

against liers for wages, the owner is to be precluded from applying the percentage to the completion of the contract or for any other purpose, or to the payment of damages for non-completion of the contract by the contractor or sub-contractor, or in payment or satisfaction of any claim against the contractor as sub-contractor, was duly considered by the Court of Appeal, and, notwithstanding the contention that, there being this express provision in favour of wage-earners and no such provision in favour of other sub-contractors, such other sub-contractors are not entitled to the same protection in regard to the percentage as wage-earners, the Court held that they were.

The Court of Appeal regarded this provision as not affecting the other provisions of the Act which they held were sufficient to protect the liens of other sub-contractors from being intercepted by counterclaims of the owner against the contractor, though not expressly provided for in the Act.

The provision in favour of wage-earners, the Court of Appeal regarded as directed to cases where there are no progress certificates in which there may be nothing payable to the contractor, except the ultimate balance, says the *Canada Law Journal*. The article concludes as follows:—

"This last suggestion as to the supposed meaning of sec. 15 (4) does not appear to us to have any good foundation. The percentage fund in no way depends on the existence or non-existence of progress certificates; it arises automatically as the work and materials are actually done and furnished altogether irrespective of progress certificates or payments to the contractor thereunder, and for every dollar's worth of work and materials done and furnished the owner has to lay aside twenty cents of the price for the benefit of sub-contractors, if any. The true reason for the Court's decision therefore, would seem to be not that sec. 15 (4) is intended to apply to some special state of facts in which wage-earners are intended to be specially benefited, but that such provision is in fact redundant and that the Act without it would have to be construed as if it contained it."

On the general question as to what persons have the right of lien under the various mechanics' lien laws of the provinces, reference should be made to the Annotation in 9 D.L.R. 105, and to *Farr v. Groat*, 12 D.L.R. 575, 24 W.L.R. 860; *Fitzgerald v. Williamson*, 12 D.L.R. 691, 18 P.C.R. 322; *Brown v. Allen*, 13 D.L.R. 350; *Peters v. Mactan*, 13 D.L.R. 519, 25 W.L.R. 358.