1914

C 140 Mechanics' and Wage Earners' Liens Act

Ontario
SECTION XI.

LABOUR AND WAGES.

CHAPTER 140.

An Act respecting Liens of Mechanics, Wage-Earners and Others.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as The Mechanics and Wage-Earners Lien Act. 10 Edw. VII, c. 69, s. 1.

2. 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 moveable 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 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
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... 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) "Sub-contractor" 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 sub-contractor;

(g) "Wages" shall mean money earned by a mechanic or labourer for work done, whether by the day or other time or as piece work. 10 Edw. VII. c. 69, s. 2.

Exception of streets or highways.

3. Nothing in this Act shall extend to any public street or highway, or to any work or improvement done or caused to be done by a municipal corporation thereon. 10 Edw. VII. c. 69, s. 3.

Contracts waiving application of Act to be void.

4.—(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 $5 a day. 10 Edw. VII. c. 69, s. 4.

Exception as to certain employees.

5. 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. 10 Edw. VII. c. 69, s. 5.

Effect upon third party of agreement waiving lien.

6. Unless he signs an express agreement to the contrary, and in that case subject to the provisions of section 4, 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 sub-contractor, shall by virtue thereof have a lien for the price of such work, service or materials upon the erection, building, railway, land, wharf, pier, bulkhead, bridge, trestle-
work, 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. 10 Edw. VII. c. 69, s. 6.

7. Where work or service is done or materials are furnished upon or in respect of the land of a married woman with the privity and consent of her husband he shall be conclusively presumed to be acting as well for himself so as to bind his own interest, and also as her agent for the purposes of this Act, unless before doing such work or service or furnishing such materials the person doing or furnishing the same shall have had actual notice to the contrary. 10 Edw. VII. c. 69, s. 7.

8.—(1) The lien shall attach upon the estate or interest of the owner in the property mentioned in section 6.

(2) Where the estate or interest upon which the lien attaches is leasehold the fee simple may also, with the consent of the owner thereof, be subject to the lien, provided that such consent is testified by the signature of the owner upon the claim of lien at the time of the registering thereof, verified by affidavit.

(3) Where the land upon or in respect of which any work or service is performed, or materials are placed or furnished to be used, is incumbered by a prior mortgage or other charge, and the selling value of the land is increased by the work or service, or by the furnishing or placing of the materials, the lien shall attach upon such increased value in priority to the mortgage or other charge. 10 Edw. VII. c. 69, s. 8.

9. 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 be subject to the claims of all persons for liens to the same extent as if such money was realized by a sale of such property in an action to enforce the lien. 10 Edw. VII. c. 69, s. 9.

10. 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. 10 Edw. VII. c. 69, s. 10.
11. 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 sub-contractor or other person for whom the work or service has been done or the materials placed or furnished. 10 Edw. VII. c. 69, s. 11.

12.—(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, deduct from any payments to be made by him in respect of the contract, and retain for a period of thirty days after the completion or abandonment of the contract twenty per cent. of the value of the work, service and materials actually done, placed or furnished as mentioned in section 6, 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 cent. instead of twenty per cent.

(3) The lien shall be a charge upon the amount directed to be retained by this section in favour of sub-contractors 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 cent., or eighty-five per cent. where the contract price or actual value exceeds $15,000, of such price or value made in good faith by an owner to a contractor, or by a contractor to a sub-contractor, or by one sub-contractor to another sub-contractor, before notice in writing of such lien given by the person claiming the lien to him, shall operate as a discharge pro tanto of the lien.

(5) Payment of the percentage required to be retained under subsections 1 and 2 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 23 and 24. 10 Edw. VII. c. 69, s. 12.

13. If an owner, contractor or sub-contractor makes a payment to any person entitled to a lien under section 6 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, by letter or otherwise, 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 sub-contractor primarily liable but not so as to affect the percentage to be retained by the owner as provided by section 12. 10 Edw. VII. c. 69, s. 13.

14.—(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.

(2) Where there is an agreement for the purchase of land, and the purchase money or 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.

(3) 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 lien holders 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. 10 Edw. VII. c. 69, s. 14.

15.—(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 sub-contractor to the extent of and on the twenty per cent. or fifteen per cent., as the case may be, directed to be retained by section 12, to which the contractor or sub-contractor 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 a contract not completely fulfilled.

