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c 200 Mechanics' Lien Act

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CHAPTER 200.

The Mechanics' Lien Act.

1. In this Act,—

(a) "Contractor" shall mean a person contracting with or employed directly by the owner or his agent for the doing of work or service or placing or furnishing materials for any of the purposes mentioned in this Act;

(b) "Material" or "materials" shall include every kind of movable property;

(c) "Owner" shall extend to any person, body corporate or politic, including a municipal corporation and a railway company having any estate or interest in the land upon which or in respect of which the work or service is done, or materials are placed or furnished, at whose request and

(i) upon whose credit, or

(ii) on whose behalf, or

(iii) with whose privity and consent, or

(iv) for whose direct benefit

work or service is performed or materials are placed or furnished and all persons claiming under him or them whose rights are acquired after the work or service in respect of which the lien is claimed is commenced or the materials furnished have been commenced to be furnished;

(d) "Registrar" shall include master of titles and local master of titles;

(e) "Registry office" shall include land titles office;

(f) "Subcontractor" shall mean a person not contracting with or employed directly by the owner or his agent for the purposes aforesaid, but contracting with or employed by a contractor, or under him by another subcontractor;
Sec. 5 (1).

LIENS OF MECHANICS.

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(g) "Wages" shall mean money earned by a mechanic or labourer for work done by time or as piece work. R.S.O. 1927, c. 173, s. 1.

2. Nothing in this Act shall extend to any public street or Exception of streets or highways. highway, or to any work or improvement done or caused to be done by a municipal corporation thereon. R.S.O. 1927, c. 173, s. 2.

3.—(1) Every agreement, verbal or written, express or implied, on the part of any workman, servant, labourer, mechanic or other person employed in any kind of manual labour intended to be dealt with in this Act, that this Act shall not apply, or that the remedies provided by it shall not be available for the benefit of such person, shall be null and void.

(2) This section shall not apply to a manager, officer or foreman, or to any other person whose wages are more than $10 a day. R.S.O. 1927, c. 173, s. 3.

4. No agreement shall deprive any person otherwise entitled to a lien under this Act who is not a party to the agreement, of the benefit of the lien, but it shall attach, notwithstanding such agreement. R.S.O. 1927, c. 173, s. 4.

5.—(1) Unless he signs an express agreement to the contrary and in that case subject to the provisions of section 3, any 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 or repairing of any erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well, excavation, fence, sidewalk, pavement, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, or the appurtenances to any of them for any owner, contractor, or subcontractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the estate or interest of the owner in the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestlework, vault, mine, well excavation, fence, sidewalk, paving, fountain, fishpond, drain, sewer, aqueduct, roadbed, way, fruit or ornamental trees, and appurtenances and the land occupied thereby or enjoyed therewith, or upon or in respect of which such work or service is performed, or upon which such materials are placed or furnished to be used, limited, however, in amount to the sum justly due to the person entitled to the lien and to the sum justly owing, except as herein provided, by the owner, and the placing or furnishing of such materials to be
used, upon the said lands or such other place in the immediate vicinity of the said land designated by the owner or his agent shall be good and sufficient delivery for the purpose of this Act, but delivery on the said designated land shall not make such land subject to a lien.

(2) The lien given by subsection 1 shall attach to the lands as therein set out where the materials delivered to be used are incorporated into the buildings, erections or structures on such land, notwithstanding such materials may not have been delivered in strict accordance with the provisions of subsection 1. R.S.O. 1927, c. 173, s. 5.

6. Where work is done or services are performed or materials are furnished to be used upon or in respect of the land of a married woman or in which she has any interest or an inchoate right of dower, with the privity and consent of her husband he shall be conclusively presumed to be acting as her agent as well as for himself for the purposes of this Act unless before doing such work or performing such services or furnishing such materials the person doing, performing or furnishing the same shall have had actual notice to the contrary. R.S.O. 1927, c. 173, s. 6.

7.—(1) Where the estate or interest upon which the lien attaches is leasehold the fee simple shall also be subject to the lien, provided the person doing the work or supplying the material gives notice in writing, by registered letter or personal service, referring to the section, to the owner or his agent of the work to be done or material to be furnished, unless the owner or his agent within ten days thereafter gives notice to such person that he will not be responsible therefor.

(2) No forfeiture or attempted forfeiture of the lease on the part of the landlord or cancellation of the lease except for non-payment of rent shall deprive any person otherwise entitled to a lien under this Act of the benefit of the lien provided that the person entitled to the lien may pay any rent accruing after he becomes so entitled and the amount so paid may be added to his claim. R.S.O. 1927, c. 173, s. 7 (1, 2).

(3) Where the land and premises upon or in respect of which any work or service is performed or materials are furnished to be used, is encumbered by a prior mortgage or other charge existing in fact before any lien arises, such mortgage or other charge shall have priority over all liens under this Act to the extent of the actual value of such land and premises at the time the first lien arose, such value to be
ascertained by the judge or officer having jurisdiction to try the action by proper evidence to be adduced before him.

(a) The time at which the first lien arose shall be deemed to be the time at which the first work or service is performed or first materials furnished, irrespective of whether a claim for lien in respect thereof is registered or enforced, and whether or not such lien is before the court.

(b) Any mortgage existing as a valid security notwithstanding that it is a prior mortgage within the meaning of this subsection, may also secure future advances, subject to the provisions of subsection 1 of section 13, 1937, c. 41, s. 2.

(4) Where there is an agreement for the purchase of land and the purchase money or a part thereof is unpaid and no conveyance has been made to the purchaser he shall for the purposes of this Act be deemed a mortgagor and the seller a mortgagee. R.S.O. 1927, c. 173, s. 7 (4).

