

Statutes
1878

THE
GENERAL STATUTES
OF THE
STATE OF MINNESOTA,

As Amended by Subsequent Legislation.

PREPARED BY
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EDITED AND PUBLISHED UNDER THE AUTHORITY OF CHAPTER 67 OF THE LAWS
OF 1878, AND CHAPTER 67 OF THE LAWS OF 1879.

FOURTH EDITION.

WITH SUPPLEMENTS,
CONTAINING ALL THE GENERAL LAWS IN FORCE UP TO THE END OF
THE LEGISLATIVE SESSION OF 1883.

SAINT PAUL:
WEST PUBLISHING COMPANY.
1883.

tion to judgments in actions, and may in like manner be removed by appeal and reversed, and execution be issued thereupon.

§ 18. ^{23 M. 46.} Costs, how regulated. If there is no provision in the submission concerning the costs of the proceedings, the arbitrators may make such award respecting the costs as they shall judge reasonable, including therein a compensation for their own services; but the court may reduce the sum charged for the compensation of the arbitrators, if it appears to them unreasonable.

§ 19. Testimony under oath—common-law arbitrations. The arbitrators shall hear and receive the testimony of either party, under oath; and shall have power to administer all necessary oaths to parties or witnesses appearing before them. Nothing in this chapter contained shall preclude the submission and arbitration of controversies, according to the common law.

CHAPTER XC.

LIENS.

- SECTION
- 1-2. Who may have lien, and on what—mechanics and material-men.
 - 3-5. Bond of contractor—lien not to attach—bond after work commenced—action on bond.
 - 6-7. Proceedings to establish lien—filing of account, etc.—duration of lien.
 - 8. Judgment on lien, how obtained and enforced.
 - 9. Proceedings by laborers, etc., when owner suspends work.
 - 10-11. Judgment on lien—application of rents and profits—sale of railways—property may be leased, when—distribution of rents received.
 - 12. Discharge of liens.
 - 13. Proceedings by attachment.
 - 14. Rights and liabilities of executors, etc.

- SECTION
- 15. Certificate of release of satisfied lien.
 - 16-17. Lien on personal property, in what cases—how enforced—lien of carriers and bailees.
 - 18. Form of affidavit.
 - 19-20. Frauds by contractors in obtaining material—penalty—sale of movable property.
 - 21. Liability of contractor to subcontractors and laborers.
- PROTECTION OF WAGES OF MECHANICS, CLERKS, ETC.
- 22-24. Lien for wages—in what cases—on what property—filing—notice of claim in case of attachments, etc.—death or insolvency of employer.
 - 25-26. Lien not to be impaired by mortgages—not to be waived.

11. See 1883 Supp. p. 63.

§ 1. Who may have lien, and on what. Whoever performs labor, or furnishes materials or machinery, for erecting, constructing, altering or repairing any house, mill, manufactory or other building, or appurtenances, or for constructing, altering or repairing any boat, vessel, or other water-craft, by virtue of a contract or agreement with the owner or agent thereof, shall have a lien, to secure the payment of the same, upon such house, mill, manufactory, or other building and appurtenances, and upon such boat, vessel, or other water-craft, together with the right, title or interest of the person owning such house, mill, manufactory, or other building and appurtenances, on and to the land upon which the same is situated, not exceeding forty acres, and if erected within the limits of any city, town or village plat, the lot of ground on which said house, mill, manufactory, or other building and appurtenances is erected, not exceeding in extent one acre. Whoever furnishes any labor, skill or material for constructing, altering or repairing any line of railway, or for constructing, altering or repairing any bridge, telegraph, depot, fences, or other structure appertaining to

any line of railway, by virtue of any contract with the owner, or with any party authorized by the owner, of such line of railway, or by virtue of any subcontract with any original contractor with such owner, or with such authorized party, shall have a lien, to secure the payment for such labor, skill and material, upon all such line of railway, and upon all franchises, privileges and immunities, and upon all bridges, depots, telegraphs, fences, and other structures, and upon all right of way appertaining to such line of railway. (*As amended 1874, c. 69, § 1.*)

