CHAPTER 514

LIENS FOR LABOR AND MATERIAL IMPROVEMENT OF REAL ESTATE

514.01 MECHANICS, LABORERS AND MATERIALMEN.

HISTORY. 1849 c. 70 s. 1; R.S. 1851 c. 97 ss. 1, 2; 1855 c. 16 ss. 9, 10; 1858 c. 54 ss. 1, 2; P.S. 1858 c. 86 s. 21; G.S. 1866 c. 90 ss. 1, 2; G.S. 1866 c. 122; 1874 c. 69 s. 1; 1878 c. 3 s. 1; G.S. 1878 c. 90 ss. 1, 2; 1889 c. 200 ss. 1, 2; G.S. 1894 ss. 6229, 6230; R.L. 1905 s. 3505; G.S. 1913 s. 7020; 1917 c. 285 s. 1; 1921 c. 229 s. 1; G.S. 1923 s. 8490; 1925 c. 274; M.S. 1927 s. 8490.

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1. Generally

By the contract the architect was to furnish plans and to superintend the work. The owner abandoned the construction. Held, though the lien statement was filed more than 90 days after the plaintiff furnished the plans, the filing within 90 days after notice of abandonment was sufficient. Lamoreaux v Andersch, 128 M 261, 150 NW 908.

An owner who has entered into an execution contract subjects his interests to a mechanic's lien for improvements by the vendee, even if the vendee has not made payments on the contract so as to be entitled to take possession, if after the knowledge of such improvements he fails to protect himself by posting the statutory notice. Fauser v McElroy, 157 M 116, 195 NW 786.

The time within which to redeem from a mechanic's lien foreclosure dates from the date of the confirmation of the sale, and not from the date of the sale. Salmon v Central, 157 M 369, 196 NW 468.

Where a mechanic performs labor for the improvement of real estate under a contract whereby his lien right is waived and the other party breaches the con-

tract, whereupon the mechanic rescinds, his lien is restored. Lindholm v Hamilton, 159 M 81, 198 NW 289.

The statute limits the life of a mechanic's lien to one year, and no person can be bound by a judgment in an action to foreclose the lien, unless made a party by service of the summons upon him within the year. In this case the service was fatally defective. The original was in proper form, but the copy served on the defendant was not. Thompson v Standard, 161 M 143, 201 NW 300.

Contractor with state furnished the usual bond, and let part of the job to a subcontractor who was fully paid, and the moneys so paid were sufficient to pay the oil company, who supplied the oil, in full, but the subcontractor at the time he started this job was indebted to the oil company plaintiff and part of the payments by the contractor to the subcontractor were with consent of the plaintiff and subcontractor applied to the old debt. Held, the money so paid by the contractor to the subcontractor was paid unconditionally, and the subcontractor could and did use it as his own, and the surety cannot direct application of such funds and the plaintiff may recover the amount unpaid from the original contractor and his surety. Standard v Day, 161 M 281, 201 NW 410.

When Coleman v Ballandi, 22 M 144, was decided, the courts were strict in their application of the constitutional prohibition of class legislation. In recent years there has been a marked drift in the opposite direction in both federal and state courts. The legislature is now permitted to create classes to which the operation of so-called general laws is confined without much risk of having the statute held unconstitutional as special or class legislation. Halsey v Svitak, 163 M 253, 203 NW 968.

Plaintiff, under the mistaken notion that a farm house was complete, filed its lien on September 8, 1921. Later other articles were delivered in completion of the house and a second lien for the full amount was filed on December 6. The later articles so furnished had to do with so-called extras not included in defendant's original plans, but necessary, nevertheless, to the home. Held, the articles were lienable, and the filing of December 6 timely. Lampert v Jeppeson, 166 M 84, 207 NW 22.

A mistake in the lien claim by using the copartnership name instead of the corporate name did not invalidate this lien. During the progress of the construction of a building, a contractor partnership known as Evenson & Utterberg were unknown to either the owner or those furnishing materials incorporated as Evenson & Utterberg, Inc. Held, that those furnishing materials both before and after the incorporation are entitled to liens. Bailey v Eveleth, 167 M 5, 208 NW 198.

Liens for improvements on property made by a person other than the owner can only be sustained upon the theory the owner has consented thereto, and in the instant case the record is such that it does not clearly show consent or justify an inference of it, and the trial court is reversed and the case sent back for a new trial. Couture v Hennessy, 167 M 90, 208 NW 545.

Delivery may be proven by receipts signed by the delivery driver. Crandall v Kroening, 169 M 120, 210 NW 637.

On the trial of a foreclosure action, an amendment to the specifications may be permitted, there being no increase in the amount.

In order to fall within the one-year limitation, section 541.12 does not apply.

Where the material was all used on 40 acres of a 320-acre farm the lien is imposed on the 40 acres only. Botsford-Fuller, 170 M 130, 212 NW 72.

Plaintiff loaned certain copartner defendants $100,000 and the defendant surety company executed a bond against liens; when sued for a balance of unpaid liens in the amount of $9,000, the bond company claimed misapplication of part of the money to the paying off of a first mortgage and other items. Held, the bond was strictly against liens and had no relation to the application of funds and the plaintiff has judgment against the bonding company. Investors Syndicate v Fidelity, 176 M 281, 223 NW 139.

Where a contractor submits a bid, the bid and acceptance constitute the contract, but where the owner accepts the bid conditionally, there is no contract; but if the contractor proceeds to carry out the contract as conditionally amended, the amended contract becomes the real contract on which settlement may be made. Johnson v O'Neil, 182 M 232, 234 NW 16.

A mechanic employed by a contractor to repair and keep in condition a fleet of trucks used in building a state highway, and who furnishes minor repair parts in replacement of broken parts, and who does not furnish major equipment, as far as the bonding company is concerned, is an employee under the casualty clause or against liens. General Motors v Phillips, 191 M 467, 254 NW 580.

The lien of a materialman is not defeated by the fact that product of his work can be detached without undue injury to the property. Trade fixtures are articles ordinarily fixtures attached by a tenant for trade purposes but which may be removed during the tenancy, and cannot be invoked in this case where a heavy boiler weighing 6,000 pounds was installed in a greenhouse conducted by the owner. Willcox v Messier, 211 M 304, 1 NW(2d) 130.

Action by trustees under a trust deed against a surety company on a bond against liens. Held, a surety on an indemnifying bond cannot complain of transfer of ownership when the grantee is made coprincipal in bond. Compensation surety must show departure from strict terms of surety contract. Hartford v Federal, 59 F(2d) 950.

Under the provisions of the drainage law, the laborer or materialman has no lien rights, and his remedy is to rely on the bond the contractor is required to furnish. 1918 OAG 194.

A schoolhouse and the land on which it is situated is exempt from the operation of the mechanic's law. 1926 OAG 363.

2. Constitutional

Laws 1889, Chapter 200, relating to liens held constitutional. Where all of the material or labor had been furnished before October 1, 1889, the provisions of the old law applied, although the statements were not filed after that date, but where part was furnished before and part after, the provisions of the new law applied. Bardwell v Mann, 46 M 285, 48 NW 1120.

The signing by the governor of the bill enacting Laws 1889, Chapter 200, was within the provisions of Minnesota Constitution, Article 4, Section 11. Burns v Sewell, 48 M 425, 51 NW 224.

In the revision of 1905, it was not the purpose of the legislature to enact a new body of laws, but to make a restatement of the previously existing general statutes in a more compact and orderly form. A previously existing statute is presumed to have continued unchanged in substance unless an intention to change clearly appears. Bauman v Metzger, 145 M 133, 176 NW 497.

3. Nature of lien

Plaintiff filed his lien petition under the lien law of 1855 which was repealed by the legislature March 20, 1858, and plaintiff commenced this action in April, 1858. Held, the right to file and enforce a lien depends on the state alone for its existence, and if, as in this case, the legislature sees proper to repeat the law, he loses nothing, and is merely unable to secure an advantage which, without the statute, he is in no wise entitled to, and as plaintiff had not perfected his lien prior to the repeal of the 1855 statute he has lost his remedy. Bailey v Gilman, 4 M 546 (430).

A mechanic's lien is not classed as security but as a statutory remedy, an assistance in the collection of a debt. Atkins v Little, 17 M 342 (320).

A mechanic's lien, being the creature of statute, can only exist by virtue of a compliance with its provisions. The verified statement filed in this case was too loose, indefinite, and ambiguous to satisfy the requirements of the statute. Rugg v Hoover, 28 M 404, 10 NW 473.

Plaintiff furnished materials for a building erected by defendants on a designated lot, the title meantime being in a third party. During the process of the building, there was a partial change of ownership. Held, plaintiff may enforce his lien against the property, and defendants are estopped to deny ownership therein. Colman v Goodnow, 36 M 9, 29 NW 338.

A mechanic's lien is not an interest or estate in land, and the materialman or his successor in interest may release, or waive, or satisfy the lien by an instrument in writing. Burns v Carlson, 53 M 70, 54 NW 1055.

Plaintiff was entitled to a lien, although when he did the work he did not know on what particular building the material was being used. It is sufficient that he knew it was to be used on a building and not merchandise to be sold on the general market. Emery v Hertig, 60 M 54, 61 NW 830.

Action to determine adverse claims to real estate. Grant constructed buildings under contract with Elmo Park Company, and filed liens on 40 acres where the work was done, and started actions to enforce his liens, whereupon the St. Paul Trust Company filed a cross bill claiming under a prior mortgage on 740 acres of which the above described 40 acres were a part. The petition of the mortgagee was granted by the court, and the premises sold to the Iowa Land Company at foreclosure sale. Held, that it appearing that the cross bill was filed with the clerk, but not served upon certain parties to the action, the foreclosure decree is invalid. The provisions of the mechanic's lien law for filing, instead of serving pleadings, apply only to issues tendered by the complaint. Jewett v Iowa, 64 M 531, 64 NW 639.

The contract named three lots, on two of which similar cottages were to be erected, and on notice subsequently given, a like building on the third lot. Held, it was not necessary for the plaintiff to file separate liens for each lot. It was all one contract, and one filing was sufficient. Johnson v Salter, 70 M 146, 72 NW 974.

A defendant, holding a lien claim, after trial but before findings and adjudication released his lien and elected to take personal judgment against the principal contractor with immediate execution, and judgment was entered accordingly and sustained. Baxter v Ornes, 130 M 214, 153 NW 594.

Mechanics' liens are created by statute and exist only to the extent given by statute. The legislature did not violate the equality provisions of the constitution in placing mechanics' liens on mines in a class by themselves. The act of 1897 as amended in 1903 confined liens for services and material in opening a mine to the interest of the lessee, and there is no attachment to the interest of the lessor. Olson v Oneida, 153 M 80, 189 NW 455.

Plaintiff and others filed, and in this action are foreclosing a mechanic's lien. Defendant, McAdam, owning two lots, 24 and 25, conveyed by executory contract lot 24 to Robinson, who proceeded to rebuild a single dwelling into a duplex. The work extended over a small part of lot 25, owned by McAdam. Held, improvements made by a vendee in possession under an executory contract, are chargeable in mechanic's lien proceedings against the interests of the vendor in the absence of notice by him as provided by statute; and the proceedings are in rem and extend to and include all the real property benefited. Henning v McAdam, 155 M 194, 193 NW 124.

A bond was conditioned for the payment of all claims for labor and material furnished or used in the erection of a building on mortgaged premises. In the absence of appeal or supersedeas, the condition of the bond was broken by the entry of judgment perfecting the liens and subjecting the mortgaged property to sale, the judgment remaining unpaid. Strimling v Union, 172 M 320, 215 NW 67.

4. Basis of lien

Plaintiff, an architect, was employed and performed the usual services in relation to a building being erected. The contract was made and the services began in July, 1865. When the building was nearly completed, and before plaintiff's contract had been fully performed, there was a stoppage of work, and plaintiff filed his lien. The owner mortgaged the premises in July, 1866, which mortgage was foreclosed and this action is by plaintiff to establish his lien on the property against the original owner and also the purchaser at the mortgage sale. Held, the filing was not premature; and the evidence sustains a finding for the plaintiff. Knight v Norris, 13 M 473 (438).

Prior to the enactment of Laws 1878, Chapter 3, a complaint upon a mechanic's lien must allege a contract with the owner, and where, as in this case, the work was done prior to the passage of the 1878 amendment, it is not in the power of the legislature 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. O'Neil v St. Olaf, 26 M 329, 4 NW 47.

The provisions, General Statutes 1878, Chapter 90, securing a lien to subcontractors pursuant to a contract between the owner and the principal contractor,

are valid and constitutional, and such provision may be enforced irrespective of the state of the accounts between the contractor and the owner. Laird v Moonan, 32 M 358, 20 NW 354.

Laws 1887, Chapter 170, (mechanic's lien law) held unconstitutional for various reasons. Meyer v Berlandi, 39 M 438, 40 NW 513.

In an executory contract to convey real estate, the vendee was required to erect a dwelling house before he received his deed. Held, to authorize the vendee to enter into a contract for building, and the labor and materialmen were entitled to a lien which attached to the premises and the vendor's interest therein on the day the lien attached. Hill v Gill, 40 M 441, 42 NW 294.

The interest of one who, being in possession under a contract of purchase, erects a building thereon, is chargeable with a mechanic's lien, and a surrender by the vendee of his interest does not divest the right of lien which extends to the land as well as the building. King v Smith, 42 M 286, 44 NW 65.

Laws 1889, Chapter 200, is constitutional, but where the work was done before Oct. 1, 1889, the effective date, the provisions of the former law relating to lien statements will be applied. Bardwell v Mann, 46 M 285, 48 NW 1120.

Where a married woman entered into an executory contract for the sale of land contingent on the vendee erecting a building thereon, and the contract was invalid, a mechanic's lien cannot be enforced against her interest. The invalid contract is, however, admissible in evidence as tending to show the work was done with the knowledge and consent of the vendor owner, and being satisfactorily proven, a lien is established. Althen v Tarbox, 48 M 18, 50 NW 1018.

Where an oral contract unenforceable under the statute of frauds was prior to the effective date of Laws 1889, Chapter 200, but the delivery after Oct. 1, 1889, the new, rather than the old, law applies. The provisions of section five, subjecting the estate of the vendor to liens for improvements made by others with his knowledge, unless he gave notice of dissent, construed as creating a rule of prima facie evidence, and as casting the burden on the landowner to excuse his default in giving notice. Wheaton v Berg, 50 M 525, 52 NW 926.

Where work done under several contracts is practically continuous, and constitutes one job, only one lien statement need be filed. Where a claimant furnished labor and material for installing a combination heating and power plant, if the plant is a fixture in a legal sense, the freehold is lienable; if removable, the freehold is not lienable. Northwestern v Parker, 125 M 107, 145 NW 964.

A lien statement describing the premises as a governmental subdivision in the fractional northeast quarter of a certain section on which was to be erected his "White City Resort;" and naming as owner, the husband of the record owner, is not fatal as regards description. Nelson v Sampson, 186 M 271, 243 NW 105.

A finding that the material was not furnished for a certain building, and the lien statement was not filed within 90 days, is sustained. Lake Street v Evans, 186 M 316, 243 NW 110.

Plaintiff, a wholesale merchant, furnished goods to a plumbing contractor who in turn installed electric kitchen sinks. The sinks, proving unusuable, were removed and new ones installed. Held, a lien may be claimed on the second installation, no claim being made for the defective one. McDonald v Lima, 187 M 240, 244 NW 804.

A husband is not entitled to an equitable lien on his wife's property for the value of his services in improving the property or for advancements in connection therewith, in the absence of proof that he was induced to perform the services or make the advancements by fraud, duress, undue influence, or mistake of such character that he is entitled to restitution. Martin v Tucker, 217 M 104, 14 NW(2d) 105.

5. Interpretation

A mortgage on the property was executed on August 14 and filed September 4. The goods on which the lien is filed were sold to the owner on August 1 and delivered prior to the last day of September. The question is which party has the paramount lien. Held, the lien attaches when the goods are delivered on the premises, and no sufficient proof being offered that these goods were on the premises

prior to September 4. The demurrer of the plaintiff shall have been sustained. Bank v Winslow, 3 M 86 (43).

A mechanic's lien, being a creature of statute, can only exist by virtue of compliance with its provisions. Rugg v Hoover, 28 M 404, 10 NW 473.

An invalid contract is admissible as evidence only as tending to show the work was done with the knowledge and assent of the owner. Althen v Olson, 48 M 18, 50 NW 1018.

Lien statement described the property as the "basement of a certain school building known as 'Hardy Hall,' situate on the northwest quarter of the southwest quarter of." The description was complete and true, except the designation should have been the northeast instead of the northwest quarter. Held, the description was sufficiently certain to identify the property and sustain the lien. Tulloch v Rogers, 52 M 114, 53 NW 1063.

Plaintiff, when he performed the work, knew the columns polished were not for the general market, but were for a building being erected, and the fact that he did not know which particular building of those being erected is immaterial. Emery v Hertig, 60 M 54, 61 NW 830.

Where a contract for material provides for substitution or extras, the 90 days within which to file the statement begins to run from the date of the change or the furnishing of the extras, and an error in the dates of commencing or ending is immaterial so long as the lien is filed within 90 days of the true date of the last item. Coughlan v Longini, 77 M 514, 80 NW 695.

Requiring construction of mechanic's lien law in such a way as to give full recovery to lien claimant. 21 MLR 630.

Liberal construction of law. 25 MLR 715.

6. "Owners" defined

Under the lien law a person furnishing material and performing work on a building for a married woman upon her separate real property has a lien. Carpenter v Leonard, 5 M 155 (119); Tuttle v Howe, 14 M 145 (113); Althen v Tarbox, 48 M 18, 50 NW 1018.

The right to file a lien for labor or material applies to and includes the legal owner as well as the owner at law. Atkins v Little, 17 M 342 (320); Benjamin v Wilson, 34 M 517, 26 NW 725; Carey v Bierbauer, 76 M 434, 79 NW 541.

The buildings were erected by defendants, the property title being in a third party, and during the erection of the building, one defendant sold out to the others, and the title to the lot conveyed to the latter. Held, that plaintiff may perfect his lien against the building and lot, and the defendants are estopped to deny ownership. Colman v Goodnow, 36 M 9, 29 NW 338.

In an executory contract for sale of real estate, requiring the vendee to build before getting his deed, the vendee may purchase materials and the dealer may perfect a lien against the interest of the equitable owner and of the legal title holder. Hill v Gill, 40 M 441, 42 NW 294.

The interest of a vendee in possession who erects a building is chargeable with a lien, and neither the surrender or transfer of his interest, nor a judgment canceling the contract, affects the interest of the lienor, he not being a party. King v Smith, 42 M 286, 44 NW 65.

Where four of five executors of an estate, one of them being a devisee, contracted for improvements in the Davidson block, a lien was properly decreed against the separate interests of those who joined in the contract, but a lien cannot be decreed against the executor and devisee who refused to join. Ness v Wood, 42 M 427, 44 NW 313.

Vendor and vendee in an executory contract for the sale of real estate cannot, by any stipulation between themselves, deprive third persons, not parties to the contract, of their statutory rights to liens for material or labor subsequently furnished to the vendee for the construction of buildings on the premises. Malmgren v Phinney, 50 M 457, 52 NW 915.

A mortgagee in possession of real estate is an "owner" within the meaning of the mechanic's lien statute. So also is a mortgagee who holds the legal title and appears of record to be the absolute owner. In either case, the title of the mortga-

gee may be subjected to a lien arising from an improvement to which he has consented. Lindholm v Hamilton, 159 M 81, 198 NW 289.

The vendor contracted to sell the farm to vendee for $300.00 cash and a note secured by a purchase money mortgage on the farm of $2,700. The vendee went into immediate possession, but the cash payment was not made until October 4th, and the note and mortgage executed and filed December 24th. The material on which the lien is claimed was delivered between September 24th and October 25th. Held, as the vendor had no notice or knowledge, and gave no consent, the mortgage is declared superior to the lien. Reed v Jones, 202 M 274, 278 NW 30.

7. Subcontractors

The 1878 amendment to the mechanic's lien law was to extend and more fully protect the subcontractor, and such subcontractor's lien may be enforced, irrespective of the state of the accounts between the contractor and owner. Laird v Moonan, 32 M 358, 20 NW 354.

In a contract for the building of a church, it was agreed there was to be no charge for extras. The subcontractor, not being actually advised of the condition, and at the instance of the church building committee did extra work for which he now claims a lien. Held, that he was chargeable with notice of the provisions of the contract and cannot recover. Shaw v Church, 44 M 22, 46 NW 146.

Laird v Moonan followed under the amendment by Laws 1889, Chapter 200. Bardwell v Mann, 46 M 285, 48 NW 1120.

The mechanic's lien law, Laws 1874, Chapter 69, permits a right of lien, not only to subcontractors, but to subcontractors in the second degree. Spafford v Duluth, 48 M 515, 51 NW 469.

The contract between the owner and the contractor specified "kiln-run" brick, and the contract of the contractor and subcontractor "the grade known as common brick." Held, in order that the subcontractor may acquire a mechanic's lien, it is not necessary that his contract and his performance of the same should conform in all respects to the contract between the contractor and the owner, and the owner in this case has no defense against the subcontractor's lien except such defense as could have been interposed by the contractor. Wisconsin v Hood, 67 M 329, 69 NW 1091.

Where the contractor was erecting a hospital, the subcontractor furnished the glass required. Held, that the glass was furnished, not to a dealer, but to a subcontractor for the purpose of using it in construction of the hospital. Pittsburgh v Sisters, 83 M 29, 85 NW 829.

Cameron contracted to build a factory for Ford; Scribner was a subcontractor who put on the title roof for Cameron. Scribner's work was complete and satisfactory except that on orders from Cameron, but knowing the foundations were not in proper shape, he put on the roof which, because of the condition of the support built by Cameron, the roof settled to the damage of $900.00. Held, the subcontractor, having fully performed his contract, is entitled to a recovery and lien for the full amount. Breen v Cameron, 132 M 357, 157 NW 500.

8. Notice of provisions of original contract

Laborers, materialmen, and subcontractors are chargeable with notice of the terms and provisions of the contract between the owner and the contractor. Shaw v Church, 44 M 22, 46 NW 146; and the same rule applies after the 1889 amendment. Bardwell v Mann, 46 M 285, 48 NW 1120; but it is not necessary that the terms and provisions be followed in all respects, where the subcontractor fulfills the terms of his contract with the contractor. Wisconsin v Hood, 67 M 329, 69 NW 1091.

9. Nature of work or material

The laborer, materialman, or subcontractor is governed by the value, rather than by any agreement he may have with the principal contractor and must so specify in his lien statement. Laird v Moonan, 32 M 358, 20 NW 354; Bardwell v Mann, 46 M 285, 48 NW 1120.

Plaintiffs furnished compo-board and insulite to make partitions and for refrigeration purposes connected with the manufacture of insulite, and this without

the owner's knowledge. Held, the material went into personal property, and not as fixtures to the building, and plaintiffs do not have a lienable claim against the premises. Brown v Heffelfinger, 159 M 182, 198 NW 424.

Where the original electric sinks proved defective, and plaintiff replaced them without charge, a lien may be perfected for the replacement material. McDonald v Lima, 187 M 240, 244 NW 804.

10. Who performs labor

Under Laws 1889, Chapter 200, Section 3, one who lets his teams and teamsters to a subcontractor to do work in constructing a railway is entitled to a lien. Perry v Duluth, 56 M 306, 57 NW 792.

11. Materials furnished but not used

Where an executory contract for the sale of land contains a covenant that the vendee shall erect a building thereon, and a materialman furnished building material, and at the time when the building was in the process of erection, the vendee defaulted on his contract, and vendor went into possesson, the materialman is entitled to a lien against the property including the rights of the vendor, not only as to material used, but also as to material delivered and not used. Hickey v Collom, 47 M 565, 50 NW 918; Burns v Sewell, 48 M 425, 51 NW 224; Combination v St. Paul, 52 M 203, 53 NW 1144.

The time when a lien is to be considered as acquired, depends upon the statute authorizing the remedy. As used in the mechanic's lien law, the term "furnish" means furnished on the premises, and the lien or all the laborers or materialmen attach as of the date of the performance of the first work or the delivery of the first material on the ground. Wentworth v Tubbs, 53 M 388, 55 NW 543.

Between September 23, 1892, and January 31 following plaintiff furnished to defendant building material. On March 1 and 2, plaintiff furnished similar material actually used by defendant in another building, but which plaintiff assumed, and from the evidence had a right to assume, went into repair of the original building. The lien was filed 116 days after January 31. Held, the statement was seasonably filed. John Paul v Hormel, 61 M 303, 63 NW 718.

The owner erecting a house contracted with a contractor for materials and labor for the plain and ornamental plastering therein. Plaintiff was employed by the contractor to do certain work in his shop, the completed work a part of the plan, and when completed to be installed in the building. This, with the knowledge of the owner. After plaintiff had completed his work, a controversy arose between the owner and the contractor, and plaintiff's work was never delivered. Held, that plaintiff is entitled to a lien on the house and lot for the value of his labor. Berger v Turnblad, 98 M 163, 107 NW 543.

