

leave to amend the pleadings so as to set up want of reasonable and probable cause on the defendant's part in making the seizure. The defendant's counsel opposed this, and objected to the trial then proceeding if the amendment were allowed—alleging the necessity of calling, on the issue to be raised in the amendment, witnesses who were not present and could not be obtained on short notice. The amendment was refused, and the trial proceeded. Notwithstanding that the new issue was not raised on the record, and that not a little evidence upon it was admitted, it could not be said that that evidence was exhaustive—counsel might well have felt it needless to pursue the evidence on a matter not formally in issue.

The County Court Judge, however, decided the issue in favour of the defendant. This should not have been done. Even on the record without amendment, there were several legal questions of much nicety which should not be decided without further evidence—evidence which will perhaps be available in a new trial.

Order made for a new trial; all parties to be allowed to amend as they may be advised; and the costs of the former trial and of this appeal to be disposed of by the trial Judge.

HIGH COURT DIVISION.

NEVILLE, OFFICIAL REFEREE.

NOVEMBER 16TH, 1915.

WHALEY v. LINNENBACK.

Mechanics' Liens — Improvements to Buildings — Work and Materials — Valid Lien against Estate of Owner of Equity of Redemption — Claim to Priority over Mortgages upon Increased Selling Value — Claim not Made until after Expiry of Time for Registering Claim of Lien — Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, secs. 8(3), 17, 19(1), 22, 23, 24.

The plaintiff, a carpenter and builder, was employed by the defendant Linnenback to alter and improve buildings on land owned by Linnenback subject to two prior mortgages to the defendants Martin and Bowman.

The last work was done on the 13th May, 1915; the claim of lien was registered on the 9th June, 1915; and the date of the filing of the statement of claim (the commencement of the action) was the 9th August, 1915.