

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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Transfers between husband and wife, whether made directly or indirectly, are prima facie fraudulent as to existing creditors; burden resting upon wife to show by clear and satisfactory evidence that a valuable consideration was paid by her or by some one in her behalf. *Id.* See Dun. Dig. 3907.

A voluntary conveyance is one made without any valuable consideration. *Kohrt v. M.*, 203M494, 282NW129. See Dun. Dig. 3870.

Mere fact that a person is solvent does not necessarily render him incapable of making conveyances or transfers fraudulent to his creditor, solvency being only an item of evidence to be considered with all the other facts and circumstances of the case. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3860, 3919.

8479. Conveyances by persons in business.

Whether transferee of securities participated in fraud or acted in bad faith, held question of fact for trial court. *Weese v. W.*, 191M526, 254NW816. See Dun. Dig. 3851.

4½. Subd. 3. Statement showing that materials were furnished by subcontractor to owner, though actually furnished to principal contractor, held sufficient. 199NW 475, 47SD494.

8481. Conveyance made with intent to defraud.

¼. In general.

Brill v. W. B. Foshay Co. (CCA8), 65F(2d)420. *Cert. den.* 290US643, 54SCR61, note under §8478. Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S. (USCCA-Minn)*, 87F(2d)365.

This section does not apply to a joint tenancy in stock created by husband in himself and wife in the absence of either fraud or insolvency, so as to render the wife liable for husband's unpaid federal income tax as transferee under §311 of the Federal Revenue Act of 1928. *Irvine v. H. (CCA8)*, 99F(2d)265, rev'g 36BTA653.

Evidence held to show that makers of note to bank were not estopped as against creditors to deny that note was given for valid consideration. *Grant Co. State Bk. v. S.*, 178M556, 228NW150.

6. Subsequent creditors.

Creditors could not impress proceeds of life insurance policies with claims based on fraud of insured after issuance of policies. *Cook v. P.*, 182M496, 235NW9. See Dun. Dig. 4801, 3876a.

In action to set aside conveyance as fraudulent evidence held to establish that claim upon which judgment rested arose prior to transfer. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3928a.

In action to set aside conveyance as fraudulent, evidence held to establish that intervenor's claim upon which his judgment rested arose prior to the conveyance attacked. *Larson v. T.*, 185M374, 241NW47.

23. Transfer between husband and wife.

Transfers from husband to wife are presumptively fraudulent as to existing creditors and burden is upon her to show good faith and a valuable consideration paid by her, or by someone in her behalf. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3859.

24. Transfers between near relatives.

Transfers by father to daughters are scrutinized closely by the courts, and when voluntarily made are presumptively fraudulent as to creditors. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3858.

31. Chattel mortgages.

Title that passes on foreclosure of prior and paramount mortgage. 171M197, 213NW892.

Evidence sustained finding that chattel mortgage given by father to son was not executed in good faith. 177M84, 224NW457.

32. Who may assail.

Equity will not lend its aid either to a grantor who seeks to impeach a fraudulent conveyance, or personal representative suing for benefit of his estate, though statute permits personal representative in some cases to sue for benefit of creditors. *Lind v. O.*, 204M30, 282NW 661. See Dun. Dig. 3898.

A creditor may sue on his own behalf to set aside a fraudulent conveyance made by decedent prior to his death, right of personal representative of fraudulent debtor to bring suit not being exclusive. *Id.* See Dun. Dig. 3901.

35. Action to set aside.

In action to set aside fraudulent conveyances, grantee cannot set up defenses which were available to the

grantor in the original action. *Weber v. A.*, 176M120, 222NW646.

A change procured by misrepresentations in form of indebtedness held not to relieve defendant from his obligation. 176M550, 224NW237.

Causes of action set forth in complaint in intervention in action to set aside conveyances as fraudulent held not well pleaded. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3926.

Court was not justified in vacating mortgage foreclosure proceedings in action to set aside transfer of mortgage as fraudulent as to creditors. *Larson v. T.*, 185M370, 241NW46. See Dun. Dig. 3930.

