

CHAPTER 514

LIENS; LABOR, MATERIAL

IMPROVEMENT OF REAL ESTATE

514.01 MECHANICS, LABORERS, AND MATERIALMEN

NOTE: Insofar as they are inconsistent or in conflict with the rules of civil procedure, sections 514.01 to 514.17 are excepted therefrom.

It is wholly unnecessary, in order to state a cause of action in the form of a common count for work, labor, and materials, to follow the old common law fiction of alleging a promise to pay, and in an action to foreclose a mechanic's lien for labor and materials furnished, the plaintiff is not required to elect upon what basis the labor and materials were furnished, whether on quantum meruit or agreed price, there being no express contracts establishing an agreed price involved and hence there was no variance, although the time-plus-materials agreement provided a basis for calculation of ultimate cost. *Sallblad v Burman*, 225 M 104, 29 NW(2d) 673.

Mechanics lien law is to be given liberal construction in favor of workmen and materialmen for their labor and material supplied in the improvement of property. *Aaby v Better Builders*, 228 M 222, 37 NW(2d) 234.

Where a building contractor withdrew his claim at the trial for items that had been paid, and there was no showing that inclusion of such items was more than inadvertence, the contractor did not forfeit his mechanic's lien by claiming more than was due him. *Sward v Nash*, 230 M 100, 40 NW(2d) 828.

A county may make repair on property which it owns but the persons furnishing the material for doing the work may not acquire a mechanic's lien on such public property. OAG Feb. 2, 1950 (425-C-10).

514.02 CONTRACTOR GUILTY OF FRAUD; LARCENY

A plumbing, heating, and tinning contractor who installed a boiler and fixtures and sent the proceeds of the payment made to him on account thereof to the corporation which had supplied the installed materials, but who failed to designate the source of the funds or the particular items of material for which the money was to constitute payment, did not thereby violate section 514.02 even though he was, at the time of payment, indebted to that corporation on account of other supplies and materials purchased by him. *Survis v McDonald*, 224 M 479, 28 NW(2d) 720.

514.03 EXTENT AND AMOUNT OF LIEN

No one can become the agent of another except by the will of the principal, either express or implied from the particular circumstances. The power of an agent to bind his principal rests entirely upon the authority conferred upon him. Without such authority, for which the principal himself becomes, by act or conduct, responsible, the agent can bind himself only. Every person who undertakes to deal with an alleged agent is put upon inquiry and must discover at his peril that such pretended agent has authority, that it is in its nature and extent sufficient to permit him to do the proposed act, and that its source can be traced to the will of the alleged principal. Under the particular circumstances here, there were no acts of insurance company which misled plaintiff as to the position of the company's alleged agent to estop it from denying that he was its agent. *Mooney v Jones*, ..... M ....., 54 NW(2d) 763.

514.04 LINES OF RAILWAY; TELEGRAPH, OR SIMILAR PROJECTS

HISTORY. GS 1866 c 66 s 279; 1872 c 71; 1873 c 29 s 1; 1874 c 69 s 1; GS 1878 c 90 s 1; 1889 c 200 s 3; GS 1894 s 6231; RL 1905 s 3507; GS 1913 s 7022.

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## 514.05 WHEN LIEN ATTACHES, NOTICE

The excavating of a basement may constitute the beginning of an improvement so as to establish a priority of the mechanics' and materialmen's liens over a mortgage recorded subsequent to the excavation, there being no abandonment of the project, even though there was a short lapse of time between the date of excavation and the beginning of actual construction. Liens may attach even though the deed to the property is subsequently acquired where it appears that, in anticipation of building a house, the contractor is instructed to proceed with the work and does so by excavating the basement. *Brettschneider v Wellman*, 230 M 225, 41 NW(2d) 255.

With regard to whether the lien has been timely filed, the question is whether material furnished or work performed was all pursuant to one job as a continuous undertaking, and if the work being done is one continuous work constituting one job, a lien filed within 90 days after the last item furnished preserves the lien for all items furnished even though there are several agreements for furnishing of different materials, each being a separate contract for some part of the general work. *Barrett v Hampe*, 237 M 80, 53 NW(2d) 803.

Where the mortgagee delivered a check, receipt, and lien waiver to officer of the mortgagor, who delivered the check to the contractor and had him sign a receipt and a lien waiver, assuring the latter that the lien waiver did not affect his lien and that the mortgagee would pay subsequent bills for labor and materials, there were no acts of mortgagee which misled the contractor as to the position of the company's alleged agent to estop it from denying that he was its agent. *Mooney v Jones*, ..... M ....., 54 NW(2d) 763.

## 514.06 TITLE OF VENDOR OR CONSENTING OWNER, SUBJECT TO

"Implied consent" provisions of certain mechanics lien statutes. 32 MLR 559.

