

able to him; which, if it had not been paid, he could have recovered in an action, except as to "twenty per cent." of it, which the Act required the owner to retain for the benefit of others who were putting their labour and building materials into his building, and might have liens for them.

To the extent, then, of twenty per cent. on these payments, at least, I would have thought it obvious that the owner is liable to lien-holders; and if, over and above the amount of these progress certificates, any sum ever became payable by the owner to the contractor, twenty per cent. of that also is available to lien-holders.

How is there any way of escape from that conclusion? And why should there be? If the Act opens such a way—if the owner's contentions be right—it would not be an Act for the benefit of lien-holders, but would be an Act for the relief of owners against their contracts to pay. In this the Act puts no additional liability on the owner; it accepts his own obligation, contracted by himself, to pay, as the basis of lien-holders' rights, and provides merely that out of the amounts he has bound himself, and has become liable, to pay, unconditionally, to his contractor, he shall retain twenty per cent. for lien-holders.

There is nothing harsh or unjust to him in that; it would be harsh and unjust if the Act enabled him, for his own benefit only, to disregard his own contract to pay. Nor is it unreasonable that he should be made a trustee of a reasonable portion of the money he ought otherwise to pay to the contractor, retained for the one purpose of preventing sub-contractors and others putting work and material into the building, which is his, from being "done out" of their pay for it by the contractor.

All this accords with every one of the provisions of the Act respecting lien-holders; such twenty per cent. is to be deducted and retained from "payments to be made by him in respect of the contract;" sec. 12; is "limited to the amount owing to the contractor;" sec. 11; is not out of any "greater sum than the sum payable by the owner to the contractor;" sec. 10; and is "limited, however, in amount to the sum justly due to the person entitled to the lien, and to the sum justly owing . . . by the owner;" sec. 6.

Different considerations would apply if there had been no contract to pay except on fulfillment of the contract on the contractor's part.

The Act, thus understood, creates no hardship on the owner; if he choose to pay when he is under no obligation to pay, he pays at his own risk as to the ultimate result; if he retains