1940 Supplement

To

Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938 Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions, and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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8479. Conveyances in person's business.

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4681. Conveyance made with intent to defraud.

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lien and the taking of a lease on a part of the building in satisfaction of the lien, held not to discharge the surety. Id. See Dun. Dig. 9695.

2. Where a mortgagee under a mortgage to the plaintiff as surety on the work of mechanics' liens paid a balance of the proceeds of the mortgage to the plaintiff to discharge the mechanics' liens held not to discharge the mortgagee. 171M582, 208NW85. See Dun. Dig. 6076.

Surety on bond given to a mortgagee to protect his security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, and an action begun after judgment, but before expiration of period to redeem, when mortgage foreclosure, was not premature. 172M320, 215NW37.

3. Basis of lien. Finding that wall and rail were not sold and furnished for construction of certain building upon which mortgage was obtained, held properly sustained by evidence. Lake Street Stash & Door Co. v. D., 186M245, 248NW11. See Dun. Dig. 6145.

Where lien for labor, material, and other liens superior to mortgage. Minneapolis-Hennepin County curate, held proper. 175M204, 244NW30. See Dun. Dig. 6081.

4. Nature of lien. Where a bond given to a mortgagee to protect the security against mechanics' liens was broken by the entry of a judgment perfecting the liens and subjecting the property to sale, an action begun after judgment, but before expiration of period to redeem, when mortgage foreclosure, was not premature. 172M320, 215NW37.

5. Who are owners. Where owner contracted to sell land for certain cash payment and a purchase money mortgage, vendee "to assume full responsibility for the maintenance and upkeep of said premises, buildings and improvements," purchase money mortgage executed subsequent to commencement of repairs on dilapidated buildings had priority over mechanics' lien, where mortgagee had no knowledge that repairs were being made until foreclosure before accrual of mechanics' lien. Reed & Sherwood Mfg. Co. v. L., 202M274, 278NW30. See Dun. Dig. 6065.

6. Release and waiver. Mechanic's lien, satisfied in order that first mortgage loan might be negotiated, was subordinate to mortgage obtained by the owner. 182M332, 244NW16. See Dun. Dig. 7140(24).

Finding that government subdivision in fractional northeast quarter of town section, on which was erected "White City Resort," was not defective for lack of certainty. Nelson v. S., 186M271, 243NW105. See Dun. Dig. 6075.

7. When lien attaches—Notice. Finding as to coverage of an express plumber's contract held not supported by evidence. Boesemann & Co. v. J., 184M100, 218NW35. See Dun. Dig. 6145.

Finding that trust deed was recorded before any mechanics' lien statement was filed. Nelson v. S., 186M271, 243NW105. See Dun. Dig. 6075.

8. Mechanics lien—Filing—Etc. Time for filing mechanic's lien for furnishing and attaching materials was not extended to thirty days after contract for small items for household use. A. Y. McDonald Mfg. Co. v. N., 187M240, 244NW30. See Dun. Dig. 6066.

21. Held not entitled to lien. Mechanics' lien, satisfied in order that first mortgage loan might be negotiated, was subordinate to mortgage obtained by the owner. 182M332, 244NW16. See Dun. Dig. 7140(24).

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§8301. Notice of lien pendens in certain cases.—At the beginning of the action the plaintiff shall file for record with the register of deeds of the county in which it is brought, and of the several counties if the lien be claimed under Section 8493, a notice of the pendency thereof, embracing therein a copy of the complaint and judgment and an assignment of any such lien no other action shall be commenced for the enforcement of any lien arising from the improvement described, but all such lienholders shall intervene in the original action. Any such lienholder not named as a defendant may nevertheless answer the complaint and be admitted as a party. If more than one action shall be commenced in good faith, all shall be consolidated and tried as one, under such order of the court as may be best protect the rights of all parties concerned. But no lien shall be enforced in any case unless the holder thereof shall assert the same, either by complaint or answer, within one year after the date of the last item of his claim as set forth in the recorded lien statement: and, as to bonds or encumbrances without notice, the absence from the record of a notice of its pendency of an action after the expiration of said year in which said lien could be so asserted shall be conclusive evidence that said lien may no longer be enforced and, in the case of registered land, the registrar of titles shall refrain from carrying forward to new certificates of title the memorials of lien statements when no such notice of lien could be registered before the filing of the lien statement but after the furnishing of notice of the lien or prior lien release. Nor shall any person be bound by the judgment in such action unless he is made a party thereto, within said year. (R. L. '05, §515; G. S. '12, §7030; Apr. 21, 1923, c. 562, §1; Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.)

§8302. Postponement, judgment, subrogation, etc. In mechanics' lien foreclosures, court did not err in refusing to reopen case to permit plaintiff to show how two partners held title. A. Y. McDonald Mfg. Co. v. N., 187M311, 244NW672. See Dun. Dig. 6114a.

