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VICTORIÆ REGINÆ.

A.D. 1893.

No. 575.

An Act relating to Workmen's Liens.

[Assented to, December 23rd, 1893.]

BE it Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows:

Preamble.

1. This Act may be cited as "The Workmen's Liens Act, 1893," and shall come into operation on a day to be fixed by the Governor by Proclamation in the *Government Gazette*.

Short title and commencement.

*Came in
27 Jan 1893
See Gazette 25/11*

2. In this Act, where not inconsistent with the context, the following terms have the following meanings:—

Interpretation.

"Contract" means any agreement, whether written, oral, or implied, to do work or to procure work to be done, or to furnish materials in connection with work, or to pay for work, or for materials furnished or to be furnished in connection with work:

"Contract price" means the money payable to any contractor or sub-contractor for any work, or materials furnished or to be furnished in connection with work, under any contract, and whether such price has been fixed by express agreement or not:

"Contractor" means a person (not being a sub-contractor) contracting with or employed by another person to do work, or to procure work to be done, or to furnish materials in connection with work:

"Court"

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- “Court” in the case of an action in the Supreme Court includes a Judge of that Court, and in the case of an action in a Local Court includes a Special Magistrate:
- “Fixture” means such a fixture upon land as, having been attached to such land by the vendor, would pass to the purchaser upon the sale of the fee simple of the land:
- “Goods” includes all produce of land when severed from the land:
- “Owner” means the owner of the legal or equitable fee simple of land:
- “Occupier” means the lessee, sub-lessee, tenant, or occupier for the time being of land other than the owner thereof:
- “Prescribed” means prescribed by regulation made under this Act:
- “Regulation” means a regulation made under this Act:
- “Sub-contractor” means a person contracting with or employed by a contractor or sub-contractor to do work, or to procure work to be done, or to furnish materials in connection with work for the purposes of the contract made by such contractor or last-mentioned sub-contractor:
- “The Real Property Act” means “The Real Property Act, 1886,” and any Act or Acts amending the same or substituted therefor:
- “Wages” means money to which a workman is or may be entitled for manual work or personal service, and whether to be ascertained by time or by the piece, and whether at a fixed price or rate or otherwise:
- “Work” means every description of manual work or personal service:
- “Workman” means every person employed in or doing any manual work or personal service.

Division of Act.

3. This Act is divided into four parts, viz.:—

PART I.—Liens and Charges:

PART II.—Registration and Discharge of Liens:

PART III.—Legal Procedure:

PART IV.—Miscellaneous.

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PART I.

PART I.

LIENS AND CHARGES.

4. (1) A workman doing work for an owner or occupier, or for a contractor or sub-contractor for the benefit of an owner or occupier, shall have a lien for his wages for such work on the estate or interest in land of the owner or occupier in each of the following cases—

Workmen's lien.

(a) Where the work is done with the assent, express or implied, of the owner or occupier to the land or to any fixture thereon:

(b) Where the work is done in or about the manufacture of materials which are, with the assent, express or implied, of the owner or occupier, used or intended to be used in or about work done, or intended to be done, to the land or to any fixture thereon.

(2) A workman employed upon land and doing work there for the owner or occupier thereof in connection with pastoral, agricultural, horticultural, or mining pursuits carried on upon such land shall have a lien on all goods on such land belonging to such owner or occupier, but such lien shall not avail against the title of a *bonâ fide* purchaser, mortgagee, pledgee, or incumbrancee without notice of such lien.

(3) A lien under this section shall be limited to four weeks' wages or wages for work not occupying more than four weeks, not exceeding the sum of Twelve Pounds.

5. A contractor or sub-contractor shall have a lien for the contract price, so far as accrued due, on the estate or interest in land of any owner or occupier in each of the following cases—

Lien of contractor or sub-contractor.

(a) Where the work is done, with the assent, express or implied, of the owner or occupier to the land or to any fixture thereon:

(b) Where the materials are, with the assent, express or implied, of the owner or occupier, used or intended to be used in or about work done, or intended to be done, to the land or to any fixture thereon.

