

No. 130.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

An Act to give Mechanics and others
a Lien on buildings for work done by
them to or upon the same.

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MR. HARTMAN.

QUEBEC :

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An Act to give Mechanics and others a Lien on Real Property in Upper Canada, for work done by them to or upon the same.

WHEREAS it is expedient, that Builders and Mechanics employed in constructing or improving houses and other property in Upper Canada should under certain conditions have a Lien thereon for the value of their work, which lien should be preferred even to prior incumbrances on the same property, to the extent only of the increased value given to it by the work, inasmuch as such Lien would not only be manifestly just, but would encourage and facilitate the improvement of property: Be it therefore enacted, &c., as follows :

Preamble.

I. Every Builder, Mechanic or other person, who shall under a contract under seal with the owner of the land, build, construct repair, or improve any house or other building, upon any land in Upper Canada, described in such contract, or any machinery therein or appurtenance thereof, which would pass with the land under a conveyance of such land with the buildings and appurtenances generally, may obtain a Lien upon such land and the buildings and appurtenances thereof, to the amount of the sum mentioned in such contract as the price of the work to be done by him, provided such sum be not less than pounds: And such Lien shall from the date of the registration of the contract creating it in the Registry Office of the proper County, have priority and preference over all claims or incumbrances to or upon the same property subsequently registered, and also over all claims or incumbrances to or upon such property registered before the registration of the said property by the work mentioned in such contract and performed under it, if such additional value be not greater than the price mentioned in such contract; and the said lien shall attach to the property, into whose hands soever it may pass, subject to the provisions hereinafter made.

How the Lien may be acquired.

What priority such Lien shall give.

II. The said Lien shall not be enforced or exist as against any person having any title or claim to the said property or to any estate therein or charge or incumbrance thereon, except such only as claim under some instrument registered subsequently to that by which such Lien is created, unless the additional value given to the property by the work performed under such contract be proved at the trial of the suit for the recovery of the sum secured by such Lien, nor unless it shall then be proved that before the commencement of the work an examination of the state of the property was made by some competent and disinterested persons and a certificate thereof made and signed by him, and sworn to

On what conditions only the Lien shall have priority over claims registered before it.

by him as correct and true to the best of his knowledge and belief, before some Justice of the Peace having jurisdiction in the place where the property is situate,—nor unless it shall be proved that the state of the property was also examined by some competent and disinterested persons within after the work in respect of which the Lien 5 is claimed was completed, and a certificate made and signed by him of its then state and of the additional value given to the property by such work, as compared with its value in the state described in the certificate first above mentioned,—nor unless the suit for the recovery of the sum for which the Lien is claimed be commenced within after the 10 completion of the said work,—nor unless the said work be completed within from the date of the contract under which such Lien is claimed.

Lien for part of the consideration money of the contract. III. The Lien given by this Act shall exist and may be enforced for the price of any separate portion of the work mentioned in the Contract un- 15 der which it is claimed, provided the price of such portion be specified in the Contract, and be due under it at the time when the suit shall be brought for enforcing such Lien.

How part of the Lien may be transferred to a sub-contractor. IV. No sub-contractor or workman employed by the original contractor shall merely as such have a Lien on the property by reason of the work 20 he is employed to do ; but the original contractor may, by an instrument under his hand and seal with the consent of the owners of the property with whom he contracted, testified by his being a party to and confirming the assignment, assign his Lien in respect to any definite portion of the work described in such assignment, and then remaining to 25 be done, and for a sum to be also therein mentioned ; and from the time when such assignment shall be registered in the proper Registry Office, the assignee shall in respect of the work and for the price mentioned in the assignment, stand in the place of the original contractor and have all his rights. 30

The whole claim shall be assignable and must be assigned in certain cases, to persons having claims on the property. V. The claim for the whole sum due and to become due under any such contract as aforesaid and the Lien for securing the same, shall always be assignable, and from the time when such assignment shall be registered in the proper Registry Office, and notified to the person by whom such sum is payable, the assignee thereof shall as regards such 35 sum and Lien, stand in the place of the assignor and have all his rights ; and the party to whom such sum is due, shall always be bound to receive the same with the costs (if any) incurred by him in any suit for the recovery thereof, from any person having to or upon the property upon which the same is secured as aforesaid, a claim or charge ranking after 40 the Lien by which such sum is secured, and upon receiving such sum shall assign the said claim and Lien therefor to the person paying the same ; and if he refuse to make such assignment, then the tender of such sum (and the said costs if any) being made to him by or in the presence of some competent witness, who shall swear before some Justice of the 45 Peace that such tender was made by him or in his presence, and the assignment refused, such affidavit of tender and refusal to assign, being registered in the proper Registry Office, by memorial thereof under the hand and seal of the party on whose behalf the tender shall be made, shall operate as such

assignment to all intents and purposes, saving the right as the person so refusing to demand, and if not paid on demand to recover the money so refused from the person who tendered it.

VI. It shall be the duty of the Registrar of the proper county to register a memorial of any Instrument which may be registered under this Act, the execution of such memorial and of the Instrument to which it relates being attested and proved in the manner provided with regard to Deeds or Instruments, whereof memorials may be registered in Upper Canada; and whenever the Registration of an Instrument is mentioned in this Act the Registration of a memorial of such Instrument shall be understood to be intended.

Registry of Instruments, &c. under this Act.

