

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE.

1861.



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1861.

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# FORTIETH LEGISLATURE.

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HOUSE.

No. 69.

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## STATE OF MAINE,

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

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### AN ACT concerning liens on land and buildings.

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

SECTION 1. Any person to whom a debt is due for  
2 labor performed or furnished, or for materials furnished  
3 and actually used in the erection, alteration, or repair  
4 of any building or structure, when real estate, by vir-  
5 tue of an agreement with, or by consent of, the owner  
6 of such building or structure, or any person having  
7 authority from, or rightfully acting for, such owner,  
8 in procuring or furnishing such labor or materials, shall

9 have a lien on such building or structure, and upon  
10 the interest of the owner thereof in the lot of land up-  
11 on which the same is situated, to secure the payment  
12 of the debt so due to him, and the costs which may  
13 arise in enforcing such lien by virtue of this act but  
14 such lien for materials furnished shall not attach, un-  
15 less the person furnishing the same, before so doing,  
16 gives notice to the owner of the property to be affected  
17 by the lien, if such owner is not the purchaser, that he  
18 intends to claim such lien, nor shall such lien avail or  
19 be of force, against any mortgage actually existing and  
20 duly recorded prior to the date of the contract, under  
21 which the lien is claimed.

SECT. 2. The owner of any such building or struc-  
2 ture in process of erection, or being altered or repaired,  
3 other than the party by whom, or in whose behalf a  
4 contract for labor and materials has been made, may  
5 prevent the attaching of any lien for labor thereon, not  
6 at the time performed, or materials not then furnished,  
7 by giving notice in writing to the person performing  
8 or furnishing such labor, or furnishing such materials,  
9 that he will not be responsible therefor.

SECT. 3. Such lien shall be dissolved, unless the  
2 person desiring to avail himself thereof, within thirty  
3 days after he ceases to labor on, or furnish labor or

4 materials for such building or structure, files in the  
5 office of the clerk of the city or town in which the  
6 same is situated, a statement of a just and true account  
7 of the amount due him, with all just credits given,  
8 together with a description of the property intended to  
9 be covered by the lien, sufficiently accurate for identi-  
10 fication, with the name of the owner or owners of the  
11 property, if known, which certificate shall be sub-  
12 scribed and sworn to by the person claiming the lien,  
13 or some one in his behalf, and shall be recorded in a  
14 book kept for that purpose by such clerk, who shall be  
15 entitled to the same fees therefor, as for recording  
16 mortgages of equal length. No inaccuracy in such  
17 statement, if the property can be reasonably recog-  
18 nized, shall invalidate the proceedings, unless it ap-  
19 pears that the person filing the certificate has wilfully  
20 and knowingly claimed more than is his due. The  
21 lien shall be dissolved, unless a suit is commenced  
22 within sixty days after filing such statement.

SECT. 4. The lien may be enforced by petition to  
2 the supreme court in the county where the property is  
3 situated, and the petition may be filed in term time or va-  
4 cation, or it may be inserted in a writ of original sum-  
5 mons, and be served, returned and entered as other  
6 civil cases. Whether filed as a petition, or inserted

7 in the writ, the petition shall contain a brief state-  
8 ment of the contract on which it is founded, and of  
9 the amount due thereon, with a description of the prem-  
10 ises subject to the lien, and all other material facts  
11 and circumstances, and shall pray that the premises  
12 may be sold and the proceeds of the sale be applied to  
13 the discharge of the demand. The court may allow  
14 either party to amend his pleadings.

SECT. 5. The court in which the petition is entered  
2 shall order notice to be given to the owner of the build-  
3 ing or structure, that he may appear and answer there-  
4 to, at a certain day in the same term, or at the next  
5 term, by serving him with an attested copy of the pe-  
6 tition and order of court, fourteen days at least before  
7 the time assigned for the hearing, and the court shall  
8 order like notice to all other creditors who have a lien  
9 of the same kind, when the estate in any case when  
10 the court shall deem it reasonable, it may, instead of  
11 the personal notice before mentioned, or in addition  
12 thereto, order notice to all parties interested, by pub-  
13 lishing in some newspaper the substance of the peti-  
14 tion and order of court thereon, and may order such  
15 further and other notice, and in such manner as may  
16 be considered most proper and effectual.

