

Nineteen Hundred Thirty-One  
Supplement

to

# Mason's Minnesota Statutes

(1927 thru 1931)

Containing the text of the acts of the 1929 and 1931 Sessions of the  
Legislature, both new and amendatory, and notes showing repeals,  
together with annotations from the various courts, state  
and federal, construing the constitution, statutes,  
charters and court rules of Minnesota



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In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the grantor in the original action. *Weber v. A.*, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

### 38. Burden of proof.

175M157, 220NW560.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

### 39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

### 40. Evidence.

Evidence, held to show that conveyance from

father to daughter was not in fraud of creditors. 181M71, 231NW397.

### §8483. Rights of creditors with matured claims.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW892.

### §8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditors and vested with the right to attack. 175M47, 220NW400.

## CHAPTER 69

# Liens for Labor and Material

## FOR IMPROVEMENT OF REAL ESTATE

### §8490. Mechanics, laborers and material-men.

#### ½. In general.

Surety on bond to protect mortgagee against mechanics' liens held to have no rights with respect to fund obtained by the mortgage and was not released because fund was applied in payment of other than lienable claims. 176M 281, 223NW139.

Where one on accepting contract includes new conditions there is no contract unless the maker of original offers consents to the new conditions. *Johnson v. O'N.*, 234NW16. See *Dun. Dig.* 1740(24).

#### 2. Nature of lien.

The condition of a bond given to a mortgagee to protect his security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, and an action begun after judgment, but before expiration of period to redeem from mortgage foreclosure, was not premature. 172 M320, 215NW67.

#### 21. Held not entitled to lien.

Where materialman waived lien on materials furnished prior to certain date, and subsequently filed lien, which, through mistake, contained certain items delivered before the waiver date, owner who paid the lien could recover the amount of items delivered prior to waiver, the lien statement constituting a false representation. 171M274, 213NW917.

### §8494. When lien attaches—Notice.

Finding that trust deed was recorded before any mechanics' liens attached to the property, held sustained by the evidence. 171M445, 214NW503.

"Without notice" means without notice of an existing lien. 171M445, 214NW503.

Obligatory advances made under a mortgage securing future advances have priority over mechanics' liens arising after the recording of the mortgage but before the making of the advances. 171M445, 214NW503.

Advances made in reliance on representations that the mortgagor had performed the precedent conditions to be performed by him retain their right of priority although such representations were in fact false. 171M445, 214NW503.

Where parties for whose benefit conditions are imposed waive them, strangers thereto cannot complain. 171M445, 214NW503.

Where a mortgagee has agreed to make future advances, a breach of the contract by the other party does not bring advances thereafter made within the doctrine of optional advances. 171M445, 214NW503.

Bonds which are secured by a trust deed and are sold on the markets as instruments of commerce take priority over all incumbrances arising subsequent to the recording of the trust deed. 171M445, 214NW503.

Priority between recorded mortgage and mechanic's lien where such lien attached from time of "actual and visible beginning of an improvement on the ground." "Without notice" means without notice of an existing lien. 176M1, 225NW507.

Release of lien rights in favor of mortgage, held to apply to material subsequently furnished. 177M132, 224NW847.

Materialman held to have waived lien as against subsequent mortgage. *Thompson Lumber Co. v. G.*, 224NW849.

### §8495. Vendors, consenting owners, etc.

Evidence held to sustain finding that building and loan association agreed to obtain lien waivers and negligently failed to do so. 171 M343, 214NW56.

#### 1. Forfeiture of executory contracts.

Evidence held insufficient to show that vendor effected forfeiture before accrual of mechanic's lien. 179M280, 228NW934.

### §8497. Mechanic's lien—Filing—Etc.

#### 2. Time of filing.

Finding as to coverage of an express plumber's contract held not supported by evidence. *Bossenmaier v. B.*, 234NW303. See *Dun. Dig.* 6112a.

### §8499. Foreclosure of liens.

Liability to owner under contractor's bond. 173M388, 227NW205.

