

GENERAL STATUTES

OF THE

STATE OF MINNESOTA,

IN FORCE JANUARY, 1891.

VOL. 2.

CONTAINING ALL THE LAW OF A GENERAL NATURE NOW IN FORCE AND NOT IN
VOL. 1, THE SAME BEING THE CODE OF CIVIL PROCEDURE AND ALL REME-
DIAL LAW, THE PROBATE CODE, THE PENAL CODE AND THE CRIM-
INAL PROCEDURE, THE CONSTITUTIONS AND ORGANIC ACTS.

COMPILED AND ANNOTATED

BY

JNO. F. KELLY,

OF THE ST. PAUL BAR.

SECOND EDITION.

ST. PAUL:

PUBLISHED BY THE AUTHOR.

1891.

CHAPTER 59 (G. S. ch. 90).

LIENS.

This chapter of G. S. was amended by acts 1874, ch. 69; 1883, ch. 43; 1885, ch. 46, and supplemented by acts 1874, ch. 50. All these were repealed and superseded by acts 1889, ch. 200, except sections 16 and 17, ch. 90, G. S., as amended 1885, ch. 81; 1889, ch. 199, which compose sections 4315, 4316 of this chapter. Acts 1889, ch. 200, § 19, specifically repealed §§ 9, 10, 13, 18, ch. 90, of G. S., as amended 1874, ch. 69, providing for laborer's lien when work suspended; for the lease of the property when sale could not be made; for enforcement of lien by attachment, and the form of verification, but did not carry such provisions into the new enactment. Acts 1889, ch. 200, saved vested rights, and that proceedings begun shall as far as practicable conform to this act.

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AUTHORIZED.

SEC. 4297. **On building, structure, water craft.**—Whoever performs labor, or furnishes skill, material or machinery for the construction, alteration or repair of any boat, vessel or other water craft, or for the erection, alteration, repair or removal of any house, mill, manufactory, or other building or appurtenance, or of any fixture, bridge, wharf, fence or other structure, by virtue of a contract with, or at the instance of, the owner thereof, or his agent, trustee, contractor or subcontractor, shall have a lien to secure the contract price or value of the same upon such boat, vessel or other water craft, or upon such house, mill, manufactory, or other building or appurtenance, or fixture, bridge, wharf, fence or other structure, and upon the right, title and interest of the owner thereof, in and to the land upon which the same is situate, or to which it may be removed, not exceeding forty acres, if without the corporate limits of any city or incorporated village; and if situate upon, or removed to, land within the corporate limits of any city or incorporated village, then in and to the lot of land upon which the same is situate, or to which it may be removed, not exceeding one acre in extent.

1889, ch. 200, § 1: "An act giving liens for the better security of mechanics, material-men, laborers and others." Approved April 24th. In force from October 1, 1889. This act repealed sections 1-15, 18, 19, 20, 21, ch. 90, G. S., and all acts amendatory thereof or inconsistent therewith, the same being acts 1874, ch. 50; 1874, ch. 69; 1878, ch. 3; 1883, ch. 43; 1885, ch. 46; 1885, ch. 107; 1885, ch. 112. And that existing rights and pending suits were not affected, but that proceedings begun shall as far as practicable conform to this act. This section is same as § 1, ch. 90, G. S., before it was amended by acts 1874, ch. 69; 1883, ch. 43; 1885, ch. 46, except the words "skill," "or any fixture, bridge, wharf, fence or other structure," and "or at the instance of," which were inserted by acts 1889, ch. 200. 3 M. 147; 5 M. 155, 288; 8 M. 118; 13 M. 455, 473; 17 M. 342; 24 M. 302; 28 M. 152; 27 M. 518; 28 M. 264, 406; 29 M. 23; 32 M. 360, 499; 33 M. 4; 34 M. 294, 519; 37 M. 456; 38 M. 242, 274, 266; 38 N. W. 695; 39 N. W. 141; 39 N. W. 801.