A contractor was building two houses, numbered 4540 and 4544, on adjoining lots. The plaintiff furnished mill work for both houses. When time for filing a lien on 4540 was about to expire, plaintiff threatened to file a lien, and the contractor called attention to the fact that one of two drain boards charged on client's books as delivered at No. 4544 was, in fact, intended for 4540, and the contractor changed the delivery receipt to so show. Later, plaintiff filed and attempted to foreclose his lien on 4540. The drain board was, in fact, never delivered to, or installed in 4540. Held, the plaintiff is entitled to a lien, and his lien is prior to that of a mortgage taken during the construction of the building. Minneapolis v Hedden, 131 M 31, 154 NW 511.

Defendant Schnobrich claims that the last deliveries on the Klossner job were made more than 90 days before the filing of the lien, and the later deliveries were for his shop in New Ulm. Held, one who delivers material to the owner for use on a specific building in good faith believes that it is to be so used therein, though not delivered on the premises, is entitled to a lien. Simons v Schnobrich, 159 M 116, 198 NW 406.

Certain claimants would have liens superior to that of the plaintiff, unless plaintiff's filing was within 90 days. If the delivery of Nov. 5, 1920, can be considered a delivery on the job, the filing was timely, and plaintiff's lien valid. It appears that without plaintiff's knowledge the Nov. 5 delivery was not used in the packing house, but in a silo on an adjoining lot. Held, the fact that materials

furnished and delivered by a materialman upon an open and running account for the erection of a building, are, unknown to him, used in another adjacent structure, does not defeat his right to a lien on the structure for which they were furnished. Moorhead v Remington, 165 M 411, 206 NW 653.

12. "Furnished" defined

Defendant was employed by the owner to construct and install a wire enclosure for an elevator in a seven-story building being erected. The work was done in defendant's shop. Held, such preparation in the shop is deemed a "furnishing" under the contract, and no loss of lien is occasioned where the work is stopped or abandoned. Howes v Reliance, 46 M 44, 48 NW 448.

Tyrer, the owner, had a contract with Lawton, the builder, to construct a house. Plaintiff furnished the lumber and filed a lien. The last two deliveries were, unknown to the lumber company, used elsewhere, and defendant claims because those deliveries were not used in the building, the filing was not within the 90 days. Held, one who sells and delivers to a contractor, material to be used in a building, is entitled to a lien, though the material was not used in the building. Burns v Sewell, 48 M 425, 51 NW 224; Wentworth v Tubbs, 53 M 388, 55 NW 543.

Plaintiff furnished lumber used on the contract, and on March 30, 1912, furnished an item of $9.71 for the building, but accepted by the contractor from the carrier and not used in the building or delivered on the premises. The lien was timely filed, if the last shipment is lienable, otherwise not. Held, delivery is not necessary as against the owner, and plaintiff is entitled to a lien. Thompson v Morawetz, 127 M 277, 149 NW 300.

13. Knowledge of intended use unnecessary

Plaintiff polished granite columns for use of the contractor, though he did not know in what building they might be used. He did know they were to be used in buildings being erected, and not for re-sale on the general market. Held, knowledge of the purpose was sufficient on which a lien may be established on the building where the columns were used. Atkins v Little, 17 M 342 (320); Emery v Hertig, 60 M 54, 61 NW 830.

14. Labor performed at shop

Defendant's construction foreman in the construction of an apartment house, contracted with a broker to "fabricate" and furnish the steel work, and he, in turn, sublet to Boorman who did the work in his shop, purchasing material from plaintiff. Defendant, under direction of the broker, paid Boorman in full, but he did not pay plaintiff, who files this lien. Held, one who furnishes steel work which must be "fabricated" according to plans and specifications is a contractor as distinguished from a materialman, and plaintiff who furnished material to the contractor has valid lien rights. Howes v Reliance, 46 M 44, 48 NW 448; Emery v Hertig, 60 M 54, 61 NW 830; Illinois v Hennepin, 149 M 157, 182 NW 994.

15. Transportation charges

A charge for the transportation of machinery to be repaired is properly part of the account for repairing and secured by the statutory mechanic's lien. McKeen v Haseltine, 46 M 426, 49 NW 195.

16. Held not to defeat lien

A lien, the work being wholly or partially performed, is not defeated by the suspension of work on the job, the suspension being no fault of the lienor. Knight v Norris, 13 M 473 (438).

Plaintiff furnished labor and material for a mill being built on a five-acre tract, commencing April 12 and ending Sept. 27. On the last date the mill was destroyed by fire and was not rebuilt. Held, the lien was not defeated by the fire, and attaches to the five-acre tract on which the building was situated. Freeman v Carson, 27 M 516, 8 NW 764.

All the lien claimant is required to do in order to preserve his lien is to file the verified account. It is then the duty of the register to record it. His failure to do so does not invalidate the lien. Smith v Headley, 33 M 384, 23 NW 550.

In the absence of any adverse claims, it is immaterial that the defendant, Goodnow, acquired legal title after the lumber had been partly furnished. The lien is continuing, and binds the whole estate or interest of the debtor in the building and lot on which it stands. Colman v Goodnow, 36 M 9, 29 NW 338.

An accounting, or a part payment on account, or an inclusion of non-lienable items along with lienable, will not be deemed a waiver or defeat of rights under the lien. Dennis v Smith, 38 M 494, 38 NW 695.

Where a mechanic's lien is perfected by filing the account and affidavit as required by the lien law, and same is duly recorded, the subsequent withdrawal of the original account so recorded, does not impair nor affect the validity of the lien. Paul v Nample, 44 M 453, 47 NW 51.

By agreement with the owner and builder, defendant fabricated certain wire work as protection to elevators to be installed in a seven-story building. After the work was completed by defendant, but before delivery, the owner conveyed the property to another and the work abandoned. Held, the abandonment did not in any way cause a loss of defendant's lien rights. Howes v Reliance, 46 M 44, 48 NW 448.

The vendor and the vendee in an executory contract for the sale of real estate cannot, by any stipulation between themselves, deprive third persons, not a party to the contract, of their statutory rights to liens for material or labor subsequently furnished to the vendee for the construction of buildings on the premises. Malmgren v Phinney, 50 M 457, 52 NW 915.

17. Exemption of public buildings

Under the mechanic's lien law of 1887, Chapter 170, a public schoolhouse is not subject to a mechanic's lien. Jordan v Board, 39 M 298, 39 NW 801.

Neither the Constitution of Minnesota, Article 1, Section 12, nor the lien laws of the state, permit the filing of a mechanic's lien by a subcontractor for work or materials furnished on a court house and city hall. Burlington v Board, 67 M 327, 69 NW 1091.

Where the county attorney was authorized by statute to employ counsel to assist in the collection of taxes, and the fee for such services was filed with and allowed by the county commissioners, the employed attorney has an equitable lien or set-off, as against the fund so collected, and is not required to pay the full amount into the county treasury, but may retain the amount of his fee, and pay over the balance. Board v Clapp, 83 M 512, 86 NW 775.

18. Homesteads not exempt

Minnesota Constitution, Article 1, Section 12, as amended, is self-executing, and has the effect of subjecting the property exempt from other debts to seizure and sale to a specified extent; and labor and materials used in erecting a building on a homestead are entitled to lien rights, and the land remains subject to seizure in favor of the transferee of the debt. Nickerson v Crawford, 74 M 366, 77 NW 292; Bagley v Pennington, 76 M 226, 78 NW 1113.

The amendment to Minnesota Constitution, Article 1, Section 12, adopted Nov. 6, 1888, is wholly prospective in its operation, and the collection of debts for work or material on a homestead all furnished prior to the amendment cannot be enforced. Brown v Hughes, 89 M 150, 94 NW 438.

Defendant erected a house on his lot in 1912 and thereafter occupied the premises as a homestead, and mortgaged the place to McCoy. The property was destroyed by fire in 1915. Plaintiff claims the insurance money under the provisions of Minnesota Constitution, Article 1, Section 12. Held, although the plaintiff could have enforced his claim against the property, the insurance contract is one in which he is not a party, and his rights under the law and under the constitution have not been extended to reach the insurance money. Remington v Sabin, 132 M 372, 157 NW 504.

Since the amendment to the constitution in 1888, homesteads are subject to mechanic's liens, and the lien extends to the entire tract not exceeding one acre, if within the limits of an incorporated city or village, even though a second building has been erected thereon. Gale v Hopkins, 165 M 177, 206 NW 164.

19. Waiver and release

A formal waiver of lien, supported by no consideration is ineffectual. Abbott v Nash, 35 M 451, 29 NW 65.

Plaintiffs, as materialmen, furnished W & L material to build a hotel on lots owned by them. Deliveries began Oct. 5, 1883. In November, plaintiffs gave a mortgage to appellant. Plaintiffs took from W & L notes for the amount due at the end of each month. In April, 1884, L sold his interest in the building, and a new company was formed. As notes taken by plaintiffs matured, new notes were executed by the successor company. The time of payment was never extended beyond the lien period. Held, that against appellant's claim under his foreclosed mortgage, plaintiffs have not waived or lost their lien. Howe v Kindred, 42 M 433, 44 NW 311; St. Paul v Eden, 48 M 5, 50 NW 921.

A contract was entered into by which Bruce was to construct an apartment for Mrs. Lennon, the moneys to be payable to the contractor as the work progressed. When work and material to the amount of $4,100 had been furnished, it was found that Mrs. Lennon could not procure a loan, and by mutual consent, the progress on the building was abandoned and the contract canceled. Held, this cancelation did not constitute a release or waiver of any lien rights Bruce might have. Bruce v Lennon, 52 M 548, 54 NW 739.

The right to enforce a lien upon real property is not an estate in land; and may be released and waived by an instrument in writing, supported by a money consideration therein expressed, the money being paid by third parties who had acquired property rights, though the sum paid is less than the amount due. Burns v Carlson, 53 M 70, 54 NW 1055.

The contractor furnished the last item on April 21, 1893, and accepted a note payable "on or before one year after date." As there would be three days of grace, the note was not legally enforceable until April 24, 1894. This action was commenced on April 20, 1894. Held, by extending credit to the debtor beyond the statutory period, plaintiff lost his lien rights. Flenniken v Liscoe, 64 M 269, 66 NW 979.

Work on the building of an apartment house was suspended; buildings were incomplete and material piled on the premises. A mortgage, superior to the liens, was foreclosed, and certain lienholders redeemed from the mortgage foreclosure for the benefit of all. There being many liens, a receiver was appointed to sell the assets, pay off the advancements, and prorate the balance to the lien owners. The court conducted the sale, and against the objection of certain lienholders included the scattered material. Held, on such redemption, the claimants became the fee owners of the property, and may not include the material unattached and not a part of the realty, but the lien is not thereby merged in the fee title, but survives so far as may be necessary to the protection of claimants. Northland v Northern, 145 M 395, 177 NW 635.

An architect, whose claim amounted to $29,000, filed a release in order that the Beach Club could obtain a loan. He was not paid out of the loan, and the money raised being insufficient to complete the building, the liens were foreclosed. Held, all liens, except that of the architect, are a prior lien, and superior to the mortgage, and the architect, because of his waiver, may perfect his lien, but it will be junior to the other liens and to the mortgage. Minneapolis v Calhoun, 186 M 635, 244 NW 53.

20. Lien claim assignable

Under the statute, a lien is not a personal right given to the laborer or materialman alone for his protection, but the lien may be assigned and the assignee may, in his own name, maintain an action to enforce same. Tuttle v Howe, 14 M 145 (113).

Where a laborer having lien rights, assigns his unfiled claim to another as security, the laborer may file the lien in protection of his secured creditor and his

own equity in the claim, but where the account is sold and assigned, and there is a complete change of title, the filing by the laborer will not inure to the benefit of the assignee. Davis v Crookston, 57 M 402, 59 NW 482.

The transfer of a claim, the payment of which may be enforced under the provisions of the mechanic's lien act, operates as an assignment of the right to a lien, including the right of the transferee to file the lien statement in his own name. Kinney v Duluth, 58 M 455, 60 NW 23.

21. Entitled to a lien

A person who furnishes plans and specifications for, and superintends the work upon a building, under a contract with the owner of the building, performs labor for erecting and constructing such building and may perfect a lien therefor. Knight v Norris, 13 M 473 (438); Gardner v Leck, 52 M 522, 54 NW 746; Wanganstein v Jones, 61 M 262, 63 NW 717.

A non-resident performing labor or furnishing merchandise may perfect a lien. Atkins v Little, 17 M 342 (320); Pond v Robinson, 38 M 272, 37 NW 99.

Introduction into a shop or factory of additional permanent and stationary machinery for use therein may subject the premises to a lien for the purchase price. Pond v Robinson, 38 M 272, 37 NW 99; and a charge for transportation may be included. McKeen v Haseltine, 46 M 426, 49 NW 195.

One who sells and delivers to a contractor material to be used in the erection of a building actually constructed or in process of construction, is entitled to a lien, though the material be not in fact used in the building. Burns v Sewell, 48 M 425, 51 NW 224; Emery v Hertig, 60 M 54, 61 NW 830.

Where the architect's work was begun in his office, and nothing appeared on the premises, the claimant would be junior to the lien of a mortgage placed before anything had been done on the premises. Wentworth v Tubbs, 53 M 388, 55 NW 543.

One who polishes marble or granite may perfect a lien. Emery v Hertig, 60 M 54, 61 NW 830.

A florist's refrigerator, caused to be erected in the storeroom of a hotel building, such room having been leased by a hotel company, who in turn was lessee of the whole building, is under the facts of the case a store fixture and not an improvement or permanent fixture within the lien statute. White v Kruse, 121 M 479, 140 NW 114.

Where coal, gas, and dynamite, lubricants, supplies for lights and material for erection of a tool house, are furnished to excavation contractor the items are lienable, but not so, the repair parts for excavating machinery. Johnson v Starrett, 127 M 138, 149 NW 6.

An architect may perfect a lien where he furnishes plans, even if he does not superintend the construction. Lamoreaux v Andersch, 128 M 261, 150 NW 908; Jandrich v Svabek, 170 M 24, 211 NW 957.

22. Not entitled to a lien

Prior to the passage of Laws 1889, Chapter 200, Augsburg Seminary, owner, contracted with Evans, a contractor for the erection of a building. Evans purchased from Jones, a lumber dealer. Evans purchased the materials from plaintiff. Plaintiff's action to foreclose the lien was dismissed by the trial court and affirmed in the supreme court. Merriman v Jones, 43 M 29, 44 NW 526.

Where a hole is drilled solely for the purpose of ascertaining if ore rests underneath, and if in paying quantities, it is not an excavation for which the statute gives a lien. Colvin v Weimer, 64 M 37, 65 NW 1079.

Rowe, the owner, contracted with Heald, the contractor for the erection of a greenhouse. Heald purchased his glass from Ryan, a wholesale dealer, on credit. Held, Ryan sold to Heald as a dealer, and is not entitled to a lien. Ryan v Rowe, 66 M 480, 69 NW 468; Forman v St. Germain, 81 M 26, 83 NW 438; but where a hospital was under erection, the contractor let the subcontract to Kleinschmidt for mill work, and they in turn obtained the glass from plaintiff. Held, plaintiff has lienable rights. Pittsburg v Sisters, 83 M 29, 85 NW 829.

A confectioner and florist rented a store from a hotel company who in turn was a lessee. He purchased and installed a refrigerator. Held, the article was a trade fixture and the vendor factory had no lienable rights. White Enamel v Kruse, 121 M 479, 140 NW 115.

Where lighting fixtures do not become a part of the realty, the value of such fixtures was improperly included in the amount adjudged as a lien upon the property. Lyons v Westerdahl, 128 M 288, 150 NW 1083.

Plumbing and heating fixtures were furnished to plaintiff's building by Clarke. On March 22, 1922, defendant supply company executed a waiver on all goods delivered prior to that date, receiving a payment at that time. Thereafter, Clarke obtained from defendant other material to complete the contract, and later became bankrupt. Defendant filed its lien. Plaintiff negotiated a loan on his property, and in order to clear the record, defendant was paid the amount of his lien out of the mortgage money. It then developed that $211.85 of the amount paid was for a delivery five days prior to the date of the waiver, and plaintiff having paid the contractor in full is entitled to reimbursement by defendant. The doctrine of voluntary payment does not apply when the payment is made in reliance on a misrepresentation. Call v Terminal, 171 M 274, 213 NW 917.

The evidence sustains the finding that plaintiff is chargeable with knowledge of the terms of the lease, and the trial court justified in finding that the lighting system installed on defendant's miniature golf course was a removable trade fixture, and therefore no lien attaches to the land. Johnson v Grady, 187 M 104, 244 NW 409.

23. Performance

A building contractor entered into a contract with defendant, in part reading as follows: "The contractor will run all the necessary air piping for equipping the entire building with the Paul vacuum system for circulating steam at or below the atmospheric pressure, and furnish license to use the system." The trial court found for the plaintiff, and in sustaining the court's order the appellate court stated: "It is the rule that the contractor is entitled to a lien on substantial compliance with the contract, despite an omission or defect that does not go to the root of the subject matter of the contract, but is easily susceptible of remedy." Judgment of foreclosure was authorized, the plaintiff to furnish the necessary certificate of license to use the system. Hankee v Arundel, 98 M 219, 108 NW 842.

514.02 CONTRACTOR GUILTY OF FRAUD; LARCENY.

HISTORY. 1915 c. 105 s. 1; G.S. 1923 s. 8491; M.S. 1927 s. 8491.

The purpose of the statute is to punish a fraudulent act because of fraud. It is not to collect a debt. It is not class legislation. It is not imprisonment for debt. State v Harris, 134 M 35, 158 NW 829.

The moneys paid to the subcontractor became its money and it could use it as its own, and the surety cannot direct application of payments, and Laws 1915, Chapter 105, does not modify the rule nor reflect any intent of the legislature to adopt as the public policy any contrary rule. Standard v Day, 161 M 281, 201 NW 410.

A verdict in the amount of $2,500 was sustained in a case where the materialman had the contractor arrested under this section, and after a verdict of not guilty, the contractor sued for malicious prosecution. Wally v Chapman, 175 M 185, 220 NW 604.

514.03 EXTENT AND AMOUNT OF LIEN.

HISTORY. 1849 c. 70 s. 1; R.S. 1851 c. 97 ss. 1, 2; 1855 c. 16 ss. 9, 10; 1858 c. 54 s. 12; P.S. 1858 c. 86 s. 21; G.S. 1866 c. 90 ss. 1, 2; G.S. 1866 c. 122; 1874 c. 69 s. 1; 1878 c. 3 s. 1; G.S. 1878 c. 90 ss. 1, 2; 1889 c. 200 ss. 1, 2, 6; G.S. 1894 ss. 6229, 6230, 6234; R.L. 1905 s. 3506; G.S. 1913 s. 7021; G.S. 1923 s. 8492; M.S. 1927 s. 8492.

When the tract of land, upon which the building on which a lien is claimed is situated, contains more than one acre, and lies within the limits of an incorporated city, the lien claimant may carve out the acre upon which he will claim his lien without consulting the landowner. Tuttle v Howe, 14 M 145 (113).

A lien may be enforced, irrespective of the state of accounts, between the contractor and owner on the amount due on such contract by any subcontractor or laborer, and the lien is limited to the reasonable value of the labor or materials furnished. Laird v Moonan, 32 M 358, 20 NW 354.

Where the contractor under contract to build lets the tiling to a subcontractor, in case of enforcement of the lien by the subcontractor, the amount will be commensurate with the contract price between the contractor and the subcontractor, if the contract be an honest or fair one, and will be conclusive on the owner, unless impeached for fraud or mistake. Leeds v Little, 42 M 414, 44 NW 309.

Under Laws 1889, Chapter 200, laborers, materialmen, and subcontractors are not required to pay any attention to the terms of the contract between owner and contractor, but the courts will protect the owner against fraud or excess in price by appraising the value. Bardwell v Mann, 46 M 285, 48 NW 1120.

Contract price as agreed upon between a lien claimant and the party ordering the work is prima facie evidence of its value as against the owner. Northwestern v Parker, 125 M 107, 145 NW 964.

An architect is entitled to a lien only on the improvement, and where his contract is for plans and specifications and superintendence, he may file a lien even though the building is abandoned, and consequently there was no superintendence possible. Lamoreaux v Andersch, 128 M 261, 150 NW 908.

A lienholder who furnishes material upon adjoining lots many file one statement against all the lots, or he may apportion it. In this case, the apartment buildings were one enterprise, but on adjacent lots, a street between. Some claimants filed on both lots, some on only one, but as the lien claimants tried the case, all lienors consenting, on the theory that all filings could be considered together; the court on review will not disturb the findings even though the lots together constituted more than one acre. Northland v Melin, 142 M 233, 171 NW 808.

Where the contractor had two contracts, one with the owner in writing, and one with tenants on the second floor, an oral contract, the tenants were to pay one-half and the owner half of the second floor alterations. The work was negligently done so that damage resulted. Held, that the owners have a cause in tort for the damage; that the statute permitting a counter-claim should be liberally construed to the end that rights of the parties may be determined in a single action. Bauman v Metzger, 145 M 133, 176 NW 497.

Mechanics' liens, on which redemption from a mortgage foreclosure sale is made, are not thereby merged or extinguished, but the liens survive so far as may be necessary to protect the parties redeeming. The redemption satisfies the debt of the credit or redeeming, only to the extent of the value of the property, less the sum paid to effect redemption. Northland v Northern, 145 M 395, 177 NW 635.

A subcontractor or laborer, or materialman who is required to "fabricate" the steel furnished is not a dealer in trade goods but is entitled to a lien to the value of his fabricated goods. Illinois v Hennepin, 149 M 157, 182 NW 994.

Rodewald purchased land under an executory contract, and in March, 1920, started to build, and in July, a lien was filed. On June 21, 1920, Rodewald sold to M & R. On April 6, Horne sold an engine and boiler to Rodewald taking a chattel mortgage. Laborers and materialmen were not paid. Held, the materialman's right to charge the interest of the vendor in an executory contract for the sale of land with a mechanic's lien is not limited to the value of that portion of the materials which were furnished to the vendee after the vendor learned of the building; the vendor not having posted a notice. The sale of the buildings which have once become a part of the realty does not free the land from the lien. Dower v Rodewald, 157 M 314, 196 NW 473.

Liens extend to all the interest and title the owner has in the premises, not exceeding one acre within the limits of a city or village, and marking and grading off a homestead and erecting a second building on the lot constitutes an improvement, subjecting the entire lot to lien rights. Gale v Hopkins, 165 M 177, 206 NW 164.

Materials furnished and delivered by a materialman to a tenant who had a leasehold on a railway right of way and who was erecting an addition to his warehouse, were, unknown to him, used in building a silo on adjacent territory, a part of the right of way. This does not defeat his right to have his lien attached to

the structure where furnished, and the last delivery, though used in the silo may be considered in fixing the date within which the lien may be filed. A mechanic's lien takes precedence of a chattel mortgage where the lease provides by its terms for the erection of the improvements. Moorhead v Remington, 165 M 411, 206 NW 653.

A mechanic's lien for materials necessary to complete an improvement attaches as of the time there is actual and visible beginning of the improvement on the grounds. Such lien for materials furnished after the record of the mortgage given subsequent to the beginning of the improvement takes precedence over the mortgage. As between the materialman, no third party interests intervening, fixtures attached to the real estate are lienable. Ulstruck v Home, 166 M 183, 207 NW 324.

In the case of a lien filed by an architect, defendant waived the right of election, and there was no error in trying the case on the value rather than the contract price. Actual improvement is not necessary to establish a lien for work done. Jandrich v Svabek, 170 M 24, 211 NW 957.

514.04 LINES OF RAILWAY, TELEGRAPH, OR SIMILAR PROJECTS.

HISTORY. G.S. 1866 c. 66 s. 279; 1872 c. 71; 1873 c. 29; 1874 c. 169 s. 2; G.S. 1878 c. 90 s. 7; 1889 c. 200 s. 3; G.S. 1894 s. 6231; R.L. 1905 s. 3507; G.S. 1913 s. 7022; G.S. 1923 s. 8493; M.S. 1927 s. 8493.

The materials were fabricated in Pennsylvania by the subcontractor and delivered there to the chief contractor who delivered them to the defendant. Held, under the law prior to Laws 1889, Chapter 200, that a lien may be perfected by a subcontractor who furnishes materials in construction of a street railway, and it is not essential that the material should be delivered by the subcontractor within the limits of the state. Thompson v St. Paul, 45 M 13, 47 NW 259.

The lien statement stating generally that the work was done and material furnished on "a line of street railway owned by defendant in the city of St. Paul" was not a sufficient description under the statute as it was before the enactment of Laws 1889, Chapter 200, it appearing that defendant had several lines in St. Paul. Fleming v St. Paul, 47 M 124, 49 NW 661.

The mechanic's lien law, relating to railway construction, as amended in 1874, held to give a right of lien, not only to subcontractors, but to subcontractors in the second degree. Spafford v Duluth, 48 M 515, 51 NW 469.

