

BILL

No. 39 of 1918.

An Act to create Liens in favour of Mechanics and Others.

(Assented to , 1918.)

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 Mechanics' Lien Act*, 1918." Short title

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

(a) "Improvement," without restricting its general and Improvement ordinary meaning, shall include every kind of thing erected or placed, and every kind of work done, upon, in or under land and that although as for instance in the case of a mine or a quarry it may be supposed ultimately to diminish the value of the land; and every alteration or repair of an improvement; and an improvement though not made upon, in or under the land sought to be charged with a lien under this Act, if made upon, in or under land immediately adjacent thereto and if the improvement is made directly and primarily for the benefit thereof;

(b) "The land" with reference to the property to which The land a lien is to attach means the land upon, in or under which the improvement is made together with the land, premises and appurtenances thereto used and enjoyed therewith and with reference to the land upon, in or under which an improvement is made includes the land immediately adjacent to the land upon, in or under which the improvement is made if the improvement is made directly and primarily for the benefit of the latter;

(c) "Contractor" means any person who has been Contractor engaged directly by the owner to make the whole or any part of an improvement or to supply all or any part of the materials for the improvement or to furnish all or any part of the apparatus to be used in making the improvement or to supply all or some of the workmen to be engaged in making the improvement;

(d) "Sub-contractor" means any person who has made Sub-contractor any such engagement as in the last preceding clause is described not directly with the owner but with a contractor or with another sub-contractor;

(e) "Owner" includes any person to whose estate or Owner interest in the land it is declared, by this Act, liens under this Act shall attach;

(f) "Apparatus" means any machinery, vehicle or Apparatus implements, together with the means of operating them, whether animals or mechanical contrivance;

(g) "Materials" means any kind of moveable property Materials intended to be worked into and to form part of the improvement and shall be deemed to have been "supplied" for an improvement if they are upon the land or upon any other land used or intended to be used as a place of deposit for materials to be used for the improvement;

(h) "Workman" includes:

Workmen

1. An architect;
2. A superintendent of the work;
3. Labourers;

(i) "Labourer" includes artizans, and mechanics (but ^{Labourer} not an architect or superintendent) whether or not they are to be paid by time or by the piece and whether or not as incidental to their work they supply and use their own draught animals, implements or tools, as for instance in the case of teamsters supplying teams;

(j) "Wages" includes money owing to labourers for ^{Wages} work done by them, including remuneration for the use of draught animals, implements or tools used as incidental to their work, whether the work is done by time or by the piece;

(k) "Contract price" means the cost of the improve- ^{Contract price} ment as fixed between the owner and the contractor or where there are separate engagements for parts of the improvement the total of the several sums so fixed. If the amount of the cost so fixed is increased or reduced by reason of alterations or partial non-fulfilment of the terms of the contract then the "contract price" shall mean the amount to which it has been so increased or reduced;

(l) "Court" means the Supreme Court of Alberta; and ^{Court} "judge" means a judge thereof, and shall include a Master if so declared by Rule of Court;

(m) "Lien" means a lien by virtue of this Act; ^{Lien}

(n) "Lien claimant" means a person claiming to be ^{Lien claimant} entitled to a lien by virtue of this Act;

(o) "Claim of lien" includes the affidavit of verification. ^{Claim of lien}

3. Every person who, as a contractor or sub-contractor, or ^{Lien declared} as a person who furnishes apparatus or supplies materials or as a workman, contributes to the making of an improvement to land shall be entitled to a lien upon the improvement and upon the land to the extent and subject to the conditions and restriction in this Act provided.

4. In order to preserve his lien the lien claimant shall ^{Filing and registration of claim of lien and service of notice} file a claim of lien in the office of the clerk of the Supreme Court for the judicial district in which the land is situate and deliver to him a duplicate or copy thereof, paying to the clerk the proper fees for filing the claim, certifying the duplicate or copy, and transmitting the certified duplicate or copy to the registrar and the registration fee.

