

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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In as much as a sale of property claimed to have been fraudulently conveyed will not be restrained by injunction, it is clear that assertion of such a claim after the sale and after a determination of the transfer as being fraudulent in fact cannot be permitted to stand in the way. *Brennan v. Friedell*, 215M499, 10NW(2d)355. See Dun. Dig. 3906(84).

A judgment creditor who claims his debtor has made a transfer of corporate stock in fraud of creditors may disregard the transfer and levy upon the property by execution and leave the issue of fraudulent transfer to be later determined. *Id.* See Dun. Dig. 3906.

The Uniform Fraudulent Conveyance Act, so far as it purports to authorize action to set aside fraudulent conveyance without existence of lien is unconstitutional. *F. W. Horstmann Co. v. R.*, 15Atl(2d)(NJ)623.

The rule under New Jersey statute that a suit to recover payment made in fraud of creditors may be maintained only by a judgment creditor applied by analogy to a statute providing for a lien on an insurance policy up to the amount of premiums paid by insured when insolvent. *Cohen v. Metropolitan Life Ins. Co.*, 129NJ289, 19Atl(2d)332.

Mortgagee did not have right to attack conveyance from mortgagor as fraudulent before having a lien on property, even though foreclosure decree showed that there was a deficiency. *Nield v. Norris*, 130NJEq53, 21Atl(2d)153.

Provision in act that a conveyance could be attacked as fraudulent before complainant had any lien or judgment against property conveyed was unconstitutional. *Id.*

Provision that a creditor could have a fraudulent conveyance set aside without having a judgment lien on the property, held valid. *Epstein v. Bendersky*, 130NJEq180, 21Atl(2d)815.

Action to set aside transfer by corporate debtor made through judicial proceeding, and not one based on disregard of conveyance, and is governed as to limitations by statute relating to suits in equity to avoid transfer, and not by limitations applicable to fraud actions. *Hearn, 45 St. Corp. v. J.*, 27NE(2d)814, 283NY139, rev'g 16NYS(2d)778, 17NYS(2d)1000, 258 AppDiv923, 965.

Conveyance to wife by a joint tenant results in severance of joint tenancy, and if conveyance is in fraud of creditors husband's interest becomes subject to claims of creditors, and to sale in a proper suit by husband's administrator, where judgment is obtained against husband prior to his death, but the conveyance is valid and binding as between husband and wife, subject to prior rights of creditors. *Campbell v. Drozdowicz*, 243Wis354, 10NW(2d)158. See Dun. Dig. 3850, 3859, 3899.

(1). Good faith grantee may not continue payments to his fraudulent grantor upon learning that conveyance to him was designed to hinder, delay or defraud creditors of the grantor, and assuming fraudulent purpose of grantor, conveyance is subject to be set aside by creditors of the latter. *Angers v. S.*, 235Wis422, 293NW173.

(2). Grantees who are guilty of no actual fraud are entitled to a lien for payments made for maintenance and preservation of property from tax and other liens, even if those payments are made after learning of fraudulent purpose of grantor, and the better rule would seem to be to protect even guilty grantees in such respect. *Angers v. S.*, 235Wis422, 293NW173.

Where a grantee innocently makes part payments upon purchase price prior to learning of fraudulent purpose of conveyance, he may have a lien upon premises as security for those payments. *Id.*

An innocent grantee paying part of purchase price and making payments to preserve property may maintain an action to establish his lien against property, conveyed to him. *Id.*

#### 8484. Creditors whose claims have not matured.

Where there was nothing in allegations of complaint to indicate that ancestor in title in disposing of assets involved any fraud as to future creditors, plaintiff as a successor in title to real estate, had no cause of action against transferee of such ancestor in title arising from fact that he was an innocent purchaser of real estate and would have some rights if transfer to him were set aside, at suit of creditors of the ancestor. *Angers v. S.*, 235Wis422, 293NW(Wis)173.

