

The conclusion at which the learned writer arrived was that *Russell v. French* was not a correct exposition of the statute.

Those who favour that view may be therefore inclined to doubt the soundness of the recent deliverance of the Court of Appeal.

The broad question is: does the statute as it now stands give to sub-contractors, not being wage earners, a lien on the percentage required to be retained by an owner so as to intercept the latter's right to set off against it any counterclaim he may have against the contractor, by reason of his default, if any, under the contract, or for any other cause? The Court of Appeal have practically answered that question in the affirmative.

It may be here remarked that the earlier statutes dealing with Mechanics' Liens up to the year 1896 required the percentage to be retained on "the price to be paid" whereas since 1896 the Acts have required, and the present Act now requires, that the percentage shall be retained on the value of the work and materials actually done and furnished. *In re Cornish*, 6 Ont. 259, Boyd, C., and Ferguson, J., held that the Act prior to 1896 though requiring the percentage to be retained on "the price to be paid" really meant not the whole price to be paid but the price to be paid for the work and material actually done and furnished, which seems to be, in effect, importing into the Act a limitation which it did not in fact contain.

Might not the true distinction between the two Acts be thus illustrated: Under the Acts prior to 1896, if an owner made a contract for work and materials to the amount of \$100, the \$100 would be "the price to be paid" irrespective of whether work to that amount was done or not, and on which the percentage must have been retained; under those Acts the owner might validly pay to the contractor, on the making of the contract \$90, and on the remaining \$10 sub-contractors would have a lien, provided it was earned, but if the contractor never earned the remaining \$10, no sub-contractor under him would have any lien thereon.

But under the present Act an owner entering into such a