

premises or elsewhere at her death, became the property of the husband's estate.

An account against her executor was directed, and the scope of the inquiry defined.

Murphy, Q.C., and R. G. Smyth, for plaintiff. Coatsworth and F.E. Hodgins, for defendant, T. Wakefield. A. J. Boyd, for infant defendants.

Boyd, C., Robertson, J., Meredith, J.]

[May 14.

CRAIG v. CROMWELL.

Mechanics' lien—"Notice in writing" to owner—Letter—R.S.O. c. 153, s. 11, sub-s. 2.

The claimants of a mechanics' lien for materials wrote to the owner a letter asking him, when making a payment to the contractor "on the Lisgar Street Buildings"—the property on which the lien was asserted—to "see that a cheque for at least \$400 is made payable to us on account of brick delivered, as our account is considerably over \$700, and we shall be obliged to register a lien if a payment is not made to-day."

Held, MEREDITH, J., dissenting, a sufficient "notice in writing" of their lien, under sub-s. 2 of s. 11 of the Mechanics' and Wage-Earners' Lien Act, R.S.O. c. 153.

Thomson, Q.C., and R. B. Matheson, for claimants. Arnoldi, Q.C. for owner.

Osler, J.A.]

APPLEBY v. TURNER.

[May 15.

Leave to appeal—Order setting aside judgment—Grounds of plausible attack—Statement of claim—Service by posting—Irregularity—Delay—Discretion.

A Divisional Court of the High Court having set aside a judgment signed by the plaintiffs for default of defence in an action on a bond (ante p. 313), upon two grounds, viz., (1) that a motion for judgment was necessary, and (2) that the statement of claim had never been legally served upon the defendants, the posting up thereof in the office not being service because of the omission to file an affidavit of service of the writ of summons before doing so;

Held, that leave to appeal should not be granted unless the plaintiffs could make a plausible attack upon both grounds, for if only one were demolished, the other would support the judgment, and leave to appeal is not given merely to settle a point of practice the decision of which would not affect the judgment complained of.

And in this case the service of the statement of claim could not be supported, having regard to Rule 574, and it was in the discretion of the Court below to give effect to the objection to its regularity, notwithstanding the defendants' delay in moving against the judgment.

W. E. Middleton, for plaintiffs. Hislop, for defendants.