

action to realize a lien, and all questions arising in such action. See also ss. 35 and 39 where the adjudication is again referred to as a "trial." It will thus be seen that what now takes place before the Master is a trial of an action and not a mere taking of accounts, as was formerly the case, and the Master or other officer trying the case has full jurisdiction to dispose of all questions properly raised by the pleadings.

My jurisdiction being established, I shall proceed to deal with the question on the merits : and first as to the facts :

The lien was registered at 1.20 p. m. on June 21. A notice in writing, sufficient in form to satisfy the requirements of s. 13 (1), dated June 21, was mailed on that day addressed to the defendant Company, and was received by them at some time on June 22. The cheque for the \$400.00 in question is dated June 21, and was paid at the bank on June 22. So far there is no dispute. The two questions which I have to decide are, first, was the notice received by the defendant Company before or after the handing of the cheque to Larose : and second, was or was not the lien registered at the time the cheque was so handed to him ?

Taking the second question first. Larose swears that he asked for or was offered the cheque first on Friday, June 21, but that it was not handed to him until Saturday, June 22, at about noon, and that he then took it direct to the bank and got it cashed. He says that on Saturday morning after he had been promised the cheque, but before actually receiving it, he went up and offered the \$400.00 to the plaintiff, who, however, declined to accept it. The plaintiff corroborates this and also Larose's statement that it took place on the morning of the day on which the plaintiff left town. The plaintiff further fixes the time by saying that it was two or three days after the lien was put on. The plaintiff swore to the lien on June 20, though it was not actually registered until the 21st. The only witness called for the defendant Company is their manager, Mr. Chamberlain, but as it was not he who handed the cheque to Larose, he cannot give first hand evidence as to when that was done. The evidence he does give is directed largely to shewing that the cheque was signed on the 21st, the day it bears date, but it does not follow that Larose got it on that day. On the whole I see no reason for disbelieving Larose's positive statement, corroborated as it is in some important respects by the plaintiff, and I therefore find that the cheque was handed by the Company to Larose on June 22, and, consequently, after the registration of the plaintiff's lien.

As regards the other question of fact, the onus is of course on the plaintiff to shew that the notice was actually received by the Company before parting with the money, and in this I think he has failed. All he proves is that the letter was mailed, addressed to the Company, on the afternoon of the 21st, leaving it to be inferred that it was received in the ordinary course of post, early on the morning of the 22nd. But this is not enough, especially in the face of the positive evidence of Mr. Chamberlain that the cheque had been handed to Larose before the notice was received.