

MAINE STATE LEGISLATURE

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NEW DRAFT.

Sixty-Seventh Legislature.

SENATE.

No. 35.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND NINETY-FIVE

AN ACT to amend chapter ninety-one of the Revised Statutes, by providing a Remedy for the Enforcement of Liens on Buildings and Lots by Bill in Equity.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECTION 1. Section thirty of chapter ninety-one of the 2 Revised Statutes is hereby amended by striking out the 3 words "attachment; and if a levy is made thereon the 4 appraisers may set out a suitable lot for said building, if 5 they think the whole is not needed therefor" in lines five, 6 six, seven and eight, and by inserting in lieu thereof the 7 words, 'bill in equity.' Also, by striking out the word

8 “suit” in line twelve, and inserting in lieu thereof the
9 words ‘bill in equity;’ so that said section shall read as
10 follows :

‘Section 30. Whoever performs labor or furnishes labor
12 or materials in erecting, altering, moving, or repairing a
13 house, building, or appurtenances, by virtue of a contract
14 with, or by consent of the owner, has a lien thereon, and
15 on the land on which it stands, and on any interest such
16 owner has in the same, to secure payment thereof, with
17 costs, to be enforced by bill in equity. If the debtor has
18 no legal interest in the land on which the building is
19 erected or to which it is moved, the lien attaches to the
20 building, and may be enforced as above provided; and if
21 the owner of such land or building, so contracting, is a
22 minor or married woman, such lien shall exist, and such
23 minority or coverture shall not bar a recovery in any bill
24 in equity brought to enforce it.’

SECT. 2. The liens mentioned in sections thirty, thirty-
2 one, thirty-two and thirty-three of chapter ninety-one of
3 the Revised Statutes, may be preserved and enforced by
4 bill in equity against the debtor and owner of the property
5 affected, and all other parties interested therein, filed with
6 the clerk of court, in the county where the house, building,
7 or appurtenances, on which a lien is claimed, is situated,
8 within ninety days after the last of the labor is performed
9 or materials are so furnished; and not otherwise.

SECT. 3. The bill shall state that the plaintiff claims a
2 lien on the house, building, or appurtenances described
3 therein, and the land on which it stands, for labor per-
4 formed, or for labor or materials furnished, in erecting,
5 altering, moving or repairing said house, building, or

6 appurtenances, as the case may be; whether it was by
7 virtue of a contract with or by consent of the owner, and
8 if not, that the claimant has complied with the provisions
9 of section thirty-two of said chapter. And the bill shall
10 pray that the property be sold and the proceeds applied to
11 the discharge of such lien. Two or more lienors may join
12 in filing and prosecuting such a bill. Other lienors may
13 be made parties; other lienors may become parties, and
14 preserve and enforce their liens on said property, provided
15 their petitions therefor, setting forth their claims in sub-
16 stance as required in a bill as aforesaid, be filed with the
17 clerk within ninety days after the last labor is performed,
18 or the last materials are furnished by them, as aforesaid.
19 The court may consolidate two or more bills claiming liens
20 on the same property, into one proceeding, if justice shall
21 so require. Any mortgagee or other person having a
22 claim upon or interested legally or equitably in said prop-
23 erty may be made a party.

The court shall have power to determine all questions of
25 priority of lien or interest, if any, between parties to the
26 proceeding.

SECT. 4. The court shall determine the amount for
2 which each lienor has a lien upon the property, by jury
3 trial, if either party so requests in bill, petition or answer;
4 otherwise in such manner as the court shall direct. And
5 such determination shall be conclusive as to the fact and
6 amount of the lien. Any lienor may contest another
7 lienor's claim upon issues framed under direction of the
8 court.

SECT. 5. If it is determined that the parties, or any of
2 them, claiming a lien, have a lien upon said building and

3 land, the court may decree that said property, or such
4 interest in it as is subject to the liens, or any of them,
5 shall be sold, and shall prescribe the place, time, terms,
6 manner, and conditions of such sale. And any justice, in
7 term time or vacation, may order an adjournment of such
8 sale from time to time. And a deed of the officer of the
9 court, appointed to make such sale, recorded in the
10 registry of deeds where the land lies, within three months
11 after the sale, shall convey all the title of the debtor and
12 the owner in the property ordered to be sold. And
13 if justice requires, the court may provide in the order of
14 sale, that the owner shall have a right to redeem the
15 property from such sale within a time fixed in the order
16 of sale. If the court shall determine that the whole of
17 the land, on which the lien exists is not necessary
18 therefor, it shall describe in the order of sale a suitable
19 lot therefor, and only so much shall be sold. The lienors
20 shall share pro rata; provided their claims therefor are filed
21 prior to the order of sale, and within the ninety days
22 mentioned in sections two and three. The court may
23 make such decree in regard to costs as is equitable.

SECT. 6. If the proceeds of the sale, after payment of
2 costs and expenses of sale, are insufficient to pay the lien
3 claims in full, the court may render judgment against the
4 debtor in favor of each individual lienor, for the balance of
5 his claim remaining unpaid, and may issue executions
6 therefor.

SECT. 7. Any owner of a building or real estate, upon
2 which a lien is claimed as aforesaid, may petition in writ-
3 ing a justice of the Supreme Judicial Court in term time
4 or vacation, setting forth the name of the lienor, the court
5 and county in which it is returnable or pending, the fact

6 that a lien is claimed thereon under sections thirty, thirty-
• 7 one, thirty-two and thirty-three of said chapter, the par-
8 ticular building or real estate, and his interest therein, its
9 value and his desire to have it released from said lien.
10 Such justice shall issue a written notice, which shall be
11 served on the lienor, or his attorney, ten days, at least,
12 prior to the time fixed therein for a hearing. At the hear-
13 ing, such justice may order such owner to give bonds to the
14 lienor, in such amount and with such sureties as he may
15 approve, conditioned to pay the amount for which such
16 lienor may be entitled to a lien, as determined by the
17 court, with his costs on the petition, within thirty days
18 after final decree or judgment.

The clerk shall give the petitioner an attested copy of
20 the petition and proceedings, with a certificate under seal
21 of the court attached thereto, that such bond has been
22 duly filed in his office; and the record of such copy and
23 certificate in the registry of deeds, in the county where
24 such real estate or interest therein lies, vacates the lien.

SECT. 8. The provisions of chapter three hundred one
2 of Public Laws of 1893 shall be applicable to proceedings
3 under this act.

SECT. 9. All acts and parts of acts inconsistent here-
2 with are hereby repealed; but the passage of this act shall
3 not affect suits pending when it takes effect.

STATE OF MAINE.

IN SENATE, January 31, 1895.

Reported by Mr. SAVAGE, from Committee on Judiciary and laid on table to be printed under joint rules.

KENDALL M. DUNBAR, *Secretary*.