

MIDDLETON, J., IN CHAMBERS.

OCTOBER 14TH, 1919.

JAMIESON v. HAGAR.

Costs—Action to Enforce Mechanic's Lien—Power of Master or Referee to Fix Costs at Lump-sum—Discretion—Appeal—Judicature Act, sec. 74(4).

Appeal by the plaintiff from an order of the Assistant Master in Ordinary, in an action to enforce a mechanic's lien, fixing the costs of the plaintiff at a lump-sum.

C. W. Plaxton, for the plaintiff.

J. Parker, for the defendant.

MIDDLETON, J., in a written judgment, said that the plaintiff's claim was for \$200.98. The claim was undisputed—the difficulty was to raise the money to pay. This was not accomplished until after a lien had been registered and a statement of claim filed. The lien-holder then demanded \$62 costs for this preliminary work, and presented a detailed bill, which the Master considered in detail, and reduced to \$21, being \$16 fee and \$5 disbursements. The plaintiff's solicitor was not satisfied, and asked for reconsideration, and produced another bill, prepared on another theory, claiming to be entitled to \$53.10, this consisting of \$5.10 disbursements, and the balance representing solicitor's fees. The Master, without considering this demand in detail, exercised the jurisdiction which he has of fixing the costs at a lump-sum, in the exercise of his discretion; and from this the plaintiff appealed. The appeal should fail. There was no room for the contention that in actions to enforce mechanics' liens the claimant is entitled to 25 per cent. of the claim as costs. The Act fixes 25 per cent. as a limit which cannot be transcended.

Under the Mechanics and Wage-Earners Lien Act, the general provisions of the Rules of the Judicature Act are applicable. Under sec. 74(4) of the Judicature Act, "costs of proceedings before judicial officers, unless otherwise disposed of, shall be in their discretion subject to appeal." One of the recognised modes of exercising the judicial discretion over costs is by fixing the amount at an arbitrary sum without taxation: *Ryan v. Fish* (1883), 4 O.R. 335, 344; *Willmott v. Barber* (1881), 17 Ch. D. 772. Where costs are fixed by a Judge exercising his discretion, his ruling is not subject to review; where costs are fixed by a judicial officer under the terms of the section quoted, an appeal will lie, but the same principle must apply that is always invoked where there is an appeal from a discretionary order. The appellate tribunal will