Lessor on whose property improvements were made with lessor's consent waived the benefits of section 514.06 by failing to post notice as authorized by law. *Schleiff v Bennett*, 175 F(2d) 890.

## 514.07 PAYMENT TO SUBCONTRACTORS WITHHELD

The filing of a mechanic's lien statement of record is not the commencement of an "action or other proceeding \* \* \* for the enforcement of such lien" within the meaning of section 514.07. The lien of a subcontractor for labor and materials furnished in improvement of real property is valid and enforceable where the proper statement of the claim therefor was filed within 15 days after completion of its subcontract. *Sterling Electric Co. v Kent*, 233 M 31, 45 NW(2d) 709.

## 514.08 STATEMENT; NECESSITY FOR RECORDING; CONTENTS

The filing of a mechanic's lien statement of record is for the purpose of preserving and perfecting the lien claimed. *Sterling v Kent*, 233 M 31, 45 NW(2d) 709.

## 514.10 FORECLOSURE OF LIENS

HISTORY. 1849 c 70 s 6; RS 1851 c 97 s 2; 1858 c 54 s 8; PS 1858 c 86 s 28; GS 1866 c 90 s 8; 1874 c 69 s 2; 1878 c 3 s 5; GS 1878 c 90 s 8; 1889 c 200 s 10; GS 1894 s 6238; RL 1905 s 3513; GS 1913 s 7028; 1921 c 521 s 2.

## 514.11 COMMENCEMENT OF ACTIONS; PROCEEDINGS

When a contractor sues a manufacturer to foreclose a mechanic's lien, and the manufacturer by way of counterclaim alleges and claims damages because of destruction of his plant by fire negligently caused by plaintiff, whether the contractor was an employee or an independent contractor was for the trier of fact. *Willner v Wallinder*, 224 M 361, 28 NW(2d) 632.

It is wholly unnecessary, in order to state a cause of action in the form of a common count for work, labor, and materials, to follow the old common law fiction of al-

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leging a promise to pay, and in an action to foreclose a mechanic's lien for labor and materials furnished, the plaintiff is not required to elect upon what basis the labor and materials were furnished, whether on quantum meruit or agreed price, there being no express contracts establishing an agreed price involved and hence there was no variance, although the time-plus-materials agreement provided a basis for calculation of ultimate cost. *Sallblad v Burman*, 225 M 64, 29 NW(2d) 673.

## 514.12 NOTICE OF LIS PENDENS

Where the evidence established that plaintiff had negotiated and performed his contract in his individual name distinct from an electrical business which he conducted under a trade name, and where the title of the action incorrectly included such trade name as part of plaintiff's designation therein, the trial court did not err in ordering the trade name deleted therefrom to conform with the proof. *Heyn v Braun*, ..... M ....., 59 NW(2d) 327.

## 514.14 POSTPONEMENT, JUDGMENT, SUBROGATION

Attorney's fees on appeal in an action to foreclose a mechanic's lien are not allowed in the absence of express litigation. *Barrett v Hampe*, 237 M 80, 53 NW(2d) 803.

## 514.15 JUDGMENT, SALE, REDEMPTION

Where upon the death of an old age recipient appropriate foreclosure proceedings were taken and the lien foreclosed and the homestead was bid in for the state, the procedure for readmission by the heirs is as follows: section 256.26, subdivision 8, provides that old age assistance liens may be enforced in the manner provided for the enforcement of mechanic's liens upon real estate. Section 514.15 provides that the judgment shall direct a sale for the satisfaction of the liens and the manner of sale, and that the right of redemption shall be the same as upon execution sales. Sections 550.24, 550.25, 550.26, and 550.27 provide the method by which such redemption may be made. Upon such redemption being made a certificate of redemption may be issued either by the person from whom such redemption is made, the sheriff, or the clerk of the district court of the county in which the real property is located. The facts set forth in the certificate of redemption are in section 580.26. OAG Aug. 9, 1948 (521-P-4).

The procedure to be taken to redeem realty from foreclosure sale after proceedings by the state to foreclose the lien for old age assistance is the same, subject to certain exceptions, as on execution sales. OAG Aug. 9, 1948 (525-P-4).

## 514.16 SEVERANCE OF BUILDING, RE-SALE, RECEIVER

It is an abuse of discretion for the bankruptcy court to fail to confirm a judicial sale where the only apparent reason for the court's action was its desire to obtain benefit of a higher offer made at the confirmation here. *Re Stanley Engineering Corp.*, 164 F(2d) 316.

## PERSONALTY IN POSSESSION

### 514.18 FOR KEEPING, REPAIRING

Where an owner retains constructive possession the party to whom the bare physical control of the property has been entrusted for the owner's purpose does not have "possession" but only "custody." *Jacobson v Aetna Casualty & Surety Co.*, 233 M 383, 46 NW(2d) 868.

