

BILL

No. 14 of 1913 (Second Session).

An Act relating to Liens of Woodmen for Services.

(Assented to 1913.)

HIS Majesty by and with the advice and consent of the Legislative Assembly of the Province of Alberta enacts as follows:

1. This Act may be cited as "*The Woodman's Lien Act*." Short title

2. In this Act, unless the context otherwise requires— Interpretation

(a) The expression "logs and timber" means and includes logs, timber, poles, ties, bolts, staves, posts, tanbark and wood; Logs and timber

(b) The expression "labour, service or services" means and includes cutting, skidding, felling, hauling, scaling, banking, driving, running, rafting or booming any logs or timber, and any work done by cooks, blacksmiths, artisans and others usually employed in connection therewith whether performed by wage-earners or others; Labour, service or services.

(c) The expression "person" in the third section of this Act shall be interpreted to include clerks, timekeepers, storekeepers, cooks, blacksmiths, artisans, and all others usually employed in connection with such labour, service or services; Person in Section 3.

(d) The expression "Judge" means a judge of any of the District Courts in this province, or any deputy lawfully acting for him or any judge of the Supreme Court. Judge

HOW LIEN ARISES AND WHEN SAME ATTACHES.

3. Any person performing any labour, service or services in connection with any logs or timber within this province shall have a lien thereon and upon any logs or timber belonging to the same owner with which any such logs or timber or any portion thereof may have become mixed for the amount due, for such labour, service or services and the same shall be deemed a first lien or charge on such logs or timber, and shall have precedence of all other claims or liens thereon, except any lien or claim which the Crown may have upon such logs or timber for or in respect of any dues or charges and no contract hereinbefore or hereafter entered into shall deprive such person of such lien. Lien

4. The lien provided for in the last preceding section shall not remain a charge on the logs or timber, unless a statement thereof in writing verified upon oath by the person claiming such lien, or some one duly authorized on his behalf, and bearing indorsed thereon the name and post office address of the claimant's attorney, shall be filed in the office of the clerk of the District Court or of the Supreme Court (according to the amount of the claim) of the judicial district in which the labour or services or some part thereof has been performed: Lien to attach when a statement filed in office of district court clerk

Provided that, when such labour or services have been performed upon any logs or timber got out to be run down or run down any of the rivers or streams, within or partly within the Province of Alberta, such statement may, at the option of the claimant, be filed in the office of the clerk of the District Court or of the Supreme Court of the judicial district wherein the drive terminates or reaches its destination.

5. Such statement shall set out briefly the nature of the debt demand or claim, the amount due to the claimant, as near as may be, over and above all legal set-offs or counter-claims and description of the logs or timber upon or against which the lien is claimed, and may be in the form set out in schedule A to this Act or to the like effect.

6. If such labour, service or services be performed between the first day of October and the first day of June next thereafter, the statement of claim shall be filed on or before the thirtieth day of said month of June, but if such labour or services be done or performed on or after the first day of June and before the first day of October in any year, then such statement shall be filed within thirty days after the last day such labour, service or services were performed:

Provided that no mortgage, sale or transfer of the logs or timber upon which a lien is claimed under this Act during the time limited for the filing of such statement of claim and previous to the filing thereof, or after the filing thereof and during the time limited for the enforcement thereof, shall in anywise affect such lien, but such lien shall remain and be in force against such logs or timber, no matter in whose possession the same shall be found.

ENFORCEMENT OF LIEN.

7. Any person or persons having a lien upon or against any logs or timber under this Act may enforce the same by the regular practice and procedure of the courts according to the amount of the claim either in the District Court, or in the Supreme Court in the district within whose jurisdiction the said logs or timber, or any part thereof, may be situated at the time of the commencement of the suit; and such suit may be commenced to enforce such liens, if the same be due, immediately after the filing of such statement, or if credit has been given, immediately after the expiry of the period of credit, and such lien shall cease to be lien upon the property named in such statement, unless the proceedings to enforce the same be commenced within thirty days after the filing of the statement of claim or within thirty days of the expiry of the period of credit. In all such suits the person, company or corporation liable for the payment of such debt or claim shall be made the party defendant.

8. In any case, whether commenced by writ of summons or attachment, the judge may order that the same shall be disposed of summarily in chambers, upon such terms as to notice and otherwise as the order shall provide, and the same may be so heard and disposed of.

9. The judge may also entertain in chambers any application to set aside an attachment or seizure or to release logs or timber that have been seized, and may summarily dispose of the same.

