

defendant to set aside an order for substituted service of a statement of claim, and the statement of claim itself, and to vacate a certificate of *lis pendens*. The Master said that the motion being made on behalf of the defendant shewed that the matter had come to his knowledge: *Taylor v. Taylor*, 6 O.L.R. 356, 545.—The order should, perhaps, have given some additional time for delivery of the defence beyond the usual 10 days; but this could be provided for now.—It was argued, further, that the motion was entitled to prevail, because the statement of claim shewed that the action was begun too late. The proceeding was under the *Mechanics' Lien Act*. The statement of claim was delivered on the 11th July, 1911. The lien was filed on the 12th May, 1911. The statement of claim did not say when the last work was done. It spoke of a contract to do plumbers' work, to the value of \$1,000, made in May or June, 1910, and admitted payment of \$100. It admitted also that the work was not completed, but said that this was owing to the default of the defendant, and that the plaintiff has not abandoned the work. The Master said that there was no admission by the plaintiff of when the last work was done, supposing that this would be conclusive if more than 90 days ago. Mr. White contended that, as between the parties here, this was immaterial. Without expressing any opinion, it seemed to the Master to be a matter of defence that would have to be proved if available. It might be that sec. 22(1) of the *Mechanics' Lien Act* supported Mr. White's contention.—It was also argued in support of the motion that an order should have been made under *Con. Rule 162*. As the defendant was in the Province when the statement of claim was filed, it would seem (the Master said) from the decision of the Court of Appeal in *Jay v. Budd*, [1897] 1 Q.B. 12, that this was not necessary. The Court there distinguished the cases of *Wilding v. Bean*, [1891] 1 Q.B. 100, and *Fry v. Moore*, 23 Q.B.D. 395, relied on by the defendant's counsel. From the entry made at the time, it would appear that the plaintiff's solicitor at first intended to take out an order under *Con. Rule 162*. This was, as it would seem, changed, possibly in reliance on *Jay v. Budd*, *supra*.—Something was said on the argument that indicated a disposition to settle the matter. If this was not carried into effect, the best disposition to make would be to dismiss the motion, giving the defendant such further time as he might require, and letting the action be disposed of on the merits. Costs in the cause, as the plaintiff might have proceeded more promptly and thereby have rendered this motion unnecessary. A. J. Russell Snow, K.C., for the defendant. J. T. White, for the plaintiff.