

CHAPTER XLVIII.

OF LIENS.*

(This Chapter is Chapter XC. of the Statutes of 1866.)

SEC.

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SECTION 1. *Party performing labor or furnishing materials shall have lien.*—

Whoever performs labor, or furnishes materials or machinery for erecting, constructing, altering, or repairing any house, mill, manufactory, or other building or appurtenances, or for constructing, altering, or repairing any boat, vessel, or other water craft, by virtue of a contract or agreement with the owner or agent thereof, shall have a lien to secure the payment of the same, upon such house, mill, manufactory, or other building and appurtenances, and upon such boat, vessel, or other water craft, together with the right, title, or interest of the person owning such house, mill, manufactory, or other building and appurtenances, on and to the land upon which the same is situated, not exceeding forty acres, and if erected within the limits of any city, town, or village plat, the lot of ground on which said house, mill, manufactory, or other building and appurtenance is erected, not exceeding in extent one acre.

Building bound for work on appurtenances, *Carpenter et ux. v. Leonard*, 5 Minn. 155; *Same v. Wilverschied*, *ib.* 170. Purchaser in good faith without notice bound, *Cogel et al. v. Mickow et al.*, 11 Minn. 475. Separate estate of *feme covert* bound, *Tuttle v. Howe*, 14 Minn. 155. Architect has lien on building for drawing plans, etc., *Knight v. Norris*, 13 Minn. 473 (Wilson, C. J., dissents). Effect of promissory note on lien, *Milwain v. Sanford*, 3 Minn. 147. Sub-contractor cannot have lien under law of 1858, *Toledo Novelty Works v. Bernheimer*, 8 Minn. 118.

SEC. 2. *Sub-contractors may obtain right to funds in hands of owners of buildings or boats, how.*—Every mechanic or other person doing or performing any work

* For decisions upon this subject *vide* *Coit v. Waples*, 1 Minn. 134 (lien may be assigned). As to sub-contractor's rights, *Emmet v. Rotary Mill Co.*, 2 Minn. 290; *Lewis et al. v. Williams*, 3 Minn. 151. Effect of repeal of lien statutes, *Bailey et al. v. Mason*, 4 Minn. 546; *Dunwell v. Bidwell*, 8 Minn. 34.

toward the erection or repair of any house, mill, manufactory, or other building or appurtenance, or the construction, alteration, or repair of any boat, vessel, or other water craft, or furnishing any material for the construction of such building or vessel, erected or repaired under a contract between the owner thereof and builder, or other person, whether such work is performed as journeyman, laborer, carman, sub-contractor, or otherwise, whose demand for work so done or materials so furnished has not been paid or satisfied, may deliver to the owner of such building or vessel an attested account of the amount and value of the work or labor performed, or the materials thus furnished and remaining unpaid, and thereupon such owner shall retain, out of his subsequent payments to the contractor, the amount of such work and labor for the benefit of the person so performing the same.

SEC. 3. *Owner to furnish contractor with copy of papers served by sub-contractor.*—Whenever any such account of labor performed, or materials furnished, is placed in the hands of the owner of any building or vessel, as above stated, or his authorized agent, such owner or agent shall furnish his contractor with a copy of such papers, so that if there is any disagreement between such contractor and his creditor, they may, by amicable adjustment, or by arbitration, ascertain the true sum due: and if the contractor shall not, within ten days after the receipt of such papers, give the owner written notice that he intends to dispute the claim, or if in ten days after giving such notice, he refuses or neglects to have the matter adjusted, as aforesaid, he shall be considered as assenting to the demand, and the owner shall pay the same when it becomes due.

SEC. 4. *Disputed claims may be submitted to arbitration.*—If the contractor disputes the claim of his journeyman or other person, for work done or materials furnished as aforesaid, and the matter cannot be adjusted between themselves, it shall be submitted to the arbitrament of three disinterested persons, one to be chosen by each of the parties, and one by the two thus chosen, and their decision, or the decision of any two of them, shall be conclusive in the case submitted.

SEC. 5. *Owner may pay sub-contractor, when—owner liable to extent of balance due contractor.*—When the account is adjusted, as above provided, and the contractor does not, within ten days after it is so adjusted, pay the same to his creditor, with the costs incurred, the owner shall pay the same out of the fund as above provided; and said amount may be recovered from the said owner by the creditor of the said contractor, to the extent in value of any balance due by the owner to his contractor under the contract with him at the time of the notice first given, as aforesaid, or subsequently accruing to such contractor under the same.