Several creditors having distinct claims can join as plaintiffs in a single complaint brought to reach fraudulently conveyed property. *Lind v. O.*, 204M30, 282NW 661. See Dun. Dig. 3898.

38. Burden of proof.

175M157, 220NW560.

Transfer of real estate in full value for payment of a debt was not fraudulent in absence of showing of actual interest to hinder, delay or defraud plaintiff. 174M423, 219NW550.

39. Degree of proof required.

Finding of fraudulent intent in transfer of real estate, supported by evidence. 176M550, 224NW237.

40. Evidence.

Evidence, held to show that conveyance from father to daughter was not in fraud of creditors. 181M71, 231NW397.

Evidence held to sustain finding that conveyance left grantor insolvent and that grantee had knowledge of intent to defraud creditors of grantor. *Larson v. T.*, 185M374, 241NW47. See Dun. Dig. 3928a.

In action to set aside fraudulent conveyance, finding of good faith held supported by evidence. *National Surety Co. v. W.*, 186M93, 242NW545. See Dun. Dig. 3848.

Evidence held to support finding that transfer of real estate was fraudulent as to creditors and that crops did not belong to grantee. *Joop v. S.*, 188M419, 247NW 526. See Dun. Dig. 3910.

8483. Rights of creditors with matured claims.

Simple creditor, suing to set aside fraudulent conveyance does not obtain lien upon property conveyed until rendition of final judgment. *Emrich v. E. (USCCA8)*, 78F(2d)558, 29AmB(NS)458. *Cert. den.*, 297US709, 56SCR 501.

Assignment of future wages held not to preclude discharge of assignor in bankruptcy. *Strane v. S.*, (USCCA-Minn), 87F(2d)365.

Rights of holder of prior and paramount mortgage, and a purchaser at foreclosure sale. 171M197, 213NW 892.

Appointment of a receiver for a judgment debtor's nonexempt property in proceedings supplementary to execution is discretionary with court. *Ginsberg v. D.*, 191M12, 252NW669. See Dun. Dig. 3549.

Though a simple creditor may bring a suit to set aside a fraudulent conveyance, he is not compelled to do so and may first sue and obtain judgment, and limitations does not begin to run against him in the latter case at least until he has obtained judgment. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3922.

(a).

Enrich v. E. (USCCA8), 78F(2d)858, 29AmB(NS)458. *Cert. den.*, 297US709, 56SCR501.

8484. Creditors whose claims have not matured.

A receiver cannot attack a chattel mortgage as void to creditors because not recorded, without showing that he occupies a status to assail it. 175M47, 220NW400.

G. S. 1923, §8345, does not apply to general creditors, but to such as are armed with process, or to a receiver representing creditors and vested with the right to attack. 175M47, 220NW400.

A surety upon a fidelity bond becomes an existing creditor from the date of the taking effect of the bond for the purpose of attacking as fraudulent a transfer of property by his principal obligor. *National Surety Co. v. W.*, 184M44, 237NW690. See Dun. Dig. 3901.

8488. Inconsistent legislation repealed.

Act is not a substitute for old remedies but simply abrogates ancient rules whereby a judgment and a lien were essential preliminaries to equitable relief. *Lind v. O.*, 204M30, 282NW661. See Dun. Dig. 3921.

CHAPTER 69

Liens for Labor and Material

FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen.

¼. In general.

A surety bond to protect the owner of land against mechanic's liens, held not discharged by a transfer of the land where the contract was made a party to the bond. *Hartford A. & I. Co. v. F.*, (CCA8), 59F(2d)950. See Dun. Dig. 9094, 9107.

The surety on a bond to protect the owner of land against mechanic's liens cannot complain of a change in the title taking place after liability on the bond had attached by the filing of a lien. *Id.*

The surety on a bond to protect land from mechanics' liens is not discharged by a transfer of the land where the principals on the bond are not released. *Id.*

That obligee in a surety bond to protect against mechanics' liens compelled a lienor to elect between his

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. 9099.

