

CHAPTER LIV.

An Act to Create a Lien in favor of Mechanics and others in certain cases.

- SECTION 1. Authorises a lien upon building and land, or on both, for labor or materials furnished.
2. Owners of buildings, &c., on demand of mechanics or laborers, to keep out amounts of labor due, from payments to contractors.
 3. Owners to furnish contractors with copies of claims presented for payment—failure of contractors to give notice, considered as assenting to demands.
 4. Disputed claims to be submitted to arbitration.
 5. Contractor failing to pay, owner to pay the demands—suit against owner.
 6. Collusion of owner with contractor to pay over money in advance—owner to be liable.
 7. Account of person entitled to lien, to be filed with and recorded by the Register of Deeds—liens to continue for two years.
 8. Commencement of suits—lien to continue until final settlement.
 9. Suspension of work by owners without consent of mechanics, they may continue it at their own election so as to prevent waste.
 10. Defective titles to land wherever buildings are erected—buildings to be leased until liens are satisfied.
 11. Failure to sell property on execution, the same to be leased for liquidation of liens.
 12. Liens to exist for manual labor on lands, logs, timber or lumber.
 13. Discharge of liens.
 14. Lien holders to proceed by attachment upon owners of property, who are without reach of process.
 15. Executors and administrators same rights as testator and intestate.
 16. Fees of Registers for recording liens.
 17. On satisfaction of lien, certificate thereof to be lodged with Register—liens filed under previous laws, to be prosecuted to final judgment under their provisions.
 18. Form of affidavit for filing lien.
 19. Repeals former acts inconsistent.
 20. Act takes effect on passage.

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

SECTION 1. That any person or company who shall have performed, or may hereafter perform, labor or furnish materials or machinery for erecting, constructing, altering or repairing any house, mill, manufactory or other building or appurtenances, or for constructing, altering or repairing any boat, vessel, or other water craft, by virtue of a contract or agreement with the owner or agent thereof, shall have a lien to secure the payment of the same, upon such house, mill, manufactory or other building and appurtenances, and upon such boat, vessel or other water craft, together with the right, title or interest of the person or persons owning such house, mill, manufactory or other building and appurtenances on and to the land upon which the same shall be situated, not exceeding forty acres, and if erected within the limits of any city, town or village plat, the lot of ground on which said house, mill, manufactory or other building and appurtenance shall be erected, not exceeding in extent one acre.

Lien upon buildings and land or boats

Owners of buildings to withhold payment from contractors to satisfy claims

SEC. 2. That every mechanic or other person doing or performing any work towards the erection or repair of any house, mill, manufactory, or other building or appurtenance, or the construction, alteration or repair of any boat, vessel or other water craft, erected under a contract between the owner thereof and builder, or other person, whether such work shall be performed as journeyman, laborer, carman, sub-contractor or otherwise, or any person who shall furnish materials for the construction of such building or vessel, whose demands for work so done or materials so furnished, has not been paid or satisfied, may deliver to the owner of such building or vessel, an attested account of the amount and value of the work or labor performed, or the materials thus furnished and remaining unpaid, and thereupon such owner shall retain out of his subsequent payments to the contractor, the amount of such work and labor for the benefit of the person so performing the same.

Copies of claims for contractors—failure to object

SEC. 3. Whenever any account of labor performed, or materials furnished, as referred to in the preceding section, shall be placed in the hands of the owner of any building or vessel, as above stated, or his authorized agent, it shall be the duty of such owner or agent to furnish his contractor with a copy of such papers, so that if there be any disagreement between such contractor and his creditor, they may, by amicable adjustment, or by arbitration, ascertain the true sum due; and if the contractor shall not, within ten days after the receipt of such papers, give the owner written notice that he intends to dispute the claim, or if in ten days after giving such notice, he shall refuse or neglect to have the matter adjusted, as aforesaid, he shall be considered as assenting to the demand, and the owner shall pay the same when it becomes due.

Arbitration of disputed claims

SEC. 4. If the contractor shall dispute the claim of his journeyman or other person, for work done or materials furnished, as aforesaid, and the matter cannot be adjusted between themselves, it shall be submitted to the arbitrament of three disinterested persons, one to be chosen by each of the parties, and one by the two thus chosen, and their decision, or the decision of any two of them, shall be conclusive in the case submitted.