SEC. 4298. **Grading land, drain, vault, sidewalk, gutter, sewer.**—Whoever performs labor, or furnishes skill, material or machinery for grading, filling in or excavating any land, or for digging, constructing, altering or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, constructing, altering or repairing any sidewalk, curb, gutter,

or any sewer, water pipe or gas pipe, whether mains or connections, upon any land, or in the half of the highway, street or alley adjacent and contiguous to said land, by virtue of a contract with or at the instance of the owner thereof, or his agent, trustee, contractor or subcontractor, shall have a lien to secure the contract price, or value of the same, upon the right, title and interest of the owner of such grading, filling in or excavation, ditch, drain, well, fountain, cistern, reservoir, vault, sidewalk, curb, gutter, sewer, water pipe or gas pipe, whether mains or connections, in and to the land upon which the same has been done or is situate, or in and to the land adjacent and contiguous to the half of the highway, street or alley in which such sidewalk, curb, gutter, sewer, water pipe or gas pipe, whether mains or connections, has been laid, constructed, altered or repaired, not exceeding forty acres, if without the corporate limits of any city or incorporated village, and if done or situate upon land, or in the half of the highway, street or alley adjacent and contiguous to land within the corporate limits of any city or incorporated village, then in and to the lot of land upon which the same has been done or is situate, or in and to the lot of land adjacent and contiguous to the half of the highway, street or alley in which such sidewalk, curb, gutter, sewer, water pipe, gas pipe, whether mains or connections, has been laid, constructed, altered or repaired, not exceeding one acre in extent.

1889, ch. 200, § 2. New.

SEC. 4299. On railway, telegraph, telephone, electric light, gas-pipe, subway.— Whoever performs labor, or furnishes skill, material or machinery for the construction, alteration or repair of any line of railway, or of any telegraph line, depot, bridge, fence, or other structure appertaining to any line of railway, or for the construction, alteration or repair of any line of telegraph, telephone, electric light, gas-pipe or subway conduit, or of any fixture or structure appertaining to any such line, by virtue of a contract with, or at the instance of the owner thereof, his or its agent, trustee, contractor or subcontractor, shall have a lien to secure the contract price, or value of the same, upon such line of railway, telegraph line, depot, bridge, fence, or other structure appertaining to such line of railway, or upon such line of telegraph, telephone, electric light, gas-pipe or subway conduit, or fixture or structure appertaining to such line, and upon all franchises, privileges and immunities, and all right of way of or appertaining to any of the several lines aforesaid.

1889, ch. 200, § 3. This section is substantially acts 1874, ch. 69, § 1, which added this provision to § 1, ch. 90, G. S., except that acts 1874 was confined to railways and telegraph.

SEC. 4300. Fastens on all interests — Except.— Every house, mill, manufactory or other building or appurtenance, and every structure or other improvement mentioned in sections¹ one and two of this act (excepting boats, vessels or other water craft), erected, constructed, altered, removed to or repaired upon any land, with the knowledge of the owner of such land, or of any person having or claiming an interest therein otherwise than as a bona fide prior mortgagee, incumbrancer or lienor, shall be held to have been erected, constructed, altered, removed or repaired at the instance of such owner or person, so far only as to subject his interest to a lien therefor, as in this section provided, and such interest so owned or claimed, shall be subject to any lien given by the provisions of this act, unless such owner or person shall, within five days after he shall have obtained knowledge of the erection, construction, alteration, removal or repair aforesaid, give notice that his interests shall not be subject to any lien for the same by serving a written or printed notice to that effect personally upon all persons performing labor or furnishing skill, material or machinery therefor, or shall, within five days after he shall have obtained the knowledge aforesaid, or knowledge of the intended erection, construction, alteration, removal or repair aforesaid, give such notice as aforesaid by posting and keeping posted a written or printed notice to the effect aforesaid, in some conspicuous place upon said land or upon the build-

ing or other improvement situate thereon. But no lien shall be allowed as against a lessor for repairs made by or at the instance of a lessee, and nothing in this section contained shall apply to such vendor as is mentioned in section four of this act.

1889, ch. 200, § 5. New. ¹Secs. 4297, 4298, *ante*.

SEC. 4301. Follows land in executory contract.—Whenever the owner of land has sold the same upon an executory contract of sale contingent upon or providing for the erection, construction, alteration, removal to or repair upon such land by the vendee thereof of any house, mill, manufactory or other building or appurtenance, or of any fixture, wharf, fence or other structure, if the vendee or his assigns shall forfeit or surrender such contract, then, for the purpose of establishing and enforcing a lien for all labor, skill, material or machinery, performed or furnished by other persons, for or to such vendee, or his assigns, under contract or subcontract for such erection, construction, alteration, removal or repair, such vendee shall be deemed the owner of such house, mill, manufactory or other building or appurtenance, or fixture, wharf, fence or other structure, and such vendee his contractor within the meaning of this act. But no such vendor shall be personally liable for any indebtedness so contracted by such vendee.

