GUISEPPE LEVERONE *vs.* FRANK LEVERONE.

Suffolk. January 13, 1915. — January 13, 1915.

Present: RUGG, C. J., LORING, BRALEY, DE COURCY, & CROSBY, JJ.

Contract, Implied in law: common counts.

In an action of contract to recover on a *quantum meruit* for work and labor performed by the plaintiff for the defendant, where the plaintiff has testified that the defendant employed him and said to him, "I will pay you well and will satisfy you," if it appears that the plaintiff afterwards did the work required, he has a right to go to the jury, and the fact that the defendant has introduced evidence from which it can be inferred that the contract was a different one from that testified to by the plaintiff in no way deprives the plaintiff of that right.

BY THE COURT. This is an action of contract. The only question of law arises from the refusal of the trial judge to grant a request for a ruling to the effect that the plaintiff could not recover on count one of his declaration. That count was to recover a balance due on a *quantum meruit* for work and labor performed by the plaintiff for the defendant. The plaintiff testified that the defendant employed him and said, "I will pay you well and will satisfy you." Manifestly this evidence was enough to require a submission to the jury of the question whether that was the contract. Whether the plaintiff's account was correct and whether the receipt by him of numerous payments on account raised an inference of a different contract than that testified to by him were issues of fact. These exceptions appear to be frivolous. Let the entry be

Exceptions overruled with double costs and twelve per cent interest on the debt from the date of the allowance of the exceptions.

C. F. Lovejoy, for the defendant, submitted a brief.

D. H. Fulton, for the plaintiff.