

The Ontario Weekly Notes

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APPELLATE DIVISION.

SECOND DIVISIONAL COURT.

DECEMBER 7TH, 1915.

POWELL LUMBER AND DOOR CO. LIMITED v.
HARTLEY.

Mechanics' Liens—Costs of Action to Enforce—Quantum—Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140, sec. 42—“Judgment”—Taxation of Costs.

Motion by the defendant Graham to vary the minutes of the judgment of this Court pronounced on the 4th November, 1915: see ante 132.

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

T. Hislop, for the applicant.

J. P. MacGregor, for Shannon, a lien-holder, contra.

RIDDELL, J., delivering the judgment of the Court, said that the Referee had allowed liens amounting in all to \$1,421, and \$355 costs. This Court on appeal reduced the amount of the liens to \$874.75. The present motion was based on the provisions of sec. 42 of the Mechanics and Wage-Earners Lien Act, R.S.O. 1914 ch. 140: “The costs of the action, exclusive of actual disbursements awarded to the plaintiffs and successful lien-holders, shall not exceed in the aggregate twenty-five per cent. of the total amount awarded them by the judgment, and shall be apportioned and borne in such proportion as the Judge or officer who tries the action may direct.”

“Judgment” in this section, RIDDELL, J., said, is clearly identical with “judgment” in sec. 37(3) *ad fin.*; and the form number 7 prescribed shews that the “amount awarded . . . by the judgment” is the amount for which a lien is declared.