SECT. 6. At the time assigned for the hearing, or  
2 within such further time as the court allows for that

3 purpose, every creditor having a lien of the kind  
4 before mentioned upon the same property, may appear  
5 and prove his claim ; and the owner and each of the  
6 creditors may contest the several claims of every other  
7 creditor, and the court shall hear and determine them  
8 in a summary manner, either with or without a jury,  
9 as the case may require ; every material question of  
10 fact arising in the case shall be submitted to a jury,  
11 if required by either party or thought proper by the  
12 court ; and the trial shall be had upon a question  
13 stated, or an issue framed, or otherwise, as the court  
14 shall order.

SECT. 7. The court shall determine the amount due  
2 to each creditor who has a lien of the kind mentioned  
3 upon the property in question, and every such claim  
4 due absolutely and without any condition, although  
5 not then payable, shall be allowed, with a rebate of  
6 interest to the time when it would become payable.  
7 When the owner fails to perform his part of the con-  
8 tract, and by reason thereof the other party, without his  
9 own default, is prevented from completely performing  
10 his part, he shall be entitled to a reasonable compen-  
11 sation for as much as he has performed, in proportion  
12 to the price stipulated for the whole, and the court  
13 shall adjust his claim accordingly.

SECT. 8. If the lien is established in favor of any

2 of the creditors whose claims are presented, the court  
3 shall order a sale of the property to be made by the  
4 sheriff of the county, or his deputy, unless such  
5 claims are satisfied; if a part of the property can be  
6 separated from the residue and sold without damage  
7 to the whole, and if the value thereof is sufficient to  
8 satisfy all debts proved in the case, the court may  
9 order a sale of that part, if it appears to be most for  
10 the interest of all concerned. The officer who makes  
11 the sale, shall give notice of the time and place, in  
12 the manner prescribed in relation to the sale on exe-  
13 cution of a right of redeeming mortgaged lands, and  
14 any interest so sold may be redeemed in the manner  
15 provided for redeeming the equity of mortgaged lands  
16 from a sale on execution.

SECT. 9. If all the claims against the property cov-  
2 ered by the lien are ascertained at the time of order-  
3 ing the sale, the court may order the officer to pay  
4 over and distribute the proceeds of the sale, after de-  
5 ducting all lawful charges and expenses, to and among  
6 the several creditors, to the amount of their respective  
7 debts, if there is sufficient therefor; and if there is  
8 not sufficient, then to divide and distribute the same  
9 among the creditors in proportion to the amount due  
10 to each. If all the claims are not ascertained when  
11 the sale is ordered, or if for any reason the court finds



12 it necessary or proper to postpone the order of distri-  
13 bution, it may direct the officer to bring the proceeds  
14 of sale into court, there to be disposed of according to  
15 the decree of the court ; and if for any cause the  
16 whole cannot be conveniently distributed at once,  
17 the court may make successive orders of distribution,  
18 as the circumstances may require ; if there is any  
19 surplus of the proceeds of sale, after making all  
20 payments before mentioned, it shall be paid over to the  
21 owner of the property, but before it is paid over it  
22 shall be liable to be taken on execution against the  
23 owner.

SECT. 10. If the interest of the owner in the build-  
2 ing, structure or land, is under attachment at the time  
3 of filing and recording the statement of the account,  
4 the attaching creditor shall be preferred to the extent  
5 of the value of the buildings and land as they were  
6 when the statement was recorded ; and the court shall  
7 ascertain by a jury or otherwise, as the case may re-  
8 quire, what proportion of the proceeds of the sale  
9 shall be held subject to the attachment ; if the attach-  
10 ing creditor secures judgment, he shall be entitled to  
11 receive on his execution the proportion of the proceeds  
12 held subject to his attachment, or as much thereof as  
13 may be necessary to satisfy his execution, and the res-  
14 idue shall be applied in the same manner as if there