That mortgagee protected by surety bond against mechanics' liens paid a balance of the proceeds of the mortgage to the surety to discharge the liens other than that of a lienor who had an option to take a lease on part of the premises, held not to discharge the surety. *Id.*

Surety on bond to protect mortgagee against mechanics' liens held to have no rights with respect to fund obtained by the mortgage and was not released because fund was applied in payment of other than lienable claims. 176M281, 223NW139.

Where one on accepting contract includes new conditions there is no contract unless the maker of original offers consents to the new conditions. *Johnson v. O'N.*, 182M232, 234NW16. See Dun. Dig. 1740(24).

Evidence held to show that contractor plumber had been paid for fixtures and had paid plaintiff therefor before plaintiff filed liens. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6061.

2. Nature of lien.

The condition of a 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 from mortgage foreclosure, was not premature. 172M320, 215NW67.

3. Basis of lien.

Finding that door and wall rail were not sold and furnished for construction of certain building upon which seller asserted mechanic's lien, held sufficiently sustained by evidence. *Lake Street Sash & Door Co. v. D.*, 186M316, 243NW110. See Dun. Dig. 6049.

Evidence held to show that plumber who installed plaintiff's fixtures did so for owners, as affecting mechanic's lien. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6037.

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 mechanic's lien, where mortgagee had no knowledge that repairs were being made until foreclosure of mechanic's lien. *Reed & Sherwood Mfg. Co. v. J.*, 202M274, 278NW30. See Dun. Dig. 6065.

8. Nature of work or material.

Where lienable fixture proves defective before paid for and is taken back and replaced by materialman, he may claim lien for new fixture, no claim being made for defective one. *A. Y. McDonald Mfg. Co. v. L.*, 187M240, 244NW804. See Dun. Dig. 6046.

A towel bar and a tumbler holder did not contribute to any improvement of realty and were not lienable. *A. Y. McDonald Mfg. Co. v. N.*, 187M237, 244NW806. See Dun. Dig. 6045.

18. Release and waiver.

Mechanic's lien, satisfied in order that first mortgage loan might be negotiated, was subordinate to mortgage and other liens superior to mortgage. *Minneapolis Builders' Sup. Co. v. C.*, 186M635, 244NW53. See Dun. Dig. 6065.

21. Held not entitled to lien.

Where materialman waived lien on materials furnished prior to certain date, and subsequently filed lien, which, through mistake, contained certain items delivered before the waiver date, owner who paid the lien could recover the amount of items delivered prior to waiver the lien statement constituting a false representation. 171M274, 213NW917.

One installing wiring, lights, poles and appliances for lighting miniature golf course, held charged with knowledge of terms of lease which he was handed for examination by lessee. *Johnson v. G.*, 187M104, 244NW409. See Dun. Dig. 5402, 6037.

8494. When lien attaches—Notice.

Finding that trust deed was recorded before any mechanics' liens attached to the property, held sustained by the evidence. 171M445, 214NW503.

"Without notice" means without notice of an existing lien. 171M445, 214NW503.

Obligatory advances made under a mortgage securing future advances have priority over mechanics' liens arising after the recording of the mortgage but before the making of the advances. 171M445, 214NW503.

Advances made in reliance on representations that the mortgagor had performed the precedent conditions to be performed by him retain their right of priority although such representations were in fact false. 171M445, 214NW503.

Where parties for whose benefit conditions are imposed waive them, strangers thereto cannot complain. 171M445, 214NW503.

Where a mortgagee has agreed to make future advances, a breach of the contract by the other party does not bring advances thereafter made within the doctrine of optional advances. 171M445, 214NW503.

Bonds which are secured by a trust deed and are sold on the markets as instruments of commerce take prior-

ity over all incumbrances arising subsequent to the recording of the trust deed. 171M445, 214NW503.

Priority between recorded mortgage and mechanic's lien where such lien attached from time of "actual and visible beginning of an improvement on the ground." "Without notice" means without notice of an existing lien. 176M1, 225NW507.

