

REPRINTED BILL

Bill No. 21 of 1943.

A BILL TO AMEND THE MECHANICS' LIEN ACT.

NOTE.

The change made by section 1 of the Bill is to strike out the reference in subsection (1) of section 6 to the estate or interest of the owner in the land to impose the lien on the land itself.

Section 2 of the Bill makes clear when the lien for materials arises, which before was open to argument.

Section 3 of the Bill puts the husband and wife in the same position with respect to a presumption of agency of one for the other.

The amendment to section 10 made by section 4 of the Bill merely brings the section into line with the new subsection of section 6.

Section 5 of the Bill strikes out section 11 of the Act and substitutes three other sections which deal with the priorities as between liens and mortgages and with the disposition of the proceeds after sale of the land, the aim being to make a fair distribution as between a mortgagee and a lienholder where there is not sufficient proceeds to satisfy both claims. The value of the improvements to which the lien attaches and all subsequent improvements are taken together in ascertaining the value of the improvements for the purpose of distributing the proceeds. Provision is made for either the mortgagee or lienholder to purchase the premises at a price not less than the value of the land and improvements fixed by the court. The provisions of these sections are made to apply to all liens arising before as well as after the amendments are passed and to all proceedings with respect to same, except where they have been concluded by sale or an order of the court vesting the lands in the mortgagee.

Section 6 of the Bill brings the provisions of section 12 of the Act in line with the other changes already made.

Sections 14*a* and 14*b* inserted in the Act by section 7 of the Bill provide for the cases where the contract price is not payable in money but in shares, etc. The lien, in such a case, has been held unenforceable as the Act now stands.

The new section 26*a* enacted by section 8 of the Bill cures an omission in the Act. Provision is made by section 23

(ii)

for the registration of liens on oil and gas well equipment in the office of the Minister of Lands and Mines but no provision was made for cancellation of such liens by notice, etc., as provided with respect to liens registered in the Land Titles Office. The object of the new section is to provide this procedure.

Subsection (6) of section 35 of the Act is struck out by section 10 of the Bill owing to the change made by earlier sections as to distribution of proceeds as between a mortgagee and lienholder.

Section 11 of the Bill incorporates in the Act a new section 38*a* which empowers a judge to order the removal from the land and sale of a building or structure to satisfy a lien under the Act when the judge thinks that course a proper one having regard to the value of the building and the amount owing on the lien. In such case all the proceeds of the sale will be applied on the lien up to the amount of the claim.

Section 12 of the Bill incorporates new provisions relating only to liens in connection with oil and gas wells. The lien is extended to cover oil and gas in place or severed and makes all persons having an interest in the oil or gas come within the definition of "owner" in the Act. Owners of the fee simple are protected to the extent of twenty per cent royalty. Section 45 enacted by section 12 of the Bill makes it clear that the lien applies to the interests over the twenty per cent of the owner of the fee simple.

W. S. GRAY,
Acting Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

REPRINTED BILL

BILL

No. 21 of 1943.

An Act to amend The Mechanics' Lien Act.

(Assented to _____, 1943.)

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

1. *The Mechanics' Lien Act*, being chapter 236 of the Revised Statutes of Alberta, 1942, is hereby amended as to section 6 by striking out subsection (1) thereof and substituting therefor the following:

“6.—(1) Unless he signs an express agreement to the contrary and in that case, subject to the provisions of section 4, a person who performs any work or service upon or in respect of or places or furnishes any materials to be used in the making, constructing, erecting, fitting, altering, improving, demolishing, or repairing of any improvement for any owner, contractor or sub-contractor, shall by virtue thereof have a lien for so much of the price of the work, service or materials as remains due to him in the improvement and the land occupied thereby or enjoyed therewith, or upon or in respect of which the work or service is performed, or upon which the materials are to be used.”

2. The said Act is further amended as to section 7 thereof by adding at the end the following words: “or at the date of the first delivery of material.”

3. The said Act is further amended as to section 9 thereof by adding at the end the following words: “and likewise and to the same extent a wife under similar circumstances shall be conclusively presumed to be acting as the agent of the husband as well as for herself for the purposes of this Act.”

4. The said Act is further amended as to section 10 by striking out subsection (1) thereof and substituting therefor the following:

“10.—(1) Where works or improvements are put on land for a person whose only interest in such land is that of a tenant, such works or improvements shall be subject to liens arising under this Act, and if the person doing or intending to do the work gives to the owner of the fee simple or his agent notice in writing of the work to be done, the fee simple shall also be subject to such liens, un-

less the owner or his agent within five days after the receipt of the notice gives notice to such person that he will not be responsible therefor.”

5. The said Act is further amended as to section 11 by striking out the same and substituting therefor the following:

11. Liens arising by virtue of this Act shall as against the lands and improvements subject to the lien be prior to all unregistered mortgages and prior to all mortgages registered subsequent to the date the lien arose.

