

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

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VOL. 2.

SUPPLEMENT, 1879-1888,

WITH

ANNOTATIONS AND GENERAL INDEX TO BOTH VOLUMES.

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§ 15. Judgment on award.

A judgment rendered on an award has the same conclusive effect, and can, if attacked, be impeached, reviewed, or set aside in the same manner and for the same causes, as other judgments in civil actions. *Johnston v. Paul*, 23 Minn. 46.

CHAPTER 90.

LIENS.

See *North Star Iron-Works Co. v. Strong*, 33 Minn. 1, 21 N. W. Rep. 740; *Coleman v. Ballandi*, 22 Minn. 144; *Milner v. Norris*, 13 Minn. 455, (Gil. 424.)

§ 1. Lien for labor and materials.

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: *provided*, that whenever any labor is performed, or materials or machinery furnished, as in this chapter provided, by or with the knowledge and consent of a married woman, who is the owner of the property benefited thereby, upon the order of her husband, such knowledge and consent shall be sufficient to establish that such husband acted therein as the agent of the wife. (*As amended* 1874, c. 69, § 1; 1883, c. 43, § 1; 1885, c. 46.)

A lien cannot be claimed for a debt other than for labor or materials, although arising out of a transaction connected with the furnishing of labor and materials. *Brown v. Rodecker*, (Iowa,) 21 N. W. Rep. 160.

The introduction into a shop of additional permanent and stationary machinery for use therein may subject the premises to a lien for the purchase price. *Pond Mach. Tool Co. v. Robinson*, (Minn.) 37 N. W. Rep. 99. Work done upon a building incidental to work upon personal property. *Curnew v. Lee*, (Mass.) 8 N. E. Rep. 890. Lien for making sewer connections. *Beatty v. Parker*, (Mass.) 6 N. E. Rep. 754. For lightning-rods. *Harris v. Schultz*, (Iowa,) 21 N. W. Rep. 22.

A contract to cut from plaintiff's own material, and furnish, all the cut stone required for a building, payments to be made to him from time to time as the work under said contract progresses, is one contract, and the party is entitled to a lien for material furnished thereunder, although the contract may be to furnish distinct items of material,

or perform distinct items of labor, to be paid for as the work progressed. *Milner v. Norris*, 13 Minn. 455, (Gil. 424.)

The provision as to the knowledge and consent of the wife is applicable as a rule of evidence, not merely for the purpose of establishing a lien, but for the purpose of a personal recovery against the wife. But proof of knowledge only is not sufficient. *Smith v. Gill*, 35 N. W. Rep. 178. A person furnishing material and performing work for the erection of an hotel for a married woman, upon her separate real property, has a lien upon such building and real estate. *Carpenter v. Leonard*, 5 Minn. 155, (Gil. 119.) Where materials sold to the husband upon his personal credit are used in improvements made upon the wife's land, under her protest, neither the land nor the improvements are subject to a lien. *Getty v. Framel*, (Iowa,) 25 N. W. Rep. 245.

Where the owner agrees to pay a part of the price only, the balance to be paid by a third party to whom the premises are to be conveyed, a lien can be established for that part only. *Smith v. Iowa City L. & B. Ass'n*, (Iowa,) 14 N. W. Rep. 231.

Lien for labor performed under an implied contract. *Foerder v. Wesner*, (Iowa,) 9 N. W. Rep. 100; *Nelson v. Iowa Eastern R. Co.*, (Iowa,) 1 N. W. Rep. 484; *Great Western Manuf'g Co. v. Hunter*, (Neb.) 16 N. W. Rep. 759.

Materials for improvements furnished to one having a naked possession, see *Wilkins v. Litchfield*, (Iowa,) 29 N. W. Rep. 447. And see *Proctor v. Tows*, (Ill.) 3 N. E. Rep. 569.

One who furnishes materials for erecting or repairing a house on homestead property is not entitled to a lien. *Cogel v. Mickow*, 11 Minn. 475, (Gil. 354.)

Public property is not subject to mechanics' liens, in the absence of express provisions therefor. *Knapp v. Swaney*, (Mich.) 23 N. W. Rep. 162; *Wilkinson v. Hoffman*, (Wis.) 21 N. W. Rep. 816; *City of Platteville v. Bell*, (Wis.) 28 N. W. Rep. 404.

The lien of a material-man extends as well to the interest of an equitable, as of a legal, owner. *Atkins v. Little*, 17 Minn. 342, (Gil. 320.)

