

This PUBLIC BILL originated in the HOUSE OF REPRESENTATIVES, and, having this day passed as now printed, is transmitted to the LEGISLATIVE COUNCIL for its concurrence.

*House of Representatives,
22nd September, 1939.*

Hon. Mr. Mason.

WAGES PROTECTION AND CONTRACTORS' LIENS.

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A BILL INTITULED

Title. AN ACT to consolidate and amend certain Enactments relating to the Payment of Wages due to Workers and of Moneys due to Contractors.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title and commencement. **1.** This Act may be cited as the Wages Protection and Contractors' Liens Act, 1939, and shall come into force on the *first* day of *January*, nineteen hundred and *forty*. 10

PART I.

WAGES PROTECTION AND TRUCK.

Interpretation. **2.** In this Part of this Act, unless the context otherwise requires,— 15

“Contract” includes any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, and whether direct or indirect, to which the employer and the worker are parties, or are assenting, or by which they are mutually bound to each other, or whereby either of them endeavours to impose an obligation on the other of them: 20

“Employer” includes any master, manager, foreman, clerk, or other person engaged in the hiring, employment, or superintendence of the service or work of any worker:

5 “Money” means any coins or banknotes the tender of which is a legal tender:

10 “Wages” includes any money or thing had or contracted to be paid, delivered, or given as a recompense, reward, remuneration, or consideration for any service or work rendered or done or to be rendered or done, whether computed according to time or by piecework, or at a fixed price, or otherwise, and whether payable at regular intervals or otherwise:

15 “Worker” means any person in any manner employed in any service or work.

3. (1) No order attaching or charging the wages of any worker shall be made in any Court except with respect to so much of the wages as exceeds the rate of two pounds a week.

Restrictions on attachment of wages. 1908, No. 204, s. 27

(2) The foregoing provisions of this section shall not apply in any case where the attachment of wages is expressly authorized by any Act.

4. The following provisions of this Part of this Act shall be deemed to be subject to sections *nine* and *nineteen* of this Act.

Exceptions to following provisions of this Part.

5. (1) In every contract made with any worker the wages of the worker shall be made payable in money only, and not otherwise, and if by agreement or custom or otherwise a worker is entitled to receive in anticipation of the regular period of the payment of his wages an advance as part or on account thereof, it shall not be lawful for the employer to withhold the advance or to make any deduction in respect of the advance on account of poundage, discount, or interest, or any similar charge.

Wages to be payable in money. Ibid., s. 29

40 (2) If any part of any such contract is in contravention of this section that part shall be deemed to be illegal and void, and to be severable from the remainder of the contract.

No contract to stipulate as to mode of spending wages. 1908, No. 204, s. 30

6. (1) No employer shall, directly or indirectly, by himself or his agent, impose as a condition, express or implied, in or for the employment of any worker any terms as to the place or the manner in which or the person with whom the whole or any part of the wages paid to the worker is to be expended. 5

(2) No employer shall, by himself or his agent, dismiss any worker from his employment for or on account of the place or the manner in which or the person with whom the whole or any part of the wages paid by the employer to the worker is expended or is not expended. 10

Manual workers to be paid weekly, and other workers monthly. Ibid., ss. 3, 31

7. In the absence of an agreement in writing to the contrary, the entire amount of wages earned by or payable to any worker shall be paid to him at intervals of not more than one week if he is employed in manual labour, and, if not, at intervals of not more than one month. 15

Entire amount of wages to be paid in money. Ibid., s. 31

8. The entire amount of the wages earned by or payable to any worker shall be actually paid to him in money, and not otherwise, and every worker shall be entitled to recover from his employer in any Court of competent jurisdiction so much of the wages earned by the worker as has not been actually paid to him by his employer in money. 20

Payment of wages by cheque. Ibid., s. 36

9. (1) Nothing in this Part of this Act shall be construed to prevent or render invalid any contract for the payment, or any actual payment, to any worker of the whole or any part of his wages by a cheque, draft, or order in writing for the payment of money to the bearer on demand, drawn on any person, company, or association carrying on the business of a banker in New Zealand, either generally or with any particular persons or class of persons only, if the worker freely consents to receive the cheque, draft, or order: 25

Provided that no such cheque shall be crossed. 30

(2) If any wages are paid to any worker by a cheque, draft, or order as aforesaid and it is dishonoured, the worker shall be entitled to recover from his employer in any Court of competent 35 40

jurisdiction, in addition to any wages due or payable to the worker, such reasonable damages as he sustains in consequence of the dishonour.