(2) Upon the filing of the claim of lien it shall be the duty of the clerk instantly to make a minute of the claim of lien in a book to be kept for that purpose stating the name of the claimant, the amount of the claim, the land, the name of the alleged owner of the land and the names of any other persons sought to be made personally liable for the claim.

(3) It shall be the further duty of the clerk instantly to deliver or to transmit by way of a prepaid registered letter to the registrar of the land titles registration district within which the land is situated the certified duplicate or copy of the claim of lien for registration together with the proper registration fee; and thereupon the registrar shall register the same against the land described therein.

(4) Notice of the filing of the claim of lien shall be served upon the owner of the land or his architect or superintendent and such service may be effected in any manner in which by the Rules of Court a statement of claim is authorized to be served, or by way of a prepaid registered letter addressed to the owner, architect or superintendent at his place of business or residence and upon request and the payment of the proper postage the clerk shall instantly prepare and mail such notice, but omission to serve notice under this clause shall not invalidate the lien.

(5) The claim of lien shall be verified by affidavit.

(6) The claim of lien may be in the form A, the form of affidavit of verification in the form B and the notice of filing in the form C of the schedule to this Act or to the like effect.

(7) The affidavit of verification may be made by the claimant or by any person on his behalf who states in the affidavit that he has a personal knowledge of the matters deposed to.

(8) Every clerk of the court shall be supplied with printed forms in blank of claims of liens, affidavits of verification and notices of filing, which shall be supplied by him to everyone requesting the same and desiring to file a lien.

5. A claim of lien by a contractor or sub-contractor may be filed before or during the making of the improvement or within thirty days of its completion, unless the contract or the sub-contract as the case may be provides for a final certificate of completion by an architect, superintendent or other person and then within fifteen days of the issue of the final certificate or of the refusal of the architect, superintendent or other person to issue such certificate. Time for
filing lien

(2) A claim of lien by a person who has furnished apparatus or supplied materials may be filed before or during the time the apparatus is being used or the materials supplied or within forty-five days after the apparatus has ceased to be used or the last of the materials has been supplied for the improvement.

(3) A claim of lien by a workman may be filed at any time during the performance of his services or within forty-five days after the completion of his services in connection with the improvement; provided that if the workman shall have continued in the employ, but been engaged in other work for the same owner, contractor or sub-contractor, the period of 45 days shall commence at the termination of his employment or the completion of the work, whichever shall first occur.

6. Every lien, a claim for which has not been filed within the time fixed by the last preceding section, shall absolutely cease to exist.

7. Liens shall attach—

1. To the improvement;
2. To the estate or interest in the land of any person—
 - (a) At whose instance the improvement was set on foot; or
 - (b) With whose knowledge or consent express or implied the improvement was set on foot; or
 - (c) From whom the person at whose instance the improvement was set on foot derives his estate or interest if the former might reasonably expect

To what
extent lien
attaches

that an improvement of the character of that being carried on might be made by the latter or any successor in title unless and until he has given notice to the lien claimant that he will not be responsible for the cost of the improvement.

(2) Liens shall also attach to the estate or interest of any person who has become aware that the improvement is being carried on and who has failed to give the lien claimant notice that he will not be responsible for the cost of the improvement. If he has given such notice within such time as under the circumstances the court or judge shall find to be reasonably prompt, the lien of the lien claimant shall not attach to his estate or interest to any extent. If he has given such notice after such time the lien of the lien claimant shall attach to his estate or interest to the extent of such portion of the claim as has been incurred between the time he became aware the improvement was being carried on and the time he gave the notice.

(3) A general notice stating in effect that the person giving the same will not be responsible for the cost of the improvement posted and maintained for a period of at least six hours during the daytime of any working day in a conspicuous place upon the improvement or upon land in the immediate proximity of the improvement shall be deemed to be a notice to all present or future lien claimants.

(4) No lien shall attach to the estate or interest of any person other than the person at whose instance or with whose knowledge or consent the improvement was set on foot in favour of any lien claimant who knew or had reason to believe that the person whose estate or interest he seeks to charge did not expect that his estate or interest would be sought to be charged with such lien.