“**11a.** Except as provided in section 11*b*, no lien arising by virtue of this Act either before or after the coming into force of this section shall be dealt with in any manner in proceedings on or in respect to a mortgage against the lands subject to the lien.

“**11b.**—(1) Where works or improvements are put upon premises subject to a registered mortgage, liens arising by virtue of this Act shall be prior to such mortgage to the extent of the increase in value of the mortgaged premises resulting from such works or improvements and from all subsequent improvements and no such lien shall be barred or foreclosed in any proceedings on such mortgage.

“(2) In any proceedings on such mortgage leading to sale or foreclosure of the mortgaged premises or in which sale or foreclosure or both are claimed by the mortgagee, or in any proceedings to enforce the lien, the court shall direct the mortgaged premises together with all improvements to be sold by tender or by public auction, and immediately prior to such sale the court shall upon proper evidence and on notice to all persons concerned, determine the value at that time of the mortgaged premises including all improvements and also the value at the time of such determination of the mortgaged premises as they existed immediately prior to the lien arising. The amount by which the value so determined by the court of the mortgaged premises including all improvements exceeds the value so determined by the court of the mortgaged premises as they existed immediately prior to the lien arising shall be the value of the improvements for the purposes of subsection (7) hereof.

“(3) The sale shall not be subject to any upset price or reserve bid but no sale shall be made unless the same is approved and confirmed by the court.

“(4) Neither the lienholder nor the mortgagee shall have the right to bid or tender at any such sale.

“(5) If the mortgaged premises are not sold in such sale proceedings, the lienholder and the mortgagee, provided such right is exercised within one year from the date the mortgaged premises were offered for sale, shall each have the right upon application to the court in such proceedings and upon notice to the other, and to such other persons as the court may direct, to purchase the mortgaged premises at an amount equal to but not lower than the value of the

mortgaged premises including all improvements as determined by the court pursuant to the provisions of subsection (2) hereof, and if both the lienholder and the mortgagee apply, preference shall be given to the one having the larger claim against the mortgaged premises:

“Provided that if either the lienholder or the mortgagee or both of them shall offer to purchase the mortgaged premises at an amount greater than the aforesaid valuation, then in that event the mortgaged premises shall be sold to the one offering the highest price.

“(6) In the event of a sale including any sale to a mortgagee or lienholder the purchase moneys shall be paid into court and subject to the provisions of subsection (7) shall be paid out to the persons entitled thereto.

“(7) If the proceeds of the sale (including any sale to the mortgagee or lienholder) of the mortgaged premises are not sufficient to fully satisfy the moneys owing in respect of the lien and the mortgage, such proceeds shall be divided between the lien and the mortgage in the following manner, namely; that portion of the sale proceeds bearing the same relation to the total sale proceeds as the value of the improvements determined pursuant to subsection (2) hereof bears to the value of the mortgaged premises including all improvements determined pursuant to subsection (2) hereof shall be applied on the lien and the balance of the sale proceeds shall be applied on the mortgage:

“Provided that if on this distribution of the sale proceeds the amount to be applied on either the lien or the mortgage is more than the amount owing in respect of such lien or mortgage, the excess shall be applied on the unsatisfied mortgage or lien, as the case may be.

“(8) In this section ‘mortgage’ includes mortgages if more than one and other charges and incumbrances existing and registered against the premises at the date the lien arose.

“(9) In the case of an agreement for the purchase of land where the purchase money, or part thereof, is unpaid, and the purchaser has not been registered as owner thereof, he shall for the purposes of this Act be deemed a mortgagor and the seller a mortgagee, whose mortgage was registered on the date of execution of the agreement for sale.

“(10) In this section ‘lien’ includes liens, if more than one, arising under this Act and in the event of there being more than one lien the portion of the sale proceeds applied on the lien under subsection (7) shall be divided between the liens in proportion to the amounts by which the improvements in respect to which each lien arose shall be found by the court to have respectively contributed to the sale price and liens arising in respect to the same improvements shall between themselves share *pro rata*.

“(11) If the mortgaged premises are not sold when offered for sale as aforesaid and are not purchased by either the lienholder or the mortgagee, then after the expiration of one year from the date the mortgaged premises were

offered for sale, they may again be offered for sale at intervals of not less than one year in the same or any other proceedings under the mortgage or lien, and the provisions of this section shall apply to each such sale proceedings in the same manner and to the same extent as if the mortgaged premises had not previously been offered for sale.

“(12) The provisions of this section and sections 11 and 11a shall apply to all liens arising after the coming into force of the same and shall also apply to all liens which arose prior thereto under the provisions of *The Mechanics' Lien Act*, Revised Statutes of Alberta, 1922, chapter 182, and all liens which arose under the provisions of *The Mechanics' Lien Act*, 1930, to the same extent as if this section had been in force when such liens arose and where legal proceedings affecting a lien have been commenced prior to the coming into force of this section, its provisions shall apply thereto unless the land has been sold and the proceeds paid to the party or parties entitled thereto, or title to the land has been vested in the mortgagee by an order of the court.”