Defendant contracted to build 90 miles of railway, and plaintiff was a subcontractor. In this action, other subcontractors were impleaded. Held, under the statute prior to Laws 1889, Chapter 200, that failure of a party to perform within the time limited in a contract will not prevent a recovery upon the performance after the time specified if he is allowed to go on after the time limited has expired, without expression of disapproval by the party for whose benefit the stipulation has been made. Fowlds v Evans, 52 M 551, 54 NW 743.

The plaintiff enforcing this lien was the assignee of a subcontractor in the fourth degree. Held, under Laws 1889, Chapter 200, Section 3, one who lets his team and teamsters to a subcontractor to do work in constructing a railway is entitled to a lien. Perry v Murphy, 56 M 306, 57 NW 792.

Under the lien law relating to logging, a right of lien is given not only for the personal labor, but includes labor by teams and servants, including cooks, blacksmiths, and similar under a contract of a gross price per month. Breault v Archambault, 64 M 420, 67 NW 348.

A Minnesota telephone company extends its line into Wisconsin from its Minnesota switchboard. Held, laborers who were employed on both Minnesota and Wisconsin lines may enforce their entire claim against defendant's plant in Minnesota. Brown v Marine, 137 M 460, 162 NW 884.

A mechanic's lien extends to all materials furnished in good faith for the construction of a building although not used therein, and where a mortgage has priority, and lienholders redeem from the mortgage foreclosure, the liens do not merge but survive so far as may be necessary to protect the parties redeeming. Northland v Northern, 145 M 395, 177 NW 635.

An electric power line located on the highway and not a part of a real estate plant is personal property. A chattel mortgage upon a power line, not

yet in existence, can only attach itself to such property in the condition in which it comes into the mortgagor's hands. Where these liens for materials used to bring the property into existence, they are superior to the general mortgage lien, even though they be junior in point of time. St. Paul v Baldwin, 159 M 221, 199 NW 9.

See Laws 1933, Chapter 362, relating to lis pendens on mechanics' liens.

Motor vehicle lien. 14 MLR 783.

514.05 WHEN LIEN ATTACHES; NOTICE.

HISTORY. 1895 c. 101; R.L. 1905 s. 3508; G.S. 1913 s. 7023; G.S. 1923 s. 8494; M.S. 1927 s. 8494.

A purchase money mortgage held superior to a mechanic's lien, where materials were contracted for prior to the purchase of a lot, and a mortgage was given as part of the purchase price, and deed and mortgage were not recorded until after the delivery of the materials and the filing of the lien. The lien claimant had knowledge that the title was in the vendor. Oliver v Davy, 34 M 292, 25 NW 629.

Plaintiff furnished to defendants materials for a dwelling house to be constructed on lot 5, then owned by defendants, and upon which another defendant assuming that a house was being built took a mortgage. In fact the house was built on lot 6, and when the fact was discovered, the owner of lot 5 purchased lot 6. Held, plaintiff has no lien on lot 6, because the original owner neither consented nor was estopped, and the purchaser took free of encumbrance, and having delivered no material to lot 5, he is not entitled to a lien. Smith v Barnes, 38 M 240, 36 NW 346.

A creditor, a part of whose claim was secured by a mortgage, released same and took a new mortgage covering the entire amount due him; the mortgagor represented that there were no liens. In fact there were intervening liens. Held, a finding of those facts alone would not entitle the mortgagee to priority over the liens, unless proof was adduced that he relied on misrepresentation. McKeen v Haseltine, 46 M 426, 49 M 195.

Where liens were superior to the mortgage and other liens were junior, the proper method to distribute proceeds of an equitable sale is to first set aside a sufficient sum to take care of the senior liens, next the mortgage, then the junior liens. Laws 1889, Chapter 200, do not provide for a special statutory proceeding, but proceedings are as in ordinary civil actions. Finlayson v Crooks, 47 M 74, 49 NW 398.

Where a vendor accepts from the vendee, as security for part of the purchase money, a mortgage on the property subject to a prior mortgage by the vendee to a third party, he holds it also subject to a mechanic's lien in favor of a contractor of the vendee, which attached prior to the lien of the first mortgage. Reilly v Williams, 47 M 590, 50 NW 826.

The owner of a lot sold it on time, it being that the vendor should advance $1,000, and the vendee should erect a house thereon. Vendor conveyed the property, and took back a mortgage thereon, both being recorded, the mortgage including the price of the lot plus $1,000. Subsequently vendee built a house, vendor contributing the $1,000 which was applied on the expense thereof. Held, vendor's mortgage was prior to any lien on the premises for material furnished in the construction of the building. Hill v Aldrich, 48 M 73, 50 NW 1020; Haupt v Westmen, 49 M 397, 52 NW 33.

Under the mechanic's lien law of 1889, Chapter 200, claimants who furnished material have a lien prior to the purchase money mortgages, on the theory that under the facts, the owner, and in this case the mortgagee, knowing that the improvements were being made, kept silent, when fairness required him to speak. Martin v Howard, 49 M 404, 52 NW 34.

Lien claimants are junior to the mortgage because (1) their liens were not filed until after the mortgage was recorded; (2) there was no evidence to indicate they did not have actual notice, and (3) in the absence, provision to that effect in the lien law, a lien cannot be preferred to a prior unrecorded mortgage unless where upon general equitable principles, the mortgagee would be estopped by his conduct from asserting the lien of his mortgage as against the other lien claimants. Miller v Stoddard, 50 M 272, 52 NW 895; Noerenberg v Johnson, 51 M 75, 52 NW 1069.

Where a building is constructed under one entire contract between owner and contractor, the liens of all subcontractors who furnished labor or material at any time during the progress of construction, attach, by relation, as of the date of the commencement of the work, and are entitled to a preference over a mortgage on the premises, executed by the owner subsequent to that date. Glass v Freeburg, 50 M 386, 52 NW 900.

Applicable to the findings in this case, the proceeds from the sale of the real estate were marshaled as follows: (1) H.'s mortgage to the extent of B.'s mortgage; (2) mechanics' liens senior to H.'s mortgage; (3) the balance of H.'s mortgage; (4) B.'s mortgage, and (5) mechanics' liens subsequent to both mortgages, modifying the holding in Reilly v Williams, 47 M 590, 50 NW 826. Malmgren v Phinney, 50 M 457, 52 NW 915; Miller v Stoddard, 54 M 486, 56 NW 131.

The land company conveyed to Riggin who caused a building to be erected. The executory contract was entered into Sept. 3, 1890, and on May 3, 1891, pursuant to the contract, the land company deeded the property and took back a purchase money mortgage for the unpaid balance. Between the date of the contract and the date of the filing of the mortgage a house was erected. Held, that the lien claimants, who had supplied material for the house, have valid liens. McCausland v West Duluth, 51 M 246, 53 NW 464.

Where the interest of the vendor in an executory contract of sale is not subject to liens contracted by the vendee in constructing a building on the premises, a mortgage for purchase money, subsequently taken back at the same time that the premises are conveyed to the vendee, is entitled to precedence over the liens. Moody v Tschabold, 52 M 51, 53 NW 1023.

Menage sold a building to Kommers and agreed to remove it and rebuild it on a lot belonging to Kommers. Menage contracted with Nilson to do the work. Nilson failed to complete the job, and liens were filed. Held, materialmen creditors of Nilson may establish a lien on the property of Kommers, and he in turn has an action in tort against Menage. Bassett v Menage, 52 M 121, 53 NW 1068.

Where two houses are being erected on one lot, the lien claimant need not keep separate accounts nor file separate liens, and where the project is one continuous undertaking, a distinct lien such as a mortgage, originating subsequently to the commencement of the work upon the ground, or the furnishing of materials at the place, must be postponed to claims of all who contributed to the completion of the structure. Gardner v Leck, 52 M 522, 54 NW 746; Hewson v Cook, 52 M 534, 54 NW 751.

As respects the date of acquiring a lien, the term "furnish," as used in the mechanic's lien law, means furnished on the premises; and the liens of all mechanics and materialmen attach as of the date of the performance of the first work or the delivery of the first material on the ground; that is, from the commencement of the improvement on the land. Wentworth v Tubbs, 53 M 388, 55 NW 543.

Findings to the effect that the lien of materialmen is senior to that of the mortgagee and the lien foreclosure by the mechanic's lien claimant was valid, but the rights of the mortgagee as to redemption have not been cut off by the proceedings, and the plaintiff mortgagee may redeem from the lien foreclosure. Nash v Adams, 55 M 46, 56 NW 241.

In filing a lien statement on a lien otherwise the senior lien, the claimant made an error in the date of the commencement of the work, and in a foreclosure proceeding where the rights of a mortgagee were involved, it was held that an incorrect lien statement will not be reformed so as to prejudice a subsequent encumbrance actually misled by the incorrect statement. Wetmore v Royal, 55 M 162, 56 NW 594; Borman v Baker, 68 M 213, 70 NW 1075.

Laws 1895, Chapter 101, has not changed the law as laid down in Gardner v Leck, nor modified it further than to require the recording of a mortgage executed prior to the commencement of the work to render it superior to lien claims for labor and material. Ortonville v Geer, 93 M 501, 101 NW 963.

Where an architect prepared plans, but the owner abandoned the project, a lien filed within 90 days of notice to the architect of the abandonment was filed in time. Lamoreaux v Andersch, 128 M 261, 150 NW 908; Jandrich v Svabek, 170 M 24, 211 NW 957.

Evidence sustains a finding that the principal contractor agreed that a mortgage in contemplation of execution upon the property should be prior in lien to the

mechanics' liens and that such liens would be discharged by the contractor. Baxter v Ornes, 130 M 214, 153 NW 594.

Plaintiff's lien was filed in time because of the inclusion of a kitchen drain board furnished and charged to the account but never used. Minneapolis v Hedden, 131 M 31, 154 NW 511.

A mortgage to secure future advances which the mortgagee obligates himself to make has priority over mechanics' liens which attach, after the mortgage is given, but before the money is paid out. All liens attach at the time the first item of material or labor is furnished for beginning the improvement, and does not include plans drawn by the architect in the seclusion of his own office. Erickson v Ireland, 134 M 156, 158 NW 918.

When improvements are made by one person upon the land of another, a presumption of consent is raised against the owner, but if he does not consent he may protect his interests by serving or posting notices, and the burden of proving such notices is upon the owner. Stravs v Steckbauer, 136 M 69, 161 NW 259.

The statute requires an answer to be filed instead of being served, and is of no effect until filed. The intervenor was entitled to a personal judgment but no lien. Bauman v Metzger, 145 M 133, 176 NW 497.

Mechanics' liens, on which redemption from a mortgage foreclosure sale is made, are not thereby merged or extinguished, but the liens survive so far as may be necessary to protect the parties redeeming. Northland v Northern, 145 M 395, 177 NW 635.

One who contracts to furnish "fabricated" metal according to specifications is a contractor rather than a materialman, and the fact that he is a broker or sells to the trade does not affect his status. Illinois v Hennepin, 149 M 157, 182 NW 994.

Failure to pay claims which were liens on the property when the mortgage was taken, but which, if not paid, will become liens thereon superior to the mortgage, is deemed waste. Failure to pay taxes or interest on prior mortgages is waste within this rule. Nielsen v Heald, 151 M 181, 186 NW 299.

A chattel mortgage upon a power line, not yet in existence, can only attach itself to such property in the condition in which it comes into the mortgagor's hands. Where there are liens for materials used to bring the property into existence, they are superior to the general mortgage lien, though junior in point of time. St. Paul Electric v Baldwin, 159 M 221, 199 NW 9.

The coming into existence of the facts which fulfil the statutory requirements to have a mechanic's lien, creates the lien, and, if he who has such lien desires to preserve and enforce it, he must comply with the remedial provisions of the statute providing for the filing of the lien. State v Anderson, 159 M 245, 199 NW 6.

If materials for an improvement are furnished on the premises before the owner mortgages the property, in the absence of actual notice of the mortgage, the materialman's lien is superior to the lien of the mortgage. Rudd Lumber Co. v Anderson, 161 M 353, 201 NW 548.

A lien attaches as of the time there is actual and visible beginning of the improvement on the ground. Ulstruck v Home, 166 M 183, 207 NW 324.

Nelson sold the lot and took back a purchase money mortgage. The evidence sustains the finding that the improvement for which liens are claimed was begun before they conveyed the lot or recorded the mortgage, and that the mortgagee had knowledge of the improvement and gave no protective notice. Bruer v Kenyon, 166 M 357, 208 NW 10.

The words "without notice" in the statute, providing that as against a bona fide purchaser or encumbrancer without notice no lien shall attach prior to the visible beginning of the improvement on the ground, mean without notice of an existing lien. Landers v Ambassador, 171 M 445, 214 NW 503; Carr v Deming, 176 M 1, 222 NW 507.

In determining what constitutes "actual and visible beginning of the improvement on the ground" the removal of an old building by the purchaser preparatory to erecting a building did not constitute a beginning. Carr v Deming, 176 M 1, 222 NW 507.

The evidence sustains a finding that the plaintiff lumber company waived its lien. Thompson v Gruesner, 177 M 111, 224 NW 849.

Part of the goods furnished were delivered and paid for and plaintiff gave the contractor a "release." One who was making a building loan, secured by mortgage advanced money to the contractors on the faith of the release. Held, the release could not be limited to those supplied, but applied as well to those supplied later. Crane v Advance, 177 M 132, 224 NW 847.

A motor vehicle lien perfected by filing the statutory statement within the 60 days is superior to the title acquired through execution sale made before the filing of the lien statement but after furnishing the labor or material. Stegmeir v Lannon, 184 M 194, 238 NW 328.

The evidence sustains the finding of the trial court that before any materials were furnished, the plaintiffs had actual notice of the then unrecorded mortgage. The lien is held inferior to the mortgage. Anderson v Iverson, 187 M 308, 245 NW 365.

The vendor had no knowledge that any improvement was in progress until a notice of foreclosure of a mechanic's lien was served upon him, and no consent can be predicated, and consequently the lien is inferior to a mortgage given by the vendee to the vendor as part of the purchase price. Reed v Jones, 202 M 274, 278 NW 30.

A mechanic's lien filed with the registrar of titles attaches to the land as of the commencement of the improvement the same as would a mechanic's lien filed in the office of the register of deeds for improvement upon land not registered under the Torrens act. Armstrong v Lally, 209 M 373, 296 NW 405.

Under Laws 1911, Chapter 300, a claimant furnishing tire casings for taxicabs must show they were furnished for particular cabs to be entitled to a lien; but if the work was done prior to the date when the taxicab company was declared bankrupt, and the lien statement filed after the adjudication, but within the 60-day limit, the right of the claimant is fixed as against the trustee in bankruptcy. Re McAllister-Newgard Co. 193 F 265.

The registered owner of a Torrens title sold and conveyed the property, and a new certificate was issued to the vendee. At that time "actual and visible beginning of an improvement" had been begun on the premises. The purchaser takes title subject to a lien for the improvement, provided the statute is implemented by filing a lien. 1928 OAG 238.

Motor vehicle accident compensation. 4 MLR 4.

Bankruptcy procedure relating to mechanic's liens. 9 MLR 59.

Motor vehicle lien; rights of innocent purchaser. 14 MLR 783, 19 MLR 469.

514.06 TITLE OF VENDOR OR CONSENTING OWNER, SUBJECT TO.

HISTORY. R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 26; G.S. 1866 c. 90 s. 6; 1878 c. 3 s. 5; G.S. 1878 c. 90 s. 6; 1889 c. 200 ss. 4, 5; G.S. 1894 ss. 6232, 6233; R.L. 1905 s. 3509; G.S. 1913 s. 7024; G.S. 1923 s. 8495; M.S. 1927 s. 8495.

1. Generally
2. Forfeiture of executory contracts
3. Consent implied; notice

1. Generally

The evidence sustains the findings of the jury that the defendant association which made a loan to the plaintiff with which to erect a building and paid its proceeds to the contractors as the work progressed, agreed to obtain lien waivers, and negligently failed to do so. Harmon v Central, 171 M 343, 214 NW 56.

Where the owner rented the premises to a tenant who had improvements made so as to make the place usable. The owner knew of the work as it was done. The work was the building of porches, ceilings, booths fastened to the floor and walls and the painting of same. Held, a lien may be perfected. Sandberg v Burns, 198 M 472, 270 NW 575.

2. Forfeiture of executory contracts

Holdings prior to enactment of Laws 1889, Chapter 200. Hill v Gill, 40 M 441, 42 NW 294; McGauflin v Beeden, 41 M 408, 43 NW 86; Boyd v Blake, 42 M 1, 43 NW 485.

Under the provisions of Laws 1889, Chapter 200, Section 4, it is incumbent upon the lien claimant, in order to establish and enforce a lien for labor or material, as against the title or interest of a vendor of real property who has entered into an executory contract of sale contingent upon or providing for the erection or construction of a building thereupon, and as a precedent to his right to recover, to allege in his complaint and prove if contraverted, that the contract had been forfeited or surrendered, that is, terminated unconditionally as between vendor and vendee. Nolander v Burns, 48 M 13, 50 NW 1016.

An invalid contract is admissible as evidence in an action to foreclose a lien, as tending to show the furnishing by the lien claimant was with the knowledge and consent of the vendor in the executory contract, and if satisfactorily proven, a lien established is enforceable against the vendor's title under the provision of Laws 1889, Chapter 200, Section 1. Althen v Tarbox, 48 M 19, 50 NW 1018.

Vendor sold a lot to the vendee with the understanding that a house be built thereon, and agreed to loan $1,000 toward the construction; vendor deeded the property, and vendee executed a mortgage for the price plus the $1,000, both instruments being recorded. Held, vendor's mortgage being bona fide, it is prior to the liens for labor or material. Hill v Aldrich, 48 M 73, 50 NW 1020.

Weide conveyed the land to Berg, and took back a purchase money mortgage. A written agreement of sale was executed on January 6, 1890, and under its terms the vendee was to build. On March 17, the foundation being in, the deed and mortgage were recorded. Held, lien claimants who furnished labor or material prior to the date of the filing of the deed and mortgage are entitled to priority, but those who furnished subsequently to the filing of the mortgage are junior to it. Haupt v Westman, 49 M 397, 52 NW 34.

In an executory contract, there was no provision requiring the vendee to build, but there was that improvements would become the property of the vendor. The contract was forfeited for default. Held, as to lien claimants that the case did not come under the provisions of Laws 1889, Chapter 200, Section 4, but was covered by Section 5 of that law, and that as the improvements contracted for by the vendee were with the knowledge of vendee, his consent is presumed, he not having given notice of non-assent. Wheaton v Berg, 50 M 525, 52 NW 926.

When the owner of the land conveys to one who has caused a building to be erected, the building having been erected after the executory contract was executed and before the deed of conveyance and mortgage were recorded, and there being no proof by defendant of service or posting of notice, the claimants may perfect their lien. McCausland v West Duluth, 51 M 246, 53 NW 464.

In an action by the vendor against the vendee to determine adverse claims, lien claims which attach to vendee's interest in real property will extend to the entire estate upon completion of the contract, and acquisition thereof by him, and the equitable rights of the lienholders accruing under a building clause in the contract of purchase could not be destroyed by acts of the purchaser. Brown v Jones, 52 M 484, 55 NW 54.

Under the findings, a mortgage was set aside, and the property sold, and out of the proceeds the trustees were to have back their disbursements in excess of sums received, and the owner of the note and mortgage was next to be paid, and the intervenor was to have a lien on the factory site, subject and subordinate to the above ordered items and payments. Borman v Baker, 68 M 213, 70 NW 1075.

In an action to foreclose a lien on premises sold under a contract for deed, it is held that the evidence fails to show that the vendor seasonably served or posted the notice specified in the statute. Interior v Appleby, 179 M 280, 228 NW 934.

3. Consent implied; notice

Even though the owner procures a bond from his contractor and posts a notice as required by statute, a subcontractor is entitled to a lien on the premises if the notice was not posted on the premises during any part of the time in which the subcontractor furnished labor or material. Kraus v Murphy, 38 M 422, 38 NW 412.

Of the five executors of a will, four of them entered into a contract with plaintiff for the repairing and rebuilding of a building. Held, a lien cannot be perfected against the executor who did not join, nor against the interest of a devisee of minor age, but against those who signed the contract with plaintiff, there is adjudged a specific lien. Ness v Wood, 42 M 427, 44 NW 313.

It is not necessary that the lien notice contain the averment that the labor or material for which a lien is claimed was furnished by virtue of a contract with the owner of the property or at his instance. It is enough that the notice conform to the specific requirements of the statute. Hurlbert v New Ulm, 47 M 81, 49 NW 521.

The trial court found the rights of the lien claimants superior to those of the mortgagee, and the appellate court reversed the decision, holding that the recording imposes no obligation upon the mortgagee to record his mortgage as against a mechanic's lien, and even if the lien claimants did come within its provisions, the facts did bring them within its protection because (1) their liens were not filed until after the mortgage was recorded; (2) there was no evidence that the lienors did not have actual knowledge of the mortgage. Miller v Stoddard, 50 M 272, 52 NW 895.

The provision in Laws 1889, Chapter 200, Section 5, subjecting the estate of the landowner to liens for improvements unless he serves or posts a notice of his want of consent, is construed as creating a rule of prima facie evidence, and casting the burden upon the landowner to excuse his default to comply with the law. Wheaton v Berg, 50 M 525, 52 NW 926; McCausland v West, 51 M 246, 56 NW 464.

Cook owning two lots applied for a $6,000 loan and executed his note to the loan company in that amount. These were placed on record on August 1, 1890. The loan company refused the loan, but at a later date on September 3 he made a new application which was accepted, and the money paid over on October 1, 1890. The mortgage on file was allowed to stand as evidence of the transaction. In the meantime between August 16 and November 4 various labor was performed and material furnished. Held, the mortgage was not prior to the liens. Hewson v Cook, 52 M 534, 54 NW 751.

Knowledge of an agent authorized only to sell real estate, that a building is being constructed on it, is not knowledge in the owner. Sandberg v Palm, 53 M 252, 54 NW 1109.

The language "the owner or person having or claiming any interest," must, except for repairs, inlcude lessors of land improved by the lessee; a peaceable entry to post a notice is not a trespass. Congdon v Cook, 55 M 1, 56 NW 253.

Where an agent was authorized by his principal to make leases, collect rents, and care and look after the property generally, notice to the agent that improvements are being made upon a building situate upon his principal's real estate and necessary to save and protect the property, was notice to the principal. Jefferson v Leithauser, 60 M 251, 62 NW 277.

Test-drilling solely for the purpose of determining if ore is found in paying quantities is not an excavation on which a lien can be predicated. Colvin v Weimer, 64 M 37, 65 NW 1079.

A lessor may, by posting or giving notice as required by statute, prevent a mechanic's lien from attaching to his interest, although in the lease he has given the tenant permission to make the alterations for which the lien is claimed, the tenant, having agreed to pay for the alterations and to restore the building to its former condition at the end of the term. Wallinder v Weiss, 119 M 412, 138 NW 417.

Leased realty is subject to a mechanic's lien for improvements made at the instance of the lessee, when the lessor knows such are being made and fails to give or post a written notice of irresponsibility. Minneapolis v Arcade, 124 M 317, 145 NW 37.

Painting a building inside and out, papering, kalsomining and putting on a section of new roof to fit the premises for occupancy by a tenant are not "repairs" within the statute which provides that, against a lessor, no lien is given for repairs made by or at the instance of his lessee. Northwestern v Parker, 125 M 107, 145 NW 966.

The defendant owned a ground lease. The building burned. By agreement between the defendant and the fee owner, the insurance money was deposited as security for rebuilding. The ground lease was afterwards assigned to plaintiff upon condition that he rebuild the building. Liens accrued against the ground lease. The fee owner gave notice of forfeiture. It is held that by purchasing the fee, after forfeiture by the fee owner, the defendant could not defeat the liens against the ground lease. Madler v Twin City, 125 M 207, 145 NW 1072.

Foreclosure of mechanic's lien, appellant holding the legal title, subject to a contract of purchase, pleaded ignorance of the improvements ordered by the vendee and consequent failure to post notice. The trial court failed to find on that defense, and appellant overlooked asking for such finding. A new trial was refused. Held, while the trial court did not abuse its discretion, the affirmance was without prejudice to the right of any party to the action to request the trial court to find on the issue litigated. Rockey v Joslyn, 134 M 468, 158 NW 787.

Section 314.06 raises a presumption against the owner, and if he does not consent, he may protect his interest by serving or filing notices, and the burden of proving such notices is on the owner. Stravs v Steckbauer, 136 M 69, 161 NW 259.

The evidence sustains a finding that the cast iron fire pot installed was made with the knowledge and consent of the corporation owner of the premises. Mueller v Bahneman, 144 M 119, 174 NW 614.

Improvements cannot be charged as a lien against land unless made with the consent of the owner, but a lien is founded on a duty which under the statute, the owner owes to laborers and materialmen. The statute provides that all persons, except encumbrancers, having an interest in land, shall be deemed to have authorized improvements, unless they shall disclaim responsibility in the manner provided by statute. Berglund v Abram, 148 M 412, 182 NW 624.

