

2ND APPELLATE DIVISION.

JULY 22ND, 1913.

EADIE DOUGLAS, LIMITED v. H. C. HITCH & CO.

4 O. W. N. 1597.

*Mechanics' Lien—Report of Master—Appeal and Cross-appeal from
—Remoteness of Damage—Evidence—Disallowance of Certain
Items—Costs.*

SUP. CT. ONT. (2nd App. Div.), dismissed an appeal by the defendants in a mechanics' lien action from the report of the Local Master at Ottawa, but reduced the amount allowed as damages against plaintiffs from \$1,492.19 to \$542.19.

Appeal and cross-appeal from the Master at Ottawa in a lien action tried by him to the Supreme Court of Ontario (Second Appellate Division) heard by HON. MR. JUSTICE CLUTE, HON. MR. JUSTICE RIDDELL, HON. MR. JUSTICE SUTHERLAND and HON. MR. JUSTICE LEITCH.

J. E. Caldwell, for the defendants H. C. Hitch & Co.

H. M. Mowatt, K.C., for the plaintiffs.

HON MR. JUSTICE CLUTE:—During the course of the argument the appeal of the defendant, Hitch & Company, in respect of certain items, was disallowed, and that appeal dismissed except as to the question of costs.

With respect to the cross-appeal by the plaintiffs as to the sum of \$1,492.19, allowed by the local Master: After a careful perusal of the evidence, I agree with the learned Master that there was unreasonable delay in delivery of the terra cotta. I also think there is evidence to support item (b) \$125 and item (c) \$190. I also think items (e) \$83.75 and (f) \$143.44, were properly allowed. As to item (g) \$350, allowed by the Master for labour, cartage and rented yard for storing the terra cotta in Lyon street yard, and repacking and removing from Lyon street and Besserer street yards. It was claimed that this was necessary owing to so much material being sent that it could not be set on account of its not being shipped course for course. The result was that the building could not hold it all. Out of the claim of \$591.75, the sum of \$231.35 is charged for moving material from the plaintiff's Besserer street yard. The Master states that while the mode of shipment may have been negligent, he cannot say from the evidence, that the plaintiffs are responsible for the whole trouble. That probably the defendant miscalculated