## CHAPTER 69

### Liens for Labor and Material

#### FOR IMPROVEMENT OF REAL ESTATE

##### 8490. Mechanics, laborers and materialmen.

###### 6. Subcontractors.

Subcontractor doing plastering under contract with general contractor was not entitled to recover from general contractor for extra work required by agent of owner of the building, such agent having no authorization from general contractor to change its contractual relationship. *Warner v. A. G. Anderson, Inc.*, 213M376, 7NW(2d)7. See Dun. Dig. 6053.

###### 10½. Installations and fixtures.

Heavy heating boiler "installed" was part of real estate and lienable. *Willcox Boiler Co. v. Messier*, 211M304, 1NW(2d)130. See Dun. Dig. 6040.

Doctrine of "trade fixtures" cannot be invoked as against a claimant otherwise entitled to a lien, no rights of a tenant being involved. *Id.*

Partitions, doors, plumbing, etc. placed in structure by a tenant so as to make it usable for restaurant purposes, removal of which would cause considerable damage to physical property both as it was and even more so as changed by improvements, were properly found to be improvements, rather than "trade fixtures" or "repairs", and laborers and material men were entitled to a lien as against landlord who had knowledge thereof. *Knoff Woodwork Co. v. Zotalis*, 213M204, 6NW(2d)264. See Dun. Dig. 6040(63).

###### 15. Held not to defeat lien.

Discharge of contractor in bankruptcy does not affect lien of materialman. *Willcox Boiler Co. v. Messier*, 211M304, 1NW(2d)130. See Dun. Dig. 749, 6067-6076.

##### 8491. Defrauding contractor on improvement of real estate; etc.

President and secretary of corporation may individually be prosecuted without bringing criminal action against corporate contractor, if they aid and abet or counsel or encourage or command or procure the commission of the crime. *Op. Atty. Gen.* (494b-10), Oct. 20, 1942.

##### 8494. When lien attaches—Notice.

A mechanic's lien, in proper form, filed with registrar of title, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under *Torrens Act*. *Armstrong v. L.*, 209M373, 296NW405. See Dun. Dig. 6062.

No notice of lien is required to be given owner by person who contracts directly with owner and furnishes materials under such contract to owner in order to establish

lien as between owner and material men. *Roughan v. R.*, 199So(Fla)572.

Notice of lien is sufficient to meet statutory requirements though it is drawn in rather slipshod fashion. *Id.*

Person furnishing materials for construction of building on married woman's separate property under contract with married woman may avail himself of Uniform Mechanic's Lien Act, but he must follow provisions of act. *Id.*

##### 8495. Vendors, consenting owners, etc.

###### 2. Consent implied—Notice.

Where owner of a building leased it to another for use as a restaurant and had knowledge of installation of partition, doors, plumbing, etc., his failure to give notice to laborers and material men as prescribed by this section gives rise to a presumption that improvements are deemed to have been made at his instance. *Knoff Woodwork Co. v. Zotalis*, 213M204, 6NW(2d)264. See Dun. Dig. 6035, 6036, 6037.

##### 8496. Payment to subcontractors, etc.

Construction contract providing that owner make monthly payments of 85% of cost of labor and material furnished each month by contractor entitled the contractor to only 85% of cost of labor and material actually paid for by him. *First Church of Christ, Scientist v. Lawrence*, 210M37, 297NW99. See Dun. Dig. 1847a.

##### 8497. Mechanic's lien—Filing—Contents of statement.

###### 2. Time of filing.

Evidence held sufficient to support findings as to timeliness of filing and commencing action to foreclose lien. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6087, 6100.

##### 8500. Summons, pleadings; etc.

Laws 1943, c. 134, provides that state may be made party defendant in action to quiet title, or to foreclose mortgage or other lien on real or personal property.

###### 3. Complaint.

Where claim for which a mechanics' lien is sought is but a single item, labor, no bill of particulars is necessary. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6106.

###### 7. No reply necessary.

No reply is necessary in actions to foreclose mechanic's liens. *Ylijarvi v. Brockphaler*, 213M385, 7NW(2d)314. See Dun. Dig. 6108.