5 **10.** In any action brought by any worker against his employer for the recovery of any money due to the worker as his wages the employer shall not be allowed to make any set-off or counterclaim, or to claim any reduction of the worker's demand,—

No set-off for goods supplied to worker by employer. 1908, No. 204, s. 32

10 (a) In respect of any goods had or received by the worker as or on account of his wages:

(b) In respect of any goods sold, delivered, or supplied at any shop, store, house, or premises kept by or belonging to the employer, or in the profits of which the employer has any share or interest:

15 (c) In respect of any goods supplied to the worker by any person under any order or direction of the worker or his agent, or of the employer or his agent.

20 **11.** (1) No employer shall be entitled to maintain an action in any Court against any worker for or in respect of any goods sold, delivered, or supplied by the employer to the worker as or on account of his wages, or for or in respect of any goods sold, delivered, 25 or supplied to the worker while in his employment at any shop, store, house, or premises kept by or belonging to the employer, or in the profits of which the employer has any share or interest.

No action for goods supplied to worker by employer. *Ibid.*, s. 33

30 (2) Where any goods are supplied to any worker by his employer, or by any agent of the employer, or under any order or direction of the employer or his agent, neither the employer nor his agent nor any person supplying the goods shall be entitled to maintain any action in any Court against the worker for or in 35 respect of those goods.

12. No deduction shall be made from a worker's wages for sharpening or repairing tools, except by agreement.

No deduction for repairing tools. *Ibid.*, s. 34

40 **13.** (1) No employer shall directly or indirectly take or receive any money from any worker in his employment, whether by way of deduction from wages or otherwise, in respect of any policy of insurance against injury by accident.

No money to be received or deducted for accident-insurance policies. *Ibid.*, s. 35

(2) It shall not be lawful for any insurance company or any person on its behalf to take or receive, directly or indirectly, from any worker any money in respect of any policy of insurance that in any way, directly or indirectly, purports both to indemnify the employer against any of his liability under the Workers' Compensation Act, 1922, and to insure the worker against injury by accident. 5

See Reprint
of Statutes,
Vol. V, p. 597

(3) The foregoing provisions of this section shall not apply to any voluntary arrangement arrived at between any employer and his worker for insurance against accidents happening to the worker outside the time in which he is engaged working for the employer, if the arrangement is approved by a Magistrate after hearing evidence. But in no case shall the premium payable by the worker exceed one-third of the total amount payable. 10 15

(4) The amount of any money taken or received from any worker in contravention of this section may at any time within six months thereafter be recovered by him in any Court of competent jurisdiction from the employer, company, or person who took or received it. 20

Service of
legal process.
1908, No. 204,
s. 37

14. (1) Service of any legal process for or incidental to the recovery of wages, or damages for non-payment thereof, or on any cheque, draft, or order given in respect of wages may be effected on the employer by leaving the process with or delivering it to the manager or overseer for the time being of the works at or in respect of which the wages are earned. 25

(2) This section shall not affect any other mode of service allowed by law. 30

Offences.
Ibid., ss. 38,
40-44.

15. (1) If the employer of any worker, by himself or the agency of any other person, directly or indirectly enters into any contract or makes any payment in contravention of this Part of this Act, or if the employer or his agent otherwise contravenes or fails to comply with any of the provisions of this Part of this Act the employer shall be deemed to be guilty of an offence and, subject to the provisions of this section, shall be liable on summary conviction to a fine of fifty pounds. 35 40

(2) Where the offence has in fact been committed by an agent of the employer or by any other person the agent or other person shall be deemed to be guilty of the offence and punishable in the same way as if he
5 were the employer.

(3) Where an employer is charged with an offence under this section he shall be entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought before the Court
10 at the time appointed for hearing the charge, and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the Court that he has used due diligence to enforce the execution of this Part of this Act and that the other person
15 committed an offence without his knowledge, consent, or connivance, the other person shall be convicted of the offence, and the employer shall be exempt from liability.

16. In any proceedings or suit against any employer,
20 company, or person for the breach of any provision of this Part of this Act or for the recovery by any worker of money alleged to have been taken or received from him in contravention of any provision of this Part of this Act the fact that the worker consented
25 thereto shall not avail in any way as an answer or defence.

Consent of
worker no
defence.
1908, No. 204,
s. 39

17. No person shall be liable to be convicted of any offence against this Part of this Act committed by his partner in business and without his knowledge,
30 privity, or consent. But it shall be lawful, when any fine or sum for wages, or any other sum, is ordered to be paid under the authority of this Part of this Act, and the person ordered to pay it neglects or refuses to do so, to levy it by distress and sale of any goods
35 or chattels belonging to any partnership, concern, or business in the carrying-on of which the wages became due or the offence was committed.

