

request of the owner or lawful possessor thereof, shall have the same lien for his charges for carrying, transporting, storing, keeping, supporting and caring for such property, and the same right to hold and retain possession thereof, and the same power of sale for the satisfaction of his reasonable charges and expenses upon the same conditions and restrictions as provided in the preceding section.

SEC. 3. That sections sixteen (16) and seventeen (17) of chapter ninety (90) of the general statutes of one thousand eight hundred and seventy-eight (1878), of the state of [Minnesota, and all acts and parts of acts amendatory thereof be and the same are hereby repealed; and all acts and parts of acts inconsistent with this act are hereby repealed. *Provided*, That this act shall not affect any right existing or suits pending when it shall take effect. *Provided further*, That proceedings begun to enforce liens after this act shall take effect shall conform, as far as practicable, to the provisions of this act.

Acts repealed.

SEC. 4. This act shall take effect and be in force from and after its passage.

When act to take effect.

Approved April 24, 1889.

CHAPTER 200.

[H. F. No. 783.]

AN ACT GIVING LIENS FOR THE BETTER SECURITY OF MECHANICS, MATERIAL MEN, LABORERS AND OTHERS.

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

SECTION 1. Whoever performs labor, or furnishes skill, material or machinery for the construction, alteration or repair of any boat, vessel or other water craft, or for the erection, alteration, repair or removal of any house, mill, manufactory, or other building or appurtenance, or of any fixture, bridge, wharf, fence or other structure, by virtue of a contract with, or at the instance of, the owner thereof, or his agent, trustee, contractor or subcontractor, shall have a lien to secure the contract price or value of the same upon such boat, vessel or other water craft, or upon such house, mill, manufactory, or other building or appurtenance, or fixture, bridge, wharf, fence or other structure, and upon the right, title and interest of the owner thereof, in and to the land upon which the same is situate, or to which it may be removed, not exceeding forty (40) acres, if without the corporate limits of any city or incorporated village; and if situate upon, or removed to, land within the

Labor, skill, material, etc. furnished shall be a first lien

corporate limits of any city or incorporated village, then in and to the lot of land upon which the same is situate, or to which it may be removed, not exceeding one (1) acre in extent.

Liens for
grading, etc.

SEC. 2. Whoever performs labor, or furnishes skill, material or machinery for grading, filling in or excavating any land, or for digging, constructing, altering or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, constructing, altering or repairing any sidewalk, curb, gutter, or any sewer, water pipe or gas pipe, whether mains or connections, upon any land, or in the half of the highway, street or alley adjacent and contiguous to said land, by virtue of a contract with or at the instance of the owner thereof, or his agent, trustee, contractor or subcontractor, shall have a lien to secure the contract price, or value of the same, upon the right, title and interest of the owner of such grading, filling in or excavation, ditch, drain, well, fountain, cistern, reservoir, vault, sidewalk, curb, gutter, sewer, water pipe or gas pipe, whether mains or connections, in and to the land upon which the same has been done or is situate, or in and to the land adjacent and contiguous to the half of the highway, street or alley in which such sidewalk, curb, gutter, sewer, water pipe or gas pipe, whether mains or connections, has been laid, constructed, altered or repaired, not exceeding forty (40) acres, if without the corporate limits of any city or incorporated village, and if done or situate upon land, or in the half of the highway, street or alley adjacent and contiguous to land within the corporate limits of any city or incorporated village, then in and to the lot of land upon which the same has been done or is situate, or in and to the lot of land adjacent and contiguous to the half of the highway, street or alley in which such sidewalk, curb, gutter, sewer, water pipe, gas pipe, whether mains or connections, has been laid, constructed, altered or repaired, not exceeding one (1) acre in extent.

Liens for
building and
repairing rail-
way, telegraph,
telephone, etc.

SEC. 3. Whoever performs labor, or furnishes skill, material or machinery for the construction, alteration or repair of any line of railway, or of any telegraph line, depot, bridge, fence, or other structure appertaining to any line of railway, or for the construction, alteration or repair of any line of telegraph, telephone, electric light, gas-pipe or subway conduit, or of any fixture or structure appertaining to any such line, by virtue of a contract with, or at the instance of the owner thereof, his or its agent, trustee, contractor or sub-contractor, shall have a lien to secure the contract price, or value of the same, upon such line of railway, telegraph line, depot, bridge, fence, or other structure appertaining to such line of railway, or upon such line of telegraph, telephone, electric light, gas-pipe or subway conduit, or fixture or structure appertaining to such line, and upon all franchises, privileges and immunities, and all

right of way of or appertaining to any of the several lines aforesaid.

