MASON'S

MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STATUTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED BY THE SUBSEQUENT LEGISLATION OF 1925 AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES 1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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relief upon the ground that they paid in part for the land and did not actually participate in the fraud. 211+473.

A judgment creditor, claiming a conveyance of land made by his debtor to be fraudulent, may disregard it and sell on execution, and afterwards litigate the question of fraud; or he may bring an action to set aside the conveyance as fraudulent. 212+455.

8484. Rights of Creditors Whose Claims Have Not Matured—Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the court may:

(2) Restrain the defendant from disposing of his property;

(b) Appoint a receiver to take charge of the property;

(c) Set aside the conveyance or annul the obligation, or

(d) Make any order which the circumstances of the case may require. ('21 c. 415 § 10)

8485. Cases Not Provided for in Act—In any case not provided for in this Act the rules of law and equity including the law merchant, and in particular the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern. ('21 c. 415 § 11)

8486. Construction of Act—This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it. ('21 c. 415 § 12)

Mortgage of stock of goods remaining in hands of mortgagor is presumptively fraudulent. 15 F. (2d) 871.

8487. Name of Act—*This act may be cited as the* Uniform Fraudulent Conveyance Act. ('21 c. 415 § 13)

8488. Inconsistent Legislation Repealed—Sections 7010 and 7013 of General Statutes, 1913, are hereby repealed, and all acts or parts of acts inconsistent with this Act are hereby repealed; but sections 7011, 7012, 7017 and 7018 of General Statutes, 1913, are not repealed. ('21 c. 415 § 14)

8489. This act shall take effect on the first day of January, one thousand nine hundred and twenty-two. ('21 c. 415 § 15)

CHAPTER 69

LIENS FOR LABOR AND MATERIAL

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FOR IMPROVEMENT OF REAL ESTATE

8490. Mechanics, laborers and materialmen—Whoever contributes to the improvement of real estate by performing labor, or furnishing skill, material or machinery for any of the purposes hereinafter stated,

whether under contract with the owner of such real estate or at the instance of any agent, trustee, contractor or subcontractor of such owner, shall have a lien upon said improvement, and upon the land on which it is situated or to which it may be removed, for the price or value of such contribution; that is to say, for the erection, alteration, repair, or removal of any building, fixture, bridge, wharf, fence, or other structure thereon, or for grading, filling in or excavating the same, or for clearing, grubbing, or first breaking, or for furnishing and placing soil or sod, or for furnishing and planting of trees, shrubs or plant materials, or for labor performed in placing soil or sod, or for labor performed in planting trees, shrubs or plant materials, or for digging or repairing any ditch, drain, well, fountain, cistern, reservoir, or vault thereon, or for laying, altering or repairing any sidewalk, curb, gutter, paving, sewer, pipe, or conduit in or upon the same, or in or upon the adjoining half of any highway, street or alley upon which the same abuts. (R. L. '05, § 3505; G. S. '13, § 7020; amended '17, c. 285, § 1; '21, c. 229, § 1; '25, c. 274)

½. In General.

157–116, 195+786, note under § 8495; 161–143, 201+300, note under § 8501.

Evidence considered, and held, sufficient to support a foreclosure judgment of a materialman's lien. 166–84, 207+22.

During the progress of the construction of a building the contracting partnership incorporated under the copartnership name with "Inc." added. Neither the owner nor those furnishing materials knew of the change. Held, that those furnishing materials both before and after the incorporation, and those furnishing only after the incorporation, were entitled to liens. 167–5, 208+198

There is evidence sustaining the finding of a delivery of all the material for which a lien was claimed. 210+637.

Actual improvement not necessary to establis lien. Lamoreaux v. Andersch, 128 Minn. 261, 150 N. W. 908, L. R. A. 1915D, 204, followed. 211+957.

Failure to use a part of such material for the purpose for which it was sold does not destroy the lien. 212+22.

Cited (100–380, 111+275; 119–412, 138+417; 139+619; 193 Fed. 265).

1. Constitutional—46–285, 48+1120; 48–425, 51+224. 145–134, 176+497; 145–133, 176+497.

2. Nature of lien—The lien is purely statutory (4–546, 430; 28–404, 10+473; 60–54, 61+830; 64–531, 535, 67+639). It is a "statutory security;" not a remedy (17–342, 320). It is not an estate or interest in realty within the statute of frauds (53–70, 54+1055). The lien is continuing and binds the whole estate or interest of the debtor in the building and lot on which it stands (36–9, 29+338; 70–146, 72+974) 130–384, 153+594; 153–80; 189+455; 193+124.