Partner not
liable in
certain cases.
Ibid., s. 45

18. In any proceedings to recover any sum due for wages in the case of a partnership the service of the
40 summons or other process upon one or more of the partners shall be deemed to be service upon all of them, and it shall be lawful for the Court to give judgment against any one or more of the partners for the payment of the sum appearing to be due.

Judgment and
execution
against
partners.
Ibid., s. 46

This Part of
Act not to
apply in
certain cases.
1908, No. 204,
s. 47

19. (1) This Part of this Act (except sections *three* and *thirteen* thereof) shall not apply with respect to any persons employed as seamen or in agricultural or pastoral pursuits.

(2) Nothing in this Part of this Act shall be 5
construed to prevent any employer or his agent—

(a) From supplying or contracting to supply to any worker any medicine or medical attendance, or any fuel, materials, tools, appliances, or implements to be used by the worker in 10
his work:

(b) From supplying or contracting to supply to any worker employed by him to fell bush or to clear land of bush the necessary outfit and means of support and materials and tools 15
requisite for commencing his work, to any amount not exceeding in any case the amount of two months' wages to be earned by the worker in that work:

(c) From supplying or contracting to supply to any worker any food for any horse or other beast of burden used by the worker in his work: 20

(d) From letting to any worker at any rent that may be agreed upon the whole or any part of any tenement, or from allowing to any worker 25
the use of a tenement as part of his wages or in addition to his wages, or any other allowance or privilege in addition to money wages as a remuneration for his services:

(e) From providing or contracting to provide 30
board or lodging or meals for any worker:

(f) From deducting or contracting to deduct from the wages of any worker a reasonable amount for or in respect of any of the matters referred to in the foregoing paragraphs of 35
this subsection:

Provided that the exemptions provided for in this subsection shall not apply to any contractor or sub-contractor for any work executed for the Government or for any local authority or public body, or to any 40
contractor or subcontractor for any railway or road-making work, except in respect of the supply of medicine or medical attendance.

(3) Nothing in this Part of this Act (except section *thirteen* thereof) shall be construed to prevent any employer or his agent from advancing to any worker any money to be contributed by him to any friendly
5 society, life-insurance company or association, savings-bank, or other society or association whatsoever, or from advancing any money for the relief of any worker or his wife or family in sickness, or from advancing
10 any money to any member of a worker's family by his order, or from deducting or contracting to deduct any moneys so advanced from the wages of the worker.

PART II.

CONTRACTORS' AND WORKERS' LIENS AND CHARGES.

20. (1) In this Part of this Act, unless the context
15 otherwise requires,—

Interpretation.
1908, No. 204,
ss. 48, 59 (3);
1914, No. 52,
ss. 2, 4

“Charge” means a charge under this Part of this Act:

20 “Contract price” means the amount of the consideration for the performance of any work under any contract or subcontract, express or implied, and whether the price is fixed by express agreement or not:

25 “Contractor,” as regards an employer, means a person who contracts directly with the employer to perform any work; as regards a subcontractor it means a person with whom the subcontractor contracts to perform any work; and “subcontractor” means a person who contracts with a contractor, or with
30 another subcontractor, to perform any work:

“Court” means the Court in which any proceeding may be taken under this Part of this Act; and includes a Judge or a Magistrate, as the case may require:

35 “Employer” means any person who contracts with another person for the performance of work by that other person, or at whose request, or on whose credit, or on whose behalf, with his privity or consent, work is done; and includes all persons claiming under
40 him whose rights are acquired after the work is commenced; but a mortgagee who advances money to an employer shall not by reason thereof be deemed to be an employer:

- “Lien” means a lien under this Part of this Act:
- “Owner” means the person to whom the land or chattel upon or in respect of which any work is to be done belongs; and, in the case of land, includes a person having a limited estate or interest in the land: 5
- “Work” includes any work or labour, whether skilled or unskilled, done or commenced by any person of any occupation in connection with— 10
- (a) The construction, decoration, alteration, or repair of any building or other structure upon land; or
 - (b) The development or working of any mine, quarry, sandpit, drain, embankment, or other excavation in or upon any land; or 15
 - (c) The placing, fixing, or erection of any materials, or of any plant or machinery, used or intended to be used for any of the purposes aforesaid; or 20
 - (d) The alteration or improvement of any chattel; or
 - (e) The threshing of grain (including in the term “grain” all cereals, pulse, and seeds of every kind)— 25
- and also includes the supply of material used or brought on the premises to be used in connection with the work:
- “Worker” means a person employed in doing work, whether his remuneration is to be according to time or by piecework, or at a fixed price, or otherwise: 30
- References to the amount payable under any contract or subcontract shall be deemed to include all amounts that under the contract or subcontract are to be credited or allowed in complete or partial satisfaction of the contract price otherwise than upon payment in money; and references to the payment of any moneys in reduction of the contract price shall be deemed to include the making of any such credit or allowance. 40

