

ch. 15, sec. 4; R.S.O. 1887 ch. 126, secs. 9, 10; R.S.O. 1897 ch. 153, secs. 14 (1), 15 (4); Re Cornish, 6 O.R. 259; Goddard v. Coulson, 10 A.R. 1; Re Sear and Woods, 23 O.R. 474; 59 Vict. ch. 35, sec. 10 (1); 60 Vict. ch. 24, sec 2; Russell v. French, 28 O.R. 215.]

In Russell v. French the Court have assumed that the change made in the basis upon which the 20 per cent. is to be computed now shews such a clear indication of intention on the part of the legislature as to warrant a finding making the owner liable for 20 per cent. more than he agreed to pay for the work contracted for, when he has been in no way in fault. We cannot agree with this. The section still recognises that the charge is a charge upon money to become payable to the contractor. When, by reason of the contractor's default, the money never becomes payable, those claiming under him and having their statutory charge upon this fund, if and when payable, have no greater rights than he himself had, and their lien fails.

In the result, the appeal succeeds; and the judgment must be varied by reducing the amount due the contractor to \$309, which must be applied in payment of the amount due the wage earners, \$282.91. No personal order should be made against the lien-holders for the costs. The amount paid into Court in excess of \$309 should be returned to the owner. The difference between \$282.91 and \$309 should be applied on the owner's costs, and the contractors should pay the owner's costs (subject to the statutory reductions as to amount) throughout (less their credit). The personal order for payment by the owner to the contractors should stand.

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DIVISIONAL COURT.

JANUARY 24TH, 1911.

\*CARTER v. CANADIAN NORTHERN R.W. CO.

*Contract—Payment of Money—Condition—Non-fulfilment—Return of Money—Authority of Agent—Parol Evidence to Shew Condition upon which Written Contract Signed—Admissibility—Consistency or Inconsistency with Terms of Written Contract.*

Appeal by the defendants from the judgment of LATCHFORD, J., 1 O.W.N. 892, in favour of the plaintiff for the recovery of \$480 paid by the plaintiff in April, 1908, to one Webster, as

\*To be reported in the Ontario Law Reports.