6. Liens under sub-section (1) of section 4 or under section 5 shall not, in cases other than those of workmen employed by the owner or occupier, extend beyond that portion of the contract price payable by the owner or occupier under the contract for the purposes of which the work or materials are done, furnished, or manufactured and unpaid at the time when the owner or occupier shall receive notice of the lien or of its registration, whichever shall first happen, nor extend at all to cases where there is no such contract binding the owner or occupier to pay a contract price.

Extent of lien

7. (1) A

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Charge of workman
and sub-contractor.

7. (1) A workman shall have a charge on any money payable to the contractor or sub-contractor by whom he is employed for his wages in respect of work done for the purposes of the contract of such contractor or sub-contractor.

(2) A sub-contractor shall have a charge on any money payable to the contractor or sub-contractor with whom he shall have contracted for that portion of the contract-price payable to the first-mentioned sub-contractor in respect of work done or materials furnished or manufactured for the purposes of the contract of such contractor or secondly mentioned sub-contractor.

(3) A charge under this section shall attach only to money payable under the contract for the purposes of which the work or materials have been done, supplied, or manufactured, and shall lapse unless an action be brought to enforce the same within twenty-eight days after the wages or contract price in respect of which such charge has arisen shall have become due within the meaning of section 10, subsection (2). Such action shall not be discontinued without the consent of the defendant or an order of the Court, and the Court on making such order may declare that any charge claimed does not exist or order that it shall forthwith lapse, or that the plaintiff have further time to bring a fresh action to enforce the charge.

(4) The charge of a workman under this section shall be limited to four weeks' wages or wages for work not occupying more than four weeks, not exceeding the sum of Twelve Pounds.

(5) A charge under this section shall not avail as to any moneys *bonâ fide* paid over without notice of such charge.

Priority of liens and
charges.

8. The several liens and charges created by this Act shall have priority in the following order:—

- i. The liens and charges of workmen for wages:
- (ii. The liens and charges of sub-contractors :
- iii. The liens of contractors :

As between themselves, persons belonging to each of the said three classes shall, subject to the provisions hereinafter contained, participate ratably in the benefits of their liens or charges.

Lien subject to regis-
tered, but not to
unregistered, mort-
gage, &c.

9. A lien under this part of Act shall be subject to every dealing, assurance, mortgage, encumbrance, or charge on the estate or interest in the land of the owner or occupier, or on the goods the subject of the lien, registered before the registration of such lien, but shall take priority of any dealing, assurance, mortgage, encumbrance, or charge not so registered.

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PART II.

REGISTRATION AND DISCHARGE OF LIENS.

10. (1) A lien under this Act with regard to land shall be available only if registered before the expiration of twenty-eight days after the wages or contract price in respect of which such lien has arisen shall for the purposes of this section have become due. Lien to be registered.

(2) Any wages or contract price shall for the purposes of this section be deemed to have become due—

(a) If unpaid for seven days after the same (being payable) shall have been demanded by notice in writing, signed by the person claiming the same and given to the person liable to pay the same, or posted in a registered letter addressed to him at his usual or last known place of abode in South Australia :

(b) If either before or after the same shall have become payable, the person liable to pay the same shall have called a meeting of his creditors, or committed an act of insolvency, or executed a deed of assignment within the meaning of "The Insolvent Act, 1886," or any other Insolvency Act, or shall have taken or attempted to take the benefit of any law relating to insolvent debtors, or shall have suffered his goods to be taken in execution or seized under legal process or distress for rent.

(3) A lien shall be registered by the person claiming the same lodging in the General Registry Office a notice in the prescribed form or in a form to a similar effect, which notice shall be signed by such person and attested.

(4) A lien may be registered after the wages or contract price have become payable, although the seven days mentioned in subsection (2) shall not have commenced to run.

(5) Notices of lien under this Act shall state the Court in which action will be brought to enforce the same, and any person to whom notice is given may deposit the amount claimed in such Court to abide the event of such action, and thereupon the lien shall be deemed to cease.

11. Upon the lodging of such notice the Registrar-General shall—

Duty of Registrar-General on receiving notice of lien.