(2) For the purposes of this Part of this Act the work specified in any contract or subcontract shall be deemed to be completed when, with such variations, omissions, or deductions as have been duly authorized
5 or agreed upon, it has been performed in accordance with the contract or subcontract, notwithstanding that the contractor or subcontractor may then or subsequently be employed in doing additional or extra work which is connected with or related to the work but is
10 not specified in the contract or subcontract, or that he may be liable to rectify defects in the work discovered since the performance thereof and during any period of maintenance provided for by the contract or subcontract.

15 *Rights of Lien and Charge.*

21. (1) Where any employer contracts with or employs any person for the performance of any work upon or in respect of any land or chattel, the contractor and every subcontractor or worker employed to do
20 any part of the work shall be entitled to a lien upon the estate or interest of the employer in the land or chattel, and every subcontractor or worker employed by the contractor or by any subcontractor to do any part of the work shall be entitled to a charge on the moneys
25 payable to the contractor or subcontractor by whom he is employed, or to any superior contractor, under his contract or subcontract.

Liens and charges in favour of contractors, subcontractors, and workers.
1908, No. 204, ss. 49, 51 (1), 52

(2) The lien or charge of the contractor or of a subcontractor shall be deemed to secure the payment
30 in accordance with his contract or subcontract of all moneys that are payable or are to become payable to him under the contract or subcontract. The lien or charge of a worker shall be deemed to secure the payment in accordance with the terms of his employ-
35 ment of all moneys that are payable or are to become payable to him for his work.

(3) The total amount recoverable under the liens and charges of the contractor and of the subcontractors and workers employed by the contractor or by any
40 subcontractor shall not, except in the case of fraud, exceed the amount payable to the contractor under his contract.

(4) The total amount recoverable under the liens and charges of all claimants who are employed as subcontractors or workers by any contractor or subcontractor shall not exceed the amount payable under his contract or subcontract to that contractor or subcontractor, as the case may be. 5

Certain moneys deemed to be included in amount payable to contractor or subcontractor. 1908, No. 204, s. 59 (1)

22. For the purposes of the lien and charge of any claimant who is employed as a subcontractor or worker by the contractor or by any subcontractor, the amount of money payable to the contractor or subcontractor by whom the claimant is employed, or to any superior contractor, under his contract or subcontract shall be deemed to include all moneys paid in reduction of the contract price to any person other than the claimant, unless the payments are made in good faith, and not for the purpose of defeating or impairing a claim to a lien or charge existing or arising under this Part of this Act, and are not made in contravention of section *thirty-one* or section *thirty-two* of this Act. 10 15 20

Liability of owner who is not the employer. *Ibid.*, s. 50

23. (1) Where any owner is not the employer, the estate or interest of the owner in the land or chattel upon or in respect of which the work is to be done shall be subject to lien or liability as if he were the employer, to the extent to which the owner has consented in writing that he should be liable for the contract price or that his estate or interest in the land or chattel should be liable. 25

(2) For the purposes of this section references in this Part of this Act to the employer shall be deemed to include references to the owner, and references to the liability of the employer under his contract shall be deemed to include references to the liability of the owner under this section. 30

Assignments, attachments, &c., to be void as against subcontractors' or workers' charges. *Ibid.*, ss. 5, 6, 51 (2); 1914, No. 52, s. 3

24. (1) No assignment, disposition, or charge (whether legal or equitable) that is made or given by any contractor or subcontractor (otherwise than to his workers for wages due to them in respect of his contract or subcontract) of or upon any money payable or to become payable to him under his contract or subcontract shall have any force or effect at law or in equity as against the lien or charge of any subcontractor or worker. 35 40

(2) No money that is payable or is to become payable to any contractor or subcontractor under his contract or subcontract shall be capable of being attached, or of passing or being charged by operation of law (otherwise than under this Part of this Act), so as to defeat or impair the lien or charge of any subcontractor or worker.

25. (1) Subject to the provisions of this section and the *last preceding* section, where any land to which a lien attaches is subject to a mortgage registered before the registration of the lien against that land, the mortgage shall have priority over the lien.

Provisions with respect to mortgaged land. 1908, No. 204, s. 53

(2) If the mortgagee is a party to the contract in respect of which the lien arises the lien shall have priority over the mortgage.

