

MAINE STATE LEGISLATURE

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EIGHTY - SIXTH L E G I S L A T U R E

Legislative Document

No. 45

H. P. 48 House of Representatives, Jan. 18, 1933.

Referred to Committee on Judiciary and 500 copies ordered printed. Sent up for concurrence.

HARVEY R. PEASE, Clerk.

Presented by Mr. Fernald of Winterport.

STATE OF MAINE

IN THE YEAR OF OUR LORD ONE THOUSAND NINE
HUNDRED AND THIRTY-THREE

AN ACT Relating to Liens on Lands and Artesian Wells or
Drilled Wells.

Be it enacted by the People of the State of Maine, as follows :

Section 1. **Liens on lands and Artesian wells.** Section 29 of chapter 105 of the revised statutes is hereby amended by inserting in the 5th line of said section after the word "thereon" the words 'or in drilling an Artesian well or drilled well'; and by deleting in the 10th, 11th and 13th lines of said section, before the word "pier" the word "or"; and by inserting in the said 10th, 11th and 13th lines, after the word "pier" the words 'or Artesian well or drilled well'; and by striking out in the 6th line of said section the word "stands" and inserting in place thereof the words 'is situated'; and by striking out in the 8th and 11th lines of said section the word "erected" and inserting in place thereof the word 'situated'; so that said section, as amended, shall read as follows :

'Sec. 29. **Liens on buildings and lots for labor and materials.** Whoever performs labor or furnishes labor or materials in erecting, altering, moving, or repairing a house, building, or appurtenances, including any public building erected or owned by any city, town, county, school district, or other municipal corporation, or in constructing, altering, or repairing a wharf, or pier, or any building thereon, or in drilling an Artesian well

or drilled well, by virtue of a contract with or by consent of the owner, has a lien thereon, and on the land on which it is situated and on any interest such owner has in the same, to secure payment thereof, with costs. If the owner of the building has no legal interest in the land on which the building is situated, or to which it is moved, the lien attaches to the building, and if the payment thereof, with costs. If the owner of the building has no legal interest in the land on which the wharf, pier or Artesian well or drilled well is situated, the lien attaches to the wharf, pier or Artesian well or drilled well, and in either case may be enforced as hereinafter provided; and if the owner of such land, building, wharf, pier or Artesian well or drilled well so contracting, is a minor or married woman, such lien shall exist, and such minority or coverture shall not bar a recovery in any proceeding brought to enforce it.'

Sec. 2. **Section 31 of c. 105, amended.** Section 31 of chapter 105 of the revised statutes is hereby amended by striking out in the 4th line of said section the first word "or"; and by inserting in the said 4th line after the word "pier" the words 'or Artesian well or drilled well'; so that said section, as amended, shall read as follows:

'Sec. 31. **Lien dissolved unless claim is filed in town clerk's office.** The lien mentioned in the preceding section shall be dissolved unless the claimant within 60 days after he ceases to labor or furnish materials as aforesaid, files in the office of the clerk of the town in which such building, wharf, pier or Artesian well or drilled well is situated, a true statement of the amount due him, with all just credits given, together with a description of the property intended to be covered by the lien, sufficiently accurate to identify it, and the names of the owners, if known; which shall be subscribed and sworn to by the person claiming the lien, or by some one in his behalf, and recorded in a book kept for that purpose, by said clerk, who is entitled to the same fees therefor as for recording mortgages, but this section shall not apply where the labor or materials are furnished by a contract with the owner of the property affected.'

Sec. 3. **Section 33 of c. 105, amended.** Section 33 of chapter 105 of the revised statutes is hereby amended by inserting in the 5th line of said section after the word "thereon" the

words 'or Artesian well or drilled well,'; so that said section, as amended, shall read as follows :

'Sec. 33. **Liens may be preserved and enforced by bill in equity.** The liens mentioned in the 4 preceding sections may be preserved and enforced by bill in equity against the debtor and owner of the property affected, and all other parties interested therein, filed with the clerk of courts, in the county where the house, building or appurtenances, wharf, pier, or building thereon, or Artesian well or drilled well, on which a lien is claimed, is situated, within 90 days after the last of the labor is performed, or labor or materials are so furnished, and not afterwards, except as provided in the following section.'

Sec. 4. **Section 35 of c. 105, amended.** Section 35 of chapter 105 of the revised statutes is hereby amended by inserting in the 3rd and 6th lines of said section after the word "thereon" the words 'or Artesian well or drilled well'; and by striking out in the 4th line of said section the word "stands" and inserting in place thereof the words 'is situated'; so that said section, as amended, shall read as follows :

'Sec. 35. **Necessary allegations of bill; other lienors may join and be made parties, also mortgage.** The bill shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier, or building thereon, or Artesian well or drilled well, as the case may be, described therein, and the land on which it is situated for labor performed, or for labor or materials furnished, in erecting, altering, moving, or repairing said house, building or appurtenances, or in constructing, altering, or repairing said wharf, pier, or building thereon, or Artesian well or drilled well, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with the provisions of § 31. And the bill shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a bill. Other lienors may be made parties; other lienors may become parties, and preserve and enforce their liens on said property, provided, their petitions therefor, setting forth their claims in substance, as required in a bill as aforesaid, be filed with the clerk within 90 days after the last labor is performed, or the last labor or materials are furnished by

them, as aforesaid, or within the additional time prescribed in the preceding section. The court may consolidate 2 or more bills claiming liens on the same property, into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in said property, may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding.'