§8303. Judgment, sale redemption, etc. Where remainderman participated in transaction wrongfully disabled a tenant from redeeming from possession and, as to foreclosed mechanics lien foreclosures, evidence that said lien may no longer be enforced and, in the case of registered land, the registrar of titles shall refrain from carrying forward to new certificates of title the memorials of lien statements when no such notice of lien could be registered before the filing of the lien statement but after the furnishing of notice of the lien or prior lien release. Nor shall any person be bound by the judgment in such action unless he is made a party thereto, within said year. (R. L. '05, §515; G. S. '12, §7030; Apr. 21, 1923, c. 562, §1; Sec. 3 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage.)

§8304. Judgment, sale redemption, etc. Where remainderman participated in transaction wherein a tenant in possession of the property of the remainderman was disabled from redeeming the property of the remainderman who had given a shrew mortgage was in effect rendered void. A. Y. McDonald Mfg. Co. v. N., 187M311, 244NW672. See Dun. Dig. 6114a.

Evidence held not to require a finding that storage charges were incurred in reliance on a personal credit extended to a defendant conditional buyer of goods and were based on possession of goods. Id.

In prosecution of owner of fur coat for larceny, defendant was entitled to recover the fur coat which plaintiff had lost by surrender of possession of lien entitling to possession unless labor and material furnished in repair of coat enhanced its value, and court erred in instructing jury that defendant would not recover if coat was not enhanced by furrier's material and labor. State v. Cohen, 193M339, 252NW322. See Dun. Dig. 5925.

Evidence supports verdict finding defendant guilty of larceny of a fur coat from a furrier to whom she had delivered it for alteration and repair at an agreed price of $60. Id.

Motor vehicles abandoned on city street, owners being unknown, may be removed by city officials to a local garage for storage or sale keeping, and later be sold for storage charges under the motor vehicle storage lien statute. Op. Atty. Gen. (6236), Feb. 15, 1937.

§8508. For what given. Holder of lien on motor vehicle for labor and material for storage on goods to which plaintiff had legal title, vendee has a lien under §8507 prior to the right of the employee to enforce lien at once after the commencement of action to foreclose and where machine was converted by lienor and is superior to title of a subsequent bona fide purchaser who, without notice of lien or prior lien release or sale, bought the vehicle prior to the filing of the lien statement but after the furnishing of notice of lien or prior lien release. Priority of conditional vendors recorded title. 14MinnLawRev779. Lien of garage man and priority by recording within statutory period. 38MichLawRev464.

§8525. Statement of claim for lien—Contents Filing. Motor vehicle lien given by §§8524-8528 attaches to vehicle when storage is furnished and repairs are made in the territory of a subsequent bona fide purchaser who, without notice of lien or prior lien release or sale, bought the vehicle prior to the filing of the lien statement but after the furnishing of notice of lien or prior lien release. Priority of conditional vendors recorded title. 14MinnLawRev779. Lien of garage man and priority by recording within statutory period. 38MichLawRev464.

§8526. Foreclosure. Sheriff to serve copy of notice of sale.—At or before posting the notice of sale, the sheriff shall serve a copy of said notice of sale on the judgment debtor.—If he be a resident of the county, or can be found therein, in the manner required by law for the service of a summons in a civil action in the district court. (11, c. 302, §1; '25, c. 302, §1.)


§8532. Action—Attachment. Note in 1927 edition should read: "Governed by §9434 as to time," etc.

ON LOGS AND TIMBER

§8548. For wages, as against attachment, etc. Statute does not require that lien be filed for record. C.I.T. Corp. v. C., 193M317, 252NW325. See Dun. Dig. 6578.

There is no provision in statutes expressing an intention to extend liens for wages to after-acquired property of employer, and, if so intended, lien would attach to such interest in after-acquired property as employer acquired by his purchase. Id.

Employee may bring suit to enforce lien at once after his employment terminates, or after lien vests. Id.

Lien for unpaid wages vested when wages become due and an employee is not paid, and remains in existence after the termination of employment. Id.

A conditional sales contract or purchase-money mortgage, if superior to lien, is superior to such prior lien or mortgage attached only to such interest as purchaser of property acquires at time of purchase, subject to any lien or con-
diurnal sales contract given to seller for part or all of purchase price at time of sale. 1d.


8553. Lien for services. Sec. 58552 to 8571 for registration of stallions and jacks.

Stallion owner's lien on mare does not have priority over a previous mortgage but lien upon offspring has priority over all other claims. Op. Atty. Gen. Mar. 30, 1934.

Section 8552 has not been repealed by 8588. Op. Atty. Gen. (520c), July 10, 1926.