SEC. 6. *Collusion between owner and contractor renders owner liable.*—If by collusion the owner of any building erected by contract, pays to his contractor any money in advance of the money due on said contract, and if the amount still due to the contractor, after such payment has been made, is insufficient to satisfy the demand made in conformity with the provisions of this chapter, for labor done and materials furnished, the owner shall be liable to the amount that would have been due at the time of his receiving the account of such work and materials, in the same manner as if no such payment had been made.

SEC. 7. *Account to be recorded in office of register of deeds.*—Any person entitled to a lien under section one aforesaid, shall make an account in writing of the item of labor, skill, material, and machinery furnished, or either of them, as the case may be; and after making oath thereto, within one year after the time of per-

forming such labor and skill, or furnishing such material and machinery, shall file the same in the register's office of the county in which such labor, skill, and materials have been furnished, which account so made and filed shall be recorded in a book to be provided separately by the register for that purpose, and shall, from the commencement of such labor, or the furnishing of such materials, and for two years after the completion of such labor or the furnishing of such materials, operate as a lien on the several descriptions of structures and buildings, and the lots of ground on which they stand, in the first section of this chapter named. When any labor has been done, or materials furnished as provided, on a written contract, the same, or a copy thereof, shall be filed with the account herein required.

Filing notice of lien, *Willius v. Bernheimer*, 5 Minn. 288; *Knight v. Norris et al.*, 13 Minn. 473. When the lien attaches, *Farmer's Bank v. Winslow*, 3 Minn. 86; *Knox et al. v. Starks et al.*, 4 Minn. 20; *Milner et al. v. Norris et al.*, 13 Minn. 455.

SEC. 8. *Lien holder may bring action—lien to continue till action is terminated.*—Every person holding such lien may proceed to obtain a judgment for the amount of his account thereon, according to the course of legal proceedings in like cases; and when any action is commenced on such accounts, within the time of such lien, the lien shall continue until such action is finally determined and the judgment satisfied.

SEC. 9. *When owner suspends progress of work, laborers may proceed, how.*—When the owner of any house or buildings, described in the first section of this chapter, suspends its progress or completion, without the consent of such laborers, mechanics, or furnishers; or if the progress or completion of the same is suspended by the decease of the owner at a stage when, from its unfinished state, such structure would go to waste, the laborers, mechanics, and furnishers thereto, or any of them, may at their election proceed with the same at their cost, so far as to inclose such building and thereby prevent such waste: *provided*, the work so done, after said suspension, shall be according to the contract and the plan of the owner.

SEC. 10. *When rents and profits of building may be applied to satisfy lien.*—If the person erecting as owner any building described in the first section of this chapter, is not, at the suspension or completion of the same, possessed of the legal title to the ground on which the same is erected, but is possessed of the equitable title thereto, and the fact of such defect of title is made to appear to the court before whom any judgment under this chapter has been obtained; or if the same is returned by any legal officer, to whom any execution under this chapter is directed, the court shall direct the officer who has returned, or who is authorized by law to serve such execution, to rent or lease such building, until the rents and issues thereof shall pay or satisfy the several liens on which judgment may be had against the same: *provided*, this law shall not be so construed as to interfere with prior *bona fide* liens on ground on which such building is erected.

SEC. 11. *Property bound by lien may be leased, when.*—In all other cases of judgment obtained in favor of any lien holder, if the property bound by such lien will not sell on execution as provided by law in other cases, having been once duly offered, the court before whom such judgment was obtained may direct the officer aforesaid to lease the same in the manner and for the purpose pointed out in the preceding section; and the officer giving such lease shall therein require the payment to be made to him, or his successor in office, which successor shall have the

same power and perform the same duties therein as the maker of the lease should or could do; and in cases where the money may be collected by said officer on leases made under this chapter, he shall forthwith pay the same into court, where the judgments were obtained, which money shall be distributed to the several lien holders interested in said judgments, in proportion to their several demands.

SEC. 12. *Liens, how discharged.*—All liens may be discharged by the payment of the judgment or debt, with costs, before the property on which such liens attached is sold or leased under this chapter; and if any lien holder, after the same is duly tendered to him, proceeds at law, or refuses to give a due discharge from such lien, such lien holder shall forfeit his lien and pay costs.