**8501. Notice of lis pendens in certain cases.**

Evidence held sufficient to support findings as to timeliness of filing and commencing action to foreclose lien. *Steele v. Vernes*, 212M281, 3NW(2d)425. See Dun. Dig. 6087, 6100.

Two actions to foreclose mechanics' liens brought in good faith were properly consolidated by the trial court. *Id.* See Dun. Dig. 6098.

**8504. Judgment, sale, redemption, etc.**

Where personal liability for debt in a lien foreclosure action is found against two defendants jointly and severally and judgment is entered against only one of them, latter may not complain since he may seek contribution from other defendant for his proportionate share of any sum he has paid on judgment. *Smude v. Amidon*, 214M266, 7NW(2d)776. See Dun. Dig. 1920, 6113.

In foreclosure actions, court retains jurisdiction after entry of judgment and after time to appeal therefrom has expired for purpose of supervising and controlling the foreclosure sale, and in exercise of such control may permit a lien claimant to waive completely worthless lien rights included in such judgment and order entry of personal judgment against a defendant personally liable for the debt without first requiring a foreclosure sale. *Id.* See Dun. Dig. 6113.

Lien claimants, parties to a foreclosure action, before finally submitting their cause to the court, may waive their lien rights and limit recovery sought to personal judgments against a defendant personally liable for the debt. *Id.* See Dun. Dig. 6113.

Judgment need not specifically provide for a deficiency judgment in order to authorize later entry of a personal judgment against a defendant found personally liable, for the balance due after the foreclosure sale. *Id.* See Dun. Dig. 6113.

In actions to foreclose mechanics' liens or mortgages, ordinarily personal judgment may not be entered against a defendant found personally liable for the debt until lien rights covered by judgment have first been exhausted by foreclosure sale. *Id.* See Dun. Dig. 6113.

Language of judgment in lien action that "plaintiff and the defendant lien claimants are entitled to no other or further relief hereon" held not to restrict plaintiff from applying for entry of personal judgment against defendants personally liable. *Id.* See Dun. Dig. 6113.

In ordinary action, after time for appeal expires, court cannot modify a judgment except for clerical error or misprision, or except as prescribed in statute, but there is a distinction in mortgages and mechanics' lien foreclosure action. *Id.* See Dun. Dig. 6113.

**PERSONALTY IN POSSESSION****8507. For keeping, repairing, etc.**

Possessory lien for repair of an automobile is lost if possession is unconditionally resumed by owner. *Bongard v. Nellen*, 210M392, 298NW569. See Dun. Dig. 5579a.

Where garage man purchased oil at such a cheap price that he thought it was stolen and turned it over to the police, and suspected thief escaped, oil should be returned to garage man after reasonable time and after any possibility of its being needed as evidence is gone. *Op. Atty. Gen.* (605B-40), Mar. 27, 1942.

**MOTOR VEHICLES****8524. To whom given—For what services rendered.**

Holder of a motor vehicle lien for storage or repairs is not estopped by his mere silence to assert his superior right against a purchaser with notice at foreclosure sale under chattel mortgage, though such purchaser believed lien to be outlawed. *Conner v. C.*, 208M502, 294NW650. See Dun. Dig. 5579a.

A subsequent bona fide encumbrancer of an automobile takes subject to motor vehicle lien given by this act. *Id.* See Dun. Dig. 5584a.

Possessory lien for repair of an automobile under *Mason Minn. St.* 1927, § 8507, is lost if possession is unconditionally resumed by owner. *Bongard v. Nellen*, 210M392, 298NW569. See Dun. Dig. 5579a.

Disposition by municipal authority of vehicles abandoned upon street, highway, or city owned property. *Op. Atty. Gen.* (632d-1), Sept. 17, 1942.