6. The said Act is further amended as to section 12 thereof by striking out the same and substituting therefor the following:

“12. Where any works or improvements upon which a lien attaches are wholly or partly destroyed by fire, any money received by reason of any insurance thereon by an owner or mortgagee or incumbrancee shall be subject to all claims for liens to the same extent as if such moneys had been realized by a sale of such land and improvements in proceedings to enforce the lien.”

7. The said Act is further amended by adding immediately after section 14 thereof the following new sections:

“14a. Where the contract price or the sum agreed to be paid as set out in section 13 is not money, then the value of the consideration for the performance of the work shall be the determining factor and the expression ‘any sums of money which may have been duly paid’, where used in the said section, shall include the fair value of any part of the consideration which may have been performed.

“14b. Where the lien or liens become a charge on the percentage directed to be retained as set out in section 14 and the contract price is not payable in money, the person primarily liable shall be liable to pay the said percentage of the value in money. Where the owner or person primarily liable desires to avail himself of the provisions of subsection (5) of section 14 and pay the said percentage into court and the contract price is not payable in money, then a judge may, on application by the owner on such notice, if any, as the judge may direct, fix the amount in money which is to be paid into court in respect to the value of the said percentage.”

8. The said Act is further amended by adding immediately after section 26 thereof the following new section:

“26a. In case any lien is or has heretofore been registered by the Minister of Lands and Mines pursuant to the provisions of section 23 all the provisions of this Act relating to the expiry, discharge and vacating of the lien or as to the filing of a certificate of *lis pendens*, as the case may be, shall apply *mutatis mutandis* to the lien to the same extent and in the same manner as if the lien were duly registered under section 19 of this Act.”

9. The said Act is further amended as to section 35 thereof by striking out subsection (2) and substituting therefor the following:

“(2) The judge who hears the application may order that the land charged with the lien be sold and when by the judgment a sale is directed of the land charged with the lien the judge may direct the sale to take place at any time after judgment, allowing, however, a reasonable time for advertising the sale, and may make all necessary orders for the completion of the sale and vesting the property in the purchaser.”

10. The said Act is further amended as to section 35 thereof by striking out subsection (6).

11. The said Act is further amended by adding immediately after section 36 thereof the following new section:

“36a. Where the work or service performed or material furnished in respect of which the lien arose results in the creation of an improvement consisting of a structure, erection or building, then notwithstanding that such structure, erection or building may be affixed to or have become part of the land, and notwithstanding the provisions of section 11b, the court, if of the opinion that, having regard to the value of the improvement and the amount owing on the lien, it is proper so to do, may upon application of the lienholder in proceedings to enforce the lien or in any other proceedings affecting the lien, order such structure, erection or building removed and sold and the proceeds of such sale applied on the lien or liens which arose in respect to such improvement, and if such proceeds exceed the amount owing, the excess shall be applied in the same manner as the proceeds of the sale of the land and all improvements remaining thereon would be applied.”

12. The said Act is further amended by adding immediately after section 41 thereof the following new sections:

“42. In addition to the other provisions of this Act, where the improvement consists of an oil or gas well, the provisions of sections 43 to 47 inclusive shall also be applicable.

“43. The definition of ‘owner’ as set out in paragraph (g) of section 2 shall include, in addition to the persons therein

set out, every person having any estate, interest or right in the oil or gas in place or in the oil or gas when severed, notwithstanding that such person has not requested the contract work to be done, is only indirectly benefited thereby and has had no dealing or contractual relationship with the contractor or person claiming the lien :

“Provided, nevertheless, that where the oil or gas is held in fee simple, the holder of an interest in the first royalty in the oil or gas, up to twenty per cent thereof, shall not, by reason of this section, be deemed to be an owner.

“**44.** The lien provided by section 6 shall not only attach to the land, including the oil and gas therein, but also to the oil and gas when severed.

“**45.** All interests in the oil or gas under any lease, mortgage or agreement for sale relating to the oil or gas in excess of the said first royalty up to but not exceeding twenty per cent shall be subject to the lien in all respects and the provisions of sections 10 and 11 shall not be applicable thereto.

“**46.** It shall not be necessary to set out in the claim for lien set out in section 19 the name of the owner or alleged owner and the provisions in that regard contained in the forms in the Schedule shall not be applicable in the case of oil and gas wells.

“**47.** In appointing a receiver pursuant to section 36, the judge may, in addition to the powers therein conferred on such receiver, authorize him to take charge of the well and operate it and sell the production therefrom or, in the alternative to take the oil and gas when produced and saved and sell the same and receive and pay into court the proceeds of the oil and gas when sold.”

13. This Act shall come into force on the day upon which it is assented to.

REPRINTED BILL

No. 21.

THIRD SESSION
NINTH LEGISLATURE

7 GEORGE VI

1943

BILL

An Act to amend The Mechanics'
Lien Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. TANNER.

EDMONTON:
A. Shnitka, King's Printer
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