

The
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HIGH COURT DIVISION.

FALCONBRIDGE, C.J.C.B., IN CHAMBERS. FEBRUARY 4TH, 1918.

NATIONAL MATCH CO. v. THOMAS.

*Lis Pendens—Certificate of—Registration—Motion to Vacate—
What must be Shewn—Abuse of Process of Court—Delay in
Prosecution of Action—Motion to Dismiss.*

Motion to dismiss the action for want of prosecution and to vacate the registry of a certificate of lis pendens.

The motion was heard at the London Weekly Court, as in Chambers.

C. F. Maxwell, for the defendant.

J. B. Davidson, for the plaintiffs.

FALCONBRIDGE, C.J.K.B., in a written judgment, said that, the delay being reasonably explained, and the parties agreeing to go to trial at the next Court at St. Thomas, the only question argued was as to discharging the lis pendens.

“A motion to vacate a certificate of lis pendens should not, speaking generally, succeed unless it is made to appear by clear and almost demonstrative proof that the writ is an abuse of the process of the Court:” *Sheppard v. Kennedy* (1884), 10 P.R. 242; *Jameson v. Lang* (1878), 7 P.R. 404; *Bowers v. Bowers* (1915), 34 O.L.R. 463.

This was an action to set aside a conveyance to a wife as being fraudulent, and there was apparently no abuse of the process of the Court.

Motion dismissed. Costs in the cause to the successful party.