

sum of money which, together with the tolls received, shall equal the cost and expenses of said railroad, with an interest of eight per centum per annum thereon.

NER MIDDLESWARTH,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The sixteenth day of June, Anno Domini, one thousand eight hundred and thirty-six.

JOS: RITNER.

No. 184

An Act

Relating to the lien of Mechanics and others, upon Buildings.

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An act relating to the lien of Mechanics and others upon Buildings.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That every building erected within the several counties of this commonwealth, to which the act entitled "An act securing to mechanics and others, payment for their labours and materials in erecting any house or other building, within the city and county of Philadelphia," passed the seventeenth of March, eighteen hundred and six, and the several supplements thereto, now extends, shall be subject to a lien for the payment of all debts contracted for work done, or materials furnished for, or about the erection or construction of the same.

SECTION 2. The lien of such debt, shall extend to the ground covered by such building, and to so much other ground immediately adjacent thereto, and belonging in like manner to the owner of such building, as may be necessary for the ordinary and usual purposes of such building, the quantity and boundaries whereof shall be determined as follows:

SECTION 3. It shall be the duty of the prothonotary of the court of Common Pleas of every county, to which the provisions of this act extend, and the prothonotary of the District Court of the city and county of Philadelphia, respectively, and of the city and county of Lancaster, the District Court of Allegheny county, to procure and keep a book or docket, which shall be called "The Mechanics lien docket," in which he shall cause to be entered and recorded, all descriptions or designations of lots, or pieces of ground, as hereinafter mentioned, and all claims that may be filed by virtue of this act, together with the day of filing the same, and he shall cause the names, as well of the owner of the lot or piece of ground, as of the contractor, architect or builder, if such be named, and of the person claiming any lien under this act, to be alphabetically indexed therein.

SECTION 4. It shall be lawful for the owner of any lot or piece of ground, who may be desirous of erecting, or of contracting with any other person for the erection of any building, as aforesaid, to declare or define in writing, the boundaries of the lot, or curtilage appurtenant to such building, previously to the commencement thereof, and cause the same to be entered in a book aforesaid, and such designation of boundaries so made and entered upon record, shall be obligatory upon all persons concerned.

SECTION 5. In default of such designation of boundaries, previously to the commencement of any building, it shall be lawful for the owner of such lot or piece of ground, or for any person having a lien upon the same, by mortgage, judgment, or otherwise, or entitled to a lien by virtue of this act, to apply by petition, in writing, to the proper court, to appoint competent and skilful persons as commissioners, to designate the boundaries aforesaid.

SECTION 6. It shall be the duty of the court to whom application shall be made as aforesaid, after reasonable notice given to all parties interested, to appoint such competent persons commissioners, as aforesaid, as all the parties interested shall nominate, but if the parties cannot agree upon a nomination, it shall be lawful for the court to appoint such competent persons for that purpose, as they shall think proper.

SECTION 7. It shall be the duty of the commissioners so appointed, to examine the building, or place at which such building is being erected, and to make a report to the court,

in pursuance of the order to them directed, and in such report, they shall sufficiently designate and describe by metes and bounds, with their courses and distances, and by a draft, if necessary, the limits and extent of ground necessary for the convenient use of such building, for the purposes for which it is designed, and such report shall be entered at length upon the record book aforesaid, and if approved by the court, shall be conclusive upon all persons concerned.

SECTION 8. If execution shall be awarded for the levy and sale of any lot or piece of ground, upon which a building shall be erected as aforesaid, before the boundaries of the lot or curtilage which ought to be appurtenant thereto, shall be designated, it shall be lawful for the court, upon application, to stay such execution until such designation shall be made, and thereupon order the sale to proceed, in such manner, and for such part or parts, and in such parcels, as shall be most convenient for the administration of equity, among all persons interested.

SECTION 9. If the building against which any claim shall be filed as aforesaid, or any part of the ground adjacent thereto, shall be sold by virtue of an execution, upon any mortgage or judgment, before the extent of the lien of the claimant shall be ascertained, as aforesaid, the court out of which such execution shall have issued, shall have power to determine the rights of the respective parties, and the appropriation or appropriation of all liens as aforesaid, and for that purpose, may appoint an auditor to inquire into and report the facts, and may decree distribution of the proceeds accordingly, or upon the application of any of the parties, may direct an issue, for the determination of disputed facts.

