

Act No. 29, 1897.

An Act to consolidate the Acts for better securing the payment of Debts due to Workmen, Tradesmen, and others. [6th December, 1897.]

CONTRACTORS'
DEBTS.
—

BE it 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 :—

1. This Act may be cited as the "Contractors' Debts Act of 1897."

Short title.

2. The Acts mentioned in the First Schedule hereto are hereby repealed.

First Schedule.

3. If in any proceeding at law in any court of competent jurisdiction, any sum is found due and payable by the defendant for work and labour, or for material, or for material and work and labour, done, supplied, or provided by the plaintiff, and the character of the work, or material, and the locality in which the same has been done, supplied, or provided appears from the evidence, the presiding judge or justice of the peace shall upon the plaintiff's application sign and deliver to him a certificate of the cause of debts in the form in the Second Schedule, which for the purposes of this Act shall be conclusive.

Workman or tradesman suing contractor may obtain a certificate of cause of debt.
42 Vic. No. 22, s. 2.
52 Vic. No. 3, ss. 2, 3.
Second Schedule.

4. No such certificate shall be given for any sum due and payable for work and labour 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.

Certificate not to be given if workman could have had a lien.
42 Vic. No. 22, s. 2.

5. If the sum so found due for work and labour is 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.

Certificate to be for no more than sixty days' wages.
Ibid.

6. All proceedings under this Act in respect of debts due for material or for material and work and labour shall be instituted within three months after any such debt accrues due.

Limit of action by tradesmen.
52 Vic. No. 3, s. 4.

7. If the work done or material supplied be work or material or part of or incidental to work or material for the doing or supplying of which any moneys may be due or accruing due to the defendant in such proceeding (hereinafter 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 if the sum sued

Process for obtaining payment of debt out of moneys due to the contractor.
42 Vic. No. 22, s. 3.
52 Vic. No. 3, ss. 2, 3.
Third Schedule.

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for and found to be due is on account of work done, or as the tradesman if the said sum is on account of material or material and work and labour) 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 Third Schedule, together with a copy of the certificate issued to him as aforesaid.

Service of notice to
operate as an
assignment of moneys
due to the contractor.
42 Vic. No. 22, s. 4.

8. 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 or tradesman's debt specified in the certificate shall be deemed to be effectually assigned by the contractor to such workman or tradesman, but subject to any prior assignment thereof under this Act binding upon the contractor and contractee at the time of service being effected on the contractee as aforesaid.

After service
contractee to pay the
workman's or
tradesman's debt out
of moneys due to
contractor.

Ibid. s. 5.
Fourth Schedule.

9. After such service, and until a discharge for the workman's or tradesman's said debt in the form in the Fourth Schedule has 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 or tradesman upon his application the said moneys as they become due and payable.

Priority of assign-
ments.

Ibid. s. 6.

10. 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 shall be deemed to have been 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 and tradesmen 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 the contractee shall not pay any such debt out of the moneys due and accruing due as aforesaid.

If contractee fail to
pay, workman or
tradesman may sue
for the moneys
assigned.

Ibid. s. 7.

11. If the contractee fails to pay as aforesaid, the workman or tradesman 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, but 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 notice and the copy of the certificate aforesaid.

Upon satisfaction of
debt assignment to
cease to operate.

Ibid. s. 8.

12. Upon satisfaction by any other means than as aforesaid of the whole or part of the debt mentioned in any certificate under this Act, or on the setting aside of the judgment or order in respect of which any such certificate was 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 contractee on the footing of such assignment prior

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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.

13. The workman or tradesman 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 Fourth Schedule, and any workman or tradesman 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 or tradesman upon payment to sign discharge.
12 Vic. No. 22, s. 9.
Fourth Schedule.

14. The workman or tradesman 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 Fifth 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, judge, or magistrate shall order, shall be attached and shall remain in the hands of the contractee until judgment is given in the action, unless the said court, judge, or magistrate shall otherwise order on the application of the contractee, or of the defendant.

After notice of action served on contractee moneys may be attached.
Ibid. s. 10.
Fifth Schedule.

15. Leave to serve such notice may be obtained on the ex-parte application of the workman or tradesman, and he shall in such application prove on oath to the satisfaction of the court or judge or magistrate thereof that the sum sued for is due and owing by the contractor.