^{3 M. 92 [147]; 5 M. 119 [155], 229 [288]; 8 M. 92 [118]; 13 M. 455, 473; 17 M. 342.}

§ 2. *Same.* Every mechanic or other person doing or performing any work toward the erection, alteration or repair of any house, mill, manufactory, or other building, or appurtenances, or the construction, alteration or repair of any boat, vessel, or other water-craft, or furnishing any material for the construction, alteration or repair of such building, appurtenances or vessel, whether such work is performed as journeyman, laborer, carman, subcontractor or otherwise, shall have a lien, for the value or contract price of such labor and materials, upon such house, mill, manufactory, or other building, and appurtenances, and upon such boat, vessel, or other water-craft, together with the right, title or interest of the person owning such house, mill, manufactory, or other building and appurtenances, on and to the land upon which the same is situated, not exceeding forty acres, and if erected within the limits of any city, town or village plat, the lot of ground on which said house, mill, manufactory, or other building and appurtenances is erected, not exceeding in extent one acre. (*As amended 1878, c. 3, § 1.*)

1890
 § 3. *Bond of contractor—lien not to attach.* Upon entering into a contract to do any work or furnish any materials for which a lien might accrue under section one of this chapter, if the contractor will enter into a bond with the owner for the use of all persons who may do work or furnish materials pursuant to such contract, conditioned for the payment of all just claims for such work or materials as they become due, (which bond shall be in such an amount, not less than the price agreed to be paid for the performance of such contract, and with such sureties as shall be approved by the judge of the district court or justices of the peace of the county in which such contract is to be performed,) and shall file the same in the office of the register of deeds of the county in which such contract is to be performed, then no lien shall attach in favor of the persons mentioned in section two of this chapter. Such sureties shall justify in double the amount of the bond so given; but such bond shall not operate to relieve from liability the property upon which such labor or material shall be expended, unless a notice, setting forth the existence of such bond, be kept conspicuously posted about the premises during the performance of such labor, and at the time of furnishing such material. (*As amended 1878, c. 3, § 2.*)

§ 4. *Same—bond after contract is made.* A like bond may be made and filed, as provided in the foregoing section, at any time after the making of such contract, and shall have the effect to discharge all such liens as shall have accrued before the filing thereof, and to prevent the accruing of any such liens thereafter. (*As amended 1878, c. 3, § 3.*)

§ 5. *Same—action on bond.* Any person entitled to a lien under the provisions of section two of this chapter shall be considered a party in interest in said bond, and may bring an action thereon in his own name for the value or contract price of labor done, or materials furnished, under the provisions of the contract with the owner. (*As amended 1878, c. 3, § 4.*)

§ 6. *Proceedings to establish lien under section 2—account to be filed, etc.* Any person entitled to a lien under the provisions of section two of this chapter shall make an account in writing of the items of labor, skill, materials or machinery furnished, or either of them, as the case may be, and the value thereof, and,

after making oath thereto, shall, within sixty days after the time of performing such labor or skill, or furnishing such materials or machinery, file the same in the office of the register of deeds of the county in which such labor, skill, materials or machinery have been furnished, which account, so made and filed, shall be recorded as required in the next section, and shall, for one year from the commencement of such labor or the furnishing of such materials, operate as a lien upon the several descriptions of structures and buildings, and the lots of ground on which they stand, in the second section of this chapter named. Where any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required. (*As amended 1878, c. 3, § 5.*)

§ 7. **Same—proceedings under section 1.** Any person, copartnership or corporation, entitled to a lien under the provisions of section one aforesaid, shall make an account in writing of the item or items of labor, skill, materials or machinery furnished, and, after oath being made to the correctness thereof by the party furnishing the same, or by the agent of such party, shall, within one year from the time of the furnishing of such labor, skill, materials or machinery, file the same in the office of the register of deeds of the county in which such labor, skill, materials or machinery shall have been furnished; in case the same shall have been furnished for the construction, alteration or repair of any line of railway, or of any bridge, depot, fences or other structure appertaining to such line of railway, in the office of the secretary of state; which account so made, verified and filed, shall be recorded at length in such office, in the records thereof. Such account, so verified and filed, shall, during all the period of time from the commencement of such labor or skilled services, or the furnishing of such materials and machinery, until the expiration of two years after the completion of such skilled services or labor, or the furnishing of such materials or machinery, operate as a lien upon the several descriptions of structures and buildings, and upon the lots of ground on which they stand, in the first section of this chapter referred to, and upon such line of railway, and upon all franchises, privileges and immunities, and upon all bridges, depots, telegraphs, fences and other structures, and upon all right of way appertaining to such line of railway. When any labor has been done or materials furnished as provided, upon a written contract or subcontract, a copy of the same shall be filed with the account hereinafter [before] referred to. (*As amended 1874, c. 69, § 2.*)