3. Basis of lien—The basis of the lien is the consent of the owner, either expressed or implied (26–329, 4+47; 32–358, 20+354; 39–438, 40+513; 40–441, 42+294; 42–286, 44+65; 46–285, 48+1120; 50–525, 52+926). Under the present law the lien does not necessarily rest on a contract with the owner (48–18, 50+1018). All who have contributed to increase the value of the property by consent of the owner, or in pursuance of a contract with him for that purpose, should have an interest in it for the satisfaction of their claims (13–473, 438; 32–358, 20+354; 40–441, 42+294); 125–107, 145+964.

4. Construction—The statute is to be construed liberally; at least so far as the proceedings for the perfection and enforcement of the lien are concerned (28–404, 10+473; 48–18, 24, 50+1018; 52–114, 53+1063; 77–514, 80+695). It is not to be strictly construed as to the parties entitled to a lien (60–54, 61+830). It should not be extended beyond its legitimate scope to the prejudice of third parties (3–86, 43).

5. Who are "owners"—The term "owner" includes equitable owners and those holding any estate or interest which the court may order sold (17–342, 320; 34–517, 26+725; 76–434, 79+541). One in possession will be presumed to be rightfully in possession and to have an interest in the land sufficient to sustain a lien (36–9, 29+338, 1 Am. St. Rep. 632). The separate property of a married woman is chargeable (5–155, 119; 14–145, 113; See 48–18, 50+1018). The interest of a vendee under an executory contract to convey is chargeable (40–441, 42+294; 42–286, 44+65; 50–457, 52+915). Interest of a devisee held chargeable (42–427, 44+313).

6. Subcontractors—The lien of a subcontractor may be enforced irrespective of the state of the accounts between the contractor and owner (32–358, 20+354). How far necessary to conform to contract between owner and original contractor (44–22, 46+146; 46–285, 48+1120; 67–329, 69+1091). Subcontractors of second degree are within the statute (48–515, 51+469). One who furnishes material to a subcontractor is entitled to a lien (83–29, 85+829); 132–357, 157+500.

7. Original contract notice—Laborers, materialmen and subcontractors are charged with notice of the original contract and to a certain extent restricted by it (44–22, 46+146; 46–285, 289, 48+1120. See 67–329, 69+1091).

8. Nature of work or material—The work or material must be reasonably adapted to or suitable for the building or improvement contracted for by the owner (32–358, 20+354; 46–285, 48+1120).

9. Who "performs" labor—One may "perform" labor through servants or teams (56–306, 57+792).

10. Materials furnished but not used—A lien may be had for materials furnished in good faith for a particular building although they are not used in such building (47–565, 50+918; 48–425, 51+224; 52–203, 53+1144; 53–388, 396, 55+543; 61–303, 63+718; 98–163, 107+543). 131–31, 154+511.

11. When materials are "furnished"—Materials may be "furnished" before they are incorporated in the building (46–44, 48+448; 48–425, 51+224). The lien does not attach until they are furnished on the ground (53–388, 55+543); 127–277, 149+300.

12. Knowledge of intended use unnecessary—60–54, 61+830. See 17–342, 320.

13. Labor performed at shop—46–44, 48+448; 60–54, 61+830; 149–157, 182+994.

14. Repair of machinery—Shipping charges—46–426, 49+195.

15. Held not to defeat lien—Burning of building (27–516, 8+764); abandonment of work (46–44, 48+448); suspension of work (13–473, 438); failure of register to record lien (33–384, 23+550); transfer of title (36–9, 29+338); contract between vendor and vendee (50–457, 52+915); withdrawal of lien statement after recording (44–453, 47+51); an accounting and payment on account (38–494, 38+695).

16. Public buildings exempt—39–298, 39+801; 67–327, 69+1091. See 83–512, 519, 86+775.

17. Homesteads not exempt—74–366, 77+292; 76–226, 78+1113; 89–150, 94+438; 132–372, 157+504.

18. Release and waiver—35–451, 29+65; 42–433, 44+311; 48–5, 50+921; 52–547, 54+739; 53–70, 54+1055; 64–269, 66+979; 145–395, 177+635.