Mode of obtaining leave to serve notice.
Ibid. s. 11.

16. The plaintiff in the event of his obtaining judgment against the defendant shall then proceed by further notice in the form of the Third Schedule as hereinbefore provided.

Proceedings after judgment.
Ibid. s. 12.
Third Schedule.

17. Every contractor against whom a certificate is granted shall on demand furnish to every workman employed by him, and to every tradesman to whom he is indebted for any material, or material and work and labour, a certificate in the form in the Sixth Schedule of this Act, and setting forth the name and addition 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.

Contractor to furnish information as to contractee.
Ibid. s. 14.
Sixth Schedule.

18. A contractor who sublets any part of the work shall be responsible to the extent provided for by this Act for the wages of the workmen employed by, and for material, or material and work and labour supplied for the sub-contractor; and a workman employed by, or a tradesman supplying material, or material and work and labour

Contractor to be liable for wages or moneys due by sub-contractor.
Ibid. s. 13.

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for a sub-contractor, may proceed against the contractor, as in this Act provided, as if he had been directly employed by, or had directly contracted with him.

Saving of remedies
and rights.

42 Vic. No. 22, s. 15.

19. Nothing in this Act shall be construed to prejudice any remedy which the workman or tradesman 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.

SCHEDULES.

FIRST SCHEDULE.

Sec. 2.

Title of Act.	Year and Number of Act.
Contractors' Debts Act	42 Vic. No. 22.
Contractors' Debts Act Amending Act...	52 Vic. No. 3.

SECOND SCHEDULE.

Sec. 3.

(a) Name of defendant.
(b) Name of plaintiff.
(c) State generally the actual employment of plaintiff, *e.g.*, bricklayer, labourer, shipwright.
(d) Describe generally the thing upon or in respect of which the plaintiff has been employed or for which he has provided material, *e.g.*, the house, No. 500 George-street, No. 10 Section Great Western Railway, the brig "Firefly."
(e) Signature.

In pursuance of the Contractors' Debts Act of 1897 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) , (or for material provided by him for, or for material and work and labour provided and done by him for and upon) (d) .
As witness my hand this day of 18 .

Presiding Judge or Magistrate.

THIRD SCHEDULE.

Secs. 7, 16.

(a) Name and address of contractee.
(b) Name and address of contractor.

To (a) Take notice that the work (or material, or material and work and labour) specified in the certificate, a copy of which is served herewith, having been done (or provided, or provided and done) in performance of an agreement entered into with you by (b) , who has failed to pay me for such work (or material, or material and work and labour), you are hereby required under the Contractors' Debts Act of 1897 to pay me on demand the amount specified in the certificate out of any moneys now due or from time to time becoming due from you to the said (c) under the said agreement, and on your failing so to do, you will under the said Act be liable to legal proceedings at my suit to obtain payment.

(c) Name of contractor.

As witness my hand this day of 18 .
(d)

(d) Signature of workman or tradesman.

Secs. 9, 13.

FOURTH SCHEDULE.

(a) Name of contractor.

I hereby acknowledge that the debt £ certified to be due to me by (a) in a certificate issued under the Contractors' Debts Act of 1897 and dated the day of 18 has been fully discharged.
As witness my hand this day of 18 .

(b) Signature of workman or tradesman.

(b)

FIFTH

Claims against the Government and Crown Suits.

FIFTH SCHEDULE.

Sec. 14.

In the Court

Between A.B., plaintiff and C.D., defendant.

To E.F., of

By leave of this Court (*or* of G.H. a judge of this Court, or J.K. a magistrate of this Court) and on the application of A.B., the plaintiff, you are hereby required to retain in your hands until judgment herein or as this Court otherwise orders all moneys due or accruing due from you to the said C.D., or if the same shall exceed pounds then pounds thereof.

Dated this day of 18 .

Judge (*or* Magistrate) of the Court.

SIXTH SCHEDULE.

Sec. 17.

I hereby certify that (*a*) is the contractee of the work (*b*) upon which you (*c*) are now employed (*or* : for which you (*d*) have provided material, *or* material and labour).

As witness my hand this day of 18 .
(*e*)

(*a*) Name and address of contractee.
(*b*) State generally the kind of work as in the Second Schedule.
(*c*) Name of workman.
(*d*) Name of tradesman.
(*e*) Signature of contractor.