(5) In the event of the improvement only or the improvement and some partial estate or interest only in the land being subject to liens and of a sale becoming necessary to realize the liens and of a sufficient sum not being likely to be realized by the sale of the improvement only or of the improvement and such partial estate or interest only the court or judge may direct a sale of the land with the improvement thereon and shall ascertain and fix the value of the estates or interests in the land not subject to the liens.

(6) Where a leasehold interest is sold by direction of the court or judge the purchaser shall be deemed to be an assignee of the lease with the leave in writing of the lessor or his assigns.

(7) If an improvement be made by a husband upon the land of his wife he shall be deemed conclusively to be the agent of his wife to make the improvement and *vice versa* subject to the provisions of subsections 2 and 4 of this section.

8. Where an improvement is made upon, in or under land subject to a mortgage the lien shall attach to the land, in priority to the mortgage only to the extent to which the land has been increased in value by the improvement unless the improvement has been set on foot or is being carried on at the written request of the mortgagee. If such increased value is not agreed upon it shall be fixed

by a judge in the course of the proceedings to realize the liens as the price at which in his opinion the land, at the time being, could if the improvement had not been made be sold for cash at a sale not a forced sale and the judge shall direct the land to be sold subject to an upset price of the amount so agreed or fixed and the amount realized in excess of the upset price shall be subject to the liens.

(2) "Mortgage" in this section shall include any lien charge or incumbrance which is a specific charge upon the land.

(3) The amount secured by the mortgage shall as against liens be deemed to be the amount actually owing thereon at the time when the mortgagee first had knowledge that the improvement had been set on foot or was being carried on, together with the amount of any further advances, if any, made thereon by the mortgagee, which shall have been applied either by mortgagor or the mortgagee by way of payment on account of the cost of the improvement within the restrictions imposed on the owner by section 15.

(4) It shall not be necessary to make a prior mortgagee a party to the proceedings to realize liens unless priority over the mortgage is sought and then only at the time when it is proposed to fix the increased value.

9. No agreement shall prevent a lien from attaching under this Act in favour of any person not a party to the agreement. Agreement for no lien

10. The taking of security, or conditional payment or a cheque, order or promissory note which has been dishonoured or the extending of the time for payment or the recovery of judgment for a claim in respect of which a person is entitled to a lien shall not prejudice his lien. Security, etc.

11. No assignment by a contractor or sub-contractor of any moneys owing or to become owing under his contract shall prejudice any lien under this Act. Assignment

12. No agreement that the contract price shall be paid in whole or in part otherwise than in money shall prejudice the lien of any person entitled to a lien under this Act who is not a party thereto. Cash contract price

(2) If the contract price is payable in whole or in part otherwise than in money the contract price for the purposes of this Act shall be deemed to be the sum of the part, if any, payable in money and the value of the other consideration which in case of dispute shall be ascertained by the court or a judge.

13. No deduction from the contract price shall be allowed to the prejudice of any lien except such deductions as shall be fairly allowed by reason of alterations in the improvement or the partial non-fulfilment of the terms thereof. Diminution of contract price

14. Except in respect of a claim by a labourer for not more than six weeks' wages, liens shall not attach so as to make the total amount payable by the owner or chargeable upon his estate or interest in the land more than, in the case of completion, the contract price or, in the Limit of owner's liability,

case of non-completion, the total amount which for the purposes of this Act it shall be found the owner ought to pay.

15. All payments made by the owner to any contractor, ^{Payments by the owner} sub-contractor, supplier of apparatus or furnisher of materials or workman on account of the improvement, shall be deducted from the contract price or the total amount which for the purposes of this Act it shall be found the owner ought to pay, as the case may be, except to the extent, if any, that any lien has been prejudiced by reason of any payment or part thereof having been made so as to increase the total amount paid beyond what represents a fair and just proportion of the contract price having regard to the progress of the improvement and except as against any lien of the filing of which the owner had notice at the time of payment.