19. Claim assignable—14–145, 113; 58–455, 60+23; See 57–402, 59+482).

20. Held entitled to lien—Laborer polishing granite columns at quarry (60–54, 61+830); architect (13–473, 438; 52–522, 54+746; 61–262, 63+717. See 53–388, 55+543); one furnishing material to a subcontractor (83–29, 85+829); one furnishing material to a contractor for a particular building though it was not so used (48–425, 51+224. See 52–203, 53+1144; 53–388, 55+543; 61–303, 63+718); one superintending the construction of a building (61–262, 63+717); one furnishing permanent stationary machinery, in the nature of a fixture, for a shop (38–272, 37+99); one repairing machinery (46–426, 49+195); a non-resident (17–342, 320); 121–479, 140+114; 127–138, 149+6; 128–264, 150+908.

21. Held not entitled to lien—One selling a common article of merchandise to one who is neither the owner of the building nor an agent, trustee, contractor or subcontractor of such owner (43–29, 44+526; 66–480, 69+468; 81–26, 83+438. See 83–29, 85+829); one drilling a hole in search of minerals (64–37, 65+1079). A florist's refrigerator, caused to be erected by tenant in a storeroom in hotel building, such room having been leased by a hotel company, the lessee of the whole building, to the tenant for a flower store, held to be a "trade fixture," and not an "improvement" or "fixture;" and hence the hotel property was not lienable for the value thereof (140+114); 128–288, 150+1083.

22. Substantial performance—See 98–219, 108+842.

23. Homesteads.

Since the amendment to the Constitution in 1888 (see Laws 1889, p. 1), homesteads are subject to mechanics' liens 165–177, 206+164.

Marking off and grading a part of the homestead, and erecting a second dwelling house thereon, does not operate as a waiver of the homestead right in such tract, but constitutes an "improvement" of the homestead, for which mechanics' liens may be filed against it. 165–177, 206+164.

24. Use of Materials on Another Building.

One who delivers material to the owner for use on a specific building, in the good faith belief that it is to be so used therein, though it is not delivered on the premises, is entitled to a lien. 159–116, 198+406.

The fact that materials furnished and delivered by a materialman upon an open and running account for the erection of an addition to a building are unknown to him, used in another adjacent structure, does not defeat his right to have them adjudged a lien upon the structure for which they were furnished. 165–411, 206+653.

25. Insulite Used in Partitions, etc.

In an action to establish and enforce a materialman's lien for insulite and compo-board, furnished to a tenant

of a room 66x92 feet on the second floor of the premises, and used in refrigerating the same and for partitions, movable lockers, platforms, tables, and the like, held, under the proofs in the case, to be persoanl property and not fixtures or repairs, so as to constitute a lienable claim against the premises. 159–182, 198+424.

26. Rights of Chattel Mortgagees.

The rights of the holder of a chattel mortgage on an engine and boiler, given to secure the purchase price thereof, are superior to those of lien claimants who were charged with notice of the mortgage by the filing thereof before the mortgaged property was annexed to the realty. 157–314, 196+473.

27. Counterclaim.

The evidence fell short of establishing a contract obligating plaintiff to furnish all the cement required to construct the building. The counterclaim for damages, resulting from a breach of the alleged contract, was not established by the evidence. 161–353, 201+548.

28. Waiver of Lien.

The mere fact that a mechanic took a personal judgment against the owner of a building upon which he had performed labor is insufficient to establish his waiver of a lien upon the property. 158–194, 197+217.

Where a mechanic performs labor on an improvement of real estate under a contract whereby his lien right is waived, and the other party breaches the contract, whereupon the mechanic rescinds, his lien is restored, inasmuch as he is by the breach and resulting rescission relegated to all lawful means of recovering the reasonable value of his services. 159–81, 198+289.

Where the owner, relying upon a waiver of a lien right executed by one who has furnished material in the improvement of the property, pays money and gives a lien waiver on other property against which he has a right of lien, it is a sufficient consideration to support the lien waiver inducing the transaction. 164–99, 204+647.

29. Bonds of Contractors.

A bond given by a building contractor to the owner, insuring the payment of all materials used in the building, held intended for the benefit of all persons furnishing material. 211+834.

