

If, owing to a contractor's default, it costs the owner more than the balance of the contract price or of the price to be paid, the ten per cent. would not become payable to the contractor, and would be absorbed by or set off against the loss. Does the provision giving priority to wage earners enure to the benefit of sub-contractors for the supply of material? or does the giving of a lien upon the ten per cent. of the value of the work done in favour of such sub-contractors make the owner liable to pay it, even if it never became payable, or if absorbed by his claim for damages? Or does the proviso "save as herein provided" do more than express that in some cases, e.g., payment to a contractor after notice of a lien (s. 10) or payment in defiance of a wage earner's priority, the owner may be liable for more than the sum "justly due to the contractor."

*Russell v. French* professes to be founded on the fact that *Goddard v. Coulson*, *Re Cornish*, and *Re Sears v. Woods*, are no longer applicable owing to changes in the statute. Those changes are more clearly developed in the argument than in the decision itself. They are the difference between the basis of calculation of the ten per cent.—the value of the work as against the price to be paid and the words "save as herein provided," and the priority of liens for wages.

But in the first of those cases the owner did not need to set off damages, because he had only paid ninety per cent., and was therefore protected. In the second of these the Court disclaims any intention of deciding against the owner's claim for damages (see p. 265). Yet the lien given upon the ten per cent. was considered, and the subsequent addition of the words "save as herein provided," in the statute neither aided nor weakened its conclusion, while the "price to be paid" was construed as equivalent to "the value of the work done." In *Re Sears v. Woods*, the same provisions were under review.

The result of the foregoing is that *Russell v. French* is in conflict with the cases before the Q.B. Divisional Court, and with the opinions of Mr. Dalton (in *Re Cornish*), Mr. Cartwright (in *Re Sears v. Woods*), and Judge McDougall (in *Harrington v. Saunders*), is not supported upon the facts nor by the law laid down in *Goddard v. Coulson*, and can find little support from