Release of lien rights in favor of mortgage, held to apply to material subsequently furnished. 177M132, 224NW847.

Materialman held to have waived lien as against subsequent mortgage. *Thompson Lumber Co. v. G.*, 177M111, 224NW849.

Evidence held to sustain finding that lien claimants had actual notice of unrecorded mortgage before delivery of materials. *Anderson v. I.*, 187M308, 245NW365. See Dun. Dig. 6037.

Where owner contracted to sell land for certain cash payment and 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 mechanic's lien, where mortgagee had no knowledge that repairs were being made until foreclosure of mechanic's lien. *Reed & Sherwood Mfg. Co. v. J.*, 202M274, 278NW30. See Dun. Dig. 6065.

8495. Vendors, consenting owners, etc.

½. In general.

Evidence held to sustain finding that building and loan association agreed to obtain lien waivers and negligently failed to do so. 171M343, 214NW566.

Law construed liberally to make effective compensation to those who rendered service or furnished material toward improvement and betterment of property. *Sandberg v. B.*, 198M472, 270NW575. See Dun. Dig. 6033.

1. Forfeiture of executory contracts.

Evidence held insufficient to show that vendor effected forfeiture before accrual of mechanic's lien. 179M230, 228NW934.

2. Consent implied—Notice.

Booths built into and securely fastened to floors and walls of a building so as to become firmly attached thereto and a part thereof become a part of freehold as between lien claimant and owner when made with knowledge and consent of owner. *Sandberg v. B.*, 198M472, 270NW575. See Dun. Dig. 6040.

Painting and other repair work done for lessee held lienable. *Id.* See Dun. Dig. 6042a.

Where owner contracted to sell land for certain cash payment and 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 mechanic's lien, where mortgagee had no knowledge that repairs were being made until foreclosure of mechanic's lien. *Reed & Sherwood Mfg. Co. v. J.*, 202M274, 278NW30. See Dun. Dig. 6065.

8497. Mechanic's lien—Filing—Etc.

2. Time of filing.

Finding as to coverage of an express plumber's contract held not supported by evidence. *Bossenmaier v. B.*, 182M200, 234NW303. See Dun. Dig. 6112a.

Time for filing mechanic's lien for furnishing sink and attachments was not extended by later separate contract for small items for household use. *A. Y. McDonald Mfg. Co. v. N.*, 187M240, 244NW806. See Dun. Dig. 6087.

2½. Mistake in name.

Naming as owner husband of real owner of premises sought to be charged is not fatal, where it appears that this was according to lienor's best information at time lien statement was filed. *Nelson v. S.*, 186M271, 243NW105. See Dun. Dig. 6078.

3. Description of premises.

Mechanic's lien statement which described premises as government subdivision in fractional northeast quarter of certain section on which was erected "White City Resort" was not defective for lack of certainty. *Nelson v. S.*, 186M271, 243NW105. See Dun. Dig. 6079.

8499. Foreclosure of liens.

Hartford A. & I. Co. v. F. (CCA8), 59F(2d)950. Liability to owner under contractor's bond. 178M388, 227NW205.

8500. Summons, pleadings, etc.

½. In general.

Denial of application to open foreclosure judgment and to permit a defendant to answer on the ground of mistake, inadvertence, and excusable neglect of applicant's attorney, held proper. 172M462, 215NW859.

3. Complaint.

Unless complaint is filed in office of clerk of court before expiration of year from furnishing last item, foreclosure suit must be dismissed. *Thornton Bros. v. J.*, 195M385, 263NW108. See Dun. Dig. 6100.

Evidence held to sustain finding of trial court, on special appearance of defendant, that complaint was not filed in office of clerk within one year. *Id.*

8501. Notice of lis 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 summons, omitting the caption. After such filing, 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 by answer, as provided in Section 8500. 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 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 a bona fide purchaser, mortgagee or encumbrancer without notice, the absence from the record of a notice of lis pendens 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 lis pendens has been registered within said period; 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, §3515; G. S. '13, §7030; Apr. 21, 1933, c. 362, §1.)