8491. Defrauding contractor on improvement of real estate to be deemed guilty of larceny—That any contractor or subcontractor on any improvement to real estate within the meaning of Section 7020, General Statutes 1913 [8490] who, with intent to defraud, shall use the proceeds of any payment made to him on account of such improvement by the owner of such real estate or person having any improvement made, for any other purpose than the payment for labor, skill, material and machinery contributed to such improvement, while any such labor performed, or skill, material or machinery furnished for such improvement at the time of such payment remains unpaid for, shall be guilty of larceny of the proceeds of such payment so used. ('15 c. 105 § 1)

134–35, 158+829.

Effect on public contractors' bonds. 161–281, 201+410.

8492. Extent and amount of lien—If the contribution be made under a contract with the owner and for an agreed price, the lien as against him shall be for the sum so agreed upon; otherwise, and in all cases as against others than the owner, it shall be for the reasonable value of the work done, and of the skill, material, and machinery furnished. It shall extend to all the interest and title of the owner in and to the premises improved, not exceeding forty acres in area if situated outside the limits of an incorporated city or village, and not exceeding one acre if within such limits. (3506) [7021]

Limitation to reasonable value of labor or material (32–358, 20+354; 46–285, 289, 48+1120. See 42–414, 44+309). Limitation of one acre (14–145, 113). 142–235, 171+808.

165–177, 206+164; 211+957, note under § 8490.

The right of a materialman to charge the interest of the vendor in an executory contract for the sale of land with a mechanic's lien is not limited to the value of that portion of the materials, which were furnished to the vendee to erect a building on the land after the vendor learned that it was bing erected. 157–314, 196+473.

The one who contracted for the materials, and was erecting the addition, had leased the ground for a 10-year period; the lease providing for the erection of the building and consenting to the construction of the addition. The leasehold was subject to mechanics' liens, and such take precedence over chattel mortgages given and filed before the materialman began to furnish materials, but of which he had no actul knowledge. 165–411, 206+653.

As between the materialman and the owner of the improvement, fixtures attached to the real estate are lienable. 166–183, 207+324.

8493. Lines of railway, telegraph, telephone, etc.—If such contribution be thus made for the construction, alteration, or repair of any line of railway, or any structure or appurtenance of such railway, or of any telegraph, telephone, or electric light line, or of any line of pipe, conduit, or subway, or any appliance or fixture pertaining to either, the person performing such labor, or furnishing such skill, material or machinery, shall have a like lien upon the lines so improved, and upon all the rights, franchises, and privileges of the owner appertaining thereto. (3507) [7022]

56–306, 57+792; 64–420, 67+348. See under former statute: 45–13, 47+259; 47–124, 49+661; 48–515, 51+469; 52–551, 54+743.

A chattel mortgage upon a power line, not yet in existence, can only attach itself to such property in the condition in which it comes into the mortgagor's hands. Where there are liens for materials used to bring the property into existence, they are superior to the general mortgage lien, even though they be junior to it in point of time. 159–221, 199+9.

8494. When lien attaches—Notice—All such liens, as against the owner of the land, shall attach and take effect from the time the first item of material or labor is furnished upon the premises for the beginning of the improvement, and shall be preferred to any mortgage or other incumbrance not then of record, unless the lienholder had actual notice thereof. As against a bona fide purchaser, mortgagee or incumbrancer without notice, however, no lien shall attach prior to the actual and visible beginning of the improvement on the ground, but a person having a contract for the furnishing of labor, skill, material or machinery for such improvement, may file for record with the register of deeds of the county within which the premises are situated, or, if claimed under § 8493, with the secretary of state, a brief statement of the nature of such contract, which statement shall be notice of his lien for the contract price or value of all contributions to such improvement thereafter made by him or at his instance. (3508) [7023]

The liens of all mechanics and materialmen attach as of the date of the performance of the first work or the delivery of the first material on the ground (53–388, 55+542). Mortgages attaching during the course of an improvement are subordinate to the liens of all who contribute to the completion of the improvement (50–386, 52+900; 52–522, 54+746; 93–501, 101+963); 1895 c. 101 does not change this rule (93–501, 101+963). The provision as to filing notice of contract is new. See the following cases, arising prior to 1895 c. 101, as to priority between mortgages and mechanic's liens (34–292, 25+629, 38–240, 36+346; 46–426, 49+195; 47–74, 49+398, 645; 47–590, 50+826; 48–73, 50+1020; 49–397, 52+33; 49–404, 52+34; 50–272, 52+895; 50–386, 52+900; 50–457, 52+915; 51–75, 52+1069; 51–246, 53+464; 52–51, 53+1023; 52–121, 53+1064; 52–522, 54+746; 52–534, 54+751; 53–388, 55+543; 54–486, 56+131; 55–46, 56+241; 55–162, 56+594; 68–213, 70+1075). Cited (193 Fed. 265). See 134–157, 158+918; 151–186, 186+299.

