

parties, are numbered 6 and 7. Adam and William Denmead, whose claims are numbered 8 and 9, supplied portions of the machinery. This consisted, with the exception of some looms, of the motive power. According to the proof, there was a steam-engine, with three boilers, tanks, and appurtenances, which were put up and placed upon the premises in the mode pointed out by the witnesses, Barling & Hedrick. The Messrs. Denmead claim to have a lien on this machinery under the mechanics' lien law, and upon the footing of judgments recovered upon a proceeding in Baltimore County Court, in September, 1849, under the lien law passed at December Sessions, 1838, ch. 205. It is insisted on their part, that these judgments are in the nature of proceedings *in rem*, and binding and conclusive on all the world.

So far as the rights of these creditors depends upon the cases relating to the lien of mechanics and others upon buildings, the decision of this Court in the case of *Jones vs. Hancock*, 1 *Maryland Ch. Decisions*, 187, is conclusive against them, as respects prior incumbrances. The property upon which the machinery in question was constructed, was subject to a lien or incumbrance prior to the commencement of the building in which the machinery was placed, and consequently so long as the case of *Jones vs. Hancock* remains unreversed, the lien given to the mechanic must be deferred to the prior incumbrancer.

I have not deemed it necessary to look into the authorities, to see how far the proceedings authorized by the act of 1838 can give to the judgment which may be rendered for the claim, the quality of a judgment *in rem*, because the records of these judgments show that these creditors not only have not adopted the proceedings by which the rights of third parties could be affected, but they, by agreement with the defendant's counsel, have expressly waived it.

The claim of the Messrs. Denmead was filed against William Mason, William Mason, Jr., and Henry A. Barling, and the *scire facias* authorized by the 14th section of the statute, was issued against them only. But the legislature contemplated