

THE  
GENERAL STATUTES

OF THE  
STATE OF MINNESOTA

As Amended by Subsequent Legislation, with which are Incorporated  
All General Laws of the State in Force December 31, 1894

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## CHAPTER 90.

## LIENS.

For lien of log companies for tolls, see § 2633.  
 For lien for purchase price of railroad equipment, see § 2729.  
 For lien for inspecting and weighing grain, see § 7699.

**§ 6229. Lien for labor, material, etc., in buildings, etc.**

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 acres, if without the corporate limits of any city or incorporated village; and if situate upon, or removed to, land within the 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 acre in extent. (1889, c. 200, § 1.)

As to proceedings to enforce liens for labor performed or material furnished before the act took effect, see *Nelson v. Sykes*, 44 Minn. 63, 46 N. W. Rep. 207; *Tell v. Woodruff*, 45 Minn. 10, 47 N. W. Rep. 262; *Bardwell v. Mann*, 46 Minn. 235, 48 N. W. Rep. 1120; *Nystrom v. London & N. W. A. Mortg. Co.*, 47 Minn. 31, 49 N. W. Rep. 394; *Hill v. Lovell*, 47 Minn. 293, 50 N. W. Rep. 81; *Wheaton v. Berg*, 50 Minn. 525, 52 N. W. Rep. 926.

Laws 1889, c. 200, held constitutional. *Bardwell v. Mann*, 46 Minn. 235, 48 N. W. Rep. 1120.

See, also, *Burns v. Sewell*, 48 Minn. 423, 51 N. W. Rep. 224; *Wheaton v. Berg*, 50 Minn. 525, 52 N. W. Rep. 926.

Laws 1887, c. 170, "An act giving labor the right of first lien, and material furnished a second lien on all property," was unconstitutional. *Meyer v. Berlandi*, 39 Minn. 433, 40 N. W. Rep. 513; *St. Paul Foundry Co. v. Wegmann*, 40 Minn. 419, 42 N. W. Rep. 288.

The seller of material to a contractor to be used in a building, constructed or in process of construction, is entitled to a lien, though it was not used in the building. *Burns v. Sewell*, 48 Minn. 425, 51 N. W. Rep. 224.

Where a married woman has made an invalid contract to convey, contingent on the vendee's erection of a building, a lien cannot be enforced through § 6232; but the contract is admissible to show that the work was done at her instance, under this section. *Althen v. Tarbox*, 43 Minn. 18, 50 N. W. Rep. 1018.

See *Haupt Lumber Co. v. Westman*, 49 Minn. 397, 52 N. W. Rep. 33.

The vendor and vendee in an executory contract cannot, by stipulation, deprive third persons of their rights to liens for labor or material subsequently furnished to the vendee. *Malmgrem v. Phinney*, 50 Minn. 457, 52 N. W. Rep. 915.

A subcontractor doing extra work on a church, by verbal direction of a building committee, held bound by a clause in the principal contract that no charge for extra work should be allowed, etc. *Shaw v. First Baptist Church*, 44 Minn. 22, 46 N. W. Rep. 146.

Where the owners of contiguous lots unite in a joint contract for the construction of a building on both lots, one claim may be filed against both lots, or the claimant may sever his claim. *Miller v. Shepard*, 50 Minn. 268, 52 N. W. Rep. 894. *Menzel v. Tubbs*, 51 Minn. 364, 53 N. W. Rep. 653, 1017.

See, also, *Lax v. Peterson*, 42 Minn. 214, 44 N. W. Rep. 3; *Glass v. St. Paul Park C. & S. Co.*, 43 Minn. 223, 45 N. W. Rep. 150.

So, also, where the owner of one of the lots constructs a building on both with the

<sup>1</sup>An act giving liens for the better security of mechanics, material men, laborers and others. Approved April 24, 1889. By § 19 of this act, G. S. 1873, c. 90, §§ 1-15, both inclusive, and §§ 18-21, both inclusive, and all acts and parts of acts amendatory thereof, and all acts and parts of acts inconsistent therewith, are repealed: "Provided, further, that proceedings to enforce liens after this act shall take effect shall conform, as far as practicable, to the provisions of this act."

knowledge of the owner of the other. In such case, one who furnishes work or material on a part of the building situate on one of the lots may claim a lien on both. *Menzel v. Tubbs, supra.*

An architect who furnishes plans, etc., may have a lien. *Gardner v. Leck, 52 Minn. 522, 54 N. W. Rep. 746. See Knight v. Norris, 13 Minn. 473 (Gil. 438).*

A mechanic's lien may be released by an instrument in writing for a consideration paid by third parties who have acquired rights in the premises, though a sum less than the amount due was paid. *Burns v. Carlson, 53 Minn. 70, 54 N. W. Rep. 1055.*

Where a partly performed building contract is canceled by consent, and the owner agrees to pay for the work performed at an agreed value, the lien is not waived. *Bruce v. Lennon, 52 Minn. 547, 54 N. W. Rep. 739.*

A lien claim is assignable. *Kinney v. Duluth Ore Co. (Minn.) 60 N. W. Rep. 23.*

#### Under former statutes.

The provisions securing a lien to subcontractors and others for labor performed or materials furnished in the erection of buildings pursuant to a contract between the owner and contractor, are valid and constitutional. *Laird v. Moonan, 32 Minn. 353, 20 N. W. Rep. 354; Bohn v. McCarthy, 29 Minn. 23, 11 N. W. Rep. 127.*

Such lien may be enforced, irrespective of the state of accounts between the contractor and owner, or the amount due upon such contract. *Laird v. Moonan, supra.* And see *Othmer v. Clifton, (Iowa,) 29 N. W. Rep. 767.* In such cases the lien is limited to the reasonable value of the labor or materials furnished. *Laird v. Moonan, supra.*

