

Meredith, C.J.C.P.]

[Dec. 29, 1903.]

HAYCOCK v. SAPPHIRE CORUNDUM CO.

*Mechanics' lien — Action — Parties — Execution creditor — Incumbrance arising pendente lite — Notice of trial — Judgment — Vacating.*

Under s. 36 of the Mechanics' and Wage Earners' Lien Act, R.S.O. 1897, c. 153, it is the persons who are incumbrancers at the time fixed for service of notice of trial, and those only, who are required to be served; service of notice of trial on them being the mode by which incumbrancers not already parties to the proceedings are brought in.

After service of notice of trial in an action to enforce a mechanic's lien against the lands of the defendants, but before the trial, the petitioners, who were judgment creditors of the defendants, placed a fi. fa. against goods and lands in the hands of the sheriff of the county in which the lands of the defendants lay. The petitioners were not served with any notice of trial, and did not appear at the trial nor prove any claim, but the judgment given upon the trial recited that it appeared that they had some lien, charge, or incumbrance on the lands, created subsequent to the commencement of the action, and declared that the plaintiffs and others were entitled to liens.

*Held*, that the name of the petitioners and all reference to their claim should be stricken out of the judgment.

*F. E. Hodgins*, K.C., for petitioners. *W. H. Blake*, K.C., for plaintiffs.

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RE WALSH & FITCH.

[Jan. 2.]

*Solicitor and client — Taxation — Delivery of bill of costs — Delivery of amended bill after order.*

Some solicitors having delivered an unsigned bill of costs, the client applied for and obtained an order that they do deliver a bill and for taxation of same when delivered. Under this order the solicitor delivered a bill in which certain charges were made larger than they had been in the previous unsigned bill, and some new items were charged.

Objection was taken on the part of the client that nothing more should be allowed on taxation in respect to any item appearing in the new bill than was charged in respect of it in the first bill, nor should new items be allowed.

*Held*, that by applying for an order for delivery of a bill the client must be considered to have consented to the old bill being withdrawn, and the objection could not prevail.

*Hislop*, for client. *Middleton*, for solicitors.