sub-s. 4, of the Act. I do not allow any costs to the Imperial Bank, as my conclusions have not been arrived at by anything in their defence.

I find, however, that Patrick Villeneuve, who filed a lien for towing the logs to the mill, including not only those sawn, but others now in the booms, is entitled to a lien thereon subject to the prior lien of the Crown, and to judgment against defendants for $370.95, with costs, including the costs of enforcing his lien.

McGillivray, K.C., for plaintiff. *Apjohn*, for defendants.

Province of Manitoba.

COURT OF APPEAL.

Full Court.] [Nov. 6, 1911.

REX *v.* TOY MOON.

Criminal law—Conviction for playing or looking on in a common gaming house—Charging offence in the alternative—Amendment of conviction—Joinder of several persons charged with offence.

Held, 1. Sec. 725 of the Criminal Code, which permits the statement in an information or conviction that an offence has been committed in different modes, etc., does not apply so as to warrant a conviction under s. 229 for playing or looking on while others are playing in a common gaming house, as these are separate and distinct offences.

King v. *Ah Yin*, 6 Can. Cr. Cas. 63, followed.

2. Such conviction may, however, be amended under s. 1124, on being brought before the court by certiorari, so as to make it a conviction for playing in a common gaming house if the evidence shews the commission of that offence, and, when there is the statement of a witness that the accused were all playing on the occasion in question, and it is shewn that gaming instruments were found in the room at the time of the arrest, which fact furnishes primâ facie evidence under ss. 985 and 986, the proof is sufficient. *King* v. *Meikleman*, 10 Can. Cr. Cas. 782, followed.

3. Any number of person may be charged and convicted jointly with the offence of playing in a common gaming house, if they were all actually present and taking part in the same game.

Graham, D.A.-G., for the Crown. *Phillipps* and *Whitla*, for defendants.