The introduction into a shop of additional permanent and stationary machinery for use therein may subject the premises to a lien for the purchase price. *Fond Mach. Tool Co. v. Robinson, 38 Minn. 272, 37 N. W. Rep. 99.*

A contract to cut from plaintiff's own material, and furnish, all the cut stone required for a building, payments to be made to him from time to time as the work under said contract progresses, is one contract, and the party is entitled to a lien for material furnished thereunder, although the contract may be to furnish distinct items of material, or perform distinct items of labor, to be paid for as the work progressed. *Milner v. Norris, 13 Minn. 455, (Gil. 424.)*

The lien of a material-man extends as well to the interest of an equitable, as of a legal, owner. *Atkins v. Little, 17 Minn. 342, (Gil. 320.)*

Where, in the sale of materials, it is the mutual understanding that they are for the purpose of erecting or repairing a building, though no particular building was at the time mentioned or understood, and no lien is contracted for, the material-man may have a lien. *Id.* And in such case the lien attaches, although the material was to be paid for on delivery at one place, and it was delivered without payment at another, the place where the building was situated. *Id.*

"Owner" means owner of any estate or interest which the court may order sold. *Benjamin v. Wilson, 34 Minn. 517, 26 N. W. Rep. 725.*

Plaintiffs furnished to defendants, B. & C., materials for a dwelling, to be constructed upon lot 5, then owned by B. & C., and upon which another defendant, supposing the house was being built as contemplated, took a mortgage. By mistake the house was erected upon lot 6, the property of a stranger. Held that, as against the mortgagee, the plaintiffs were not entitled to a lien upon lot 5, and that as against said mortgagee, who upon discovering the error in location purchased lot 6, the plaintiff could have no lien upon the dwelling thereon. *Smith v. Barnes, 38 Minn. 240, 36 N. W. Rep. 346.*

A married woman may subject her separate estate to a lien. *Carpenter v. Leonard, 5 Minn. 155 (Gil. 119); Tuttle v. Howe, 14 Minn. 145 (Gil. 113).*

See, also, *Smith v. Gill, 37 Minn. 455, 35 N. W. Rep. 178; McCarthy v. Caldwell, 43 Minn. 442, 45 N. W. Rep. 723.*

In what cases a contractor may have a lien when he has substantially, but not literally, performed his contract. *Leeds v. Little, 42 Minn. 414, 44 N. W. Rep. 309.*

Lien allowed for transportation of machinery to be repaired. *McKeen v. Haseline, 46 Minn. 426, 49 N. W. Rep. 195.*

Evidence that material furnished for construction was not "required," held inadmissible, under G. S. 1578, c. 90. *Woolsey v. Bohn, 41 Minn. 235, 42 N. W. Rep. 1022.*

A contractor with the owner is entitled to a lien for material prepared at his shop. *Howes v. Reliance Wire Works Co., 46 Minn. 44, 48 N. W. Rep. 448.* And, if the building is stopped by the owner's fault, the contractor may have a lien for work already done. *Id.* If one purchasing from the owner subject to such lien claims refuses to permit the completion of the work, the contractor may have a lien to the extent of his loss. *Id.*

See *Hickey v. Collom, 47 Minn. 565, 50 N. W. Rep. 918.*

Meaning of "lot of land." *Lax v. Peterson, 42 Minn. 214, 44 N. W. Rep. 3; Glass v. St. Paul Park C. & S. Co., 43 Minn. 223, 45 N. W. Rep. 150.*

Extent of lien as to "appurtenances" of a dry kiln. *McDonald v. Minneapolis Lumber Co., 23 Minn. 262, 9 N. W. Rep. 765.*

Evidence held insufficient to limit a lien to one of two disconnected buildings on a lot. *Bergsma v. Dewey, 46 Minn. 357, 49 N. W. Rep. 57.*

The lien continues, though the building is burned before the account is filed. *Freeman v. Carson, 27 Minn. 516, 3 N. W. Rep. 764.*

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A public school held not subject to a lien under Laws 1887, c. 170. *Jordan v. Board of Ed.*, 39 Minn. 298, 39 N. W. Rep. 801.

Prior to the amendment to the Constitution of 1888, homestead could not be made subject to a lien, in the absence of agreement. *Meyer v. Berlandi*, 39 Minn. 438, 40 N. W. Rep. 513.

See *Bergsma v. Dewey*, 46 Minn. 357, 49 N. W. Rep. 57.

The interest of one in possession under a contract of purchase, who erects a building, is chargeable with liens, which are not divested by surrender of his interest. *King v. Smith*, 42 Minn. 286, 44 N. W. Rep. 65.

If such interest is surrendered, the vendor agreeing to pay the liens, there being no equitable consideration requiring the court to treat the vendee's interest as still outstanding, the liens may be enforced against the whole estate. *Boyd v. Blake*, 42 Minn. 1, 43 N. W. Rep. 485.

## § 6230. Same—In grading, etc.

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 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 acre in extent.

(1889, c. 200, § 2.)

See *Pratt v. Duacan*, 36 Minn. 545, 32 N. W. Rep. 709.

## § 6231. Same—Line of railway, or telegraph, or telephone, etc.

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.

(1889, c. 200, § 3.)

One who lets his team and teamsters to a subcontractor for work in constructing a railway is entitled to a lien. *Ferry v. Murphy* (Minn.) 57 N. W. Rep. 792.

Under G. S. 1878, c. 90, a subcontractor might have a lien for material for a railway in the state, though delivered outside. *Thompson v. St. Paul City Ry. Co.*, 45 Minn. 13, 47 N. W. Rep. 259.

See *Spafford v. Duluth, R. W. & S. R. Co.*, 48 Minn. 515, 51 N. W. Rep. 469; *Fowlds v. Evans*, 52 Minn. 551, 54 N. W. Rep. 743.

