

old Chancery Division and the Q. B. Division. The former considers that the owner is liable for the ten per cent. and the latter that he is not so chargeable.

In *Re Cornish*, 6 O.R. 259, the owner finished the work within the contract price (see per Ferguson, J., p. 270). But the Court, holding that the ten per cent. was to be calculated upon the value of the work done (treating the words "the price to be paid" as equivalent thereto), charged the owner with the ten per cent. upon that basis, and in so doing made the owner pay \$100 over and above the contract price—the \$235 there allowed being partly offset by the amount in the owner's hands on the abandonment.

But in *Truax v. Dixon*, 17 O.R. 366, the owner's claim for damages was allowed, the Q.B. Divisional Court professing to follow *Goddard v. Coulson*, and in *Sears v. Woods*, 23 O.R. 474, the same Court again based a similar decision upon the same case, and declared that even the wage earner's priority did not involve payment by the owner of the ten per cent. whether the percentage had become payable or not.

In *Harrington v. Saunders*, 7 C.L.T. 88, His Honour Judge McDougall, decided that, provided the payments to the contractor have been only ninety per cent. or under, of the value of the work actually performed, the sub-contractor's claim on the ten per cent. is postponed to the claim of the owner on the contractor for damages for non-completion.

The Court of Appeal and Judge McDougall appear to have struck upon the prime factor, already adverted to, in considering an owner's liability, viz., that he was protected to the extent of ninety per cent. of his payments. In *Goddard v. Coulson* the effect of the statute giving priority to wages liens was considered as throwing no light upon the subject, while the contractor had, upon the basis of value, been fully paid, to the extent, however (per Patterson, J., p. 8), of only ninety per cent. To that extent the protection is positive. Beyond that, while he is not protected, the statute is negative in its quality, and does not actively make him liable. In this conflict of authority it becomes necessary to consider how far the changes in the statute give validity to one, or to the other, view.