

claim against the vessel, and she might have been tied up by the court, on his showing that the party with whom he made his hiring was insolvent.

Action dismissed with costs, which are fixed at \$25, including disbursements, the court expressing the opinion that the plaintiff could enforce his maritime lien on the boat for his wages, as the party employing him was in an insolvent condition at the time of instituting action.

The following were referred to: R.S.C., c. 75, ss. 30, 34, and 35 (Inland Waters Seaman's Act); Merchants' Shipping Act of 1854, ss. 10, 19, 43, 55; *Meiklereid v. West*, 1 Q.B.D. 428; "*The Harriet*" (Lushington), 285; *The Yorkshire Railway Wagon Co. v. McClure*, 21 Chy.D. 309; *The North Central Wagon Co. v. The Manchester R.W. Co.*, 35 Chy.D. 191, affirmed in 13 App. Cas. 554; *Beckett v. Tower*, 1 Q.B. 1 (1891); Baron on Sales, pp. 12, 13, and 15; *Wood v. Bell*, 5 E. & B. 772.

R. G. Smyth for plaintiff.

Mulvey for owner intervening.

SUPREME COURT OF JUDICATURE
FOR ONTARIO.

HIGH COURT OF JUSTICE.

Chancery Division.

FERGUSON, J.]

[June 18.

REGGIN v. MANES.

Mechanics' lien—R.S.O., c. 126, s. 2, s-s. 3—*Ib.*, s. 9—"Owner"—*Computation of the ten per cent.*

Certain builders, on February 13th, 1891, agreed with H. to construct a house for him on land then owned by them, and proceeded with the work accordingly for him, though no conveyance of the land was made to H. till May 23rd, 1891.

Held, that even though the agreement of February 13th, 1891, might not have been good in the face of a pleading setting up the Statute of Frauds, yet H. was the "owner" within the meaning of R.S.O., 2. 126, s. 2, s-s. 3, from that date.

The builders failed to complete the house, and H., who had already paid the contract price, had to expend \$438 to finish the building.

Held, that in computing the ten per cent. under R.S.O., c. 126, s. 9, this sum of \$438 must be deducted from the contract price of the building.

Geo. Kerr, jr., for the owner.

Moss, Q.C., for sub-contractors.

Hoyles, Q.C., for other lienholders.

Practice.

BOYD, C.]

[June 29.

SPARKS v. PURDY.

Costs—Taxation—Allowing service of writ of summons out of the jurisdiction—Rule 274—Form 121—Mortgage action—Tenant in possession—Personal service on infant heirs of mortgagor—Rules 258, 259—Copies of writ of summons and of pleadings for brief—Rule 395.

Upon an appeal from the taxation of the plaintiff's costs of a mortgage action,

Held, (1) that where the plaintiff, before serving the writ of summons on defendants out of the jurisdiction, obtains an order shortening the time for appearance, he should include in it an order allowing the issue of the writ for service out of the jurisdiction, and should not have taxed to him the costs of a subsequent order allowing the service.

Rule 274 and Form 121 considered.

(2) In a mortgage action where possession is claimed, the writ of summons need not be served personally on the infant heirs of the mortgagor if they are not personally in possession.

Rules 258 and 259 considered.

(3) A writ of summons is a "pleading or other document" within the meaning of Rule 395, and more than four copies cannot be taxed.

(4) The provision of Rule 395 as to four copies covers all copies required during litigation, and extends to the copy of pleadings in the brief.

Middleton for the plaintiff.

F. W. Harcourt for the infant defendants.