8. Where any of the property upon which a lien attaches is wholly or partly destroyed by fire any money received by reason of any insurance thereon by an owner or prior mortgagee or chargee shall take the place of the property so destroyed and shall, after satisfying any prior mortgage or charge in the manner and to the extent set out in subsection 3 of section 7, be subject to the claims of all persons for liens to the same extent as if such money had been realized by a sale of such property in an action to enforce the lien. R.S.O. 1927, c. 173, s. 8.

9. Save as herein otherwise provided the lien shall not attach so as to make the owner liable for a greater sum than the sum payable by the owner to the contractor. R.S.O. 1927, c. 173, s. 9.

10. Save as herein otherwise provided where the lien is claimed by any person other than the contractor the amount which may be claimed in respect thereof shall be limited to the amount owing to the contractor or subcontractor or other person for whom the work or service has been done or the materials placed or furnished. R.S.O. 1927, c. 173, s. 10.

11.—(1) In all cases the person primarily liable upon any contract under or by virtue of which a lien may arise shall, as the work is done or materials are furnished under the contract, retain for a period of thirty days after the completion or abandonment of the work done or to be done...
under the contract twenty per centum of the value of the work, service and materials actually done, placed or furnished, as mentioned in section 5 irrespective of whether the contract or subcontract provides for partial payments or payment on completion of the work and such value shall be calculated on the basis of the contract price, or if there is no specific contract price, then on the basis of the actual value of the work, service or materials.

(2) Where the contract price or actual value exceeds $15,000 the amount to be retained shall be fifteen per centum instead of twenty per centum.

(3) The lien shall be a charge upon the amount directed to be retained by this section in favour of lienholders whose liens are derived under persons to whom such moneys so required to be retained are respectively payable.

(4) All payments up to eighty per centum as fixed by subsection 1 or up to eighty-five per centum as fixed by subsection 2 made in good faith by an owner to a contractor, or by a contractor to a subcontractor, or by one subcontractor to another subcontractor, before notice in writing of such lien given by the person claiming the lien to the owner, contractor or subcontractor as the case may be shall operate as a discharge pro tanto of the lien.

(5) Payment of the percentage required to be retained under this section may be validly made so as to discharge all liens or charges in respect thereof after the expiration of the period of thirty days mentioned in subsection 1 unless in the meantime proceedings have been commenced to enforce any lien or charge against such percentage as provided by sections 22 and 23, in which case the owner may pay the percentage into court in such proceedings and such payment shall constitute valid payment in discharge of the owner to the amount thereof. R.S.O. 1927, c. 173, s. 11.

12.—(1) If an owner, contractor or subcontractor makes a payment to any person entitled to a lien under section 5 for or on account of any debt, justly due to him for work or service done or for materials placed or furnished to be used as therein mentioned, for which he is not primarily liable, and within three days afterwards gives written notice of such payment to the person primarily liable, or his agent, such payment shall be deemed to be a payment on his contract generally to the contractor or subcontractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 11.
(2) Every subcontractor shall be entitled to enforce his lien notwithstanding the non-completion or abandonment of the contract by any contractor or subcontractor under whom he claims. R.S.O. 1927, c. 173, s. 12.

13.—(1) The lien shall have priority over all judgments, executions, assignments, attachments, garnishments, and receiving orders recovered, issued or made after such lien arises, and over all payments or advances made on account of any conveyance or mortgage after notice in writing of such lien to the person making such payments or after registration of a claim for such lien as hereinafter provided, and in the absence of such notice in writing or the registration of a claim for lien all such payments or advances shall have priority over any such lien. R.S.O. 1927, c. 173, s. 13 (1); 1932, c. 19, s. 3.

(2) Except where it is otherwise provided by this Act, no person entitled to a lien on any property or money shall be entitled to any priority or preference over another person of the same class entitled to a lien on such property or money, and each class of lienholders shall rank pari passu for their several amounts, and the proceeds of any sale shall be distributed among them pro rata according to their several classes and rights. R.S.O. 1927, c. 173, s. 13 (2).

(3) Any conveyance, mortgage or charge of or on land given to any person entitled to a lien thereon under this Act in payment of or as security for any such claim, whether given before or after such lien claim has arisen, shall, as against other parties entitled to liens under this Act, on any such land be deemed to be fraudulent and void. 1932, c. 19, s. 4.

PRIORITY OF WAGES IN CERTAIN CASES.

14.—(1) Every mechanic or labourer whose lien is for wages shall, to the extent of thirty days' wages, have priority over all other liens derived through the same contractor or subcontractor to the extent of and on the twenty per centum or fifteen per centum as the case may be, directed to be retained by section 11 to which the contractor or subcontractor through whom such lien is derived is entitled and all such mechanics and labourers shall rank thereon pari passu.

(2) Every wage-earner shall be entitled to enforce a lien in respect of any contract or subcontract not completely fulfilled and, notwithstanding anything to the contrary in this Act provided, may serve a notice of motion on the proper
parties returnable in four days after service thereof before the judge or officer having jurisdiction under this Act, that said applicant will on the return of the motion ask for judgment on his claim for lien, registered particulars of which shall accompany such notice of motion duly verified by affidavit.

(3) If the contract has not been completed when the lien is claimed by a wage-earner, the percentage shall be calculated on the value of the work done or materials furnished by the contractor or subcontractor by whom such wage-earner is employed having regard to the contract price, if any.

(4) Where the contractor or subcontractor makes default in completing his contract the percentage shall not as against a wage-earner claiming a lien, be applied by the owner or contractor to the completion of the contract or for any other purpose nor to the payment of damages for the non-completion of the contract by the contractor or subcontractor nor in payment or satisfaction of any claim against the contractor or subcontractor.

(5) Every device by an owner, contractor or subcontractor to defeat the priority given to a wage-earner for his wages and every payment made for the purpose of defeating or impairing a lien shall be null and void. R.S.O. 1927, c. 173, s. 14.

