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No. 90.

4th Session, 8th Parliament, 29th Victoria, 1865.

BILL.

An Act to secure the payment of Mechanics, Labourers, and persons furnishing materials towards the erection, altering or repairing of buildings, in Upper Canada.

[No. 124 of 1865—1st Session.]

Mr. CHAMBERS.

QUEBEC:
PRINTED BY HUNTER, ROSE & CO.,
ST. URSULE STREET.

An Act to secure the payment of Mechanics, Labourers and persons furnishing materials towards the erection, altering, or repairing of Buildings, in Upper Canada.

WHEREAS it is expedient and necessary to provide for the protection and safety of mechanics, labourers, and persons furnishing materials towards the erection, altering and repairing of buildings in Upper Canada; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. Any person or persons who shall hereafter, as contractor, laborer, workman, merchant or trader, in pursuance of, or in conformity with, the terms of any contract with, or employment by the owner, or by or in accordance with the directions of the owner or his agent, perform any labour or furnish any materials towards the erection of, or in altering, improving or repairing of any building or buildings, or the appurtenances thereto in Upper Canada, on complying with the sixth section of this Act, shall have a lien for the value of such labour and materials, or either, upon such house or building, and the appurtenances and lot on which the same shall stand, to the full value of such claim or demand, and such liens may be filed and become an absolute lien to the full and fair value of all such work and materials, and to the extent of the right, title and interest then existing, of the owner of said premises, in favor of every person or persons who shall be employed by any owner, contractor, sub-contractor, jobber or master-workman in manner aforesaid, and notwithstanding any sale, transfer or incumbrance made or incurred at any time after the commencement of the work or furnishing of materials; provided that all mortgages given in good faith for full value, which shall have been executed and registered at any time prior to any actual work done or materials furnished, shall not be affected or impaired by such lien; and provided also, that no owner shall be required to pay a greater amount than the contract price, or value of the work and materials furnished (when no specific contract is made) upon his land by the contractor.

Preamble.

Contractors, &c., to have liens for value of work done and materials furnished.

Mortgages registered prior to work done, &c., not affected.

Enforcement of liens.

How priority of liens shall be determined.

2. All persons having liens, in order to enforce the same, shall prove their demands in the same manner as in ordinary actions at law, except that no variance as to the persons named as contractor, owner or debtor in the lien, notice or bill of particulars or statement of claim or any in pleading, shall impair or affect the rights of the claimants as hereinafter defined, and every party shall have relief according to the rights of the parties as they shall appear in evidence.

3. In case of successive liens by the contractor, sub-contractor, workman, person or persons furnishing materials, and of a number of liens in favor of different persons, their rights and priorities shall be

determined as follows: the lien of the labourer, cartman, materialman and sub-contractor, shall be entitled to a priority over the contractor for the payments due for his services or materials. In case of several buildings done under one contract, in conflicting liens, each shall have priority on the particular building where his labour is performed or his material used. Persons standing in an equal degree as co-labourers or various persons furnishing materials, shall have priority according to the date of filing their liens, where several lien notices are filed for the same demand, as in case of a contractor including claims for workmen to whom he is indebted, and a lien by the workmen, the judgment shall provide for the proper payments, so that under the liens filed double payment shall not be required; but no payments voluntarily made shall impair the lien of any person except the one to the person so paid.

Notice of foreclosure to be given to parties interested.

4. Any person or persons having filed a notice of lien may, at the expiration of twenty days thereafter, institute a proceeding to enforce or foreclose the lien, and any owner or other person interested, may also commence such proceedings, and in such proceedings each and every person or persons who have filed liens shall be parties to and have notice of the said proceedings, and said person or persons filing liens before final judgment, shall be notified to appear and join in the said proceedings, by a notice to be served upon said person or persons at least ten days before the entering of said judgment. When the aggregate of liens shall be less than one thousand dollars, the said proceedings may be had before the Judge of the County Court of the county in which the property on which the liens claimed is situated, and where they exceed that sum, then before the Judge of any Superior Court. 10 25

Commencement of proceedings.

5. The proceedings shall be commenced by a notice stating the liens and times of filing, to be served upon all persons having filed notices of lien at the place by them designated, and on the owner and incumbrancers, when they can be found, requiring them to appear before the Court at a day and hour named, and shall be served twenty days before the time specified, except those acquiring after-liens who shall be required to appear summarily at such time as the Court or Judge thereof shall order, and within ten days after service, each party shall file in Court or with the Clerk a brief statement of his claim, and any party interested may, in five days, state his objections to such claim, and copies of these shall be served on the Attorney of any claimant whose claim is to be affected by such objection, and the issue thus made shall be tried as in ordinary actions. The Court shall proceed without regard to matters of form which shall be amended at all times while the proceedings progress without costs, and judgment shall be rendered according to the equity and justice of the claims of the respective parties. 30 35 40 45

Within what time a lien may be obtained and how.