16. No partial failure of completion of the improvement, ^{Breach of contract} though sufficient to entitle the owner to refuse to make any payment or further payment on account of the contract price to a contractor shall be effective to prevent the enforcement of liens to the extent of the fair value of the improvement in its incomplete state.

17. In calculating the amount of the contract price or ^{Penalties} the amount remaining owing in respect thereof for the purposes of this Act no deduction therefrom shall be allowed of sums by way of penalties or liquidated damages or unascertained damages for delay in completion.

18. If any improvement is wholly or partially destroyed ^{Insurance]} by fire, any insurance moneys payable in respect thereof ^{moneys} shall be subject to the same liens as the improvement.

19. A lien claimant may assign his lien by any appropriate ^{Assignment} form of writing.

20. If a person entitled to a lien dies his lien shall pass ^{Succession} to his executor or administrator.

21. If for any reason a person entitled to a lien is unable ^{Incapacity} to file a lien or to give notice of the filing thereof any other person may by leave of a judge do so on his behalf.

22. A substantial compliance only with the provisions of ^{Substantial compliance} this Act relating to the form, contents and registration of the claim of lien and the notice of filing thereof shall be required and where forms are provided it is intended that they shall be modified so as to meet the circumstances of the case and no lien shall be invalidated by reason of defects either of form or substance in the claim of lien the notice of filing or the filing or registration unless in the opinion of the court or judge adjudicating thereon the owner, contractor, sub-contractor or mortgagee or other person is prejudiced thereby and then only to the extent to which he is prejudiced; and the court or a judge may permit a lien to be amended.

23. A claim of lien may comprise the claims of any ^{Combining claims} number of lien claimants and any number of properties belonging to the same owner.

24. A lien may be discharged by the registration of ^{Discharge} a release thereof in writing signed by the lien claimant ^{of lien} or by his agent duly authorized in writing so to do or by the person who filed the claim of lien on his behalf.

(2) The court or judge may vacate the registration of a lien upon security being given to the lien claimant or upon payment into court of a sum sufficient to answer the claim of lien and costs.

(3) The court or judge may direct the cancellation of the registration of a lien upon proof that the claim has been satisfied or the lien released or that proceedings to enforce the lien have been unreasonably delayed.

25. The court or a judge may make an order for the ^{Enforcement} enforcement of any duty by this Act imposed upon any ^{of duty} person.

26. Every proceeding in relation to or arising out of a ^{Proceedings} claim of lien and every other application to the court or ^{generally} a judge authorized by this Act, unless *ex parte*, shall be commenced by way of originating notice.

27. Proceedings for the enforcement of liens shall unless ^{Proceedings} a judge otherwise orders be as follows: ^{to enforce} ^{liens}

1. The notice of motion may be given by one or more registered lien claimants;

2. The notice shall be filed in the office of the clerk of the court for the district in which the land lies;

3. On the notice being filed the clerk shall issue a certificate of *lis pendens* under the seal of the court which shall be registered in the proper land titles office;

4. The notice shall be served upon all persons who appear by the register of the land titles office to have any interest in or charge upon the land, including all other registered lien claimants;

5. The notice shall be returnable in chambers;

6. On the hearing of the motion, the judge shall as far as appears convenient determine all matters of law and fact in a summary manner or by way of reference but may if he deems it expedient direct that any issue of fact shall be tried in the usual way before a judge without a jury;

7. After proceedings have been commenced for the enforcement of any lien no new proceedings shall be commenced for the enforcement of any other lien in respect of the same improvement or any part thereof but other lien claimants who have not already been brought in may at any time and from time to time apply by motion in the proceedings already commenced to be added as parties thereto upon notice to the party having the conduct thereof and the judge, after notice to any other party or parties, if he shall think proper, shall proceed to deal with the claim and so far as proper vary any order already made, accordingly;

8. The judge shall determine the rights and priorities of all registered lien claimants and of all others interested in the land and shall fix a time for payment of the lien-claims or and if he deems it expedient of any other charges upon the land and direct that in default of payment the land shall be sold with the approbation of a judge and

may make an order for payment by any person of any moneys he is personally liable to pay and an order for delivery of possession to the purchaser;

9. The judge may direct that an affidavit verifying the particulars of the claim upon which any lien is founded made by a person who swears that he has a personal knowledge of the matters deposed to shall be *prima facie* proof of the claim.

