

The claim of lien was confined to the estate of Linnenback in the lands—in it nothing was said of the mortgages, and the mortgagees were not mentioned. The claim against them was first made when the statement of claim was filed, which was after the 30 days allowed by sec. 22, sub-sec. 1, of the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, for registering the lien, but within the 90 days limited by sec. 24 of the Act for bringing the action and registering a certificate of *lis pendens*.

By the statement of claim, the plaintiff claims the enforcement of his lien under the Act, and priority upon the increased selling value as against the two mortgagees.

The action was tried by R. S. Neville, Esquire, K.C., an Official Referee.

J. Y. Murdoch, for the plaintiff.

J. F. Boland, for the defendant Linnenback.

Hattin, for the defendants Martin and Bowman.

THE REFEREE found that the plaintiff's claim of lien was valid, and that by reason of the work done and materials furnished by the plaintiff there was an increase in the selling value of the land to the extent of \$500.

The objection was raised by counsel for the mortgagees that no claim against them or for priority over their mortgages was made till after the 30 days allowed by the Act for registering the lien had expired; and this objection must prevail.

Reference to secs. 8(3), 17, 19(1), 22, 23, 24 of the Act.

A claimant may begin an action and register a certificate of *lis pendens* within the time limited by sec. 22 (see sec. 23); and, if he claims priority upon the increased value over a prior mortgage, the prior mortgagee must be made a defendant and the claim against him set up: *Bank of Montreal v. Haffner* (1884), 10 A.R. 592, 598, 599.

Where a claimant registers his claim under sec. 22, his lien, according to sec. 24, shall absolutely cease at the expiration of the periods therein mentioned (90 days in this case) unless in the meantime an action is commenced to realise *the claim* and a certificate of *lis pendens* is registered. "The claim" is that made in the registered document; and if in that there is only a claim against the owner of the equity of redemption, that is all that can be realised in an action begun after the 30 days have expired.

The claim made against the mortgagees was, therefore, dismissed.