Where, in the sale of materials, it is the mutual understanding that they are for the purpose of erecting or repairing a building, though no particular building was at the time mentioned or understood, and no lien is contracted for, the material-man may have a lien. *Id.* And in such case the lien attaches, although the material was to be paid for on delivery at one place, and it was delivered without payment at another, the place where the building was situated. *Id.*

Lien upon equitable title in case of the conveyance of the legal title to a third person. *Crocker v. Currier*, (Wis.) 27 N. W. Rep. 825. And see *Clark v. Parker*, (Iowa,) 12 N. W. Rep. 553.

Lien upon the interest of a tenant. *Watson v. Gardner*, (Ill.) 10 N. E. Rep. 192; *Nordyke & M. Co. v. Hawkeye Woolen-Mills Co.*, (Iowa,) 5 N. W. Rep. 693.

Lien upon the improvements, see *Lane v. Snow*, (Iowa,) 24 N. W. Rep. 35.

Plaintiffs furnished to defendants, B. & C., materials for a dwelling, to be constructed upon lot 5, then owned by B. & C., and upon which another defendant, supposing the house was being built as contemplated, took a mortgage. By mistake the house was erected upon lot 6, the property of a stranger. Held that, as against the mortgagee, the plaintiffs were not entitled to a lien upon lot 5, and that as against said mortgagee, who upon discovering the error in location purchased lot 6, the plaintiff could have no lien upon the dwelling thereon. *Smith v. Brooks*, 36 N. W. Rep. 346.

An affidavit for a mechanic's lien, under this section, must show that the work was done or material furnished by virtue of an agreement with the owner of the building or his agent. *Clark v. Schatz*, 24 Minn. 300.

See, as to priority between mechanics' liens and mortgages, *Iowa Mortgage Co. v. Shanquest*, (Iowa,) 29 N. W. Rep. 820; *Curtis v. Broadwell*, (Iowa,) 24 N. W. Rep. 265; *Hoskins v. Carter*, *Id.* 249. Priority of garnishment over lien. *Dorestan v. Krieg*, (Wis.) 29 N. W. Rep. 576.

Giving a note of the debtor for the debt does not extinguish a lien to which the creditor was entitled for furnishing materials for a building. *Milwain v. Sanford*, 3 Minn. 147, (Gil. 92.)

See, also, *Willim v. Bernheimer*, 5 Minn. 288, (Gil. 229.); *Oliver v. Davy*, 34 Minn. 292, 25 N. W. Rep. 629; *McDonald v. Minneapolis Lumber Co.*, 28 Minn. 262, 9 N. W. Rep. 765; *Oliver v. Davy*, 34 Minn. 292, 294, 25 N. W. Rep. 629; *Benjamin v. Wilson*, 34 Minn. 517, 519, 26 N. W. Rep. 725; *Freeman v. Carson*, 27 Minn. 516, 8 N. W. Rep. 764; *Rugg v. Hoover*, 28 Minn. 404, 406, 10 N. W. Rep. 478.

§ 2. Same—In favor of subcontractor, etc.

Under the lien law of August 12, 1858, a subcontractor has no lien, and his only remedy against the owner, where there has been no collusion between the owner and contractor, is by action to recover his demand, to the extent of the amount owing by the owner to the contractor upon the work at the time the subcontractor notifies the owner of his claim. *Jackson v. Butler*, 8 Minn. 117, (Gil. 92.)

The provisions securing a lien to subcontractors and others for labor performed or materials furnished in the erection of buildings pursuant to a contract between the owner and contractor, are valid and constitutional. *Laird v. Moonan*, 32 Minn. 358, 20 N. W. Rep. 354; *Bohn v. McCarthy*, 29 Minn. 23, 11 N. W. Rep. 127.

Such lien may be enforced, irrespective of the state of accounts between the contractor and owner, or the amount due upon such contract. *Laird v. Moonan, supra*. And see *Othmer v. Clifton, (Iowa), 29 N. W. Rep. 767*. In such cases the lien is limited to the reasonable value of the labor or materials furnished. *Laird v. Moonan, supra*. The statute does not authorize a lien for filling in and grading the earth about buildings already erected, the work being unconnected with the erection, alteration, or repair of any building or structure on the premises. *Pratt v. Duncan, 36 Minn. 545, 32 N. W. Rep. 709*.

Under the Massachusetts statute it is held that a lien cannot be established for carting lumber and sand for use in the erection of a building under an agreement with the contractor. *Webster v. Real-Estate Imp. Co., (Mass.) 6 N. E. Rep. 71*.