Sec. 5. **Section 37 of c. 105, amended.** Section 37 of chapter 105 of the revised statutes is hereby amended by inserting in the 3rd line of said section after the word "pier" the words "Artesian well or drilled well"; so that said section, as amended, shall read as follows:

'Sec. 37. **Court may decree that property be sold; redemption; lienors to share pro rata.** If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land, or upon said wharf, pier, Artesian well or drilled well, building, and land, the court may decree that said property, or such interest in it as is subject to the liens, or any of them, shall be sold, and shall prescribe the place, time, terms, manner, and conditions of such sale; any justice, in term time or vacation, may order an adjournment of such sale from time to time; and a deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within 3 months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale, that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land, on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The lienors shall share, pro rata; provided, their bills or petitions therefor are filed with the clerk of courts prior to the order of sale, and within the time mentioned in §§ 33, 34 and 35. The court may make such decree in regard to costs as is equitable.'

Sec. 6. **Section 41 of c. 105 amended.** Section 41 of chapter 105 of the revised statutes is hereby amended by inserting in the 2nd and 7th lines of said section after the word "pier" the

words 'Artesian well or drilled well'; so that said section, as amended, shall read as follows:

'Sec. 41. **Owner may petition for release.** Any owner of a building, wharf, pier, Artesian well or drilled well, or real estate, upon which a lien is claimed, may petition in writing a justice of the superior court in term time or vacation, setting forth the name of the lienor, the court and county in which the bill in equity or action at law is returnable or pending, the fact that a lien is claimed thereon under §§ 29, 30, 31 and 32, the particular building, wharf, pier, Artesian well or drilled well, or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice, which shall be served on the lienor, or his attorney, ten days at least, prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor, in such amount and with such sureties as he may approve, conditioned to pay the amount, for which such lienor may be entitled to a lien, as determined by the court, with his costs on the petition, within thirty days after final decree or judgment. The clerk shall give the petitioner an attested copy of the petition and proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office; and the record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien.'

Sec. 7. **Section 42 of c. 105 amended.** Section 42 of chapter 105 of the revised statutes is hereby amended by striking out in the 5th line of said section before the word "pier" the word "or"; and by inserting in the 4th line of said section after the word "thereon" the words 'or Artesian well or drilled well'; and by inserting in the 5th line of said section after the word "pier" the words 'or Artesian well or drilled well'; so that said section, as amended, shall read as follows:

'Sec. 42. **Proceedings pending at the same time may be transferred to one court.** When 2 or more proceedings, either at law or in equity, are pending at the same time, in whatever court or courts, to enforce liens on the same house, building or appurtenances, wharf, pier, and building thereon, or Artesian well or drilled well, upon petition of any lienor who

has commenced such proceedings, or of the owner of the building, wharf, pier or Artesian well, a justice of the supreme judicial court after notice and hearing, in term time or vacation, may, if justice requires it, order all such actions to be transferred either to the supreme judicial court or to the superior court as he may determine, and require the parties in all such proceedings, in whatever court commenced, to plead in equity, substantially in the manner prescribed in section 35, and thereafter all the proceedings shall be in accordance with the provisions of said section and the 5 following sections; and while such petition is pending all such actions shall stand continued.'

Sec. 8. **Section 43 of c. 105, amended.** Section 43 of the revised statutes is hereby amended by inserting in the 2nd line of said section after the word "thereon" the words 'or Artesian well or drilled well'; and by striking out in the 3rd line of said section the word "stands" and inserting in place thereof the words 'is situated'; and by striking out in the 4th line of said section before the word "pier" the word "or"; and by inserting in the said 4th line after the word "pier" the words 'or Artesian well or drilled well'; so that said section, as amended, shall read as follows:

'Sec. 43. **Property may be taken and sold on execution to satisfy judgment; proceedings when two or more are rendered at same term; redemption.** When a judgment is rendered in any suit authorized by this chapter, against any house, building, or appurtenances, wharf, pier, or building thereon, or Artesian well or drilled well, and the land on which it is situated, or any interest that the owner of such house, building or appurtenances, wharf, pier or Artesian well or drilled well has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If 2 or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under the provisions of this chapter shall be notified in writing by any lienor who has caused said property to be attached as aforesaid, or who has filed his bill in equity

as herein provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments, and all lienors so notifying such officer otherwise direct, shall thereupon sell said property as aforesaid, and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien suit is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made, may fix the time within which the owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto.'