(3) In so far as the mortgage secures any money that is advanced after notice of the lien has been given to the mortgagee or to any solicitor for the time being acting for the mortgagee in respect of the mortgage, the lien shall have priority over the mortgage.

(4) All moneys that any mortgagee pays in respect of a lien that has priority over his mortgage shall be added to and form part of the principal money secured by the mortgage, and shall bear interest accordingly.

26. (1) Subject to the *next succeeding* subsection, liens and charges shall have priority in the following order:—

Priority of liens and charges. Ibid., s. 54

(a) The liens and charges of workers for wages, not exceeding *three months'* wages, and not exceeding the sum of *fifty* pounds in the case of any worker:

(b) The liens and charges of workers for wages in so far as they are not included in the *last preceding* paragraph, and the liens and charges of subcontractors:

(c) The liens of contractors,—
so that the lien or charge of a subcontractor shall have priority over the lien or charge of the contractor with whom his contract is made.

(2) If the notice of lien or charge is not given before the completion of the work in respect of which it is claimed or within *thirty* days after the completion, the lien or charge shall have priority after the class to which it would otherwise belong but before the class next in order of priority.

(3) If the money available is insufficient to meet the claims of two or more claimants whose liens or charges have equal priority under this section, the claims shall rank equally between themselves and abate in equal proportions. 5

Transmission and assignment of liens and charges. 1908, No. 204, s. 77

27. (1) When upon the death or bankruptcy of the person entitled to a lien or charge, or otherwise by operation of law, the debt secured by a lien or charge passes to any other person, the right to the lien or charge shall pass therewith. 10

(2) A lien or charge may be assigned together with the debt secured thereby.

Notice of Lien or Charge.

Notice of lien. Ibid., s. 55

28. (1) Every person who intends to claim a lien on any land or chattel shall give notice to the owner 15 specifying the amount and particulars of his claim, and stating that he requires the owner to take the necessary steps to see that it is paid or secured to the claimant.

(2) He shall also give notice of having made the claim to the employer (if the owner is not the employer), to the contractor or subcontractor (if any) by whom he is employed, to every superior contractor, and to every other person who to the knowledge of the claimant would, but for the claim, be entitled to receive any money payable to that contractor or subcontractor or to any superior contractor. 20 25

Notice of charge. Ibid., s. 56

29. (1) Every subcontractor or worker who intends to claim a charge on any money payable to his contractor or to a superior contractor shall give 30 notice to the employer or superior contractor by whom the money is payable, specifying the amount and particulars of his claim, and stating that he requires the employer or superior contractor, as the case may be, to take the necessary steps to see that it is paid or 35 secured to the claimant.

(2) He shall also give notice of having made the claim to the contractor to whom the money is payable and to every other person who to the knowledge of the complainant would, but for the claim, be entitled to receive any money payable to that contractor. 40

30. (1) A notice of lien or charge may be in one of the forms in the Schedule to this Act or to the like effect, but its validity shall not be affected by any inaccuracy or want of form, if the property or money sought to be charged and the amount of the claim can be ascertained with reasonable certainty from the notice.

Form of and time for giving notice of lien or charge. 1908, No. 204, s. 57

(2) A notice of lien or charge may be given although the work is not completed, or the time for payment of the money payable by the owner or of the money sought to be charged or of the money claimed has not arrived.

Duties and Obligations of Employer or Superior Contractor.

15 31. (1) When a notice of lien or charge is given to the employer or to a contractor by a claimant not employed by him it shall be the duty of the employer or contractor to retain in his hands, until the claim is satisfied or otherwise disposed of, a sufficient part of the money payable or to become payable by him under his contract to satisfy the claim of the claimant.

Consequences of notice of lien or charge. Ibid., s. 58

(2) Subject to the provisions of this Part of this Act, the employer or contractor shall in every such case be personally liable to pay to the claimant the amount of his claim, not exceeding the amount that he is required by this section to retain, in the same manner and to the same extent as if the claimant had been employed by him personally.

30 32. In addition to the amount (if any) that he is required by the *last preceding* section to retain, every employer or contractor, whether or not he has received any notice of lien or charge, shall retain in his hands one-fourth of the contract price payable by him until the expiration of thirty-one days after the completion of the work specified in the contract or subcontract.

Duty to retain one-fourth of contract price. Ibid., s. 59 (1), (2)

35 33. (1) Every contractor who enters into a subcontract for the performance of any part of the work to be done by him under his contract shall forthwith give written notice to the employer, stating the name of the subcontractor, the work to be done by him, the amount of the subcontract price, and the mode of payment.