Priority between subcontractor and surety of contractor. *Wilkinson v. Hoffman, (Wis.) 21 N. W. Rep. 316*.

See *Ewing v. Folsom, (Iowa), 24 N. W. Rep. 595*; *O'Neil v. St. Olaf's School, 26 Minn. 329, 4 N. W. Rep. 47*; *Keller v. Houlihan, 32 Minn. 436, 21 N. W. Rep. 729*; *Merriman v. Bartlett, 34 Minn. 524, 26 N. W. Rep. 728*.

§ 3. Bond of contractor.

Where a bond has been executed by the principal contractor, and approved, filed, and published, as prescribed by this section, no right of lien exists in favor of a subcontractor. He has a right of action upon the bond without taking any of the steps necessary under the statute for securing a lien upon the property. *Bohn v. McCarthy, 29 Minn. 23, 11 N. W. Rep. 127*.

A subcontractor is entitled to a lien if the notice is not posted upon or about the premises during any part of the time in which he performed labor and furnished materials, though the bond has been given, and notice posted. *Kraus v. Murphy, (Minn.) 38 N. W. Rep. 112*.

An agreement made between the creditor and principal debtor, without the consent of the sureties, to extend the time for payment of a debt for which sureties are bound, though made after the debt is due, discharges the sureties. *Wheaton v. Wheeler, 27 Minn. 464, 8 N. W. Rep. 599*.

See *O'Neil v. St. Olaf's School, 26 Minn. 329, 4 N. W. Rep. 47*.

§§ 4, 5. Same—Bond after making contract—Action.

See *O'Neil v. St. Olaf's School, 26 Minn. 329, 4 N. W. Rep. 47*; *Wheaton v. Wheeler, 27 Minn. 464, 8 N. W. Rep. 599*.

§ 6. Proceedings to establish lien under § 2.

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 *six months* 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 *two* 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; 1885, c. 107.*)

A complaint upon a mechanic's lien for doing work or furnishing material in the construction of a building, etc., must allege a contract with the owner, in the performance of which the work was done, or the material furnished. An allegation that the work was done or material furnished for one who "was building and constructing a school building for said defendant," without alleging that he was doing so under any contract, is insufficient. *O'Neil v. St. Olaf's School, 26 Minn. 329, 4 N. W. Rep. 47*.

Where the contract with the owner for constructing the building, etc., was made prior to Laws 1878, c. 3, persons doing work or furnishing material for the contract, even after that amendment, can have no lien. It was not in the power of the legisla-

*The amendment of 1885 to §§ 6, 7, took effect from and after July 1, 1885. The amendments are in the words italicized.

ture to provide for liens to others than those entitled to them by the statute in force when the owner made his contract for the building, etc. *Id.*

See *Frankoviz v. Smith*, cited in note to *c. 66, § 82, supra*; *Abbott v. Nash*, 35 Minn. 451, 29 N. W. Rep. 65; *Johnson v. Gold*, 32 Minn. 535, 21 N. W. Rep. 719; *Dorestan v. Krieg*, (Wis.) 29 N. W. Rep. 576; and cases cited, *supra*.

§ 7. Same, under § 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 *six months* 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; 1885, c. 107.*)

The account need not contain a statement of the labor which has been paid for. *Sexton v. Weaver*, (Mass.) 6 N. E. Rep. 367. An account for "balance on lumber" held sufficient under a statute requiring an account of the items to be filed. *Manly v. Downing*, (Neb.) 19 N. W. Rep. 601. An allegation in the affidavit that the "building is situated upon a certain lot owned by" the person against whom the lien is claimed, is insufficient. *Morrison v. Phillippi*, 35 Minn. 192, 28 N. W. Rep. 239.

An account purporting to be sworn to before the register of deeds, but not properly attested by his seal, so as to entitle it to be recorded within the prescribed time, held insufficient to preserve the lien. *Colman v. Goodnow*, 36 Minn. 9, 29 N. W. Rep. 388.

Under a statute requiring a "just and true statement," if the statement is false no lien attaches. *Stubbs v. Railroad Co.*, (Iowa,) 22 N. W. Rep. 654.

Including non-lienable items in account filed—application of part payment upon the account generally—accounting. *Dennis v. Smith*, 38 N. W. Rep. 695.