SEC. 4. Whenever the owner of land has sold the same upon an executory contract of sale contingent upon or providing for the erection, construction, alteration, removal to or repair upon such land by the vendee thereof of any house, mill, manufactory or other building or appurtenance, or of any fixture, wharf, fence or other structure, if the vendee or his assigns shall forfeit or surrender such contract, then, for the purpose of establishing and enforcing a lien for all labor, skill, material or machinery, performed or furnished by other persons, for or to such vendee, or his assigns, under contract or subcontract for such erection, construction, alteration, removal or repair, such vendee shall be deemed the owner of such house, mill, manufactory or other building or appurtenance, or fixture, wharf, fence or other structure, and such vendee his contractor within the meaning of this act. But no such vendor shall be personally liable for any indebtedness so contracted by such vendee.

In case of sale, liens how maintained.

SEC. 5. Every house, mill, manufactory or other building or appurtenance, and every structure or other improvement mentioned in sections one (1) and two (2) of this act (excepting boats, vessels or other water craft), erected, constructed, altered, removed to or repaired upon any land, with the knowledge of the owner of such land, or of any person having or claiming an interest therein otherwise than as a bona fide prior mortgagee, incumbrancer or lienor, shall be held to have been erected, constructed, altered, removed or repaired at the instance of such owner or person, so far only as to subject his interest to a lien therefor, as in this section provided, and such interest so owned or claimed, shall be subject to any lien given by the provisions of this act, unless such owner or person shall, within five (5) days after he shall have obtained knowledge of the erection, construction, alteration, removal or repair aforesaid, give notice that his interests shall not be subject to any lien for the same by serving a written or printed notice to that effect personally upon all persons performing labor or furnishing skill, material or machinery therefor, or shall, within five (5) days after he shall have obtained the knowledge aforesaid, or knowledge of the intended erection, construction, alteration, removal or repair aforesaid, give such notice as aforesaid by posting and keeping posted a written or printed notice to the effect aforesaid, in some conspicuous place upon said land or upon the building or other improvement situate thereon. But no lien shall be allowed as against a lessor for repairs made by or at the instance of a lessee, and nothing in this section contained shall apply to such vendor as is mentioned in section four (4) of this act.

In case of improvements on leased lands, owner of land may give notice that his interest is not subject to lien.

SEC. 6. In all cases where the labor, skill, material or

Lien shall not exceed actual value of labor, etc., furnished.

In case of two or more buildings upon same or contiguous lots, not necessary to file separate lien.

Statement to be made by party wishing to obtain lien.

Statement to be verified and filed within ninety days.

machinery referred to in sections one (1), two (2) and three (3) of this act, shall be furnished by any person other than the original contractor with such owner or his agent or trustee the lien shall not exceed the actual value of the labor, skill, material or machinery so furnished.

SEC. 7. Whenever any contractor, sub-contractor or other person shall perform labor or furnish skill, material or machinery for the erection, construction, alteration, removal or repair of two or more buildings or structures united together and situate upon the same lot or contiguous lots, or of separate buildings upon contiguous lots, in either case under or pursuant to the purposes of one general contract with the owner or joint owners of the lot or lots and of such improvements thereon, or with the person or persons whose interest therein may be charged, with a lien under this act, it shall not be necessary to file a separate lien upon each building or structure for the labor so performed thereon, or for the skill, material or machinery so furnished therefor, nor, in case a separate lien is not so filed, to apportion the amount of the entire lien claimed, between the several buildings or structures.

SEC. 8. Any person, copartnership or corporation, claiming lien under this act, and wishing to avail himself of the benefits thereof, and to continue such lien, shall make a statement in writing setting forth:

1. The amount actually due and owing him after allowing all just credits and offsets. (The separate items of the account need not be stated.)

2. That such amount is due and owing for labor performed, or for skill, material or machinery furnished, or for one or more of them; and in what erection, construction, alteration, repair, removal, digging or laying, as the case may be, the same was performed or furnished.

3. The time when the first and last item of such labor, skill, material or machinery, as the case may be, was furnished.

4. A description of the property to be charged with the lien.

5. The name of the owner or reputed owner, at the time of making said statement, of the property charged with the lien, according to the best information then had.