(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 sub-contractor by whom such wage-earner is employed, having regard to the contract price, if any.

(4) Where the contractor or sub-contractor 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 sub-contractor, nor in payment or satisfaction of any claim against the contractor or sub-contractor.
(5) Every device by an owner, contractor or sub-contractor 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. 10 Edw. VII. c. 69, s. 15.

**MATERIAL.**

16.—(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 brought upon any land to be used in connection with such land for any of the purposes enumerated in section 6, 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 by the person furnishing the same. 10 Edw. VII. c. 69, s. 16; 1 Geo. V. c. 17, s. 37.

**REGISTRATION OF LIEN.**

[As to registration of liens against mining claims and mining lands, see R.S.O. c. 32, s. 182.]

17.—(1) A claim for a lien, Forms 1, 2 and 3, may be registered in the registry office of the registry division, or where the land is registered under The Land Titles Act in the land titles office of the locality in which the land is situate, 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 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;
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(e) the date of expiry of the period of credit when credit has been given.

(2) The claim shall be verified 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 a 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 registry in the registry office for the registry division within which such lien is claimed to have arisen. 10 Edw. VII. c. 69, s. 17.

18. 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 17. 10 Edw. VII. c. 69, s. 18.

19.—(1) A substantial compliance with sections 17 and 18 shall be sufficient, and no lien shall be invalidated by reason of failure to comply with any of the requisites of those sections unless, in the opinion of the court, judge or officer who tries an action under this Act, the owner, contractor or sub-contractor, 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. 10 Edw. VII. c. 69, s. 19.

20.—(1) The registrar, upon payment of the proper fee, shall register the claim, describing it as “Mechanics’ Lien,” against the land therein described in like manner as if it were a mortgage, but he shall not copy the claim or affidavit in any registry book.

(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. 10 Edw. VII. c. 69, s. 20.

21. Where a claim is so registered the person entitled to the 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. 10 Edw. VII. c. 69, s. 21.
22.—(1) A claim for lien by a contractor or sub-contractor, in cases not otherwise provided for, may be registered before or during the performance of the contract, or within thirty days after the completion or abandonment thereof.

(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 certificate 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 to him by the contractor, refused to give a final certificate. 10 Edw. VII. c. 69, s. 22.

EXPIRY AND DISCHARGE OF LIEN.

23. 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. 10 Edw. VII. c. 69, s. 23.

24.—(1) 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 22, 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 the next preceding section.

(2) Where the period of credit mentioned in the claim for lien registered has not expired it shall nevertheless cease to have any effect on the expiration of six months from the
registration or any re-registration thereof if the claim is not again registered within that period, unless in the meantime an action is commenced and a certificate thereof has been registered as provided by subsection 1. 10 Edw. VII. c. 69, s. 24.

25. If there is no period of credit, or if the date of the expiry of the period of credit is not stated in the claim so registered, the lien shall cease to exist upon the expiration of ninety days after the work or service has been completed or materials furnished or placed, unless in the meantime an action is commenced and a certificate thereof registered as provided by section 23. 10 Edw. VII. c. 69, s. 25.

26. The right of a lien holder may be assigned by an instrument in writing and, if not assigned, upon his death shall pass to his personal representative. 10 Edw. VII. c. 69, s. 26.

27.—(1) 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.

(2) 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.

(3) The fee shall be the same as for registering a claim.

(4) Upon application the court, 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 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.

(5) Where the certificate required by sections 23 or 24 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 the certificate required by sections 23, 24 or 25, 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. 10 Edw. VII. c. 69, s. 27.

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

28.—(1) The taking of any security for, or the acceptance of any promissory note or bill of exchange for, or the taking of any acknowledgement 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 lien holder 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 lien holder, 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 23, 24 or 25, but no further proceedings shall be taken in the action until the expiration of such extension of time. 10 Edw. VII. c. 69, s. 28.

29. 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 lien holder 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. 10 Edw. VII. c. 69, s. 29.

LIEN HOLDER’S RIGHT TO INFORMATION.

30.—(1) Any lien holder may at any time demand of the owner or his agent the terms of the contract or agreement with the contractor for and in respect of which the work, service or material is or is to be performed or furnished or placed, and if such owner or his agent does not, at the time of such demand or within a reasonable time thereafter, 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 in an action therefor for the amount of such loss.