15 had been no attachment ; if the attachment is made  
16 after the recording of the statement, the proceeds,  
17 after discharging all prior liens and claims, shall be  
18 applied to satisfy the execution of such attaching  
19 creditor, as in case of two or more successive attach-  
20 ments or seizures on execution of a right of redemp-  
21 tion ; if an attachment is made after the recording of  
22 such statement, and if after the attachment another  
23 like statement is recorded, the creditor in the latter  
24 statement shall be entitled to be paid only out of the  
25 residue of the proceeds remaining after paying all that  
26 is due on the demands, a statement of which is re-  
27 corded before the attachment and satisfying the attach-  
28 ing creditor ; attaching creditors shall, as between  
29 themselves, be entitled to be paid according to the  
30 order of their attachments, but when several creditors  
31 who are entitled to the lien provided for in this chap-  
32 ter have equal rights as between themselves, and the  
33 fund is insufficient to pay the whole, they shall share  
34 it equally in proportion to their respective debts.

SECT. 11. The lien before provided, shall bind the  
2 whole estate and interest of the person for whom the  
3 work is done or materials furnished, and the creditor  
4 may cause the right of redemption, or whatever other  
5 right or estate the owner had in the property, to be  
6 sold and applied to the discharge of his debt, accord-

7 ing to the provisions of this chapter ; if the person in-  
8 debted dies, or conveys away his estate or interest  
9 before the commencement of a suit on the contract,  
10 the suit may be commenced and prosecuted against his  
11 heirs or whoever holds the estate or interest which he had  
12 in the premises at the time the labor or materials were per-  
13 formed or furnished ; if he dies during the pending of the  
14 suit, it may be prosecuted against his executors, ad-  
15 ministrators, heirs or assigns ; if the creditor dies  
16 before the commencement of the suit, it may be com-  
17 menced and prosecuted by his administrator or execu-  
18 tor ; or if commenced in his life time, it may be  
19 prosecuted by them, as it might have been by the  
20 deceased if living. Any party interested in a suit  
21 brought under this act, may appeal to the district  
22 court from the final decree, and the cause shall be  
23 thereupon heard and determined according to the pro-  
24 visions of this act.

SECT. 12. If it appears, in any stage of the proceed-  
2 ings that the suit was commenced by the petitioning  
3 creditor, before his right of action accrued, or after it  
4 was barred, or if he becomes nonsuit, or fails to es-  
5 tablish his claim, the suit may be prosecuted by any  
6 other creditor having such lien, in the same manner

7 as if it had been originally commenced by him, if the  
8 circumstances of the case are such that he might  
9 then, or at any time since the commencement of the  
10 original suit, have commenced a like suit on his own  
11 claim—if the petitioning creditor commences his suit  
12 before his right of action accrues, his claim may  
13 nevertheless be allowed, if the suit is carried on by  
14 any other creditor, as herein provided, but he shall not  
15 in such case be entitled to costs, and he may be re-  
16 quired to pay the costs incurred by the debtor, or a  
17 part thereof, as the court may deem reasonable. The  
18 costs in all other respects shall be subject to the dis-  
19 cretion of the court, to be paid from proceeds of sale  
20 or by any of the parties, as justice and equity may  
21 require.

SECT. 13. Nothing herein contained shall be con-  
2 strued to prevent a creditor in such contract from  
3 maintaining an action thereon at the common law in  
4 like manner as if he had no such lien for the security  
5 of his debt.

SECT. 14. When a lien debt is fully paid the cred-  
2 itor at the debtor's expense shall enter on the margin  
3 of the registry, where the statement is recorded, a  
4 discharge of his lien, or shall execute a release thereof,  
5 which may be recorded.

SECT. 15. The sixteenth, seventeenth and eighteenth  
2 sections of chapter ninety-one of the revised statutes,  
3 and chapter fifty-two of the public laws of eighteen  
4 hundred and fifty-eight, are hereby repealed, saving  
5 and reserving all rights and remedies by virtue thereof,  
6 and this act shall apply only to contracts hereafter  
7 made.

## STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, }  
March 13, 1861. }

Reported by Mr. FOX from the Committee on Judiciary, and on motion of Mr. DYER of Calais, laid on the table and 350 copies ordered to be printed for the use of the Legislature.

CHARLES A. MILLER, *Clerk.*