

twenty per cent. out of every payment he has made himself liable for his contract, he does that which the Act requires and is as well off as if the Act had never been passed; whilst, if he fail to do as the Act requires, if he do not retain the twenty per cent. for lien-holders, he runs the risk of having to pay over again—a very reasonable penalty for defiance of the plain law of the land. As it is, the Referee has given to the owner, to secure him against the default of his contractor, not only the twenty per cent. which, by his contract, in agreeing to pay eighty per cent. only, he had retained for that purpose; but also the twenty per cent. of which the Act made him trustee for lien-holders; an obviously, I would have thought, erroneous result; reached perhaps by reason of not quite grasping all the facts and circumstances of the case.

But, driven to the last ditch, the respondent contends that the provisions of sec. 15 of the Act, respecting liens for wages, are inconsistent with this view, and ought to prevent effect being given to it; because there express provision is made that the twenty per cent. shall apply to contracts not completely fulfilled, and shall be calculated on the value of the work and materials, having regard to the contract-price, if any; and shall not be applied, in case of default in completing the contract, to the completion of the contract or to damage for non-completion, "as against a wage-earner claiming a lien." A contention, however, in my opinion, of no sort of conclusive effect when applied to an enactment made up of different provisions enacted at different times, and as to this particular section an enactment prepared doubtless with the mind much more intently set on making a sure and most favourable provision for the earners of wages—whose liens would generally be comparatively very small—than upon just how this provision might fit in with the rest of the Act, or affect it. It seems to me quite certain, however, that may be, that there was no intention, in adding that section, to affect the other provisions of the Act respecting liens for things other than wages.

But the contention loses entirely any weight which it might otherwise have, when it is observed that this section covers cases in which there are no progress certificates, in which there may be nothing ever payable by the owner to the contractor except the ultimate balance, if any; and so it goes far beyond any of the provisions of the Act in favour of other lien-holders.

The judgment of Rose, J., in the case of *Russell v. French*, shews plainly that the ruling in that case was based upon the same grounds as those upon which I have based my opinion in