

county where said action was brought shall have full jurisdiction as in other actions appealed from a justice court. Immediately upon such application being made, the court shall enter its order transferring the said action to the district court of the county where the defendant, or a majority of the defendants, reside, and the clerk of such district court shall thereupon transmit to the clerk of the district court specified in said order all papers and files in said cause.

SEC 2. This act shall take effect and be in force from and after its pasage.

Approved April 20th, 1899.

CHAPTER 342.

S. F. No. 61.

Liens for labor and services on logs, ties, cedar poles and timber.

An act providing for the giving and enforcing of a lien for labor and services performed in cutting, hauling, banking, driving, rafting, cribbing or towing logs, railroad crossties, cedar poles or timber in the State of Minnesota and repealing chapter eighty-nine (89) of the laws of eighteen hundred and seventy-six (1876), chapter four (4) of the laws of eighteen hundred and seventy-eight (1878), and chapter eighty-six (86) of the laws of eighteen hundred and eighty-five (1885), and all other acts or parts of acts inconsistent herewith.

Be it enacted by the Legislature of the State of Minnesota:

Liens, when to attach.

SECTION 1. Any person who may do or perform any manual labor in cutting, hauling, banking, driving, rafting, cribbing or towing any logs, railroad crossties, cedar poles or timber in this state shall have a lien thereon as against the owner thereof, and all other persons, except the State of Minnesota, for the amount due for such services, and the same shall take precedence of all other claims thereon; and any verbal or written agreement, express or implied, made by or between any person or persons, corporation, or chartered company or companies, designed to act as a waiver of any right under this act, or any portion thereof, shall be wholly void. The lien herein created shall not attach as against the claim of the owner or legal occupant of the land upon which logs or timber were cut, in cases of trespass, or when the logs and timber were cut and carried away without the consent of such owner or legal occupant.

Lien not to attach against owner without his consent, in cases of trespass.

SEC. 2. No such debt, demand or claim shall remain a lien on any such logs, railroad crossties, cedar poles or timber unless a statement thereof in writing, under oath, by the claimant or some one in his behalf shall be made and filed for record in the office of the surveyor general of the lumber district in which such logs or timber may be. And such statement shall briefly set forth and state the postoffice address of claimant, the date of the commencement and termination of such labor, the rate of compensation therefor, the amount paid thereon, if any, the amount or balance due, and a description of the logs, railroad crossties, cedar poles or timber upon which the lien is claimed, that such labor was performed wholly on such logs, railroad crossties, cedar poles or timber, and that the person performing the same claims a lien thereon for the amount due. For all such labor done and performed between the first day of October and the first day of April thereafter, such statement shall be filed on or before the first day of May next thereafter. And for all labor done and performed between the first day of April and the first day of October thereafter, such statement shall be filed within thirty days after the completion or last day of such labor or services. *Provided, however,* that when the labor and services for which such lien is claimed shall have been commenced before the first day of April and shall continue without termination from the time of such commencement until after the first day of April, then, and in such case, the party performing such labor and services or his assignee shall have the right to file the statement herein provided for at any time within thirty days after the completion of such work, and unless suit shall be commenced for the recovery and enforcement of such claim or demand under the provisions of this act within three (3) months after the filing of such statement the lien shall cease. *Provided, further,* that in all cases where there is no record or description of such logs, railroad crossties, cedar poles or timber, or the marks thereon made or kept in the office of the surveyor general, and no such record or description is required to be made or kept in said office of said surveyor general, then, and in that case, it shall not be necessary for the said claimant or his assignee to file the statement herein provided for in the office of said surveyor general of logs and lumber, but such statement shall then be filed in the office of the clerk of district court of the county wherein said labor was performed at the time and in the manner as herein provided for filing with such surveyor general.

Lien statement, what to contain.

