

fect the lien. But there was no statement, either in the claim for lien or on the record or in the evidence, as to what, if anything, he did on that date in fulfilment of his contract. The claim for lien was not registered within the time prescribed by sec. 22 of the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, nor was the action to realise commenced within the time mentioned in sec. 23.

The appeal must be allowed with costs here and below.

During the argument, the appellant's counsel expressed himself as desiring that the plaintiff should be paid whatever sum was due him after all due allowances were made; and it was suggested that the Court should say for what, if anything, the defendant was liable to the plaintiff in respect of the contract.

Taking the evidence as it stood—in some respects it was meagre—and considering the statements of the plaintiff and his witnesses of defects and of non-completion, the defendant was entitled to an allowance which would reduce the amount claimed to \$75.

SECOND DIVISIONAL COURT.

DECEMBER 31ST, 1915.

DAVISON v. FORBES.

Trust—Share of Proceeds of Sale of Farm—Account—Contract—Counterclaim—Fraud and Misrepresentation—Appeal—New Evidence—Admissibility—Costs.

Appeal by the defendant Forbes and cross-appeal by the plaintiff from the judgment of KELLY, J., ante 22.

The appeal and cross-appeal were heard by FALCONBRIDGE, C.J.K.B., MACLAREN, J.A., RIDDELL and LATCHFORD, JJ.

Wallace Nesbitt, K.C., J. W. Bain, K.C., and Christopher C. Robinson, for the defendant Forbes.

W. N. Tilley, K.C., and J. T. White, for the plaintiff.

R. McKay, K.C., and D. Inglis Grant, for the defendant Haines.

FALCONBRIDGE, C.J.K.B., delivering judgment, said that, to his mind, the evidence of Alfred Ernest Davison, brother of the plaintiff, given before this Court on the 22nd November, 1915; by leave of the Court (see ante 145), after the argument had been partly heard, was conclusive. This witness said that