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**§ 6232. In case of surrender of contract for purchase of land.**

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 vendor 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.

(1889, c. 200, § 4.)

To enforce a lien as against the vendor, the claimant must allege and prove that the contract has been forfeited or surrendered, that is, terminated unconditionally. *No-lander v. Burns*, 48 Minn. 13, 50 N. W. Rep. 1016.

See *Hill v. Aldrich*, cited in note to § 6233.

Otherwise, under the prior law. *Hill v. Gill*, 40 Minn. 441, 42 N. W. Rep. 294.

See, also, *M'Glauffin v. Beeden*, 41 Minn. 408, 43 N. W. Rep. 86; *Boyd v. Blake*, 43 Minn. 1, 43 N. W. Rep. 485; *Hickey v. Collom*, 47 Minn. 565, 50 N. W. Rep. 918.

The vendee's interest after forfeiture will be treated as still outstanding for the purpose of enforcing liens established against it. *Brown v. Jones*, 52 Minn. 484, 55 N. W. Rep. 54.

See *Althen v. Tarbox*, cited in note to § 6229; *Wheaton v. Berg*, cited in note to § 6233.

**§ 6233. Interest of owner subject to lien unless he gives notice—Service of notice.**

Every house, mill, manufactory or other building or appurtenance, and every structure or other improvement mentioned in sections one and two 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 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 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 of this act.

(1889, c. 200, § 5.)

In case of a mortgage to secure future advances, the mortgagee cannot, as against a subsequent lien claimant, claim the benefit of the security for optional advances made after actual notice of the lien. *Finlayson v. Crooks*, 47 Minn. 74, 49 N. W. Rep. 393, 645.

A mortgage by a vendee, under a contract of sale requiring the erection of a building by him, given to secure the purchase money and advances, held prior to a lien for materials furnished for the building. *Hill v. Aldrich*, 48 Minn. 73, 50 N. W. Rep. 1020.

The mortgagees excepted by this section must not only be bona fide, but their mortgages must be prior in time, and superior. *Hewson-Herzog Supply Co. v. Cook*, 53 Minn. 534, 54 N. W. Rep. 751.

A mortgage by a vendee of a building to be removed and rebuilt on his lot, given to

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secure the price of the completed building, held secondary to liens arising in the rebuilding. *Bassett v. Menage*, 52 Minn. 121, 53 N. W. Rep. 1064.

As to the priorities where a vendor accepts, as security for part of the purchase money, a mortgage subject to a prior mortgage by the vendee to a third person, the prior mortgage being subject to liens which have attached on the purchaser's interest. (Modifying *Reilly v. Williams*, 47 Minn. 590, 50 N. W. Rep. 826.) *Malmgrem v. Phinney*, 50 Minn. 457, 52 N. W. Rep. 915.

See *Miller v. Stoddard*, 54 Minn. 486, 56 N. W. Rep. 131.

Where the husband made a contract to sell his wife's land, the purchaser to build a house, and, when the foundation was completed, to receive a deed and give back a mortgage for the price, and the contract was carried out, held, that she was a "bona fide prior mortgagee," and that the mortgage was superior to liens for work and material done and furnished subsequent to the record of the mortgage, but not to liens for work and labor done and furnished while she was owner. *Haupt Lumber Co. v. Westman*, 49 Minn. 397, 52 N. W. Rep. 33. Cf. *Gardner v. Leck*, cited in note to § 6233.

Where the owner entered into an executory contract for the sale of the land, providing that improvements made should become the property of the vendor, and the contract was forfeited for the default of the purchaser, who had meanwhile erected a house thereon, on account of which certain liens were claimed, held, that § 6233, and not § 6232, was applicable. *Wheaton v. Berg*, 50 Minn. 525, 52 N. W. Rep. 926.

Whether a purchase-money mortgage or liens take precedence depends on whether the owner's interest was subject to the liens. *McCausland v. West Duluth Land Co.*, 51 Minn. 246, 53 N. W. Rep. 464.

See *Moody v. Tschabold*, 52 Minn. 51, 53 N. W. Rep. 1023.

The provision subjecting the owner's estate to lien unless he give notice creates a rule of prima facie evidence, and casts on the owner the burden of excusing his default. *Wheaton v. Berg*, supra.

The onus of proving that notice was given is on the owner. *McCausland v. West Duluth Land Co.*, 51 Minn. 246, 53 N. W. Rep. 464.

Knowledge in an agent authorized only to sell real estate is not knowledge of the owner. *Sandberg v. Palm*, 53 Minn. 252, 54 N. W. Rep. 1109.

The "owner or person having or claiming any interest" includes lessors of land improved by the lessee. *Congdon v. Cook* (Minn.) 56 N. W. Rep. 253.

The recording act imposes on a mortgagee no obligation to record as against mechanics' liens. *Miller v. Stoddard*, 50 Minn. 272, 52 N. W. Rep. 895; *Id.*, 54 Minn. 486, 56 N. W. Rep. 131.

See, also, *Oliver v. Davy*, 34 Minn. 292, 25 N. W. Rep. 629.

See *Hurlbert v. New Ulm Basket Works*, 47 Minn. 81, 49 N. W. Rep. 521; *Nolander v. Burns*, 48 Minn. 13, 50 N. W. Rep. 1016; *Althen v. Tarbox*, 48 Minn. 18, 50 N. W. Rep. 1018; *Martin Lumber Co. v. Howard*, 49 Minn. 404, 52 N. W. Rep. 34; *Menzel v. Tubbs*, cited in note to § 6229.

## § 6234. Lien shall not exceed actual value of labor, etc.

In all cases where the labor, skill, material or machinery referred to in sections one, two and three 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.

(1889, c. 200, § 6.)

