Having regard to plaintiff's experience as a quarryman, perfectly familiar with the danger incident to the use of blasting powder and of fuses, it was, I think, negligence on his part to have deposited the pail within reach of the falling sparks. If he had used proper care he would have placed it at a safe distance, and the accident would not have happened. I, therefore, think, his own negligence was the cause of his injury, and that, therefore, he is not entitled to recover. This action is, therefore, dismissed without costs.

The appeal to Divisional Court from above judgment was heard by HON. SIR GLENHOLME FALCONBRIDGE, C.J.K.B., HON. MR. JUSTICE BRITTON, and HON MR. JUSTICE RIDDELL, on the 16th September, 1912.

T. J. Bain, for the plaintiff, appellant.

A. J. Anderson, for the defendants, respondents.

THEIR LORDSHIPS (V.V), dismissed the appeal with costs.

MASTER IN CHAMBERS. SEPTEMBER 30TH, 1912.

JENKINS v. McWHINNEY.

4 O. W. N. 90.

Lis Pendens—Certificate—Motion to Vacate Registration—Claim for Commission for Sale of Land and Damages for Failure to give Option — Not Claim in Respect of Lands.

MASTER-IN-CHAMBERS *held*, that a claim for a commission and for damages for failure to give an option could not possibly be the foundation of a claim in respect of the lands, the subject matter of the option, and vacated a *lis pendens* filed against them with costs to defendant in any event.

Burdett v. *Fader*, 6 O. L. R. 532; 2 O. W. R. 942; 7 O. L. R. 72; 3 O. W. R. 289, and *Brock* v. *Crawford*, 11 O. W. R. 143, followed.

Plaintiff, a real estate agent, on 16th August last, issued a writ claiming a commission at 5% on $95,000—and a 2½% on $24,600—and a certificate of *lis pendens* against the properties in question "as to the interest of defendants or either of them" in the east half and north-westerly quarter of lot 6—in second concession west of Yonge street, county of YORK—and in lots 20 to 61 both inclusive on plan