RAMSAY v. GRAHAM—MASTER IN CHAMBERS—APRIL 3.

Mechanics' Liens—Motion to Dismiss Proceeding to Enforce Lien—Default of Plaintiff in Making Discovery——Rights of Other Lien-holders—Absence of Plaintiff—Opportunity to Proceed.]—A statement of claim was filed under the Mechanics' Lien Act in December, 1911, the plaintiff seeking to recover about $500 as due to him as a sub-contractor, and to enforce a lien therefor. The defendant Graham (the owner) filed her statement of defence on the 2nd January, 1912; and now moved for a dismissal of the action and to vacate the certificates of lien and lis pendens for the plaintiff's default in making discovery. On the argument it appeared that both the plaintiff and the defendant Farrell (the contractor) had left the city of Toronto and could not be found. The Master said that the plaintiff was, no doubt, in default, and in an ordinary action the motion would be entitled to prevail, unless the omission was repaired or accounted for. Here, however, the rights of others, who might be entitled to take the benefit of this proceeding to enforce similar claims, might be injuriously affected. It further appeared that on the 19th January, 1912, an order was made in an action against Ramsay (the plaintiff in this action), whereby the Sheriff of Toronto was ordered to proceed as provided by Con. Rule 1059. The Master said that it did not seem right to impair that order at present. It must, however, be conceded that no party to an action can complain of anything done while he is absent and not keeping in touch with his solicitor. Here, the action could either proceed without the plaintiff or it could not. In the latter case, it must be ultimately dismissed. On the other hand, if the necessary evidence could be given in the plaintiff's absence, there was no reason why the matter should not be prosecuted forthwith. The defendant Graham was entitled to have the matter disposed of one way or the other. Unless this was done in two weeks, or such further time as might be thought just, the action must be dismissed—and with costs. If an appointment should be taken out for trial, the costs of this motion should be to the defendant Graham in any event. The Master added that, in his experience, to ask a plaintiff in such an action to make discovery before service of notice of trial was not usual. In the present case, this course was perhaps adopted to obtain a dismissal, instead of moving to dismiss for want of prosecution. T. Hislop, for the defendant Graham. H. E. Rose, K.C., for the plaintiff.