

FIRST DIVISIONAL COURT.

DECEMBER 19TH, 1919.

\*METALS RECOVERY CO. v. MOLYBDENUM  
PRODUCTS CO.

*Mechanics' Liens—Claim of Lien for Work and Materials—Increase in Selling Value of Land—Work Done for Company in Possession of Land under Agreement for Purchase—Title to Land Remaining in Vendor—Vendor not Originally Made Party to Action for Enforcement of Lien, but Served with Notice of Trial—Lien as against Vendor then at an End—Appeal—Costs.*

Appeal by the American Molybdenites Limited from the judgment of the Assistant Master in Ordinary in a mechanics' lien action.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, and FERGUSON, JJ.A.

J. J. Gray, for the appellant company.

Gordon Waldron, for the plaintiff company.

J. Cowan, for nine lien-holders.

MEREDITH, C.J.O., reading the judgment of the Court, said that the action was brought under the Mechanics and Wage-Earners Lien Act for the establishment and enforcement of a lien on two lots in the township of Monmouth, the title to which was in the appellant company. The defendant company held an agreement for the purchase of these lots at a large price, most of which was as yet unpaid. The work of the plaintiff company was done for the defendant company, and it was asserted that the selling value of the lots was increased by it, and that the plaintiff company was entitled to a lien in priority to the appellant company for the amount of that increased value. The only defendant to the action as begun was the defendant company. The appellant company was served with notice of the trial, but not until after the time for bringing an action for the enforcement of the lien had elapsed; the appellant company did not appear and was not represented at the trial.

By the judgment of the Assistant Master in Ordinary it was declared that the plaintiff company and certain other lien-holders were entitled to liens on one of the lots for the respective amounts mentioned in schedule 1 of the judgment. It was also declared that the selling value of this lot had been increased by the value of the work done and the material furnished or placed on or adjacent to it by the lien-holders. A schedule attached to the judgment gave