(NOTE: As to claims for wages against mines, see The Mining Act, Rev. Stat. c. 47. As to woodmen's wages see The Woodmen's Lien for Wages Act, Rev. Stat. c. 201.)

MATERIAL.

15.—(1) During the continuance of a lien no part of the material affected thereby shall be removed to the prejudice of the lien.

(2) Material actually delivered to be used for any of the purposes enumerated in section 5, shall be subject to a lien in favour of the person furnishing it until placed in the building, erection or work, and shall not be subject to execution or other process to enforce any debt other than for the purchase thereof due to the person furnishing the same.

(3) The judge or officer trying the action may direct the sale of any material or authorize its removal. R.S.O. 1927, c. 173, s. 15.
REGISTRATION OF LIEN.

(Note.—As to registration of liens against mining claims and mining lands, see Rev. Stat. c. 47. As to filing liens of woodmen in provisional judicial districts, see Rev. Stat. c. 201.)

16.—(1) A claim for a lien (Forms 1, 2 and 3) may be registered in the proper registry office and shall set out,—

(a) the name and residence of the person claiming the lien and of the owner or of the person whom the person claiming the lien, or his agent, believes to be the owner of the land, and of the person for whom the work or service was or is to be done, or materials furnished or placed, and the time within which the same was or was to be done or furnished or placed;

(b) a short description of the work or service done or to be done, or materials furnished or placed or to be placed or to be furnished or placed;

(c) the sum claimed as due or to become due;

(d) a description of the land sufficient for the purpose of registration and where the land is registered under The Land Titles Act, also a reference to the number of the parcel of the land and to the register in which such land is registered in the land titles office;

(e) the date of expiry of the period of credit when credit has been given.

(2) The claim shall be verified in duplicate by the affidavit (Form 4) of the person claiming the lien, or of his agent or assignee, having a personal knowledge of the matters required to be verified, and the affidavit of the agent or assignee shall state that he has such knowledge.

(3) When it is desired to register a claim for lien against a railway it shall be sufficient description of the land of the railway company to describe it as the land of the railway company and every such claim shall be registered in the general register in the office for the registry division within which such lien is claimed to have arisen. R.S.O. 1927, c. 173, s. 16.

17.—(1) A claim for lien may include claims against any number of properties, and any number of persons claiming liens upon the same property may unite therein, but
where more than one lien is included in one claim each lien shall be verified by affidavit as provided in section 16.

(2) The judge or officer shall have jurisdiction equitably to apportion against the respective properties the amounts included in any claim or claims for liens under subsection 1. R.S.O. 1927, c. 173, s. 17.

18.—(1) A substantial compliance with sections 16, 17 and 29 shall be sufficient and no lien shall be invalidated by reason of failure to comply with any of the requisites of these sections unless, in the opinion of the judge or officer who tries an action under this Act, the owner, contractor or subcontractor, mortgagee or other person, is prejudiced thereby, and then only to the extent to which he is thereby prejudiced.

(2) Nothing in this section shall dispense with registration of the claim for lien. R.S.O. 1927, c. 173, s. 18.

19.—(1) The registrar, upon payment of the proper fee shall register the claim, describing it as "Mechanic's Lien" against the land therein described in like manner as if it were a mortgage, and shall certify the registration upon the duplicate, but he shall not copy the claim or affidavit in any registry book, and the duplicates shall be filed in the office of the master or the clerk of the county or district court of the county or district in which the land is situate on or before the trial of the action.

(2) The fee for registration of a claim for lien shall be twenty-five cents, and if several persons join in one claim the registrar shall be entitled to a further fee of ten cents for each person after the first. R.S.O. 1927, c. 173, s. 19.

20. Where a claim is so registered the person entitled to a lien shall be deemed a purchaser pro tanto and within the provisions of The Registry Act and The Land Titles Act, but except as herein otherwise provided those Acts shall not apply to any lien arising under this Act. R.S.O. 1927, c. 173, s. 20.

21.—(1) A claim for lien by a contractor or subcontractor in cases not otherwise provided for, may be registered before or during the performance of the contract or of the subcontract or within thirty days after the completion or abandonment of the contract or of the subcontract as the case may be.

(2) A claim for lien for materials may be registered before or during the furnishing or placing thereof, or within thirty
days after the furnishing or placing of the last material so furnished or placed.

(3) A claim for lien for services may be registered at any time during the performance of the service or within thirty days after the completion of the service.

(4) A claim for lien for wages may be registered at any time during the performance of the work for which such wages are claimed, or within thirty days after the last work is done for which the lien is claimed.

(5) In the case of a contract which is under the supervision of an architect, engineer or other person upon whose certificates payments are to be made, the claim for lien by a contractor may be registered within the time mentioned in subsection 1, or within seven days after the architect, engineer or other person has given or has, upon application in writing to him by the contractor, refused or neglected for three days after such application to give a final certificate.

(6) Every lienholder who does not register a claim for lien and whose lien is preserved by an action commenced by another lienholder shall nevertheless before the day appointed for the trial of such action give written notice of his lien to the owner or his agent, the mortgagor or his agent and the lienholder who has commenced action, and deposit with the proper officer of the county or district concerned, particulars of his claim verified by affidavit. R.S.O. 1927, c. 173, s. 21.

EXPIRY AND DISCHARGE OF LIEN.

22.—(1) Every lien for which a claim is not registered shall absolutely cease to exist on the expiration of the time hereinbefore limited for the registration thereof, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized, under the provisions of this Act and a certificate thereof is registered in the registry office in which the claim for lien might have been registered. R.S.O. 1927, c. 173, s. 22.

