

REPORTS AND NOTES OF CASES.

Province of Ontario

SUPREME COURT—APPELLATE DIVISION.

Meredith, C.J.O., Maclaren, and Magee,
J.J.A., and Lennox, J.]

[16 D.L.R. 119.

BROOKS v. MUNDY.

1. *Mechanics' liens—Sub-contractor—Claim on statutory percentage—Time.*

The obligation of the owner to retain a statutory percentage of the value of the work and materials is limited to the period of thirty days after the completion or abandonment of the contract by the contractor with whom the owner had contracted, and where such contractor had abandoned the work uncompleted and the owner had to pay more than the balance of the contract price to finish it, a sub-contractor filing his claim more than thirty days after the principal contractor's abandonment although within thirty days of his own last work on the building has no lien, if nothing then remained due the principal contractor.

2. *Mechanics' liens—Sub-contractor—Owner advancing statutory percentage to contractor.*

The fact that the owner did not retain from his contract any of the percentage of the value of the work as required by the Mechanics' Lien Act (Ont.) for the protection of sub-contractors and wage-earners, does not make him liable for sub-contractors' claims as to which no lien was filed or notice of claim given the owner until after the expiry of thirty days following the abandonment of the work by the principal contractor, the statutory obligation to retain the percentage being limited to thirty days after completion or abandonment of the contract with the owner.

J. G. Donoghue, for appellant.

J. R. Code, for plaintiff, respondent.

ANNOTATION ON ABOVE CASE FROM D.L.R.

It is provided by the Ontario Mechanics' Lien Act, 10 Edw. VII. ch. 69 R.S.O. 1914, ch. 140, that in all cases the person primarily liable upon any contract or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, deduct from any pay-