It is not necessary that an action to enforce a lien should be prosecuted to judgment within the period mentioned in §§ 6 or 7, during which the filing of the account alone continues the lien. If commenced within that period, it may be prosecuted to judgment, and the judgment enforced, notwithstanding that the expiration of such period intervenes. *North Star Iron-Works v. Strong*, 33 Minn. 1, 21 N. W. Rep. 740.

A mechanic's lien for labor performed and materials furnished and used for the repairing of a building is not terminated by the destruction of the building by fire after the performance and furnishing of such labor and materials, but before the account provided for by this section is filed for record; but may, notwithstanding the destruction of the building, be enforced against the land on which it was situated. *Freeman v. Carson*, 27 Minn. 516, 8 N. W. Rep. 764.

See *Ballou v. Black*, (Neb.) 23 N. W. Rep. 3; *Marble v. Jones & M. Lumber Co.*, (Neb.) 28 N. W. Rep. 309; *Rugg v. Hoover*, 28 Minn. 404, 10 N. W. Rep. 473.

§ 8. Judgment.

Pleadings in action to foreclose lien upon church property. *Gurtermiller v. Rosengarn*, (Ind.) 2 N. E. Rep. 829.

See note to last section.

An action under this section is not an action for the recovery of money only; neither is it made such to any extent by the fact that the defendant in his answer sets up matter (controverted in the reply) showing not only that plaintiffs have no cause of action, but that they are thereupon indebted to him in a balance, for which he prays judgment. On the trial of such action, therefore, the plaintiff is not, as a matter of right, entitled to a jury trial; but, under Gen. St. 1878, c. 66, § 217, the action is triable by the court, subject, however, to the right of the parties to consent, or of the court to order, that the whole issue, or any specific question of fact involved therein, be tried by a jury. *Sumner v. Jones*, 27 Minn. 312, 7 N. W. Rep. 265.

It is necessary to prove that the buildings are situated on the land described in the statement. *Hutton v. Maines*, (Iowa,) 28 N. W. Rep. 9.

If the evidence fails to show the interest of the party to whom the labor or materials were furnished, foreclosure will be denied. *Dierks v. Walrod*, (Iowa,) 28 N. W. Rep. 751. But see *Willer v. Bergenthal*, (Wis.) 7 N. W. Rep. 352; *Moritz v. Splitt*, (Wis.) 13 N. W. Rep. 555.

In an action to recover a judgment *in personam*, and to establish a lien, the former relief may be had, the pleadings and evidence being sufficient, although no lien was ever perfected. *Smith v. Gill*, (Minn.) 35 N. W. Rep. 178.

See as to the judgment, *Crocker v. Currier*, (Wis.) 27 N. W. Rep. 825; *Edleman v. Kidd*, (Wis.) 26 N. W. Rep. 116.

Misnomer in notice of sale. *Fanning v. Krapfl*, (Iowa,) 26 N. W. Rep. 133.

§ 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 lienholder, after the same is duly tendered to him, proceeds at law, or refuses to give a due discharge from such lien, such lienholder shall forfeit his lien and pay costs. All liens may also be released and discharged in the same manner as is now provided by law for the release and discharge of mortgages. (*As amended 1885, c. 112.*)

§ 14. Rights of executors, etc.

See *Cummings v. Halsted*, 26 Minn. 151, 1 N. W. Rep. 1052; *Tuttle v. Howe*, 14 Minn. 145, (Gil. 113, 116.)

§ 15. Certificate of release—Refusal to execute.

To show a cause of action under this section, a complaint must show that the account and affidavit filed and recorded to secure a mechanic's lien did, *prima facie*, secure a lien so as to create a cloud on the title. *Houlihan v. Keller*, 34 Minn. 407, 26 N. W. Rep. 227.

§ 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; any keeper of a livery or boarding stable, and any person pasturing or keeping any horses, mules, cattle, or stock, at the request of the owner or lawful possessor thereof, shall have the same lien for all his charges for keeping, supporting, and caring for such property, and the same right to hold and retain the possession thereof, and the same power of sale for the satisfaction of his reasonable charges and expenses upon the same conditions and restrictions as provided in the preceding section. (*As amended 1885, c. 81.*)

Under §§ 16 and 17, as amended in 1885, the lien takes precedence of a prior chattel mortgage. *Smith v. Stevens*, 36 Minn. 303, 31 N. W. Rep. 55. And the statute is constitutional. *Id.*

§ 18. Affidavit.