Mechanics' liens are created by statute and exist only to the extent given by statute. Section 514.17 supersedes sections 514.01 and 514.06 as far as inconsistent therewith. Section 514.17 confines liens in the operation of missing properties to the interests of the lessee, and do not attach to the interest of the owner. Olson v Oneida, 153 M 80, 189 NW 455.

Improvements by vendee in possession under executory contract are chargeable in mechanic's lien proceedings in the absence of notice from the owner that the improvements are not being made at his instance. Henning v McAdam, 155 M 194, 193 NW 124; Ruedlinger v Fisher, 160 M 324, 200 NW 299.

Although there is evidence that the owner did post notices as required by statute, the finding of the trial court that the notices required by statute were not kept posted, is sustained. Fauser v McElroy, 157 M 116, 195 NW 786.

The failure of the vendor to give notice as required by statute entitled the materialman to a lien for the reasonable value of all materials furnished, and the right to charge the interest of the vendor in an executory contract with a mechanic's lien is not limited to the value of that portion of the materials furnished after the vendor was advised of the improvement. Dower v Rodewald, 157 M 314, 196 NW 473.

Where in an action to enforce a mechanic's lien, the evidence discloses that the owner did not have notice; that the materials were used by a tenant as repairs; and that the refrigerator might be classified as trade fixtures, the claimant would not be entitled to a lien. Brown v Heffelfinger, 159 M 182, 198 NW 424.

A life tenant in possession must make such ordinary repairs as are necessary to preserve property, but it is under no duty to improve it. If he makes improvements, he cannot compel the remaindermen to reimburse him. Rendahl v Hall, 160 M 502, 200 NW 744, 940.

The owner of property situate in Minneapolis resided in South Dakota, and her son occupied the house and ordered the repairs. In the absence of allegation and proof as to the legal status of the occupant, whether tenant or purchaser, and no finding of any knowledge on the part of the owner, the lien claimant is not entitled to relief. Schrieber v Scott, 163 M 422, 204 NW 575.

A ten-year lease provided for the erection of a building, and the owner consented. The leasehold was subject to mechanics' liens, and the liens take precedence over chattel mortgages given and filed before the materialman began to

furnish materials, but of which he had no actual knowledge. Moorhead v Remington, 165 M 411, 206 NW 653.

Lien claimant performed his work under a contract with Lundberg who was negotiating for the purchase of the property, but no contract for its purchase was ever consummated, and Lundberg never acquired any rights. The work was done without the knowledge of the owner, and no lien can be perfected. Peterson v Lundberg, 165 M 453, 206 NW 641.

Nelson sold the lot taking back a purchase money mortgage. The improvement was begun before the conveyance and the recording of the mortgage, and Nelson had knowledge and failed to give notice. A lien may be perfected. Bruer v Kenyon, 166 M 357, 208 NW 10.

Orfield sold to Merritt on payments and instructed the tenant to pay subsequent rent to vendee's agent. The agent authorized the tenant to make repairs. While these were being made, Orfield was informed and posted a notice which was removed or destroyed. The trial court found for the lien claimants, and on appeal there was a reversal because the record is incomplete as to the agency of the real estate agent, and also as to the posting of the notice. Couture v Hennessy, 167 M 90, 208 NW 545.

Bannochie sold his lake resort to Appleby on an executory contract. There was a fire and insurance collected; part of the insurance money was applied on the contract, and the balance used to rebuild. Held, the evidence fails to show that the notice served and posted by Bannochie was properly and seasonably posted. Interior v Appleby, 179 M 280, 228 NW 934.

The vendor in the contract for a deed did not require the vendee to improve the property, and as he had no notice or knowledge of the improvement until served with a summons in this foreclosure action, it follows that the purchase money mortgage is superior to the lien. Reed v Jones, 202 M 274, 278 NW 31.

Evidence sustains trial court's findings that certain improvements made by lien claimants were permanent in nature, could not be removed without loss to the freehold, and that owner had notice and knowledge of their making as and when made, yet failed to give notice required by section 514.06. The legislature may provide that improvements made with the knowledge of the landowner "shall be deemed to have been made at his instance, unless he disclaims responsibility therefor in the manner and within the time prescribed by the statute." Knoff v Zotalis, 213 M 204, 6 NW(2d) 264.

Improvements upon real property made by a vendee in possession under an executory contract for sale are chargeable in mechanic's lien proceedings against the interests of a vendor having knowledge of the improvements, in the absence of notice by the latter that the improvements are not being made at his instance. Snell v Florsheim, 217 M 22, 13 NW(2d) 776.

Motor vehicle accident compensation. 4 MLR 4.

Oral agency to purchase lands. 24 MLR 718.

514.07 PAYMENT TO SUBCONTRACTORS WITHHELD.

HISTORY. 1889 c. 200 s. 14; G.S. 1894 s. 6242; 1899 c. 277; R.L. 1905 s. 3510; G.S. 1913 s. 7025; G.S. 1923 s. 8496; M.S. 1927 s. 8496.

Under this section the right to perfect a lien for labor or material furnished in the construction under a contract does not accrue until the expiration of the time therein fixed within which the owner may demand of the contractor a verified statement of the amounts due from him to laborers or materialmen under him, and a lien statement filed prior to that time is ineffectual and invalid, and the fact that there are no amounts due does not suspend the operation of the statute. If there are none, a verified statement to that effect will be sufficient compliance with the statute. Clark v Anderson, 88 M 200, 92 NW 964; Northland v Northern, 145 M 398, 177 NW 636; Illinois v Hennepin, 149 M 159, 182 NW 995.

History of the various acts and amendments. Bauman v Metzger, 145 M 134, 176 NW 497.

A construction contract providing that owner make monthly payments of 85 per cent of the cost of labor and materials furnished each month by the contractor is construed to mean only 85 per cent of that actually paid for. First Church v Lawrence, 210 M 37, 297 NW 99.

Extension of statutory period for filing claims by furnishing materials not within the original contract. 17 MLR 219.

514.08 STATEMENT; NECESSITY FOR RECORDING; CONTENTS.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 7; P.S. 1858 c. 86 s. 27; G.S. 1866 c. 90 s. 7; 1874 c 69 s. 2; G.S. 1878 c. 90 s. 7; 1889 c. 200 s. 8; G.S. 1894 s. 6236; R.L. 1905 s. 3511; G.S. 1913 s. 7026; 1921 c. 521 s. 1; G.S. 1923 s. 8497; M.S. 1927 s. 8497.

1. **Generally**
2. **Time of filing**
3. **Claim of lien**
4. **Description of premises**
5. **Dates**
6. **Name**

1. Generally

The lien statement must conform substantially with the statute. Clark v Schatz, 24 M 300; Keller v Houlihan, 32 M 486, 21 NW 729; but inaccuracies in particulars are not necessarily fatal. Smith v Headley, 33 M 384, 23 NW 550.

The filing for record of the verified statement operates as the creation of the lien, and, at the same time, as notice of its existence to all interested parties, and the right to a lien is dependent on the filing of a proper statement. Rugg v Hoover, 28 M 404, 10 NW 473; Olson v Pennington, 37 M 298, 33 NW 791; Meyer v Berlandi, 39 M 438, 40 NW 513.

The lien having been filed in accordance with the statute, the failure of the register to record it does not affect its validity. Smith v Headley, 33 M 384, 23 NW 550.

The verified account may include two or more existing liens accruing in favor of the same person and against the same person and property. Benjamin v Wilson, 34 M 517, 26 NW 725; Kinney v Duluth, 58 M 455, 60 NW 23.

In order to perfect his lien, the materialman must file a duly verified account within the statutory time, and where such account purported to be sworn to before the register of deeds, but was not properly attested by his seal, it was insufficient to preserve the lien. Colman v Goodnow, 36 M 9, 29 NW 338.

Where the lien statement shows on its face that it is defective, an allegation in the complaint does not avoid the difficulty. The filing is intended to serve the purposes of a notice and show the existence of a lien. Olson v Pennington, 37 M 298, 33 NW 791.

A mechanic's lien is not defeated by including in the account lienable and nonlienable items furnished under the same contract, provided the lienable items, and their prices, are separable from the others. Dennis v Smith, 38 M 494, 38 NW 695.

A lien statement sworn to before a notary in another state, and authenticated by his official seal is sufficient. Wood v St. Paul, 42 M 411, 44 NW 308.

Where a lien is perfected by filing the account and affidavit required by law, and same is duly recorded, the withdrawal of the original verified account, so recorded, will not impair the validity of the line. Paul v Nample, 44 M 453, 77 NW 51.

Under the lien act of 1889 it is not necessary to allege that the furnishing was at the instance or under contract with the owner. Hurlbert v New Ulm, 47 M 81, 49 NW 521.

Technical objections to liens are disfavored, and the statement is to be liberally construed. A variance of four days between the statement and the proof as to the day on which the work was completed is immaterial, the statement having been filed within the prescribed time. Althen v Tarbox, 48 M 18, 50 NW 1018; Tulloch v Rogers, 52 M 114, 53 NW 1063; Coughlin v Longini, 77 M 514, 80 NW 695.

A lien cannot, as to third persons who have acquired rights adverse to the lien claimant, be amended to their prejudice, after it has been filed and after the expiration of the prescribed time of filing. Wetmor v Royal, 55 M 162, 56 NW 594; Meehan v St. Paul, 83 M 187, 86 NW 19; Minneapolis v Arcade, 124 M 317, 145 NW 37.

The claim may be filed by one to whom it was assigned, or by one to whom it was assigned as collateral security. Davis v Crookston, 57 M 402, 59 NW 482; Kinney v Duluth, 58 M 455, 60 NW 23.

Surplusage does not vitiate. John Paul v Hormel, 61 M 303, 63 NW 718.

The verification asserted that "the affiant was the person named as claimant in the foregoing claim of lien, that he had knowledge of the facts therein stated and that same were true." Nordine v Knutson, 62 M 264, 64 NW 565.

At the time the material was furnished, the premises were located in Polk County, but Red Lake County was created out of certain Polk County territory in which these premises were situate. The register of deeds in the new county qualified in the afternoon of Jan. 6. The filing was in Polk County in the forenoon of the same date. The time within which liens might be filed did not expire until later in the month. Held, the statute, not having been followed, the lien has no validity. Meehan v Zeh, 77 M 63, 79 NW 655; but see under the conditional sales statute, Creamery v Tagley, 91 M 79, 97 NW 412.

The statutes do not require the statement of a mechanic's lien to designate the law under which it is claimed, and a reference in the lien statement to Laws 1889, when in fact, the claim of lien arose under the provisions of Revised Laws 1905, is not fatal to its validity. The reference to the act of 1889 may be rejected as surplusage. Barndt v Parks, 103 M 360, 115 NW 197.

Verification by agent is sufficient. Krengel v Haslam, 118 M 506, 137 NW 11; Small v Smith, 120 M 118, 139 NW 133.

One who delivers material to the owner for use on a specific building, in the good faith belief that it is to be so used therein, though it is not delivered on the premises, is entitled to a lien. Simons v Schnobrich, 159 M 116, 198 NW 406.

A notary's official seal is essential to a verification of a mechanic's lien statement. Hodge v Anderson, 161 M 147, 201 NW 603.

A lienholder, not named as defendant but admitted on stipulation with plaintiff appellant, attacks the judgment because she was not notified that the intervenor had been made a party. Held, in the absence of proof that the appellant had not received notice, the judgment was not void for want of jurisdiction. She may, on proper showing, have the judgment vacated in order to contest the respondent's claim. Black v Brown, 164 M 440, 205 NW 438.

That trustee for bondholders had compelled the lienors in mechanic's lien foreclosure to elect between lease or lien, does not release the surety. Hartford v Federal, 59 F(2d) 951.

Liens in relation to Torrens certificates. 8 MLR 214.

Liens in relation to bankruptcy proceedings. 9 MLR 58.

Comparison of motor lien law with the mechanic's lien provisions. 14 MLR 783.

Liens for improvement of the homestead. 25 MLR 385.

2. Time of filing

Where the work was suspended by the owner through no fault of the architect, filing statement of lien during the period of suspension is not premature. Knight v Norris, 13 M 473 (438); McCarthy v Groff, 48 M 325, 51 NW 218.

In a claim for mechanic's lien, the items being delivered at different dates, the account must be considered a unit and the time within which the statement must be filed begins to run from the date of the last item, they being delivered at the same job of work. Johnson v Gold, 32 M 535, 21 NW 719; Frankoviz v Smith, 34 M 403, 26 NW 225; State v Norwegian, 45 M 254, 47 NW 974; St. Paul v Stout, 45 M 327, 47 NW 974; Lundell v Ahlman, 53 M 57, 54 NW 936; St. Paul v Hormel, 61 M 303, 63 NW 718; American v Honstain, 120 M 329, 139 NW 619; Thompson v Pettijohn, 157 M 404, 196 NW 567.

The lien law of 1878 required as a requisite to give notice of a claim of lien, the statement be filed within one month after the claim becomes due. Held, a lien statement is ineffectual to perfect a lien, if it shows on its face that it is filed too late, even though the fact may have been otherwise. Olson v Pennington, 37 M 298, 33 NW 791.

Filing not in time. Dayton v Minneapolis, 63 M 48, 65 NW 133; Bauman v Metzger, 145 M 133, 176 NW 497.

Plaintiff contracted to install a furnace. When installed, it did not produce sufficient heat, whereupon in satisfaction of all damages for breach of warranty, he agreed to substitute, and did substitute another furnace. He filed no lien statement until within 90 days of the second installation. Held to be in time. Scheible v Schickler, 63 M 471, 65 NW 920; Coughlan v Longini, 77 M 514, 80 NW 695.

Contractor installed a heating plant and agreed to keep it in repair for a year. During the year he made repairs three times. The lien filed within 90 days after the end of the year was held to be in time. Shaw v Fjellman, 72 M 465, 75 NW 705.

The subcontractor completed his work, but the owner refused to accept it on account of inadequate work by the contractor, whereupon the contractor completed the unfinished contract, calling on the subcontractor for aid which was furnished. Held, a lien filed more than 90 days after the completion of the contractor's contract but within 90 days after the second furnishing was a legal filing. Minneapolis v Great Northern, 74 M 30, 76 NW 953; 81 M 28, 83 NW 463.

Plaintiffs agreed with owner to make all repairs on a building as might be needed. From time to time between Sept. 1902, and Sept. 1903, work was ordered and performed, a bill being rendered currently. In Sept. 1903, the defendant became owner by foreclosure. The lien statement was filed on Nov. 14, 1903. Held, that plaintiffs could recover on their lien only such portions of the work as had been done within 90 days next prior to its filing. Fitzpatrick v Ernst, 102 M 195, 113 NW 4.

Liability of an attorney in damages to his client for failure to seasonably institute foreclosure proceedings on a lien by which failure the lien rights were lost. Krats v McDonald, 123 M 353, 143 NW 975.

The contract provided for completion of the house by Aug. 1. It was substantially completed on Aug. 17 when the owner moved in. Two lights of glass were delivered on Aug. 21, and certain screen and storm doors, all included in the contract on October 31. Held, that a lien filed on December 11 was seasonable. Shevlin v Taylor, 124 M 132, 144 NW 472.

Plans were drawn, but work suspended by the owner, and after some delay, owner notified the architect he could not proceed. Held, a lien filed within 90 days after the repudiation of the contract by the owner, but more than 90 days after the preparation of the plans is in seasonable time. Lamoreaux v Andersch, 128 M 261, 150 NW 908.

A lien statement having been filed in ample time, the claimant found a few days after the time for filing had expired that the wrong numbered lot had been used in the description. Held, too late to file a new lien statement and plaintiff cannot be allowed, after the expiration of the time limit, to amend his description. Johnson v Ludwigson, 148 M 468, 182 NW 619.

A materialman who has completed his contract cannot extend the time for filing a lien by thereafter furnishing additional material for the mere purpose of continuing or reviving the lien. Bisbee v Granite City, 159 M 442, 199 NW 17.

The evidence supports the finding that the furnishings were all part of one continuous operation, and the lien was seasonably filed. The action in foreclosure is not controlled by section 541.12 which says an action is begun when the summons is placed in the hands of the officer for service. Botsford v Fuller, 170 M 130, 212 NW 22.

The builder of apartment houses fully completed his contract. Subsequently plaintiff delivered other material, and the plaintiff materialman and the builder agreed upon an extension of the lien. Plaintiff filed his lien within 90 days after the last delivery, but more than 90 days after delivery of the items used on the contract. Held, such arrangement did not extend the time except as to those to whom the doctrine of estoppel applies. Belt Line v Standard, 170 M 509, 213 NW 41.

Where a lienable fixture furnished by a materialman and installed in a dwelling proves defective before paid for and is taken back and replaced by the materialman with a new fixture, the materialman may claim a lien for the new fixture, no claim being made for the defective one. McDonald v Lima, 187 M 240, 244 NW 804.

3. Claim of lien

It is not necessary in the affidavit to state that a party claims a lien; the failure of the register to record the instrument filed does not affect a lien; the use of letters or abbreviations susceptible of explanation is allowable; and the coverage in the description of more property than allowable does not vitiate the lien. Smith v Hadley, 33 M 384, 23 NW 550.

Where work was done under several small contracts, each for some small part of the work, it may be considered as all part of one general improvement and continuous in part of time, and one lien filing will suffice. Northwestern v Parker, 125 M 107, 145 NW 964.

Where in executing a lien statement, an authorized agent of the claimant signs his name immediately below the verification and above the jurat, the signing constitutes a sufficient subscription thereto. Mueller v Bahneman, 144 M 119, 174 NW 614.

A lien statement which fails to state definitely the value of the material and the particular tract of land sought to be charged therewith, fails of compliance with the statute in a substantial respect and cannot be amended to supply the defect. Bowman v Piersol, 147 M 300, 180 NW 106.

Where the claim for which a mechanic's lien is sought is but a single item, labor, no bill of particulars is necessary. Steele v Vernes, 212 M 281, 3 NW(2d) 425.

4. Description of premises

Under the mechanic's lien law, when the building on which the lien is claimed is situate upon a tract of land containing a greater area than that upon which a lien is given, it is not necessary that the claimant should in his affidavit carve out and describe the statutory amount. It is sufficient if he describe the building, and the entire tract upon which it stands.

Where the tract exceeds the statutory limit, the the statutory quantity need not be carved out when filing the lien statement. A false statement may be disregarded. North Star v Strong, 33 M 1, 21 NW 740; Smith v Headley, 33 M 384, 22 NW 550; Boyd v Blake, 42 M 1, 43 NW 485; Evans v Sanford, 65 M 271, 68 NW 21.

The description need not be as full and precise as in a deed or judgment. It is in this case sufficient to inform defendants of the claim of the plaintiff, and to identify the property, and to put all other persons interested, upon inquiry such as to lead to such identification. Russell v Hayden, 40 M 88, 41 NW 456; Northwestern v Norwegian, 43 M 449, 45 NW 868; Nystrom v London, 47 M 31, 49 NW 394; Bassett v Menage, 52 M 121, 53 NW 1064; Evans v Sanford, 65 M 271, 68 NW 21; Doyle v Wagner, 100 M 380, 111 NW 275; Jandrich v Svabek, 170 M 24, 211 NW 951; Nelson v Sampson, 186 M 273, 243 NW 105.

A lot and block description referring to the recorded plat, or a description according to the government survey is a proper and a prima facie description. Northwestern v Norwegian, 43 M 449, 45 NW 868.

When the description is too general or is faulty, or a misdescription, a lien is not perfected. Fleming v St. Paul, 47 M 124, 49 NW 661; and the rule applies where third parties have acquired intervening rights. Tulloch v Rogers, 52 M 114, 53 NW 1063.

The contract provided for the erection of a house on lot 3. By mistake the frame house was erected on lot 4, and thereafter removed to lot 2. In the meanwhile, the owner of lot 3 built a brick house thereon. Held, the description was insufficient, and no lien can be perfected. Lingren v Nilsen, 50 M 448, 52 NW 915.

A description is sufficient when it describes the lots and property by its legal lot and block description. The buildings situate thereon need not be described. Johnson v Salter, 70 M 146, 72 NW 974.

A description of premises sought to be charged with a mechanic's lien is sufficient, if it enables an interested person to recognize and locate the property with reasonable certainty. A description giving the correct lot number, an erroneous number of the block, and properly describing the addition together with the proper street number is a sufficient description. Doyle v Wagner, 100 M 380, 111 NW 275; Atlas v Dupuis, 125 M 45, 145 NW 620.

Lien statement held sufficient, even though the signature was misplaced. Mueller v Bahneman, 144 M 119, 174 NW 614.

In the instant case, the description and recitals in the lien statement filed, in every particular identified the premises adjoining those intended to be charged with the lien, and nothing in such statement could be construed as describing or identifying the premises for which the material was furnished. Johnson v Ludwigson, 148 M 468, 182 NW 619.

The old creamery which burned was on a tract outside of the village, the new creamery built to replace the old one was on two lots adjoining, but within the village. The lien described the old location when it should have described the new. Although identifiable by reason of other description, it was held to be an insufficient description. After eliminating the faulty description, it left nothing sufficient to identify. Hydraulic v Pierz, 169 M 452, 211 NW 836.

When the description is wholly erroneous and the statement contains nothing which, unaided by knowledge gained from extraneous sources as to the actual use of the materials or labor furnished, will identify the property intended, the statute requiring identification has not been complied with, and the lien statement is fatally defective and the lien itself falls. Hydraulic v Pierz, 169 M 452, 211 NW 836.

The total description reading "Lot two (2), block seven (7) Winslow's Addition to St. Paul", is a sufficient description. Jandrich v Svabek, 170 M 24, 211 NW 957.

The statement which described the premises as government subdivision in the fractional northeast quarter of a certain section on which was erected "White City Resort" was not defective for lack of reasonable certainty in the description. Nelson v Sampson, 186 M 271, 243 NW 105.

5. Dates

A variance of four days between the lien statement and the proof, as to the day on which the claimant completed his work, the statement being filed within the prescribed period of time, is immaterial. Althen v Tarbox, 48 M 18, 50 NW 1018.

When a mistake is made in respect to the date of the first item, a lien may be enforced for so much of the account as is embraced in the statement, and when the statement included all the items furnished, and the account was in all other respects correctly stated, no other parties being prejudiced by the error, the mistake was immaterial and the lien valid for the whole amount. Miller v Condit, 52 M 455, 55 NW 47; Coughlan v Longini, 77 M 515, 80 NW 695.

That the last item in a lien statement is not proved is not fatal to the whole claim, provided the statement was filed within the specified time after the last item stated in it and proven. Lundell v Ahlman, 53 M 57, 54 NW 936.

The lien statement erroneously gave Sept. 30 as the first date of the furnishing. The trial court permitted plaintiff to amend and prove the correct date of Aug. 29. Held, error as the rights of others had intervened because of the giving of a mortgage on Sept. 3. Wetmore v Royal, 55 M 162, 56 NW 594.

6. Name

Prior to the enactment of Laws 1889, Chapter 200, the lien affidavit was required to show that the furnishing was by virtue of a contract or agreement with the owner of the building or with his agent. Clark v Schatz, 24 M 300.

A mechanic's lien, being a creature of the statute, can only exist by virtue of a compliance with its provisions. In this case the statement was too loose, indefinite, and ambiguous, as respects the ownership, to satisfy the statutory requirements. Rugg v Hoover, 28 M 404, 10 NW 473.

Prior to enactment of Laws 1889, Chapter 200, an affidavit which omitted to state to whom the items were furnished, or that the building was erected under a contract with the owner of the land, or with his consent, is fatally defective. Keller v Houlihan, 32 M 486, 21 NW 729; Anderson v Knudsen, 33 M 172, 22 NW 302; Morrison v Philippi, 35 M 192, 28 NW 239; Conter v Farrington, 46 M 336, 48 NW 1134.

Under the mechanic's lien law, Laws 1889, Chapter 200, it is not necessary that the recorded lien notice contain the averment that the labor or material for which a lien is claimed was furnished by virtue of a contract with the owner of the property or at his instance. Compliance with the statute only is required. Hurlbert v New Ulm, 47 M 81, 49 NW 521.

Lien statement need not set forth the name of the owner at the time of making said statement, it being sufficient that the ownership at the time of the making of the contract and the furnishing be set forth. Finlayson v Biebighauser, 51 M 202, 53 NW 362.

In an action against a corporation, the complaint need not allege defendant's corporate existence. Minneapolis v Arcade, 124 M 317, 145 NW 37.

During the construction of a building, a partnership incorporated under the copartnership name, "Inc." added. Held, a mistake in the lien claim by using the copartnership name instead of the corporate name, or both, did not invalidate the lien. Bailey v Eveleth, 167 M 5, 208 NW 198.

514.09 TWO OR MORE BUILDINGS.

HISTORY. 1889 c. 200 s. 7; G.S. 1894 s. 6235; R.L. 1905 s. 3512; G.S. 1913 s. 7027; G.S. 1923 s. 8498; M.S. 1927 s. 8498.