6. At any time before the whole work is completed, and within three months after the work is done or the materials furnished, for which a lien is sought, if the work is then finished or abandoned, any claimant may file with the Clerk of the County Court, a notice stating the residence of the claimant, certified on oath or affirmation, the amount claimed, from whom and to whom due, or if not yet due when it will become due, and containing either a brief description of the premises by street, lot, number, or a diagram or boundary, or by reference to maps open to the public, so as to furnish information to persons examining titles, and the supposed owner, although no error in the owner's name, shall impair the validity of the lien. The Clerk of 50 55

the County Court shall enter in a lien-docket the name and residence of the claimant, the person against whom claimed, the amount and the date of filing, the street, lot and particular place where located, in such manner as to be convenient in searching for the liens by street, 5 block and lot, and he shall receive ten cents on filing the same. He shall also enter on his docket, a notice that a suit is commenced thereon, upon a notice of that fact and affidavit of service being filed with him, for which he shall receive ten cents; the Clerk of the County Court shall make searches for such liens on being furnished 10 with a proper description of any property and without reference to the individual against whom the lien is filed, and his fees shall be ten cents a year for the time embraced in such search.

7. In case the parties notified shall neglect to appear and object to or insist on any claim, the Court may take the proofs and determine the 15 equities of the parties, and in such case, or in cases where they appear and plead, the Court may determine the rights of all parties, and the amounts due to each, and by whom to be paid, and may order any questions tried by a jury, or refer the whole matter to a referee to examine and pass upon the rights of the respective parties and report 20 upon the same in a summary manner, on which every party shall be at liberty to take proofs for or against any claim or lien, and such judgment or decree shall be made thereon, as to the rights and equities of the several parties among themselves and as against any owner, as may be just; any party aggrieved by any decision may, within four- 25 teen days after the notice of the judgment or decree, appeal from such judgment or any part thereof, in the same manner and upon the same conditions as in case of appeal in ordinary actions.

8. Such appeal shall be a stay of proceedings (upon the terms or- 30 dered as to security or otherwise being complied with) until the hearing and determining of such appeal. Effect of appeal.

9. Judgments may be enforced by an execution, on which the prop- erty on which the lien is adjudged may be sold and the proceeds distributed as ordered by such judgment, and personal liabilities may be enforced by execution against the property of any party against 35 whom a personal judgment shall have been rendered. The contractor shall be personally liable to the lien or for the whole amount of his indebtedness, and the owner to the extent of the amount due by him to his contractor. Enforcement of judgments.

10. The lien so filed may be discharged; first, by filing a certificate 40 of the claimant, or his successor in interest, verified upon affidavit, stating the lien is discharged; secondly, by depositing the amount of any lien and interest to the credit of the lien, with the Clerk where the lien is filed, provided no action shall have been com- menced for the enforcement of said lien, and in case an action shall 45 have been commenced, then such additional amount of security for the costs thereof, as a Judge of the Court where such action shall have been commenced shall deem proper, which sum shall be held subject to such lien in place of the land, building and buildings; third, by an entry of an order to discharge the same by any Judge of a Court of 50 Record made on due proof, that one year has elapsed and that no action or proceeding has been had on such lien, and a certificate of such Clerk that no notice of such proceeding has been filed with him; fourth, by a judgment or docket of a judgment exempting such pro- How liens may be discharged.

erty after ten days on proof of notice of such judgment and that fourteen days have elapsed and no appeal has been taken therefrom; fifth, by an entry by order of the Court, that the judgment has been secured on appeal; sixth, by satisfaction of any judgment on such lien. 5

Limitation of liens. **11.** Liens shall, in all cases, cease after one year, unless by order of the Judge the lien is continued and a new docket made, stating such fact (without discharging the lien).

Transfer of interest by contractor. **12.** No transfer or assignment of his interest in his contract by the contractor or contractors, shall be valid as against parties entitled to file liens under said contract against said contractor. 10

Effect of this Act on contracts of sale contingent on erection of buildings. **13.** For the purposes of this Act, any person or persons who may have sold or disposed of his or their lands upon an executory contract of purchase contingent upon the erection of buildings thereon, shall be deemed the owner, and his vendee the contractor, and said owner shall, in all respects, be subject to the provisions of this Act. 15