SEC. 3. Any person having a claim upon logs, railroad crossties, cedar poles or timber as provided in this act,

Lien, how assigned.

may assign the same in writing to any person, either before or after the making and filing of the statement therefor as provided in section two (2) of this act; and the person to whom such claim may be assigned, his agent or attorney, may make and file for record the statement for lien therefor as provided in said section two (2), in case no such statement thereof has been filed. And when such statement as provided for in section two (2) of this act and the assignment provided for in this section has been made and filed in the office of the surveyor general of the lumber district in which such logs are situated, or in the office of the clerk of district court, in case the lien statement is filed in the office of the clerk of district court, said person to whom said assignment is made shall be subrogated to all the rights of the original claimant, and is hereby authorized to enforce the lien against said logs, railroad crossties, cedar poles or timber in his own name, in the same manner and with the same effect that the original claimant could have done had not such assignment been made; and any person holding the title to such logs or timber, or any lien by mortgage or otherwise thereon as security for the payment of any sum as stumpage thereon, may in like manner purchase and take an assignment of any or all of such claims for labor, or may pay and discharge the same, and in either case may tack the same to his original claim and hold the same as an additional incumbrance thereon, and may enforce the payment of the same with interest in like manner as his original claim thereon, but in no case shall he be required to pay more than the reasonable and current value of such labor.

Lien, how
enforced; at-
tachment.

SEC. 4. Any person having a lien upon any logs, railroad crossties, cedar poles or timber pursuant to the provisions of this act, may enforce the same by attachment against such logs, railroad crossties, cedar poles or timber in the district court of said state in the judicial district wherein is situate the office of the surveyor general in which the mark of such logs, railroad crossties, cedar poles or timber is or should be recorded, or in the judicial district wherein such manual labor was performed, in the same manner prescribed in title nine (9) of chapter sixty-six (66) of the General Statutes of eighteen hundred seventy-eight (1878), and all amendments thereof, so far as the same can be applicable thereto and not herein otherwise provided or inconsistent herewith. The judicial district in which such lien shall be enforced shall be determined and fixed by the person performing such labor and services or his assignee; and in case such lien is enforced in the judicial district wherein such services were performed the action for the enforcement thereof shall be prosecuted

in the county wherein such manual labor and services were performed, if such county is an organized county for judicial purposes, and if such county is not an organized county for judicial purposes, then such action shall be prosecuted in the county to which such unorganized county is attached for judicial purposes. Any person performing such labor and services, or his assignee, shall have the right to determine the county in which such action for the enforcement of such lien shall be prosecuted as herein provided.

SEC. 5. Before any attachment shall be issued the claimant, or some one in his behalf, shall make affidavit setting forth that the defendant therein named is indebted to such claimant in a certain sum over and above all legal set-off, which sum shall be stated as near as may be, and that such indebtedness is due or accrued for labor or services on logs, railroad crossties, cedar poles or timber, describing the same as near as practicable, and that the claimant has filed a lien thereon. Upon the making and filing of such affidavit, together with a certified copy of the statement provided for in section two (2), together with a complaint as required in civil actions, in the office of the clerk of the district court wherein such action shall be commenced, the attachment shall be issued by the clerk of said court upon the order of the judge of such district or the court commissioner of any county thereof; and thereafter said claim shall be prosecuted in the manner provided for the prosecution of civil actions in the district court.

Attachment, proceedings in, affidavit, complaint.

SEC. 6. The attachment shall require the sheriff or other proper officer to attach and safely keep the property described in such affidavit or so much thereof as may be necessary to satisfy the plaintiff's claim, with costs, disbursements, charges and expenses, as provided for herein. In case of a levy upon logs, such officer shall file a certified copy of such writ, with a copy of his return of levy endorsed thereon, specifying the mark or marks upon such logs, and the quantity of the same levied upon by him, in the office of the surveyor general of the lumber district where such mark or marks are recorded; and also such officer shall file such certified copy in the office of the clerk of said district court wherein such suit is brought, and the filing of such certified copy of writ and levy endorsed thereon in said office of said surveyor general and in the office of said clerk of district court shall be a sufficient levy upon such logs, railroad crossties, cedar poles or timber.

Writ of attachment form of, contents.

SEC. 7. Such sheriff or other officer shall, if necessary to save the same from loss, proceed to have such logs sealed to him as provided by law, without delay, or as

Duty of sheriff; attachment, how served.

soon thereafter as such logs shall arrive within the limits of the boom which is the proper destination of such logs, and nothing shall be done to hinder or delay the driving of such logs to such destination. When more than one writ of attachment or execution shall be levied upon the same property they shall take priority in the order in which the levies are made, provided that logs and timber in the first lumber district may be held at Stillwater by the sheriff attaching the same, or by the sheriff of Washington county, and logs and timber in the second lumber district may be held at Minneapolis by the sheriff attaching the same, or by the sheriff of Hennepin county, notwithstanding the destination of such logs may be below those places, respectively.

