

ity of a wage-earner's lien was not decided: See *Harrington v. Saunders*, *supra*; *McBean v. Kinnear* (1892), 23 O.R. 313.

It was afterwards held in *Russell v. French* (1896), 28 O.R. 215, that if any owner, contractor or sub-contractor under whom a lien may arise pays more than the specified percentage of the value of the work and materials done or finished, he does so at his peril, and a lien may be successfully asserted against him, to the extent of the percentage which he should have retained, by any lien-holder who is prejudiced by the excessive payment.

Section 22 of the Ontario Mechanics' Lien Act, limits the time within which a lien may be registered to within thirty days after the completion of the work or the supplying of the materials for which the lien is claimed. By retaining the percentage for the same period the owner, contractor or sub-contractor is in a position to know whether any lien will be asserted, the same limit of time being adopted in both instances.

An interlocutory application to stay proceedings in an action under the Mechanics' Lien Act (Ont.), brought by workmen against both their employer and the property owner, should not be granted to enable the owner to complete the work on the contractor's default and so ascertain the balance, if any, owing by the owner under the contract; such a question should not be determined in Chambers but should be determined at the trial, or, if the pleadings properly raise the question of law, it can be determined upon a motion in Court: *Saltsman v. Berlin Robe and Clothing Co.*, 6 D.L.R. 350, 4 O.W.N. 88, 23 O.W.R. 61.

Payments to the extent of the percentage mentioned will not be protected if before payment is made, notice in writing has been given by a person claiming a lien. The necessity for this provision is obvious as otherwise the owner before making any payment would always be obliged to make a search to ascertain if any lien had been registered: *Wallace on Mechanics' Liens*, 2nd ed., 363.

Lien claimants for materials wrote to the owner a letter asking him, when making a payment to the contractor "on the Lisgar street buildings" to "see that a cheque for at least \$400 is made payable to us on account of brick delivered, as our account is considerably over \$700, and we shall be obliged to register a lien if a payment is not made to-day:" *Held*, *Meredith, J.*, dissenting, a sufficient "notice in writing" of their lien: *Craig v. Cromwell* (1900), 32 O.R. 27, affirmed, 27 A.R. 585. On the appeal in this case, at page 587, *Osler, J.A.*, thus refers to the notice required by sub-sec. 2, of the former section: "The object of the notice is to warn the owner that he cannot safely make payments on account of the contract price even within the 80 per cent. margin, because of the existence of liens of which he was not otherwise bound to inform himself or to look for. The notice does not compel him to pay the lien. It does not prove the existence of the lien. Its sole purpose is to stay the hand of the paymaster until he shall be satisfied—either by the direction of the debtor or of the Court in case proceedings are taken to realize the lien—that there is a