(2) Where a certificate of action has been registered for two years or more in the registry office and no appointment has been taken out for the trial of such action, any interested party may apply ex parte to a judge or officer who has jurisdiction to try the action who may make an order vacating such certificate of action and discharging all liens depending thereon. 1932, c. 19, s. 5; 1933, c. 30, s. 2.
Every lien for which a claim has been registered shall absolutely cease to exist on the expiration of ninety days after the work or service has been completed or materials have been furnished or placed, or after the expiry of the period of credit, where such period is mentioned in the claim for lien registered, or in the cases provided for by subsection 5 of section 21, on the expiration of thirty days from the registration of the claim, unless in the meantime an action is commenced to realize the claim or in which the claim may be realized under the provisions of this Act, and a certificate is registered as provided by section 22. R.S.O. 1927, c. 173, s. 23.

The right of a lienholder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. R.S.O. 1927, c. 173, s. 24.

A lien may be discharged by a receipt signed by the claimant, or his agent duly authorized in writing, acknowledging payment, and verified by affidavit and registered.

The receipt shall be numbered and entered like other instruments, but shall not be copied in any registry book, and there shall be entered against the entry of the lien to which the discharge relates the word "discharged" and the registration number of such discharge.

The fee shall be the same as for registering a claim. R.S.O. 1927, c. 173, s. 25 (1-3).

Upon application the judge or officer having jurisdiction to try an action to realize a lien, may allow security for or payment into court of the amount of the claim and such costs as the judge or officer may fix, and may thereupon order that the registration of the lien be vacated or may vacate the registration upon any other proper ground and a certificate of the order may be registered. R.S.O. 1927, c. 173, s. 25 (4), part.

(a) Any money so paid into court, or any bond or other security for securing the like amount and satisfactory to the judge or officer having jurisdiction, shall take the place of the property discharged and be subject to the claims of every person who has at the time of the application registered his claim for lien or given notice of such claim under subsection 4 of section 11 or section 13 to the same extent as if such money, bond or other security was realized by a sale of such property in an action to enforce the lien, provided that such amount as the judge or officer finds to be owing to the person
whose lien has been so vacated, shall be a first charge upon such money, bond or other security. 1937, c. 41, s. 3.

(5) Where the certificate required by section 22 or section 23 has not been registered within the prescribed time, and an application is made to vacate the registration of a claim for lien after the time for registration of such certificate, the order vacating the lien may be made ex parte upon production of the certificate of the proper registrar certifying the facts entitling the applicant to such order. R.S.O. 1927, c. 173, s. 25 (5).

**EFFECT OF TAKING SECURITY OR EXTENDING TIME.**

26.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgment of the claim, or the giving of time for the payment thereof, or the taking of any proceedings for the recovery, or the recovery of a personal judgment for the claim, shall not merge, waive, pay, satisfy, prejudice or destroy the lien unless the claimant agrees in writing that it shall have that effect.

(2) Where any such promissory note or bill of exchange has been negotiated the lienholder shall not thereby lose his lien, if, at the time of bringing his action to enforce it, or where an action is brought by another lienholder, he is, at the time of proving his claim in such action, the holder of such promissory note or bill of exchange.

(3) Nothing in subsection 2 shall extend the time limited by this Act for bringing the action to enforce the lien.

(4) A person who has extended the time for payment of a claim for which he has a lien, to obtain the benefit of this section, shall commence an action to enforce such lien within the time prescribed by this Act, and shall register a certificate as required by sections 22 and 23, but no further proceedings shall be taken in the action until the expiration of such extension of time. R.S.O. 1927, c. 173, s. 26.

27. Where the period of credit in respect of a claim has not expired, or where there has been an extension of time, for payment of the claim, the lienholder may nevertheless, if an action is commenced by any other person to enforce a lien against the same property, prove and obtain payment of his claim in such action as if the period of credit or the extended time had expired. R.S.O. 1927, c. 173, s. 27.
Lienholder's Rights to Information.

28.—(1) Any lienholder may, in writing, at any time demand of the owner or his agent the production, for inspection, of the contract or agreement with the contractor for or in respect of which the work, service or material is or is to be performed or furnished or placed, if such contract or agreement is in writing or if not in writing, the terms of such contract or agreement and the state of the accounts between the owner and the contractor, and if such owner or his agent does not at the time of such demand, or within a reasonable time thereafter, produce the said contract or agreement if in writing or, if not in writing, does not inform the person making such demand of the terms of such contract or agreement and the amount due and unpaid upon such contract or agreement or if he knowingly falsely states the terms of the contract or agreement or the amount due or unpaid thereon and if the person claiming the lien sustains loss by reason of such refusal or neglect or false statement, the owner shall be liable to him for the amount of such loss in an action therefor or in any action for the enforcement of a lien under this Act and subsection 4 of section 35 shall apply.

(2) Any lienholder may in writing at any time demand of a mortgagee or unpaid vendor or his agent the terms of any mortgage on the land or of any agreement for the purchase of the said lands in respect of which the work, service or material is or is to be performed, furnished or placed and a statement showing the amount advanced on the said mortgage or the amount owing on the said agreement as the case may be, and if such mortgagee or vendor or his agent fails to inform said lienholder at the time of such demand or within a reasonable time thereafter of the terms of the said mortgage or agreement and the amount advanced or owing thereon or if he knowingly falsely states the terms of the said mortgage or agreement and the amount owing thereon and such lienholder sustains loss by such refusal or neglect or misstatement, the mortgagee or vendor shall be liable to him for the amount of such loss in an action therefor or in any action for the enforcement of a lien under this Act, and subsection 4 of section 35 shall apply.

(3) The judge or officer having jurisdiction to try an action to realize a lien may, on a summary application at any time before or after any action is commenced for the enforcement of such lien, make an order requiring the owner or his agent or the mortgagee or his agent or unpaid vendor or his agent as the case may be to produce and allow any lienholder to inspect any such contract or agreement or mortgage or agreement for sale upon such terms as to costs as he may deem just. R.S.O. 1927, c. 173, s. 28.
ACTION TO REALIZE CLAIM.