The provisions of this section as to the form and contents of the affidavit of claim for a mechanic's lien, apply equally to claims for liens in favor of subcontractors, under § 2, *supra*, as to those in favor of the original contractors with the owners, under § 1, *supra*. *Keller v. Houlihan*, 32 Minn. 486, 21 N. W. Rep. 729. In either case the form of the affidavit given in this section, although it may be varied to suit the circumstances of the case, must, in all matters of substance, be followed. *Id.*

A mechanic's lien, being the creature of the statute, can only exist by virtue of a

compliance with its provisions. The verified statement of account filed in the office of the register of deeds as the basis for a mechanic's lien in this case examined, and held to be too loose, indefinite, and ambiguous, as respects the ownership of the property on which the lien was sought to be imposed, to satisfy the requirements of the statute. *Rugg v. Hoover*, 28 Minn. 404, 10 N. W. Rep. 473.

The affidavit to the account required to be filed and recorded to perfect a mechanic's lien, must show that the labor or materials for which the lien is claimed was performed or furnished by virtue of a contract or agreement with the owner of the building or with his agent. *Clark v. Schatz*, 24 Minn. 300.

See *Smith v. Headley*, 33 Minn. 384, 23 N. W. Rep. 550; *Clark v. Schatz*, 24 Minn. 300; and note to § 7, *supra*.

***§ 21a. First lien for labor.**

That on and after the passage of this act all labor performed by contract or by the day on any building, article, or utility, or that has entered into the construction of anything, shall be a first lien thereon, to the full amount of the money or other consideration agreed upon between the owner or employer and employe, whether the person performing the labor be a contractor, subcontractor, or working for wages; and in addition to the lien for labor there shall be added thereto a sum to cover costs, and a reasonable amount for attorney's fees. (1887, c. 170, § 1.)*

This act is prospective in operation. Contracts previously made are governed by the former statute, which so far remains operative, and may stand consistently with the new act. *Pond Mach. Tool Co. v. Robinson*, (Minn.) 37 N. W. Rep. 99.

***§ 21b. Second lien for materials.**

All material furnished in the construction or building or in aid thereof of any building, article, or utility, or anything whatever, shall be a second lien thereon, whether it be real estate, homestead, personal property, or otherwise, to the full amount of money or other consideration agreed upon, and all costs and an attorney fee not exceeding ten dollars, in the discretion of the court: *provided*, that any person wishing to file a lien under the provisions of this act, having furnished both labor and material, shall specify the amount of labor and material as separate items in one statement, but the amount for material shall not be paid until all claims for labor are satisfied. (*Id.* § 2.)

***§ 21c. Failure of contractor, etc., to pay wages, etc.—Penalty.**

Any contractor or subcontractor receiving the full amount of the money or other consideration due on his contract, and failing to pay the person performing any labor, or furnishing any material expended or used in the construction of any building, article, or utility, thereby allowing a lien to be filed against such property, shall be deemed guilty of obtaining money under false pretenses, and may be punished under the statute made and provided for that offense. (*Id.* § 3.)

As to the constitutionality of this section, see *State v. Brachvogel*, 36 N. W. Rep. 641.

***§ 21d. Perfecting lien — Records — Right of inspection — Evidence of ownership.**

Any lien filed under the provisions of this act, must be filed in the office of the register of deeds of the county where such labor was performed and material furnished, within ninety days from the last day on which any labor was performed or material furnished, by leaving with the register of deeds a statement of the amount of labor performed and material furnished; and the register of deeds shall make a record of such filing by making an entry in a book kept for the purpose, of the date of filing and amount of claim, and shall place the statement on file. Any of the parties interested shall have the right

*"An act giving labor the right of first lien, and material furnished a second lien on all property." Approved March 8, 1887. § 12 repealed all inconsistent acts and parts of acts.

to examine the statement on file. The parties filing a lien shall also serve a copy of such lien on the owner or agent of the property against which the lien is filed. The record of ownership in the office of the register of deeds shall be satisfactory evidence of ownership. (*Id.* § 4.)

***§ 21e. Evidence of owner's consent.**

The fact that the person performing labor or furnishing material was not enjoined by law from performing labor or furnishing material, by the person in whom the title was vested at the time such labor was performed or material furnished, shall be conclusive evidence that it was with and by the consent of the owner that such labor was performed and material furnished. (*Id.* § 5.)

***§ 21f. Action—Limitation.**

Any person filing a lien shall bring suit for recovery within four months after such lien is filed. (*Id.* § 6.)

***§ 21g. Jurisdiction of justices.**

Any justice shall have jurisdiction of any claim of one hundred dollars and under for the foreclosure of liens on personal property. (*Id.* § 7.)

