,000, for which they were declared entitled to a lien. An appeal by the plaintiffs to the Court of Appeal to have the amount of the judgment increased and a cross-appeal by the defendants to have the action dismissed were both unsuccessful. The plaintiffs have taken a further similar appeal to this court, and the defendants a like cross-appeal. The defendants now move to quash the plaintiffs' appeal for want of jurisdiction. The plaintiffs assert that they have a right of appeal under section 37 (b) of the "Supreme Court Act," which is as follows:—

37. Except as hereinafter otherwise provided, an appeal shall lie to the Supreme Court from any final judgment of the highest court of final resort now or hereafter established in any province of Canada, whether such court is a court of appeal or of original jurisdiction, where the action, suit, cause, matter or other judicial proceeding has not originated in a superior court, in the following cases:—

(b) In the Provinces of Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, if the sum or value of the matter in dispute amounts to two hundred and fifty dollars or upwards, and in which the court of first instance possesses concurrent jurisdiction with a superior court.

Notwithstanding the awkward grammatical construction of clause (b), I think it reasonably clear that the antecedent of the relative pronoun “which” in its concluding member is “the action, suit, cause, matter or other judicial proceeding” mentioned in the earlier part of the section. That this is the correct construction of the clause is made certain by comparison with the French version, in which the concluding member reads

et si la cour de première instance possède une juridiction concurrente avec celle d’une cour supérieure.

In order that there should be jurisdiction in this court under section 37(b) “the action, suit, cause, matter or other judicial proceeding” instituted in the inferior court must also be within the jurisdiction of a superior court in the province. It does not suffice that in respect to some part of an action, some claim made in it, or some relief which may be accorded there is concurrent jurisdiction in both the superior and inferior courts. The jurisdiction must be concurrent over the action as a whole.

In the present instance the jurisdiction of the inferior court is exclusive as to the claim of mechanics’ lien. It is the existence of this claim which is the foundation of the County Court jurisdiction. It is

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only as incidental to an action in which such a claim is asserted that the County Court is given an extended personal jurisdiction. I am convinced that in a mechanics' lien action, which the superior court could not entertain, the County Court cannot be said to possess concurrent jurisdiction with the superior court merely because in such an action the former court may give a personal judgment for debt which could have been, and must have been, sought in the superior court, if sued for alone.

I am, therefore, of the opinion that the motion to quash should be granted with costs.

I find nothing, however, to warrant the view suggested that jurisdiction under section 37(b) is confined to cases in which the jurisdiction of the inferior court is explicitly declared, either by the statute conferring it or by some other statutory provision, to be concurrent with that of a superior court. Clause (b) applies to four provinces. The introduction into it of such a limitation would probably preclude an appeal in many cases in which it was intended that the right should exist.

Appeal quashed with costs.

Solicitors for the appellants: *MacNeill, Bird, Macdonald & Darling.*

Solicitors for the respondent, The World Building Co.: *Bourne & Macdonald.*

Solicitors for other respondents: *Bodwell, Lawson & Lane.*