Sec. 2 of Act Apr. 21, 1933, cited, provides that the act shall take effect from its passage. 172M462, 215NW859; note under §8500.

8503. Postponement, judgment, subrogation, etc.

In mechanic's lien foreclosure, court did not err in refusing to reopen case to permit plaintiff to show how towel bar and tumbler holder were attached to wall. *A. Y. McDonald Mfg. Co. v. N.*, 187M237, 244NW806. See Dun. Dig. 6114a.

8504. Judgment, sale redemption, etc.

Where remainderman participated in transaction which wrongfully disabled life tenant from redeeming from mechanic's lien foreclosure, redemption by one to whom they had given a sham mortgage was in effect redemption by remainderman and on annulment of the foreclosure. 173M128, 216NW798.

One obtaining new certificate under Torrens Act, after purchase at mechanic's lien foreclosure, had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 218NW246.

Where suit on mechanic's lien claim is brought in name of two partners and it develops that one has assigned all of his interest in claim to his copartner, court may properly decree foreclosure in behalf of assignee. *Blatterman v. C.*, 188M95, 246NW532. See Dun. Dig. 571, 7407.

PERSONALTY IN POSSESSION

8507. For keeping, repairing, etc.

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

One in possession of horse under claim of lien may be convicted under §10443 if he permits it to starve to death. *State v. Maguire*, 188M627, 248NW216. See Dun. Dig. 279.

Evidence sustains verdict that defendant had a lien for storage on goods to which plaintiff had legal title, which goods were stored in a warehouse owned and controlled by defendant and were placed in storage by one who had legal possession under a conditional sales contract from plaintiff. *J. I. Case Co. v. J.*, 190M518, 252NW436. See Dun. Dig. 10147.

Fact that one storing goods in warehouse was furnished key and permitted to remove certain goods and replace them from time to time did not show waiver or release of lien on goods remaining in warehouse at time of assertion of lien. Id.

Public warehouse statute does not apply to warehouse in village having less than 5,000 inhabitants. Id.

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

In prosecution of owner of fur coat for larceny, defendant was not entitled to an instruction that furrier had no lien entitling to possession unless labor and material furnished in repair of coat enhanced its value, and court rightly excluded testimony of an expert that value of coat was not enhanced by furrier's material and labor. *State v. Cohen*, 196M39, 263NW922. See Dun. Dig. 5579.

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 agreed price of \$50. Id.

Automobiles abandoned on city street, owners being unknown, may be removed by city officials to a local garage for storage or safe keeping, and later be sold for storage charges under unclaimed property statute or motor vehicle storage lien statute. *Op. Atty. Gen.* (632a), Dec. 2, 1937.

Priority of conditional vendor's recorded title—Rights of an innocent purchaser. 14MinnLawRev779.

8508. For what given.

J. I. Case Co. v. J., 190M518, 252NW436; note under §8507.

State v. Cohen, 196M39, 263NW922; note under §8507.

MOTOR VEHICLES

8524. To whom given—For what services rendered.

One repairing automobile at instance of conditional vendee has a lien under §8507 prior to the right of the vendor, but his lien is lost by surrender of possession, and he has a lien under §8524, but no priority over conditional vendor. 177M217, 225NW15.

Material and labor lien is superior to title acquired through an execution sale upon a levy made before the filing of the lien statement but after the furnishing of labor or material. *Stegmeir v. L.*, 184M194, 238NW328. See Dun. Dig. 5579a, 5584a.

Priority of conditional vendors recorded title. 14MinnLawRev779.

Lien of garage man and priority by recording within statutory period. 33MichLawRev454.

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 and is superior to title of a subsequent bona fide purchaser who, without notice or knowledge of the lien, buys before lien is filed. *Pratt v. A.*, 192M14, 255NW91. See Dun. Dig. 5673.

8526. Foreclosure.

Holder of lien on motor vehicle was not entitled to possession until the commencement of the action to foreclose and where machine was converted by lien claimant, his lien is not a defense in trover. 174M11, 218NW172.