166–357, 208+10, note under § 8495; 211+957, note under § 8490.

A mortgagee in possession of real estate is an "owner" of real estate within the meaning of the mechanic's lien statute. So also is a mortgage who holds the legal title and appears of record to be the absolute owner. In either case the title of the mortgagee may be subjected to a lien arising from an improvement to which he has consented. 159–81, 198+289.

Power lines. 159–221, 199+9, note under § 8493.

Waiver of lien obtained by fraud of which mortgagee had knowledge. 159–238, 199+14.

Rugg v. Hoover, 28 Minn. 404, 10 N. W. 473, and Meyer v. Berlandi, 39 Minn. 438, 40 N. W. 513, 1 L. R. A. 777, 12 Am. St. Rep 663, in so far as they hold that the filing of a mechanic lien statement operates as a creation of the lien, are overruled. 159–245, 199+6.

If materials for an improvement are furnished on the premises before the owner mortgages the property, in the absence of actual notice of the mortgage, the materialman's lien is superior to the lien of the mortgage. 161–353, 201+548.

A mechanic's lien for materials necessary to complete an improvement attaches as of the time there is actual and visible beginning of the improvement on the ground. Such lien for materials furnished after the record of a mortgage, given subsequent to the beginning of the improvement, takes precedence over the mortgage. 166–183, 207+324.

8495. Vendors, consenting owners, etc—Whenever land is sold under an executory contract requiring the vendee to improve the same, and such contract is forfeited or surrendered after liens have attached by reason of such improvements, the title of the vendor shall be subject thereto; but he shall not be personally liable if the contract was made in good faith. When improvements are made by one person upon the land of another, all persons interested therein otherwise than as bona fide prior incumbrancers or lienors shall be deemed to have authorized such improvements, in so far as to subject their interests to liens therefor. But any person who has not authorized the same may protect his interest from such liens by serving upon the persons doing work or otherwise contributing to such improvement, within five days after knowledge thereof, written notice that the improvement is not being made at his instance, or by posting like notice, and keeping the same posted, in a conspicuous place on the premises: Provided, that as against a lessor no lien is given for repairs made by or at the instance of his lessee. (3509) [7024]

1. **Forfeiture of executory contracts**—48–13, 50+1016; 48–18, 50+1018; 48–73, 50+1020; 49–397, 52+33; 50–525, 52+926; 51–246, 53+464; 52–484, 55+54; 68–213, 70+1075. See 40–441, 42+294; 41–408, 43+86; 42–1, 43+485.

2. **Consent implied—Notice**—The presumption of consent created by the statute is only prima facie (50–525, 52+926. See 47–81, 49+521). It establishes a rule of evidence in the nature of an equitable estoppel where owners remain silent when improvements are being made on their property without their consent (49–404, 52+34). The burden of proving the posting of notice is on the owner (51–246, 53+464). Lessors are required to give notice under this section except as to repairs. A peaceable entry to post the notice is not a trespass. Statute held constitutional (55–1, 56+253. See 42–427, 44+313). Notice to an agent held notice to the owner (60–251, 62+277). Knowledge of an agent to sell land is not knowledge of the owner within this section (53–252, 54+1109). The "improvements" of this section are the improvements specified in § 7020 (64–37, 65+1079). Application in case of executory contracts (48–13, 50+1016; 50–525, 52+926). Exception as to bona fide incumbrancers (48–73, 50+1020; 49–397, 52+33; 50–272, 52+895; 52–534, 54+751). Notice held not posted (38–422, 38+112). A lessor may, by posting or giving notice, prevent mechanics' liens from attaching, though in the lease he has given the tenant permission to make the alterations; the tenant having agreed to pay for the alterations and to restore the building to its former condition at the end of the term (119–412, 138+417). See 124–317, 145+38; 134–470, 158+787; 136–69, 161+259; 144–121, 174+614; 148–412, 182+624; 153–80, 189+455; 193+124.