***§ 21h. Sale—Redemption.**

The court granting judgment under this act shall immediately order the sheriff to publish a notice of sale of the property on which the lien was filed. The notice shall be published for three consecutive weeks in a newspaper published in the county where the lien was filed, and, if there is no newspaper, then by posting a notice in a conspicuous place in the court-house and three other places in the county for the same length of time. Thirty days after the first publishing or posting such notice the sheriff shall sell at public auction, in front of the court-house, to the highest bidder, a sufficient quantity of the property to satisfy all claims, and the sheriff shall give a deed where the property is real estate, and a bill of sale for other property, which shall convey the property, and take precedence of any other title: *provided*, the property may be redeemed at any time within one year from the date of sale by the person in whom the title was vested, at the time of sale, paying the principal, costs, attorneys' fees, and interest at the legal rate. (*Id.* § 8.)

***§ 21i. Sale of part of property.**

Where practical, the property may be divided at the option of the owner, and sufficient sold to pay all lawful demands, and any sum over and above shall be turned over to the owner of the property. (*Id.* § 9.)

***§ 21j. Priority over incumbrances.**

No incumbrance upon land created before or after the making a contract, or performing labor, or furnishing material, under the provisions of this act, shall operate upon the building erected or material furnished, until the lien in favor of the person performing the labor or furnishing the material shall have been satisfied. (*Id.* § 10.)

***§ 21k. Construction of act.**

It shall be the duty of the court, where any doubt arises as to the construction of this act, to construe it so as to give to the person performing any labor the full amount of his claim, over and above all costs, and a reasonable attorney's fee, to be determined by the court. (*Id.* § 11.)

***§ 22. Lien for wages.**

The provisions of Gen. Laws 1878, c. 86, were not intended to secure to farm laborers a lien for wages upon agricultural products. *Schilling v. Carter*, 35 Minn. 287, 28 N. W. Rep. 658.

The effect of § 22 is to give the lien therein spoken of as security for moneys due the employes mentioned for wages; and further, to provide (for the purpose of making the lien effectual) that moneys so due shall be preferred, and first paid out of the proceeds of the sale of the property bound by the lien: *provided, however*, among other things, that in order to secure a lien, the claim of the employe for money due him as aforesaid must be filed in the office of the register of deeds, or of the town or city clerk, as the case may be. *Kruse v. Thompson*, 26 Minn. 424, 4 N. W. Rep. 814.

See *Olson v. Lumber Co.*, (Minn.) 33 N. W. Rep. 791.

***§ 23. Same—Notice in case of attachments, etc.**

§ 23 does not assume to give any lien or any preference to the employe, but provides a way in which "an officer executing a writ of execution or attachment, or similar writ, upon the property of the employer, may and shall pay over to such employe the amount of his *claim*," meaning (by reference to the preceding section) the claim which he has filed as in such preceding section provided, and by filing which, as therein provided, he has secured the lien therein given. *Kruse v. Thompson*, 26 Minn. 424, 4 N. W. Rep. 814.

***§ 27. Lien for service of animals.**

That neglect or refusal on the part of the owner of any mare, cow, ewe, or sow, to pay the service fees of any stallion, jack, bull, ram, or boar, kept for public service, until the birth of the offspring, shall in such case constitute a lien upon the offspring resulting from said service. (1885, c. 175, § 1.)*

***§ 28. Same—Perfecting lien—Release.**

That the owner or owners of every stallion, jack, bull, ram, or boar, kept for public service, shall make and file within ninety days after said service, with the town clerk, in the same manner now provided for the filing of chattel mortgages, an accurate description of each female bred, such description to state time and place of service, color, supposed age, and any other description of said female that may be necessary for identification, together with the amount claimed to be due for the services of such animal. That a certified copy of said description shall be sufficient authority for the owner of said lien, his agent or assigns, to enforce the same by taking possession of said offspring, and to foreclose said lien as provided by law for the foreclosure of chattel mortgages in this state: *provided, however*, that upon the payment of said service fees, or the full satisfaction of said lien, the owner thereof shall file with the description before mentioned a full release of said offspring with the clerk of the township where said female is owned. (*Id.* § 2, as amended 1887, c. 73.)

CHAPTER 91.

CRIMES AND PUNISHMENTS—PRINCIPALS AND ACCESSORIES.

[Under §§ 1, 2, 10, 11, 12, see notes to §§ 5, 26, 32, 186, of Penal Code, *post.*]

*"An act relating to the service fees for domestic animals." Approved March 7, 1885.