Where the owner of a carload lot of paper delivers it to a printer under a single contract relating to the printing of all the paper, the entire carload lot of paper is treated as a unit for the purpose of imposing a lien on the printer's behalf, so that the printer is entitled to a lien upon all of the paper remaining in his possession,

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whether printed or unprinted, as security for the amount due him on labor and materials expended by him in printing any portion of the carload lot. *Braufman v Hart Publications*, 234 M 343, 48 NW(2d) 546.

Where the owner of a motor car had it repaired, paid the sum of \$187.66 to a mechanic, and after obtaining possession of the car stopped payment on the check, he was guilty of the crime of larceny. The mechanic had a lien upon the car under the provisions of sections 514.18, 514.19. Such lien was a special property interest entitling the mechanic to the possession of the car until the lien was lawfully discharged. The giving and stopping of the check was a fraudulent act depriving the mechanic of special property and it constituted the crime of larceny. OAG June 25, 1948 (133-B-45).

## 514.21 SALE, WHEN AND WHERE MADE; NOTICE

HISTORY. RS 1851 c 97 s 9; 1855 c 16 s 21; PS 1858 c 90 s 9; GS 1866 c 90 s 16; GS 1878 c 90 s 16; 1889 c 199 s 1; GS 1894 s 6217; 1905 c 328 s 4; 1907 c 114 s 4; GS 1913 s 7039.

## MOTOR VEHICLES

NOTE: Sections 514.35 to 514.39 are excepted from the rules of civil procedure governing the procedure in the district courts in all suits of a civil nature insofar as they are inconsistent with the procedure and practice provided by the rules.

## 514.35 LIEN FOR IMPROVEMENT AND SERVICES

HISTORY. 1911 c 320 s 1; 1925 c 352 s 1; 1951 c 364 s 1; 1953 c 318 s 1.

## 514.36 STATEMENT OF CLAIM FOR LIEN; CONTENTS, FILING

HISTORY. 1911 c 320 s 2; GS 1913 s 7054; 1925 c 352 s 1.

## 514.37 FORECLOSURE OF LIEN; SUMMONS AND NOTICE; REPLEVIN OF VEHICLE; JUDGMENT; SEIZURE AND SALE OF VEHICLE; COSTS

HISTORY. 1911 c 320 s 3; GS 1913 s 7055; 1925 c 352 s 1.

## 514.38 SHERIFF TO SERVE COPY OF NOTICE OF SALE

HISTORY. 1911 c 320 s 4; GS 1913 s 7056; 1925 c 352 s 1; 1929 c 302 s 1.

## 514.39 MOTOR VEHICLE AND OWNER

HISTORY. 1911 c 320 s 5; GS 1913 s 7057; 1925 c 352 s 1.

A motor tractor to which a shovel or scoop is attached and which is equipped with rubber tires, and is capable of driving at slow speeds over the highways is a "motor vehicle" within the meaning of New Hampshire financial responsibility law and was therefor an "automobile" within a liability policy indorsement relating to the use of automobiles. *American Mutual Liability Insurance Co. v Chaput*, 60 A(2d) 118.

## LOGS, TIMBER

## 514.40 TO WHOM AND FOR WHAT GIVEN

HISTORY. RS 1851 c 97; 1858 c 54 s 12; PS 1858 c 86 s 32; 1860 c 19; GS 1866 c 32 s 29; 1870 c 70 s 1; 1876 c 89 s 1; 1878 c 4 s 1; GS 1878 c 32 s 36, 46, 63; 1885 c 86; GS 1894 s 2424, 2434, 2451; 1899 c 342 s 1, 18; RL 1905 s 3524; GS 1913 s 7058; 1927 c 343.

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### 514.41 LIEN STATEMENT; FILING, ASSIGNMENT OF LIEN

HISTORY. 1860 c 19 s 3; GS 1866 c 32 s 31; 1870 c 71 s 2; 1872 c 90 s 1; 1876 c 89 s 2; GS 1878 c 32 s 38, 47, 64; GS 1894 s 2426, 2435, 2452; 1899 c 342 s 2, 16; 1901 c 293; RL 1905 s 3525; GS 1913 s 7059.

### 514.43 ACTION; ATTACHMENT

HISTORY. 1860 c 19 s 5; GS 1866 c 32 s 33; 1870 c 71 s 3; 1873 c 101 s 1; 1876 c 89 s 38; GS 1878 c 32 s 40, 48, 65; GS 1894 s 2428, 2436, 2453; 1899 c 342 s 4, 8; RL 1905 s 3527; GS 1913 s 7061.

