

*RICE LEWIS & SON LIMITED v. GEORGE RATHBONE LIMITED.

Mechanics' Liens—Claims of Material-men—Abandonment of Work by Contractor—Completion of Work by Owner—Payment in Excess of Contract-price—Liability of Owner for Percentage of Contract-price—Mechanics' Lien Act, secs. 6, 10, 11, 12, 15—Construction of Statute.

Appeal by lien-holders, in a proceeding to enforce a mechanics' lien, from the judgment of J. A. C. Cameron, an Official Referee, holding that the appellants were not entitled to any amount whatever upon the taking of the accounts as between the owner (the defendant Harvey), the contractors (the defendants George Rathbone Limited), and the lien-holders.

The claims were for materials furnished to the contractors for the erection of three brick houses. Before the completion of the contract, the contractors abandoned the work, and the owner was compelled to pay a sum exceeding the contract-price to complete the houses; and the Referee held that, in the circumstances, the appellants' liens could not be enforced as against the owner.

The appeal was heard by GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

F. E. Hodgins, K.C., for the lien-holders, the appellants.

I. F. Hellmuth, K.C., and F. J. Dunbar, for the defendant Harvey, the respondent.

MEREDITH, J.A.:—When rightly understood, the case of Russell v. French, 28 O.R. 215, seems to me to have been well decided; and, when the facts of this case are rightly understood, the question involved in it is easily solved, even without the aid of that case.

Under the Act "twenty per cent." is to be deducted from "any payment to be made" on the contract: sec. 12; and the amount of such deduction is to be retained for the benefit of lien-holders.

Under the contract in question, eighty per cent. of the value of the work done, to be estimated at contract-prices, was to be paid, from time to time, on progress certificates, by the owner to the contractor; and a very considerable sum became thus pay-

*To be reported in the Ontario Law Reports.