- i. Where the estate or interest of the owner or occupier sought to be affected by the lien is registered under the Real Property Act, make a memorandum of such notice and the day and hour of the lodging thereof upon the folium of the Register Book on which such estate or interest is registered, and shall send a copy of such notice through the post addressed to the owner or occupier at his address as appearing in the Register Book :

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11. Where the estate or interest of the owner or occupier sought to be affected by the lien is not registered under the Real Property Act, make a memorandum on such notice of the day and hour of the lodging thereof, and send a copy of such notice through the post addressed to the owner or occupier at his address as given in the notice.

Notice to be deemed caveat.

12. A notice lodged in respect of land under the provisions of the Real Property Act shall be deemed to be a caveat forbidding the registration of any dealing with the estate or interest sought to be affected by the lien, unless such dealing shall be expressed to be subject to the claim of the person lodging the notice, and the provisions of the Real Property Act relating to caveats shall, so far as applicable and so far as consistent with this Act, apply to every such notice.

Registrar-General to keep index.

13. All notices of lien lodged in the General Registry Office shall be numbered consecutively, and the Registrar-General shall keep an alphabetical index containing the names of all persons giving notices of lien and of the persons named in such notices as owners or occupiers.

Notices of lien open to inspection.

14. All notices of lien, and the indexes thereof, shall be open to inspection by any person during the hours and upon the days appointed for search in the General Registry Office, upon payment of Two Shillings in lieu of any other fee.

Liens to cease in certain events.

15. Every lien under this Act upon the estate or interest of any owner or occupier shall cease unless an action shall be brought against the owner or occupier for enforcement of the lien within fourteen days from the registration thereof.

Satisfaction of lien to be recorded.

16. The Registrar-General upon proof to his satisfaction that any person who has registered a lien has failed in an action to enforce the same, or that no such action has been brought by him against the owner or occupier within fourteen days from registration or having been so brought has been discontinued without an order of the Court giving further time to bring a fresh action to enforce the lien, which order the Court is empowered to make, or that any claim made or judgment obtained against the owner or occupier has been satisfied by payment or otherwise, or in any case where the owner or occupier shall have deposited with the Registrar-General the amount claimed in respect of the lien, either in discharge of such lien or to abide the event of an action to enforce the same, or to recover the amount so deposited, shall make on the proper folium of the Register Book if the lien is registered there or otherwise on the notice of lien a memorandum that the lien has ceased, and upon such entry the lands affected by such notice shall be discharged from the lien.

Proceedings to compel Registrar-General to record lien in event of refusal.

17. If the Registrar-General shall refuse to make the memorandum that any lien has ceased, the owner or occupier may apply to

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to a Judge of the Supreme Court or a Special Magistrate in a summary manner to direct the Registrar-General to make such memorandum, and notice of such application shall be given by posting the same in a registered letter two clear days at least before such application shall be heard to the person who has given the notice of the lien to his address mentioned in such notice, and he shall be entitled to be heard on the application.

18. Upon the hearing of such application the Judge or Special Magistrate may make such order in respect thereof as shall be just and the Registrar-General shall obey such order, and the costs of and incidental to such application shall be in the discretion of the Judge or Special Magistrate.

Judge may make order.

19. (1) Any person entitled to a lien under section 4 sub-section (2) hereof may give to the owner or occupier, his manager, or overseer, or leave for him at his residence or place of business, or may send to him by registered letter to his last known address, a notice in writing, demanding payment of the wages due to him, and stating the amount thereof and the nature of the claim; and from the giving or leaving of such notice such goods shall not be removed by the owner or occupier, or any person on his behalf, from the land until the wages of such person, to the extent of his lien, have been paid, or an agreement permitting the removal of the goods shall have been made.

Enforcement of lien on goods under sec. 4, sub-section 2.

(2) Every such person shall, within fourteen days after giving or leaving such notice, commence an action to enforce his lien, otherwise such lien shall cease.

20. Where a lien under this Act attaches to the estate or interest in land of any owner or occupier or to any goods any person interested in such land or goods as mortgagee, incumbrance, or pledgee, whether his interest is or is not subject to such lien, may pay the wages or contract price in respect of which the lien exists, together with all costs, charges, and expenses of and incidental thereto, and shall, on demand, be entitled to recover the same from the mortgagor, encumbrancer, or pledgor, together with interest thereon, at the rate of eight per centum per annum, calculated from the date of payment, and the moneys so paid with interest as aforesaid, shall be a charge on the estate or interest or the goods as if originally portion of the moneys secured by the mortgage, incumbrance, or pledge.