## § 6235. Separate lien for each building not necessary, when.

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.

(*Id.* § 7.)

Where the contractor, under a single contract to build two like buildings on contiguous lots, after being paid more than half of the price, released one house and lot, under an agreement that he should retain a lien on the other for the whole amount due, held, that he could enforce the lien, no rights of third parties being affected. *Reilly*

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v. Williams, 47 Minn. 590, 50 N. W. Rep. 826. See Lax v. Peterson, 42 Minn. 214, 44 N. W. Rep. 3.

See Miller v. Shepard and Menzel v. Tubbs, cited in note to § 6229; Knauff v. Miller, 45 Minn. 61, 47 N. W. Rep. 813.

### § 6236. Lien statement—Requisites.

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 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 year after the time of furnishing the last item of the same.

(1889, c. 200, § 8.)

**SUBD. 1.** A lien under G. S. 1878, c. 90, held not defeated because the account filed contained nonlienable items, if these and their prices were severable. Dennis v. Smith, 33 Minn. 494, 33 N. W. Rep. 695.

Where a payment less than the amount of the lienable items was applied on the whole account, this did not extinguish the lien. *Id.*

As to application of payments. Jefferson v. Church of St. Matthew, 41 Minn. 392, 43 N. W. Rep. 74; Miller v. Stoddard, 50 Minn. 272, 52 N. W. Rep. 395; Gardner v. Leck, 52 Minn. 522, 54 N. W. Rep. 746.

Where the claimant agreed to furnish, and did furnish, such hardware as the owner should need in the erection of two houses on one lot, held, that he need not keep separate accounts for each house, or file separate lien statements. Gardner v. Leck, *supra*.

**SUBD. 3.** A variance of four days between the statement and the proof as to the day of completion, the statement being filed in time, is immaterial. Althen v. Tarbox, 48 Minn. 18, 50 N. W. Rep. 1018.

Where a contractor has allowed a wrong date as to the first item to go on record, and remain for more than a year, he cannot correct the date to the prejudice of a mortgagee who, relying on the statement, has bid in the premises on foreclosure for the full amount of the mortgage. Wetmore v. Royall (Minn.) 56 N. W. Rep. 594.

See McDonald v. Ryan, 39 Minn. 341, 40 N. W. Rep. 158; Miller v. Condit, 52 Minn. 455, 55 N. W. Rep. 47.

**SUBD. 4.** Description of wrong premises. Lingren v. Nilsen, 50 Minn. 448, 52 N. W. Rep. 915.

Description held sufficient to identify the property, and to sustain the lien, as between the claimant and owner. Tulloch v. Rogers, 52 Minn. 114, 53 N. W. Rep. 1063.

See, also, Bassett v. Menage, 52 Minn. 121, 53 N. W. Rep. 1065.

The same fullness and precision of description are not required as in conveyances and judgments. Tulloch v. Rogers and Bassett v. Menage, *supra*.

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See, also, *Russell v. Hayden*, 40 Minn. 88, 41 N. W. Rep. 456; *Northwestern, etc., Pavement Co. v. Norwegian, etc., Seminary*, 43 Minn. 449, 45 N. W. Rep. 863; *Nystrom v. London & N. W. A. Mortg. Co.*, 47 Minn. 31, 49 N. W. Rep. 394.

If the land on which the building is situated exceed the statutory limit, the statement need not carve out and describe the statutory amount, under G. S. 1878, c. 90. *North Star Iron Works v. Strong*, 33 Minn. 1, 21 N. W. Rep. 740; *Smith v. Headley*, 33 Minn. 384, 23 N. W. Rep. 550; *Boyd v. Blake*, 42 Minn. 1, 43 N. W. Rep. 485.

See *Fleming v. St. Paul City Ry. Co.*, 47 Minn. 125, 49 N. W. Rep. 661.

Subd. 5. An averment of ownership on information, though not on "best" information, held sufficient. *Hurlbert v. New Ulm Basket Works*, supra.

A statement of the ownership at the time of making the contract and furnishing the materials is sufficient. *Finlason v. Biebighauser*, 51 Minn. 202, 53 N. W. Rep. 302.

Under former statutes. *Conter v. Farrington*, 46 Minn. 336, 43 N. W. Rep. 1134.

The filing of the statement operates as the creation of the lien, under G. S. 1878, c. 90. *Meyer v. Berlandi*, 39 Minn. 433, 40 N. W. Rep. 513.

A judgment for defendant on the pleadings, by reason of a defective lien statement, held not a bar to a second action after filing a new statement. *Linne v. Stout*, 44 Minn. 110, 46 N. W. Rep. 319.

An assignee or receiver may enforce a lien. *Miller v. Condit*, 52 Minn. 455, 55 N. W. Rep. 47.

The transfer of a claim or demand, enforceable under the mechanics' lien law, operates as an assignment of the right of lien, including the right of the transferee to file the statement in his own name. *Kinney v. Duluth Ore Co. (Minn.)* 60 N. W. Rep. 23.

Such transferee may include more than one claim or demand in the same statement.

Id.

While material was being supplied as needed, pursuant to a contract not specifying the price, certain material was supplied for the same purpose on a contract then made, specifying the price. Held, under G. S. 1878, c. 90, that the filing of the statement within six months after the last delivery was sufficient. *State Sash & Door Manuf'g Co. v. Norwegian-Danish Seminary*, 45 Minn. 254, 47 N. W. Rep. 796.

See, also, *St. Paul & M. Pressed Brick Co. v. Stout*, 45 Minn. 327, 47 N. W. Rep. 974; *Frankoviz v. Smith*, cited in note to § 5222.

