THE MASTER IN-ORDINARY :—The plaintiff seeks to amend his statement of claim herein by adding, as defendants claiming liens on the land in question, the following parties: McMullen Brothers and Millichamp, who claim a lien to the amount of $98; and McTaggart & Leishman, who had registered a lien to the amount of $151.29. These sums, when added to the amount claimed by the plaintiff ($94.50), make $343.79.

But it is admitted that the lien of McTaggart & Leishman had been discharged by a certificate of discharge, dated 7th October, and registered on the 8th October, after the registration of the certificate issued on the same day (8th October) in this proceeding, and the question is: Can the amount of McTaggart & Leishman's lien be added to the other two, so as to give the High Court jurisdiction to entertain this claim?

The 25th section of the Act of 1890 enacts that the plaintiff in these proceedings shall be deemed sufficiently to represent "all other lienholders entitled to the benefit of the action;" and, by section 26, a right to apply to have the carriage of the proceedings is conferred upon "any lienholder entitled to the benefit of the action." If the Act had used the expression "all other *registered* lienholders," I think the case of *Hall* v. *Pilz*, 11 P.R. 449, would have disposed of the question. That case construed the expression "all the lienholders of the same class who shall have *registered* their liens" as meaning all those who had an apparent right by virtue of the registration of their liens. But this later Act omits the word "registered," and by its use of the words "entitled to the benefit" excludes from the rights represented in the plaintiff's proceedings those not so entitled, and thus limits the plaintiff's representative action to those who have substantial, not apparent, rights in the subject-matter which are capable of being judicially enforced in the action. The rule in such representative actions is that no persons should be made parties to such actions but those claiming some right: *Alloway* v. *Alloway*, 2 Con. & L. at p. 512; and the plaintiff in such action must have a common interest with the persons he seeks to represent: *Fawcett* v. *Lauric*, 1 Dr. & Sm. 192; 7 Jur. N.S. 61. As says Lord Cottenham, L.C., in *Mozely* v. *Alston*, 1 Phil. 798, the relief which is prayed in a representative action must be one in which the parties whom the plaintiff professes to represent have all of them an interest identical with his own. And in *Gray* v. *Pearson*, L.R. 5 C.P. 568, it was held to be a rule of procedure in England, and also one affecting all sound procedure, that the proper person to bring an action is the person whose right has been affected; and this rule, when extended to representative actions, includes all persons there represented. As an illustration of this rule, the case of *Pryce* v. *Belcher*, 4 C.B. 867, may be cited, where, in an action brought against a returning officer by a person who had an apparent right to vote by being entered on the register of voters, but who had lost his right by non-residence, it was held that having lost his right to vote he had no cause of action. The court held that the foundation of his right of action was an injury to his right to vote, and as he had no such right he had suffered no injury.

As to the plaintiff's right to amend, I may add that the case of *Bickerton* v. *Dakin*, 20 O.R. 192, 695, shows that the Master may give leave to amend the plaintiff's statement of claim as a pleading in a proper case. But the cases as to the power of a court to amend, so as to give itself jurisdiction, are not harmonious. In *Jackson* v. *Ashton*, 10 Peters U.S. 480, STORY, J., intimated an opinion that the court of first instance had power to amend the proceedings by inserting a necessary allegation which would give the court jurisdiction. But in *Taylor* v. *Addyman*, 13 C.B. at p. 316, Maule, J., observed that a county court judge had no power to allow amendments in a proceeding which was not within his jurisdiction; that he could neither amend nor adjourn, nor do anything else, as the proceeding was *coram non judice*. And in *Austin* v. *Dowling*, L.R. 5 C.P. 534, it was held improper for a county court judge to admit evidence of a matter which was beyond the jurisdiction of the county court.

There is also a question whether a Master has jurisdiction, in these summary proceedings, to issue any process making persons lienholders, mortgagees, or execution creditors, who have not been named on the record parties to the action against their will. They may come in voluntarily and submit to be bound by the proceedings. The act may intend that such persons should be named on the record in the