SECTION 10. The lien for work and materials, as aforesaid, shall be preferred to every other lien or incumbrance which attached upon such building and ground, or either of them, subsequently to the commencement of such building.

SECTION 11. Every person entitled to such lien, shall file a claim or statement of his demand, in the office of the prothonotary of the court of Common Pleas of the county in which the building may be situate.

SECTION 12. Every claim as aforesaid, must set forth:

- First.* The names of the party claimant, and of the owner or reputed owner of the building, and also of the contractor, architect or builder, where the contract of the claimant was made with such contractor, architect or builder.
- Second.* The amount or sum claimed to be due, and the nature or kind of the work done, or the kind and amount of materials furnished, and the time when the materials were furnished, or the work was done, as the case may be.

Third, The locality of the building, and the size and number of the stories of the same, or such other matters of description as shall be sufficient to identify the same.

SECTION 13. In every case in which one claim for materials shall be filed by the person preferring the same, against two or more buildings, owned by the same person, the person filing such joint claim shall, at the same time, designate the amount which he claims to be due to him on each of such buildings, otherwise, such claim shall be postponed to other lien creditors, and the lien of such claimant shall not extend beyond the amount so designated, as against other creditors having liens, by judgment, mortgage, or otherwise.

SECTION 14. Every such debt shall be a lien as aforesaid, until the expiration of six months after the work shall have been finished, or materials furnished, although no claim shall have been filed therefor, but such lien shall not continue longer than the said period of six months, unless a claim be filed as aforesaid, at or before the expiration of the same period.

SECTION 15. The proceedings to recover the amount of any claim as aforesaid, shall be, by a writ of scire facias, in the following form, viz:

County, ss.

The commonwealth of Pennsylvania,

To the Sheriff of said county, greeting:

Whereas, hath filed a claim in our (court) for the county of , against , for the sum of , for (work done or materials furnished, as the case may be,) to (or for) a certain building, to wit: (describing it as in the claim:) And whereas, it is alleged that the said sum still remains due and unpaid to the said ; now we command you, that you make known to the said , and to all such persons as may hold or occupy the said building, that they be and appear before the judges of our said court, at a court of , to be held at , on the of next, to show if anything they know or have to say, why the said sum of should not be levied of the said building, to the use of the said , according to the form and effect of the act of assembly, in such case made and provided, if to them it shall seem expedient, and have you then and there this writ; witness

SECTION 16. *Provided*, That no such scire facias shall in any case be issued, within fifteen days previous to the return day of the next term.

SECTION 17. The writ of scire facias aforesaid, shall be served in the same manner as a summons, upon the defendant therein named, if he can be found within the county, and a copy thereof shall also be left with some person residing in the building, if occupied as a place of residence, but if not so

occupied, it shall be the duty of the sheriff to affix a copy of such writ upon the door, or other front part of such building.

SECTION 18. It shall also be the duty of the sheriff to whom any such writ of scire facias may be directed, to give notice thereof to all other claimants and persons interested, by advertisements, in two daily newspapers published in his county, as the case may be, at least ten days before the return day of the writ, in each county where such papers are published, but when daily papers are not so published, then in two weekly newspapers, if so many are published therein, or if but one weekly newspaper is published in such county, in such newspaper, or if no paper is published in such county, in a paper published nearest thereto, for four successive weeks before the return day thereof.

SECTION 19. Upon the return of such writ, it shall be lawful for any other person, having filed a claim as aforesaid, to cause to be entered on the record of the same suit, a suggestion, setting forth the amount and nature of his demand, and thereupon, he may have a rule upon the defendant, to appear and plead thereto, as in other actions.

SECTION 20. If the defendant shall appear and plead to such suggestion, and issue, either in fact or law, be joined upon any plea, such particular issue shall be tried and determined as in other cases; if the defendant shall not plead to such suggestion, after due notice, judgment shall be entered for the claimant filing the same, and the amount of the claim shall be ascertained as in other cases.

SECTION 21. The execution for every such judgment, shall be by a writ of levari facias, in the following form:

County, ss.

The Commonwealth of Pennsylvania.

