

So far as I can see, the Rules of the Court do not in this respect apply to the Mechanics' Lien Act. For, although the initial step in an action under this Act is called a statement of claim, it differs materially from the pleading of that name in an ordinary action.

Here it is the first step in a proceeding to enforce a statutory remedy—and this step the Act itself expressly requires to be taken within a fixed period. To extend that period by excluding the vacations would be in effect to amend the Act, and materially enlarge the time which must elapse before proceedings under it will be barred.

The action must be dismissed, and the certificate of lis pendens vacated. . . .

CARTWRIGHT, MASTER.

NOVEMBER 1ST, 1907.

CHAMBERS.

METHODIST CHURCH v. TOWN OF WELLAND.

Pleading — Statement of Defence — Motion to Strike out Paragraph—Action for Negligence Resulting in Destruction by Fire of Plaintiffs' Buildings — Insurance Moneys — Application in Reduction of Damages — Objection in Law.

This action was brought to recover from the defendants damages, to the amount of \$15,000, caused to the plaintiffs by the destruction of buildings by fire resulting from the breaking of the main which supplied natural gas to the users in the town.

The plaintiffs alleged that this breakage was caused by the negligent use of a heavy steam roller by the defendants.

The 5th paragraph of the statement of defence was as follows: "The defendants by way of counterclaim further say that the said church and contents were insured for the sum of \$5,000 or thereabouts against loss or damage by fire, which amount of insurance has been or will be paid the plaintiffs or other owners of the said property, and the defendants are entitled, in the event of being held liable for the amount