Contractor to give notice to employer of all subcontracts. Ibid., s. 60

40 (2) Every contractor who fails to comply with this section shall be liable on summary conviction to a fine of *fifty* pounds.

Enforcement of Lien or Charge.

Actions to
enforce liens
and charges.
1908, No. 204,
ss. 61, 66

34. (1) Subject to the provisions of this section, every person who gives a notice of lien or charge may commence an action in any Court of competent jurisdiction claiming a declaration that he is entitled to the lien or charge, or to both a lien and a charge, as the case may be. 5

(2) In addition to the person to whom the notice of lien or charge is given there shall be joined as a defendant in the action every person to whom the claimant is required by this Part of this Act to give notice of having made the claim of lien or charge. The Court may give such directions as it thinks fit with respect to the joinder of any other persons or the notification of the proceedings to any other persons. 10 15

(3) The claimant may also, if he so desires, recover judgment in the same action against any defendant for the amount for which he is liable under any contract or under this Part of this Act in respect of the claimant's claim. 20

(4) Subject to the *next succeeding* subsection, an action under this section must be commenced within sixty days after the completion of the work specified in the contract between the employer and the contractor or worker employed directly by the employer. 25

(5) Where an action to enforce a lien or charge in respect of that work or any part thereof is commenced within the time hereinbefore prescribed the Court may, if it thinks fit, at any time while that action is pending, and whether or not the time has already expired, extend the time within which an action to enforce any other lien or charge in respect of that work or any part thereof may be commenced, whether in that Court or in any other Court having jurisdiction. The Court may make an order under this subsection of its own motion or on the application of any party to the action that is pending or of any other interested person, and in either case may make such incidental orders as it thinks fit with respect to the service or notification of the order. 30 35 40

(6) Every lien or charge shall be deemed to be extinguished unless the claimant duly commences an action under this section to enforce it, or becomes a party to an action under this section as hereinafter provided.

5 **35.** (1) The Supreme Court shall have jurisdiction in respect of all actions, matters, questions, and disputes arising under this Part of this Act.

Jurisdiction of Supreme Court and Magistrate's Court.

(2) A Magistrate's Court presided over by a Magistrate shall have jurisdiction in respect of an action under this Part of this Act and all matters incidental thereto, and an appeal shall lie from any such action, as if it were an action for debt, and where the amount claimed does not exceed the amount up to which the Court has jurisdiction in actions for debt it shall have jurisdiction in all other matters, questions, and disputes arising under this Part of this Act, including jurisdiction to award costs to any party.

1908, No. 204, s. 63

15 **36.** (1) An action under this Part of this Act may be brought by or on behalf of any number of persons claiming liens or charges of the same order of priority.

Actions for joint benefit.

Ibid., ss. 72, 80

(2) Every action commenced by any person to enforce a lien or charge shall be deemed to be brought on behalf also of every other person claiming a lien or charge of the same order of priority who, in accordance with rules of Court, becomes a plaintiff in the action. Subject to any rules of Court, every such person may become a plaintiff at any time before the date appointed for the hearing of the action or any adjournment of the hearing (whether or not he has given a notice of lien or charge) by filing in the Court and serving on all the other parties, in the same manner as if he were commencing the action, a statement of claim endorsed with a request that he be joined as a plaintiff in the action.

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40 (3) Any person claiming to be interested in the land or chattel in respect of which a lien is claimed or in the money in respect of which a charge is claimed may, in accordance with rules of Court, intervene in any action to enforce the lien or charge. Subject to any rules of Court, every such person may intervene by filing in the Court and serving on all the other parties an affidavit stating the nature of his interest.

Consolidation
of actions.
1908, No. 204,
s. 81

37. (1) Where separate actions are brought under this Part of this Act against the same person or against several persons in respect of the whole or any part of the work specified in the same contract between the employer and the principal contractor, the Court may order them to be consolidated, on such terms as it deems just. 5

(2) For the purposes of this section any action pending in the Supreme Court may be remitted to a Magistrate's Court if it is within the jurisdiction of that Court, and any action pending in a Magistrate's Court may be remitted to another Magistrate's Court or to the Supreme Court. 10

Protection
of property.
Ibid., s. 71

38. (1) The Court may, on the application of any party to an action or other proceeding under this Part of this Act, make such interim orders for the custody or preservation of any property concerned as may be deemed necessary for the protection of the interests of any persons interested, pending the decision of the Court on the claim or dispute. 15 20

(2) Every person who after notice of an order made under this section acts in contravention of the order or fails to comply with it shall be liable on summary conviction to a fine of fifty pounds.

