seem to us reasonable and right, it would appear that a trust or combine within the limits mentioned in the said reasons, would not be unlawful by the law of England, nor would its object be held to be unduly effected. Lord Esher, however, thinks otherwise; and if the case is to be carried to the House of Lords we may say "*adhuc sub judice lis est.*" We believe there has been no Canadian judgment under this Act.

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## *PARTIES TO ACTION TO ENFORCE MECHANICS' LIEN.*

It will be seen from the note of the case of *Cole* v. *Hall*, *ante* p. 284, that the Court of Appeal has affirmed the decision of Ferguson, J., upon which we offered some remarks, *ante* Vol. 24. p. 481. The decision of the Court of Appeal proceeds on the ground taken by Ferguson, J., that according to the ordinary procedure of the Court to enforce liens, it is right and proper to make subsequent incumbrancers parties in the Master's office and not original parties to the writ. This, of course, apart from any question as to any Statute of Limitations, is a truism; but would this "ordinary procedure" enable a plaintiff to resist a defence of the Statute of Limitations if raised by a party added in the Master's office? For instance, assume a mortgagee brings an action for the foreclosure of the mortgaged premises, and a subsequent mortgagee in possession is not added in the Master's office until after the time limited by the statute for the plaintiff to bring action against him has expired. Would it be any answer to the defence of the Statute by the party added, that the action was commenced against the mortgagor in due time? The case has never actually arisen in any reported case that we have seen, but, on principle, we should say that it would be no answer. We observe that the Court of Appeal distinguishes *Cole* v. *Hall* from the *Bank of Montreal* v. *Haffner*, 10 App. R. 592, Cass. Dig. 289. In that case, the plaintiff, after bringing a suit against the "owner" to enforce his lien, in which the mortgagee was not made a party either by bill, or in the Master's office, subsequently brought a new suit against the mortgagee after the 90 days had expired, in order to recover the increased selling value caused by the plaintiff's improvements; but the action was held to be too late. If it was too late to bring a new action, would it not also have been too late to have added the mortgagee as a party in the Master's office, in the original action? because, according to the cases of *Juson* v. *Gardiner*, 11 Gr. 23, *Sterling* v. *Campbell*, 1 Chy.Ch. R. 147, a party added in the Master's office is not a party until the date of the notice, or Master's order, adding him, and therefore, if an attempt had been made to add the mortgagee as a party in the Master's office in the original suit after the 90 days had expired, would it not have also been held to be too late to do so? We are inclined to think it would, and that this is a proper deduction from the case of *Bank of Montreal* v. *Haffner*. Any distinction between the case of a prior mortgagee sought to be made a party to a lien action in respect of the plaintiff's right to the increased selling value, and a subsequent mortgagee, or execution creditor, on the ground, that the one is prior, and the other subsequent, to the