28. Unless otherwise ordered by the judge no person shall be personally liable for costs except the persons personally liable for the debt in respect of which the claims of lien are made. ^{Costs}

29. In a proper case the proceedings may be transferred to the District Court. ^{Transfer}

30. All moneys realized by proceedings under this Act shall be distributed and applied in the following order: ^{Distribution of moneys}

First: The costs of all the lien-claimants of and incidental to the proceedings and of filing and proving their claims;

Second: Six weeks' wages (if so much be owing) of all labourers employed by the owner, contractor or sub-contractor;

Third: The wages beyond six weeks' wages of all labourers employed by the owner, contractor or sub-contractor to the extent that there is not sufficient to satisfy such wages out of the amount distributable to the owner, contractor or sub-contractor who is the labourers' debtor;

Fourth: The amounts owing to persons who have furnished apparatus;

Fifth: The amounts owing to persons who supplied materials;

Sixth: The amounts owing to the sub-contractor and other persons engaged by the owner or contractor;

Seventh: The amount owing to the contractor;

Eighth: The amounts owing to the architect or superintendent.

(2) The lien-claimants of each class shall rank *pro rata* for their several amounts.

(3) Any balance shall be paid to the owner or other person entitled thereto; provided, however, that when any labourer has a lien for more than six weeks' wages the amount beyond six weeks' wages shall be deducted from the amount distributable to the owner, contractor or sub-contractor as the case may be who is his debtor.

31. During the continuance of a lien no portion of the materials to which it attaches shall be removed to the prejudice of the lien and any actual or anticipated attempt so to do may be restrained by a judge. ^{Removal of materials}

32. When any materials are supplied for any improvement they shall be exempt from seizure under execution or ^{Exemption}

other process to enforce payment of any moneys owing by the person supplying them, other than for the purchase price thereof.

33. When any material has been brought upon the land ^{Material on ground} or upon any land adjacent thereto used or intended to be used as a place of deposit for materials to be used in the making of the improvement, the person who has supplied the materials shall, notwithstanding the delivery thereof, have a lien thereon for the unpaid price thereof until the materials are worked into the improvement, in priority to any other lien under this Act.

34. Any person who has or has agreed to contribute to ^{Statement from owner or contractor} the making of an improvement as a sub-contractor, a person furnishing apparatus or supplying materials or as a workman may demand of the owner a statement showing the total contract price and the balance remaining unpaid for the time being and of the contractor a similar statement together with a statement showing the amount which he has estimated for the cost of the portion of the improvement in respect of which the applicant has or has agreed to contribute.

(2) The owner and the contractor shall furnish such statements promptly after such demand.

(3) If the owner or contractor fail to do so, a judge may order such statements to be furnished.

(4) If any such statement be false in any respect the owner or contractor as the case may be shall be liable to the person to whom they are furnished for any damages he sustains by reason of their being incorrect.

(5) Any person who has engaged himself to contribute to the making of an improvement shall be excused from the performance or further performance of his engagement and may recover on a *quantum valebat* if it appears that there is not or will not be, having regard to other claims a sufficient fund to satisfy a claim of lien by him, unless the person who is personally liable to him shall give security for the payment of the amount which will ultimately be payable.

(6) Any dispute arising under the foregoing clause may be settled by a judge.