Interpreted in relation to other sections in this group. Lamoreaux v Andersch, 128 M 265, 150 NW 910.

The statute gives a lien upon the premises improved, not exceeding one acre in an incorporated city. The lienholder furnishing to adjoining lots may file one statement for his entire claim, or he may apportion it. This action was brought to foreclose a lien upon two adjoining blocks, exceeding one acre in extent, between which there was a street. Some of the lien claimants filed on both blocks, some on one of them, and some on particular lots in one or the other. It is held that the flat buildings constituted one improvement, one enterprise, one tract, and that all lien claimants were entitled to similar treatment, and a lien upon both blocks regardless of the manner of filing. Northland v Melin, 142 M 233, 171 NW 808; Northland v Northern, 145 M 395, 177 NW 635.

A materialman, whose furnishings contributed to the erection of six dwelling houses on eight adjoining lots under and pursuant to the purposes of one general contract, had a right to file one lien statement for its entire claim. Carr v Cooper, 144 M 380, 175 NW 696.

Under an agreement between the owner and the tenant on the ground floor, extensive changes were required in other parts of the building. There were two contracts completed as part of one transaction. In an action by the contractor to enforce a lien, it was held that both the owner and the tenant might counterclaim for setoff or damages for faulty construction. Bauman v Metzger, 145 M 133, 176 NW 497.

Where the furnishings were to three non-contiguous farms, held, one general lien statement is not sufficient, there being no attempt made to apportion or specify the amount furnished to each. Material furnished in the improvement of one tract cannot be made a charge against separate tracts. Bowman v Piersol, 147 M 300, 180 NW 106.

The evidence supports a finding that one contract embraced materials for different farm improvements, and thereunder materials were furnished and delivered from time to time as needed, on one continuous account, in good faith and in the justifiable belief that it was for the improvements planned. Failure to use a part of such material for the purpose for which it was sold does not destroy the lien. Botsford v Fuller, 170 M 130, 212 NW 22.

514.10 FORECLOSURE OF LIENS.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 ss. 6, 7; P.S. 1858 c. 86 ss. 24, 27; G.S. 1866 c. 90 s. 7; 1874 c. 69 s. 2; 1878 c. 3 s. 5; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 s. 10; G.S. 1894 s. 6238; R.L. 1905 s. 3513; G.S. 1913 s. 7028; G.S. 1923 s. 8499; M.S. 1927 s. 8499.

An action brought to enforce a lien, not being an action for the recovery of money only, plaintiffs are not as a matter of right entitled to a jury trial, but as

provided by statute the case 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 M 312, 7 NW 265; Lamoreaux v Andersch, 128 M 261, 150 NW 908.

In actions in personam of a strictly judicial character, and proceeding according to the course of the common law, service of the summons, by publication in a newspaper, upon resident defendants, who are personally within the state and can be found therein, is not "due process of law." Assuming to provide for such service in foreclosure actions is unconstitutional and void. Bardwell v Collins, 44 M 97, 46 NW 315.

An action to enforce a mechanic's lien under Laws 1889, Chapter 200, is not a special statutory proceeding, but an ordinary civil action, proceeding according to the usual course of the law, and governed by the same rules of procedure as other similar actions, except as otherwise expressly provided in the statute itself, and so a mortgagee or any other party claiming an interest in the premises may be made a party, and his rights adjudicated, wherever it might be done in an action to foreclose a mortgage. Finlayson v Crooks, 47 M 74, 49 NW 398 (645).

Under lien law of 1889 in an action to foreclose, the court has jurisdiction to determine liens set up by any of the defendants. When the lien sets up but a single item, no bill of particulars need be filed. Menzel v Tubbs, 51 M 364, 53 NW 653 (1017).

There was a mortgage on 740 acres of land. Three mechanics' liens were filed upon 40 acres of the land, and action in foreclosure commenced and the three actions consolidated. The mortgagor and mortgagee were made defendants. The mortgagee appeared and filed a cross-bill alleging default in the mortgage and demanding relief, which was granted, and foreclosure ordered as to the 740 acres. Other than the filing of the cross-bill, the mortgagor, who did not appear in the proceedings, had no notice, and there was no actual service upon him. Held, that the provisions of the lien law as to service apply only to issues tendered by the complaint, or expressly authorized by statute and do not extend to matters foreign to such issues. Jewett v Iowa, 64 M 531, 67 NW 639.

The owner had an oral, and his tenant a written contract with the plaintiff to do certain work. This action was brought to enforce a mechanic's lien. Both tenant and landlord were parties defendant. Held, each has a right to plead and prove a setoff or counter-claim in tort on account of work negligently performed. Bauman v Metzger, 145 M 133, 176 NW 497.

It is largely within the sound discretion of the court having control of the property to grant or deny an application to vacate a sale on the ground that the price paid was inadequate. It is the purpose of the law that a judicial sale should be final. It will not be set aside for irregularities, unless injury has resulted to the party complaining. Northland v Northern, 145 M 395, 177 NW 635.

A subcontractor in the second degree may be a party to a foreclosure proceeding. Illinois v Hennepin, 149 M 157, 182 NW 994.

Under the provisions of Revised Laws, 1905, the time to redeem from a foreclosure sale under a mechanic's lien dates from the confirmation of the sale and not from the day of sale. Salmon v Central, 157 M 369, 196 NW 468.

Bond to an owner conditioned on faithful performance by the contractors, and an agreement to indemnify. It limited the commencement of action on the bond to 12 months from the day of final payment. The owner paid the contractor in full according to the contract. There after this lien was filed, and a finding against the owner who was obliged to pay. Held, the 12-months period includes not only the voluntary payments, but the enforced payment as well, so the bond company must respond. National v McDonough, 178 M 388, 227 NW 205.

Due process defined: Dimke v Finke, 209 M 36, 295 NW 80.

In actions to foreclose mechanics' liens or mortgages, ordinarily personal judgment may not be entered until the lien rights have been exhausted by foreclosure, and the court retains jurisdiction for the purpose of supervising the process. Smude v Amidon, 214 M 266, 7 NW(2d) 776.

The judgment in a lien action need not specifically provide for a deficiency judgment in order to authorize later entry. Lien claimants may at any time waive lien rights and recover a personal judgment. Smude v Amidon, 214 M 266, 7 NW(2d) 776.

There being no adverse issue between the vendor and the vendee the refusal of the trial court to permit the appellant to cross-examine the vendee as an adverse party, is sustained. Snell v Florsheim, 217 M 22, 13 NW(2d) 776.

As to election of remedies. Hartford v Federal, 59 F(2d) 950.

In the matter of lien arising out of old age assistance, one of the interested parties in service with the armed forces, action in foreclosure should be instituted to save running of the statute of limitations and the court may then save the rights of the absent service man as prescribed by statute. OAG Oct. 16, 1944 (521p-4).

514.11 COMMENCEMENT OF ACTION; PROCEEDINGS.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 ss. 6, 7; P.S. 1858 c. 86 s. 27; 1874 c. 69 s. 2; 1878 c. 3 s. 5; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 s. 10; G.S. 1894 s. 6238; R.L. 1905 s. 3514; G.S. 1913 s. 7029; G.S. 1923 s. 8500; M.S. 1927 s. 8500.

1. **Generally**
2. **Summons**
3. **Parties**
4. **Complaint**
5. **Answer**
6. **Cross-complaint**
7. **Variance**
8. **No reply necessary**
9. **Burden of proof**
10. **Evidence**

1. Generally

A mechanic's lien, being a creature of statute, can only exist by virtue of compliance with its provisions. Rugg v Hoover, 28 M 404, 10 NW 473.

If a complaint states no cause of action, it cannot be sustained by a supplemental pleading setting up matters that have occurred after the commencement of the suit. Meyer v Berlandi, 39 M 438, 40 NW 513.

In instituting action under this section, a brief description "of the improvement out of wnich the lien arose" is required. Lamoreaux v Andersch, 128 M 265, 150 NW 910.

One who furnishes material for a building at the instance of a subcontractor in the second degree is entitled to a lien therefor under the statute. Illinois v Hennepin, 149 M 157, 182 NW 994.

Rugg v Hoover, 28 M 404, and Meyer v Berlandi, 39 M 438, in so far as they hold that the filing of a mechanic's lien statement operates as a creation of the lien, are overruled. It is the coming into existence of the facts which fulfil the statutory requirements that creates the lien, and if one who has such a lien desires to preserve and enforce it, he must comply with the remedial provisions of the statute. State v Anderson, 159 M 245, 199 NW 6.

Unless a lienholder, joined as a defendant, in an action to foreclose another lien, files his answer within one year after the date of the last item of his claim for lien, he loses his right to enforce the lien; and a stipulation between the attorney for the plaintiff and the attorney for the lienholder, permitting a late filing, does not revive the lien. Olson v Juckem, 163 M 375, 204 NW 51.

The summons in an action to foreclose a mechanic's lien will not be set aside for defects therein which do not affect or prejudice the substantial rights of the defendants. Dressel v Brill, 168 M 99, 209 NW 868.

The statute provides that the summons in a mechanic's lien action shall require the answers to be filed with the clerk of the court. The summons required them to be served as in the ordinary case. In this case, the defect was not jurisdictional, but was an amendable irregularity, and a defendant who filed his answer and made a general appearance could not complain. A party who does not complain of absence of a bill of particulars, or of defective verification during the trial, cannot complain afterwards. Melvey v Bowman, 169 M 504, 212 NW 194.

In an application to open a judgment in order to permit a defendant, who purchased the property after plaintiff's lien accrued, but before it was filed of record, to answer and interpose a defense, such application being based upon excusable neglect of the attorney, the trial court could conclude that the plaintiff respondent relied on defendant appellant's default to respondent's prejudice, and also that after knowledge of the entry of judgment, appellant obtained extensions of time by promise of payment. Hede v Minneapolis, 172 M 462, 215 NW 859.

2. Summons

The statute (Laws 1889, Chapter 200) intends that, an action having been brought by a claimant purporting to enforce his claim for the furnishing of labor or material, it shall be a proceeding to enforce all such liens on the same property, and the holders of which choose, or may be required to appear. When not named as plaintiffs, they appear by intervening answers, of which all parties, including the owners, have notice, and the only summons necessary is the original, which under the statute, gives the court jurisdiction over all parties. Menzel v Tubbs, 51 M 364, 53 NW 653 (1017).

The statute limits the life of a mechanic's lien to one year, and no person is bound by a judgment in an action to foreclose the lien, unless he is made a party thereto by service of the summons upon him within the year. Thompson v Standard, 161 M 143, 201 NW 300.

The premises being situate in Ramsey County, the venue of the original summons was laid in the proper county, but the copies to be served on the various defendants were entitled in Hennepin County and returnable before the district court, 4th judicial district. The incorrect copies were served within a year, but when correctly served, 13 months had elapsed. The service was held to be fatally defective. Thompson v Standard, 161 M 143, 201 NW 300.

Section 543.13 is applicable in actions to foreclose mechanics' liens. In the instant case a mortgagee, upon whom service had been made by publication, in the mistaken notion she was a non-resident, and who did not appear applying within one year after judgment, not being guilty of laches, and tendering an answer constituting "sufficient cause" because it states a good defense, is entitled to have the judgment vacated and be given permission to serve and file her answer. Suhring v Stafford, 166 M 430, 208 NW 136.

The summons in an action to foreclose a mechanic's lien will not be set aside for defects therein which do not affect or prejudice the substantial rights of the defendants. Dressel v Brill, 168 M 99, 209 NW 868.

The statute provides that the summons in a mechanic's lien action shall require the answer to be filed with the clerk of court. The summons in the instant case required them to be served. Held, the defect is not jurisdictional and was no more than an amendable irregularity or one which might have been overlooked, and as the defendant entered an appearance and filed its answer it could not complain. Melvey v Bowman, 169 M 504, 212 NW 194.

3. Parties

Under an early statute where a lien was claimed by a subcontractor, the contractor was a necessary party, but it was a defect that did not entitle the owner for judgment on the merits. The court may continue the action and have the contractor served and brought in. Northwestern v Norwegian, 43 M 449, 45 NW 868.

The owner is a necessary party. In the instant case the owner only was served, and no service was made on grantees, deeds to whom were on record, and the time having expired, no lien could be filed against the property rights of the grantees. Burbank v Wright, 44 M 544, 47 NW 162.

An action to enforce a mechanic's lien under Laws 1889, Chapter 200, is not a special statutory proceeding, but an ordinary civil action, proceeding according to the usual course of the law and governed by the same rules of procedure as other similar actions, except as otherwise expressly provided in the statute itself. All encumbrancers should be made parties. Finlayson v Crooks, 47 M 74, 49 NW 398.

In an action to enforce mechanics' liens, the bringing in of a proper party at the time of the trial held not erroneous, no prejudice being shown. Wheaton v Berg, 50 M 525, 52 NW 926; Northwestern v Norwegian, 43 M 449, 45 NW 868.

The mechanic's lien law of 1889 intends that, when an action is brought by any claimant, it shall be a proceeding to enforce all such liens on the same property. When not named as plaintiffs, they appear by answer, and all lien claimants of record are necessary parties. Menzel v Tubbs, 51 M 364, 53 NW 653.

In an action to foreclose a mechanic's lien, encumbrancers should be made parties, and all equities which may exist in favor of mortgagors should be determined, and the rights of mortgagees fully adjudicated. Bassett v Menage, 52 M 121, 53 NW 1064.

The lien law of 1889 contemplates one general action in which all the lien claims against the specified property shall be consolidated and adjudicated. Where an insolvent debtor is entitled to a lien for labor or materials, his assignee in insolvency may prosecute and enforce the same. Miller v Condit, 52 M 455, 55 NW 47.

Owner is a necessary party. In the instant case, it was held that a mere notice is not sufficient, he must be made a party and seasonably served. Hokanson v Gunderson, 54 M 499, 56 NW 172; Jewett v Iowa, 64 M 531, 67 NW 639.

The legal owner of a city lot verbally agreed with his son that he would furnish money to build a house, that the son was to occupy it when completed, and was to purchase it in payments. He was to pay the cost of the house and a stated sum for the lot. The builder was paid in full, part by the father and part by the son, and part out of the father's estate. Held, the son had an equitable interest which might be proceeded against, and the lien enforced without joining the legal record owner as a defendant in the action, and the son's interest could be sold. Carey v Bierbauer, 76 M 434, 79 NW 541.

4. Complaint

Where a party seeks to enforce a lien under the law of 1855, he must describe the land with sufficient accuracy to enable the court to decree the sale and the purchaser to find the land under such description. Knox v Starks, 4 M 20 (7).

The complaint must allege all the facts entitling the plaintiff to a lien. Marshall v Hart, 4 M 450 (352).

A complaint under the lien act of 1855 set forth that the "building is situated on block one hundred nine in the town of Columbus" without showing the quantity of land in said block, or whether it was within the limits of any city, town, or village plot. Such a description not sufficient so that the court might authorize a lien thereon. McCarty v Van Etten, 4 M 461 (358).

Should demand a lien on the premises. McCarty v Van Etten, 4 M 461 (358).

Prior to the enactment of the mechanic's lien law of 1878, no one was entitled to a lien on building and land for work done and similar, unless he had a contract with the owner or his agent, so an allegation that the furnishing was for one who "was building and constructing a school building for said defendant" without alleging that he was doing it under any contract, is insufficient. O'Neil v St. Olaf's, 26 M 329, 4 NW 47.

The complaint must allege due filing of the claim within the statutory time. It must state facts entitling the plaintiff to judgment. Frankoviz v Smith, 34 M 403, 26 NW 225; Price v Doyle, 34 M 400, 26 NW 14; Hurlbert v New Ulm, 47 M 81, 49 NW 521; Moran v Clarke, 59 M 456, 61 NW 556.

To show a cause of action under the 1878 act, a complaint must show that the account and affidavit filed and recorded did prima facie secure a lien so as to create a cloud on the title. The complaint in the instant case did not. Houlihan v Keller, 34 M 407, 26 NW 227.

It is not necessary for the lien claimant to show that the quantity of land on which the lien is claimed is within the statutory limit. If the defendant claims that it exceeds that limit, he must show it, and the court must then carve out a tract within the limit, and confine the lien to it. Boyd v Blake, 42 M 1, 43 NW 485.

It is not necessary to allege or show that the land is within the statutory limit. Boyd v Blake, 42 M 1, 43 NW 485.

The allegation was that for the purpose of securing a lien upon the premises, plaintiffs duly made an account in writing of the items of material so sold, and of the value of same, to which oath was made upon a certain day, and that the same, with a copy of the written contract was filed and recorded. Held, sufficient as against a motion to strike out. Glass v St. Paul, 43 M 228, 45 NW 150.

Under Laws 1889, Chapter 200, it was incumbent on the claimant in an action where the property to be reached was the subject of an executory contract, in order to reach the interest of the vendor to allege and prove if controverted that the contract between the vendor and vendee had been forfeited or surrendered, and terminated unconditionally between vendor and vendee. Nolander v Burns, 48 M 13, 50 NW 1016.

Complaint need not allege that a notice of lis pendens has been filed in the office of the register of deeds. Proof may be introduced on the trial without formal pleading of it. John Paul v Hormel, 61 M 303, 63 NW 718; Julius v Callahan, 63 M 154, 65 NW 267.

An allegation stating that the lien statement was filed Feb. 26, 1906, and within 90 days after furnishing the last item is one of fact, and sufficient as against a general demurrer, although the exact date of furnishing the last item is not alleged. Stewart v Simmons, 101 M 375, 112 NW 282.

Evidence examined and held to sustain the findings of the trial court that the plaintiff had not filed its complaint in the office of the clerk; and the complaint had not been lost or mislaid in the clerk's office. Thornton Bros. v Johnson, 195 M 384, 263 NW 108.

5. Answer

One not interested in premises cannot object to a lien claimed upon them. Cogel v Mickow, 11 M 475 (354).

In an action to enforce a mechanic's lien, accrued prior to the amendment to the constitution in 1888, the defendant, to prove the fact that the land constituted his homestead, must plead it. Any new matter in defense, must be pleaded as in an ordinary action. Bergsma v Dewey, 46 M 357, 49 NW 57.

Where a lien claimant appears in a pending action for the purpose of asserting his lien he makes the action his own for the purpose of enforcing his lien, and if he is in time, the fact that plaintiff's lien is barred, or that plaintiff for any cause fails to recover, will not affect the intervenor. Burns v Phinney, 53 M 431, 55 NW 540.

6. Cross-complaint

There was a mortgage on a 740-acre tract. Three mechanics' liens were filed on 40 acres of the tract. Both mortgagor and mortgagee were made parties defendant. The mortgagor did not appear, but the mortgagee filed a cross-bill demanding foreclosure of his mortgage. He had a decree, and the land was sold under foreclosure. Held, on application by the mortgagor that there had been no proper notice or service of the mortgagee's cross-bill on the defendant mortgagor, and that one defendant cannot have judgment against a co-defendant upon a cross-bill, except upon proper notice to such co-defendant. Jewett v Iowa, 64 M 531, 67 NW 639.

7. Variance

Where the account for a lien for furnishing states the items and dates when they were delivered, and same is duly verified, and was filed in time, a variance in the proof as to the time when one or several items were furnished, or mistake or inaccuracy in the statement of dates in the affidavit annexed to such account, no prejudice appearing, will not be fatal to the lien. Linne v Stout, 41 M 483, 43 NW 377.

The brick having been furnished by plaintiff and accepted by the subcontractor at a stated price, and used in the building, sustains the finding in favor of the lien rights of plaintiff. The alleged contract with Leeds based upon letters, and differing in terms from that of plaintiff is not a variance. Wisconsin v St. Peter, 46 M 231, 48 NW 1022.

A variance of four days between the lien statement and the proof, as to the day on which the claimant completed his work, the statement being filed within the prescribed period of time in any event, is immaterial. Althen v Tarbox, 48 M 18, 50 NW 1018.

That the last item stated in a lien statement is not proved is not fatal to the whole claim, provided the statement was filed within the specified time after the last item stated in it and proved. Lundell v Ahlman, 53 M 57, 54 NW 936.

In the instant case, the contract is entire; the contractor's performance according to contract terms is a condition precedent to payment; and because of wilful deviation, the contractor is not entitled to recover upon a quantum meruit. Ylijarvi v Brockphaler, 213 M 385, 7 NW(2d) 314.

8. No reply necessary

In an action to foreclose a lien under the provision of Laws 1889, Chapter 200, the allegations in each answer are denied, and taken to be controverted, without the interposition of a reply. Bruce v Lennon, 52 M 547, 54 NW 439; Davis v Crookston, 57 M 402, 59 NW 482; Johnson v Lau, 58 M 508, 60 NW 342.

9. Burden of proof

By construing the statutory presumption, which springs from failure to give notice, as being of a prima facie nature rather than conclusive, and as imposing upon the landowner who, knowing the fact of the improvement, has failed to give the prescribed notice, the burden of relieving himself from the statutory imputation of having consented to what was being done, by proof of his inability to give the prescribed notice of his dissent, and that in fact the improvement was made without his authority or consent. Wheaton v Berg, 50 M 525, 52 NW 926.

The onus of proof as to serving or posting notice as required by Laws 1889, Chapter 200, when he must serve or post it to protect his property from liens, is on the owner. McCausland v West Duluth, 51 M 246, 53 NW 464.

The burden of proof is on the plaintiff to show that the lumber was furnished for the building, and that the last item thereof was delivered within 90 days next before the filing of the lien statement. Lamb v Benson, 90 M 403, 97 NW 143.

10. Evidence

A statutory lien being charged for lumber furnished for construction of a building, evidence merely that the amount of lumber claimed to have been furnished was not "required" for the construction is inadmissible. Woolsey v Bohn, 41 M 235, 42 NW 1022.

A husband having contracted to have the plumbing done in a house being constructed by his wife, and owned by her, and the issue being as to whether he acted by her authority so that her property might be charged with a lien, it was error to exclude proof that the wife saw and conversed about the plumbing while it was being done; the statute making her knowledge and consent evidence of her authority. McCarthy v Caldwell, 43 M 442, 45 NW 723.

An invalid contract is admissible in evidence in an action brought to foreclose such a lien, as tending to show that the work was done, or the materials furnished with the knowledge and consent of the vendor owner. Althen v Tarbox, 48 M 18, 50 NW 1018.

In an action to establish and foreclose a mechanic's lien, it is held that the trial court erred when admitting in evidence a certain exhibit, which tended to alter, vary, and contradict the terms and conditions of the contract between the parties under which materials were furnished and the labor performed. Justus v Myers, 68 M 481, 71 NW 667.

Objection was made to the receiving in evidence certain tickets or receipts purporting to be for each load of lumber delivered. The claim was made that the validity of the signatures was not proven, strict proof of the signature could not be made, but there was ample competent evidence to show delivery as claimed, hence not reversible error to admit the tickets in evidence. Lamb v Benson, 90 M 403, 97 NW 143.

In an action to foreclose a lien, the defendant was entitled to no relief through a counter-claim based on fraud where there was no evidence of damage thereby. Johnson v Kruse, 121 M 28, 140 NW 118.

Where the defense was that deliveries were fraudulently delayed in order to establish a date against which the time for filing had not run, the evidence sustains a holding that the deliveries were at such time that the lien filing was seasonably made. Shevlin v Taylor, 124 M 132, 144 NW 472.

In an action to foreclose a mechanic's lien for improvements made after the foreclosure of a prior mortgage upon the property, but begun before the time to redeem from the foreclosure expired, the lienholder may prove that the time for redemption from the mortgage sale had been extended by agreement between the owner and the purchaser at the mortgage sale. Gale v Melin, 136 M 118, 161 NW 389.

The claim of owners for loss of rent resulting from a breach of a written contract to which they were not parties was correctly excluded. Bauman v Metzger, 145 M 133, 176 NW 497.

The court is justitfied in finding that the summons was served on the date shown in the sheriff's return, and although the return of service was not filed until after a motion had been made to vacate the summons, its production at the hearing was demanded, and was produced as demanded. Carney v Bastian, 155 M 317, 193 NW 697.

514.12 NOTICE OF LIS PENDENS.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 7; G.S. 1866 c. 90 s. 6; 1874 c. 69 s. 7; 1878 c. 3 s. 5; G.S. 1878 c. 90 ss. 6,7; 1889 c. 200 s. 10; G.S. 1894 s. 6238; R.L. 1905 s. 3515; G.S. 1913 s. 7030; G.S. 1923 s. 8501; M.S. 1927 s. 8501; 1933 c. 362 s. 1; 1945 c. 4 s. 1.

The universal policy and scheme of lien laws is that action shall be brought in a limited time. The lien account must be filed within a certain time; likewise the action for foreclosure within a limited time. The lien is continued by the filing of the lis pendens. It is not necessary under Laws 1878 that an action to enforce a lien be prosecuted to judgment within the period. If commenced within that period, it may be prosecuted to judgment, and the judgment enforced, notwithstanding the expiration of the period intervenes. North Star v Strong, 33 M 1, 21 NW 740.