29.—(1) A lien shall be enforced in the Supreme Court in an action to be commenced by filing in the proper office a statement of claim, verified by affidavit (Form 5), which affidavit may be made by any of the persons named in subsection 2 of section 16.

(2) The statement of claim shall be served within one month after it is filed, but a judge or officer having jurisdiction to try the action may extend the time for service thereof, and the time for delivering the statement of defence shall be the same as for entering an appearance in an action in the Supreme Court.

(3) It shall not be necessary to make any lienholders parties defendant to the action, but all lienholders served with the notice of trial shall for all purposes be deemed parties to the action.

(4) After the commencement of any action under this Act any lienholder or other person interested may move before the judge or officer having jurisdiction, to speed the trial of such action. R.S.O. 1927, c. 173, s. 29.

30. Any number of lienholders claiming liens on the same land may join in an action and an action brought by a lienholder shall be deemed to be brought on behalf of himself and all other lienholders. R.S.O. 1927, c. 173, s. 30.

31.—(1) The action shall be tried in the County of York before the Master, or the Assistant Master, and outside the County of York before a judge of the county or district court of the county or district in which the land is situate.

(2) Notwithstanding the provisions of subsection 1 upon the application of any party to an action, made according to the practice of the Supreme Court, and upon notice the Court may direct that the action be tried before a judge of the Supreme Court at the regular sittings of the said Court for the trial of actions in the county or district in which the land is situate. R.S.O. 1927, c. 173, s. 31.

32.—(1) The Master, Assistant Master and the county or district judge, in addition to their ordinary powers shall have all the jurisdiction, powers and authority of the Supreme Court to try and completely dispose of the action and questions arising therein, including power to set aside a fraudulent conveyance or fraudulent mortgage, or a mortgage which
amends to a preference within the meaning of the Bankruptcy Act, (Canada), or of The Assignments and Preferences Act, and all questions of set-off and counterclaim arising out of the work or service done or materials furnished to the property in question. R.S.O. 1927, c. 173, s. 32 (1); 1932, c. 19, s. 7; 1937, c. 41, s. 4 (1).

(2) Where an owner enters into an entire contract for the supply of material to be used in several buildings the person supplying such material may ask to have his lien follow the form of the contract and that it be for an entire sum upon all the buildings, but in case the owner has sold one or more of such buildings, the judge or officer shall have jurisdiction equitably to apportion against the respective buildings the amount included in the claim for lien under the entire contract. R.S.O. 1927, c. 173, s. 32 (2).

(3) At any time after the delivery of the statement of claim, as provided by this Act, the judge or other officer having jurisdiction to try the action may, on the application of any lien claimant, mortgagee or other party interested, appoint a receiver of the rents and profits of the property against which the claim of lien is registered, upon such terms and upon the giving of such security or without security as to the said judge or other officer may seem just. 1932, c. 19, s. 8, part.

(4) At any time after the delivery of a statement of claim as provided by this Act, any lien claimant, mortgagee or other party interested, may make an application by way of originating notice to a judge of the Supreme Court in chambers who shall have power to appoint, upon such terms and upon the giving of such security or without security as the judge deems best, a trustee with power to manage and sell the property upon which the lien is filed, such management and sale to be under the supervision and direction of the Court, and shall be approved by the Court, and with power, when so directed by the Court, to complete the property and in the event that mortgage moneys are advanced to the trustee as the result of such power, such moneys shall take priority over all liens existing as of the date of the appointment. 1932, c. 19, s. 8, part; 1937, c. 41, s. 4 (2).

(5) The judge in chambers may in his discretion, refer the application so made to the judge or officer having jurisdiction to try the action, who may hear viva voce or affidavit evidence upon the application, and who shall have the same powers as are conferred upon the judge under subsection 4. 1932, c. 19, s. 8, part.
(6) Any property directed to be sold under the provisions of this section, may be offered for sale subject to any mortgage or other charge or encumbrance if the judge or other officer having jurisdiction so directs, but only in cases where there is no dispute whatever as to the priority of any such mortgage. 1932, c. 19, s. 8, part.

(7) The proceeds of any sale made by a trustee under the provisions of subsection 4 or 5, shall be paid into Court and be subject to the claims of all lienholders, mortgagees or other parties interested in the property so sold as their respective rights may be determined and in so far as applicable the provisions of section 36 shall apply. 1932, c. 19, s. 8, part; 1937, c. 41, s. 4 (3).

(8) The judge of the Supreme Court or the judge or officer having jurisdiction as aforesaid as the case may be, shall make all necessary orders for the completion of the sale for the vesting of the property in the purchaser and for possession. 1932, c. 19, s. 8, part; 1937, c. 41, s. 4 (4).

(9) Any such vesting order so made of property so sold by a trustee appointed as aforesaid shall vest the title of the property free from all lienholders' claims, encumbrances and interests of any kind including dower, except in cases where sale is made subject to any mortgage, charge, encumbrance or interest as hereinbefore provided, but nothing in this section or in this Act shall be deemed to extinguish the right to dower, if any, of any married woman or the right to have the value of the same ascertained and deducted from the proceeds of the same so paid into Court. 1932, c. 19, s. 8, part.

33. Where more actions than one are brought to realize liens in respect of the same land a judge or officer having jurisdiction to try such actions may, on the application of any party to any one of the actions, or on the application of any other person interested, consolidate all such actions into one action, and may give the conduct of the consolidated action to any plaintiff as he may see fit. R.S.O. 1927, c. 173, s. 33.

34. Any lienholder entitled to the benefit of an action may apply for the carriage of the proceedings, and the judge or officer may make an order giving such lienholder the carriage of the proceedings. R.S.O. 1927, c. 173, s. 34.

