

save as is provided for in the Act. This latter exception may refer to the drawback, but certainly points to a liability created by disregard of a lien after proper notice and to a wage earners' lien. There is one important difference, however, that the present drawback is to be calculated upon the "value of the work, service and materials actually done, placed or furnished," instead of upon "the price to be paid."

The question, therefore, is whether the change in the basis of calculation from the price to the value of the work done has effected a change which the creation of a drawback, the establishment of a charge upon it, and the absence of protection to payments which would encroach upon the drawback failed to do.

The drawback, and the charge upon it, were provided for as far back as 1878 by 41 Vict. c. 17, s. 11.

No consideration of the difficult provisions of the Mechanics' Lien Act, as to an owner's liability, can properly take place unless one cardinal fact is kept in view, namely, that he is absolutely protected as to eighty per cent. or eighty-five per cent. of his payments, when made in good faith, and that beyond that, while not protected, he is not in terms made liable. His position must, therefore, be determined by inferences made from other portions of the Act, and it may be said that his rights are at least as strong as those of the sub-contractors.

In *Goddard v. Coulson*, 10 A.R. 1, the attempt was made to make the owner liable for ten per cent. upon the whole contract price, which the contractor never earned. The case was therefore presented to the Court in such a way as to invite defeat.

But if the ten per cent. were to be calculated upon the whole contract price then the ninety per cent. must likewise be so calculated, and up to that extent the owner was protected. Hence as the remaining ten per cent. was never earned the decision appears to be logical and sound, having regard to the basis upon which it was presented to the Court. The case also discloses the fact that the owner suffered more damage than the ten per cent. (p. 5), and the decision somewhat, though not very distinctly, involves the allowance of the owner's claim for damages. The subsequent cases depend largely upon the view taken in them of this decision. They disclose an essential difference between the