

the plaintiffs in an action under the Mechanics and Wage-Earners Lien Act, to enforce a lien for lumber supplied for the erection of a house, and dismissing the defendant's counterclaim.

The appeal was heard by MEREDITH, C.J.C.P., LENNOX, J., FERGUSON, J.A., and ROSE, J.

J. M. Ferguson, for the appellant.

R. McKay, K.C., for the plaintiffs, respondents.

The judgment of the Court was read by MEREDITH, C.J.C.P., who said that the questions involved in the appeal were: (1) whether the action was altogether premature; and (2), if not, whether it was premature in part.

The price of the materials was to be paid in three payments: before action the first two had become payable—the third had not.

A cause of action arose upon default in payment of each of these instalments; and so, apart from the provisions of the Act the action would have been properly brought as to the first two, but improperly as to the third.

It is quite plain, from sec. 37 of the Act, that immature claims of lien-holders are to be brought in and dealt with upon the trial of the action. The purpose of the enactment is, to "adjust the rights and liabilities of and give all necessary relief to all parties to the action and all persons who have been served with the notice of trial"—in the one action and upon the one trial—a thing necessary in working out the purposes of the Act—and the persons to be served with the notice of trial are, among others, "all lien-holders who have registered their claims as required by this Act," not merely lien-holders whose claims are payable. See also sec. 39.

Sections 24 and 25 expressly deal with a case such as this, in which there is a "period of credit," but they leave the questions to be answered here unsolved; and sec. 32 is not very helpful—its provision is not that the action shall be taken to have been brought on behalf of the lien-holders, but "on behalf of the other lien-holders."

No provision of the Act gives a right of action when nothing is yet payable to the plaintiff; the contrary, rather, appears; and, on the other hand, it would be extraordinary if a plaintiff, having a right of action, upon a matured claim, could not get the benefit of the Act in respect of a claim not then matured, though every other lien-holder could.

Having regard to all the provisions of the Act, the plaintiffs might at the trial bring in their claim in respect of the lien for the