

MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1847.

AUGUSTA:

Wm. T. JOHNSON,.....PRINTER TO THE STATE

1848.

TWENTY-SEVENTH LEGISLATURE.

No. 26.]

[HOUSE.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND
FORTY-SEVEN.

AN ACT securing the lien of mechanics and others, for
the cost of repairs and improvements on real estate.

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

SECTION 1. Every person who shall by contract
2 with the owner of land, furnish labor or materials for
3 erecting or repairing any building, or the appurte-
4 nances of any building on such land, shall have a
5 lien upon the whole piece of land, in the manner
6 hereinafter provided, for the amount due to him for
7 such labor and materials.

SEC. 2. Such lien shall not attach, unless the con-
2 tract is made in writing, and signed by the owner of
3 the land, or by some person duly authorized by him,
4 and recorded by the clerk of the town or city in
5 which the land lies.

SEC. 3. The lien shall be dissolved at the expira-
2 tion of six months after the time, when the money
3 due by the contract, or the last instalment thereof,
4 shall become payable, unless a suit for enforcing the
5 lien shall have been commenced within the said six
6 months.

SEC. 4. When any sum due by such contract shall
2 remain unpaid, for the space of sixty days after the
3 same is payable, the creditors may, upon a petition
4 to the district court for the county where the land
5 lies, obtain a decree for the sale thereof, and for ap-
6 plying the proceeds to the discharge of his demand.

SEC. 5. The petition may be filed in court, or in
2 the clerk's office in vacation, and in either case, the
3 filing of the petition shall be deemed the commence-
4 ment of the suit.

SEC. 6. The petition shall contain a brief statement
2 of the contract on which it is founded, and of the
3 amount due thereon, with a description of the prem-

4 ises which are subject to the lien, and all other ma-
5 terial facts and circumstances, and shall pray that the
6 premises may be sold, and the proceeds of the sale be
7 applied to the discharge of the demand.

SEC. 7. The court in which the petition is entered,
2 shall order notice to be given to the owner of the
3 land, that he may appear and answer thereto, at a
4 certain day in the same term, or at the next term, by
5 serving him with an attested copy of the petition, with
6 the order of the court thereon, fourteen days at least
7 before the time assigned for the hearing, and the
8 court shall also order notice of the filing of the peti-
9 tion to be given to all the other creditors, who have
10 a lien of the same kind upon the same estate, by
11 serving them with the last mentioned order, fourteen
12 days at least before the time assigned for such hearing.
13 *Provided, however,* that when said petition is filed
14 in the clerk's office in vacation, notice may be given
15 to the owner of the land by serving on him an attest-
16 ed copy of the same, fourteen days at least before the
17 selling of the land, that he may then appear and an-
18 swer thereto. And the officer who serves said pro-
19 cess, shall, within five days thereafter, file with the
20 clerk of the town or city where the contract is record-

21 ed as herein required, an abstract of said petition,
22 with the names of the parties, sum demanded, and
23 date of the same, and the said clerks shall minute on
24 the same, the time when it was received, and keep
25 the same on file, and enter them in a book kept for
26 that purpose. And said officers and clerks shall re-
27 spectively be entitled to receive the same fees as are
28 now paid for filing attachments of real estate with
29 registers of deeds.

SEC. 8. If it shall appear to the court, that any of
2 the parties so entitled to notice are absent, or that
3 they cannot probably be found to be served with the
4 notice, as before provided, the court may, instead of
5 the personal notice before mentioned, or in addition
6 thereto, order notice to all persons interested, to be
7 given, by publishing in some newspaper the substance
8 of the petition, with the order of court thereon, assign-
9 ing the time and place for hearing the cause, or may
10 order such other notice to be given, as shall, under
11 the circumstances of the case, be considered most
12 proper and effectual.

SEC. 9. If, at the time assigned for the hearing, it
2 shall appear to the court, that any of the persons in-
3 terested have not had sufficient notice of the suit, the

4 court may order further notice to them, in such man-
5 ner as shall be considered most proper and effectual.

SEC. 10. At the time assigned for the hearing of
2 the cause, or within such farther time as the court
3 shall order for that purpose, every creditor, having a
4 lien of the kind before mentioned, upon the same
5 estate, may appear and prove his claim, and the
6 owner shall be admitted to deny and disapprove the
7 same, and also each of the said creditors shall have a
8 right to contest the claim of any other creditor, and
9 the court shall hear and determine the several claims,
10 in a summary manner, either with or without a jury,
11 as the case may require.

SEC. 11. Every material question of fact, arising
2 in the case, shall be submitted to a jury, if required
3 by either party, or if it shall be thought proper by the
4 court, and such time shall be had upon a question
5 stated, or an issue framed, under the direction of the
6 court, or otherwise, as the court shall order.

SEC. 12. The court shall examine all the claims
2 that shall be presented, and shall ascertain and deter-
3 mine the amount due to each creditor who has a lien
4 of the kind before mentioned, upon the estate in ques-
5 tion, and every such claim that is due absolutely and

6 without any condition, although not then payable,
7 shall be allowed, with a rebate of interest at the time,
8 when it would become payable.