Contractor failing to pay—owner to pay

SEC. 5. When the account shall be adjusted, as above provided, and the contractor shall not, within ten days after it is so adjusted, pay the sum to his creditor, with the costs incurred, the owner shall pay the same out of the fund as above provided; and which amount may be recovered from the said owner by the creditor of the said contractor, and in action for money had and received to the use of said creditor, and to the extent in value of any balance due by the owner to his contractor under the contract with him at the time of the notice first given, as aforesaid, or subsequently accruing to such contractor, under the same, if such amount shall be less than the sum due from said contractor to his creditor.

SEC. 6. If by collusion, the owner of any building erected by contract, shall pay to his contractor any money in advance of the money due on said contract, and if the amount still due the contractor after such payment has been made, shall be insufficient to satisfy the demand made in conformity with the provisions of this Act, for labor done and materials furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work or materials, in the same manner, if no such payment had been made.

Collusion of owner and contractor—penalty

SEC. 7. That any person entitled to a lien under this Act shall make an account, in writing, of the item of labor, skill, material and machinery furnished, or either of them, as the case may be, and after making oath thereto, within one year from the time of performing such labor and skill or furnishing such material and machinery, shall file the same in the Registers office of the county in which such labor, skill, and materials shall have been furnished, which account so made and filed, shall be recorded in a book to be provided, separately, by the Recorder for that purpose, and shall, from the commencement of such, or the furnishing of such materials, and for two years after the completion of such labor or the furnishing of such materials, operate as a lien on the several description of structures and buildings, and the lots of ground, on which they stand, in the first section of this Act named. When any labor has been done, or materials furnished, as provided, on a written contract, the same, or a copy thereof, shall be filed with the account herein required.

Accounts to be recorded—lien to hold for two years

SEC. 8. That every person or persons holding such lien, may proceed to obtain a judgment for the amount of his or their account thereon, according to the course of legal proceedings in like cases; and when any suit or suits shall be commenced on such accounts, within the time of such lien, the lien shall continue until such suit or suits be finally determined and satisfied.

Commencement of suits

SEC. 9. That when the owner or owners of any house or buildings, described in the first Section of this Act, shall suspend its progress, or completion, without the consent of such laborers, mechanics or furnishers; or if the progress or completion of the same be suspended by the decease of the owner or owners, at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics and furnishers thereto, or any of them, may, at their election, proceed with the same at their cost, so far as to inclose such building and thereby prevent such waste. *Provided*, The work so done, after said suspension, shall be according to the contract and the plan of the owner or owners.

Suspension of work—rights of mechanics

SEC. 10. That if the person or persons also may erect as owner or owners, any building described in the first Section of this Act, be not, at the suspension or completion of the

Defective titles to
land—lease of
buildings

same, possessed of the legal but equitable title to the ground on which the same is erected (if the same be a fixture) and the fact of such defect of title be made to appear to the Court before whom any judgment or judgments under this Act may have been obtained; or if the same be returned by any legal officer, to whom any execution under this Act shall be directed, in either case the Court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building or buildings, until the rents and issues thereof shall pay or satisfy the several liens on which judgment may be had against the same. *Provided*, This law shall not be so construed, as to interfere with prior bona fide lien on grounds on which such building or buildings shall be erected, (if a fixture.)

Failure to sell on
execution to be
leased

SEC. 11. That in all other cases of judgment or judgments obtained in favor of any lien holder or holders, if the property bound by such lien will not sell on execution as provided by law in other cases, having been once duly offered, the Court before whom such judgment or judgments may be obtained, may direct the officer aforesaid, to lease the same in the manner and for the purpose pointed out in the preceding section; and the officer giving such lease or leases shall therein require the payment to be made to him, or his successors in office, which successor or successors shall have the same power and perform the same duties therein as the maker of the lease or leases should or could do; and in cases where the money may be collected by said officer on lease or leases made under this Act, it shall be his duty, forthwith, to pay the same into Court where the judgment or judgments were obtained, which money shall be distributed to the several lien holders interested in said judgments, in proportion to their several demands.

Liens to exist for
manual labor on
lands, logs, tim-
ber or lumber

SEC. 12. Any person or persons performing manual labor upon any land, logs, timber or lumber, for or on account of the owner, agent or assignee thereof, may avail themselves of the foregoing provisions of this Act, and upon complying with the requirements thereof, shall have a like lien upon said lands, logs, timber or lumber, for the amount of work and labor done and performed; and the said lien may be carried into force and effect, pursuant to the foregoing provisions of this Act.