It is not necessary that an action to enforce a lien should be prosecuted to judgment within the period mentioned in G. S. 1878, c. 90, §§ 6 or 7, during which the filing of the account alone continues the lien. If commenced within that period, it may be prosecuted to judgment, and the judgment enforced, notwithstanding that the expiration of such period intervenes. *North Star Iron Works v. Strong*, 33 Minn. 1, 21 N. W. Rep. 740.

A complaint which fails to show that the lien was filed within the time limited is demurrable. *Hurlbert v. New Ulm Basket Works*, 47 Minn. 81, 49 N. W. Rep. 521.

The statement need not aver that the labor or material was furnished by virtue of a contract with the owner or at his instance. Id. Otherwise, under former statute. *Clark v. Schatz*, 24 Minn. 300; *Rugg v. Hoover*, 28 Minn. 404, 10 N. W. Rep. 473; *Keller v. Houlihan*, 33 Minn. 486, 21 N. W. Rep. 729; *Anderson v. Knudsen*, 33 Minn. 172, 22 N. W. Rep. 302; *Morrison v. Phillippi*, 35 Minn. 192, 28 N. W. Rep. 239.

Statement held to have been filed in time. *McCarthy v. Groff*, 43 Minn. 325, 51 N. W. Rep. 218.

Though the last item is not proved, the claim is valid if the statement is filed within the specified time after the last item stated and proved. *Lundell v. Ahlman*, 53 Minn. 57, 54 N. W. Rep. 936.

An account purporting to be sworn to before the register of deeds, but not properly attested by his seal, so as to entitle it to be recorded within the prescribed time, held insufficient to preserve the lien. *Golman v. Goodnow*, 36 Minn. 9, 29 N. W. Rep. 338.

An affidavit, under G. S. 1878, c. 90, sworn to before a notary in another state, held sufficient. *Wood v. St. Paul City Ry. Co.*, 42 Minn. 411, 44 N. W. Rep. 308. Otherwise, before clerk of court in another state. *Hickey v. Collom*, 47 Minn. 565, 50 N. W. Rep. 918.

Failure to record an account duly filed held not to affect the lien. *Smith v. Headley*, 33 Minn. 384, 23 N. W. Rep. 550.

Withdrawal of the statement after record held not to affect the lien, under G. S. 1878, c. 90. *Paul v. Nample*, 44 Minn. 453, 47 N. W. Rep. 51.

As to prior unrecorded mortgage. *Miller v. Stoddard*, cited in note to § 6233.

"Furnish" means furnish on the premises. The liens attach from the commencement of the improvement on the land. *Wentworth v. Tubbs*, 53 Minn. 388, 55 N. W. Rep. 543.

See *Nelson v. Sykes*, 44 Minn. 63, 46 N. W. Rep. 207; *Tell v. Woodruff*, 45 Minn. 10, 47 N. W. Rep. 262; *Bardwell v. Mann*, 46 Minn. 235, 43 N. W. Rep. 1120, and *Hill v. Lovell*, 47 Minn. 293, 50 N. W. Rep. 81.

## § 6237. Effect of inaccuracy in lien statement.

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

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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 willfully 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.

(1889, c. 200, § 9.)

See *Finlason v. Biebighauser, Tulloch v. Rogers, Bassett v. Menage, and Althen v. Tarbox*, cited in note to § 6236.

### § 6238. Judgments, how obtained and enforced—Procedure.

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. Every such action to enforce any such lien shall be commenced within one year from the time of furnishing the last item of labor, skill, material or machinery for which such lien is had. 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. The summons shall require the defendant so to file his answer within twenty 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. 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. 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. 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

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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. 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 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.

(1889, c. 200, § 10.)

An action to enforce a lien is an ordinary civil action, governed by the same rules, except as otherwise provided. *Finlayson v. Crooks*, 47 Minn. 74, 49 N. W. Rep. 398, 645.

Mortgagees and others claiming an interest in the premises may be made parties whenever it might be done in an action to foreclose a mortgage. *Id.*

See, also, *Bassett v. Menage*, 52 Minn. 121, 53 N. W. Rep. 1064.

In a suit by a subcontractor, under G. S. 1873, c. 90, the contractor held a necessary party. *Northwestern, etc., Pavement Co. v. Norwegian, etc., Seminary*, 43 Minn. 449, 45 N. W. Rep. 863.

The court has jurisdiction to determine liens set up by any defendant. *Menzel v. Tubbs*, 51 Minn. 364, 53 N. W. Rep. 653, 1017.

If a claimant brings a second action, it may be consolidated with the prior action. *Miller v. Condit*, 52 Minn. 455, 55 N. W. Rep. 47.

Within what time a lien claimant made a party must appear. *Burns v. Phinney*, 53 Minn. 431, 55 N. W. Rep. 541.

A grantee under a deed from the owner, recorded prior to the action, who is not-

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made a party, is not affected by the judgment, and the liens expire after two years from their commencement, under G. S. 1878, c. 90. *Burbank v. Wright*, 44 Minn. 544, 47 N. W. Rep. 162.

See *Corser v. Kindred*, 40 Minn. 467, 42 N. W. Rep. 297.

Under G. S. 1878, c. 90, service on the owner within two years does not preserve the lien as against other defendant lien holders not served till after the two years. *Smith v. Hurd*, 50 Minn. 503, 52 N. W. Rep. 922.

As to service by publication. *Id.* *Bardwell v. Collins*, cited in note to § 6058; *Carlson v. Phinney* (Minn.) 58 N. W. Rep. 38.

Where a non-resident defendant was served by publication, and failed to answer within the time prescribed, and applied for leave to answer, held, that he failed to make out a case for relief. *Carlson v. Phinney*, *supra*.

If the action is not commenced, as against the owner, within the year, it may be dismissed on the application of one of the other defendants. *Steinmetz v. St. Paul Trust Co.*, 50 Minn. 445, 52 N. W. Rep. 915; *Malmgrem v. Phinney*, 50 Minn. 457, 52 N. W. Rep. 915.