6. A notice of intention to claim and hold such lien.

Said statement shall be verified by the oath of the person claiming the lien, or by his agent, or by one having knowledge of the facts, and shall, within ninety (90) days from the time of furnishing of the last item of such labor, skill, material or machinery, be filed in the office of the register of deeds in and for the county in which the premises charged with the lien are situate; and in case such labor, skill, material or machinery shall have been furnished for the construction, alteration or repair of any boat, vessel or other water craft, or of any line of railway, or any

telegraph line, depot, bridge, fence or other structure appertaining to any line of railway, or for the construction, alteration or repair of any line of telegraph or telephone, or of any fixture or structure appertaining to any such line, said statement shall be filed, within the time aforesaid, in the office of the secretary of state.

Said statement, when so verified, shall be recorded in the office, where it is filed as aforesaid, at length in the records thereof, and shall operate to continue such lien during all the period of time, from the time of the furnishing of the first item of such labor, skill, material or machinery until the expiration of one (1) year after the time of furnishing the last item of the same.

SEC. 9. The validity of the lien shall not be affected by any inaccuracy in the statement relating to the property to be charged with it, if such property can be reasonably recognized from the description, nor by any inaccuracy in the statement of the name of the owner or reputed owner of such property, nor by any inaccuracy in stating the amount due for labor, skill, material or machinery, unless it appears that the person claiming the lien has wilfully and knowingly claimed more than is due. *Provided*, that in no case shall a lien exist for a greater amount than that claimed in said statement.

Validity of Lien
not affected by
any inaccuracy.

SEC. 10. Any person having a lien given by the provisions of this act, may proceed to obtain judgment and enforce the same, in the same manner as in actions for the foreclosure of mortgages upon real estate, except as otherwise herein provided.

Judgments,
how obtained
and enforced.

Every such action to enforce any such lien shall be commenced within one (1) year from the time of furnishing the last item of labor, skill, material or machinery for which such lien is had.

Actions, when
commenced.

At the time of the commencement of such action a notice of *lis pendens* shall be filed, as provided by law, in the office of the register of deeds in and for the county in which such action is brought, and, except in cases where the lien statement shall have been filed in the office of the secretary of state, as in this act provided, in each and every county in which the property, or any part thereof, affected by such action is situate.

In all cases no pleadings or copies thereof need be served, on demand or otherwise, but the several pleadings in such action shall be filed by the parties thereto, in the office of the clerk of the district court in and for the county wherein the action is brought. The complaint shall be so filed at the time of issuing the summons in such action.

Pleadings.

The summons shall require the defendant so to file his answer within twenty (20) days after the service of such summons, exclusive of the day of service, and shall notify him that the complaint has been filed with the clerk of said court, and that such action is for the foreclosure of a mechanic's lien.

Summons.

Bill of
particulars.

Every party to such action claiming a lien under this act shall attach to his complaint, or answer, and file therewith, a bill of particulars of the items of his lien-claim, verified by his oath, or that of his agent, or of some one having a knowledge of the facts, or be precluded from giving evidence thereof. The court may order a further and more particular bill.

In any such action all persons who have liens given by the provisions of this act, filed of record upon the same property or any part thereof, shall be made parties defendant. The complaint in such action shall ask the determination, and adjudication of the amount, and validity of all such lien-claims.

Answer must
be made by
each defendant

Each defendant in such action shall answer, setting up any defense to the plaintiff's claim, and, also, as in a complaint, the amount and nature of the lien claimed by such defendant, and asking that the same be determined, adjudicated and foreclosed in said action. Against any defendant failing to answer, judgment shall be rendered denying him any relief in such action, and he shall be thereby debarred from afterwards setting up or asserting his said lien; but his claim upon the person with whom the contract was made shall not be thereby impaired. All the allegations of each answer in such action shall be deemed to be controverted, as upon a direct denial or avoidance, as the case may require, without further pleading.

Actions may be
continued in
certain cases.

At the trial of such action the amount and validity of all such liens as aforesaid shall be determined and adjudged; and if it shall appear to the court at any time before final judgment, that other liens have been filed, or will thereafter be filed under the provisions of this act, upon or against the same property or any part thereof, or that there are other persons who ought to be made parties to such action, the court, upon its own motion, or upon motion of any party or of any person claiming such lien, or upon motion of any such other person who ought to be made a party, may continue such action, or delay trial thereof or judgment therein, for the purpose of bringing in, and making all lien claimants upon such property, or such other persons, parties to such action. Any person entitled to a lien given by the provisions of this act, whose claim is not due or payable at the time of the commencement of an action by any other person or persons, to enforce their liens, shall be permitted to become or to be made a party to such action; and the claim of such person may be allowed, subject to discount for the period to elapse between the date of the judgment and the maturity of such claim. After the commencement of, and before final judgment in any such action to foreclose any such lien, as aforesaid, upon any certain property, no other such action to foreclose any other such lien upon the same property or any part thereof shall be commenced; but the claimant of any other