SEC. 13. *Lien holder may proceed by attachment, when.*—If the owner of the property which is subject to a lien is without the reach of process, or resident without the state, any lien holder may proceed by attachment against the same as in other cases, and the court before whom the same attachment is pending, on the entry of judgment, on return of the proper officer, shall have the same power to order leases as is given in the tenth and eleventh sections of this chapter.

SEC. 14. *Rights of executors and administrators.*—Executors and administrators, under this chapter, have the same rights, and are subject to the same liabilities, that their testator or intestate would be or might have if living.

SEC. 15. *When lien is satisfied, lien holder shall file certificate with register of deeds, which shall be recorded and operate to release said lien.*—Every person in favor of whom any such lien has existed, after having received satisfaction of his debt, or after final judgment against him by a competent tribunal, showing that nothing is due by reason of such claims, shall, at the request of any person interested in the property on which the same was a lien, or who is interested in having the lien removed, or of his legal representatives, lodge a certificate with said register that the said debt is satisfied and said lien removed, which certificate shall be filed and recorded by the register on the margin of the record, in the same manner that releases of mortgages are now by law required to be recorded; and when so recorded, shall for ever discharge and release said lien; and if such person having received satisfaction as aforesaid, by himself or attorney, or judgment having been rendered against him as aforesaid, shall not within ten days after request in writing lodge a notice in writing with the register, as is prescribed in this section, he shall forfeit and pay to the party aggrieved any sum of money not exceeding one-half of the debt claimed as a lien on such property, to be recovered in a civil action; and the party lodging such certificate as aforesaid shall pay to the register twenty cents for recording each notice or certificate as aforesaid.

SEC. 16. *Lien on personal property.*—Whoever makes, alters, repairs, or bestows labor on any article of personal property at the request of the owner or legal possessor thereof shall have a lien on such property so made, repaired, altered, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the materials he has furnished, and such person may hold and retain possession of the same until such just and reasonable charges are paid, and if they are not paid within three months after the labor is performed or the materials furnished, the person having such lien may proceed to sell the property by him so made, altered, or repaired, or upon which labor has been bestowed, at public auction, by giving public notice of such sale by advertisement for three weeks in some newspaper printed and published in the county, or if there is

none, then by posting up notice of such sale in three of the most public places in the county three weeks before the time of sale; and the proceeds of such sale shall be applied first to the discharge of such lien and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

SEC. 17. *Carriers and bailees entitled to lien.*—Any person who is a common carrier, and any person who, at the request of the owner or lawful possessor of any personal property, carries, conveys, or transports the same from one place to another, and any person who safely keeps or stores any personal property at the request of the owner or lawful possessor thereof, shall have the same lien and the same power of sale for the satisfaction of his reasonable charges, upon the same conditions and restrictions as provided in the preceding section.

SEC. 18. *Form of affidavit to be used under this chapter.*—The following form may be used under this chapter:

State of Minnesota, }
County. } ss.

A. B., affiant, makes oath and says: That the annexed is a true and correct account of the labor performed, and material (or say machinery) furnished by him (or them) to and for (here give the name) at said county; and the prices thereof set forth in the account hereto annexed are just and reasonable, and the same is unpaid; that said labor was performed, and material (or say machinery) was furnished for said C. D. at the time in said account mentioned under and by virtue of a contract between affiant and C. D. (if the contract was in writing, add, above copy of which is hereto annexed, marked A.), and for (constructing, or say altering, or say repairing a certain boat called, and so forth), giving a description of the water craft (or say erecting, or say repairing a certain house, or say mill, giving the common name of the building, or say a certain piece of land, giving location, etc.; or say lot of timber, or logs, or lumber, etc.)

And affiant further makes oath and says: That the said C. D. was, at the time said contract was entered into and said labor was performed, and said materials (or say machinery) was furnished, the owner of house (or say mill, or say said manufactory, naming the kind of building), and that said building is situate upon a certain lot of land owned by said C. D., in town _____, section _____, range _____, in said county _____, and this affiant claims a lien on the premises.

Sworn and subscribed before me this

day of

(Signed) A. B.

A.D. 18

H. G., J.P.