The fact that the action was not commenced within one year after the date of the plaintiff's last item does not prevent a recovery by a lien-claiming defendant, whose answer is filed within a year after the date of his last item. *Sandberg v. Palm*, 53 Minn. 252, 54 N. W. Rep. 1109.

See *Burns v. Phinney*, 53 Minn. 431, 55 N. W. Rep. 540.

Where a pleading sets up a single item, a bill of particulars is not necessary. *Menzel v. Tubbs*, *supra*.

Bringing in a proper party at the trial, no prejudice being shown, is not erroneous. *Wheaton v. Berg*, 50 Minn. 525, 52 N. W. Rep. 926.

An action to foreclose a lien is not an action for the recovery of money only. The plaintiff is not, as a matter of right, entitled to a jury trial. *Sumner v. Jones*, 27 Minn. 312, 7 N. W. Rep. 265.

In an action for a judgment in personam, and to establish a lien, the former relief may be had, though no lien was perfected. *Smith v. Gill*, 37 Minn. 455, 35 N. W. Rep. 178.

In the matter of obtaining and enforcing judgments under the former mechanic's lien law (G. S. 1878, c. 90, § 8), the statute adopts the procedure obtaining in actions to foreclose real-estate mortgages. *Thompson v. Dale* (Minn.) 59 N. W. Rep. 1036.

The allegations of the answer are deemed to be controverted without reply. *Bruce v. Lennon*, 52 Minn. 547, 54 N. W. Rep. 739; *Davis v. Crookston Waterworks, Power & Light Co.* (Minn.) 59 N. W. Rep. 879.

The purchaser at a mortgage sale is not bound by an action against the mortgagor to enforce a mechanic's lien, or by notice of the pendency thereof, where such purchaser is not seasonably brought in, and the mortgagees are not made parties till after foreclosure. *Hokanson v. Gunderson*, 54 Minn. 499, 56 N. W. Rep. 172.

Where the erection of a building is a continuous undertaking, a mortgage executed after the commencement of the work or of the furnishing of materials is postponed to the liens of all who have contributed to the construction. (*Overruling Finlayson v. Crooks*, 47 Minn. 74, 49 N. W. Rep. 393, 645.) *Gardner v. Leck*, 52 Minn. 523, 54 N. W. Rep. 746; *Hewson-Herzog Supply Co. v. Cook*, 52 Minn. 534, 54 N. W. Rep. 751; *Miller v. Stoddard*, 54 Minn. 486, 56 N. W. Rep. 131.

See, also, *Haupt Lumber Co. v. Westman*, cited in note to § 6233, and *Glass v. Freeberg*, 50 Minn. 386, 52 N. W. Rep. 900.

### § 6239. Sale of railways, etc., upon execution.

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 or of 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.

(1889, c. 200, § 11.)

**§ 6240. Building may be removed, when.**

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 days after such sale.

(Id. § 12.)

**§ 6241. Sale of real property—Redemption.**

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 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 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.

(Id. § 13.)

As to redemption. *Bovey De Laittre Lumber Co. v. Tucker*, 48 Minn. 223, 50 N. W. Rep. 1033.

The court cannot extend the time of redemption. *State v. Kerr*, 51 Minn. 417, 53 N. W. Rep. 719.

See *Milner v. Norris*, 13 Minn. 455 (Gil. 424).

**§ 6242. Sub-contractor may serve notice on owner.**

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.

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 machinery, 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.

(1889, c. 200, § 14.)

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**§ 6243. Promissory note, etc., taken for lien—Effect.**

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.

(Id. § 15.)

Effect of taking notes and other securities. *Howe v. Kindred*, 42 Minn. 433, 44 N. W. Rep. 311; *McKeen v. Haseltine*, 46 Minn. 426, 49 N. W. Rep. 195; *Milwain v. Sanford*, 3 Minn. 147 (Gil. 92).

Where the purchaser promised his vendor to pay for materials furnished and to be furnished by the plaintiff under a contract, and agreed with the plaintiff to pay for all the materials if he would furnish the balance, which was done, held, that the plaintiff had not waived his lien. (*Criticising Abbott v. Nash*, 35 Minn. 451, 29 N. W. Rep. 65.) *St. Paul Labor Exch. Co. v. Eden*, 48 Minn. 5, 50 N. W. Rep. 921.

See *Howe v. Kindred*, 42 Minn. 433, 44 N. W. Rep. 311.

**§ 6244. Fraud of contractor—Penalty.**

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

(1889, c. 200, § 16.)

**§ 6245. Executors and administrators.**

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.

(Id. § 17.)

A lien may be enforced by suit against the executor or administrator. *Cummings v. Halsted*, 26 Minn. 151, 1 N. W. Rep. 1052.

As to the lien under a contract made by four of five executors, one of whom is also devisee. *Ness v. Wood*, 42 Minn. 427, 44 N. W. Rep. 313; *Ness v. Davidson*, 45 Minn. 424, 48 N. W. Rep. 10; *Id.*, 49 Minn. 469, 52 N. W. Rep. 46.

See *Tuttle v. Howe*, 14 Minn. 145 (Gil. 113).

**§ 6246. Release and discharge of liens.**

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 days after request in writing, he shall forfeit and pay twenty-five 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. 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.

(1889, c. 200, § 18.)

As to what was necessary to maintain an action under a similar provision. *Houlihan v. Keller*, 34 Minn. 407, 26 N. W. Rep. 227.