such lien, not a party to such action firstly commenced, shall apply to be made, and shall be admitted a defendant in the action last mentioned. And if he shall, nevertheless, commence such other action, the same shall be consolidated with, and merged in the action firstly commenced, upon motion of any party to the earlier action, or by the court upon its own motion. In rendering judgment in such action the court shall first determine the amount of the lien claim to which each sub-contractor is entitled, and direct judgment in favor of such sub-contractor for the amount so determined; the court shall then determine the amount to which the contractor, with whom each sub-contractor shall have made his contract, is entitled, over and above the amount of the liens of such sub-contractors, and direct judgment for such excess only in favor of such contractor. But if after judgment any original contractor shall pay the amount so adjudged to be due to such sub-contractor, such original contractor shall be subrogated to the rights of such sub-contractor. Any judgment rendered in such action shall specify the amount of every such lien, and by whom it is held or owned, and shall order the sale of the premises covered by all such liens to satisfy the same. Such judgment shall require the officer to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the several creditors, including such subsequent lien claimants, if any, as are hereinafter mentioned, to the amount of their several claims, if there is sufficient therefor; and if there is not sufficient, then to divide and distribute the same among the creditors in proportion to the amount due to each, and without priority among themselves.

Judgments.
Amounts how
determined.

Proceeds of
sale.

If, at any time after judgment and before sale or distribution, it shall be made to appear to the court that any lien claimant, having a lien which might properly have been foreclosed in said action and provided for by said judgment, has without fault on his part, omitted to assert the same or to apply to be made a party to said action the court shall, by its further order or orders delay such sale or distribution, as the case may be, for the purpose of admitting, and shall, upon due proof of such lien-claim, in manner as the court may direct, admit such claimant to a participation in the proceeds of such sale or distribution, in all respects as if he had been a party to said action, and had therein duly established his said claim.

In case claim-
ant has failed
to assert his
lien.

In case the property covered by such lien or liens will not sell upon execution, as provided by law in other cases, having been once duly offered, the court may order the property into the hands of a receiver, to be leased or rented from time to time, under the direction of the court, until the lien or liens shall be discharged, or make such other order or disposition of the property as shall to right appertain.

Judgments establishing liens upon telegraph, railway, etc., how satisfied.

SEC. 11. When judgment is obtained establishing any lien, given by the provisions of this act, upon any line of railway, telegraph, telephone, electric light, gas-pipe or subway conduit, such line of railway, together with all telegraph lines, depots, bridges, fences or other structures appertaining to such line of railway, or such line of telegraph, telephone, electric light, gas-pipe or subway conduit, together with all fixtures or structures appertaining to such line, and together with all franchises, privileges, immunities, and all right of way of or appertaining to any of the several lines aforesaid, may be sold upon execution to satisfy such judgment.

The purchaser thereof, at any such sale, shall have and hold all and singular the same, in the same manner and with the same effect, as the same were had and held by the judgment debtor. Such sale shall be conducted in like manner, and be upon like notice, and be subject to like redemption, as sales of real property upon execution, except that in the case of the sale of any line of railway or telegraph as aforesaid, the notice of sale, required by law to be published in a newspaper shall be published in some newspaper published at the capital of the state.

Building may be removed.

SEC. 12. If the building or other improvement erected, or constructed, is so constructed as to be movable from the premises without material injury thereto, the court may direct the same to be sold to satisfy any lien given by the provisions of this act, and the purchaser may, under the direction of the court, remove such building or improvement from the premises within sixty (60) days after such sale.

On sale of real property to satisfy lien.

SEC. 13. Upon the sale of any real property under the provisions of this act, when the interest or estate sold is a leasehold of less than two (2) years, unexpired term, from the time of such sale or is at the time of such sale the interest or estate of a vendee of such property under an executory contract of sale, the conditions of which are to be performed within two (2) years from the date of the contract, the sale is absolute; in all other cases the property sold is subject to redemption as provided by law.

Sub-contractor may serve notice on owners.

SEC. 14. Any sub-contractor or person other than the original contractor, who performs any labor or furnishes any skill, material or machinery, or who has agreed so to do, for which a lien is, or may be given by the provisions of this act, may at any time serve or cause to be served upon the owner of the premises, or upon the person whose interest therein is, or may be charged with such lien, or upon the authorized agent of either, a notice in writing.