35.—(1) After the delivery of the statement of defence where the plaintiff's claim is disputed, or after the time for delivery of defence in all other cases and except where the trial is to take place before a judge of the Supreme Court
under subsection 2 of section 31 either party may apply
ex parte to a judge or officer who has jurisdiction to try the
action to fix a day for the trial thereof, and the judge or
officer shall appoint the time and place of trial.

(2) The party obtaining an appointment for the trial
shall, at least ten clear days before the day appointed, serve
notice of trial (Form 6) upon the solicitors for the defendants
who appear by solicitors and upon defendants who appear
in person, and on all lienholders who have registered their
claims as required by this Act or of whose claims he has
notice, and on all other persons having any charge, incum-
brance or claim on the land subsequent in priority to the
lien, who are not parties, and such service shall be personal
unless otherwise directed by the judge or officer who may
direct in what manner the notice of trial may be served.

(3) Where any person interested in the land has been
served
with statement of claim and makes default in delivering state-
ment of defence, he shall nevertheless be served with notice of
trial and shall be entitled to defend on such terms as to costs
and otherwise as the judge or officer trying the action may
deeem just.

(4) The judge or officer shall try the action and all questions
which arise therein or which are necessary to be tried in order
to completely dispose of the action and to adjust the rights
and liabilities of the persons appearing before him or upon
whom the notice of trial has been served, and shall take all
accounts, make all inquiries, give all directions and do all
other things necessary to finally dispose of the action and of
all matters, questions and accounts arising therein or at the
trial, and to adjust the rights and liabilities of and give all
necessary relief to all parties to the action and all persons who
have been served with the notice of trial and shall embody
the results in a judgment (Form 7), which judgment may
direct payment forthwith by the person or persons primarily
liable to pay the amount of the claims and costs as ascertained
by the judgment and execution may be issued therefor forth-
with.

(5) The form of the judgment may be varied by the judge
or officer in order to meet the circumstances of the case so
as to afford to any party to the proceedings any right or
remedy in the judgment to which he may be entitled.

(6) The judge or officer may order that the estate or interest
charged with the lien may be sold and may direct the sale
to take place at any time after judgment, allowing, however,
a reasonable time for advertising such sale.
(7) A lienholder who has not proved his claim at the trial, on application to the judge or officer before whom the action was tried, may be let in to prove his claim on such terms as to costs and otherwise as may be deemed just at any time before the amount realized in the action for the satisfaction of liens has been distributed, and where such a claim is allowed the judgment shall be amended so as to include such claim.

(8) Every lienholder for an amount not exceeding $100 may be represented by an agent who is not a solicitor. R.S.O. 1927, c. 173, s. 35.

(9) An action may be tried by any officer having jurisdiction to try actions, notwithstanding that the time and place for the trial thereof were appointed and fixed by another officer having jurisdiction. 1933, c. 30, s. 3.

36.—(1) Where a sale is had, the moneys arising therefrom shall be paid into Court to the credit of the action and the judge or officer shall make a report on the sale and therein direct to whom the moneys in Court shall be paid and may add to the claim of the person conducting the action his fees and actual disbursements incurred in connection with the sale, and where sufficient to satisfy the judgment and costs is not realized from the sale he shall certify the amount of the deficiency and the names of the persons who are entitled to recover the same, showing the amount which each is entitled to recover and the persons adjudged to pay the same, giving credit for payments made, if any, under subsection 4 of section 35, and the persons so entitled may enforce payment of the amounts so found to be due by execution or otherwise.

(2) The judge or officer may make all necessary orders for the completion of the sale and for vesting the property in the purchaser.

(3) Where a claimant fails to establish a valid lien he may nevertheless recover a personal judgment against any party to the action for such sum as may appear to be due to him and which he might recover in an action against such party. R.S.O. 1927, c. 173, s. 36.

37. Where property subject to a lien is sold in an action to enforce a lien, every lienholder shall be entitled to share in the proceeds of the sale in respect of the amount then owing to him, although the same or part thereof was not payable at the time of the commencement of the action or is not then presently payable. R.S.O. 1927, c. 173, s. 37.
PAYMENTS OUT OF COURT.

38.—(1) Where money has been paid into Court and the time for the payment has arrived, the judge or officer shall forward a certified copy of his judgment and of the report on sale, if any, to the accountant of the Supreme Court, whereupon the cheques shall be delivered by the accountant to the persons entitled, or their solicitors, in accordance with the usual practice of the accountant's office.

(2) No fees or stamps shall be payable on any cheques or on proceedings to pay money into Court or to obtain money out of Court, in respect of a claim for lien, but sufficient postage stamps to prepay a return registered letter shall be enclosed with every requisition for cheques. R.S.O. 1927, c. 173, s. 38.

39.—(1) If in the course of proceedings to enforce a lien a question of law arises, the judge or officer trying the case may, at the request of any party, state the question in the form of a stated case for the opinion of the Court and the stated case shall thereupon be set down to be heard before the Court of Appeal and notice of hearing shall be served by the party setting down upon all parties concerned.

(2) The stated case shall set forth the facts material for the determination of the question raised and all papers necessary for the hearing of the appeal shall be transmitted to the registrar of the Court of Appeal. R.S.O. 1927, c. 173, s. 39.

NEW TRIAL AND APPEAL.

40.—(1) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is not more than $100, the judgment shall be final and without appeal, but the judge or officer who tried the action may, upon application within fourteen days after judgment is pronounced, grant a new trial.

