

E. G. Porter, K.C., and W. Carnew, for plaintiff.

A. Abbott, for defendant.

HON. MR. JUSTICE LATCHFORD:—From the plaintiff's own evidence it appeared that with full knowledge of all that he now alleges and proves, he had by disposing of part of the property acquired from the defendant put himself in such a position that he had in law affirmed what he seeks in this action to set aside. See *Stocks v. Boulter* (1912), 22 O. W. R. 464, and *Boulter v. Stocks* (1913), 47 S. C. R. 440.

It may be that had the action been for deceit, the defendant would have to meet the claim by calling evidence. But as no case has been made for rescission I am—in the absence of an amendment which I refused to make changing the whole form of the action—obliged to grant the defendant's motion for a non-suit and dismiss the action with costs, but without prejudice to the right of the plaintiff, if so advised, to bring an action for damages for deceit. Stay of thirty days.

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MASTER-IN-CHAMBERS.

MAY 31ST, 1913.

BRUCE v. NATIONAL TRUST.

4 O. W. N. 1372.

*Mechanics' Liens—Statement of Claim—Lack of Affidavit—Time for Filing Expired—Jurisdiction of Court—Vacation of Lien.*

MASTER-IN-CHAMBERS held, that he had no power to do other than set aside a statement of claim in a mechanics' lien action filed upon the last day for filing the same without the required affidavit attached.

*Canada Sand Lime v. Ottaway*, 10 O. W. R. 686, 788, referred to.

Motion in a proceeding under the Mechanics' Lien Act by defendants to set aside the statement of claim filed 1st February, 1913, but without any affidavit attached.

S. G. Crowell, for motion.

C. M. Garvey, for plaintiff.

CARTWRIGHT, K.C., MASTER:—It appears 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