Form of notice

Such notice to be substantially in the following form:
 To _____ : You are hereby notified, that I have (been employed by, or have contracted with) _____, to (here state whether to perform labor or furnish skill, material or ma-

chinery, or both, and substantially the nature of the undertaking or demand) upon your (here state the building or other structure or improvement, and where situate, in general terms); and that I shall hold the (building, or as the case may be), and your interest in the land liable for the amount that (is, or may become) due me on account thereof. That said amount (is, or will be, here state the amount as nearly as may be.)

Date.....

Signature.....

No such notice shall be invalid by reason of any defect of form, *Provided*, it is sufficient to inform the owner or such person or persons as aforesaid of the substantial matters, as set forth in the form herein above given. Such notice shall be verified by the oath of such sub-contractor or that of his agent. Such notice shall be served by delivering the same to the owner or to such person as aforesaid, or to the authorized agent of either, personally, or in case such owner, person or agent cannot be found in the county in which such improvement is made and has no residence therein, then by posting such notice, and keeping it posted in a conspicuous place upon the premises of the owner or such person as aforesaid. Upon such notice being served, the owner or such person as aforesaid, or the agent or either shall, and it shall be his duty to withhold from the original contractor, out of the money due or that may become due to him, an amount sufficient to answer the sum of money claimed in such notice to be due or to become due, and any lien that may be filed therefor. Such an amount as aforesaid shall be so withheld until such notice is by writing withdrawn, by the party so having given the same. But failure by any such sub-contractor or person, other than the original contractor, as aforesaid, to give such notice shall not defeat his lien or right of lien under this act.

Notices not invalid by reason of defect of form.

SEC. 15. The taking of a promissory note or other evidence of indebtedness, for labor performed, or skill, material or machinery furnished, under the provisions of this act, shall not discharge the lien thereby given for the same, unless expressly received in payment therefor, and so specified in such note or other evidence of indebtedness.

Promissory note taken for lien does not discharge same unless so specified.

SEC. 16. Any contractor or sub-contractor who shall purchase material on credit, and represent at the time of said purchase, that the same is to be used in a designated building or other improvement, and shall thereafter use or cause to be used, the said material in the construction of any building or improvement other than that designated when purchased, with intent to defraud the person from whom the material was purchased, without first having given due notice to, and obtained written consent from the person from whom the material was purchased, shall, upon conviction thereof, be punished by a fine not exceeding five

To prevent fraud on part of contractors.

hundred (500) dollars, or by imprisonment not exceeding six (6) months, or both, in the discretion of the court.

Rights of
executors and
administrators

SEC. 17. Executors and administrators under this act have the same rights, and are subject to the same liabilities, that their testator or intestate, if living, would have or might be subject to.

SEC. 18. Every person who has received satisfaction of his debt or tender of the amount thereof, with all costs of action brought thereon, or of any judgment recovered therefor, for which he has filed any such claim for lien, or after final judgment against him by a competent tribunal in an action thereon, or after the expiration of the time limited by this act for the commencement of action thereon without action being begun, shall, at his own cost, at the request of any person interested in the property affected by such lien, or who is interested in having such lien removed, or of his legal representatives, release and discharge such lien of record; and if he neglects so to do for ten (10) days after request in writing, he shall forfeit and pay twenty-five (25) dollars to the person requesting such satisfaction and discharge, to be recovered in a civil action, and shall be liable to any person injured to the extent of his injury.

Liens, release
and discharge.

All liens given by the provisions of this act shall be released and discharged in the office where recorded in the same manner as is now provided by law for the release and discharge of mortgages upon real property.

Certain
sections
released.

SEC. 19. That sections one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), eighteen (18), nineteen (19), twenty (20) and twenty-one (21) of chapter ninety (90) of the general statutes of one thousand eight hundred and seventy-eight (1878), of the state of Minnesota, and all acts and parts of acts amendatory thereof, be and the same are hereby repealed; and all acts and parts of acts inconsistent with this act are hereby repealed. *Provided*, that this act shall not affect any rights existing or suits pending when it shall take effect. *Provided, further*, that proceedings begun to enforce liens after this act shall take effect, shall conform, as far as practicable, to the provisions of this act.

When act to
take effect.

SEC. 20. That this act shall take effect and be in force from and after the first (1st) day of October, A. D. one thousand eight hundred and eighty-nine (1889).

Approved April 24, 1889.