10. When the amount of any claim filed as aforesaid is not less than ten dollars, upon the production and filing of a copy of said claim and affidavit, and of an affidavit made and sworn by the claimant as to the correctness of the amount of the claim due and owing, and showing that the same has been filed as aforesaid, and stating that—

(a) He has good reason to believe and does believe that the logs or timber are about to be removed out of the Province of Alberta; or

(b) That the person indebted for the amount of such lien has absconded from the province with intent to defraud or defeat his creditors; or

(c) That the logs or timber are about to be cut into lumber or other timber, so that the same cannot be identified;

(d) And that he is in danger of losing his said claim if an attachment do not issue; and

(e) If an affidavit corroborating the affidavit of the plaintiff in respect of subsections (a), (b), or (c) of this section be also filed, then the clerk of the proper court within whose jurisdiction the logs or timber are shall issue a writ of attachment, directed to the sheriff or bailiff of such court, commanding such sheriff or bailiff to attach, seize, take and safely keep such logs or timber, or a sufficient portion thereof to secure the sum mentioned in the said writ, and the costs of the suit and of the proceedings to enforce the lien, and to return the writ forthwith to the court out of which the same issued.

11. Where additional claims are made or the amount of a claim is increased or a sufficient seizure has not been made, a second or subsequent seizure may be made either under execution or attachment.

12. The said writ of attachment shall also, where no writ of summons has issued, summon the defendant to enter an appearance in the court out of which the attachment has issued, and a copy of the writ of attachment shall be served upon the defendant, and if the defendant in such attachment is not the owner of the logs or timber described in the writ of attachment then a copy of the writ shall also be served upon the owner of the said logs or timber, or upon the agent or person in whose possession, custody or control they may be found for him. The owner may on his own application or by direction of a judge, be made a party defendant at the trial.

13. Where the service has not been personal upon either the defendant or owner, and where a proper defence has not been filed, the judge may in his discretion admit them or either of them to make full defence and may make such order as to service and otherwise in the premises as may be reasonable and just to all parties.

14. No sheriff or bailiff shall seize upon or detain any logs or timber under the provisions of this Act when in transit by water from the place where cut to the place of destination.

15. In case of an attachment, if the owner of said logs or timber, or any other person in his behalf, shall execute and file with the clerk of the court out of which the attachment has issued a good and sufficient bond to the

person claiming the lien, executed by two sureties and approved by the said clerk and conditioned for the payment of all damages, costs, charges, disbursements and expenses that may be recovered by the claimant in such proceedings, together with the amount for which a lien is claimed in any other suit, if any, the clerk shall issue an order to the sheriff or bailiff having in charge the logs or timber directing their release, and upon service of such order upon the bailiff, he shall release the same.

16. Any person who shall have been served with a copy of the writ of attachment under this Act, and who may desire to dispute the same, shall, within ten days after such service, file in the court in which proceedings are pending a statement of defence. ^{Notice of dispute}

17. If no statement of defence is filed under the last preceding section, judgment may be entered as in the case of default, and the practice or procedure may be the same as in a suit begun by writ of summons. ^{Judgment by default}

18. The defendant may, at any time after service of the writ of attachment and before the sale of the logs or timber, pay into court the amount for which a lien is claimed in the suit, together with the amount for which a lien is claimed in any other suit (if any), and together with costs of the proceedings thereon to the date of such payment taxed by the clerk of the court if so required, and the person making such payment shall thereupon be entitled to a certificate vacating such lien; and upon said certificate being filed with the clerk of the court in which the original statement of claim was filed the said lien shall be vacated and all further proceedings thereon shall cease and the person making such payment shall further be entitled to an order directing the delivery up of the logs or timber seized under the attachment of the cancellation of any bond given under the eighteenth section of this Act. ^{Payment into court}

19. In any case commenced by writ of attachment, after the expiration of the time hereinbefore named within which a statement of defence may be filed and provided a statement of defence has been filed, the judge shall, in chambers as provided by section 11 of this Act, or at the next sitting of the court after due notice has been given to all parties to the suit and to all persons claiming liens on the logs or timber and whose liens are duly filed as aforesaid, or to their attorneys, hear all such parties and claimants, and take all accounts necessary to determine the amounts, if any, due to them or any of them or to any other holders of liens who may be called by the judge to prove their liens, and shall fix or cause to be taxed by the clerk their costs and determine by whom the same shall be payable and settle their priorities and generally determine all such matters as may be necessary for the adjustment of the rights of the several parties. ^{Hearing parties taking accounts, etc}

20. At the conclusion of the inquiry the judge shall make his report and order, which shall state his findings and direct the payment into the court in which proceedings are pending of the amounts, if any, so found due and costs, within eight days thereafter, and, in default of such payment that the logs or timber shall be sold by the sheriff or bailiff for the satisfaction of the amounts found due to the several parties upon the inquiry and costs. ^{Judge's report and order for payment}

21. In default of payment into court under the last preceding section within the said eight days, and the said logs or timber shall, within twenty days thereafter be sold by the sheriff or bailiff, in the same manner and subject to the same provisions of law as goods and chattels seized or taken in execution, unless the judge shall direct that additional publicity be given to the sale; and the amount realized by such sale shall, after deducting the expenses thereof payable to the sheriff or bailiff, be paid into the court in which the proceedings are pending, and shall upon the application of the several parties found to be entitled thereto under the order of the judge, be paid out to them by the clerk of the said court:

Provided that where the amount realized upon the sale shall not be sufficient to pay the claims in full and costs, the judge shall apportion the amount realized *pro rata* among the different claimants.