Bond not required from plaintiff; defendant, how to obtain possession, payment, bond.

SEC. 8. The plaintiff in any proceedings to enforce such lien as herein provided shall not be required to give the bond mentioned in section 131 of chapter 66 of the General Statutes, nor any security whatever. But the defendant or any person who may apply and be admitted to defend upon making and filing an affidavit showing that he has good and valid defense in whole or in part, setting out such defense therein, and upon payment to the plaintiff of that portion of his claim to which there is no defense stated in his affidavit, and all costs incurred up to the time of such payment, may make and file with the clerk of the court wherein such action is commenced a bond to the plaintiff, with sureties to be approved by said judge or court commissioner, and in such sum as the said judge or court commissioner shall order, conditioned that he will pay and satisfy such judgment as shall be recovered in the action. And thereupon such judge or court commissioner may order the property levied upon by virtue of such writ to be released therefrom. The defendant or person so applying shall give at least five (5) days' notice of his intention to file such affidavit and apply for such order; and upon the hearing of such application the sureties shall justify orally, if required by the plaintiff, in addition to the usual justification by affidavit, which shall in all cases accompany the bond.

Parties in interest to be made parties to suit.

SEC. 9. In all suits under the provisions of this act the person, company or corporation liable for the payment of such debt or claim shall be defendant; but any person having an interest in or lien upon the logs, railroad cross-ties, cedar poles or timber, upon which the lien is claimed, may apply and be admitted by the court, so far as necessary to protect his rights in the premises.

Suits, how tried; form of verdict or decision; judgment.

SEC. 10. In all suits under the provisions of this act the court or jury who shall try the same or make an assessment of damages therein or make an inquest therein, shall, in addition to finding the sum due the plaintiff, also

find generally that the same is due for labor and services for which the action was brought and was performed on the logs, railroad crossties, cedar poles or timber described in the complaint therein, and that the same is a lien thereon, or the amount or extent thereof to which the same is a lien thereon, if a lien only in part. And the court shall render judgment in accordance with such finding, and execution shall issue therefor. And such execution, in addition to the direction and commands contained in ordinary executions in civil actions, may direct and command that the said logs, railroad crossties, cedar poles or timber, or so much thereof as may be necessary for that purpose, be sold to satisfy such judgment to the extent of such lien and all costs or charges and disbursements; *provided, however*, that if the court or jury shall find that no part of the amount due the plaintiff is a lien upon the property described in the complaint, the plaintiff's action shall not be defeated thereby, but he shall be entitled to judgment as in other civil actions; and *provided further*, that in all cases where the property levied upon by writ of attachment in any such action has been released from such levy by the giving of a bond as herein provided, and the amount found due the plaintiff is adjudged to be in whole or in part a lien upon such logs, railroad crossties, cedar poles or timber, then judgment shall also be rendered for the amount of such lien against all the persons liable on such bond. All levies upon logs, railroad crossties, cedar poles or timber by virtue of any such execution shall be made in the same manner herein provided for the levying of writs of attachment in like cases, and sales thereon shall be made in the same manner as ordinary sales on execution, except that in addition to the usual notice of sale, a notice shall also be posted in a conspicuous place in the office of the surveyor general of the district, and such sale when made in the county where such surveyor general's office is located, shall be made at the office of the surveyor general, and when made in any other county shall be made at the front door of the usual place of holding district court therein. And the officer making the sale shall give his certificate thereof to any person who may buy such logs or timber or any part thereof at such sale, and the same shall vest in each purchaser an absolute title thereto. And upon such certificate being delivered to the surveyor general, he shall scale to such person or his assigns the said logs or timber so purchased and shall deliver a scale bill thereof to the person to whom such scale is made, which shall be evidence of his ownership of such logs or timber.

Judgment
against sure-
ties on bond,
how rendered.

Levies, how
made; sales,
how made.

Sheriff may pay boomsage and scalage and collect same.

SEC. 11. The officer making a levy upon logs as herein provided may pay the boomsage and scalage of the logs or timber levied upon, and return the amount paid on the writ, which shall be included and taxed in the bill of costs and disbursements; but if paid after judgment, then the officer may charge and collect the same out of the property as other costs and disbursements.