1889, ch. 200, § 4. New.

SEC. 4302. Limited to actual value, when.—In all cases where the labor, skill, material or machinery referred to in sections ¹one, two and three of this act, shall be furnished by any person other than the original contractor with such owner or his agent or trustee the lien shall not exceed the actual value of the labor, skill, material or machinery so furnished.

1889, ch. 200, § 6. New. ¹Secs. 4297, 4298.

SEC. 4303. Promissory note will not discharge lien.—The taking of a promissory note or other evidence of indebtedness, for labor performed, or skill, material or machinery furnished, under the provisions of this act, shall not discharge the lien thereby given for the same, unless expressly received in payment therefor, and so specified in such note or other evidence of indebtedness.

1889, ch. 200, § 15. New.

SEC. 4304. Rights of executors and administrators.—Executors and administrators under this act have the same rights, and are subject to the same liabilities, that their testator or intestate, if living, would have or might be subject to.

1889, ch. 200, § 17. Substantially § 14, ch. 90, G. S.

SEC. 4305. Fraud in purchasing material.—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, and obtained written consent from the person from whom the material was purchased, shall, upon conviction thereof, be punished by a fine not exceeding five hundred dollars, or by imprisonment not exceeding six months, or both, in the discretion of the court.

1889, ch. 200, § 16. This is substantially § 7, ch. 3, acts 1878, which added this provision to ch. 90, G. S.

CREATION OF LIEN.

SEC. 4306. Statement—Filing—Effect.—Any person, copartnership or corporation, claiming lien under this act, and wishing to avail himself of

the benefits thereof, and to continue such lien, shall make a statement in writing setting forth:

1. The amount actually due and owing him after allowing all just credits and offsets. (The separate items of the account need not be stated.)*

2. That such amount is due and owing for labor performed, or for skill, material or machinery furnished, or for one or more of them; and in what erection, construction, alteration, repair, removal, digging or laying, as the case may be, the same was performed or furnished.

3. The time when the first and last item of such labor, skill, material or machinery, as the case may be, was furnished.

4. A description of the property to be charged with the lien.

5. The name of the owner or reputed owner, at the time of making said statement, of the property charged with the lien, according to the best information then had.

6. A notice of intention to claim and hold such lien.*

Filing.— Said statement shall be verified by the oath of the person claiming the lien, or by his agent, or by one having knowledge of the facts, and shall, within ninety days from the time of furnishing of the last item of such labor, skill, material or machinery, be filed in the office of the register of deeds in and for the county in which the premises charged with the lien are situate; and in case such labor, skill, material or machinery shall have been furnished for the construction, alteration or repair of any boat, vessel or other water craft, or of any line of railway, or any telegraph line, depot, bridge, fence or other structure appertaining to any line of railway, or for the construction, alteration or repair of any line of telegraph or telephone, or of any fixture or structure appertaining to any such line, said statement shall be filed, within the time aforesaid, in the office of the secretary of state.

Effect.— Said statement, when so verified, shall be recorded in the office, where it is filed as aforesaid, at length in the records thereof, and shall operate to continue such lien during all the period of time, from the time of the furnishing of the first item of such labor, skill, material or machinery until the expiration of one year after the time of furnishing the last item of the same.

1889, ch. 200, § 8. This is substantially § 7, ch. 90, G. S., as amended 1874, ch. 69, § 2; 1885, ch. 107, except that the time under former law was six months and two years instead of ninety days and one year under present law. Acts 1874, ch. 69, § 2, inserted in G. S. the words "partnership or corporation," and the provision that the account against railway be filed with secretary of state, and acts 1885 changed time for filing from one year to six months. The matter between * * in above section was not specifically in prior law, which merely provided for itemized account in writing. 11 M. 475; 13 M. 455; 17 M. 342; 33 M. 5, 388; 32 M. 488; 23 M. 406.

SEC. 4307. Immaterial inaccuracies.— The validity of the lien shall not be affected by any inaccuracy in the statement relating to the property to be charged with it, if such property can be reasonably recognized from the description, nor by any inaccuracy in the statement of the name of the owner or reputed owner of such property, nor by any inaccuracy in stating the amount due for labor, skill, material or machinery, unless it appears that the person claiming the lien has wilfully and knowingly claimed more than is due.

