

a prior mechanic's lien is concerned, the prior lien holder is not entitled' to say to the mortgagee, redeem me or be foreclosed; but the mortgagee may say to the lienholder, proceed to realize your lien or be foreclosed.

We should have thought, but for this decision, that a prior mechanic's lien is on the same footing as a prior mortgage. If a subsequent incumbrancer does not redeem he may, when a defendant, claim a sale which he may conduct, or may pay \$80 into Court and require a plaintiff prior incumbrancer to conduct it; but where there is any provision which throws on a prior chargee any obligation to sell or to pay \$80 into Court and require a subsequent incumbrancer to conduct the sale we have not been able to discover. Rules 461 and 462 are based on the supposition that the original or added defendants will be subsequent, not prior, incumbrancers.

It has been perhaps assumed that the lien given by the Mechanics and Wage Earners' Lien Act in priority to mortgages, is a lien merely on the increased selling value. But we venture to doubt the correctness of that assumption. Sec. 8 shows that the lien is upon the estate or interest of the owner in the property and sub-sec. 3 that where that estate or interest is incumbered by a prior mortgage the lien is to attach on the increased selling value caused by the work or materials for which the lien is claimed in priority to the mortgage. But that does not do away with the first section which expressly declares that the lien is on the land, but it seems to us merely to define the pecuniary extent of the lien. But why should this prior lien be deemed to stand in any different position to any other prior charge? The statute has given the lienholder a prior charge to the extent mentioned, if the subsequent mortgagee does not redeem and it becomes necessary to enforce this prior charge by a sale, it is said the costs must be paid out of the increased selling value, that may be all very well if the increased selling value is sufficient to satisfy both the lien and the costs but assuming there is a deficit, why should the lien holder have to bear the expense? Any ordinary prior lienholder is not bound to realize his lien at his own expense, the property subject to the lien and out of