

**MECHANICS' LIENS—PERCENTAGE TO BE RETAINED
BY OWNER.**

The construction of section 12 of the Mechanics and Wage-Earners' Lien Act of Ontario has recently been fully considered by Mr. Neville, Official Referee, in the case of *Batts v. Poynte*.

He points out that under the statute the person primarily liable upon any contract, under or by virtue of which a lien may arise, is required to deduct from any payments to be made by him in respect to the contract and retain for a period of thirty days after the completion or abandonment of the contract, 20% of the value of the work, service and materials actually done, placed or furnished as mentioned in section 6, and such value shall be calculated on the basis of the contract price or if there is no specific contract price then on the basis of the actual value of the work, service or materials.

In the case in question the work was abandoned by the contractor; it was under the supervision of an architect who had from time to time issued certificates shewing the value of the work done at \$2,312.50. The total contract price of the building was \$3,233. The contract contained a clause that the certificates of the architect were not to lessen the total and final responsibility of the contractors nor exempt them from liability to replace work afterwards discovered to have been badly done or not in accordance with the drawings and specifications.

The learned Referee holds that the architect was thus entitled to re-inspect the work and require defects to be made good before issuing the final certificate, and that the contractor not having completed the work, the architect had the right to re-inspect the work actually done, and revise his estimate of its value calculated on the basis of the contract price. Upon the trial the architect placed the value of the work done, calculated on the basis of the contract price, at \$2,240.03 instead of \$2,312.50.

The Referee finds that this sum \$2,240.02 was the value of the work done and material furnished, calculated on the basis of the contract price, and that 20% of this sum should have been retained by the owner, amounting to \$448.00, and that the claimants were entitled to a lien upon this sum. He also points out that the cost of completion is generally, and often very