Court may
discharge lien
on terms.
Ibid., ss. 70, 86

39. The Court may at any time discharge a lien upon any land (whether it is registered or not), or a lien upon any chattel, on payment into Court of the amount claimed, or on such other terms (whether or not an action has been commenced) as the Court deems just. 25 30

Effect of
payment under
order of
Court.
Ibid., s. 73

40. All payments made by an employer, contractor, or subcontractor to any person pursuant to an order of the Court made under this Part of this Act shall be a sufficient discharge to the person making the payment of his liability to pay the money to the person who, but for the order, would have been entitled to receive the money from him. 35

Registration of
lien against
land.
Ibid., ss. 74,
75, 76, 79, 85
See Reprint
of Statutes,
Vol. VII,
p. 1162

41. (1) No land shall be affected by a lien unless the lien is registered against the title to the land as provided in this section. 40

(2) Where the land is subject to the Land Transfer Act, 1915, a copy of the statement of claim in the action to enforce the lien, certified by the proper officer of the Court, may be lodged with the District Land

Registrar, who shall thereupon register it in the manner in which caveats are required to be registered. Notice of the registration shall be given by the Registrar, by registered letter, to the registered proprietor of the
5 land and to every person entitled to a mortgage or encumbrance over the land.

(3) Where the land is not subject to the Land Transfer Act, 1915, the statement of claim, certified as aforesaid, may be registered in the manner in which
10 deeds and other instruments affecting the land may be registered.

(4) A statement of claim of lien shall not be liable to stamp duty. The fee for registering a statement of claim shall be one shilling.

(5) The costs of and incidental to the registration of a lien and of a discharge of a lien shall be deemed to be part of the costs of the action.

42. (1) A lien registered against any land may be discharged by a receipt signed by the claimant,
20 acknowledging payment of the amount claimed, and stamped as a receipt.

Registration of discharge of lien.
1908, No. 204, s. 78

(2) A receipt under this section or a judgment or order of the Court discharging a lien or directing the cancellation of the registration of a lien may be
25 registered in the same manner and for the same fee as the lien.

43. (1) If judgment is recovered by the plaintiff on a claim of lien, the Court may direct a sale of the land or chattel to take place at any time after one
30 month from the date of the judgment, and may direct such public notice, not being less than fourteen days, of the intended sale as the Court deems necessary.

Sale to enforce lien after judgment.
Ibid., ss. 83, 84, 87

(2) Where the lien is on a chattel that is affixed to any land, the Court may direct the sale of the
35 chattel, and may authorize its removal from the land to which it is affixed.

(3) Where a sale of any land is directed under this Part of this Act by a decision of a Magistrate's Court, the sale shall be made by the Sheriff in the
40 district in which the land is situated on delivery to him of a copy of the decision, certified by the Clerk of the Magistrate's Court, which shall be a sufficient warrant and authority to the Sheriff to effect and complete the sale in the same manner and with the

same powers and authorities (including those relating to the execution of transfers and other instruments) as if it were a sale under a writ of sale pursuant to a judgment of the Supreme Court.

Persons prejudicially affected may apply to Court. 1908, No. 204, Ibid., s. 88

44. Any person alleging that he is prejudicially affected by a claim of lien or charge, or by registration of a lien against any land, may at any time apply to the Court to have the claim or registration cancelled or the effect thereof modified, and such order may be made as may be just. 5
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Vexatious notice of lien or charge. Ibid., s. 89

45. If any person vexatiously or without any reasonable grounds gives a notice of lien or charge, or registers any lien, he shall be liable to pay to any person prejudicially affected thereby such reasonable damages as he sustains in consequence thereof. 15

Lien on Personal Chattels.

Special provision for enforcing lien on personal chattels. Ibid., s. 91

46. (1) Where a worker has done work upon a chattel in his possession so as thereby to be entitled to a lien on the chattel for any amount, and the amount to which he is entitled remains unpaid for not less than two months after it ought to have been paid, he may, in addition to all other remedies provided by law, cause the chattel to be sold by auction. 20

(2) Not less than one week's notice of the sale shall be given to the owner of the chattel as provided in section *forty-eight* of this Act if his address is known to the worker, and also (whether his address is known or not) by advertisement in a newspaper published in the locality in which the work was done, or if there is no newspaper published in that locality, in a newspaper circulating in the neighbourhood, stating in each case the name of the worker, the amount of the debt, a description of the chattel, the time and place of sale, and the name of the auctioneer. The advertisement need not specify the name of the owner. 25
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(3) The proceeds of the sale shall be applied, firstly, in payment of the costs of advertising and sale and, secondly, in payment of the amount due under the lien, and any surplus shall, as soon as may be after the completion of the sale, be paid to the Clerk of the Magistrate's Court nearest to the place of sale, to be held by him for the benefit of the person entitled to it. 40

Charge for Cost of Threshing Crops.