Not more than claim.— *Provided*, that in no case shall a lien exist for a greater amount than that claimed in said statement.

1889, ch. 200, § 9. New.

SEC. 4308. Not necessary to file separate lien, when.— Whenever any contractor, sub-contractor or other person shall perform labor or furnish skill, material or machinery for the erection, construction, alteration, removal or repair of two or more buildings or structures united together and situate upon the same lot or contiguous lots, or of separate buildings upon contiguous lots, in either case under or pursuant to the purposes of one general contract, with the owner or joint owners of the lot or lots and of such improvements thereon, or with the person or persons whose interest therein may be charged

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SEC. 4309.]

LIENS.

with a lien under this act, it shall not be necessary to file a separate lien upon each building or structure for the labor so performed thereon, or for the skill, material or machinery so furnished therefor, nor, in case a separate lien is not so filed, to apportion the amount of the entire lien claimed, between the several buildings or structures.

1889, ch. 200, § 7. New.

ENFORCEMENT OF LIEN.

SEC. 4309. Proceedings — Trial — Judgment.— Any person having a lien given by the provisions of this act, may proceed to obtain judgment and enforce the same, in the same manner as in actions for the foreclosure of mortgages upon real estate, except as otherwise herein provided.*

Time to commence.— Every such action to enforce any such lien shall be commenced within one year from the time of furnishing the last item of labor, skill, material or machinery for which such lien is had.

Lis pendens.— At the time of the commencement of such action a notice of lis pendens shall be filed, as provided by law, in the office of the register of deeds in and for the county in which such action is brought, and, except in cases where the lien statement shall have been filed in the office of the secretary of state, as in this act provided, in each and every county in which the property, or any part thereof, affected by such action is situate.

Pleadings.— In all cases no pleadings or copies thereof need be served, on demand or otherwise, but the several pleadings in such action shall be filed by the parties thereto, in the office of the clerk of the district court in and for the county wherein the action is brought. The complaint shall be so filed at the time of issuing the summons in such action.

Summons.— The summons shall require the defendant so to file his answer within twenty days after the service of such summons, exclusive of the day of service, and shall notify him that the complaint has been filed with the clerk of said court, and that such action is for the foreclosure of a mechanic's lien.

Bill of particulars.— Every party to such action claiming a lien under this act shall attach to his complaint, or answer, and file therewith, a bill of particulars of the items of his lien-claim, verified by his oath, or that of his agent, or of some one having a knowledge of the facts, or be precluded from giving evidence thereof. The court may order a further and more particular bill.

Parties defendant.— In any such action all persons who have liens given by the provisions of this act, filed of record upon the same property or any part thereof, shall be made parties defendant. The complaint in such action shall ask the determination, and adjudication of the amount, and validity of all such lien-claims.

Answer.— Each defendant in such action shall answer, setting up any defense to the plaintiff's claim, and, also, as in a complaint, the amount and nature of the lien claimed by such defendant, and asking that the same be determined, adjudicated and foreclosed in said action. Against any defendant failing to answer, judgment shall be rendered denying him any relief in such action, and he shall be thereby debarred from afterwards setting up or asserting his said lien; but his claim upon the person with whom the contract was made shall not be thereby impaired. All the allegations of each answer in such action shall be deemed to be controverted; as upon a direct denial or avoidance; as the case may require, without further pleading.

Trial.— At the trial of such action the amount and validity of all such liens as aforesaid shall be determined and adjudged; and if it shall appear to the court at any time before final judgment, that other liens have been filed, or will thereafter be filed under the provisions of this act, upon or against the same property or any part thereof, or that there are other persons who ought

to be made parties to such action, the court, upon its own motion, or upon motion of any party or of any person claiming such lien, or upon motion of any such other person who ought to be made a party, may continue such action, or delay trial thereof or judgment therein, for the purpose of bringing in, and making all lien claimants upon such property, or such other persons, parties to such action.

Claims not due.— Any person entitled to a lien given by the provisions of this act, whose claim is not due or payable at the time of the commencement of an action by any other person or persons, to enforce their liens, shall be permitted to become or to be made a party to such action; and the claim of such person may be allowed, subject to discount for the period to elapse between the date of the judgment and the maturity of such claim.