**8525. Statement of claim for lien; etc.**

Record of an unsatisfied and undischarged lien, which was filed and upon which foreclosure was commenced within time allowed by statute, is notice not only of lien but of action to foreclose it, although statute does not require filing of a notice of lis pendens and none is filed. *Conner v. C.*, 208M502, 294NW650. See Dun. Dig. 5579a.

**8526. Foreclosure.**

Chattel mortgagee foreclosing and selling automobile in exclusion and defiance of lien rights of one furnishing storage or repairs, may be held in conversion. *Conner v. C.*, 208M502, 294NW650. See Dun. Dig. 5579a.

Proceedings for foreclosure commenced within period allowed need not be brought to final adjudication within such period. *Id.*

**IN OTHER CASES****8548. For wages as against attachment, etc.**

In bankruptcy proceeding, claims for wages earned within 6 months but more than 3 months before filing of petition were not entitled to priority of payment over claim of United States for taxes due under Social Security Act. *Penticoff*, (DC-Minn), 36FSuppl.

**GENERAL PROVISIONS****8558. Inaccuracies in lien statement.**

Evidence held to sustain finding that materialman knowingly by lien statement demanded more than was justly due, where it appeared owner gave check payable to contractor and materialman, and materialman credited materials for amount of check and then gave contractor a check and added it to material account. *Standard Lumber Co. v. A.*, 207M52, 289NW827. See Dun. Dig. 6074.

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

In case of a pledged commercial paper, foreclosure is not permitted, where a sale would result in sacrifice, especially when obligor is insolvent. *First & Am. Nat. Bank of D. v. W.*, 207M537, 292NW770. See Dun. Dig. 7751.

A pledgee of tangible personalty may not resort to it for his own purposes prior to foreclosure of pledge, but a pledgee of a chose in action pursuant to his duty to conserve collateral must use reasonable diligence to collect. *First & Am. Nat. Bank of D. v. W.*, 207M537, 292NW770. See Dun. Dig. 7744.

**8561 1/2.****COMMON LAW  
DECISIONS RELATING TO LIENS  
IN GENERAL**

Pledgee of automobile who paid sight draft accompanying bill of lading and received delivery abandoned or relinquished his rights as pledgee, as against a good faith purchaser for value, by permitting pledgor to expose it for sale in his show room. *Goebel v. Heesch*, 212M424, 4NW(2d)104. See Dun. Dig. 7740.

**CHAPTER 70****Marriage**

**8562. Marriage a civil contract.—**Marriage, so far as its validity in law is concerned, is a civil contract, to which the consent of the parties, capable in law of contracting, is essential. Lawful marriage hereafter may be contracted only when a license has been obtained therefor as provided by law and when such marriage is contracted in the presence of two witnesses and solemnized by one authorized, or who the parties in good faith believe to be authorized, so to do. Marriages subsequent to the passage of this act not so contracted shall be null and void. (As amended Act Apr. 26, 1941, c. 459, § 1.)

The quality of a marriage, as to its being void or voidable, is to be tested by law of place where ceremony was performed. *Von Felden v. Von Felden*, 212M54, 2NW(2d)426. See Dun. Dig. 1557.

A marriage may not be dissolved by agreement of the parties or by the say-so of one of them, and this applies as well to common law marriages as to those solemnized by a person thereto authorized by statute. *Rogers v. Cordingley*, 212M546, 4NW(2d)627. See Dun. Dig. 2786.

The validity of a marriage celebrated in Iowa between residents of Minnesota is governed by the law of Iowa. *Johnson v. Johnson*, 214M462, 8NW(2d)620. See Dun. Dig. 1557, 5784.

A marriage contracted prior to enactment of Laws 1941, c. 459, amending this section, is not affected by the provisions thereof. *Id.* See Dun. Dig. 5785.

One who has been adjudged an incompetent may contract a valid marriage if he has in fact sufficient mental capacity for that purpose. *Id.* See Dun. Dig. 5788.

The rule is the same in Iowa as in other states that a person under guardianship as an incompetent may have capacity to contract a marriage. *Id.* See Dun. Dig. 5788.