11 M. 354 [476]; 13 M. 455; 17 M. 342.

§ 8. **Judgment on lien, how obtained and enforced.** Any person holding a lien under the provisions of the preceding sections may proceed to obtain judgment, and enforce the same, in the same manner as in actions for the foreclosing of mortgages upon real estate. (*As amended 1878, c. 3, § 6.*)

14 M. 145.

§ 9. **Proceedings by laborers when owner suspends work.** When the owner of any house or buildings described in the first section of this chapter suspends its progress or completion, without the consent of such laborers, mechanics or furnishers, or if the progress or completion of the same is suspended by the decease of the owner, at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics and furnishers thereto, or any of them, may, at their election, proceed with the same at their cost, so far as to inclose such building and thereby prevent such waste: *provided*, the work so done after said suspension shall be according to the contract and the plan of the owner.

§ 10. **Judgment on lien—application of rents and profits—sale of railway, etc.** If the person erecting, as owner, any building described in the first section of this chapter, is not, at the suspension or completion of the same, possessed of the legal title to the ground on which the same is erected, but is possessed of the equitable title thereto, and the fact of such defect of title is made to appear

to the court before whom any judgment under this chapter has been obtained, or if the same is returned by any legal officer to whom any execution under this chapter is directed, the court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building, until the rents and issues thereof shall pay or satisfy the several liens on which judgment may be had against the same: *provided*, this law shall not be so construed as to interfere with prior bona fide liens on ground on which such building is erected. When judgment is obtained establishing any lien given by the provisions of this chapter upon any line of railway, such line of railway, together with all franchises, privileges, immunities, bridges, depots, telegraphs, fences and other structures, and all right of way, appertaining to such line, may be sold upon execution to satisfy such judgment; and the purchaser thereof at any such sale shall have and hold all and singular the same in the same manner and with the same effect as the same were had and held by the judgment debtor. Such sale or [on] execution shall be conducted in like manner, and be upon like notice, and be subject to like redemption, as sales of real property upon execution, except that the notice of sale required by law to be published in a newspaper shall be published in some newspaper published at the capital of this state. (*As amended 1874, c. 69, § 3.*)

§ 11. **After judgment on lien, property may be leased, when.** In all other cases of judgment obtained in favor of any lien-holder, if the property bound by such lien will not sell on execution as provided by law in other cases, having been once duly offered, the court before whom such judgment was obtained may direct the officer aforesaid to lease the same, in the manner and for the purpose pointed out in the preceding section; and the officer giving such lease shall therein require the payment to be made to him, or his successor in office, which successor shall have the same power and perform the same duties therein as the maker of the lease should or could do; and in cases where the money may be collected by said officer on leases made under this chapter, he shall forthwith pay the same into court where the judgments were obtained, which money shall be distributed to the several lien-holders interested in said judgments, in proportion to their several demands.

§ 12. **Liens, how discharged.** All liens may be discharged by the payment of the judgment or debt, with costs, before the property on which such liens attached is sold or leased under this chapter; and if any lien-holder, after the same is duly tendered to him, proceeds at law, or refuses to give a due discharge from such lien, such lien-holder shall forfeit his lien and pay costs.

§ 13. **Lien-holder may proceed by attachment, when.** If the owner of the property which is subject to a lien is without the reach of process, or resident without the state, any lien-holder may proceed by attachment against the same, as in other cases; and the court before whom the same attachment is pending, on the entry of judgment, on return of the proper officer, shall have the same power to order leases as is given in the tenth and eleventh sections of this chapter.

§ 14. **Rights of executors and administrators.** Executors and administrators, under this chapter, have the same rights, and are subject to the same liabilities, that their testator or intestate would be or might have, if living.

§ 15. **Certificate of release of satisfied lien—filing and record.** Every person in favor of whom any such lien has existed, after having received satisfaction of his debt, or after final judgment against him by a competent tribunal, showing that nothing is due by reason of such claims, shall, at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his legal representatives, lodge a certificate with said register, that the said debt is satisfied and said lien removed; which certificate shall be filed and recorded by the register on the margin of the record, in the same manner that releases of mortgages are now by law

required to be recorded, and, when so recorded, shall forever discharge and release said lien; and if such person, having received satisfaction as aforesaid, by himself or attorney, or judgment having been rendered against him as aforesaid, shall not, within ten days after request in writing, lodge a notice in writing with the register, as is prescribed in this section, he shall forfeit and pay to the party aggrieved any sum of money, not exceeding one-half of the debt claimed as a lien on such property, to be recovered in a civil action; and the party lodging such certificate as aforesaid shall pay to the register twenty cents for recording each notice or certificate as aforesaid.