(2) In all other cases an appeal shall lie and may be had in like manner and to the same extent as from the decision of a judge trying an action in the Supreme Court without a jury, and the costs of the appeal shall not be governed by section 42 or section 43, but subject to any order of the Court shall be upon the scale of costs allowed in a division court appeal when the amount involved is not more than $200, and upon the scale allowed in county court appeals when the amount involved is over $200 and not more than $500, and upon the Supreme Court scale when the amount involved is over $500. R.S.O. 1927, c. 173, s. 40.
41. No fees in stamps or money shall be payable to any judge or officer in any action brought to realize a lien under this Act, nor on any filing, order, record or judgment or other proceeding in such action excepting that every person other than a wage-earner shall on filing his statement of claim where he is plaintiff, or on filing his claim where he is not a plaintiff, pay in stamps $1 on every $100 or fraction of $100 of the amount of his claim up to $1,000, and $1 on every $1,000 or fraction of $1,000 of the amount of his claim over $1,000. R.S.O. 1927, c. 173, s. 41.

42. The costs of the action, exclusive of actual disbursements awarded to the plaintiffs and successful lienholders, shall not exceed in the aggregate twenty-five per centum of the total amount found to have been actually due on the liens at the time of the registration thereof, and shall be apportioned and borne in such proportion as the judge or officer who tries the action may direct, but in making such apportionment he shall have regard to the actual services rendered by or on behalf of the parties respectively. R.S.O. 1927, c. 173, s. 42.

43. Where costs are awarded against the plaintiff or other persons claiming liens they shall not exceed twenty-five per centum of the claim of the plaintiff and the other claimants, besides actual disbursements, and shall be apportioned and borne as the judge or officer may direct. R.S.O. 1927, c. 173, s. 43.

44. Where the least expensive course is not taken by a plaintiff, the costs allowed to him shall in no case exceed what would have been incurred if the least expensive course had been taken. R.S.O. 1927, c. 173, s. 44.

45. Where a lien is discharged or vacated under section 25, or where judgment is given in favour of or against a claim for a lien, in addition to the costs of the action, the judge or officer may allow a reasonable amount for the costs of drawing and registering the claim for lien or of vacating the registration thereof, but this shall not apply where the claimant fails to establish a valid lien. R.S.O. 1927, c. 173, s. 45.

46. Except as otherwise herein provided, all costs of and incidental to all applications and orders shall be in the discretion of the judge or officer. R.S.O. 1927, c. 173, s. 46.
2232 Chap. 200. LIENS OF MECHANICS. Sec. 47 (1).

RULES OF PROCEDURE.

47.—(1) The object of this Act being to enforce liens at the least expense, the procedure shall be as far as possible of a summary character, having regard to the amount and nature of the liens in question.

(2) No interlocutory proceedings shall be permitted except such as are provided by this Act, without the consent of the judge or officer having jurisdiction, and then only upon proper proof that such proceedings are necessary. R.S.O. 1927, c. 173, s. 47.

(3) The judge or officer trying may obtain the assistance of merchants, accountants, actuaries, building contractors, architects, engineers or other scientific persons in such way as he deems fit, the better to enable him to determine any matter of fact in question, and may fix the remuneration of such persons and direct payment thereof by any of the parties. 1937, c. 41, s. 5.

LIENS ON CHATTELS.

48.—(1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration or improvement of its properties, or for the purpose of imparting an additional value to it so as thereby to be entitled to a lien upon such chattel or thing for the amount or value of the money or skill and materials bestowed shall, while such lien exists but not afterwards, in case the amount to which he is entitled remains unpaid for three months after the same ought to have been paid, have the right in addition to any other remedy to which he may be entitled to sell by auction the chattel or thing, on giving one week's notice by advertisement in a newspaper published in the municipality in which the work was done, or in case there is no newspaper published in such municipality then in the newspaper published nearest thereto, setting forth the name of the person indebted, the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the auctioneer, and leaving a like notice in writing at the last known place of residence if any, of the owner, if he is a resident of such municipality.

(2) Such mechanic or other person shall apply the proceeds of the sale in payment of the amount due to him and the costs of advertising and sale and shall, upon application pay over any surplus to the person entitled thereto. R.S.O. 1927, c. 173, s. 48.
SCHEDULE A.

FORM 1.

(Sections 16-21.)

CLAIM FOR LIEN.

A.B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under The Mechanics' Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect of the following work (or service or materials) that is to say (here give a short description of the nature of the work done or to be done, or materials furnished or to be furnished, and for which the lien is claimed) which work (or service) was (or is to be) done (or materials were or are to be furnished) for (here state the name and residence of the person upon whose request the work is done or to be done, or the materials furnished or to be furnished) on or before the day of , 19 .

The amount claimed as due (or to become due) is $.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Where credit has been given, insert: The work was done (or materials were furnished) on credit, and the period of credit agreed to expired (or will expire) on the day of , 19 .

Dated at this day of , 19 .

(Signature of claimant.)

R.S.O. 1927, c. 173, Form 1.

FORM 2.

(Sections 16-21.)

CLAIM FOR LIEN FOR WAGES.

A.B. (name of claimant) of (here state residence of claimant), (if claimant is a personal representative or assignee set out the facts) under The Mechanics' Lien Act claims a lien upon the estate of (here state the name and residence of owner of the land upon which the lien is claimed), in the undermentioned land in respect of work performed (or to be performed) thereon while in the employment of (here state the name and residence of the person upon whose request the work was or is to be performed) on or before the day of , 19 .

The amount claimed as due (or to become due) is $.

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of , 19 .

(Signature of claimant.)

R.S.O. 1927, c. 173, Form 2.
FORM 3.
(Sections 16-21.)

CLAIM FOR LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons claim a lien under The Mechanics' Lien Act upon the estate of (here state the name and residence of the owner of land upon which the lien is claimed) in the undermentioned land in respect of wages for labour performed (or to be performed) thereon while in the employment of (here state name and residence or names and residences of employers of the several persons claiming the lien).

A.B. of (residence) $ for wages.
C.D. of " $ " "
E.F. of " $ " "

The following is the description of the land to be charged (here set out a concise description of the land to be charged sufficient for the purpose of registration).

Dated at this day of , 19 .