**§ 6247. Lien for repairs, etc., on personal property—Sale for charges.**

Whoever makes, alters, repairs or bestows labor or furnishes material or any article of personal property at the request of the owner or legal possessor

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thereof, shall have a lien on such property so made, repaired, altered, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed, and the material he has furnished; and such person may hold and retain possession of the same until such just and reasonable charges are paid. If they are not paid within three months after the labor is performed or the material furnished, the person having such lien may proceed to sell the property by him so made, altered or repaired, or upon which labor has been bestowed, at public auction, by giving public notice of such sale by advertisement for three weeks in some newspaper printed and published in the county, or if there is none, then by posting up notice of such sale in three of the most public places in the county three weeks before the time of sale. The proceeds of such sale shall be applied first to the discharge of such lien and the cost and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

(1889, c. 199, § 1.2)

### § 6248. Lien of common carriers and stable keepers.

Any person who is a common carrier, and any person who at the request of the owner or lawful possessor of any personal property carries, conveys or transports the same from one place to another, and any person who safely keeps or stores any personal property, and any keeper of a livery or boarding stable for horses, mules, cattle or stock, and any person who pastures or keeps the same, at the 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.

(Id. § 2.)

Under G. S. 1878, c. 90, §§ 16, 17, as amended by Laws 1885, c. 81, the lien took precedence of a prior chattel mortgage. *Smith v. Stevens*, 36 Minn. 303, 31 N. W. Rep. 55. And the statute was constitutional. *Id.*

The lien of a livery stable keeper, under G. S. 1878, c. 90, § 17, as amended by Laws 1885, c. 81, depended on possession. *Ferriss v. Schreiner*, 43 Minn. 148, 44 N. W. Rep. 1083.

A warehouseman's right to sell ceases as soon as enough has been sold to satisfy charges overdue three months, and expenses. *Jesurun v. Kent*, 45 Minn. 222, 47 N. W. Rep. 784.

### § 6249. Lien of farmers and stable keepers for agistment —Enforcement.

Every farmer, or any other person or keeper of a livery or boarding stable for horses, mules, cattle or stock, who, at the request of the owner or person having lawful possession thereof, shall keep, support or care for any horses, mules, cattle, stock, vehicles or other property used in connection with such horses, mules, cattle, stock or vehicles, shall have a lien on such property so kept, supported or cared for, for his just and reasonable charges therefor; and such person may hold and retain possession of the same until such just and reasonable charges are paid; Provided, That the person entitled to the lien herein provided for may file with the clerk of the town, city or village in which the person keeping said property resides, notice of his intention to claim and enforce his lien, which notice may be filed at any time during the keeping of said property, or within five days after he has ceased to keep the same; and Provided further, That if any person claiming such lien on any animal mentioned in section one hereof, suffers such animal to be taken out of his possession, he shall within five days thereafter file in the office of the town, village or city clerk where he resides, a verified and itemized statement of his lien, which shall be thereafter a lien on such animals as hereinbefore stated. If such charges are not paid within thirty days after the same shall become due, the person having such lien may proceed to sell the property by

<sup>2</sup>An act giving liens for the better security of mechanics, laborers and others who perform work and labor or furnish material or personal property. Approved April 24, 1889. By § 3, all of §§ 16 and 17 of c. 90, G. S. 1878, and all amendatory and inconsistent acts, are repealed.

him so kept, supported or cared for, at public auction, at any place within the county where the same shall have been kept, supported or cared for, by giving public notice of such sale and the time and place thereof, and the amount claimed for such charges, at least ten days before such sale, by advertisement in some newspaper, printed and published in such county, or if there is none, then by posting up such notice in three of the most public places in such county. The proceeds of such sale shall be applied first to the discharge of such lien and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof or person entitled thereto.

(1891, c. 28, § 1.º)

### § 6250. Same—Priority of lien.

The lien in this act provided for shall have priority over all other liens and incumbrances (excepting the lien provided for in Chapter one hundred and seventy-five General Laws of eighteen hundred and eighty-five, and all acts amendatory thereof), and liens by virtue of any mortgage, bill of sale or other instrument theretofore made and duly recorded in the office of the clerk of the proper town, city or village, and no person entitled to such lien shall be deemed to have waived or lost the same by reason of said property or any thereof being out of his possession, provided the same does not so remain out of his possession for a period exceeding ten days at any one time; and such person shall have the right to retake and reduce such property to his possession at any time within the said ten days, in whomsoever hands the same may be, and hold the same as above provided to satisfy said lien and his reasonable costs and expenses.

(Id. § 2.)

### § 6251. Failure to notify mortgagee of sale—Penalty.

If any person having theretofore conveyed any of the property above mentioned by mortgage or lien, as provided by this act, shall, during the existence of the lien or title created by such mortgage, suffer the same to be sold, as herein provided, without personal notice to the mortgagee of the time and place of such sale, at least two days before such sale, [he] shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail not exceeding ninety days.

(Id. § 3.)

### § 6252. Lien for service of animals.

That neglect or refusal on the part of the owner of any mare, cow, ewe, or sow, to pay the service fees of any stallion, jack, bull, ram, or boar, kept for public service, until the birth of the offspring, shall in such case constitute a lien upon the offspring resulting from said service.

(1885, c. 175, § 1; G. S. 1878, v. 2, c. 90, § 27.)

### § 6253. Same—Perfecting lien—Release.

That the owner or owners of every stallion, jack, bull, ram, or boar, kept for public service, shall make and file within ten months after said service, with the town clerk, in the same manner now provided for the filing of chattel mortgages, an accurate description of each female bred, such description to state time and place of service, color, supposed age, and any other description of said female that may be necessary for identification, together with the amount claimed to be due for the services of such animal. That a certified copy of said description shall be sufficient authority for the owner of said lien, his agent or assigns, to enforce the same by taking possession of said offspring, and to foreclose said lien as provided by law for the foreclosure of chattel mortgages in this state: provided, however, that upon the payment of said service fees, or the full satisfaction of said lien, the owner thereof

<sup>2</sup>An act to provide for lien for livery and boarding stable keepers, and the enforcement thereof. Approved April 9, 1891.