47. Where any crop that is subject to a valid security duly registered under the Chattels Transfer Act, 1924, is threshed by a contractor and the contractor gives notice in writing to the grantee of his claim before the realization of the security by the grantee or within ten days after the realization, the amount of the reasonable cost of threshing the crop, or so much thereof as remains unpaid, shall be a charge on the proceeds of the realization of that crop. The proceeds of the realization of the security over any crop threshed by a contractor shall be retained by the grantee until the expiration of the time provided by this section for the giving of notice of the contractor's claim, unless the amount of the claim is sooner paid.

Right of contractor in respect of threshing crop subject to security.
1908, No. 204, s. 95
See Reprint of Statutes, Vol. I, p. 632

General Provisions.

48. (1) Except where otherwise specially provided, any notice required to be given to any person for the purposes of this Part of this Act may be given by causing it to be delivered to that person, or to be left at his usual or last known place of abode or business or at any address specified by him for that purpose, or to be posted in a letter addressed to him at that place of abode or business or address.

Service of notices.

(2) If any such notice is sent to any person by registered letter it shall be deemed to have been delivered to him when it would have been delivered in the ordinary course of post, and in proving the delivery it shall be sufficient to prove that the letter was properly addressed and posted.

49. Except as otherwise expressly provided, nothing in this Part of this Act shall be construed to affect the right of any person to whom a debt is due for work done or materials supplied to maintain a personal action to recover the debt against any person liable for it; and the judgment (if any) obtained by the plaintiff in any such action shall not affect any lien or charge or other right to which he is entitled under this Part of this Act.

Saving of other remedies.
1908, No. 204, s. 93

50. Nothing in this Part of this Act shall be deemed to create or give to any person any right or remedy against any land vested in the Crown or in any local authority or public body.

Certain lands not affected.
Ibid., s. 94

PART III.

REPEALS AND SAVINGS.

Repeals and savings.
See Reprint of Statutes, Vol. VIII, pp. 1179-1216

51. (1) The Wages Protection and Contractors' Liens Act, 1908, and the Wages Protection and Contractors' Liens Amendment Act, 1914, are hereby 5 repealed.

(2) All liens, charges, notices, orders, registers, registrations, records, instruments, and generally all acts of authority that originated under any enactment hereby repealed, and are subsisting or in force on the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed 10 to have so originated. 15

(3) All matters and proceedings commenced under any such enactment and pending or in progress on the commencement of this Act may be continued, completed, and enforced under this Act.

Schedule.

SCHEDULE.

FORMS.

(1) NOTICE OF LIEN [AND CHARGE].

To Mr. C. D., of .
I, A. B., of [*Address and occupation*], hereby give you notice that I claim under the Wages Protection and Contractors' Liens Act, 1939, a lien on your land [*or motor-vehicle, or as the case may be*] at [*Here describe the land or chattel in such a manner that it can be identified*] in respect of the following work upon or in connection with the land [*or as the case may be*], that is to say: [*Here give a short description of the nature of the work for which the lien is claimed*], which work was [*or is to be*] done by me while in the employment of [*or under a contract with*] you [*or E. F. or G. H. (as the case may be) of (Address and occupation)*] between the day of , 19 , and the day of , 19 .

[If a charge is also claimed against the owner, add the following:—

And I give you further notice that I claim under the said Act a charge on the money which is now or will be payable by you to E. F. [*Here state address and occupation of contractor if not given above*] in respect of the same work.]

The amount which I claim as due [*or to become due*] is £ ; and I require you to take the necessary steps to see that this amount is paid or secured to me.

Dated at , this day of , 19 .
[Signature of Claimant.]

(2) NOTICE OF CHARGE.

To Mr. C. D., of .

I, A. B., of [*Address and occupation*], hereby give you notice that I claim under the Wages Protection and Contractors' Liens Act, 1939, a charge on the money which is now or will be payable by you to E. F. of [*Address and occupation*], in respect of the following work in connection with your contract with the said E. F., that is to say: [*Here give a short description of the nature of the work for which the charge is claimed*], which work was [*or is to be*] done by me while in the employment of [*or under a subcontract with*] the said E. F. [*or G. H. of (Address and occupation)*], a subcontractor under the said E. F., between the day of , 19 , and the day of , 19 .

The amount which I claim as due [*or to become due*] is £ , and I require you to take the necessary steps to see that this amount is paid or secured to me.

Dated at , this day of , 19 .
[Signature of Claimant.]