

CHAPTER LXXXIX.

AN ACT FOR PROVIDING FOR A LIEN FOR LABOR UPON LOGS AND TIMBER.

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

Exemption from
lien.

SECTION 1. Any person who may do or perform any manual labor in cutting, banking, driving, rafting, cribbing or towing any logs, 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. 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 or timber were cut and carried away without the consent of such owner or legal occupant.

Conditions of
lien.

SEC. 2. No such debt, demand or claim shall remain a lien on any such logs or timber, unless a statement thereof in writing, under oath by 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 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 or timber upon which the lien is claimed, that such labor was performed wholly on such logs 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, 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, such statement shall be filed within thirty days after the completion or last day of such labor or services, and unless suit shall be commenced for the recovery and enforcement of such claim or demand under the provisions of this act, within three months after the filing of such statement, the lien shall cease.

Lien to cease.

Attachment—
Claimant to
make affidavit.

SEC. 3. Any person having a lien upon any logs or timber pursuant to the provisions of this act may enforce the same by attachment against such logs or timber, in the district court of said state, in the judicial district wherein is situate the office of surveyor general in which the mark of such logs or timber is or should be recorded, in the same manner prescribed in title nine of chapter 66, of the general statutes, so far as the same can be

made applicable thereto, and not herein otherwise provided or inconsistent herewith. 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 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 complaint as required in civil actions, in the office of the clerk of the district court, 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.

SEC. 4. 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. 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 him in the office of the surveyor general of the lumber district within which suit is brought, and such mark or marks are recorded, and the same shall be a sufficient levy thereon; but the officer shall, if necessary to save the same from loss, proceed to have such logs scaled to him as provided by law, without delay, or as 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, and logs and timber in the second lumber district may be held at Minneapolis, by the sheriff attaching the same, notwithstanding the destination of such logs may be below those places respectively. Where logs to be held.

SEC. 5. 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 other 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 the 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 a bond to the plaintiff, with sureties to be approved by the said judge or court commissioner, and in Release from lien.

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 one day's 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 in all cases shall accompany the bond.

Parties to cause.

SEC. 6. 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 or timber upon which the lien claimed may apply and be admitted by the court so far as necessary to protect his rights in the premises.

Finding of court or jury.

SEC. 7. 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 service for which the action was brought, and was performed on the logs 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 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 cost 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 if adjudged to be in whole or in part upon such logs, then judgment shall also be rendered for the amount of such lien against all the persons liable on such bonds.

Execution and sale—notice.

SEC. 8. All levies upon logs, 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 notices 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 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 such 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. Title acquired.

SEC. 9. The officer making a levy upon logs as herein provided, may pay the boomage and scaleage on 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 as disbursements, but if paid after judgments, then the officer may charge and collect the same out of the property as other costs and disbursements. Costs and disbursements.

SEC. 10. 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 of the lien. Notes—how effecting complaint.

SEC. 11. 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 in his answer.

SEC. 12. The surveyors general of logs and lumber are hereby required to file and record such statements, and any assignments thereof, and all such writs and returns, and certificates of sale, and shall receive therefor the same fees as for recording other instruments in their office, and such record or a certified copy thereof, may be introduced and read in evidence in any of the courts of this state. Filing of papers.

SEC. 13. When there are more persons than one having claims upon the same logs or timber, as herein provided, it shall be lawful for any one person having such claim, to purchase the claims of any of the others and take a written assignment of the same, either before or after the making or filing of the statement therefor, as herein provided, and such assignee is hereby authorized to make or file for record the statement for a lien therefor, in case no statement thereof has been filed, it shall be his duty to file for record in said office such assignment of such claim or claims; and he shall have the right to prosecute an action as in this act provided, for the whole of the amount owned by and assigned to him without making the assignors parties to the action; and any person holding the title to any 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 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 Assignment of claims.

claim thereon, but in no case shall he be required to pay more than the reasonable and current value of such labor.

Limitation.

SEC. 14. 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 or driving logs by the thousand.

When act to take effect.

Repeal.

SEC. 15. This act shall take effect and be in force from and after its passage, and all acts or parts of acts inconsistent with this act are hereby repealed. *Provided*, That this act shall not take effect in the first lumber district until October 1st, 1876.

Approved February 28, 1876.

CHAPTER XC.

AN ACT TO PROVIDE FOR THE INSPECTION OF ILLUMINATING OILS, MANUFACTURED FROM PETROLEUM OR COAL OILS.

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

Appointment of state inspector.

SECTION 1. That there shall be appointed by the governor, by and with the advice and consent of the senate, a suitable person, resident of the state, who is not interested in manufacturing, dealing or vending any illuminating oils manufactured from petroleum, as state inspector of oils, whose term of office shall be two years from the date of his appointment, or until his successor shall be appointed and qualified. The governor shall have power to remove such person from office whenever it shall appear to him from good and sufficient evidence that such officer is guilty of malfeasance or non-feasance in the performance of his duty, and may fill any vacancy arising from such removal from resignation, death or removal from the state, by a new appointment.

Duty of state inspector.

Marking of packages.

SEC. 2. It shall be the duty of said state inspector of oils to examine and test the quality of all such oils offered for sale by any manufacturer, vendor, dealer; and if, on testing or examination, the oils [shall] meet the requirements hereinafter specified, he shall affix his brand or device, and the date of the inspection, with the word "approved" upon the barrel, cask or other package containing the same; and it shall be lawful for any manufacturer, vendor, or dealer to sell the same as an illuminator; but if the oil so tested shall not meet the said requirements, he shall mark in plain letters on said barrel, cask or package with device and date as aforesaid, the words "unsafe