

the consent of all parties, been paid the amount of their liens, aggregating \$162, exclusive of costs; and that the six lien-holders and the wage-earners were also entitled to liens for their costs, amounting in all to \$345. The appeal was against these findings.

The first matter in dispute was the amount of the contract: Hartley said it was \$4,600; the appellant, that it was only \$4,275. The Referee apparently found that it was \$4,600, and it was admitted that Hartley was entitled to \$40 for extras, thus bringing the amount up to \$4,640. Payments to the amount of \$3,303.25 were made to Hartley during the progress of the work. The Referee did not expressly find what sum was sufficient to complete the work; but the evidence established that at the time of Hartley's dismissal \$300 was the utmost that was necessary to complete all the work contracted for. There was no ground for interfering with the Referee's finding as to the amount for which Hartley was primarily liable. It was also established that the appellant had not, at the time he was shewn to have had notice of the liens, paid the contractor up to 80 per cent. of the value of the work and materials actually done, placed, or provided, and he made no payments to Hartley afterwards.

Upon this basis, there remained due to Hartley the sum of \$874.75; and the six lien-holders were entitled to liens upon the property aggregating the \$874.75 (in addition to the costs allowed by the report, for which they also had liens) in the proportion of the debt and interest (if any) found to be due to them; and the judgment of the Referee should be amended accordingly; the defendant Hartley being primarily liable for the amounts found by the judgment.

Success being divided, there should be no costs of the appeal.

NOVEMBER 4TH, 1915.

MITCHELL v. BUCKNER.

Payment—Chattel Mortgage—Set-off—Assent — Appropriation of Payments—Rights of Assignee.

Appeal by the plaintiff from the judgment of COATSWORTH, Jun. Co.C.J., dismissing an action brought in the County Court of the County Court of the County of York, in detinue, for three horses, and for damages, etc.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.