

*Provisions extended by Contractors Debts Act Amending
Act 52 Vic. No. 3 - amended to 29th June 88*
No. XXII.

CONTRACTORS
DEBTS.

**An Act for better securing the payment of
Debts due to Workmen. [28th May, 1879.]**

Preamble.

WHEREAS it is desirable and expedient to enable persons employed upon work on which a lien over the thing worked on cannot be acquired and for which their employer has failed to pay them to obtain payment from moneys due to their employer for the work which they have done Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows (that is to say) :—

Title of Act.

1. This Act shall be called and may be cited as the "Contractors Debts Act."

Workman suing
contractor may
obtain certificate of
cause of debt.

2. If in any proceeding at law in any Court having competent jurisdiction any sum shall be found due and payable by the defendant for work and labour and the character of the work and the locality in which it has been done shall appear from the evidence the presiding Judge or Justice shall upon the plaintiff's application sign and deliver to him a certificate of the cause of debts in the form in the First Schedule which for the purposes of this Act shall be conclusive but no such certificate shall be given if the work appears to have been done upon a movable chattel of such a description that it would be practicable for a workman to have a lien thereon by retaining the same in his actual possession And if the sum so found due as aforesaid shall

First Schedule.

Contractors Debts.

shall be in respect of daily weekly or monthly wages and exceeds the amount of sixty days wages such certificate shall be given for the amount of sixty days wages and no more.

3. If the work done be work or part of or incidental to work for the doing of which any moneys may be due or accruing due to the defendant in such proceeding (hereafter referred to as the contractor) under any express or implied contract with any third person the plaintiff in such proceeding (hereinafter referred to as the workman) may obtain payment of the sum mentioned in the certificate out of such moneys by serving on such third person (hereinafter referred to as the contractee) a notice in the form in the Second Schedule together with a copy of the certificate issued to him as aforesaid.

If debt to workman be due for work for which money is due to contractor workman may by serving notice require payment thereof.

Second Schedule.

4. Upon service as aforesaid all moneys due or to accrue due as aforesaid from the contractee to the contractor to the amount of the workman's debt specified in the certificate shall be deemed to be effectually assigned by the contractor to the workman but subject to any prior assignment thereof under this Act binding upon the contractor and contractee at the time of service being effected upon the contractee as aforesaid.

Service of notice to operate as assignment to workman of debt due to contractor.

5. After such service and until a discharge for the workman's said debt in the form in the Third Schedule shall have been produced to and a copy thereof left with the contractee he shall satisfy such debt out of the moneys assigned as aforesaid by paying to the workman upon his application the said moneys as they become due and payable.

After service debt to workman to be paid by contractee out of moneys due to contractor.

Third Schedule.

6. The priority of assignments as aforesaid shall be determined by the order of service of notice on the contractee but all notices served within seven days of the first notice served in respect of the same contractor in any one year shall be deemed to be served at the same time for the purpose of securing the equal distribution of moneys due and accruing due to the contractor amongst all workmen serving notice within such period of seven days ratably in proportion to the amounts of their respective debts until payment of all in full and until such period of seven days has expired no workman's debt shall be paid by the contractee out of such moneys.

Debts of workman serving notice within seven days of first notice to be paid ratably without priority.

7. If the contractee shall fail to pay as aforesaid the workman may sue for and recover in his own name the moneys assigned as aforesaid as if the assignment of the debt due to the contractor were valid at law and by any proceeding which the contractor might have taken had there been no assignment under this Act subject to any defence which would have been available against the contractor in such proceeding except a defence founded on the act of the contractee after service upon him of the copy certificate and notice aforesaid.

If contractee fail to pay workman may sue for and recover moneys due to contractor.

8. Upon satisfaction by any other means than as aforesaid of the whole or part of the workman's debt mentioned on any certificate under this Act or on the setting aside of the judgment or order in respect of which any such certificate shall have been given any assignment effected under this Act in respect of such debt shall in the whole or in part cease to be operative but without prejudice to any *bonâ fide* payment or other dealing by the contractor on the footing of such assignment prior to notice and sufficient evidence of such satisfaction or setting aside having been given to him and so far as may be necessary to such payment or dealing such assignment shall continue in force.

On satisfaction of debt due to workman assignment of debt due to contractor to cease to operate.

9. The workman shall upon the request of the contractor or contractee paying to him the debt specified in the certificate sign a discharge therefor in the form in the Third Schedule and any workman refusing to sign a discharge as aforesaid if tendered for signature at the time of payment shall forfeit and pay to the contractor or contractee so tendering a sum equal to the amount of the payment such penalty to be recoverable at the nearest Court of Petty Sessions.

Workman upon payment shall sign a discharge in the form of the Third Schedule.

Third Schedule.

Contractors Debts.

After notice of action served on contractee by workmen moneys may be attached.

Fourth Schedule.

Leave to serve notice how to be obtained.

Plaintiff how to proceed after judgment.

Contractor to be liable for wages due by sub-contractor.

Contractor to furnish information as to contractee.

Fifth Schedule.

Act not to prejudice other remedies of workman or vary rights between contractor and contractee.

When to come in force.

10. The workman when or at any time after he takes out a summons or plaint against the defendant may by leave of the Court in which the summons or plaint is taken out or of the Judge or Magistrate thereof serve a notice of the action upon the contractee specifying the sum sued for such notice shall be in the form contained in the Fourth Schedule or to the effect thereof and thereupon any moneys due or accruing due by the contractee to the defendant or so much thereof as the Court or Judge shall order shall be attached and shall remain in the hands of the contractee until judgment be given in the action unless the Court or a Judge thereof shall otherwise order on the application of the contractee.

11. Leave to serve such notice may be obtained on the *ex parte* application of the workman and he shall in such application prove on oath or affirmation to the satisfaction of the Court or a Judge thereof that the sum sued for is due and owing by the contractor.

12. The plaintiff in the event of his obtaining judgment against the defendant shall then proceed by further notice in the form of the Second Schedule hereto as before provided.

13. A contractor who shall sublet any part of the work shall be responsible to the extent provided for by this Act for the wages of the workmen employed by a sub-contractor and a workman employed by a sub-contractor may proceed against the contractor as in this Act provided as if he had been directly employed by him.

14. Every contractor against whom a certificate shall have been granted shall on demand furnish to every workman employed by him a certificate in the form in the Fifth Schedule of this Act and setting forth the name and additions of his contractee. And every contractor refusing or neglecting to furnish or making any untrue statement in such certificate shall be liable to a penalty not exceeding fifty pounds recoverable at the nearest Court of Petty Sessions.

15. Nothing in this Act shall be construed to prejudice any remedy which the workman may have against the contractor in respect of the debt due to him or save as expressly provided to affect any right subsisting under any contract as aforesaid or otherwise between the contractor and contractee.

16. This Act shall come into force at the expiration of six months after the passing thereof.

SCHEDULES.

FIRST SCHEDULE.

Section 3.

In pursuance of the "Contractors Debts Act" I hereby certify that on the day of the sum of £ was on a proceeding before me ascertained to be due and payable by (a) to (b) for work and labour done by him as (c) upon (d)

(a) Name of defendant.
(b) Name of plaintiff.
(c) State generally the actual employment of plaintiff e.g. bricklayer laborer shipwright.

(d) Describe generally the thing upon or in respect of which the plaintiff has been employed e.g. the house No. 500 George-street No. 10 Section Great Western Railway The brig "Firefly."
(e) Signature.

As witness my hand this day of 18 .

Presiding { Judge
(or Magistrate.

