

In accordance with the foregoing discussion a minority of the court feel that the judgment of the plaintiff Caron, Inc. takes precedence over the mortgage of the bank. This conclusion is not unprecedented. *Easton v. Brown*, 170 Mass. 311, 314; *Kittredge v. Newman*, 26 N. J. Eq. 195.

A majority of the court are of the opinion, however, that a decree for the plaintiff cannot be entered upon the present record and that the case should be recommitted for further finding of fact as to the terms of understanding between Caron and the bank at the time the second mortgage was given.

The plaintiffs Bryson and Manseau are not so favorably situated. They did not commence work until after the new mortgage had been given. Consequently their liens are subordinate thereto.

Case discharged.

June 13, }
1939. } No. 3113a.

OPINION OF THE JUSTICES.

To the Honorable Senate:

As members of the Supreme Court we have received your resolution of May 2 calling for our opinion whether the provisions of Senate Bill No. 62 offend the State Constitution.

As the resolution states that the opinion is sought "for the use of the 1941 session of the General Court," it is our duty to decline to express our opinion. As is said in *Opinion of the Justices*, 84 N. H. 584, 585, "The question must be pending and awaiting action in the body propounding the inquiry." The position there taken was supported by cited precedents and has been subsequently observed in *Opinion of the Justices*, 86 N. H. 607.

JOHN E. ALLEN.
THOMAS L. MARBLE.
OLIVER W. BRANCH.
PETER WOODBURY.
ELWIN L. PAGE.

June 8, 1939.

July 31, }
1939. } No. 3117.

OPINION OF THE JUSTICES.