8555. Lien for threshing grain—corn picking—ensilage cutting.—Any person owning or operating a threshing machine, combined thrasher and harvester, clover huller, corn picking machine, corn shellor, corn shredder, ensilage cutter or hay baler shall have a lien on the grain threshed, clover hulled, corn shellor or shredded, or picked, ensilage cut, or hay baled, as the case may be, for the price or value of such service, which shall be preferred to all other liens except those given for the seed from which said grain was grown. (R. L. '05, §3546; Hens or incumbrances except those given for the seed such service, which shall be preferred to all other claims. Op. Atty. Gen. (520c), July 10, 1926.

8556. How preserved and enforced.—Within fifteen days after such threshing, corn hulling, corn picking, corn shelling or shredding, or hay baling is completed the claimant of such lien shall file with the Register of Deeds of the County in which it was done a verified statement of the amounts and kinds of grain threshed, corn huller, corn picked, corn shellor or shredded, or hay baled, the time and place of doing the same, giving the first and last days thereof, the rates per bushel, per day, per hour or other terms of the contract, and the total charge therfor, the amounts paid thereon, if any, and the balance due, the name of the operator thereof, and the balance due, the name and address of the operator thereof, the dates of admission to and discharge from such hospital and the name and address of the operator thereof, the dates of admission to and discharge from such hospital and the name and address of the operator thereof, the dates of admission to and discharge from such hospital and the name and address of the operator thereof.


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8556-5. Clerk to provide record.—The clerk of court shall endorse thereon the date and hour of filing and, at the expense of the county, shall provide a hospital lien book with proper index in which he shall enter the date and hour of such filing, the names and addresses of such hospital, the operator thereof and of such patient, the amount claimed and the names and addresses of those claimed to be liable for damages. He shall be paid one dollar as his fee for such filing. (Act Apr. 20, 1933, c. 345, §2.)

8556-6. Release.—No release of such causes of action, or any of them, or of any judgment thereon shall be valid or effectual as against such lien unless such lienholder shall join therein, or execute a release of such lien, and the claimant, or assignee of such lien, may enforce such lien by action against the person, firm or corporation liable for such damages, which action shall be commenced and tried in the county in which such lien shall be filed, unless ordered removed to another county by the court for cause. If the claimant shall prevail in such action, the court may allow reasonable attorneys' fees and disbursements. Such action shall be commenced within two years after the filing of such lien. (Act Apr. 20, 1933, c. 345, §4.)

8556-7. Not to apply to workmen's compensation. —The provisions of this act shall not apply to any moneys becoming due under the Workmen's Compensation Act of this state. (Act Apr. 20, 1933, c. 345, §5.)

Sec. 6 of Act Apr. 20, 1933, cited, provides that the act shall take effect from its passage.

GENERAL PROVISIONS

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

If a pledgor effectually affirms an unauthorized sale by pledges to himself, he affirms it as an entirety, and his only right thereon is to have credited on his debt amount realized from sale, with payment to him of surplus, if any. Erickson v. Michigan, 285 NW. 611. See Dun. Dig. 7751.
If an unauthorized sale by pledgee to himself is disaffirmed, contract of pledge remains in force, and pledgee retains right of possession, and cannot be charged with conversion, or embezzlement. Id. See Dun. Dig. 7748.


where the promises of the husband, under an antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action that were stated at law were not defeated by her subsequent desertion. 172M531, 214NW791.

Alienation of affections and damages therefore. 177M 279, 294NW359.

Essentials of common-law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 190M446, 281NW 199.


On objection to petition for appointment of administrator as guardian, erred in holding that objector was common-law wife of decedent. Burden of proof was upon objector to show that there was in fact a marriage contract. Weiker’s Estate, 186M441, 283NW173. See Dun. Dig. 5784.

Where employee entered into an agreement to marry and after banns of marriage had been published by church, and 6½ months after death of employee bore a child of the employee, there was no marriage and child was not entitled to compensation under workmen’s compensation act. Gupilli v. E., 197M211, 256NW748. See Dun. Dig. 4268.

Validly of marriage celebrated in foreign state in violation of statute of domicile. 183M592, 228NW911. See Dun. Dig. 8502. Marriage a civil contract.

An equitable lien exists when there is a contract, express or implied, sufficiently indicating an intention to make some particular property security for a debt or other obligation, or it may arise wholly for consideration of right and justice. Marquette Nat. Bank v. M., 287NW 253. See Dun. Dig. 8507B.

CHAPTER 70

Marriage

Marriage may be annulled where the defendant was prohibited by law from entering into it because he had been married before. 171M340, 214 NW265.

Where the marriage contract was not entered into within six months, and induced the consent of plaintiff by a false representation of no divorce within the six-month period. 171M340, 214 NW265.

Where the promises of the husband, under an antenuptial contract, to make payments of money to his wife have matured and the money has become due, the causes of action that were stated at law were not defeated by her subsequent desertion. 172M531, 214NW791.

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