

of hoist, etc., \$35. Against this the defendant was allowed for use of extra plant and washing windows, \$14, leaving to the plaintiffs \$21, making the total claim of the plaintiffs, before deducting payments, \$1,782.68, as above, including the \$82.68 excess extras.

The learned Judge held that the defendant was entitled to retain 20 per cent. of the \$1,782.68, or \$356.53.

Plaintiffs, upon this calculation, would be entitled to 80 per cent., or \$1,426.15. Deducting the \$1,359.50, there would remain \$66.65. Add to this the balance of damages in favour of plaintiffs, \$21, making the total of \$87.65, for which judgment was given, leaving the 20 per cent. to be recovered later, upon the architect's certificate being obtained.

From this judgment the plaintiffs appeal, limiting the appeal to 3 points: (1) that there was error in holding that the defendant is entitled to retain the 20 per cent. owing to the plaintiffs, on the ground that the same was not yet payable under the terms of the plaintiffs' contract; (2) error in disallowing a claim of \$15 for putting caps on columns . . . ; and (3) error in disallowing or reducing claim for lathing.

The first point is by far the most important, as it involves the very serious question of the scale on which plaintiffs get the costs of the action. The terms of the contract are very plain and very rigid. The plaintiffs agree to do this work, as mentioned, for \$1,700; 40 per cent. of the cost of work and material to be paid when browning coat is done; 40 per cent. of the cost of work and material to be paid when finishing coat is completed; the balance of 20 per cent. to be paid one month after work is accepted by the architect.

The interpretation put upon the contract as to contract work, and so far as it provides for payment for work under it, for which the sum of \$1,700 was to be paid, is, in my opinion, correct, and the appeal cannot prevail.

If the plaintiffs had waited until 30 days after 6th August—the date of defendant's letter—they possibly could have relied upon the promise in that letter of payment in 30 days from that date, but that was not argued; and at the trial the plaintiffs were willing to stand or fall by the contract itself, and so plaintiffs must be left to recover the 20