The lien accrued April 6, 1890. The complaint was filed April 3, 1891. Summons was promptly served on certain defendants, but not on the owner. A mortgagee, one of the defendants, made a motion to dismiss, which was granted. Held, the motion to dismiss was properly granted. No judgment could be enforced against the land unless the owner was brought into the action. There could be no sale without a judgment against him. The power of the court to bring in other partites only applies after the action has been properly commenced. Steinmetz v St. Paul, 50 M 445, 53 NW 915; Malmgren v Phinney, 50 M 457, 52 NW 915.

Where the owners were residents, and no service was made upon them except by publication, the case must be dismissed for lack of timely service. Mechanic's lien law of 1878 declared unconstitutional as to substituted service. There is no unity of interest between an owner and an encumbrancer that could make either the representative of the other, so as to make service on one the equivalent of service on the other. Smith v Hurd, 50 M 503, 52 NW 922; Falconer v Cochran, 68 M 405, 71 NW 386.

The lien law of 1889 contemplates one general action in which all lien claims against specified property shall be consolidated and adjudicated. A second action would not be a void proceeding, but would be consolidated with the first. Miller v Condit, 52 M 455, 55 NW 47.

Where a lien claimant, made a defendant in an action of foreclosure, does not appear in the action within the time allowed by statute, his right to enforce his lien is barred. The fact that the action was properly and timely started by others, will not help one who does not enter an appearance. Burns v Phinney, 53 M 431, 55 NW 540.

Plaintiff's lien was filed showing last item delivered June 21, 1890. Suit was commenced June 20, 1891, but service was not made on the owner defendant until

Aug. 14, 1891. The intervenor defendant's last item was delivered Oct. 21, 1890, and he filed his intervening answer July 6, 1891. Held, while plaintiff was not entitled to a lien on account of delay in service, his fault did not extend to the jurisdiction, and Hammer, an intervening defendant, might have judgment. Sandberg v Palm, 53 M 252, 54 NW 1109.

In an action to enforce a mechanic's lien, a notice of lis pendens filed is not binding upon a person claiming an interest in the premises affected by the lien, unless he is a party to the action, or claims under one who was made a party within the life of the lien. Mere naming or mere notice is not sufficient. He must be served with process or appear voluntarily in the action. Hokanson v Gunderson, 54 M 499, 56 NW 172.

It is not necessary to allege that the notice of lis pendens has been filed. Proof of the fact may be introduced on the trial without formal pleading of it. John Paul v Hormel, 61 M 303, 63 NW 718.

In an action to enforce a mechanic's lien, the filing of a notice of lis pendens is not a condition precedent to the right of action, nor does it go to the jurisdiction of the court. Julius v Callahan, 63 M 154, 65 NW 267.

Irrespective of the statute providing that the taking of a note shall not discharge a lien, a mechanic's lien is waived or discharged where the parties enter into a special agreement inconsistent with the existence of the lien, or where a materialman extends credit to the owner beyond the statutory period for bringing an action to enforce the lien. Flenniken v Liscoe, 64 M 269, 66 NW 979.

The office of a lis pendens is merely to charge a subsequent purchaser with notice of the pending of the action. Jewett v Iowa, 64 M 531, 67 NW 639.

The rule that an action to foreclose a mechanic's lien must be commenced within one year is construed to mean from the time when the last item of material is in fact furnished, although that time be not the date stated in the affidavit. Doyle v Wagner, 100 M 380, 111 NW 275.

A lien claimant who does not, within one year after furnishing the last item, make a subsequent mortgagee a party to an action wherein the lien is foreclosed, or asserted, loses his priority, and the lien is gone as to such mortgagee. Morrison v Duclos, 138 M 20, 163 NW 734.

Failure of one who is proceeding to foreclose a mechanic's lien to file a notice of lis pendens, as required by statute, cannot be taken advantage of for the first time on appeal by the supreme court. Carr v Cooper, 144 M 380, 175 NW 696.

The complaint alleging the last day of the furnishing as Aug. 20, 1921, was filed on Aug. 19, 1922. No other papers were filed, and on Sept. 20, 1922, the defendant bank moved to vacate the service of the summons. The lis pendens was filed with the clerk Nov. 28, 1922, as was also the original summons certified by the sheriff as having been served on Aug. 19, 1922. The lis pendens had on it an endorsement by the register of deeds indicating filing on Aug. 19, 1922. Held, to be sufficient service. Carney v Bastian, 155 M 317, 193 NW 697.

Lis pendens was properly filed in Ramsey County and in the action to foreclose the venue was properly laid in the proper county, but in the copies served on the defendants, the venue was laid, and the summons was returnable in Hennepin County; subsequently, but after the year had expired, proper service was had. Held, plaintiff's lien rights were lost. Thomason v Standard, 161 M 143, 201 NW 300.

In the instant case the filings were timely, and the two actions were properly consolidated by the court. Steele v Vernes, 212 M 281, 3 NW(2d) 425.

See as to oral stipulation for stay. Albert v Edgewater Beach Co. 218 M 20, 15 NW(2d) 462.

In re old age assistance foreclosures. OAG Oct. 16, 1944 (521p-4); OAG Oct. 18, 1944 (521p-4); OAG Nov. 16, 1944 (521p-4).

514.13 BILL OF PARTICULARS.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 7; G.S. 1866 c. 90 s. 6; 1874 c. 69 s. 2; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 s. 10; G.S. 1894 s. 6238; R.L. 1905 s. 3516; G.S. 1913 s. 7031; G.S. 1923 s. 8502; M.S. 1927 s. 8502.

Where a bill of exceptions is prepared for, and use on, a motion for a new trial, which is granted, with costs of motion, the expense of preparing such bill of exceptions is not taxable in the supreme court on an appeal from the order granting a new trial. Linne v Forrestal, 51 M 249, 53 NW 653 (1017).

It is not material that there is a variance between the dates of some of the items stated in a bill of particulars and the true dates. Coughlan v Longini, 77 M 514, 80 NW 695.

The trial court's denial of the defendant's motion to strike out the complaint and disallow the lien, on the ground that there was no original bill of items attached, and that plaintiff's supplmented bill of items did not comply with the statute, sustained. Behrens v Kruse, 121 M 90, 140 NW 339.

When work is abandoned or suspended without the fault of the lien claimant, he may immediately file a lien for work already done or skill or material already furnished. Lamoreaux v Andersch, 128 M 261, 150 NW 908.

In an action to foreclose a mechanic's lien where a party verifies his pleading by an affidavit that the averments are true of his own knowledge, and the bill of items attached is true and correct, this constitutes a sufficient verification of the bill of items, but where a claimant claimed the full amount that would have come due under the contract, but only performed a part of the work, he divested himself of all right to a lien. Lyons v Westerdahl, 128 M 288, 150 NW 1083.

Owners who have an action in tort against the contractor on account of negligent construction may plead it in setoff or counter-claim against the lien claimant in an action in foreclosure. Bauman v Metzger, 145 M 133, 176 NW 497.

A mechanic's lien extends to all materials furnished, even when not used. Northland v Northern, 145 M 395, 177 NW 636.

A broker of steel who furnishes "fabricated" goods in accordance with a contract is entitled to a lien even though the furnishing is to a contractor in the second degree. Illinois v Hennepin, 149 M 157, 182 NW 994.

In this action to foreclose a mechanic's lien, the order of the trial court striking out the plaintiff's complaint and disallowing his right to a lien because of his failure to file a bill of particulars, is sustained. Engebo v Lucius, 160 M 479, 200 NW 637.

Right of lien was denied because the bill of particulars was not verified, and also because that as to the furnishing for which the lien is asked, more than 90 days elapsed between the last delivery and the date of filing the lien. Minnesota v Roinstad, 167 M 111, 208 NW 548.

A party in a mechanic's lien suit who does not complain during the course of the trial of the want of a bill of particulars, or of its defective verification, and permits the lien claims to be proved without objection, cannot complain afterwards. Melvey v Bowman, 169 M 504, 212 NW 194.

When a claim involves but a single item a bill of particulars is not necessary. Jandrich v Svabek, 170 M 24, 211 NW 957.

514.14 POSTPONEMENT, JUDGMENT, SUBROGATION.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 7; G.S. 1866 c. 90 s. 6; 1874 c. 69 s. 2; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 s. 10; G.S. 1894 s. 6238; R.L. 1905 s. 3517; G.S. 1913 s. 7032; G.S. 1923 s. 8503; M.S. 1927 s. 8503.

In an action by a subcontractor to enforce a lien, the original contractor is a necessary party. If he be named in the title as a defendant, but not served, the proper practice is for the court to continue the action until he is brought in. Northwestern v Norwegian, 43 M 449, 45 NW 868; Wheaton v Berg, 50 M 525, 52 NW 926.

One of the appellants was a non-resident defendant in an action to foreclose a mechanic's lien, on whom substituted service only of the summons was made. He omitted to answer within the time prescribed, and applied to the court for leave to answer and defend. The motion was denied. Carlson v Phinney, 56 M 476, 58 NW 38.

The statute authorizes the trial court to allow reasonable costs to the lienholder and in fixing the amount may include reasonable attorney's fees. Schmall v Lucht, 106 M 188, 118 NW 555; Behrens v Kruse, 121 M 90, 140 NW 339.

No prejudice resulted to the owner from an order compelling another lien claimant to intervene after plaintiff's cause was tried and before entry of judgment. Lindquist v Young, 119 M 219, 138 NW 28.

The evidence sustains the holding of the trial court in ordering a lien on the premises. Plaintiff had substantially performed the contract of erecting a barn and house on defendants' land, all except some minor items of less than $25.00 value. Defendants had waived the time limit of the contract. Middelstadt v Kostendick, 144 M 319, 175 NW 553.

Intervenor's claim not barred by a judgment taken by him in conciliation court, as it does not appear that the issues involved in the instant case were determined in that proceeding, and the parties in the two cases were not identical. Bauman v Metzger, 145 M 133, 176 NW 497.

Mechanics' liens, on which redemption from a mortgage foreclosure sale is made, are not thereby merged or extinguished, but the liens survive so far as may be necessary to protect the parties redeeming. The redemption satisfies the debt due the creditor redeeming, only to the extent of the value of the property, less the sum paid to effect redemption. Northland v Northern, 145 M 395, 117 NW 635.

The evidence being conflicting and there being sufficient evidence to sustain the trial court, the supreme court cannot interfere. Lampert v Thanning, 158 M 312, 197 NW 269.

Laws 1939, Chapter 315, providing a lien in favor of the state on any real estate owned by a recipient of old age assistance, which lien is not enforceable during the life time of the recipient nor during the life of the surviving spouse if the property is occupied as a homestead, does not violate the provisions of Minnesota Constitution, Article 1, Section 12, since homestead exemption is a creature of statute. Dimke v Finke, 209 M 29, 295 NW 75. Postponement. Albert v Edgewater, 218 M 20, 15 NW(2d) 462.

514.15 JUDGMENT, SALE, REDEMPTION.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 7; G.S. 1866 c. 90 s. 6; 1874 c. 69 s. 2; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 ss. 10, 13; G.S. 1894 ss. 6238, 6241; R.L. 1905 s. 3518; G.S. 1913 s. 7033; G.S. 1923 s. 8504; M.S. 1927 s. 8504.

The statute gives a right of redemption; it is not in the power of the court to deny it, and it is expressly and repeatedly recognized in the judgment itself. Milner v Norris, 13 M 455 (424).

If the claimant establishes a right of recovery, but is unable to perfect a specific lien, he may, nevertheless, have a personal judgment. Abbott v Nash, 35 M 451, 29 NW 65; Smith v Gill, 37 M 455, 35 NW 178.

Under General Statutes 1878, Chapter 90, there is the same right and precedence of redemption from a sale foreclosing a mechanic's lien as in case of a mortgage foreclosure by action. Bovey v Tucker, 48 M 223, 50 NW 1038.

The district court cannot, under its discretionary powers extend or enlarge the period of time within which real property must be redeemed from a sale made in proceedings to foreclose a mechanic's lien. State v Kerr, 51 M 417, 53 NW 719.

Under the lien laws prior to Laws 1889, Chapter 200, liens took rank in accordance with the first date of their furnishing, but under the 1889 law modifying the doctrine in the Finlayson case, all allowable mechanics' liens are coordinate and receive payment pro rata. Gardner v Leck, 52 M 522, 54 NW 746; Ortonville v Geer, 93 M 501, 101 NW 963.

All mechanics' liens are co-ordinate and without priority among themselves, although they accrued in the performance of separate contracts; the whole improvement being, in its nature, an entirety. Miller v Stoddard, 54 M 486, 56 NW 131; Malmberg v Phinney, 50 M 457, 52 NW 915; Bauman v Metzger, 145 M 133, 176 NW 497.

General Statutes 1878, Chapter 81, adopts the mortgage foreclosure procedure in foreclosing a mechanic's lien, and does not authorize the docketing of a personal judgment against a mortgagor so as to become a lien on other real estate, before the sale of the mortgaged premises and the application of the proceeds upon the debt. Thompson v Dale, 58 M 365, 59 NW 1086.

In order that the subcontractor may acquire a mechanic's lien, it is not necessary that his contract and performance conform in all respects to the contract between the contractor and the owner; and in the instant case the brick furnished by the subcontractor was inferior in quality, the owner has no defense against the lien except such as could have been interposed by the contractor against the claim for personal judgment against him. Wisconsin v Hood, 67 M 329, 69 NW 1091.

A father agreed verbally with his son that he would sell him a certain lot and furnish money to help build a house thereon, the property to be deeded to the son when the father had been repaid. The contractor was paid in full, and failed to pay the subcontractor who brought this action. Held, the son had an equitable interest subject to a lien. Carey v Bierbauer, 76 M 434, 79 NW 541.

In a lien foreclosure perfected by a materialman, the personal representative of the contractor who died before the commencement of the action, is a proper party to the action, and the determination is conclusive upon the estate of the contractor. Shevlin v Taylor, 124 M 132, 144 NW 472.

In the foreclosure of a mechanic's lien, there can be no personal judgment with execution until after the foreclosure sale; the cost of a bond, though requested by the owner, is not a lienable item; the mortgage in the instant case included a quarter section which the owner had homesteaded, and in the judgment, the court found that in certain contingencies, the contractor should be subrogated to the mortgage. It is held that that subrogation included all of the land covered by the mortgage, including the quarter section. Baxter v Ornes, 130 M 214, 153 NW 595.

Mechanics' liens, on which redemption from a mortgage foreclosure sale is made, are not thereby merged or extinguished, but the liens survive so far as may be necessary to protect the parties redeeming. Northland v Northern, 145 M 395, 177 NW 636.

The time to redeem from a foreclosure sale under a mechanic's lien dates from the confirmation of the sale and not from the day of sale. Salmon v Central, 157 M 369, 196 NW 468.

Materials were furnished to a contractor who was erecting a building on land on which the owner's interest was that of a ten-year leasehold. It was held that the leasehold was subject to the lien and as such takes precedence over certain chattel mortgages. Moorhead v Remington, 165 M 411, 206 NW 653.

Either life tenant or remainderman may buy an encumbrance or title paramount to interests of both, but neither can acquire and hold as against other title based on his own default. In the instant case, a mechanic's lien, charged against both life estate and remainder, was foreclosed. Neither tenant nor remainderman redeemed, but two of the remaindermen gave a sham mortgage to a third person to enable him to redeem as a junior lienholder. Held, to be in effect a redemption by owners, in effect annulling the mortgage sale and reinstating the former estates, both for life and in remainder. Hall v Hall, 173 M 128, 216 NW 798.

A mechanic's lien, the title of which has been registered under the Torrens act, filed with the registrar, and duly foreclosed without making parties in possession defendants, said parties holding under an unrecorded conveyance passes an indefeasible title in fee to the party who, after expiration of the time for redemption, obtains by order of court a new certificate. Douglas v Sundman, 174 M 22, 218 NW 246.

Where suit on mechanic's lien claim is brought in the name of two partners, and it develops that one has assigned all his interest in the claim to his co-partner, the court may properly decree foreclosure in behalf of the assignee. Blatterman v Cities Service, 188 M 95, 246 NW 532.

Judgment in a lien action need not specifically provide for a deficiency judgment in order to authorize later entry. Lien claimants may at any time waive lien rights and recover a personal judgment. Smude v Amidon, 214 M 266, 7 NW(2d) 776.

514.16 SEVERANCE OF BUILDING, RE-SALE, RECEIVER.

HISTORY. 1849 c. 70 s. 6; R.S. 1851 c. 97 s. 2; 1858 c. 54 s. 6; P.S. 1858 c. 86 s. 7; G.S. 1866 c. 90 s. 6; 1874 c. 69 s. 2; G.S. 1878 c. 90 ss. 6, 7; 1889 c. 200 ss. 10, 13; G.S. 1894 ss. 6238, 6241; R.L. 1905 s. 3519; G.S. 1913 s. 7034; G.S. 1923 s. 8505; M.S. 1927 s. 8505.

A receiver may be appointed in an action to foreclose a mechanic's lien, providing there is a sufficient showing that it is necessary to the protection or preservation of the property. In the instant case, the showing was insufficient. Northland v Melin Bros. 136 M 236, 161 NW 408; Dezurik v Iblings, 139 M 480, 167 NW 116.

A sale made by a receiver is a judicial sale. In the absence of a special statute regulating sales, the time, manner, terms of sale and notice thereof are matters determined solely by the court having jurisdiction over the proceedings and control of the property. Northland v Northern, 145 M 395, 177 NW 635; Illinois v Hennepin, 149 M 157, 182 NW 994.

514.17 MINERS.

HISTORY. 1897 c. 350; 1903 c. 338; R.L. 1905 s. 3520; G.S. 1913 s. 7035; G.S. 1923 s. 8506; M.S. 1927 s. 8506.

Mechanics' liens are created by statute and exist only to the extent given by statute. The act of 1897, as amended by the act of 1903, confined liens for services and material furnished a lessee in opening and operating a mine to the interest of the lessee therein, and do not apply to the interest of the owner. Olson v Oneida, 153 M 80, 189 NW 455.

PERSONALTY IN POSSESSION

514.18 FOR KEEPING, REPAIRING.

HISTORY. R.S. 1851 c. 97 ss. 9, 10; 1855 c. 16 ss. 21, 22; P.S. 1858 c. 86 ss. 9, 10; G.S. 1866 c. 90 ss. 16, 17; G.S. 1878 c. 90 ss. 16, 17; 1885 c. 81; 1889 c. 199 ss. 1, 2; G.S. 1894 ss. 6247, 6248; 1905 c. 328 s. 1; R.L. 1905 s. 3521; 1907 c. 114 s. 1; G.S. 1913 s. 7036; G.S. 1923 s. 8507; M.S. 1927 s. 8507.

The lien given by General Statutes 1878, Chapter 90, Section 17, as amended by Laws 1885, Chapter 81, depends on possession of the property, so that if the party entitled to the lien, voluntarily, and without reservation, delivers the property to the owner, his lien is gone. Ferriss v Schreiner, 43 M 148, 44 NW 1083; Stebbins v Balfour, 157 M 135, 195 NW 773.

Where a laborer polished granite for a contractor, he was entitled to a mechanic's lien, as against the banking premises where the columns were used even if he did not know at the time of delivery on what premises the columns were to be used. Emery v Hertig, 60 M 54, 61 NW 830.

Plaintiff brought replevin proceedings in justice court as owner of two buggies. Defendant claims a lien for work done on the property as a subcontractor under Clark. Held, the defendant may be entitled to right of possession by virtue of a lien, but it is incumbent on him to prove facts and the amount. Shearer v Gunderson, 60 M 525, 63 NW 103.

Plaintiff purchased timber from McKinley in the possession of defendant who claimed a lien thereon for driving the logs down the river, taking from the river, and otherwise preparing for market. Held, the enforcement of a possessory lien under the provisions of Revised Laws 1905, as amended by Laws 1907, Chapter 114, is a cumulative remedy, not inconsistent with the log lien statute. Revised Laws, Section 3524. Itasca v Brainerd, 109 M 120, 123 NW 58.

By Laws 1905, Chapter 328, as amended by Laws 1907, Chapter 114, giving a lien on personal property transported and stored at the request of the owner or legal possesor thereof, it was intended that one serving at the request of a chattel mortgagor in legal possession should have a lien superior to the interest of the chattel mortgagee. Monthly Instalment v Skellet, 124 M 144, 144 NW 750.

An operator of cinema abandoned his business and disappeared. The landlord in leasing the premises to another, found it necessary to store the moving picture outfit in another building. Held, that one who keeps or stores personal property at the request of the owner or legal possesor, is given a lien by statute for the value of the storage; the lien is not lost by reason of an excessive claim; and where an action is tried in replevin, plaintiff is not in a position to claim a judgment as in conversion. Grice v Berkner, 148 M 64, 180 NW 923.

One who "fabricates" the material delivered to premises where a building is being constructed is a subcontractor and not a merchant, and is entitled to a mechanic's lien. Illinois v Hennepin, 149 M 157, 182 NW 994.

Plaintiff is a potato buyer. Defendant is the owner of potato warehouses, and leased one of the warehouses to plaintiff, and was in turn employed by plaintiff to act as his agent in buying. A difference having arisen, defendant refused to allow shipment from the warehouse until his wages were paid, and plaintiff brings replevin. Defendant claims a possesory lien. The facts clearly bring defendant within the statute and he has no lien thereunder. In common law, a claimant must have exclusive possession; it must be rightful and not through breach of duty; he must bring himself within the rule affecting bailees. One who is simply an employee, as in this case, has no lien as his possession is deemed that of his employer. Varley v Oberg, 153 M 113, 189 NW 450.

Section 514.18 is not superseded or rendered inapplicable as to work done on motor vehicles by the later motor lien statute, section 514.35. The lien given by section 514.18 is intended to be superior to the lien of a prior chattel mortgage, and as so construed the statute is constitutional. Stebbins v Balfour, 157 M 135, 195 NW 773.

One who furnishes labor and material in the repair of an auto at the instance of the conditional vendee in possession has a lien under section 514.18 prior to the right of the conditional vendor; but his lien is lost by surrender of possession. He has a lien under sections 514.35 to 514.39, but no priority over the conditional vendor, for the statute gives none. Sundin v Swanson, 177 M 217, 225 NW 15.

Defendant was convicted of unlawfully depriving a horse of necessary food by reason of which the horse died. During the time in which the horse was starved to death, defendant was holding possession thereof, under a claim of lien thereon, as security for the payment of agreed pasture rental, and was answerable for the horse's starvation. State v John Maguire, 188 M 627, 248 NW 216.

Jansa had legal possession of goods under a conditional sales contract from plaintiff. He stored them in Coggins' warehouse. He had a key to the warehouse and removed goods as sold, replacing with similar goods. Held, as the goods were stored in a warehouse owned and controlled by Coggins, he has a possessory lien. Case v Jansa, 190 M 518, 252 NW 436.

The motor vehicle lien given by sections 514.35 to 514.39, and following by analogy Stebbins v Balfour, attaches to the vehicle when the storage is furnished and the repairs are made, and is superior to the title of a subsequent bona fide purchaser who, without notice or knowledge of the lien, buys before the lien is filed. Pratt v Armstrong, 192 M 14, 255 NW 91.

Defendant's husband took her fur coat to a furrier to be repaired, using an assumed name. Later, after the coat was repaired, the furrier offered to return it on payment of $50.00 agreed upon as the price. She obtained possession by a fraudulent subterfuge and in order to avoid paying the $50.00. She was found guilty of larceny from the bailee, and the conviction was sustained. State v Cohen, 196 M 39, 263 NW 922.

A possessory lien for repair of a car under section 514.18, is lost if possession is resumed by the owner. Bongard v Nellen, 210 M 392, 298 NW 569.

Liens on cars picked up by police and stored in garage. 1920 OAG 723, Dec. 2, 1937 (632a).

Garage keeper's lien; superiority of lien based on possession based on chattel mortgage. 8 MLR 160.

Motor vehicle lien. 14 MLR 779.

514.19 FOR WHAT GIVEN.

HISTORY. R.S. 1851 c. 97 ss. 9, 10; 1855 c. 16 ss. 21, 22; P.S. 1858 c. 86 ss. 9, 10; G.S. 1866 c. 90 ss. 16, 17; G.S. 1878 c. 90 ss. 16, 17; 1885 c. 81; 1889 c. 199 ss. 1, 2, 3; G.S. 1894 ss. 6247, 6248, 6249; 1905 c. 328 s. 2; R.L. 1905 s. 3522; 1907 c. 114 s. 2; G.S. 1913 s. 7037; G.S. 1923 s. 8508; M.S. 1927 s. 8508.

The lien given by statute depends on the possession of the horses and equipment so that if the party entitled to a lien, voluntarily delivers the property to the owner, his lien is gone. Ferries v Schreiner, 43 M 148, 44 NW 1083.

