

the owner must account to the lien-holders for 20 per cent. of the value of the work done, and cannot resort to this 20 per cent. to recoup herself for the damages sustained by the contractor's breach of contract.

Section 13 is by no means easy to construe. The 20 per cent. is to be based upon "the value of the work done," "on the basis of the contract-price." This contract, upon the evidence, was a losing one for the contractor, and the value of the work done, to him and those claiming under him, can, I think, be arrived at only in this way:—

The contract-price, plus extras	\$4,008.35
Deduct omissions	\$286.15
Cost of completion (including rectifica- tions)	911.20
	———— 1,197.35
Value of work done	\$2,811.00
20 per cent. of this would be	562.20
Wage earners' liens	282.91
	————
Balance	\$ 279.29

This is the amount in issue upon this contention.

Russell v. French, 28 O.R. 215, is precisely in point. It is there held that the 20 per cent. is a fund for the payment of lien-holders, not subject to be affected by the failure of the contractor to perform his contract. This view is in conflict with the reasoning of Goddard v. Coulson, 10 A.R. 1, and the decision in *Re Sear and Woods*, 23 O.R. 474, which are said to be no longer applicable by reason of changes in the statute.

The statute has since been revised and in some particulars changed, but we cannot find any real ground upon which *Russell v. French* can be distinguished. However, the soundness of the decision is challenged, and, according to *Mercier v. Campbell*, 14 O.L.R. 639, it is not conclusive authority; and we are bound to make an independent examination of the statute and earlier cases and to act upon our own opinion. . . .

[Reference to secs. 4, 10, and 11 of the *Mechanics' Lien Act.*]

Each of these sections makes it plain that the owner is not to be called upon to pay more than the amount actually due by him, unless the claimant can find something in the statute bringing him within the words "save as herein otherwise provided." . . .

[Reference to R.S.O. 1877 ch. 120; 41 Vict. ch. 17; 45 Vict.