### 514.44 ALLOWANCE AND ISSUE OF WRIT

HISTORY. 1860 c 19 s 5; GS 1866 c 32 s 33; 1870 c 71 s 3; 1873 c 101 s 1; 1876 c 89 s 3; GS 1878 c 32 s 40, 48, 65; GS 1894 s 2428, 2436, 2453; 1899 c 342 s 5; RL 1905 s 3528; GS 1913 s 7062.

### 514.45 CONTENTS AND LEVY OF WRIT

HISTORY. 1870 c 71 s 5; 1876 c 89 s 4; GS 1878 c 32 s 49, 66; 1894 s 2437, 2454; 1899 c 342 s 6; RL 1905 s 3529; GS 1913 s 7063.

### 514.46 LOGS SCALED TO OFFICER; WHERE HELD; FEES

HISTORY. 1876 c 89 s 9; GS 1878 c 32 s 71; GS 1894 s 2459; 1899 c 342 s 7, 11; RL 1905 s 3530; GS 1913 s 7064.

### 514.50 EXECUTION SALE

HISTORY. 1860 c 19 s 6; GS 1866 c 32 s 34; GS 1878 c 32 s 41; GS 1894 s 2429; 1899 c 342 s 10; RL 1905 s 3534; GS 1913 s 7068.

### 514.57 SURVEYOR GENERAL; LIEN FOR CHARGES

HISTORY. RS 1851 c 80 art 2 s 7, 8; 1858 c 80 s 8; PS 1858 c 122 s 30, 31; 1862 c 74 s 4; GS 1866 c 32 s 16; GS 1878 c 32 s 16; GS 1894 s 2402; RL 1905 s 3539; GS 1913 s 7075.

### 514.58 SALE AND DISTRIBUTION OF PROCEEDS

HISTORY. RS 1851 c 80 art 2 s 7, 8; 1858 c 80 s 8; PS 1858 c 122 s 30, 31; 1862 c 74 s 5; GS 1866 c 32 s 16; GS 1878 c 32 s 16; GS 1894 s 2402; RL 1905 s 3540; GS 1913 s 7076.

## SERVICE OF MALE ANIMALS

514.64 Repealed, 1949 c 273 s 1.

## GENERAL PROVISIONS

### 514.74 INACCURACIES IN LIEN STATEMENT

Where the plaintiff was unable to ascertain the exact description of the property and include more property than he should and where he was unable to ascertain the exact amount of lumber he had furnished for improvement of the property, and his agent and counsel, after diligent inquiry, filed a lien for an estimated amount in excess of the real amount, the lien was not thereby invalidated as against the holder of the mortgage on the property. The mechanic's lien is favorably construed in favor of the workman and materialman for labor and materials actually supplied on the property in question. *Aaby v Better Builders*, 228 M 222, 37 NW(2d) 234.

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Where a plaintiff bailor has proved a bailment and damaged the bailed property, defendant bailee has the two-fold burden of going forward with the evidence and establishing before the jury that his negligence did not cause the damage. If defendant does not admit and assume the burdens, plaintiff is entitled to recover fully for the damage done; but where the agreement under which a bailment is made specifies that the bailor will carry adequate collision, fire and theft insurance on the truck which is the subject of the bailment, and that the bailee will carry liability, property damage and cargo insurance, the agreement will be interpreted as giving each party the benefit of the other party's insurance, and the bailor will have no cause of action to recover from the bailee for that portion of the damage which results from a risk against which the bailor has agreed to carry adequate insurance. Since the damage which plaintiff suffered by losing the use of his truck while it was being repaired was not a loss against which he agreed to carry insurance, the trial court properly awarded damages on that basis. *Buckie v Indianhead Truck Line*, 234 M 379, 48 NW(2d) 534.

## LAUNDERERS

### 514.77 LIENS FOR LAUNDERERS

Where a dress was delivered to the laundry driver and the laundry failed to return it, the burden was on the laundry to prove not only the loss of the dress but also the loss did not occur by reason of its negligence. It was sufficient defense to prove the establishment in its place of business of a system under which it was almost impossible that a garment be lost. The evidence sustained an award of damages to the plaintiff. *Murphy v Co-operative Laundry*, 230 M 213, 41 NW(2d) 261.

## FACTORS LIEN

### 514.80 DEFINITIONS

Factor's lien on merchandise and the proceeds thereof. 33 MLR 39.

Factor's Lien Act, examination of. 34 MLR 119.

Trust receipts as voidable preferences; 1950 amendment section 60a. 34 MLR 469.

### 514.83 NOTICE, FILING OF

The register of deeds should accept and file notice of a factor's lien though presented to him more than 15 days after the date of the execution of the written agreement. OAG June 22, 1948 (373-B-11).

### 514.84 PURCHASES FOR VALUE

Purchase for value in the ordinary course as affected by the Factor's Lien Act. 34 MLR 129.

Factor's lien as a voidable preference in bankruptcy. 34 MLR 132.