(2) The court, judge, or officer having jurisdiction to try an action to realize a lien may, on a summary application at any time before or after an action is commenced for the enforcement of such lien, make an order requiring the owner or his agent to produce and allow any lien holder to inspect
any such contract or agreement upon such terms as to costs as he may deem just. 10 Edw. VII. c. 69, s. 30.

ACTION TO REALIZE CLAIM.

31.—(1) A lien may be realized by action in the Supreme Court, according to the ordinary procedure of that court, excepting where the same is varied by this Act.

(2) Without issuing a writ of summons an action shall be commenced by filing in the proper office a statement of claim, verified by affidavit, Form 5.

(3) 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.

(4) It shall not be necessary to make any lien holders parties defendant to the action, but all lien holders served with the notice of trial shall for all purposes be deemed parties to the action. 10 Edw. VII. c. 69, s. 31.

32. Any number of lien holders claiming liens on the same land may join in an action, and an action brought by a lien holder shall be taken to be brought on behalf of the other lien holders. 10 Edw. VII. c. 69, s. 32.

33. The action may be tried before the Master in Ordinary, a local master of the Supreme Court, an official referee, or a Judge of the County or District Court, in any county or district in which the land is situate, or before a Judge of the Supreme Court. 10 Edw. VII. c. 69, s. 33.

34. The Master in Ordinary, the Local Masters, Official Referees, and the Judges of the County and District Courts, 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 all questions arising therein. 10 Edw. VII. c. 69, s. 34.

35. 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 them, 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. 10 Edw. VII. c. 69, s. 35.

36. Any lien holder entitled to the benefit of an action may apply for the carriage of the proceedings, and the Judge
Appointing day for trial.

37.—(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, where it is desired to try the action otherwise than before a Judge of the Supreme Court, either party may apply 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 day and place of trial.

(2) The party obtaining an appointment for the trial shall, at least eight 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 lien holders who have registered their claims as required by this Act, or who are known to him, and on all other persons having any charge, incumbrance 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) 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 enquiries, 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.

(4) The Judge or officer may order that the estate or interest on which the lien attaches be sold, and where, by the judgment, a sale is directed he may direct the sale to take place at any time after the judgment, allowing a reasonable time for advertising such sale.

(5) The Judge or officer may also direct the sale of any materials and authorize the removal thereof.

(6) A lien holder 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.
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(7) Every lien holder for an amount not exceeding $100 may be represented by a solicitor or by an agent who is not a solicitor. 10 Edw. VII. c. 69, s. 37.

38. Where a sale is had the Judge or officer with whose approbation the sale takes place shall make a report thereon and therein direct to whom the money realized shall be paid, and may add to the claim of the person conducting the sale his actual disbursements in connection therewith, and where enough to satisfy the judgment and costs is not realized he shall certify the amount of the deficiency and the names of the persons, with their amounts, who are entitled to recover the same, and the persons by the judgment adjudged to pay the same, and the persons entitled may enforce payment by execution or otherwise as on a judgment. 10 Edw. VII. c. 69, s. 38.

39. Where property subject to a lien is sold in an action to enforce a lien, every lien holder 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. 10 Edw. VII. c. 69, 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) Where the aggregate amount of the claims of the plaintiff and all other persons claiming liens is more than $100 and not more than $500 any person affected by the judgment may appeal therefrom to a Divisional Court, whose judgment shall be final and without appeal.

(3) 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. 10 Edw. VII. c. 69, s. 40.

FEES AND COSTS.

41.—(1) No fees in stamps or money shall be payable to any officer, nor on any filing, order, record, judgment, or other proceeding, excepting that every person other than a wage-earner shall, on filing his statement of claim where he is a 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.
(2) When the proceedings are taken before a local master who is paid by fees such amount shall be payable to him in cash instead of in stamps. 10 Edw. VII. c. 69, s. 41.

42. The costs of the action, exclusive of actual disbursements awarded to the plaintiffs and successful lien holders, shall not exceed in the aggregate twenty-five per cent. of the total amount awarded to them by the judgment, and shall be apportioned and borne in such proportion as the Judge or officer who tries the action may direct. 10 Edw. VII. c. 69, s. 42.