§ 16. **Lien on personal property—how enforced.** Whoever makes, alters, repairs or bestows labor on any article of personal property, at the request of the owner or legal possessor thereof, shall have a lien on such property so made, repaired, altered, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the materials he has furnished; and such person may hold and retain possession of the same until such just and reasonable charges are paid; and if they are not paid within three months after the labor is performed or the materials furnished, the person having such lien may proceed to sell the property by him so made, altered or repaired, or upon which labor has been bestowed, at public auction, by giving public notice of such sale, by advertisement for three weeks in some newspaper printed and published in the county, or if there is none, then by posting up notice of such sale in three of the most public places in the county three weeks before the time of sale; and the proceeds of such sale shall be applied first to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

§ 17. **Lien of carriers and bailees.** Any person who is a common carrier, and any person who, at the request of the owner or lawful possessor of any personal property, carries, conveys or transports the same from one place to another, and any person who safely keeps or stores any personal property, at the request of the owner or lawful possessor thereof, shall have the same lien and the same power of sale for the satisfaction of his reasonable charges, upon the same conditions and restrictions, as provided in the preceding section.

§ 18. **Form of affidavit to be used.** The following form may be used under this chapter:

State of Minnesota, }
County. } ss.

A. B., affiant, makes oath and says: That the annexed is a true and correct account of the labor performed, and material (or say machinery) furnished by him (or them) to and for (here give the name) at said county; and the prices thereof set forth in the account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed, and material (or say machinery) was furnished, for said C. D., at the time in said account mentioned, under and by virtue of a contract between affiant and C. D., (if the contract was in writing, add, above copy of which is hereto annexed, marked A.) and for constructing (or say altering, or say repairing,) a certain boat, called (and so forth, giving a description of the water-craft; or say erecting, or say repairing, a certain house, or say mill, giving the common name of the building; or say a certain piece of land, giving location, etc.; or say lot of timber, or logs, or lumber, etc.)

And affiant further makes oath and says: That the said C. D. was, at the time said contract was entered into, and said labor was performed, and said materials (or say machinery) was furnished, the owner of house, (or say mill, or say said manufactory, naming the kind of building.) and that said building is situate upon a certain lot of land owned by said C. D., in town

MINNESOTA STATUTES 1878

876

LIENS.

[CHAP.

section _____, range _____, in said county _____ and this affiant claims a lien on the premises.

(Signed,)

Sworn and subscribed before me this _____ day of _____ A. D. 18 _____
H_____ G_____, J. P. A. B.

*§ 19. **Frauds by contractors, etc., in purchase of materials—penalty.** Any contractor or subcontractor who shall purchase material on credit, and represent, at the time of said purchase, that the same is to be used in a designated building or other improvement, and shall thereafter use, or cause to be used, the said material in the construction of any building or improvement other than that designated when purchased, with intent to defraud the person from whom the material was purchased, without first having given due notice to the person from whom the material was so purchased, shall be punished by fine not exceeding five hundred dollars, or imprisonment not exceeding three months, or both, at the discretion of the court. (1878, c. 3, § 7.)

*§ 20. **Same—sale of movable property.** Or, if the building or other improvement erected is constructed of wood, or other materials movable from the premises, the court may direct that the same be sold to satisfy such liens; and purchasers may, under the direction of the court, remove such building or improvement from the premises, within sixty days after such sale. (*Id.* § 8.)

