to that Court was refused by one of its judges, but solely because, in his judgment, as the practice then stood, the case was unappealable.

It does not rest on a very satisfactory foundation, and it is therefore proper to examine the authority which exists both for and against it, and to enquire whether as a matter of pure construction it is unassailable.

It will be admitted that the view expressed by Spragge, C., in *Crone* v. *Struthers* (1875), 22 Gr. 247, is the proper one with which to begin an examination of the mechanics' lien legislation. He there said (p. 248) "The lien of the plaintiff is the creature of the statute, and must be limited by its provisions. . . . . Without any express qualification, the Courts, I apprehend, would imply one, rather than give a construction that would compel the owner of a building to pay twice over for the same thing; once to the contractor, and then to the person who has furnished materials to the contractor."

Ferguson, J., in *Re Cornish* (1884) 6 O.R. 259, gives the practical method of working out the owner's rights when unaffected by this Act. That is (p. 270) by adding the extras to the contract price, then deducting what has been paid to the contractor, and from what remains deducting such sum as would, when the event occurred upon which the contractor ceased to carry on the work, have been fairly and justly necessary to expend in completing the work according to the contract.

To properly appreciate the changes which have been relied upon in departing from both the principle of construction adopted by Spragge, C., and the practical method outlined by Ferguson, J., it is necessary to consider some of the amendments of the original statute.

The subject of a building owner's liability to a sub-contractor has seen three distinct phases. Under the earliest Mechanics' Lien Act, affecting sub-contractors (1874, 38 Vict. c. 20) such lien-holders by virtue of their lien merely obtained a right to intercept payments to which the contractor became entitled and for which he could enforce a lien. If nothing was due to him they got nothing. This is exemplified by such cases as *Forhan* v. *Lalonde*, 27 Gr. 604, the case of an agreement by a