Lien not to be defeated by giving of note, unless specifically agreed, etc.

SEC. 12. The action or lien under the provisions of this act shall not be defeated by the taking of a note or other evidence of indebtedness, unless it was taken in discharge of the amount due and without lien, and so agreed and stated in writing at the time of the taking of such note.

Ties, cedar poles and timber to be held and disposed of according to this act.

SEC. 13. All railroad cross-ties, cedar poles and timber other than logs shall be held by the sheriff or other officer at the place where seized, and shall be detained by him until the same are disposed of according to the provisions of this act, or released by order of said court.

Complaint, contents of.

SEC. 14. The plaintiff shall allege in his complaint all the facts upon which his right to a lien depends, and the filing of such statement for lien and all such allegations shall be taken to be true, unless expressly denied by the defendant or his agent or attorney in his answer.

Duties of surveyor general.

SEC. 15. The surveyors general of logs and lumber are hereby required to file and record such statements and any assignments thereof and such writs and endorsements of levy thereon and returns and certificates of sale and shall give certified copies thereof whenever required by any person interested in such suit, and shall receive therefor the same fees as for recording other instruments, and such record or a certified copy thereof may be introduced and read in evidence in any of the courts in this state.

Lien statement, when and how filed.

SEC. 16. The statement herein provided for in section two (2) may be filed in the office of said surveyor general immediately after the termination of said labor and services, and the action herein provided for the enforcement of said lien may be commenced immediately after the filing of said statement, as herein provided.

Costs at disbursement to be recovered additional to the usual costs in civil actions.

SEC. 17. In all actions brought under the provisions of this chapter, if it shall be adjudged and determined that the plaintiff therein has a lien upon the logs, railroad cross-ties, cedar poles or timber described in his complaint, there shall be taxed and recovered by said plaintiff against the said logs, railroad cross-ties, cedar poles or timber, the following costs and disbursements, in addition to the costs and disbursements now provided by law in the trial of civil actions:

Attorney's fee, \$20.

First—The sum of twenty dollars (\$20.00) as an attorney fee.

Second—In case the plaintiff in said action is the person who performed the labor or services in the cutting, hauling, banking, driving, rafting, cribbing or towing of such logs, railroad crossties, cedar poles or timber, then, and in such case, said plaintiff shall be entitled to witness fees the same as though he were not a party to such action, but a witness therein, except that his per diem as such witness shall be one dollar and fifty cents (\$1.50) per day, and six cents per mile each way for the number of miles necessarily and actually traveled by him in attendance upon court.

Party to action entitled to witness fees of \$1.50 per day and mileage.

Third—Said plaintiff shall be entitled to have taxed in said action all of the costs and disbursements now allowed by law, to the prevailing party in civil actions, and all said costs, viz.: Said attorney fee of twenty dollars (\$20.00), said per diem of one dollar and fifty cents (\$1.50) per day, and mileage, and all other costs and disbursements provided for herein shall be taxed as now provided in civil actions, and shall become a part of the judgment, and be recovered against said logs, railroad crossties, cedar poles or timber.

Costs, how taxed and made part of judgment.

SEC. 18. This act is intended only for the protection of laborers for hire, and shall not inure to the benefit of any person interested in contracting, cutting, hauling, banking, driving, rafting, cribbing or towing any such logs, railroad crossties, cedar poles or timber by the thousand feet or otherwise; but such laborers for hire shall include all foremen, cooks, cookees, blacksmiths, carpenters, mechanics and all other persons who work for wages in said business.

Act not to apply for benefit of contractors.

SEC. 19. Chapter eighty-nine (89) of the Laws of eighteen hundred seventy-six (1876), chapter four (4) of the Laws of eighteen hundred seventy-eight (1878), and chapter eighty-six (86) of the Laws of eighteen hundred eighty-five (1885), are hereby repealed, and all other acts or parts of acts inconsistent herewith are hereby repealed, except that the repeal of said acts shall not take effect as to any liens filed or actions begun under the provisions of any of said acts; but all liens filed and all actions begun under any existing law or laws shall be prosecuted thereunder to a final determination pursuant to the provisions of such existing law or laws.

Other laws repealed.

SEC. 20. This act shall take effect and be in force from and after May first (1st), eighteen hundred and ninety-nine (1899).

Approved April 20th, 1899.