

be reversed and judgment entered for the appellant against the respondent for \$200 (the amount of the damages as found by the Judge) with costs, and the respondent should pay the costs of the appeal.

JANUARY 26TH, 1914.

BROOKS v. MUNDY.

Mechanics' Liens—Lien of Sub-contractor—Abandonment of Work by Contractor—No Sum Due by Owner to Contractor—Liability of Owner—Percentage to be Retained—Effect of not Retaining—Proceedings to Enforce Lien not Taken within Thirty Days after Abandonment—Mechanics and Wage Earners Lien Act, 7 Edw. VII. ch. 69, secs. 6, 10, 12.

Appeal by the defendant Mundy from the judgment of the Local Master at Ottawa, dated the 11th November, 1913, in a mechanic's lien action.

The appeal was heard by MEREDITH, C.J.O., MACLAREN and MAGEE, J.J.A., and LENNOX, J.

J. G. O'Donoghue, for the appellant.

J. R. Code, for the plaintiff, the respondent.

The judgment of the Court was delivered by MEREDITH, C.J.O.:—The appellant employed his co-defendant Gagnon to build four tenement houses for \$5,650, and Gagnon sublet the plastering work to the respondent. Gagnon abandoned the work on the 16th February, 1913, leaving the work he had contracted to do uncompleted, and it was afterwards completed by the appellant, whose outlay in doing so exceeded the amount of the contract price, which had not been paid to Gagnon.

The respondent had by the 1st February, 1913, completed the work he had undertaken to do, except such patching as it was his duty to do after the carpenters had completed their work, and on the 19th April following he sent men to do this patching. The men did some little work, when they were stopped from continuing what they had been sent to do, by the appellant. The lien was registered on the 15th May, 1913.

The Master gave judgment for the respondent, upon the ground that sec. 6 of the Mechanics' and Wage Earners' Lien Act (10 Edw. VII. ch. 69) gave to the respondent a lien for