SECOND DIVISIONAL COURT.   OCTOBER 15TH, 1918.

SHERWOOD v. SHEEHY.

Contract—Agreement to Lend Money—Mortgage of Land—Building Loan—Terms of Arrangement—Money not to be Advanced until Building Commenced and Progress Made.

Appeal by the plaintiff from the judgment of the Judge of the County Court of the County of Peterborough.

The action was for damages for breach of a contract to lend money.

The County Court Judge gave judgment for the plaintiff for $25 without costs.

By the appeal the plaintiff sought to increase the amount and to be awarded costs.

The appeal was heard by MULOCK, C.J.Ex., CLUTE, RIDDELL, SUTHERLAND, and KELLY, JJ.

J. G. Guise-Bagley, for the appellant.

Daniel O'Connell and J. R. Corkery, for the defendant, respondent.

The judgment of the Court was read by MULOCK, C.J.Ex., who said that the plaintiff alleged that the defendant agreed to lend him $2,000 on the security of a mortgage of land, for the purpose of enabling the plaintiff to erect houses thereon; that the plaintiff executed a mortgage in favour of the defendant securing payment of $2,000 and interest, whereupon the defendant advanced $200, but refused to advance the balance; that, relying upon the agreement, the plaintiff purchased a portion of the material to be used in the erection of the houses, but before the commencement of building operations the defendant refused to advance any more money, and, in consequence of such refusal, the plaintiff was unable to utilise the material or proceed to build; that the material purchased and lying unused had deteriorated in value and the cost of building had increased; and that the plaintiff had thus been damnified.

The defence was, that the land was a vacant lot and not adequate security for $2,000; that the plaintiff, a builder and contractor, contemplated erecting houses on the land; that it was agreed between the parties that the defendant should advance $200, part of the $2,000, forthwith upon the execution of the mortgage, but that the balance was to be advanced only in such