Mortgagee may pay wages or contract.

Mortgagee may recover wages or contract price paid by him.

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LEGAL PROCEDURE.

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21. Any person entitled to a lien or charge under this Act may bring an action to enforce such lien or charge, or to recover any amount deposited under section 16, in any Court in which the wages or contract price in respect of which such lien or charge is claimed could have been recovered against the person primarily liable therefor.

Action to enforce lien or charge.

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Procedure in case of deposit.

22. In case of deposit under section 16 of the amount claimed in respect of a lien, an action to recover the amount so deposited may be brought within fourteen days from the registration of the lien, but not after, and if such action be not so brought the amount so deposited shall be repaid by the Registrar-General to the person who deposited the same.

Person primarily liable may be joined in action to enforce lien or charge.

23. In every action to enforce a lien or charge or to recover an amount deposited under section 16, the person primarily liable for the wages or contract price may be joined as a defendant unless judgment has already been obtained against him, and judgment in such action shall be given against the person primarily liable for the full sum due by him, and an order shall be made for the enforcement of the lien or charge, or the payment of the money deposited or otherwise in relation thereto as shall be just, but shall not prejudice the right of the plaintiff to enforce any other lien or charge to which he shall be entitled under this Act.

Certificate of judgment against person primarily liable *prima facie* evidence.

24. When a judgment has been obtained against the person primarily liable for wages, or contract price or part thereof, the production of a certificate of such judgment in the prescribed form, specifying such wages or contract price or part thereof and purporting to be signed by the proper officer of the Court in which such judgment has been obtained, shall in all cases be *prima facie* proof that the wages or contract price or part thereof in respect of which such judgment has been obtained are due.

Order for enforcement of lien or charge, how carried into effect.

25. (1) An order for the enforcement of a lien or liens may be carried into effect by a writ or warrant from the Court for the sale of the estate or interest in land or the goods the subject of the lien.

(2) An order for the enforcement of a charge may be carried into effect in like manner as a judgment of the Court making the order by execution against the goods and land of the person against whom such order shall be made.

(3) Any order for the payment of money deposited under section 16 shall be obeyed by the Registrar-General, who need not, however, be a party to the action.

Person affected by lien or charge may pay money into Court.

26. (1) In case of an action to enforce a lien the person against whose property such lien is sought to be enforced or any person interested in such property may by payment into Court of the amount claimed in respect thereof relieve himself and the property from liability with regard to the lien or in respect of the costs of further proceedings.

(2) In case of an action to enforce a charge the person against whom such charge is sought to be enforced may by payment into Court of the amount claimed in respect thereof relieve himself of all further liability in respect of such charge or in respect of the costs of further proceedings.

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27. In case of an action to enforce a lien or charge the Court in which such action is brought may, upon the application of any party with or without notice to any other party, make any order for the detention, preservation, or inspection of any property concerned, and may for any purpose ancillary or incidental to the action authorise any person to enter upon or into any land or building in the possession of any party to the action.

Court may order for detention, inspection, &c.

28. Where more than one action is brought in respect of any matter to which this Act relates the Supreme Court or a Judge thereof, or as to actions where the total amount sought to be recovered does not exceed Four Hundred and Ninety Pounds, whether on a balance of accounts or otherwise, the Local Court of Adelaide or a Special Magistrate may make an order or orders for the consolidation of such actions, and also such order or orders for the removal or remission of any such actions into or to the Supreme Court or the Local Court of Adelaide as shall be expedient for the purposes of such consolidation, and upon such consolidation being effected may deal with the consolidated actions or the subject matter thereof as shall be just.

Court may order consolidation actions.