(Signatures of several claimants).

R.S.O. 1927, c. 173, Form 3.

FORM 4.
(Sections 16-21.)

AFFIDAVIT VERIFYING CLAIM.

I, A.B., named in the above (or annexed) claim, make oath that the said claim is true.

Or, We, A.B., and C.D., named in the above (or annexed) claim, make oath and each for himself makes oath that the said claim, so far as relates to him, is true.

(Where affidavit is made by agent or assignee a clause must be added to the following effect:— I have full knowledge of the facts set forth in the above (or annexed) claim.

Sworn before me at , in the County of , this day of , 19 .

Or, The said A.B. and C.D. were severally sworn before me at , in the County of this day of , 19 .

Or, The said A.B. was sworn before me at this day of , in the County of , 19 .

R.S.O. 1927, c. 173, Form 4.
FORM 5.
(Section 29.)

AFFIDAVIT VERIFYING CLAIM ON COMMENCING AN ACTION.

(Style of Court and Cause).

I, , make oath and say, that I have read (or heard read) the foregoing statement of claim, and 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 or goods or merchandise to which (naming the debtor) is entitled to credit as against me.

Sworn before me, etc.

R.S.O. 1927, c. 173, Form 5.

FORM 6.
(Section 35.)

NOTICE OF TRIAL.

(Style of Court and Cause.)

Take notice that this action will be tried at the in the , in the County (or District) of by the day of will proceed to try the action and all questions as provided by subsection 4 of section 35 of The Mechanics' Lien Act.

And further take notice that if you do not appear at the trial and prove your claim, if any (or your defence, if any), to the action, the proceedings will be taken in your absence and you may be deprived of all benefit of the proceedings and your rights disposed of in your absence.

This is a Mechanics' Lien action brought by the above named plaintiffs against the above named defendants to enforce a Mechanics' Lien against the following lands:—(set out description of lands).

This notice is served by, etc.

Dated , 19

To

R.S.O. 1927, c. 173, Form 6.
FORM 7.

(Section 35.)

JUDGMENT.

In the Supreme Court of Ontario,

Monday, the day of , 19

Name of Judge or Officer: William Spencer, Plaintiff,

and Thomas Burns, Defendant.

This action coming on for trial before at

upon opening of the matter and it appearing that the following persons have been duly served with notice of trial herein (set out names of all persons served with notice of trial) and all such persons (or as the case may be) appearing at the trial (or and the following persons not having appeared set out names of non-appearing persons) and upon hearing the
evidence adduced and what was alleged by counsel for the plaintiff and
for C.D. and E.F. and the defendant (or and by A.B. appearing in person).

1. This Court doth declare that the plaintiff and the several persons
mentioned in the first Schedule hereto are respectively entitled to a lien
under The Mechanics' Lien Act upon the land described in the second
Schedule hereto for the amounts set opposite their respective names in
the 2nd, 3rd and 4th columns of the said first Schedule, and the persons
primarily liable for the said claims respectively are set forth in the 5th
column of the said Schedule.

2. (And this Court doth further declare that the several persons
mentioned in Schedule 3 hereto are also entitled to some lien, charge or incum-
brace upon the said land for the amounts set opposite their respective names in
the 4th column of the said Schedule 3, according to the facts).

3. And this Court doth further order and adjudge that upon the de-
defendant (A.B., the owner) paying into Court to the credit of this action the sum of
(gross amount of liens in
Schedules 1 and 3 for which owner is liable) on or before the
day of next, that the said liens in the said first Schedule
mentioned be and the same are hereby discharged, (and the several persons
in the said third Schedule are to release and discharge their said claims
and assign and convey the said premises to the defendant (owner) and
deliver up all documents on oath to the said defendant (owner) or to
whom he may appoint) and the said money so paid into Court is to be
paid out in payment of the claims of the said lienholders (or and incum-
bances).

4. In case the said defendant (owner) shall make default in payment
of the said money into Court this Court doth order and adjudge that the
said land be sold with the approbation of the Master of this Court at
and that the purchase money be paid into Court to
the credit of this action.

5. And this Court doth order and adjudge that the said purchase money
be applied in or towards payment of the several claims in the said first
(and third) Schedule(s) mentioned as the said Master shall direct, with
subsequent interest and subsequent costs to be computed and taxed by
the said Master.

6. And this Court doth further order and adjudge that in case the said
purchase money shall be insufficient to pay in full the claims of the several
persons mentioned in the said first Schedule, the persons primarily liable
for such claim as shown in the first Schedule do pay to the persons to
whom they are respectively primarily liable the amount remaining due
to such persons forthwith after the same shall have been ascertained by
the said Master.

7. (And this Court doth declare that have not
proved any lien under The Mechanics' Lien Act and that they are not
entitled to any such lien, and this Court doth order and adjudge that the
claims of liens registered by them against the land mentioned in the
second Schedule be and the same are hereby discharged, according to the
fact).

R.S.O. 1927, c. 173, Form 7; 1937, c. 41, s. 6
SCHEDULE 1.

<table>
<thead>
<tr>
<th>Names of lien-holders entitled to mechanics' liens</th>
<th>Amount of debt and interest (if any)</th>
<th>Costs</th>
<th>Total</th>
<th>Names of primary debtors</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Signature of officer.)

R.S.O. 1927, c. 173, Schedule 1.

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SCHEDULE 2.

The lands in question in this matter are

(Set out a description sufficient for registration purposes).

(Signature of officer).

R.S.O. 1927, c. 173, Schedule 2.

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SCHEDULE 3.

<table>
<thead>
<tr>
<th>Names of persons entitled to incumbrances other than mechanics' liens</th>
<th>Amount of debt and interest (if any)</th>
<th>Costs</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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</tr>
</tbody>
</table>

(Signature of officer).

R.S.O. 1927, c. 173, Schedule 3.