

undertook to do. The plaintiff undertook to do the work of repair to the elevators on an open contract on a "work and material" basis—which means that the cost of the labour done and material expended is to be reckoned, plus a fair quantum of profit; the plaintiff's quantum was 25 per cent. on the material and 100 per cent. on the wages. The plaintiff absolutely refused to fix a stated price—stood firm on a basis of "work and material"—and he said that the defendant gave way and accepted that mode. The main defence was, that the plaintiff undertook to make a thorough preliminary examination in order to report whether the repairs could be made for \$2,000; that, if the report was unfavourable, the work was to stop and the plaintiff was to be paid \$100 for his trouble; if he found the conditions after the preliminary examination satisfactory, the work was to proceed at a cost of \$2,000. The finding upon the whole evidence should be in favour of the plaintiff. Judgment for the plaintiff with a reference on the details and quantum of profit added to work and materials, if a reference is asked. Counterclaim dismissed with costs. The plaintiff should have costs up to judgment; and, if there is a reference, the Master should dispose of the costs of it. M. A. Secord, K.C., for the plaintiff. W. N. Tilley, K.C., for the defendant.

CORRECTION.

In *LEMON v. YOUNG*, ante 82, in the preliminary statement of the nature of the appeal, "sub-sec. 2 of sec. 2" should be "sub-sec. 2 of sec. 31."