Second action.— After the commencement of, and before final judgment in any such action to foreclose any such lien, as aforesaid, upon any certain property, no other such action to foreclose any other such lien upon the same property or any part thereof shall be commenced; but the claimant of any other such lien, not a party to such action firstly commenced, shall apply to be made, and shall be admitted a defendant in the action last mentioned. And if he shall, nevertheless, commence such other action, the same shall be consolidated with, and merged in the action firstly commenced, upon motion of any party to the earlier action, or by the court upon its own motion.

Judgment.— In rendering judgment in such action the court shall first determine the amount of the lien claim to which each sub-contractor is entitled, and direct judgment in favor of such sub-contractor for the amount so determined; the court shall then determine the amount to which the contractor, with whom each sub-contractor shall have made his contract, is entitled, over and above the amount of the liens of such sub-contractors, and direct judgment for such excess only in favor of such contractor. But if after judgment any original contractor shall pay the amount so adjudged to be due to such sub-contractor, such original contractor shall be subrogated to the rights of such sub-contractor. Any judgment rendered in such action shall specify the amount of every such lien, and by whom it is held or owned, and shall order the sale of the premises covered by all such liens to satisfy the same. Such judgment shall require the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, including such subsequent lien claimants; if any, as are hereinafter mentioned, to the amount of their several claims, if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each, and without priority among themselves.

Parties after judgment.— If, at any time after judgment and before sale or distribution, it shall be made to appear to the court that any lien claimant, having a lien which might properly have been foreclosed in said action and provided for by said judgment, has without fault on his part, omitted to assert the same or to apply to be made a party to said action the court shall, by its further order or orders delay such sale or distribution, as the case may be, for the purpose of admitting, and shall, upon due proof of such lien-claim, in manner as the court may direct, admit such claimant to a participation in the proceeds of such sale or distribution, in all respects as if he had been a party to said action, and had therein duly established his said claim.

When property will not sell.— In case the property covered by such lien or liens will not sell upon execution, as provided by law in other cases, having been once duly offered, the court may order the property into the hands of a receiver, to be leased or rented from time to time, under the direction of the court, until the lien or liens shall be discharged, or make such other order or disposition of the property as shall to right appertain.

1889, ch. 200, § 10. Supersedes and contains § 8, ch. 90, G. S., as amended 1873, ch. 3, § 6, and § 11, ch. 90, G. S. First paragraph is § 8, and last is § 11. 23 M. 406; 36 M. 10.

SEC. 4310. **Sale of leasehold.**— Upon the sale of any real property under the provisions of this act, when the interest or estate sold is a leasehold of less than two years, unexpired term, from the time of such sale or is at the time of such sale the interest or estate of a vendee of such property under an executory contract of sale, the conditions of which are to be performed within two years from the date of the contract, the sale is absolute; in all other cases the property sold is subject to redemption as provided by law.

1889, ch. 200, § 13. New.

SEC. 4311. **Sale of movable building.**— If the building or other improvement erected, or constructed, is so constructed as to be movable from the premises without material injury thereto, the court may direct the same to be sold to satisfy any lien given by the provisions of this act, and the purchaser may, under the direction of the court, remove such building or improvement from the premises within sixty days after such sale.

1889, ch. 200, § 12. Substantially § 8, ch. 3, acts 1878, which amended G. S. ch. 90, by adding this section thereto.

SEC. 4312. **Sale of railways, etc.**— When judgment is obtained establishing any lien, given by the provisions of this act, upon any line of railway, telegraph, telephone, electric light, gas-pipe or subway conduit, such line of railway, together with all telegraph lines, depots, bridges, fences or other structures appertaining to such line of railway, or such line of telegraph, telephone, electric light, gas-pipe or subway conduit, together with all fixtures or structures appertaining to such line, and together with all franchises, privileges, immunities, and all right of way of or appertaining to any of the several lines aforesaid, may be sold upon execution to satisfy such judgment.

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 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 in the case of the sale of any line of railway or telegraph as aforesaid, the notice of sale, required by law to be published in a newspaper shall be published in some newspaper published at the capital of the state.

1889, ch. 200, § 11. This is substantially § 3, ch. 69, acts 1874, which amended § 10, ch. 90, G. S., by adding this provision thereto.