29. In any action to enforce a lien or charge—

Claims that may be included in actions to enforce lien or charge.

i. The claims of any number of persons may be included and claims against any persons interested in the subject matter of the action or in any contract or sub-contract out of which the claim in the action arises may be included, but if it appears to the Court that any of such claims cannot conveniently be tried or dealt with in such action the Court may order separate trials or separate actions in respect of any of such claims :

ii. The Court may deal with any claim relating to or connected with the original subject of the action and made by any party to the action against any person whether already a party to the action or not, who shall have been duly served with notice in writing of such claim pursuant to regulation, and may grant relief in respect of such claim as if such person had been defendant to an action under this Act. Every person so served with notice shall thenceforth be deemed a party to such action, and shall have the same rights in respect of his defence against or counter-claim to such claim and with respect to any claim over against any other person as if he had been a defendant to such action and the party claiming against him had been plaintiff.

30. Any person claiming to be interested in the subject matter of an action under this Act may apply to the Court to be made a party to the action, and the Court may make such order in respect of such application and of the subsequent proceedings in relation to such person as shall be just.

Person interested in subject matter may be made a party.

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Lienor may pay
moneys due
mortgagee of chattels

31. (1) Any person who has obtained an order for the enforcement of a lien under this Act upon any goods subject to a registered mortgage may pay the mortgagee, who shall receive, the principal moneys secured by his mortgage, with interest up to the date of such payment, at the rate provided for in such mortgage, notwithstanding the principal moneys shall not be due, or may pay such principal moneys and interest into the Court making the order, which Court shall on application by the mortgagee order payment thereof to him.

(2) On payment to the mortgagee, or into Court under sub-section (1) the goods shall be discharged from the mortgage, but the sum secured by the lien shall be increased by the amount so paid, and the order for the enforcement of the lien shall be enlarged accordingly.

(3) Any principal moneys paid under sub-section (1) shall carry interest in favor of the person paying the same at the same rate as under the mortgage.

Claim or registration
may be cancelled.

32. Any person alleging that he is prejudicially affected by a claim, lien, or charge, or by registration under this Act, may at any time apply to the Court to have such claim or registration cancelled or the effect thereof modified, and such order may be made as may be deemed just.

Penalty for claim
with intent to
defraud.

33. If any person vexatiously or without any reasonable grounds, and with intent to defraud, gives notice of claim, lien, or charge, or registers any lien, such person shall be guilty of an offence against this Act, punishable, on summary conviction, by a penalty not exceeding Fifty Pounds or by imprisonment (with or without hard labor) for a term not exceeding six months.

Penalty for vexatious
claim.

34. If any person vexatiously or without any reasonable grounds gives notice of claim, lien, or charge, or registers any lien, such person shall be liable to pay to any person prejudicially affected thereby, such compensation not exceeding Ten Pounds, as a Court on a summary application may fix and determine.

Appeal.

35. There may be an appeal to the Supreme Court in the prescribed manner and within the prescribed time from any judgment or order given or made by a Local Court or Special Magistrate by virtue of this Act, but, except as by this Act or "The Local Court Act, 1886," or other Act provided, no such judgment or order shall be appealed against or removed by *certiorari* or otherwise into the Supreme Court.

Jurisdiction, &c., of
Courts preserved.

36. Nothing in this Act shall affect the provisions of the law for the time being relating to the jurisdiction and practice of the Supreme Court or of Local Courts, except where inconsistent with this Act or any regulation made hereunder.

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Costs.

37. The costs of all proceedings shall be in the discretion of the Court in which such proceedings are taken, which may also make such order as it shall deem just in reference to proceedings preliminary to action in relation to the registration or discharge of liens and the giving of notices and otherwise, but, unless a Court having jurisdiction in the matter shall for good cause otherwise order, any owner or occupier may charge upon and deduct from any contract price payable by him, as specified in section 6, his reasonable cost of obtaining the discharge of any lien and the making of a memorandum by the Registrar-General that any lien has ceased.

38. There shall be an appeal from any conviction or order and from any order dismissing any information under this Act or any regulation, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings on such appeal shall be conducted in manner appointed by the Ordinance No. 6 of 1850 and the Act No. 298 of 1883-4 for appeals to Local Courts, but the Local Court of Adelaide may make such order as to payment of the costs of such appeal as it shall think fit, although such costs may exceed Ten Pounds.