165–411, 206+653, note under § 8492.

An owner who has entered an executory contract to convey land subjects his interest to mechanics' liens for improvements made at the request of the vendee, even though the vendee has not made payments upon the contract so as to be entitled to take possession, if, after knowledge that the improvements are being made, he fails to protect himself by giving, or posting, and keeping posted, the notice prescribed. 157–116, 195+786.

The failure of the vendor to give notice entitled the materialman to a lien for the reasonable value of all materials he furnished for the improvement. 157–314, 196+473.

Where, in an action to enforce a materialman's lien, there is no finding or proof that the material was furnished at the instance of the owner of the premises or that he had any knowledge of the improvement being made, the conclusion of law imposing a lien upon the property is without support. 159–182, 198+424.

In view of the statutory presumption that improvements on real estate, subject to an executory contract of sale, are made with the knowledge and consent of the owner of the legal title, the circumstances of this case justify the finding that appellant consented to the improvements in question. 160–324, 200+299.

If he permits the representative of the remainderman to receive a portion of insurance money, after obtaining the promise of the representative that the remaindermen will complete necessary repairs, and the promise is not kept, and the life tenant has the repairs made and a lien is filed for the value thereof, the remainderman's estate, as well as the life estate, is chargeable with the lien. 160–502, 200+744, 940.

Consent by conduct. 161–502, 200+940.

Where there is no finding as to whether the owner had any notice or knowledge of the improvement made, not having authorized the same, for which a lien is claimed, the claimant is not entitled to relief against the owner. 163–422, 204+575.

Where the record and findings of the court are silent as to how the occupant of the premises, at whose instance the improvement is made, holds the premises—held, that a decree of foreclosure is without support. 163–422, 204+575.

A contractor is not entitled to a mechanic's lien for work done on a lot without the knowledge of the owner under a contract with a third party, who was negotiating for the purchase of the lot but never acquired any interest therein. 165–453, 206+641.

Defendants Nelson sold the lot in question, and took back a purchase-money mortgage. The evidence sustains the finding that the improvement for which liens are claimed was begun before they conveyed the lot or recorded their mortgage, and that they had knowledge of the improvement and failed to give notice that it was not made at their instance. 166–357, 208+10.

The order of foreclosure considered, and held, to be incomplete as to the agency of the party ordering the improvement and as to whether notice posted was served as contemplated by section. 167–90, 208+545.

8496. Payment to subcontractors, etc—The owner may withhold from his contractor so much of the contract price as may be necessary to meet the demands of all persons, other than such contractor, having a lien upon the premises for labor, skill, or material furnished for the improvement, and for which the contractor is liable; and he may pay and discharge all such liens and deduct the cost thereof from such contract price. Any such person having a lien under the contractor, may serve upon the owner, at any time, a notice of his claim. The owner, within fifteen days after the completion of the contract, may require any person having a lien hereunder, by written request therefor, to furnish to him an itemized and verified account of his lien claim, the amount thereof, and his name and address; and no action or other proceeding shall be commenced for the enforcement of such lien until ten days after such statement is so furnished. The word "owner" as used in this section shall include any person interested in the premises otherwise than as a lienor thereunder. (3510) [7025]

88–200, 92+964.

8497. Mechanic's lien—Filing—Contents of statement—The lien shall cease at the end of ninety days after doing the last of such work, or furnishing the last item of such skill, material, or machinery, unless within such period a statement of the claim therefor, be filed for record with the register of deeds of the county in which the improved premises are situated, or, if the claim be made under Section 8493, with the secretary of state. Such statement shall be made by or at the instance of the lien claimant, be verified by the oath of some person shown by such verification to have knowledge of the facts stated, and shall set forth:

1. A notice of intention to claim and hold a lien, and the amount thereof.

2. That such amount is due and owing to the claimant for labor performed, or for skill, material, or machinery furnished, and for what improvement the same was done or supplied.

3. The names of the claimant, and of the person for or to whom performed or furnished.

4. The dates when the first and last items of the

claimant's contribution to the improvement were made.