VII. Any person having a Lien under this Act for any sum of money then due and payable, may bring an action under this Act to recover the same from any person then in possession of the property subject to such Lien, in either of the Superior Courts of Common Law, if the sum claimed exceeds and in the County Court if it does not exceed that sum, averring such Lien in the declaration; and if at the trial he shall prove any sum of money to be due he shall have judgment for such sum, and if he shall also prove that he has such lien, the judgment shall declare the same, the amount for which it subsists and the rank of such lien according to the provisions of this Act; and under any judgment declaring such lien the Plaintiff may take out execution against the property declared to be subject thereto, and under such execution the Sheriff may seize and sell not merely the estate and interest of the Defendant in the case, but every estate and interest therein which shall be subject to or rank after the Lien as declared by the judgment in the case, and the same shall pass to the purchaser by virtue of such sale; and the lien shall extend to all costs incurred in enforcing payment of the sum secured by it.

How a Lien under this Act may be enforced.

Judgment.

Costs.

VIII. The Defendant in any suit under the next preceding Section, not being a person bound independently of the Lien to pay the sum demanded, may instead of pleading to the action file a declaration that he does not intend to contest the Plaintiff's claim, and thereupon the suit shall proceed as if he had made default, but if the Plaintiff shall obtain judgment, he shall have execution only against the property subject to his Lien, and the Defendant shall pay no costs, except that the costs of the suit shall be added to the sum for which the Lien shall be declared by the judgment to subsist, and levied on the property declared to be subject thereto.

Provision when the Defendant does not contest the Suit or Lien.

IX. Nothing in this Act shall be construed in any way to diminish the liability of any person who would be bound to pay any sum for which a lien is hereby given, independently of such lien, or to impair any remedy against him for enforcing payment of such sum.

Act not to impair other remedies.

X. If after satisfying the sum for which the lien shall be adjudged to subsist and the costs of suit, out of the proceeds of the sale of the estates and interests declared subject to such lien, there shall remain any overplus of such proceeds, it shall remain in the Sheriff's hands subject to the order of the Court, and shall represent the estates and interest in the property subject to the lien, which may have been sold by the Sheriff, and the Court shall distribute the same to or among those parties entitled to such

Provision if there remain a balance of the proceeds after paying the Lien, &c.

estates and interests, who shall apply to the Court by Petition stating their claims, within months from the first insertion of the Sheriff's advertisement of the sale in the Canada Gazette, according to the rank and priority of their respective claims, with the costs of such application, and if there be then any surplus it shall belong to the defendant.

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Effect of the Registry of satisfaction of the Judgment in such case.

XI. Upon payment and satisfaction of any such judgment declaring a lien and the costs, by any person not bound to satisfy the same independently of such Lien, the Clerk of the Court shall upon the demand of such person give him a certificate of the judgment and of such payment and satisfaction, under the seal of the Court, and such certificate may be registered in the manner provided by law with regard to certificates of judgments, and the registry thereof shall transfer to and vest in the person who made such payment and satisfaction, all the claim of the person in whose favor judgment was rendered for the sum so paid, and his lien for securing the same.

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Lien and another charge may subsist together in the same hands.

XII. Any person may hold a mortgage or other charge upon any property, and a Lien upon the same property arising under this Act out of some other transaction, and the two shall not merge, but may be enforced, discharged assigned or dealt with separately as if held by several persons.

Effect of certificate, &c., as evidence.

XIII. In any action for enforcing payment of any sum secured by lien under this Act, the production of a certificate of examination of any property or work and proof of the signature of the Justice of the Peace, before whom it was declared to, shall be *prima facie* evidence that such examination was really made, and of the facts stated in such certificate, but such evidence may be rebutted by evidence adduced in the suit and disproving such facts or the making of such examination.

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Interpretation clause.

XIV. The word "owner" in the Act shall mean and include any mortgagor or mortgagee in possession, or any tenant for life or for years or upwards, as well as the actual owner of the fee simple, and number of tenants in common or joint tenants as well as a single tenant: the words "the proper County" shall mean the County in which the property subject to any lien under this Act is situate; the word "person" shall mean and include any number of persons, or any body corporate or politic or other party, and those who may thereafter represent the party to whom the word person applies; and whenever any person is required or authorized to swear to any fact, then such person, if entitled by law to make a solemn affirmation instead of an oath in civil cases, may make a solemn affirmation under this Act instead of an affidavit.

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Forms in the Schedule.

XV. The forms given in the Schedule to this Act shall always be sufficient, but any other forms to the effect required by this Act shall be equally valid.

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Extent of Act.

XVI. This Act shall extend only to property situate in Upper Canada.

SCHEDULE D.

FORM OF ASSIGNMENT OF LIEN.

In consideration of the sum of _____ to me in hand paid by O. P. of
 (addition) I, A. B. of _____ (addition) hereby assign to
 the said O. P. the sum of _____ being the total sum payable to
 me under a certain agreement in writing between me (or as the case may
 be) and C. D. of _____ (addition) bearing date the _____ day of
 18____, and witnessed by E. F. and G. H. together with the lien granted
 to me (or to A. B. as the case may be) by the said agreement, for securing
 the said sum, upon (describe the property as in the original agreement.)
 With (or without) warranty by me of the said sum. Witness my hand
 and Seal at _____ this _____ day of _____ 18____

Signed, Sealed and delivered }
 in presence of }
 S. T. }
 N. V. }

A. B.