Appeal to Local Court from order made by Special Magistrate.

PART IV.

PART IV.

MISCELLANEOUS.

39. The Governor may from time to time make, alter, and revoke regulations for all or any of the following purposes—

Regulations.

- (a) Prescribing forms for use and fees not exceeding Five Shillings for any registration or process to be paid under this Act:
- (b) The regulation of all matters relating to the practices respectively of the Supreme Court and Local Courts under this Act, or to the costs of proceedings therein, including the costs to be allowed to practitioners in such Courts, but so that no such costs shall exceed the costs which would have been payable in an action in a Local Court of Limited Jurisdiction:
- (c) Generally for carrying out the objects of this Act.

In the construction of this section general words shall not be limited or controlled by particular words.

40. All such regulations shall be laid before both Houses of Parliament within fourteen days after the publication thereof if Parliament be then sitting, and, if Parliament be not sitting, then within fourteen days after the commencement of the next sitting of Parliament; and if not disallowed by express resolution of one House of Parliament within one month from the time when they were laid before such House shall be published in the *Government Gazette*, and shall afterwards be judicially noticed and have the force of law.

Regulations to be published, &c.

41. Every

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Persons having lien at common law may sell.

41. Every person who has bestowed work or materials upon any chattel or thing in altering the condition thereof, or improving the same, and who is entitled to a lien on such chattel or thing at common law, may, while such lien exists, if the amount due to him in respect of such lien remains unpaid for one month after the same has become due, sell such chattel or thing by public auction, upon giving to the owner thereof, or posting to him at his last known place of abode in South Australia fourteen days before such sale, a notice in writing, by registered letter, stating the amount of the debt, a description of the chattel or thing to be sold, the time and place of sale, and the name of the proposed auctioneer.

Application of proceeds of sale.

42. Upon any sale under the last preceding section the proceeds arising therefrom shall be applied in payment of the amount in respect of which such lien exists, and of the costs of and incidental to such sale, and any surplus shall forthwith be paid to the clerk of the Local Court nearest to the place of sale, to be held by him for the benefit of the person entitled thereto.

A Special Magistrate may, on the application of such last-mentioned person, order payment of such moneys to him.

Wages of workman payable monthly.

43. Whenever any contract shall hereafter provide for payment of wages to any workman at longer intervals than from month to month, the wages of such workman shall, notwithstanding such provision, be deemed to be payable monthly, computing from the date of the commencement of the work.

Other remedy not prejudiced.

44. Nothing in this Act shall prejudice any other remedy which any person may have in respect of any contract price or wages payable to him.

Penalty on attempt to deprive workman of lien on goods.

45. If any person, after a demand has been made, as provided by section 19, shall conceal, sell, kill, remove, or destroy any goods upon which any workman has a lien under this Act with intent to deprive such workman of his lien, or to delay such workman in the enforcement thereof, or in obtaining payment of his wages, he shall be guilty of an offence against this Act, punishable on summary conviction by a penalty not exceeding Fifty Pounds, or by imprisonment (with or without hard labor) for a term not exceeding six months.

Substitution of £12 for £6, section 202 of The Insolvent Act, 1886.

46. Section 202 of "The Insolvent Act, 1886," shall be read as if the same provided for payment of the sum of Twelve Pounds to a workman for his wages or labor, in lieu of Six Pounds, as therein mentioned.

Duties of Registrar-General.

47. The Registrar-General and every officer under him shall be liable to the same penalties and consequences for neglect or default in respect of the duties imposed by this Act as if such duties were imposed under the Real Property Act.

48. Nothing

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48. Nothing in this Act contained shall create or give any right or remedy against land vested in Her Majesty or in any person for or on behalf of the Government or increase or change the liability of Her Majesty, or of any person procuring the performance of work for or on behalf of the Government and, except as between the contractors, sub-contractors, and workmen. this Act shall not apply to such work.

Lands, &c., of Crown not affected by this Act.

49. Notwithstanding the provisions of "The Real Property Act. 1886," this Act shall apply to land subject to the provisions of the said Real Property Act

Act to apply to land under Real Property Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

S. J. WAY, Lieutenant-Governor.