

Richards, J.]

[June 4.

IMPERIAL ELEVATOR CO. v. WELSH.

Pleading—Mechanics' and Wage Earners' Lien.

In his statement of defence to a mechanics' lien action, defendant set up and pleaded that the said lien was not filed within the time required by law, that proceedings had not been instituted within the time required by law, and that the plaintiff was not entitled to said lien.

Held, that such pleading, except the last clause, was authorized by the form No. 7 in the schedule of forms appended to the "Mechanics' and Wage Earners' Lien Act," R.S.M. 1902, c. 110, and referred to in s. 45 of the Act, since that section says that the forms in the schedule, or forms similar thereto or to the like effect, may be adopted, and the expressions used were to the like effect as that in the form, viz., "that the lien has not been prosecuted in due time as required by statute." As to the statement that the plaintiff is not entitled to said lien, it is only an allegation of a conclusion of law, and should be struck out.

Phillipps, for plaintiff. *Locke*, for defendant.

Mathers, J.]

[June 13.

NORTH-WEST CONSTRUCTION CO. v. VALLE.

Priority of equitable claims—Negligence of holder of prior equity—Constructive notice—Knowledge of solicitor, when imputed to client.

The defendant Valle was the nominal purchaser of the land in question from the city of Winnipeg under an agreement of sale, but he only held it as trustee for the plaintiffs. The defendant Wolfe bought the land from Valle, took an assignment of the agreement and paid the purchase money without any notice or knowledge of the plaintiff's claim. In carrying out his purchase Wolfe employed a clerk in the office of a solicitor who was said by the plaintiffs to have had a knowledge of their claim, although he denied it. The plaintiffs had neglected to register any notice of their claim in the Land Titles Office, and had given no notice of it to the city of Winnipeg. The solicitor knew nothing of Wolfe's purchase till after it was completed and his clerk had no notice or knowledge of the plaintiffs' claim.