8527. 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. 320, §4; G. S. '13, §7056; '25, c. 352, §1; Apr. 23, 1929, c. 302, §1.)

ON LOGS AND TIMBER

8530. Lien statement—Filing—Assignment of lien.

Clerk of court should file log liens in a similar matter as is provided for filing of like instruments in office of Register of Deeds and make similar charges for such filing. *Op. Atty. Gen.* (429h), May 19, 1934.

8532. Action—Attachment.

Note in 1927 edition should read: "Governed by §9342 as to time," etc.

IN OTHER CASES

8548. For wages, as against attachment, etc.

Statute does not require that lien be filed for record. *C.I.T. Corp. v. C.*, 198M337, 269NW325. See Dun. Dig. 5578.

There is no provision in statutes expressing an intention to extend liens for wages to after-acquired property of employer, and even if so intended, lien would attach only 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 or her employment terminates, or after lien vests. Id.

Lien for unpaid wages vests when wages become due and are not paid, or upon termination of employment. Id.

A conditional sales contract or purchase-money mortgage is superior to any proper lien or mortgage on property of purchaser, and such prior lien or mortgage attaches only to such interest as purchaser of property acquires at time of purchase, subject to any lien or con-

ditional sales contract given to seller for part or all of purchase price at time of sale. Id.

8551. For service of stallions, etc.

Procedure for filing and foreclosing liens for stallion services. Op. Atty. Gen. (520j), May 7, 1936.

8552. How preserved and enforced.

Procedure for filing and foreclosing liens for stallion services. Op. Atty. Gen. (520j), May 7, 1936.

8553. Lien for services.

See §§5855 to 5871 for registration of stallions and jacks.

Stallion owner's lien on mare does not have priority over previous mortgage but lien upon offspring has priority over all other claims. Op. Atty. Gen., Mar. 19, 1934.

Section 8553 has not been repealed by §5868. Op. Atty. Gen. (520j), July 10, 1936.

8554. Application.

Procedure for filing and foreclosing liens for stallion services. Op. Atty. Gen. (520j), May 7, 1936.

8555. Lien for threshing grain—corn picking—ensilage cutting.—Any person owning or operating a threshing machine, combined thresher and harvester, clover huller, corn picking machine, corn sheller, corn shredder, ensilage cutter or hay baler shall have a lien upon the grain threshed, clover hulled, corn shelled 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 or incumbrances except those given for the seed from which said grain was grown. (R. L. '05, §3546; G. S. '13, §7082; '23, c. 132, §1; Apr. 24, 1929, c. 314, §1; Apr. 17, 1937, c. 254, §1.)

Sec. 2 of Act Apr. 17, 1937, cited, provides that the Act shall take effect from its passage.

State seed loan lien takes preference over thresher man's lien. Op. Atty. Gen. (833c), Aug. 26, 1935.

8556. How preserved and enforced.—Within fifteen days after such threshing, clover 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, clover hulled, corn picked, corn shelled 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 therefor, the amounts paid thereon, if any, and the balance due, the name of the reputed owner and of the person requesting the work to be done, and a notice that a lien is claimed for the amount remaining unpaid. A certified copy of such statement shall authorize the seizure and sale of so much of the grain, clover, corn or hay covered by the lien as may be necessary to satisfy the same, with reasonable costs and expenses, but such seizure must be made, or an action to foreclose be commenced, within six months after such filing. The cost and the expenses above referred to shall include an attorney's fee amounting to 15 per cent of the amount of the lien claimed in the event such lien is not paid within 90 days after the filing thereof and the lien claimant employs an attorney-at-law to collect the same. So far as applicable thereto, the laws relating to the enforcement of chattel mortgages shall govern the foreclosure of liens hereunder. Any person secreting or disposing of property covered by such lien, without the consent of the lienholder, shall be guilty of a misdemeanor, the minimum penalty thereof shall be a fine of \$25.00. (R. L. '05, §3547; G. S. '13, §7083; '21, c. 248, §1; '23, c. 132, §2; Apr. 24, 1929, c. 314, §2.)