DISCHARGE OF LIENS.

SEC. 4313. **How made.**— Every person who has received satisfaction of his debt or tender of the amount thereof, with all costs of action brought thereon, or of any judgment recovered therefor, for which he has filed any such claim for lien, or after final judgment against him by a competent tribunal in an action thereon, or after the expiration of the time limited by this act for the commencement of action thereon without action being begun, shall, at his own cost, at the request of any person interested in the property affected by such lien, or who is interested in having such lien removed, or of his legal representatives, release and discharge such lien of record; and if he neglects so to do for ten days after request in writing, he shall forfeit and pay twenty-five dollars to the person requesting such satisfaction and discharge, to be recovered in a civil action, and shall be liable to any person injured to the extent of his injury.

All liens given by the provisions of this act shall be released and discharged in the office where recorded in the same manner as is now provided by law for the release and discharge of mortgages upon real property.

1889, ch. 200, § 18. This contains substance of § 15, ch. 90, G. S., and § 12, ch. 90, G. S. as amended by acts 1885, ch. 112. 34 M. 408; 36 M. 303.

LIEN BY SUB-CONTRACTOR.

SEC. 4314. Notice — Effect.— Any sub-contractor or person other than the original contractor, who performs any labor or furnishes any skill, material or machinery, or who has agreed so to do, for which a lien is, or may be given by the provisions of this act, may at any time serve or cause to be served upon the owner of the premises, or upon the person whose interest therein is, or may be charged with such lien, or upon the authorized agent of either, a notice in writing.

Such notice to be substantially in the following form:

To ———: You are hereby notified, that I have (been employed by, or have contracted with) ———, to (here state whether to perform labor or furnish skill, material or machinery, or both, and substantially the nature of the undertaking or demand) upon your (here state the building or other structure or improvement, and where situated, in general terms); and that I shall hold the (building, or as the case may be), and your interest in the land liable for the amount that (is, or may become) due me on account thereof. That said amount (is, or will be, ——— here state the amount as nearly as may be.)

Date ———.

Signature.

No such notice shall be invalid by reason of any defect of form, *provided*, it is sufficient to inform the owner or such person or persons as aforesaid of the substantial matters, as set forth in the form herein above given. Such notice shall be verified by the oath of such sub-contractor or that of his agent. Such notice shall be served by delivering the same to the owner or to such person as aforesaid, or to the authorized agent of either, personally, or in case such owner, person or agent cannot be found in the county in which such improvement is made and has no residence therein, then by posting such notice, and keeping it posted in a conspicuous place upon the premises of the owner or such person as aforesaid. Upon such notice being served, the owner or such person as aforesaid, or the agent or either shall, and it shall be his duty to withhold from the original contractor, out of the money due or that may become due to him, an amount sufficient to answer the sum of money claimed in such notice to be due or to become due, and any lien that may be filed therefor. Such an amount as aforesaid shall be so withheld until such notice is by writing withdrawn, by the party so having given the same. But failure by any such sub-contractor or person, other than the original contractor, as aforesaid, to give such notice shall not defeat his lien or right of lien under this act.

1889, ch. 200, § 14. This section contains the substance of and supersedes § 2, ch. 90, G. S., as amended 1878, ch. 3. and supersedes acts 1874, ch. 50, which provided for the arrest of contractor who failed to pay sub-contractor. Section 2, ch. 90, G. S., as amended 1878, ch. 3, was followed in six sections by provisions which directed the manner of adjusting such accounts after service of notice by sub-contractor, which not being carried into acts 1889, ch. 200, leaves the enforcement of such notice to the same mode provided for the original contractor. Sec. 4309, *ante*. As the law stood before acts 1889, ch. 200, the following adjudications were made: 34 M. 525; 33 M. 4, 387; 32 M. 362, 487; 26 M. 330; 36 M. 545; 33 M. 423; 32 M. 361; 27 M. 465; 41 N. W. 302; 35 M. 454, 404; 33 M. 6, 388; 32 M. 535, 489; 26 M. 330; 11 M. 475; 13 M. 455; 17 M. 342; 32 M. 488; 28 M. 406; 27 M. 517; 36 M. 10; 14 M. 145; 33 M. 6, 383; 27 M. 314.

LIEN FOR LABOR ON PERSONAL PROPERTY.

