

BRUCE V. NATIONAL TRUST CO.—MASTER IN CHAMBERS—MAY 31.

*Mechanics' Liens—Proceeding to Enforce Lien—Statement of Claim Filed without Affidavit—Setting aside—Vacating Register of Lien and Certificate of Lis Pendens.*—In a proceeding under the Mechanics' Lien Act, the statement of claim was filed on the 1st February, but without any affidavit attached. The defendant moved to set aside the statement of claim. It appeared that the statement of claim was filed on the very last day permissible. It was said on the argument that the plaintiff was out of reach of his solicitor at the time, and it was suggested that sec. 19 of the present Act, 10 Edw. VII. ch. 69, might be applied. The Master said that this was confined in its terms to secs. 17 and 18; and, while it was held in *Crerar v. Canadian Pacific R.W. Co.* (1903), 5 O.L.R. 383, that the necessary affidavit might be made by the solicitor as agent (as might well have been done in this case), it would be judicial legislation to say that no affidavit was necessary. The nature of the procedure under this Act was considered in *Canada Sand Lime Brick Co. v. Ottaway* (1907), 10 O.W.R. 686, 788, and *Canada Sand Lime and Brick Co. v. Poole* (1907), 10 O.W.R. 1041. The statement of claim must be set aside and the registry of the lien and certificate of lis pendens vacated with costs. Happily in this case there was no danger of the plaintiff failing to recover in another proceeding anything he might be found entitled to from the defendants. S. G. Crowell, for the defendants. C. M. Garvey, for the plaintiff.

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