8556-3. Lien for hospital charges.—Any person, firm or corporation operating a hospital in this state shall have a lien for the reasonable charges for hospital care of an injured person upon any and all causes

of action accruing to the person to whom such care was furnished, or to the legal representatives of such person, on account of injuries giving rise to such causes of action and which necessitated such hospital care, subject, however, to any attorney's lien. (Act Apr. 20, 1933, c. 345, §1.)

8556-4. Claim to be filed with clerk of the District Court.—In order to perfect such lien, the operator of such hospital, before, or within ten days after, such person shall have been discharged therefrom, shall file in the office of the clerk of the district court of the county in which such hospital shall be located a verified statement in writing setting forth the name and address of such patient, as it shall appear on the records of such hospital, the name and location of such hospital and the name and address of the operator thereof, the dates of admission to and discharge of such patient therefrom, the amount claimed to be due for such hospital care, and, to the best of claimant's knowledge, the names and addresses of all persons, firms or corporations claimed by such injured person, or the legal representatives of such person, to be liable for damages arising from such injuries; such claimant shall also, within one day after the filing of such claim or lien, mail a copy thereof, by registered mail, to each person, firm or corporation so claimed to be liable for such damages to the address so given in such statement. The filing of such claim or lien shall be notice thereof to all person, firms or corporations liable for such damages whether or not they are named in such claim or lien. (Act Apr. 20, 1933, c. 345, §2.)

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 operators 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, §3.)

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 pledgee to himself, he affirms it as an entirety, and his only right then is to have credited on his debt amount realized from sale, with payment to him of surplus, if any. Erickson v. M., 285NW611. 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.

Sheriff is entitled to fees of \$4.50 for posting notices and making sale. *Op. Atty. Gen.*, May 20, 1929.

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CHAPTER 70

Marriage

8562. Marriage a civil contract.

Marriage may be annulled where the defendant was prohibited by law from entering into it because he had been divorced from a former wife within six months, and induced the consent of plaintiff by a false representation of no divorce within the six-month period. 171M340, 214NW650.

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 so perfected are not defeated by the wife's subsequent desertion of the husband. 172M91, 214NW791.

Alienation of affections and damages therefor. 177M270, 224NW839.

Essentials of common-law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 180M463, 231NW199.

Contract whereby plaintiff was employed at a stipulated compensation per month as a farm hand was not abrogated by marriage of plaintiff to his employer, but remained a binding obligation upon her, and he could recover for work performed after the marriage. *Archer v. M.*, 183M306, 236NW455. See Dun. Dig. 4258.

Circumstantial evidence necessary to show common-law marriage estate. *Ghehin v. J.*, 186M405, 243NW443. See Dun. Dig. 5796.

General reputation alone that parties are married is not alone sufficient to show common-law marriage. *Ghehin v. J.*, 186M405, 243NW443.

On objection to petition for appointment of administrator, on ground that objector was common-law wife of decedent, burden of proof was upon objector to show that there was in fact a marriage contract. *Welker's Estate*, 190M447, 265NW273. See Dun. Dig. 5793.

Mere cohabitation, not shown to be of matrimonial nature or intent, without more, there being no evidence of public matrimonial behavior or general matrimonial repute, held insufficient to establish common-law marriage. *Id.*

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8 1/2 months after death girl bore a child of the employee, there was no marriage and child was not entitled to compensation under workmen's compensation act. *Guptil v. E.*, 197M211, 266NW748. See Dun. Dig. 5784.

On evidence that mother-in-law actively and maliciously interfered to prevent reconciliation between plaintiff and her husband, defendant's son, verdict for damages for alienation of the son's affections sustained was proper. *Ruble v. Ruble*, 203M399, 281NW529. See Dun. Dig. 4294.

Validity of marriage celebrated in foreign state in violation of statute of domicile. 16MinnLawRev173.

Common-law marriage in Minnesota. 22MinnLawRev 177.