SEC. 4315. How effective.— Whoever makes, alters, repairs or bestows labor or furnishes material or 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 material he has furnished; and such person may hold and retain possession of the same until such just and reasonable charges are paid. If they are not paid within three months after the labor is performed or the material 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. The proceeds of such sale shall be applied first to the discharge of such lien and the cost and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

G. S. ch. 90, § 16, as amended 1889, ch. 199, approved April 24th, and not to affect vested rights. Same as before amendment. This section of G. S. was not repealed by acts 1889, ch. 200. 36 M. 303.

LIEN BY CARRIER—STORAGE—KEEPER OF STOCK.

SEC. 4316. How effective.—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, and any keeper of a livery or boarding stable for horses, mules, cattle or stock, and any person who pastures or keeps the same,* at the request of the owner or lawful possessor thereof, shall have the same lien for his charges for carrying, transporting, storing, keeping, supporting and caring for such property, and the same right to hold and retain 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.

G. S. ch. 90, § 17, as amended 1885, ch. 81 (March 2); 1889, ch. 199 (April 24). Amendment between **, which was inserted by acts 1885. Residue of section substantially same as before amendment. This section of G. S. was not repealed by acts, 1889, ch. 200. 36 M. 303.

LIEN FOR WAGES.

SEC. 4317. Authorized.—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 business, 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, ch. 86, § 1: "An act for the better protection of the wages of mechanics, clerks, laborers and others." Approved March 7, 1878. Repeals all statutes inconsistent with this act. 35 M. 288; 26 M. 425; 37 M. 299.

SEC. 4318. Same — Extent of lien.— 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.

1878, ch. 86, § 3. 37 M. 299.

SEC. 4319. Same — Not impaired.— 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.

1878, ch. 86, § 4.

SEC. 4320. Same — 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.

1878, ch. 86, § 5. 35 M. 288; 37 M. 299.

SEC. 4321. Same — Notice when property attached.— 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.

1878, ch. 86, §

PRIORITY OF LIENS.

SEC. 4322. Labor — First lien.— 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 any thing, shall be a first lien thereon, to the full amount of the money or other consideration agreed upon between the owner or employer and employee, whether the person performing the labor be a contractor, sub-contractor 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, ch. 170, § 1: "An act giving labor the right of first lien and material furnished a second lien on all property." Approved March 8, 1887. Repeals all inconsistent acts.

SEC. 4323. Material — Second lien.— All material furnished in the construction or building or in aid thereof of any building, article or utility or any thing 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.¹

1887, ch. 170, § 2.

SEC. 4324. Filing.— 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

¹See note at foot of page 129.

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 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.¹

1887, ch. 170, § 4.

SEC. 4325. **Suit.**— Any person filing a lien shall bring suit for recovery within four months after such lien is filed.¹

1887, ch. 170, § 6.

SEC. 4326. **Jurisdiction of justice.**— Any justice shall have jurisdiction of any claim of one hundred dollars and under for the foreclosure of liens on personal property.¹

1887, ch. 170, § 7.

SEC. 4327. **Judgment — Sale.**— 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, attorney's fees and interest at the legal rate.¹

1887, ch. 170, § 8.

SEC. 4328. **Division of property for sale.**— 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.¹

1887, ch. 170, § 9.

SEC. 4329. **Construction of law.**— 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.¹

1887, ch. 170, § 11.

SEC. 4330. **Priority over incumbrance.**— 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.¹

1887, ch. 170, § 10.

SEC. 4331. **Conclusive evidence.**— 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

¹ See note at foot of page 129.

evidence that it was with and by the consent of the owner that such labor was performed and material furnished.¹

1887, ch. 170, § 5.

SEC. 4332. Failure to pay labor — 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.¹

1887, ch. 170, § 3. Acts 1874, ch. 50, provided a similar provision, but was repealed by acts 1889, ch. 200.

LIEN FOR SERVICE FEES.

SEC. 4333. Authorized.— 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, ch. 175, § 1: "An act relating to the service fees for domestic animals." Approved March 7, 1885.

SEC. 4334. Filing.— 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 a 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.

1885, ch. 175, § 2, as amended 1887, ch. 73. Approved March 3d. Amendment between † † and * *.

¹ NOTE.— Sections 4322-4332 are repealed by ch. 200, laws of 1889, except as to existing rights and pending suits. See secs. 4297-4314.