

the full amount of the twenty per cent. on \$2,200, viz:—\$440 without deducting, as he had done, this sum of \$94.56. From this decision the owner appealed to the Divisional Court, and the question raised upon the appeal was whether or not the owner was entitled to deduct the sum of \$94.56 from the \$440, which he was required to retain for the lien-holders. The sum paid into court by the owner, after deducting the \$94.56, was sufficient to pay all wage earners in full, and to leave a considerable sum applicable to the liens of persons who supplied materials, but was not sufficient to pay the latter in full.

The court allowed the appeal with costs, and the owner was declared entitled to deduct the \$94.56 from the twenty per cent fund (\$440) which the owner is required by the 11th section of the Act to retain to answer liens. The object of the 11th and following sections of the Act is to ensure to persons, intended to be protected by the Act, the formation of a fund in the hands of the owner equal to one-fifth of the contract price, or of the amount of work done, as the case might be, to which they might resort in case of the failure of the contractor to pay them. This fund is to be ascertained at the completion or abandonment of the work, and the owner is directed to retain it in his hands for thirty days from that time. In the present case the work upon the building was abandoned from August 11, 1899, when the last work was done. The twenty per cent. to be retained was therefore properly to be ascertained on August 12, 1899, and the amount was correctly fixed at \$440. In answer to the contention of some of the lien-holders that the owner had improperly paid the \$94.56 to the four wage-earners who had threatened proceedings, because it was paid too soon, and because the whole of the twenty per cent. upon the contract price should have been retained for thirty days, it is pointed out that the only object of requiring the owner to retain the twenty per cent. for thirty days is to give persons entitled to liens a chance of enforcing them against the fund directed to be retained. The position of all the lien-holders was precisely the same as if the owner had retained the \$440 for full thirty days, because at the end of that time the wage-earners, to whom the \$94.56 was paid on August 14, would have been entitled to receive that sum, and the other lien-holders would have been entitled to the balance. No one was injured by the owner having paid the \$94.56 at the beginning instead of at the end of the thirty days, and therefore no one could complain. But the owner, by making a payment before the expiration of thirty days, takes the responsibility of showing that he places the other lien-holders in no worse position by doing so, and this the owner did in the present case. Section 12 of the Act was urged against the appeal being allowed, but it does not apply to moneys which the owner is directed to retain, and so did not affect the case. That section merely gives authority to the owner, without the consent of the contractor, but upon mere

notice to him, to make payments out of the contract price direct to persons who would be entitled to liens, but limiting the right to make such payments to the moneys which the owner is not directed to retain under section 11. This case in effect decides that the owner of a building is not prohibited from making payments (before the expiry of the thirty days from completion) out of the twenty per cent. reserve, required by section 11 of the Act, to persons entitled to liens; but he makes such payments at his own risk as against any one ultimately prejudiced by such payment.—Ontario Law Reports, Vol. 31, page 546.

BUSINESS NOTES.

Rochon & Fournier, builders, Montreal, have registered partnership.

Paquet & Fortin, contractors, Levis Que., have dissolved partnership.

The assignment is announced of Abel Prevost, contractor, St. Genevieve, Que.

Charpentier & Chagnon, sewer contractors, Montreal, have registered partnership.

The Durham Portland Cement Co., of Durham, Ont., has obtained charter of incorporation.

Sinoneau & Dion have formed a partnership as builders, with head office at Sherbrooke, Que.

The assignment is reported of P. Boileau & Frere, contractors, of Isle Bizard, in the Lake of Two Mountains, Que.

The Imperial Sand, Stone & Brick Co. is applying for a provincial charter, with a capital of \$200,000. Mr. C. D. Warren, of Toronto, is president, and Mr. John O'Donohue, of Stratford, the chief promoter of the company. The company control patents for a new process of making brick from sand with a small mixture of cement.

A chimney about 100 feet high, owned by the Ontario Elevator Company in Buffalo, fell recently. In response to an

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enquiry as to the reason for the accident, the owners write: "We do not know for certain the real cause, but suspect that quicksand may be responsible. The chimney was built eleven years ago and until about six months ago showed no signs of trouble; then it began to settle a little, and we started to build a new one some thirty feet away, intending to tear the old one down as soon as the new one was finished. But the old chimney was in too much of a hurry to come down and gave only about eight hours warning."

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