Articles were deposited by plaintiff with defendant for storage, the charge to be $2.00 per month. When storage was three months in arrears, the defendant advertised and sold the goods. The amount received was more than enough to pay the charges overdue and expenses. In an action in conversion it is held that the right of sale ceased as soon as the sale had produced enough to satisfy the charges; that defendant being unable to show what articles were sold before the right to sell ceased is liable for the value of all. One who wrongfully took and carried away a chiffonier in which were locked articles, is liable in conversion for their value. Jesurun v Kent, 45 M 222, 47 NW 784.

The polishing of granite columns for use in a building, even at the time the work was done, the polisher did not know in which building it would be used, is basis for a mechanic's lien, rather than a possessory lien. Emery v Hertig, 60 M 54, 61 NW 830.

The owner of a horse bailed it to the keeper of a boarding stable, but hired the defendant as a groom to take care of it. Held, that it is the keeper who has a lien, and the groom being a servant only would have no possessory lien. Skinner v Caughey, 64 M 375, 67 NW 203.

The lien of a boarding stable keper for his charges is acquired solely by virtue of General Statutes 1894, Section 6249, and by the terms of Section 6250 is expressly made subordinate to the lien of a previously executed and properly filed chattel mortgage. Petzenka v Dallimore, 64 M 472, 67 NW 365.

Where a horse exempt from sale on execution is placed with a boarding stable, the horse becomes subject to a lien, as provided by statute. The statute is not unconstitutional as to exempt property. Flint v Luhrs, 66 M 57, 68 NW 514.

The statute gives a lien to one who transfers and stores personal property at the request of the legal possessor thereof, and may hold possession until his charges are paid as against the chattel mortgagee. Monthly Instalment v Skellet, 124 M 144, 144 NW 750.

A judicial sale of property, unless made for such a grossly inadequate price as to raise an inference of unfairness, fraud or mistake, will not be set aside on the ground of inadequacy of purchase price. Northland v Northern, 145 M 395, 177 NW 635.

At common law, one must be in the business of storing goods in order to have a possessory lien, but our statute gives any person who stores goods at the request of the legal possessor a lien for the value of the storage, and where the operation of a moving picture house departed for some place unknown, his act will be deemed an implied request to store and keep the equipment and he may charge therefor. Grice v Berkner, 148 M 64, 180 NW 923.

One who "fabricates" material which is furnished to a contractor for the purpose of using the steel in a building, has a mechanic's lien. Illinois v Hennepin, 149 M 157, 182 NW 994.

The plaintiff leased a warehouse, and employed the owner of the property to buy potatoes at a stated salary. The owner defendant claimed possession of the goods and a lien thereon. Held, the possession was that of the plaintiff lessee, and defendant has no lien. Varley v Oberg, 153 M 113, 189 NW 451.

The possesory lien given by section 514.18 is not superseded by a lien given by a later motor lien act, sections 514.35 to 514.39. Stebbins v Balfour, 157 M 135, 195 NW 773; Pratt v Armstrong, 192 M 14, 255 NW 91.

One who furnishes labor or material in the repair of a car at the instance of a vendee in possession, has a lien prior to the right of the conditional vendor. The lien is lost by surrender of possesison. He may also have a lien under sections 514.35 to 514.39, but that statute gives no priority over the conditional vendor. Sundin v Swanson, 177 M 217, 225 NW 15.

Defendant was in possesion of a horse as bailee and on nonpayment by owner ceased feeding the horse which died. Held, the evidence is sufficient on which to base a conviction and penalty. State v Maguire, 188 M 627, 248 NW 216.

The evidence sustains the verdict that defendant Coggins had a lien under sections 514.18 and 514.19 for storage, and the facts do not require a finding that the storage charges involved were incurred in reliance on a personal credit extended to another, and not based on possession of the goods. Case v Jansa, 190 M 518, 252 NW 436.

Fraudulent obtaining possession by a bailor from the bailee for the purpose of avoiding the payment of charges held to be larceny. State v Cohen, 196 M 39, 263 NW 922.

Garage keeper's lien and motor vehicle lien. 8 MLR 160; 14 MLR 779.

514.20 SALE.

HISTORY. R.S. 1851 c. 97 s. 9; 1855 c. 16 s. 21; P.S. 1858 c. 90 s. 9; G.S. 1866 c. 90 s. 16; G.S. 1878 c. 90 s. 16; 1885 c. 81; 1889 c. 199 s. 1; G.S. 1894 s. 6247; 1905 c. 328 s. 3; R.L. 1905 s. 3523; 1907 c. 114 s. 3; G.S. 1913 s. 7038; G.S. 1923 s. 8509; M.S. 1927 s. 8509.

The right to sell ceased as soon as sufficient had been obtained to pay the charges. The burden was on the defendant to show what articles were sold before the right to sell ceased, and being unable to so show is held in conversion for the value of all. Jesurun v Kent, 45 M 222, 47 NW 784.

A court is justified in refusing to set aside a receiver's sale on the ground that the property was sold enmasse, or for an inadequate price, in the absence of a showing of fraud, prejudice or injustice. Northland v Northern, 145 M 395, 177 NW 635.

514.21 SALE, WHEN AND WHERE MADE; NOTICE.

HISTORY. 1905 c. 328 s. 4; 1907 c. 114 s. 4; G.S. 1913 s. 7039; G.S. 1923 s. 8510; M.S. 1927 s. 8510.

514.22 CONDUCT OF SALE.

HISTORY. 1905 c. 328 s. 5; G.S. 1913 s. 7040; G.S. 1923 s. 8511; M.S. 1927 s. 8511.

SHOEING ANIMALS

514.23 TO WHOM GIVEN, AGAINST WHOM.

HISTORY. 1907 c. 47 s. 1; G.S. 1913 s. 7041; G.S. 1923 s. 8512; M.S. 1927 s. 8512.

514.24 STATEMENT AND NOTICE, WHEN AND WHERE FILED.

HISTORY. 1907 c. 47 s. 2; G.S. 1913 s. 7042; G.S. 1923 s. 8513; M.S. 1927 s. 8513.

514.25 CONTENTS OF STATEMENT.

HISTORY. 1907 c. 47 s. 3; G.S. 1913 s. 7043; G.S. 1923 s. 8514; M.S. 1927 s. 8514.

514.26 SUCCESSIVE LIENS.

HISTORY. 1907 c. 47 s. 4; G.S. 1913 s. 7044; G.S. 1923 s. 8515; M.S. 1927 s. 8515.

514.27 DUTY OF CLERK; FEES.

HISTORY. 1907 c. 47 s. 5; G.S. 1913 s. 7045; G.S. 1923 s. 8516; M.S. 1927 s. 8516.

514.28 CERTIFIED COPY; EVIDENCE.

HISTORY. 1907 c. 47 s. 6; G.S. 1913 s. 7046; G.S. 1923 s. 8517; M.S. 1927 s. 8517.

514.29 ACTION TO ENFORCE; NOTICE.

HISTORY. 1907 c. 47 s. 7; G.S. 1913 s. 7047; G.S. 1923 s. 8518; M.S. 1927 s. 8518.

514.30 PERSONAL SERVICE.

HISTORY. 1907 c. 47 s. 8; G.S. 1913 s. 7048; G.S. 1923 s. 8519; M.S. 1927 s. 8519.

514.31 DEFENDANT NOT FOUND.

HISTORY. 1907 c. 47 s. 9; G.S. 1913 s. 7049; G.S. 1923 s. 8520; M.S. 1927 s. 8520.

514.32 EXECUTION AND SALE.

HISTORY. 1907 c. 47 s. 10; G.S. 1913 s. 7050; G.S. 1923 s. 8521; M.S. 1927 s. 8521.

514.33 EXPENSES.

HISTORY. 1907 c. 47 s. 11; G.S. 1913 s. 7051; G.S. 1923 s. 8522; M.S. 1927 s. 8522.

514.34 FINDINGS; JUDGMENT.

HISTORY. 1907 c. 47 s. 12; G.S. 1913 s. 7052; G.S. 1923 s. 8523; M.S. 1927 s. 8523.

ON MOTOR VEHICLES

514.35 TO WHOM AND FOR WHAT GIVEN.

HISTORY. 1911 c. 320 s. 1; G.S. 1913 s. 7053; G.S. 1923 s. 8524; 1925 c. 352 s. 1; M.S. 1927 s. 8524.

Where, upon different dates and as separate transactions, labor or material is furnished for the repair of a motor vehicle, a single lien statement may be filed therefor, provided the item first furnished was so furnished within 60 days of the date of filing the statement. Reed v Horton, 135 M 17, 159 NW 1080.

Section 514.18, a possessory lien, analogous to the common law, is not superseded or rendered inapplicable by the later motor vehicle lien statute, sections 514.35 to 514.39. Stebbins v Balfour, 157 M 135, 195 NW 773.

Where the mechanic repairs an auto at the instance of the conditional vendee he has a possessory lien as long as he holds possession and his right is superior to that of the conditional vendor. His possesory lien is lost by surrender of possession. He also has a lien under sections 514.35 to 514.39, but that statute does not create a priority over the conditional vendor. Sundin v Swanson, 177 M 217, 225 NW 15; Bongard v Nellen, 210 M 392, 298 NW 569.

The motor vehicle lien given by sections 514.35 to 514.39 attaches to the vehicle when the storage is furnished and repairs made, and is superior to the title of a subsequent bona fide purchaser who, without notice or knowledge of the lien, buys before the lien is filed. Pratt v Armstrong, 192 M 14, 255 NW 91; Conner v Caldwell, 208 M 502, 294 NW 650.

Where the claimant furnished eight tires to a taxicab company which was later adjudicated bankrupt, and a lien statement was duly filed; the claimant would not have priority over the trustee unless at the time of selling the cars, they were furnished for particular cars. Re McAllister-Newgard Co. 193 F 265.

Rights of an innocent purchaser under the motor vehicle lien statute. 14 MLR 779.

Priority of lien as against title of subsequent bona fide purchaser. 19 MLR 469.

514.36 STATEMENT OF CLAIM FOR LIEN; CONTENTS; FILING.

HISTORY. 1911 c. 320 s. 2; G.S. 1913 s. 7054; G.S. 1923 s. 8525; 1925 c. 352 s. 2; M.S. 1927 s. 8525.

Except in cities of the first class, the statute requires the filing of statements of liens on motor vehicles with the register of deeds of the county where the

property is situated, and if the storage has been continuous, it is not an objection to such lien that the statement includes monthly storage charges for a period, the last month of which expired more than 60 days before the filing of the lien statement. Snyder v Boyle, 162 M 261, 202 NW 481.

A motor vehicle lien perfected by filing a statement thereof within 60 days from the date of furnishing the last item is superior to the title acquired by an execution sale upon a levy made before the filing of the lien statement, but after the furnishing of the labor or material for which the lien is claimed. Stegmeir v Lannon, 184 M 194, 238 NW 328.

The question of the respective rights of a lienor who has obtained a judgment for the foreclosure of a motor vehicle lien under sections 514.35 to 514.39, and a subsequent bona fide chattel mortgagee purchasing at the foreclosure sale under his mortgage does not by a sale to a third party of the car, which is subject to the lien and chattel mortgage, become moot so as to abate an action by the lienor for a declaratory judgment concerning the rights of the parties. Conner v Caldwell, 208 M 502, 294 NW 650.

The statute does not require that the lien stated be recorded at length by the register. All that is required is that the statement be filed in the office of the register and properly indexed so that it can be found when necessity arises for its examination. 1926 OAG 88, Nov. 27, 1925.

Garage keepers' statutory liens. 6 MLR 239; 8 MLR 160.

Status of lien as against the rights of a trustee in bankruptcy. 9 MLR 59.

Rights of an innocent purchaser under the motor vehicle statute. 14 MLR 779.

514.37 FORECLOSURE OF LIEN; SUMMONS AND NOTICE; REPLEVIN OF VEHICLE; JUDGMENT; SEIZURE AND SALE OF VEHICLE; COSTS.

HISTORY. 1911 c. 320 s. 3; G.S. 1913 s. 7055; G.S. 1923 s. 8526; 1925 c. 352 s. 3; M.S. 1927 s. 8526.

The holder of a lien on a motor vehicle perfected under section 514.37 is not entitled to possession until "the comencement of the action to foreclose;" and where the machine has been converted by the claimant, his lien is not a defense of trover without proof of the commencement of an action to foreclose. Hediger v Zastrow, 174 M 11, 218 NW 172.

A motor vehicle lien fully perfected is superior to the title acquired through an execution sale upon a levy made before the filing of the lien statement, but after the furnishing of the labor or material for which the lien is claimed. Stegmeir v Lannon, 184 M 194, 238 NW 328.

The motor vehicle lien given by statute attaches to the vehicle when the storage is furnished and the repairs are made, and is superior to the title of a subsequent bona fide purchaser who, without notice or knowledge of the lien, buys before the lien is filed. Pratt v Armstrong, 192 M 14, 255 NW 91; Conner v Caldwell, 208 M 502, 294 NW 650.

A garage man is by statute authorized to foreclose his lien and institute replevin in connection therewith. Ahlers v Jones, 193 M 544, 259 NW 397.

Motor vehicle lien; priority of a conditional vendor's recorded title. 14 MLR 779.

514.38 SHERIFF TO SERVE COPY OF NOTICE OF SALE.

HISTORY. 1911 c. 320 s. 4; G.S. 1913 s. 7056; G.S. 1923 s. 8527; 1925 c. 352 s. 4; M.S. 1927 s. 8527; 1929 c. 302 s. 1.

514.39 MOTOR VEHICLE AND OWNER.

HISTORY. 1911 c. 320 s. 5; G.S. 1913 s. 7057; G.S. 1923 s. 8528; 1925 c. 322 s. 5; M.S. 1927 s. 8528.

The term "owner" includes the conditional vendee or mortgagor in possession. Sundin v Swanson, 177 M 218, 225 NW 15.

Distinguishing from Sundin v Swanson. Stegmeir v Lannon, 184 M 194, 238 NW 328.

Motor vehicle accident compensation act. 4 MLR 1.

Garage keeper's statutory lien. 6 MLR 235.

ON LOGS AND TIMBER

514.40 TO WHOM AND FOR WHAT GIVEN.

HISTORY. R.S. 1851 c. 97; P.S. 1858 c. 86 s. 32; 1860 c. 19; G.S. 1866 c. 32 s. 29; 1876 c. 89 s. 1; 1878 c. 4 s. 1; G.S. 1878 c. 32 ss. 36, 63; 1885 c. 86; G.S. 1894 ss. 2434, 2451; 1899 c. 342 ss. 1, 18; R.L. 1905 s. 3524; G.S. 1913 s. 7058; G.S. 1923 s. 8529; M.S. 1927 s. 8529.

Where the whole of the services was under the terms of one contract in getting out a single lot of logs, using, however, two different log marks denoting quality, the laborer may enforce his lien for the entire service on that part bearing one of said marks. Hire of horses may be included. Martin v Wakefield, 42 M 176, 43 NW 966.

The log lien law of 1876 is not unconstitutional. This action brought in Hennepin county, where was located the surveyor's office, and the place where the log marks were recorded. The writ run to the sheriff of Aitkin county where the logs were located, and where the sheriff made his constructive seizure. Held, proceedings were legal and valid. Foley v Markham, 60 M 216, 62 NW 125; Brown v Markham, 60 M 233, 62 NW 123.

Th log lien law of 1876 should be liberally construed and includes the services of cooks, blacksmiths, teams, and servants of all kinds, and of contractors and subcontractors contributing to getting out the timber. Breault v Archambault, 64 M 420, 67 NW 348; Carver v Bagley, 79 M 114, 81 NW 957; Messerall v Dreyer, 152 M 471, 189 NW 446.

In an action to foreclose a laborer's lien claimed under Laws 1899, Chapter 342, for labor, cutting and banking logs on the White Earth Indian Reservation under a contract with the general government. Held, that at the time the work was done, title was in the general government, and no lien could attach. No lien could attach in the hands of one who purchased from the government. Rowley v Conklin, 89 M 172, 94 NW 548.

The enforcement of the mechanic's lien law is not in conflict with the law relating to logging liens. Breckke v Duluth, 101 M 110, 111 NW 949.

The enforcement of a possessory lien is a cumulative remedy, not inconsistent with the log lien statute. Itasca v Brainerd, 109 M 120, 123 NW 58.

Where a man and his team or teams is employed and contribute to getting out the timber under the doctrine laid down in Martin v Wakefield, 42 M 176, 43 NW 966, a lien may be perfected, but not so where the lien statement only covers compensation for the rental of the horses. McKinnon v Red River, 119 M 479, 138 NW 781; Kenney v. Duluth, 128 M 5, 150 NW 216.

There being no showing of a demand for payment or completion of the work or discharge by employees' act, the lien is fatally defective under the lien statute. The dates prescribed in the statute dividing the year into two times for filing, must be strictly adhered to. Kenny v Duluth, 128 M 5, 150 NW 216.

The enactment of Laws 1905, Chapter 305, did not repeal or modify the existing lien law relating to giving notice of assignment of wages for labor on timber products. An endorsement in blank of a time check is an assignment in writing under the act. When product is not marked by registered marks, it is sufficient to attach the original assignments to the statement filed with the surveyor, and copies with the clerk of the district court. Sheldon v Padgett, 144 M 141, 174 NW 827.

The lien statement need only follow the statute. Messerall v Dreyer, 152 M 471, 189 NW 446.

Statutory liens have, without possession, the same operation and efficacy that existed in common law liens where the possession was delivered. Pratt v Armstrong, 192 M 17, 255 NW 92; In re McAllister-Newgard Co. Bankrupt, 193 F 265.

514.41 LIEN STATEMENT; FILING; ASSIGNMENT OF LIEN.

HISTORY. 1899 c. 342 ss. 2, 16; 1901 c. 293; R.L. 1905 s. 3525; G.S. 1913 s. 7059; G.S. 1923 s. 8530; M.S. 1927 s. 8530.

The statement required under General Statutes 1878, Chapter 32, Section 64, to preserve a lien on logs, if not made by claimant, must be made by someone with authority from him to make it, and the oath should state the authority. The lien cannot be enforced unless filed of record in the surveyor's office, and the logs attached. Griffin v Chadbourne, 32 M 126, 19 NW 647.

The lien claimant is entitled to a foreclosure only to the extent of the indebtedness specified in the lien statement, but it is not necessary that the writ of attachment contain a description of the logs to be attached. Carver v Bagley, 79 M 114, 81 NW 757.

In a dispute as to in which lumber district the lien statement should be filed, the courts take judicial notice of the general topography of the state, and its rivers, source, course, and outlet, but not of the precise point of water parting between one drainage area and another; a third party, for whose benefit a contract is made, has a right of action on it, if there be a duty or obligation to him or he is connected with the consideration or has an interest or claim. Gaffney v Sederberg, 114 M 319, 131 NW 333.

The endorsement in blank of a time check and delivery thereof is an assignment in writing as required by statute. It is not essential that the lien statement be verified by oath of a person having personal knowledge of the facts. Small v Smith, 120 M 118, 139 NW 133; Sheldon v Padgett, 144 M 141, 174 NW 827.

The work having been done between Oct. 1 and March 31 of the following year, the claimant had all of April within which to file his lien statement. The filing by the laborer and the subsequent assignment after filing to plaintiff, was sufficient to validate the proceedings. Horgan v Duluth, 120 M 244, 139 NW 491; Kenny v Duluth, 128 M 5, 150 NW 216.

In compliance with the provision of the lien law amendement of 1899, a filing with the clerk of the district court should be made in a manner similar to a filing with the register of deeds under a similar law. 1934 OAG 174, May 19, 1934 (429h).

514.42 TERMINATION OF LIEN.

HISTORY. 1899 c. 342 s. 2; R.L. 1905 s. 3526; G.S. 1913 s. 7060; G.S. 1923 s. 8531; M.S. 1927 s. 8531.

Attachment proceedings for the enforcement of a lien on logs and timber is a provisional remedy, and the issuance of the writ is not jurisdictional. It may issue at the time of issuing the summons, or at any time thereafter within 90 days from the time of filing the lien. Breckke v Duluth, 101 M 110, 111 NW 949; Small v Smith, 120 M 118, 139 NW 133; Kenny v Duluth, 128 M 5, 150 NW 216; Sheldon v Padgett, 144 M 141, 174 NW 827.

514.43 ACTION; ATTACHMENT.

HISTORY. 1899 c. 342 ss. 4, 8; R.L. 1905 s. 3527; G.S. 1913 s. 7061; G.S. 1923 s. 8532; M.S. 1927 s. 8532.

If an assignment of a lien on logs is not filed for record in the surveyor general's office, the assignee cannot proceed to enforce the lien. The lien cannot be enforced unless the logs are attached. Griffin v Chadbourne, 32 M 126, 19 NW 647.

An action started in Hennepin county, and the seizure in Aitkin county was a legal and valid compliance with the statute. Foley v Markham, 60 M 216, 62 NW 125.

Liens were regularly filed, and an action commenced in the district court and carried to judgment allowing a lien on the logs. Defendant took and marketed the logs, and defends this action on the ground that it is an action in conversion, and plaintiff was never in possession of the logs. Held, plaintiff had a statutory lien on the logs. The seizure of them by the sheriff was not the inception of the lien, but merely a step to continue it in force, and plaintiff had a right to maintain an action on the case for damages depriving him of that lien even though he was not entitled to possession. Breault v Merrill, 72 M 143, 75 NW 122.

The remedy is provisional, and issuance of the writ is not jurisdictional. It may be issued with the summons or at any time thereafter within the statutory 90 days. It is governed as to time of issuance by section 570.01 except as modified by section 514.42. Breckke v Duluth, 101 M 110, 111 NW 949.

514.44 ALLOWANCE AND ISSUE OF WRIT.

HISTORY. 1899 c. 342 s. 5; R.L. 1905 s. 3528; G.S. 1913 s. 7062; G.S. 1923 s. 8533; M.S. 1927 s. 8533.

514.45 CONTENTS AND LEVY OF WRIT.

HISTORY. 1899 c. 342 s. 6; R.L. 1905 s. 3529; G.S. 1913 s. 7063; G.S. 1923 s. 8534; M.S. 1927 s. 8534.

The writ issued to the sheriff contained all that was required by statute; the return was endorsed thereon by the sheriff, a copy being filed, also contained all required by statute, but the sheriff certified he had attached all of the right, title and interest of the defendant in the logs. Held, the irregularity may be disregarded, and the court has jurisdiction. Brown v Markham, 60 M 233, 62 NW 123.

The return should show everything necessary to constitute a valid levy; and where the officer made a return that he had servd a copy of the writ and inventory upon the surveyor general, the return was insufficient in that it did not show such copy was filed. Scott v Sharvy, 62 M 528, 64 NW 1132.

It is not necessary that the writ contain a description of the logs to be attached. Carver v Bagley, 79 M 114, 81 NW 757.

The sheriff's return described the property levied upon but did not state the number of feet attached. Held, that a statement of the number of logs with their marks, and a return that he had levied on "all the right, title, and interest" is sufficient. Smith v Duluth, 118 M 432, 137 NW 6.

514.46 LOGS SCALED TO OFFICER; WHERE HELD; FEES.

HISTORY. 1899 c. 342 ss. 7, 11; R.L. 1905 s. 3530; G.S. 1913 s. 7064; G.S. 1923 s. 8535; M.S. 1927 s. 8535.

514.47 PLEADINGS; PRIORITY OF LIENS.

HISTORY. 1899 c. 342 ss. 7, 14; R.L. 1905 s. 3531; G.S. 1913 s. 7065; G.S. 1923 s. 8536; M.S. 1927 s. 8536.

514.48 DISCHARGE OF ATTACHMENT; BOND.

HISTORY. 1899 c. 342 s. 8; R.L. 1905 s. 3532; G.S. 1913 s. 7066; G.S. 1923 s. 8537; M.S. 1927 s. 8537.

514.49 FINDINGS, JUDGMENT, COSTS.

HISTORY. 1899 c. 342 s. 17; R.L. 1905 s. 3533; G.S. 1913 s. 7067; G.S. 1923 s. 8538; M.S. 1927 s. 8538.

A judgment for the plaintiff does not preclude the owner of the logs from denying the right of the plaintiff to a lien upon them in an action brought to recover the logs, or their value. In such action the judgment in the original proceedings to establish the lien, must be held valid unless the contrary affirmatively appears. Brown v Markham, 60 M 233, 62 NW 123.

It is not the duty of the appellate court to demonstrate by a review and discussion of the evidence returned on appeal the absolute correctness of the findings made by the trial court. Such appellate court will fully consider such evidence, but so far only as is necessary to determine beyond question that it reasonably tends to support the findings. Carver v Bagley, 79 M 114, 81 NW 757.

In an action to enforce a lien for wages for labor upon timber products, claimant is, under the provisions of section 514.49, entitled to recover $10.00 statutory costs, and in addition thereto $20.00 attorney's fees. Sheldon v Padgett, 144 M 141, 174 NW 827.

514.50 EXECUTION SALE.

HISTORY. 1899 c. 342 s. 10; R.L. 1905 s. 3534; G.S. 1913 s. 7068; G.S. 1923 s. 8539; M.S. 1927 s. 8539.