Discharge of
liens

SEC. 13. That all lien or liens may be discharged by the payment of judgment or debt, with all legal costs, before the property on which such lien or liens attached be sold or leased under this Act; and if any lien holder or holders, after the same be duly tendered to him or them, shall proceed at law, or shall refuse to give a due discharge from such lien, then such lien holder or holders shall forfeit all lien and pay all costs.

SEC. 14. That if the owner or owners of the property

which is subsequent to a lien under this Act, be without the reach of process, or resident without the State, any lien holder or holders may proceed by attachment, against the same, as in other cases, and the Court before whom the attachment is pending, on the entry of judgment, on return of the proper officer, shall have the same power to order lease or leases, as is given in the tenth and eleventh sections of this Act.

Owners beyond reach of process attachment

Sec. 15. That executors and administrators under this Act shall have the same rights and be subject to the same liabilities that their testator or intestate would or might have if living.

Rights of executors and administrators

Sec. 16. That the Registers of counties, for filing and recording contracts and accounts under this Act, shall be paid the same fees they are legally entitled to in other cases.

Fees of register

Sec. 17. Each and every person in favor of whom any such lien has existed, after receiving satisfaction of his or their debt, or after final judgment against him or them by a competent tribunal, showing that nothing is due by reason of such claims, shall, at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his or their legal representatives, lodge a certificate with said Register, that the said debt is satisfied and said lien removed, which certificate shall be filed and recorded by the Register on the margin of the record, in the same manner that releases of mortgages are now by law required to be recorded; and when so recorded, shall for ever discharge and release said lien; and if such person or persons, having received satisfaction as aforesaid, by himself or attorney, or judgment having been rendered him as aforesaid, shall not, within ten days after request in writing, lodge a notice in writing, with the register, as is prescribed in this section, he or they neglecting or refusing so to do, shall forfeit and pay to the party or parties so aggrieved, any sum of money not exceeding one half of the debt claimed, as a lien on such property, according to the circumstances of the case, to be recovered in a civil action; and the party lodging such certificate as aforesaid, shall pay to the register twelve and a half cents for recording each notice or certificate as aforesaid. In all cases where liens have been filed under pre-existing laws, the same may be prosecuted to final judgment under such law; and in all cases where the right to liens have accrued as provided in this Act, the same may be prosecuted in accordance with the provisions of this Act.

Satisfaction of lien—certificate thereof

Liens filed under former laws

Sec. 18. The following form may be used under this Act:
 STATE OF MINNESOTA, }
 County. } ss.

Form of affidavit for filing lien

A. B. affiant, makes oath and says: That the annexed is a true and correct account of the labor performed, and mate-

Form of affidavit:

rial (or say machinery) furnished by him (or them) to and for (here give name or names) at said county; and the prices thereof set forth in the account hereto annexed, are just and reasonable, and the same is unpaid; that said labor was performed, and material (or say machinery) was furnished for said C. D. at the time in said account mentioned under and by virtue of a contract between affiant and C. D., (if the contract was in writing, add above copy of which is hereto annexed, marked A.) and for (constructing, or say, altering, or say repairing a certain boat called, (and so forth,) giving a description of the water craft; or say erecting, or say repairing a certain house, or say mill, giving the common name of the building; or say a certain piece of land, giving location, etc.; or say a lot of timber, or logs, or lumber, etc.)

And affiant further makes oath and says: That the said C. D. was, at the time said contract was entered into and said labor was performed, and said materials (or say machinery) was furnished, the owner of house, (or say mill, or say said manufactory, naming the kind of building,) and that said building is situate upon a certain lot of land owned by said C. D., in town, section, range, in said county, and this affiant claims a lien on the premises.

(Signed,) A. B.

Sworn and subscribed before me this day of, A. D. 18 .

H— G—, J. P.

Repeal of former acts

SEC. 19. All acts and parts of acts inconsistent hereunto are hereby repealed.

SEC. 12. This Act shall take effect from and after its passage.

GEORGE BRADLEY,

Speaker of the House of Representatives.

WILLIAM HOLCOMBE,

President of the Senate.

APPROVED—August twelve, eighteen hundred and fifty-eight.

HENRY H. SIBLEY.

SECRETARY'S OFFICE, Minnesota, }
August 12, 1858. }

I hereby certify the foregoing to be a true copy of the original on file in this office.

FRANCIS BAASEN, Secretary of State.