SEC. 13. When the owner of the land shall have
2 failed to perform his part of the contract, and by rea-
3 son thereof, the other party shall, without his own
4 default, have been prevented from completely per-
5 forming his part, he shall be entitled to a reasonable
6 compensation for so much thereof as he has perform-
7 ed, in proportion to the price stipulated for the whole,
8 and the court shall adjust his claim accordingly.

SEC. 14. If the lien should be established in favor
2 of any of the creditors whose claims are presented,
3 whether the petitioning creditors or any other, the
4 court shall order a sale of the premises to be made
5 by any officer, who is authorized to serve any civil
6 process between the same parties.

SEC. 15. If any part of the premises can be sepa-
2 rated from the residue and sold, without damage to
3 the whole, and if the value thereof should be suffi-
4 cient to satisfy all the debts proved in the case, the
5 court may order a sale of that part, if it shall appear
6 to be most for the interest of all the parties con-
7 cerned.

SEC. 16. The officer who makes the sale, shall
2 give notice of the time and place appointed therefor,
3 in the manner prescribed in relation to the sale on
4 execution of a right of redeeming mortgaged lands,
5 unless the court shall order other or different notice
6 to be given.

SEC. 17. All lands, sold under such order of the
2 court, may be redeemed in like manner, and upon
3 the same terms as are provided in the case of a sale
4 on execution of the right of redeeming mortgaged
5 lands.

SEC. 18. If the claims against the estate are all
2 ascertained at the time of ordering the sale, the court
3 may at the same time order the officer to pay over
4 and distribute the proceeds of the sale, after deduct-
5 ing all lawful charges and expenses to and among
6 the several creditors, to the amount of their respec-
7 tive debts, if there is sufficient therefor, and if there
8 is not sufficient, then to divide and distribute the
9 same among the creditors, in proportion to the amount
10 due to each of them.

SEC. 19. If the claims are not all ascertained when
2 the sale is ordered, or if for any other reason, the
3 court should find it necessary or proper to postpone

4 the order of distribution, they may direct the officer
5 to bring the proceeds of the sale into court, there to
6 be disposed of according to the decree of the court ;
7 and if by reason of the claims of attaching creditors,
8 or for any other cause, the whole cannot be con-
9 veniently distributed at once, the court may make two
10 or more successive orders of distribution, as the cir-
11 cumstances may require.

SEC. 20. If there be any surplus of the proceeds
2 of the sale, after making all the payments before
3 mentioned, it shall be forthwith paid over to the owner
4 of the land, but such surplus, before it is so paid over,
5 shall be liable to be attached or taken on execution,
6 in like manner as if it proceeded from a sale made by
7 the officer on an execution.

SEC. 21. If the land to which any such contract
2 relates, shall be under attachment at the time of re-
3 cording the contract, the attaching creditor shall be
4 preferred, to the extent of the value of the land and
5 buildings, as they may be when the contract shall be
6 recorded, and the court shall ascertain by a jury or
7 otherwise, as the case may require, what proportion
8 of the proceeds of the sale shall be held subject to

9 the attachment, as derived from the value of the
10 premises when the contract was recorded.

SEC. 22. If the attaching creditor, in such case,
2 shall recover judgment in his suit, he shall be entitled
3 to receive on his execution the said proportion of the
4 proceeds, that are held subject to his attachment, or
5 as much thereof as may be necessary to satisfy his
6 execution, and the residue, if any, of the proceeds of
7 the sale, shall be applied in the same manner as if
8 there had been no such attachment.

SEC. 23. If the land, to which the contract relates,
2 shall be attached after the recording of the contract,
3 the proceeds shall be applied, after discharging all
4 prior liens and claims, to satisfy the execution of such
5 attaching creditor, in like manner as is provided in
6 the one hundred and seventeenth chapter of the re-
7 vised statutes, in the case of two or more successive
8 attachments or seizures in execution, of a right of re-
9 demption, or of a share in any incorporated com-
10 pany.

SEC. 24. If an attachment is made after the re-
2 cording of such a contract, and if after the attach-
3 ment another like contract should be recorded, the
4 creditor in the latter contract shall be entitled to be

5 paid only out of the residue of the proceeds, if any,
6 remaining after satisfying the attaching creditor, and
7 also paying all that is due on the contracts that were
8 recorded before the attachment.

SEC. 25. When there are several attaching credi-
2 tors, they shall, as between themselves, be entitled to
3 be paid according to the order of their respective at-
4 tachments ; but when several creditors, who are en-
5 titled to the lien provided for in this chapter, have all
6 equal rights as between themselves, and the fund shall
7 be insufficient to pay the whole, they shall share it
8 equally, in proportion to their respective debts.