22. If, after such sale and distribution of the proceeds thereof under the preceding section, any balance shall remain due to any person under the said order of the judge, the clerk of the court, shall upon the application of such person, give to him a certificate that such amount remains due, which certificate may be entered as a judgment in the court having jurisdiction, against the person or persons by whom the claim was directed to be paid, and execution may be issued thereupon as in the case of other judgments in the courts.

23. Where nothing shall be found due upon the several claims filed under this Act or upon the lien or liens in respect to which proceedings have been taken, the judge may direct by his said order that the lien or liens be discharged and the logs or timber released or the security given therefor be delivered up and cancelled, and shall also by such order direct payment forthwith of any costs which may be found due to the defendant or owner of the said logs or timber.

24. Where more money shall be paid into court as the proceeds of the sale of logs or timber than shall be required to satisfy the lien which shall have been proven and the interest and costs, the remaining moneys shall be paid over to the party entitled to the same unless the judge otherwise orders.

25. Any person affected by the proceedings taken under this Act may apply to the judge to dismiss the same for want of prosecution, and the judge may make such order upon the application as to costs or otherwise as may be just.

26. The judge may at any stage of such proceedings on application of any party, or as he may see fit, order that any person who may be deemed a necessary party to any such proceedings be added as a party thereto or be served with any process or notice provided for by this Act, and the judge may make such order as to the costs of adding such person or corporation or as to such service as may be just.

27. Nothing in this Act contained shall be deemed to disentitle any person to any other remedy than that afforded by this Act for the recovery of any amount due in respect of labour, service or services performed upon or in connection with any logs or timber; and where a suit is brought to

enforce a lien, but no lien shall be found to exist, judgment may be directed for the amount found due as in an ordinary case.

28. Any number of lienholders may join whether by writ of attachment or otherwise in taking proceedings under this Act, or may assign their claims to any one or more persons but the statement of claims shall include particular statements of the several claims of persons so joining.

29. The practice and procedure of the District Courts and of the Supreme Court (according to the amount of the claim) shall be followed as nearly as may be, as also the tariff of costs of the said courts.

SCHEDULE.

The following is the Schedule referred to in this Act:

SCHEDULE A—(SECTIONS 4 AND 5.)

STATEMENT OF CLAIM OF LIEN.

"A.B. (name of claimant), of (here state residence of claimant), (if so) as assignee of (state name and address of assignor) under The Woodman's Lien Act, claims a lien upon certain logs or timber, the property of (here state the name and residence of the owner of logs or timber upon which the lien is claimed, if known) and which logs and timber are composed of (state the kinds of logs or timber such as spruce, tamarac, cedar, or other logs, ties, poles, posts, etc., also where situate at the time of filing of statement) in respect of the following work, that is to say (here give a short description of the work done for which the lien is claimed), which work was done for (here state the name and residence of the person upon whose credit the work was done) between the..... day of..... and the..... day of..... at (per day, month or quantity).

"The amount claimed as due (or to become due) is the sum of..... (when credit has been given) the said work was done on credit, and the period of credit will expire on the..... day of..... A.D. 19....

(Signature of claimant)."

AFFIDAVIT TO BE ATTACHED TO STATEMENT OF CLAIM.

"I,..... make oath and say that I have read (or have heard read) the foregoing statement of claim, and I say that the facts therein set forth are to the best of my knowledge and belief true, and the amount claimed to be due to me in respect of my lien is the just and true amount due and owing to me after giving credit for all the sums of money, goods or merchandise to which the said (naming the debtor) is entitled to credit as against me.

"Sworn before me at..... in the..... of..... this..... day of..... A.D. 19....

(Signature of claimant).

A Commissioner, etc."

No. 14

FIRST SESSION
THIRD LEGISLATURE

4 GEORGE V

1913
(SECOND SESSION)

BILL

An Act relating to Liens of Woodmen
for Services.

Received and read the

First time.....

Second time.....

Third time.....

MR. MACKAY.

EDMONTON:
J. W. JEFFERY, Government Printer
A.D. 1913