<sup>4</sup>An act relating to the service fees for domestic animals. Approved March 7, 1885.

shall file with the description before mentioned a full release of said offspring with the clerk of the township where said female is owned.

(1885, c. 175, § 2, as amended 1887, c. 73; G. S. 1878, v. 2, c. 90, § 28; 1893, c. 102, § 1.)

**§ 6254. Lien for wages of mechanics, clerks, etc.<sup>5</sup>—In what cases—On what property—Filing.**

That all moneys that may be due or shall hereafter become due for labor or services rendered by any mechanic, clerk, laborer or servants, from any person or persons, or chartered company, employing mechanics, clerks, laborers or servants, either as owners, lessees, contractors or under-owners of any works, manufactory, or other business, of whatever description, where mechanics, clerks, laborers or servants are employed, whether at so much per diem or otherwise, for any period not exceeding six months immediately preceding the sale and transfer of such works, manufactory or business, or other property connected therewith in carrying on said business, by executors or otherwise, or preceding the death or insolvency of such employer or employers, shall be a lien upon said works, manufactory, business or other property in and about, or used in carrying on, said business, or in connection therewith, to the extent of the interest of said employer or employers, owners or contractors, as the case may be, in said property, and shall be preferred and first paid out of the proceeds of the sale of such works, manufactory, business, or other property, as aforesaid: provided, that [the] portion of such preferred claim of such mechanic, clerk, laborer or servant, thus preferred, shall not exceed two hundred dollars: and provided further, that this act shall not be construed so as to impair contracts vested, or liens of record existing prior to its passage: and provided further, that no such claim shall be a lien upon any real or personal estate, unless the same shall be filed, if real estate, in the office of register of deeds of the county in which such real estate is situated, within one month after the claim becomes due, in the same manner as mechanics' liens are now filed; and if upon personal property, such claims shall be filed in the office of the clerk of the town or city in which said property is situated, in the manner provided for the filing of chattel mortgages therein.

(1878, c. 86, § 1; G. S. 1878, c. 90, § 22.)

The provisions of Gen. Laws 1878, c. 86, were not intended to secure to farm laborers a lien for wages upon agricultural products. *Schilling v. Carter*, 35 Minn. 287, 28 N. W. Rep. 658.

The effect of § 6254 is to give the lien therein spoken of as security for moneys due the employes mentioned for wages; and further, to provide (for the purpose of making the lien effectual) that moneys so due shall be preferred, and first paid out of the proceeds of the sale of the property bound by the lien: *provided, however*, among other things, that in order to secure a lien, the claim of the employe for money due him as aforesaid must be filed in the office of the register of deeds, or of the town or city clerk, as the case may be. *Kruse v. Thompson*, 26 Minn. 424, 4 N. W. Rep. 814.

Under §§ 6254-6258 the time for filing is limited to one month for personal, as well as real, property. *Olson v. Pennington*, 37 Minn. 298, 33 N. W. Rep. 791.

A statement is ineffectual if it shows on its face that it was filed too late, though the fact be otherwise. *Id.*

**§ 6255. Same—Notice of claim in case of attachments, etc.**

In all cases of executions, attachments and writs of a similar nature, hereafter to be issued against any person or persons, or chartered company, engaged as before mentioned, it shall be lawful for such mechanics, clerks, laborers or servants to give notice in writing of their claim or claims, and the amount thereof, to the officers executing either of such writs, at any time before the actual sale of the property levied upon; and such officers shall pay to such mechanics, clerks, laborers and servants out of the proceeds of sale, the amount each is justly and legally entitled to receive, not exceeding two hundred dol-

<sup>5</sup> An act for the better protection of the wages of mechanics, clerks, laborers and others. Approved March 7, 1878 (Laws 1878, c. 88).



lars, as may be agreed on by the parties in interest, or by the judgment of any court of competent jurisdiction.

(1878, c. 86, § 2; G. S. 1878, c. 90, § 23.)

§ 6255 does not assume to give any lien or any preference to the employe, but provides a way in which "an officer executing a writ of execution or attachment, or similar writ, upon the property of the employer, may and shall pay over to such employe the amount of his claim," meaning (by reference to the preceding section) the claim which he has filed as in such preceding section provided, and by filing which, as therein provided, he has secured the lien therein given. *Kruse v. Thompson*, 26 Minn. 424, 4 N. W. Rep. 814.

Prior to a sale, the officer is not liable to the lien holder, except for wrongful or fraudulent act or omission in the disposition or care of the property. *Liljengren v. Ege*, 46 Minn. 488, 49 N. W. Rep. 250.

§ 6256. Same—Extent of lien in case of death or insolvency of employer.

In all cases of the death, insolvency or assignment of any person or persons, or chartered company, engaged in operations as hereinbefore mentioned, or of executions issued against them, the lien or preference mentioned in the first section of this act, with the like limitations and powers, shall extend to all the property of said persons or chartered company.

(1878, c. 86, § 3; G. S. 1878, c. 90, § 24.)

§ 6257. Same—No future mortgage to impair liens.

That no mortgage or other instrument by which a lien is hereafter created, shall operate to impair or postpone the lien and preference given and secured to the wages and moneys mentioned in the first section of this act: provided, that no lien of mortgage or judgment, entered before such labor is performed, shall be affected or impaired thereby.

(1878, c. 86, § 4; G. S. 1878, c. 90, § 25.)

§ 6258. Same—Lien cannot be waived.

Any verbal or written agreement, express or implied, made by or between any person or persons, or chartered company or companies, designed to act as a waiver of any right under this act, or any portion thereof, shall be wholly null and void.

(1878, c. 86, § 5; G. S. 1878, c. 90, § 26.)