*§ 21. **Liabilities of contractors to subcontractors, etc.** Any person or persons entering into any contract for the construction or repairing of any house or other building, steamboat or vessel, or any railroad contract, or for furnishing materials for such construction or repairing, and who shall sublet such contract or any part thereof to any person or persons to perform such labor or furnishing such materials, shall be held liable to pay all moneys received by him upon said contract to the person or persons who performed such work and labor, or furnished such materials, or so much thereof as may be sufficient to pay them what is justly due for the work and labor performed and materials furnished by them; and any such person who shall neglect and refuse to pay over such money so received by him upon said contract, to the person or persons who have performed the work and labor, and furnished the materials, as aforesaid, with intent to cheat and defraud the said person or persons, shall be deemed to have been guilty of fraud in contracting the said debt. And whenever it shall be made to appear to any court of competent jurisdiction that such contractor, having received the money upon his said contract, and that he fraudulently, and with the intent to cheat and defraud the said person or persons who performed the work and labor, or furnished the materials, as aforesaid, withholds from or refuses to pay them the money which he has received as aforesaid, may be arrested and held to bail for the payment of the amount so due as aforesaid; and in case such party shall not furnish the bail required, he shall be committed to the jail of the county, there to be held until the trial of the action to recover such money; and in case judgment shall be rendered against such party, the execution issued thereon shall authorize and empower the sheriff to commit the defendant in such execution to the jail of the proper county until such judgment shall be paid, or until discharged by law. (1874, c. 50, § 1.)

PROTECTION OF WAGES OF MECHANICS, CLERKS, ETC.*

*§ 22. **Lien for wages—in what cases—on what property—filing.** That all moneys that may be due or shall hereafter become due for labor or services rendered by any mechanic, clerk, laborer or servants, from any person or persons, or chartered company, employing mechanics, clerks, laborers or servants, either as owners, lessees, contractors or under-owners of any works, manufactory, or other busi-

* An act for the better protection of the wages of mechanics, clerks, laborers and others. Approved March 7, 1878. [Laws 1878, c. 86.]

ness, of whatever description, where mechanics, clerks, laborers or servants are employed, whether at so much per diem or otherwise, for any period not exceeding six months immediately preceding the sale and transfer of such works, manufactory or business, or other property connected therewith in carrying on said business, by executors or otherwise, or preceding the death or insolvency of such employer or employers, shall be a lien upon said works, manufactory, business or other property in and about, or used in carrying on, said business, or in connection therewith, to the extent of the interest of said employer or employers, owners or contractors, as the case may be, in said property, and shall be preferred and first paid out of the proceeds of the sale of such works, manufactory, business, or other property, as aforesaid: *provided*, that [the] portion of such preferred claim of such mechanic, clerk, laborer or servant, thus preferred, shall not exceed two hundred dollars: *and provided further*, that this act shall not be construed so as to impair contracts vested, or liens of record existing prior to its passage: *and provided further*, that no such claim shall be a lien upon any real or personal estate, unless the same shall be filed, if real estate, in the office of register of deeds of the county in which such real estate is situated, within one month after the claim becomes due, in the same manner as mechanics' liens are now filed; and if upon personal property, such claims shall be filed in the office of the clerk of the town or city in which said property is situated, in the manner provided for the filing of chattel mortgages therein. (1878, c. 86, § 1.)

*§ 23. *Same—notice of claim in case of attachments, etc.* In all cases of executions, attachments and writs of a similar nature, hereafter to be issued against any person or persons, or chartered company, engaged as before mentioned, it shall be lawful for such mechanics, clerks, laborers or servants to give notice in writing of their claim or claims, and the amount thereof, to the officers executing either of such writs, at any time before the actual sale of the property levied upon; and such officers shall pay to such mechanics, clerks, laborers and servants, out of the proceeds of sale, the amount each is justly and legally entitled to receive, not exceeding two hundred dollars, as may be agreed on by the parties in interest, or by the judgment of any court of competent jurisdiction. (*Id.* § 2.)

*§ 24. *Same—extent of lien in case of death or insolvency of employer.* In all cases of the death, insolvency or assignment of any person or persons, or chartered company, engaged in operations as hereinbefore mentioned, or of executions issued against them, the lien or preference mentioned in the first section of this act, with the like limitations and powers, shall extend to all the property of said persons or chartered company. (*Id.* § 3.)

*§ 25. *Same—No future mortgage to impair liens.* That no mortgage or other instrument by which a lien is hereafter created, shall operate to impair or postpone the lien and preference given and secured to the wages and moneys mentioned in the first section of this act: *provided*, that no lien of mortgage or judgment, entered before such labor is performed, shall be affected or impaired thereby. (*Id.* § 4.)

*§ 26. *Same—Lien cannot be waived.* Any verbal or written agreement, express or implied, made by or between any person or persons, or chartered company or companies, designed to act as a waiver of any right under this act, or any portion thereof, shall be wholly null and void. (*Id.* § 5.)