may be claimed in respect thereof, shall be limited to "the amount *owing* to the contractor or sub-contractor or other person for whom the work or service has been done or the materials placed or furnished." The Divisional Court expressed its disagreement with the decision in ***Russell* v. *French*** as regards the assumption in the latter case that the change made in the basis upon which the 20 per cent. is to be computed shews an intention on the part of the legislature that an owner is to be liable for the 20 per cent. where, on the contractor's default upon an unremunerative contract, the owner may have to pay more than the 20 per cent in addition to the unearned portion of the contract price to get the work completed. In its opinion, sec. 12 as amended still recognizes that the charge is a charge upon money to become "payable" to the contractor (see sec. 10); and "when, by reason of the contractor's default, the money never becomes payable, those claiming under him and having their statutory charge upon the fund if and when payable, have no greater rights than he himself had and their lien fails." This is the doctrine which for a time displaced the authority of *Russell* v. *French*, 28 O.R. 215, which doctrine has been declared fallacious by the case of *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, 27 O.L.R. 630, re-affirming the *Russell* case as having been properly decided.

In *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, it was held that the twenty per cent. which the Act requires an owner to retain constitutes a fund of which the owner is a trustee, and that where a contractor abandons his work the materialmen and other lien-holders can resort to this fund. Where, therefore, under a contract it was provided that eighty per cent. of the value of the work done was to be paid, on progress certificates, by the owner to the contractor, the owner was held liable to other lienholders to the extent of twenty per cent. on such payments, and, if any additional sum became payable by the owner to the contractor, twenty per cent. of such sum would be available to lienholders. *Russell* v. *French*, 28 O.R. 215, is in accord with this decision, and *Farrell* v. *Gallagher*, 23 O.L.R. 130, and *McManus* v. *Rothschild*, 25 O.L.R. 138, are to be considered as overruled in so far as they are inconsistent with the decisions in ***Russell* v. *French***, 28 O.R. 215, and *Rice Lewis* v. *Harvey*, 9 D.L.R. 114, also reported ***sub nom.*** *Rice Lewis* v. *Rathbone*, 4 O.W.N. 602, 27 O.L.R. 630.

A writer in the *Canada Law Journal*, 49 C.L.J. 260, in discussing the case of *Rice Lewis* v. *Harvey* (or *Rice Lewis* v. *Rathbone*, as it has been incorrectly called in some reports because of the inclusion of another lienholder of the latter name in the proceedings), says that the view of the Court of Appeal is somewhat similar to the case of a first mortgagee making further advances, after he has notice of a subsequent mortgage. Such advances cannot be tacked to his first mortgage to the prejudice of the subsequent mortgagor; and it is not unreasonable, nor unjust, that subsequently accruing equities of an owner shall not prejudice or affect the rights of lienholders whose liens have attached before such equities have arisen.

The argument founded on sec. 15 (4), which expressly provides that as