

HIGH COURT OF JUSTICE.

GAUTHIER T. LAROSE.

Mechanic's Lien—Registration—Advances under prior mortgage after registration of lien—Priority.

The Local Master or other officer trying an action to enforce a mechanics' lien has now jurisdiction to deal with a question of priority as between the lienholder and a mortgagee whose mortgage is *prima facie* prior to the lien.

Where a mortgage to secure future advances is registered and dated prior to the date of registration of a mechanics' lien, quoad advances made after the registration of the lien, it is a subsequent encumbrance to the lien, and the mortgagees are proper parties as subsequent encumbrancers in a suit to enforce the lien.

Advances made under a mortgage to secure future advances after the registration of a mechanic's lien, though without actual notice of the lien, are under s. 13 (1) of the Mechanics' and Wage Earners' Lien Act (R. S. O. c. 153) postponed to the lien notwithstanding s. 99 (1) of the Registry Act (R. S. O. c. 136).

Where a lien is registered it is not necessary that actual notice should be given of the lien to a mortgagee, whose mortgage has been previously registered, in order that the lien holder may acquire priority over the mortgage in respect of advances made to the mortgagor after the registration of the lien.

(Ottawa, Oct. 18,—W. L. Scott, Local Master.)

This was an action to enforce a mechanics' lien. The defendants were the owner and his mortgagee claiming under a mortgage to secure future advances.

The plaintiff's contract was dated Feb. 17, 1901, and work was commenced thereunder Feb. 25, 1901. The lien was registered June 21, 1901, at 1.20 p.m. The mortgage of the defendants, The Ottawa Trust and Deposit Company, was dated April 2, 1901, and was registered April 3, 1901. It was made to secure future advances. No question was raised as to any of the money advanced thereunder, except an advance of \$400 made by cheque dated June 21, 1901. The other facts sufficiently appear in the judgment.

W. J. Code, for plaintiffs.

Blanchet, for defendant, Larose.

Henderson, for The Ottawa Trust and Deposit Company, the mortgagees. The mortgage being *prima facie* an encumbrance subsequent in time, but registered before the lien, and therefore ranking in priority to the plaintiff's lien, could not be postponed in these proceedings, as to any portion of it, to the plaintiff's lien: *Dufston v. Horning*, 26 O. R. 252. In that case the plaintiffs added a prior mortgagee as a party for the sole purpose of having a declaration that her mortgage should be postponed to them by reason of notice of their liens at the time her advances were made, and of the absence of the declara-