35. No contractor or sub-contractor shall be entitled to demand or receive any payment on account of his contract, ^{Posting of labourers' payrolls} where his contract price exceeds \$500, unless there shall have been posted up and maintained in a conspicuous place on the improvement from 12 noon to 1 p.m. of the first legal day after the last pay-day a receipted payroll or copy thereof containing the names of all labourers who have done work for him upon the improvement the amounts which were due and a receipt in full from each labourer and no payment made without the delivery of such payroll shall be valid for the purpose of defeating or diminishing the lien of any labourer who has worked on the improvement; provided that the failure to comply with this provision shall not prejudice the lien of the contractor or sub-contractor in default, but the court or judge may order a stay of proceedings until satisfactory proof be made that all labourers employed by the contractor or sub-contractor have been paid in full and may limit the time for the

furnishing of such proof and in default of the furnishing of such proof may disallow in whole or in part the lien of the contractor or sub-contractor.

(2) The original of the receipted payroll shall be delivered to the owner or his agent.

(3) The payroll may be in form D of the schedule to this Act.

36. Nothing in this Act contained shall be construed so Application as to affect any claim of lien filed prior to this Act coming into force; and all such claims may be enforced as though this Act had not been passed.

37. *The Mechanics' Lien Act* (Chapter 21 of 1906), Repeal except section 34 (liens for improvement of chattels) and sections 37, 38 and 39 (woodmen's liens), is hereby repealed.

SCHEDULE.

FORM A.

CLAIM OF LIEN.

A.B. (1), of.....(2)..... (and if so as assignee or executor or administrator of C.D.) claims, under <i>The Mechanics' Lien Act</i> , 1918, a lien upon the land described below and a certain improvement made thereon (or directly and primarily for the benefit thereof) being.....(3).....to the cost of which the claimant has contributed. The name of the person who it is claimed is the owner of the land within the meaning of the Act is.....	(1) Name of claimant.
The claimant claims as (4).....	(2) Residence and business.
.....	(3) A building, artesian well, sewer, etc.
.....	(4) A contract- or (or sub-contractor) for work done or materials supplied; or as a person who has supplied materials, etc.
The kind of.....(5).....was.....	(5) Work done or materials supplied.
The last date upon which the claimant.....(6)..... was.....	(6) Did any work or supplied any materials, etc.
The amount which is owing to the claimant in respect of which he claims a lien is \$.....	(7) A sufficient description for the purposes of registration.
The description of the land sought to be charged by the lien is.....(7).....	
.....	
.....	
Signature of.....	
Claimant or person proposing to file claim on his behalf.	

FORM B.

AFFIDAVIT OF VERIFICATION.

I, *A.B.*, the person proposing to file the foregoing claim of lien make oath and say:
(If a person other than the claimant), That I have a personal knowledge of the matters set forth in the said claim of lien;
That the facts set forth in the said claim are true to the best of my knowledge and belief.
Sworn to before me at }
.....this..... }
day of.....19.... }
.....
A J.P., Commr. or N.P.

FORM C.

NOTICE OF FILING CLAIM OF LIEN.

Take notice that.....
has filed a Mechanics' Lien claiming the sum of \$.....
against the following land:.....
.....
.....
.....
Dated at.....this.....day
of.....19.....
(Signed).....

FORM D,

PAYROLL.

Name	De- scription	From 8th Jan., 19 to 15th Jan., 19 (inclusive)			Amount paid	Date of pay- ment	Received payment in full
		No. days employed	Rate per day	Total Amount earned			
R. Roe		Six days	\$3.50	\$21.00	\$21.00	12th Jan., 19	R. Roe

I hereby certify that the above statement is correct to the best of my knowledge and belief, and is made by me in compliance and in accordance with section 35 of *The Mechanics' Lien Act*, on account of (my contract to, or employment by, as the case may be), (here insert brief description of the work) for (owner's name) up to the.....
.....19....
Dated this.....day of.....19.....
(Signed).....
Contractor.

No.

FIRST SESSION
FOURTH LEGISLATURE
8 GEORGE V
1918

BILL

An Act to create Liens in favour of
Mechanics and Others.

Received and read the

First time.

Second time.

Third time.

HON. MR. CROSS.

EDMONTON:
J. W. JEFFERY, KING'S PRINTER
A.D. 1918