SEC. 26. If any person, who procures the work to
2 be done, has an estate for life only, or any other es-
3 tate less than a fee simple, in the land on which the
4 work is to be done, or if the land, at the time of re-
5 cording the contract, is mortgaged, or under any
6 other incumbrance, the person who procures the work
7 to be done shall nevertheless be considered as the
8 owner, for the purposes of this chapter, to the extent
9 of his right and interest in the land, and the lien be-
10 fore provided for shall bind his whole estate and inter-
11 est therein, in like manner as a mortgage would have
12 done, and the creditor may cause the right of redemp-

13 tion, or whatever other right or estate the owner had
14 in the land, to be sold and applied to the discharge of
15 his debt, according to the provisions of this chapter.

SEC. 27. If any person indebted in any such con-
2 tract shall die, or shall convey away his estate, before
3 the commencement of a suit on the contract, the suit
4 may be commenced and prosecuted against his heirs,
5 or whoever shall hold the estate, which he had in the
6 premises, at the time of making the contract; or if a
7 suit is commenced in his lifetime, it may be prose-
8 cuted against his heirs or assigns, in like manner as
9 if the estate had been mortgaged to secure the debt.

SEC. 28. If the creditor in such contract shall die
2 before the commencement of a suit thereon, the suit
3 may be commenced and prosecuted by his executors
4 or administrators, or if commenced in his lifetime, it
5 may be prosecuted by them, as it might have been by
6 the deceased, if living.

SEC. 29. If it appear, in any stage of the pro-
2 ceedings under this chapter, that the suit was com-
3 menced by the petitioning creditor before the ex-
4 piration of the sixty days, or after the expiration of
5 six months, in that behalf before limited, or if the peti-
6 tioning creditor should become nonsuit, or should from

7 any cause fail to establish his claim, the suit may nev-
8 ertheless be prosecuted by any other creditor having
9 such a lien, in the same manner as if it had been
10 originally commenced by the latter creditor ; *provided*,
11 the circumstances of the case are such, that he might
12 then, or at any time after the commencement of the
13 original suit, have commenced a like suit on his own
14 claim.

SEC. 30. If the suit is commenced by the petition-
2 ing creditor, before the expiration of the sixty days, in
3 that behalf limited, his claim may nevertheless be al-
4 lowed, if he is otherwise entitled thereto, and if the
5 suit is carried on by any other creditor, as provided in
6 the preceding section ; but he shall not in such case
7 be entitled to any costs, and he may be required to
8 pay the costs, that shall be incurred by the debtor, or
9 any part thereof, as the court shall think reasonable.

SEC. 31. The costs in all other respects shall be
2 subject to the discretion of the court, and shall be paid
3 out of the proceeds of the sale, or by any of the par-
4 ties in the suit, as justice and equity may require.

SEC. 32. Nothing contained in this chapter shall
2 be construed to prevent any creditor in such contract
3 from maintaining an action thereon at the common

4 law, in like manner as if he had no such lien for the
5 security of his debt.

SEC. 33. The clerks of cities and towns shall re-
2 ceive and record all contracts, of the kind mentioned
3 in this chapter, that shall be delivered to them for that
4 purpose, and they shall be entitled to the same fees
5 therefor, as for recording mortgages of personal prop-
6 erty or other papers of equal length.

SEC. 34. When any debt, secured by such lien,
2 shall be fully paid, the creditor shall, at the expense of
3 the debtor, enter on the margin of the registry, where
4 the contract is recorded, a discharge of his said lien,
5 or shall execute a deed of release thereof, in like
6 manner as is provided in relation to the release of
7 mortgages, after the payment thereof.

SEC. 35. Every petition, filed in pursuance of this
2 chapter, shall be endorsed in the same manner as is
3 required with respect to original writs, and all the
4 regulations concerning the endorsement of original
5 writs, contained in the one hundred fourteenth chap-
6 ter of the revised statutes, shall apply to the endorse-
7 ment of such petitions.

SEC. 36. The thirty-seventh, thirty-eighth and

2 thirty-ninth sections of the one hundred and twenty-
3 fifth chapter of the revised statutes are hereby repeal-
4 ed, except as to all attachments, actions and proceed-
5 ings already commenced and now pending under the
6 provisions of the same.

SEC. 37. The persons who labor in any cotton,
2 woolen or other factory in this state shall have a lien
3 upon such factory and the machinery therein, and up-
4 on the right of redeeming the same when under mort-
5 gage, to secure the payment of the amount due them
6 for such labor, and such lien shall continue in force
7 for the space of six months from the time when such
8 payment becomes due.

SEC. 38. Such persons may secure the benefit of
2 such lien by any one of them commencing a suit there-
3 for within said six months by filing a petition to the
4 district court in the county where said factory is situ-
5 ated, as required in the fourth and fifth sections of this
6 statute. Upon which petition such proceedings shall
7 be had to enforce said lien as are provided for in the
8 case of other liens in the preceding sections of this
9 statute.



STATE OF MAINE.

HOUSE OF REPRESENTATIVES, July 22, 1847.

Ordered, That 350 copies of the foregoing bill, reported from the committee on the judiciary, be printed for the use of the legislature.

SAMUEL BELCHER, *Clerk*.