8563. Persons capable of contracting.

Where a boy 19 years of age and a girl 14 years of age, residents of Wisconsin, went to Minnesota and were married and returned to Wisconsin, Minnesota law governed and marriage was only voidable and not void, and the boy obtained his majority under Iowa statute by marriage. *Boehm v. R.*, 224Iowa226, 276NW105.

A male person over 18 but under 21 years of age, and a female over 16 but under 18 years of age, cannot procure a marriage license without the consent of parents or guardians. *Op. Atty. Gen.*, Feb. 13, 1930.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. *Op. Atty. Gen.* (300a), May 13, 1937.

Boy seventeen years of age can marry with consent of parents and an order of Juvenile Court. *Op. Atty. Gen.* (300a), Nov. 27, 1937.

Marriage is a civil contract and marriage of minors over age prescribed by this section but under age of 21, without consent of parents, is not void, but voidable only by action of party under disability. *Op. Atty. Gen.* (300a), Jan. 30, 1939.

COMMON LAW DECISIONS RELATING TO LIENS IN GENERAL

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.*, 287NW233. See Dun. Dig. 5577b.

8564. Marriages prohibited.—No marriage shall be contracted while either of the parties has a husband or wife living; nor within six months after either has been divorced from a former spouse; nor between parties who are nearer of kin than second cousins, whether of the half or whole blood, computed by the rules of the civil law; nor between persons either one of whom is epileptic, imbecile, feeble-minded or insane; nor between persons one or both of whom are under 15 years of age. (As amended Apr. 24, 1937, c. 407, §1.)

Marriage to woman who had been divorced less than a year, and who was prohibited from remarrying by the laws of Wisconsin, held invalid under this section. *Cummings v. U. S.*, (USDC-Minn), 34F(2d)284.

Marriage may be annulled where it took place within six months after divorce of defendant, through false representation. 171M340, 214NW650.

Evidence held not to show common-law marriage. 175M547, 221NW911.

State v. Yoder, 113M503, 130NW10, L. R. A. 1916C, 686, followed to the effect that a marriage within the time during which the parties may not remarry, may be voidable but is not void under our laws. *Ommang's Estate*, 183M92, 236NW529. See Dun. Dig. 5788(68).

Marriage in Minnesota within one year after divorce in Wisconsin was valid, though it would be void under Wisconsin law. *Ommang's Estate*, 183M92, 236NW529. See Dun. Dig. 1557, 5788(68).

This statute prohibits the remarriage within six months of persons who have been divorced from each other. *Op. Atty. Gen.*, Sept. 3, 1931.

Marriage is forbidden between a woman and her mother's first cousin. *Op. Atty. Gen.* (300j), Feb. 26, 1935.

Marriage between first cousins solemnized outside of the state would probably be valid in Minnesota. *Op. Atty. Gen.* (133b-36), Sept. 7, 1935.

8565. By whom solemnized.

Probate judge performing marriage ceremonies is not required to turn over fee to county. *Op. Atty. Gen.*, June 22, 1933.

8568. License.

No marriage can be solemnized without a license being first issued therefor, notwithstanding pre-existing common-law marriage. *Op. Atty. Gen.*, Feb. 17, 1933.

Clerk of court may issue a second marriage license when any female decides to marry a different man, though first man refuses to surrender the first license. *Op. Atty. Gen.*, Nov. 27, 1933.

Marriage license may be issued to male resident of county to marry nonresident providing marriage is performed in county where license is procured. *Op. Atty. Gen.* (300m), April 6, 1939.

8569. Marriageable age of females.—Application for a marriage license shall be made at least five days before a license shall be issued. The clerk shall examine upon oath the party applying for license relative to the legality of such contemplated marriage, and if, at the expiration of said five-day period, satisfied that there is no legal impediment thereto, he shall issue such license, with his official seal attached, and make a record thereof, provided that in case of emergency, or extraordinary circumstances, the judge of the probate court or any judge of the district court of the county in which the application is made may authorize the license to be issued at any time before the expiration of said five days. If any person intending to marry shall be under the age of twenty-one if a male and under the age of eighteen if a fe-