To the Sheriff of said county, greeting:

We command you, that without any other writ from us of the following described building and lot of ground, of A. B. to wit: (describing the same according to the record:) in your bailiwick, you cause to be levied, as well a certain debt of , which C. D. lately in our court of Common Pleas for the county aforesaid, by the consideration of the said court, recovered of the said A. B. to be levied of the said building and lot of ground, as also the interest thereon from the day of , A. D. ; also, the further sum of , which E. F. lately, in our said court, for the county aforesaid, by the consideration thereof, recovered of the said A. B., to be levied of the said building and lot of ground, as also the interest thereon from the day of , A. D. , amounting in the whole to the sum of , and also the sum of , for the costs which accrued thereon, according to the form and effect of an act of assembly of the commonwealth of Pennsylvania, in such

case made and provided, and have you these monies before our judges at _____, at our county court of Common Pleas, there to be held on the _____ day of _____ next, to render unto the said C. D. for his debt, interest, and costs aforesaid, and have you then there this writ, &c.

SECTION 22. *Provided*, That if the proceeds of such building and ground as aforesaid, shall not be sufficient to pay the full amount of all debts due as aforesaid, for work done and materials furnished, after deducting therefrom any prior liens upon the same, then such debts shall be averaged, and the creditors aforesaid, shall be paid in proportion to their respective demands.

SECTION 23. In every case in which any claim shall be filed against any building as aforesaid, and no scire facias shall have issued thereon, it shall be lawful for the owner of such building, or any person interested therein, to apply, by petition, to the court in which such claim shall be filed, setting forth the facts, whereupon, such court may grant a rule upon the party claimant, and others interested, to appear in court, at a time to be fixed for such purpose, and on the return of such rule, may proceed in like manner as if a scire facias had been issued by such claimant, and had been duly served and returned.

SECTION 24. The lien of every such debt, for which a claim shall have been filed as aforesaid, shall expire at the end of five years from the day on which such claim shall have been filed, unless the same shall be revived by scire facias, in the manner provided by law in the case of judgments, in which case, such lien shall continue in like manner, for another period of five years, and so from one such period to another, unless such lien be satisfied, or the same be extinguished, by a sheriff's sale, or otherwise, according to law.

SECTION 25. In every case in which the amount of any claim as aforesaid, shall be paid, or otherwise satisfied, it shall be the duty of the claimant, or his legal representative, at the request of the owner of the building, or of any other person interested therein, and on payment of the costs, to enter satisfaction on the record of such claim, in the office of the prothonotary of the court in which such claim shall have been entered, which shall forever thereafter discharge and release the same.

SECTION 26. If any person who shall have received satisfaction as aforesaid, shall neglect or refuse to enter satisfaction of such claim as aforesaid, within sixty days after request, and payment of the costs of suit, as aforesaid, he shall forfeit and pay to the party aggrieved, any sum not exceeding one half of the amount of such claim, to be recovered as debts of a like amount are recoverable.

SECTION 27. *Provided*, That nothing in this act contained, shall be construed to impair, or otherwise affect the right of any person to whom any debt may be due, for work done, or materials furnished, to maintain any personal action against the owner of the building, or any other person liable therefor, to recover the amount of such debt: *Provided further*, That nothing in this act contained, shall be construed to effect the relative jurisdiction of the court of Common Pleas, and the District court of the city and county of Philadelphia, which shall remain as heretofore.

SECTION 28. The several provisions of this act, are hereby declared to be extended to the county of Lehigh.

SECTION 29. The lien hereinbefore given, is hereby declared to extend to plumbers, and to persons furnishing curb-stone for the pavement of any building as aforesaid, within the city and county of Philadelphia.

SECTION 30. This act shall take effect from and after the first day of September next, and so much of any law as is altered by this act, is hereby repealed from that period.

NER MIDDLESWARTH,

Speaker of the House of Representatives.

THOMAS S. CUNNINGHAM,

Speaker of the Senate.

APPROVED—The sixteenth day of June, Anno Domini, one thousand eight hundred and thirty-six.

JOS : RITNER.

No. 185.

An Act

Regulating Election districts, and for other purposes.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same*, That all that part of Shenango township in the county of Beaver, lying west of the state road from Beaver to Mercer, shall hereafter be a separate election district, and the electors thereof, shall hold their general