

No. 123

1st Session, 14th Legislature, Alberta
8 Elizabeth II

BILL 123

A Bill to amend The Mechanics' Lien Act

HON. MR. MANNING

Explanatory Note

General. In a recent court decision (*Horwitz v. Rigaux Building Enterprises Ltd. et al* (1960) 30 W.W.R. 559) it was held that under the present section 15 of The Mechanics' Lien Act the limit of the owner's liability to lienholders was not the value of the work done but the contract price.

In that case the contract had been abandoned when the work was less than half completed. The lienholders brought action against the owner for an amount equal to the value of the work done less the sum paid to the contractor in good faith. The owner claimed he was liable for only 15% of the value of the work done less the sum paid in good faith to the contractor. The court held both contentions incorrect and that the owner was liable for the full amount of the liens filed less the sum paid in good faith, as the limit of his liability on the wording of the Act was the full contract price.

The purpose of this Bill is to amend section 15 of the present Mechanics' Lien Act (R.S.A. 1955, c. 197) to revert to the wording used in the equivalent provision in the original Alberta Mechanics' Lien Act.

Bill No. 46, which is before this Session, is a Bill to enact a revision of the present Mechanics' Lien Act and if enacted would not come into force until a date to be fixed by proclamation. This Bill would come into force upon assent and be effective until such time as Bill 46 should come into force.

2. Section 15 presently reads:

"15. (1) Except as otherwise provided in this Act, the lien does not attach so as to make the owner liable for a greater sum than the contract price, less any sum of money that may have duly been paid to the contractor up to the time that the lien arises.

(2) Except as otherwise provided in this Act, where the lien is claimed by a person other than the contractor, the amount which may be claimed in respect thereof is limited to the amount agreed to be paid to the contractor or sub-contractor or other person for whom the contract work has been done, less any sum of money that may have been duly paid to the contractor, sub-contractor or other person up to the time the lien arises."

3. Section 16, subsection (6) presently reads:

"(6) Payment of the percentage required to be retained under this section may be validly made, after the expiration of the statutory period set out in section 28, so as to discharge all liens or charges in respect thereof, unless in the meantime a claim for a lien has been registered or proceedings have been commenced to enforce a lien or charge against such percentage as provided by section 30, in which case the owner may pay the percentage into court in such proceedings and such payment constitutes valid payment in discharge of the owner to the amount thereof."

4. Amendments apply to claims pending.

BILL

No. 123 of 1960

An Act to amend The Mechanics' Lien Act

(Assented to _____, 1960)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Mechanics' Lien Act*, being chapter 197 of the Revised Statutes, is hereby amended.

2. Section 15 is struck out and the following is substituted:

15. (1) Except as otherwise provided in this Act, a lien does not attach so as to make the owner liable for a greater sum than the sum owing and payable by the owner to the contractor.

(2) Except as otherwise provided in this Act, where a lien is claimed by any person other than the contractor, it does not attach so as to make the owner liable for a greater sum than the amount owing to the contractor for whom, or for whose sub-contractor, the work has been done or the material has been furnished.

3. Section 16, subsection (6) is amended by adding at the end thereof the words "and a discharge of the liability of the owner to the lienholders for the amount of the liens".

4. This Act applies to claims of liens pending at the date this Act comes into force.

5. This Act comes into force on the day upon which it is assented to.

No. 123

FIRST SESSION

FOURTEENTH LEGISLATURE

8 ELIZABETH II

1960

BILL

An Act to amend The Mechanics'
Lien Act

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. MANNING