43. Where costs are awarded against the plaintiff or other persons claiming liens they shall not exceed twenty-five per cent. 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. 10 Edw. VII. c. 69, 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. 10 Edw. VII. c. 69, s. 44.

45. Where a lien is discharged or vacated under section 27, 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. 10 Edw. VII. c. 69, s. 45.

46. The costs of and incidental to all applications and orders not otherwise provided for shall be in the discretion of the Judge or officer. 10 Edw. VII. c. 69, s. 46.

**PAYMENT OUT OF COURT.**

47.—(1) Except in actions tried by a Judge of the Supreme Court, the judge or officer who tries the action, where money has been paid into court and the time for payment out has arrived, shall forward a requisition for cheques with a certified copy of his judgment and of the report on sale, if any, to the Accountant of the Supreme Court who shall, upon receiving the same, make out and return to the Judge or officer cheques for the amounts payable to the persons mentioned in the requisition, and the Judge or officer, on receipt of cheques, shall distribute them to the persons entitled.

(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. 10 Edw. VII. c. 69, s. 47.

JUDGMENTS IN ACTIONS.

48. All judgments in favour of lien holders shall adjudge that the party personally liable for the amount of the judgment shall pay so much of any deficiency which may remain after sale of the property directed to be sold as might have been recovered in an ordinary action against him, and where on the sale enough to satisfy the judgment and costs is not realized such part of the deficiency may be recovered by execution against the property of such party. 10 Edw. VII. c. 69, s. 48.

49. 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. 10 Edw. VII. c. 69, s. 49.

LIENS ON CHATTELS.

50.—(1) Every mechanic or other person who has bestowed money or skill and materials upon any chattel or thing in the alteration and 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 a 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. 10 Edw. VII. c. 69, s. 50.
FORM 1.

(SECTIONS 17-22.)

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 and Wage-Earners 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.)

10 Edw. VII. c. 69, Form 1.

FORM 2.

(SECTIONS 17-22.)

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 and Wage-Earners 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.)

10 Edw. VII. c. 69, Form 2.
CLAIM FOR LIEN FOR WAGES BY SEVERAL CLAIMANTS.

The following persons claim a lien under The Mechanics and Wage Earners' 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. " $ "
E.F. " $ "

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 the several claimants.)

10 Edw. VII. c. 69, Form 3.

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 .

10 Edw. VII. c. 69, Form 4.
FORM 5.

(Section 31.)

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.

10 Edw. VII. c. 69, Form 5.

FORM 6

(Section 37.)

NOTICE OF TRIAL.

(Style of Court and Cause.)

Take notice that this action will be tried at the , in the of , in the County (or District) of , on the day of by and at such time and place the will proceed to try the action and all questions which arise in or which are necessary to be tried completely to dispose of the action and to adjust the rights and liability of the persons appearing before him, or upon whom this notice of trial has been served, and at such trial he will take all accounts, make all enquiries and give all directions and do all things necessary to try and otherwise finally dispose of this action, and of all matters, questions, and accounts arising therein and will give necessary relief to all parties.

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 plaintiff 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

10 Edw. VII. c. 69, Form 6.
In the Supreme Court of Ontario, Monday, the ___ day of ___

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 and Wage-Earners 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 incumbrance upon the said land for the amounts set opposite their respective names in the 4th column of the said schedule 3, according to the fact].

3. And this Court doth further order and adjudge that upon the 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 1st schedule mentioned be and the same are hereby discharged, [and the several persons in the said 3rd schedule are to release and discharge their said claims and assign and convey the said premises to the defendant (owner) and deliver un 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 lien holders (or and incumbrancers).

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 and that all proper parties do join in the conveyances as the said Master shall direct.

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 1st [and 3rd] 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 1st schedule, the persons primarily liable for such claims as shown in the said 1st 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 and Wage-Earners 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 said 2nd schedule be and the same are hereby discharged, according to the fact].

10 Edw. VII. c. 69, Form 7.

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>
</table>

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 1.

SCHEDULE 2.

The lands in question in this matter are

(Set out by a description sufficient for registration purposes.)

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 2.
### 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>
</table>

(Signature of officer.)

10 Edw. VII. c. 69, Schedule 3.