

within which the engineer is to make his award, is merely directory and not imperative; and where the engineer attended on May 25 under the Act, but did not make his award till August 1, the award would not be set aside on the ground of being made too late.

M. M. Brown, for appellants. *Deacon*, K.C., for respondent.

Province of Manitoba.

SUPREME COURT.

Full Court.]

HUMPHREYS v. CLEAVE.

[July 12.

Mechanics' and Wage Earners' Lien Act—Costs of sale and reference to Master—Limitation of 25 per cent., to what costs applicable.

This was an action to realize a lien under R.S.M. 1902, c. 110, by the ordinary procedure of the Court as provided for by s. 27 of the Act. At the trial the plaintiffs had judgment for \$322.25, and their costs down to and including the trial were taxed at \$190.16 and inserted in the judgment. The defendant was ordered to pay both amounts into Court within one week, and the judgment further provided that in case of default the lands, material, machinery, etc., should be sold with the approbation of a judge of the Court, and that, for the purpose of such sale, it be referred to the Master at Winnipeg, and that all necessary inquiries be made, parties added, accounts taken, costs taxed, and proceedings had by the said Master for the sale of the said property, and that the purchase money should be applied in payment of the plaintiffs' claims as proved, with subsequent interest and subsequent costs to be computed and taxed by the Master. There was no appeal from this judgment. Default having been made by defendant, the lands were sold under the judgment by direction of the Master, and the purchase money paid into Court. The plaintiffs' costs of the proceedings subsequent to the judgment were taxed and allowed at \$229.30, inclusive of disbursements, and the total amount of the costs taxed, exclusive of disbursements, was \$228.75.

Defendant appealed from the taxation of the subsequent costs on the ground that the latter sum far exceeded the limit of 25 per cent. of the amount of the judgment (\$322.25) provided for by s. 37 of the Act.

Held, that the expression in that section, "costs of the action awarded in any action under this Act by the judge or local judge trying the action," refers to the costs up to and including the trial, and means the costs which are allowed by the judge at the hearing and entered in the judgment: *Gearing v. Robinson*, 19 P.R. 192; and that the limitation of 25 per cent. does not apply to the subsequent costs of sale and proceedings before the Master, which may be dealt with by the judge as in other cases.