

ment of October. The action was defended, and Carley paid into Court \$200, which he alleged had been agreed on as liquidated damages for breach of the agreement, if any agreement had been made, which he denied. The action was tried on 18th May, and judgment was given dismissing it as against Patterson without costs, but finding that Carley had committed a breach of the agreement of October, and directing a reference to assess damages, further directions and costs being reserved. The reference proceeded forthwith, and on 21st August the local Master made his report fixing damages at \$220. In the meantime Carley appealed to a Divisional Court from the judgment at the trial, and this appeal was argued and stood for judgment.

The certificate of *lis pendens* registered in respect of that action was vacated by an order, made on the defendant's application, in November.

While the appeal was pending, and, as it would seem, in consequence of the *lis pendens* having been discharged, or a motion made for that purpose, Knapp began a new action on 28th October, 1903, against Carley alone, and another on 21st November, 1903, against Carley and Patterson, so endorsing his writ of summons in each case that he was able to obtain a *lis pendens* in each, both of which were duly registered, though neither writ was served up to the middle of December, 1903. In the first of the new actions plaintiff's claim was for an injunction restraining Carley from dealing in any way with the mortgage which Patterson had given him to secure balance of unpaid purchase money on the land in question in the original action, on the ground that he should be prevented in this way from defeating the claims of the plaintiff and his other creditors. In the second action the claim was for a decree declaring that the sale by Carley to Patterson was made without proper consideration and with intent to defeat the plaintiff and other creditors of Carley, and for an order setting aside the conveyance to Patterson and declaring the lands liable to the claim of the creditors of Carley, though, so far as appeared, there were none. On discovering what had been done, the defendants at once moved to vacate these certificates of *lis pendens* and dismiss both actions as being an abuse of the process of the Court.

C. A. Moss, for defendants. Grayson Smith, for plaintiff.

THE MASTER.—I have no doubt at all that the actions should be dismissed. The plaintiff has no interest in the lands, and is not claiming any. Any such claim was dismissed by the Chancellor, and plaintiff was remitted to dam-