514.51 OBSTRUCTING OR INTERMIXED LOGS.

HISTORY. 1866 c. 35 ss. 1, 2; G.S. 1878 c. 32 ss. 78, 79; G.S. 1894 ss. 2466, 2467; R.L. 1905 s. 3535; G.S. 1913 s. 7069; G.S. 1923 s. 8540; M.S. 1927 s. 8540.

If the logs of A are in the way of the logs of B so that B cannot drive his until A's are gotten out of th eway, B is hindered or obstructed within the meaning of the statute. To constitute such obstruction, there need be no actual contact. Anderson v Maloy, 32 M 76, 19 NW 387.

Compensation allowed by statute is to be measured by the value of the labor performed in driving the logs of the defendant, and not by the value or extent of the benefit conferred. The existence of a custom cannot affect the statutory right of compensation, and is no defense to an action to recover. Anderson v Maloy, 32 M 76, 19 NW 387; Osborne v Nelson, 33 M 285, 22 NW 540; Chesley v De Graff, 35 M 415, 29 NW 167; Backus v Scanlon, 78 M 438, 81 NW 216.

A claim by the plaintiff for driving logs for another, hindering the passage of his own logs, is not affected by the fact that at the time the stream had not, in its natural state, sufficient water to float logs, and to float them it was necessary to let into the stream water accumulated in artificial dams. Merriman v Bowen, 33 M 455, 23 NW 843; Beard v Clarke, 35 M 324, 29 NW 142; Backus v Scanlon, 78 M 438, 81 NW 216.

The statute should receive a liberal interpretation. Merriman v Bowen, 33 M 455, 23 NW 843; Backus v Scanlon, 78 M 438, 81 NW 216.

The right of compensation is not limited to cases where it results from wrongful acts of the defendant, but may arise where the logs are commingled by consent, or under a driving contract the performance having been abandoned. Walker v Bean, 34 M 427, 26 NW 232; Beard v Clarke, 35 M 324, 29 NW 142.

A person who assumes to drive logs of another, under the statute, is bound to exercise good faith, ordinary care, and reasonable skill and judgment in selecting the time and manner of making the drive. Beard v Clarke, 35 M 324, 29 NW 142; Boyle v Musser, 77 M 153, 79 NW 664.

Where logs are so intermingled with those of other owners that they cannot be conveniently separated until they reach a particular place, such other owners may drive them to such place, even if such logs were required by the owner to be left at an intermediate point. Chesley v DeGraff, 35 M 415, 29 NW 167.

A person in order to have the benefit of the statute must actually drive the logs. It is not enough that he merely gets them out of his way. Miller v Chatterton, 46 M 338, 48 NW 1109.

The statute does not take away the common law right of action for injuries caused by obstructing a stream. Miller v Chatterton, 46 M 338, 48 NW 1109.

The provisions in the statute for filing in the surveyor's office a statement of a claim for driving the logs of another intermingled with those of the plaintiff, have reference only to enforcement of a specific lien. The filing of the statement is unnecessary for the purpose of maintaining an action for personal judgment against the owner. O'Brien v Glasow, 72 M 135, 75 NW 7.

Plaintiff drove defendant's logs in good faith, and until a place in the river was reached beyond which a boom company had exclusive jurisdiction; and in the same manner, and for the same distance as he drove his own. Boyle v Musser, 77 M 153, 79 NW 664.

Where logs of various owners become intermingled in a driving stream, so that they cannot be separated, and an owner fails to furnish enough men to drive his own, and this compels another owner to furnish more than his share of the work, the latter may recover compensation and perfect a lien for the amount he is entitled to. Backus v Scanlon, 78 M 438, 81 NW 216.

Where the plaintiff declares on an express contract, and the evidence shows that it has not been strictly performed, he must recover, if at all, under the doctrine of substantial performance in which event the defendant may recover damages for plaintiff's failure of strict performance. Blakely v Neils, 121 M 280, 141 NW 179.

514.52 SUBMERGED, BURIED OR SUNKEN LOGS; BOND; LIEN; CONVERSION.

HISTORY. R.L. 1905 s. 3535a; 1907 c. 428 s. 1; G.S. 1913 s. 7070; G.S. 1923 s. 8541; M.S. 1927 s. 8541.

514.53 SCALING AND MARKING OF SUBMERGED LOGS; DUTY OF SURVEYOR GENERAL; FEES.

HISTORY. R.L. 1905 s. 3535b; 1907 c. 428 s. 1; G.S. 1913 s. 7071; G.S. 1923 s. 8542; M.S. 1927 s. 8542.

514.54 TIMBER CUT IN OTHER STATES.

HISTORY. 1897 c. 336; R.L. 1905 s. 3536; G.S. 1913 s. 7072; G.S. 1923 s. 8543; M.S. 1927 s. 8543.

514.55 STRAY TIMBER SECURED IN OTHER STATES.

HISTORY. 1897 c. 173; R.L. 1905 s. 3537; G.S. 1913 s. 7073; G.S. 1923 s. 8544; M.S. 1927 s. 8544.

514.56 HOW PRESERVED AND ENFORCED.

HISTORY. R.L. 1905 s. 3538; G.S. 1913 s. 7074; G.S. 1923 s. 8545; M.S. 1927 s. 8545.

514.57 SURVEYOR GENERAL; LIEN FOR CHARGES.

HISTORY. R.S. 1851 c. 80 art. 2 ss. 7, 8; P.S. 1858 c. 122 ss. 30, 31; 1862 c. 74 s. 4; G.S. 1866 c. 32 s. 16; G.S. 1878 c. 32 s. 16; G.S. 1894 s. 2402; R.L. 1905 s. 3539; G.S. 1913 s. 7075; G.S. 1923 s. 8546; M.S. 1927 s. 8546.

Special Laws 1870, Chapter 116, Section 23, is not unconstitutional, being an amendment to Special Laws 1856, Chapter 141. O'Brien v St. Croix, 75 M 343, 77 NW 991.

514.58 SALE AND DISTRIBUTION OF PROCEEDS.

HISTORY. R.S. 1851 c. 80 art. 2 ss. 7, 8; P.S. 1858 c. 122 ss. 30, 31; 1862 c. 74 s. 4; G.S. 1866 c. 32 s. 16; G.S. 1878 c. 32 s. 16; G.S. 1894 s. 2402; R.L. 1905 s. 3540; G.S. 1913 s. 7076; G.S. 1923 s. 8547; M.S. 1927 s. 8547.

FOR WAGES

514.59 FOR WAGES, AS AGAINST SEIZURE.

HISTORY. 1878 c. 86 ss. 1, 4, 5; G.S. 1878 c. 90 ss. 22, 25, 26; G.S. 1894 ss. 6254, 6257, 6258; R.L. 1905 s. 3541; G.S. 1913 s. 7077; G.S. 1923 s. 8548; M.S. 1927 s. 8548.

The sheriff by virtue of executions levied upon and sold goods of a fur dealer, whereupon plaintiff demanded $200.00 from the sheriff, and being refused, brings this action. A demurrer to the complaint was properly sustained. The plaintiff had made no filing of his lien which the court considered indispensable. Kruse v Thompson, 26 M 424, 4 NW 814.

The provisions of the wage lien law were not included to secure to farm laborers a lien for their wages upon agricultural products. Schilling v Carter, 35 M 287, 28 NW 658.

Filing of the lien with the town clerk could only reach personal property; a lien is provable and has priority against a receiver. In this case a demurrer to the complaint was sustained because the filing of the lien statement was not made in the time required by the statute. Olson v Pennington, 37 M 298, 33 M 791.

When property subject to wage lien claims is levied upon by the sheriff, it becomes the duty of the sheriff, notice being served upon him, and in case of

sale, to pay over to such lienholders the amount found to be due them. Until the sale, the property remains subject to the liens, but the officer's right of possession and sale is derived upon the writ only, and prior to the sale, he is not liable to the lienholder. Liljengren v Ege, 46 M 488, 49 NW 250.

Section 514.59 does not require that a wage lien be filed of record; nor does it include after-acquired property; a lien vests when the employment terminates or when the wages become due and remain unpaid, and suit may be brought thereon at once. C. I. T. Corp. v Cords, 198 M 335, 269 NW 835; Goodrich v A and A Credit System, 200 M 265, 274 NW 172.

Under its bankruptcy powers, congress may determine priority in payment to be given wages and other claims against a bankrupt estate. Irrespective of any state statute and to the extent to which such powers are exercised, the priorities established by congress are exclusive. In bankruptcy, wages earned within 90 days have priority, but wages earned more than 90 days prior to the bankruptcy, and less than six months, are junior to any claim for state or federal taxes. In re Penticoff, 36 F. Supp. 1.

Payment of workmen's compensation by an operating receiver. 19 MLR 253.

514.60 NOTICE TO SHERIFF; PROPERTY HELD.

HISTORY. 1878 c. 86 s. 2; G.S. 1878 c. 90 s. 23; G.S. 1894 s. 6255; R.L. 1905 s. 3542; G.S. 1913 s. 7078; G.S. 1923 s. 8549; M.S. 1927 s. 8549.

The wage lien law, General Statutes 1878, Chapter 90, Sections 22 and 23, does not assume to give any lien or preference to the employee, 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 employee the amount of his claim," the claim being that 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 M 424, 4 NW 814.

Until the sale, the property levied on remains subject to such liens. The officer's right of possession and power of sale is derived from the writ only, and prior to the sale he is under no liability to the lienholder. In case of a sale on execution, it is his duty, notice having been served on him to pay over to the lienholder out of the proceeds of the sale, the amount due him, not exceeding the statutory limit. Liljengren v Ege, 46 M 488, 49 NW 250.

The statute does not require that a wage lien be filed of record. C. I. T. Corp. v Cords, 198 M 337, 269 NW 825.

514.61 DEATH OR DISSOLUTION OF EMPLOYER.

HISTORY. 1878 c. 86 s. 3; G.S. 1878 c. 90 s. 24; G.S. 1894 s. 6256; R.L. 1905 s. 3543; G.S. 1913 s. 7079; G.S. 1923 s. 8550; M.S. 1927 s. 8550.

FOR SERVICE OF MALE ANIMALS

514.62 LIEN ON OFFSPRING.

HISTORY. 1885 c. 175 s. 1; 1887 c. 73; G.S. 1878 Vol. 2 (1888 Supp.) c. 90 s. 27; G.S. 1894 s. 6252; R.L. 1905 s. 3544; G.S. 1913 s. 7080; G.S. 1923 s. 8551; M.S. 1927 s. 8551.

Procedure for filing and foreclosing lien for stallion services. 1936 OAG 290, May 7, 1936 (520j).

514.63 PRESERVATION AND ENFORCEMENT.

HISTORY. 1885 c. 175 s. 2; 1887 c. 73; G.S. 1878 Vol. 2 (1888 Supp.) c. 90 s. 28; 1893 c. 102 s. 1; G.S. 1894 s. 6253; R.L. 1905 s. 3545; G.S. 1913 s. 7081; G.S. 1923 s. 8552; M.S. 1927 s. 8552.

Filing and enforcement. 14 MLR 783.

514.64 LIEN FOR SERVICES.

HISTORY. 1919 c. 476 s. 1; G.S. 1923 s. 8553; M.S. 1927 s. 8553.

When a given statutory lien has been intended not to be enforceable against the title of a subsequent bona fide purchaser without notice of the lien, the legislature has so expressed in the law, as in the breeder's and horseshoer's liens. Pratt v Armstrong, 192 M 17, 255 NW 92.

Stallion owner's lien on the mare is junior to existing mortgage, but a lien on the offspring has priority over all other claims. OAG March 19, 1934.

FOR PROCESSING FARM PRODUCTS

514.65 LIEN FOR THRESHING OR OTHERWISE HARVESTING.

HISTORY. 1897 c. 200 ss. 1, 2; R.L. 1905 s. 3546; G.S. 1913 s. 7082; 1923 c. 132 s. 1; G.S. 1923 s. 8555; M.S. 1927 s. 8555; 1929 c. 314 s. 1; 1937 c. 254 s. 1.

Statute held to be a valid legislative enactment, not class legislation, and not obnoxious to either the state or the federal constitution. Phelan v Terry, 101 M 454, 112 NW 872.

A thresher, retaining in his possession part of the grain threshed as security for payment of his charges, may have a lien upon the grain so retained without proceeding in accordance with sections 514.65, 514.66, and such lien is not lost by depositing the grain in an elevator. Gordon v Freeman, 112 M 482, 128 NW 1118.

One transporting or storing property for one in legal possession has a lien superior to that of a chattel mortgagee. Monthly Instalment v Skellet, 124 M 144, 144 NW 751.

A thresher's lien being wholly statutory expires, unless steps are taken to enforce it in the manner and within the time specified in the statute. Expiration of the lien terminates all rights growing out of it, and an action for conversion brought thereafter cannot be maintained. Ehmke v Hartzell, 160 M 38, 199 NW 748.

A lien for storage or processing is superior to the title of a subsequent bona fide purchaser who, without notice or knowledge of the lien, buys before the lien is filed. Pratt v Armstrong, 192 M 14, 255 NW 91.

As a general rule, a lien is inferior to all then existing liens, and superior to all thereafter created. In order to make it superior to liens already existing, the law must so declare. McAllister-Newgard Co. 193 F 265.

A state seed grain loan is superior to a thresher's lien. OAG Aug. 26, 1935 (833c).

Comment on Laws 1927, Chapter 314. 14 MLR 71.

514.66 HOW PRESERVED AND ENFORCED.

HISTORY. 1897 c. 200 ss. 3, 5 to 8; R.L. 1905 s. 3547; G.S. 1913 s. 7083; 1921 c. 248 s. 1; 1923 c. 132 s. 2; G.S. 1923 s. 8556; M.S. 1927 s. 8556; 1929 c. 314 s. 2.

The rules and principles of law applicable to the foreclosure of chattel mortgages apply to proceedings to foreclose a thresher's lien. The lien claimant, having duly perfected his lien, may maintain claim and delivery to recover possession of the grain covered thereby against a person wrongfully detaining it from him. Phelan v Terry, 101 M 454, 112 NW 872.

Periods allowed in which liens may be filed. 14 MLR 783.

FOR GOVERNMENTAL SERVICES

514.67 INSPECTIONS, EXAMINATIONS, OR OTHER GOVERNMENTAL SERVICES.

HISTORY. 1925 c. 188 ss. 1, 2; M.S. 1927 ss. 8556-1, 8556-2.

FOR HOSPITAL CHARGES

514.68 LIEN FOR HOSPITAL CHARGES.

HISTORY. 1933 c. 345 s. 1; M. Supp. s. 8556-3.

514.69 FILE WITH CLERK OF THE DISTRICT COURT.

HISTORY. 1933 c. 345 s. 2; M. Supp. s. 8556-4.

514.70 CLERK TO PROVIDE RECORD.

HISTORY. 1933 c. 345 s. 3; M. Supp. s. 8556-5.

514.71 RELEASE.

HISTORY. 1933 c. 345 s. 4; M. Supp. s. 8556-6.

514.72 NOT TO APPLY TO WORKMEN'S COMPENSATION.

HISTORY. 1933 c. 345 s. 5; M. Supp. s. 8556-7.

GENERAL PROVISIONS

514.73 LIENS ASSIGNABLE.

HISTORY. 1889 c. 200 s. 17; G.S. 1894 s. 6245; 1899 c. 342 s. 3; R.L. 1905 s. 3548; G.S. 1913 s. 7084; G.S. 1923 s. 8557; M.S. 1927 s. 8557.

The statutory lien of a mechanic or materialman may be assigned, and the assignee may, in his own name, maintain an action to enforce the same. Tuttle v. Howe, 14 M 145 (113).

Where a person entitled to file a mechanic's lien before filing the lien statement, assigns the sum due him as collateral security for the payment of his debt to another, the assignor is entitled to file a lien statement within the statutory time, and such filing will protect not only his equitable rights, but inure to the benefit of such assignee; but where such claimant makes an absolute assignment of the sum due him, a lien statement thereafter filed by him on his own behalf will not inure to the benefit of his assignee, but is void. It is competent to show by oral evidence that a written assignment, absolute on its face, was intended merely as security. Davis v Crookston, 57 M 402, 59 NW 482.

The proper transfer of a claim, the payment of which may be enforced under the provisions of the mechanics lien law, operates as an assignment of the right to a lien, including the right of the transferee to file the lien statement in his own name, and such transferee may include more than one claim in the same lien statement, providing the requirements of the statute are complied with as to each. Kinney v Duluth, 58 M 455, 60 NW 23.

An assignee of a log lien which had been properly perfected by filing a lien statement as required by statute before the execution of the assignment is entitled to maintain an action to enforce the same, notwithstanding the assignment had not been filed for record, there being no question of the rights of bona fide purchasers. Horgan v Duluth, 120 M 247, 139 NW 491.

Mrs. Balfany purchased a machine and patents for $24,000, of which $15,000 was to be paid to vendors, and she agreed to pay and did pay a $9,000 lien on the machine. A receiver being appointed by vendors, he brought action to recover possession of the machine for non-payment of the $15,000. Held, Mrs. Balfany was not entitled to a lien for the $9,000 paid. Oman v Balfany, 161 M 429, 201 NW 916.

No particular form of words or of the instrument is required to render an assignment valid, but an intent to transfer must be manifested, and assignor must not retain any control over the fund or any power of revocation. Springer v Clark, 46 F. Supp. 54.

514.74 INACCURACIES IN LIEN STATEMENT.

HISTORY. 1889 c. 200 ss. 6, 9; G.S. 1894 ss. 6234, 6237; R.L. 1905 s. 3549; G.S. 1913 s. 7085; G.S. 1923 s. 8558; M.S. 1927 s. 8558.

The mechanic's lien law does not imperatively require the lien statement filed to set forth the name of the owner of the property "at the time of making said statement;" it being sufficient that the ownership at the time of the making

of the contract and the furnishing of the material set forth. Finlayson v Biebighauser, 51 M 202, 53 NW 629.

A description in a lien statement was ample and correct except that the building was alleged to be located in the "northwest quarter" of a certain section, when, in fact it was actually built on the "northeast" quarter. It was held, as between the claimant and the owner the description was sufficiently certain to identify the property and to sustain the lien. Tulloch v Rogers, 52 M 114, 53 NW 1063.

The description in the lien, "Lot 3, in block 51, St. Louis Park addition to Minneapolis, according to etc." is sufficient description to identify property the right description being "Lot 3 in block 51A, St. Louis Park Center, Hennepin County, according etc." Bassett v Manage, 52 M 121, 53 NW 1064.

After rejecting the erroneous part of the description as surplusage, the remaining description covered a tract exceeding the statutory limit, but owned by the lien debtor. Held, the error did not vitiate the lien, but the court could carve out of such tract, a tract upon which a lien could be placed. Evans v Sanford, 65 M 271, 68 NW 21.

In an action by one performing labor for a logging contractor, against a purchaser of the timber and to impress a lien on said timber, it was held: (1) The verification may be made by the present owner of the time check, (2) the dates while not exact were sufficient, and (3) a time check payable to the laborer and endorsed in blank is sufficient statement to satisfy the requirements of the statute. Small v Smith, 120 M 118, 139 NW 133.

The statement described the premises as lot 1, block 1, of a certain addition. The description should have been lot 2, block 1. Both lots being owned by the person to whom the materials were furnished, and together constitute an enclosure appurtenant to the house constructed. Held, to be a sufficient description to validate the lien. Atlas v Dupuis, 125 M 45, 145 NW 620.

One of several lien claimants performed his contract only in part, but filed his lien for the amount which would have been due had he performed the contract in full. This divested him from any lien right in the property. Lyons v Westerdahl, 128 M 288, 150 NW 1083; Hydraulic v Mortgage, 144 M 24, 173 NW 849; Ruedlinger v Fisher, 160 M 324, 200 NW 299; Home v Ostrom, 164 M 99, 204 NW 647; Standard v Alsaker, 207 M 52, 289 NW 827.

If when the false or misleading parts in a lien are eliminated, or when an adjoining lot is described, there is not sufficient description left to identify with reasonable certainty the premises intended to be charged, it cannot serve as the basis for a foreclosure decree. Johnson v Ludwigson, 148 M 468, 182 NW 619.

Where a party seeking a mechanic's lien has mingled lienable and non-lienable items in his lien statement, and in the bill of particulars attached to his pleading, it is incumbent upon him to segregate and evaluate the items at trial, otherwise his right of lien falls. Pittsburg v Brown, 152 M 325, 188 NW 569.

An agent engaged in a scheme to defraud his principal, and who falsifies a lien statement to conceal his wrongdoing, is not acting in the scope of his employment. Under such circumstances, the principal cannot be charged with notice of the fact that a lien for more than was justly due was claimed, and will not be deprived of his lien rights. Rudd v Anderson, 161 M 353, 201 NW 548.

In order to defeat a lien because the statement filed claims more than justly due, such issue must be raised by the answer or in the course of the trial. Ulstruck v Home, 166 M 183, 207 NW 324.

During the progress of the construction of a building, the contracting partnership incorporated under the copartnership name with "Inc." added. Neither the owner nor those furnishing materials knew of the change. Held, that all furnishing materials, both before and after the incorporation, are entitled to liens. Bailey v Eveleth, 167 M 5, 208 NW 198.

The materials all went into the new creamery. The lien statement described the site of the old creamery near by. Held, inaccuracies of description in a lien statement may be disregarded, and the lien sustained only if, after eliminating the inaccurate and misleading parts, there remains in the statement sufficient to identify the premises with reasonable certainty. Hydraulic v Pierz, 169 M 452, 211 NW 836.

On trial, the court permitted an amendment of the complaint to include "title for drainage improvement" as an amendment to the clause, "for use in the repair and construction of hog houses, fences, and barn," the amount not being increased. Botsford v Fuller, 170 M 130, 212 NW 22.

A mechanic's lien statement, which described the premises sought to be charged as a government subdivision in the fractional northeast quarter of a certain section on which was erected "White City Resort," was not defective for lack of certainty, and naming the husband when the wife was the record owner is not fatal. Nelson v Sampson, 186 M 271, 243 NW 105.

"A lien is defined as a hold or claim which one person has upon the property of another as security for some debt or charge." An equitable lien exists when there is a contract, express or implied, sufficiently indicating an intention to make some particular property a security for a debt or other obligation. It may arise wholly from considerations of right and justice. So one may label an instrument whatever one pleases, yet the result seems perfectly clear that a lien was created by the instrument in the instant case. Marquette v Mullin, 205 M 562, 287 NW 233.

514.75 PROMISSORY NOTE; EFFECT.

HISTORY. 1889 c. 200 s. 15; G.S. 1894 s. 6243; 1899 c. 342 s. 12; R.L. 1905 s. 3550; G.S. 1913 s. 7086; G.S. 1923 s. 8559; M.S. 1927 s. 8559.

Giving a note by the debtor as evidence of the debt does not extinguish a lien to which the creditor was entitled for furnishing materials for a building. Milwain v Sanford, 3 M 147 (92); Howe v Kindred, 42 M 433, 44 NW 311.

The taking of debtors' notes maturing within the time allowed for perfecting and enforcing a mechanic's lien is not, in general, to be deemed a payment, or as affecting the statutory right of lien; nor is the taking of additional security. McKeen v Haseltine, 46 M 426, 49 NW 195.

A mechanic's lien is waived or discharged where the parties enter into a special agreement inconsistent with the existence of the lien; as the extending of credit to the owner beyond the statutory period for bringing action to enforce the lien. Flenniken v Liscoe, 64 M 269, 66 NW 979.

Where a building contract provides for the owner giving time notes for part of the contract price, which by their terms will not mature within the time allowed by statute for commencing an action to enforce a mechanic's lien, but the contract expressly provides that the taking of such notes shall not be construed as a waiver of the right of the contractor to impose a lien; held, the note taken in accordance with the contract does not waive or suspend the right to enforce a lien. The note will be deemed as merely collateral to the right of lien. Butler v Silvey, 70 M 507, 73 NW 406.

514.76 SATISFACTION; PENALTY FOR REFUSAL.

HISTORY. 1889 c. 200 s. 18; G.S. 1894 s. 6246; R.L. 1905 s. 3551; G.S. 1913 s. 7087; G.S. 1923 s. 8560; M.S. 1927 s. 8560.

Keller filed a lien against Potter and attempted to impose a lien on the property of Houlihan. The lien was adjudged null and void. Houlihan demanded that Keller satisfy the lien of record which he failed to do, whereupon Houlihan sued Keller. A demurrer to the complaint was sustained. The complaint must show that the account and affidavit filed and recorded to secure a lien did prima facie secure a lien so as to create a cloud on the title. Houlihan v Keller, 34 M 407, 26 NW 227.

LAUNDERERS

514.77 LIENS FOR LAUNDERERS.

HISTORY. 1945 c. 601 s. 1.

514.78 NOTIFICATION OF OWNER; SALE.

HISTORY. 1945 c. 601 s. 2.

514.79 BALANCE OF PROCEEDS OF SALE; PAYMENT OF.

HISTORY. 1945 c. 601 s. 3.