### §8500. Summons, pleadings, etc.

Denial of application to open foreclosure judgment and to permit a defendant to answer on the ground of mistake, inadvertence, and excusable neglect of applicant's attorney, held proper. 172M462, 215NW859.

### §8501. Lis pendens, parties, limitation, etc.

172M462, 215NW859; note under §8500.

### §8504. Judgment, sale redemption, etc.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and an annulment of the foreclosure. 173M128, 216NW798.

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure, had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW 246.

#### PERSONALTY IN POSSESSION

##### §8507. For keeping, repairing, etc.

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

#### MOTOR VEHICLES

##### §8524. To whom given—For what services rendered.

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession, and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

##### §8526. Foreclosure.

Holder of lien on motor vehicle was not entitled to possession until the commencement of the action to foreclose and where machine was converted by lien claimant, his lien is not a defense in trover. 174M11, 218NW172.

§8527. Sheriff to serve copy of notice of sale.—At or before posting the notice of sale, the sheriff shall serve a copy of said notice of sale on the judgment debtor—if he be a resident of the county, or can be found therein, in the manner required by law for the service of a summons in a civil action in the district court. (As amended Apr. 23, 1929, c. 302, §1.)

#### IN OTHER CASES

§8555.—Lien for threshing grain, etc.—Any person owning or operating a threshing machine, clover huller, corn picking machine, corn sheller, corn shredder or hay baler shall have a lien upon the grain threshed, clover hulled, corn shelled or shredded, or picked, or hay baled, as the case may be, for the price or value of such service, which shall be preferred to all other liens or incumbrances

except those given for seed from which said grain was grown. (As amended Apr. 24, 1929, c. 314, §1.)

##### §8556. How preserved and enforced.—

Within fifteen days after such threshing, clover hulling, corn picking, corn shelling or shredding, or hay baling is completed the claimant of such lien shall file with the Register of Deeds of the County in which it was done a verified statement of the amounts and kinds of grain threshed, clover hulled, corn picked, corn shelled or shredded, or hay baled, the time and place of doing the same, giving the first and last days thereof, the rates per bushel, per day, per hour or other terms of the contract and the total charge therefor, the amounts paid thereon, if any, and the balance due, the name of the reputed owner and of the person requesting the work to be done, and a notice that a lien is claimed for the amount remaining unpaid. A certified copy of such statement shall authorize the seizure and sale of so much of the grain, clover, corn or hay covered by the lien as may be necessary to satisfy the same, with reasonable costs and expenses, but such seizure must be made, or an action to foreclose be commenced, within six months after such filing. The cost and the expenses above referred to shall include an attorney's fee amounting to 15 per cent of the amount of the lien claimed in the event such lien is not paid within 90 days after the filing thereof and the lien claimant employs an attorney-at-law to collect the same. So far as applicable thereto, the laws relating to the enforcement of chattel mortgages shall govern the foreclosure of liens hereunder. Any person secreting or disposing of property covered by such lien, without the consent of the lienholder, shall be guilty of a misdemeanor, the minimum penalty whereof shall be a fine of \$25.00. (As amended Apr. 24, 1929, c. 314, §2.)

#### GENERAL PROVISIONS

##### §8561. Pledgee permitted to buy pledge where sold at public sale.

Sheriff is entitled to fees of \$4.50 for posting notices and making sale. Op. Atty. Gen., May 20, 1929.

## CHAPTER 70

### Marriage

##### §8562. Marriage a civil contract.

Marriage may be annulled where the defendant was prohibited by law from entering into it because he had been divorced from a former wife within six months, and induced the consent of plaintiff by a false representation of no divorce within the six-month period. 171M340, 214NW650.

Where the promises of the husband, under an antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

Alienation of affections and damages therefor. 177M270, 224NW839.

Essentials of common law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 180M463, 231NW199.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. Archer v. M., 236NW455. See Dun. Dig. 4258.

##### §8563. Persons capable of contracting.

A male person over 18 but under 21 years of age, and a female over 16 but under 18 years of age, cannot procure a marriage license without the consent of parents or guardians. Op. Atty. Gen., Feb. 13, 1930.