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MECHANICS LIEN ON INCREASED SELLING VALUE.

The case of *Henderson v. Morris*, 10 O.W.N. 34, strikes us as a curious decision. The action was apparently by a mortgagee for foreclosure in which a lien holder appears to have come in and proved a lien prior to the plaintiff's mortgage in respect of the increased selling value which was admitted by the parties to be \$300. It is difficult to understand how, under a judgment directing a reference as to subsequent incumbrances, which is the usual form, the master had any jurisdiction to add prior incumbrances.—See Rule 470. When a lien holder claiming priority is made a party to an action by a subsequent incumbrancer, his usual course is to move to discharge the order adding him; the well known rule being that a mortgagee is not entitled to bring in prior incumbrancers as defendants except for the purpose of redeeming them. Here it appears the mortgagee claimed that the lien holder was bound to enforce his lien by a sale, and in default was liable to be foreclosed. The learned Judge is reported to have said "The statute does not cast upon the mortgagee the duty of realizing the lien holder's claim. If the lien holder desires to realise, he must take the necessary steps to do so either by asking a direction to proceed with the sale himself, or by paying into Court \$80 in the usual way, to have a sale by the mortgagee. The costs incurred in a sale ought not to be charged against the mortgagee's interest, but should come out of the sum admitted as the increased selling value, in this case \$300." It would therefore appear that the learned Judge seems to have thought that a prior charge in respect of a mechanic's lien is altogether different from any other prior charge. As regards all other prior charges any subsequent mortgagee must redeem them or be foreclosed, but according to this case where