5. A description of the premises to be charged, identifying the same with reasonable certainty.

6. The name of the owner thereof at the time of making such statement, according to the best information then had.

7. The Post Office address of the claimant. The failure to insert such post office address shall not invalidate the lien statement. (R. L. '05 § 3511 G. S. '13 § 7026, amended '21 c. 521 § 1)

1. **In general**—The right to a lien is dependent on the filing of a proper statement (39–438, 448, 40+513). The filing for record of the verified statement operates as the creation of the lien, and, at the same time, as notice of its existence to all interested parties (28–404, 10+473; 37–298; 33+791). It must conform substantially to the statute (see, under former statute, 24–300; 32–486, 21+729; 33–384, 23+550), but it is provided that inaccuracies in particulars shall not be fatal. Surplusage does not vitiate (61–303, 63+718). The inclusion of nonlienable items is not fatal if they are separable from the lienable items (38–494, 38+695). It need not allege that the materials were furnished under contract with the owner or at his instance (47–81, 49+521). It may include several claims (34–517, 26+725; 58–455, 60+23). It may be *withdrawn from the register's office after it is* recorded (44–453, 47+51). It may be filed by an assignee of a claim (58–455, 60+23); or by one who has assigned a claim as collateral security (57–402, 59+482). Defects in the statement cannot be remedied by averments in the complaint (37–298, 33+791). The statement is to be liberally construed and technical objections are disfavored (48–18, 24, 50+1018; 52–114, 53+1063; 77–514, 80+695). Need not designate law under which lien is claimed (103–360, 115+197); 125–108, 145+964; 145–134, 176+497; 145–398, 177+636; 147–300, 180+106; 149–159, 182+995.

164–440, 205+438

Continuous account—Use of materials, 157–404, 196+567.

The evidence sustains the finding that the material was furnished under a single contract for a continuous improvement. 159–116, 198+406.

2. ***Time of filing***—*When materials are furnished for* the same job at different times as a continuous transaction (32–535, 21+719; 34–403, 26+225; 45–254, 47+796; 45–327, 47+974; 61–303, 63+718; 139+619); when, after the completion of a job, repairs or additions are made to supply omissions or remedy defects (72–465, 75+705; 74–30, 76+953; 81–28, 83+463. See 63–48, 65+133); when materials are changed (63–471, 65+920; 77–514, 80+695); when "extras" are furnished (53–57, 54+936; 77–514, 80+695); when new material is furnished in place of the original in pursuance of a warranty (63–471, 65+920); when work is suspended for a time with the consent of the owner (48–325, 51+218. See 13–473, 438). A statement is ineffectual if it shows on its face that it was filed too late, even though the fact may have been otherwise (37–298, 33+791). Plaintiffs agreed with owner in 1902 to make all improvements, etc., which owner would need in future at stipulated prices. From time to time up to September, 1903, work was ordered and performed. A bill was presented at end of first contract, and afterward monthly. On November 14, 1903, plaintiffs filed a statement. In September, 1903, defendant became owner of under foreclosure. Held, that plaintiffs could enforce lien only for work done within 90 days next prior to filing (102–195, 113+4); 123–353, 143+975; 124–132, 144+473; 128–264, 150+910; 148–469, 182+619.

A materialman who has completed his contract cannot extend the time for filing a lien by thereafter furnishing additional material for the mere purpose of continuing or reviving the lien. 159–442, 199+17.

After a contract has been substantially completed, delaying to furnish some small item for an unreasonable time for the purpose of keeping the lien in force will not extend the time for filing it. 159–442, 199+17.

The lien was seasonably filed and the action commenced within the statutory period. 212+22.

Plaintiff delivered material for the purpose of extending time to file lien and, at the same time, entered into an agreement with the owner to extend time for filing lien. Held: That such an agreement for the delivery of further material does not extend the time in which to file a lien. 213+41.

The owner is, by its conduct, estopped from asserting that the lien was filed too late as against plaintiff. 213+41.

2½. **Mistake in Name.**

A mistake in the lien claim by using the copartnership name instead of the corporate name, or both, did not invalidate the lien. 167–5, 208+198.

3. **Description of premises**—The description need not be as full and precise as in a deed or judgment. It is sufficient if it describes the property with reasonable certainty so as to put interested parties on inquiry and enable them to identify (40–88, 41+456; 43–449, 45+868; 47–31, 49+394; 52–114, 53+1063; 52–121, 53+1064; 65–271, 68+21. See 47–124, 49+661; 100–380, 111+275). This rule applies where third parties have acquired intervening rights (52–114, 53+1063). The proper description is by reference to a recorded plat or the government survey (43–449, 45+868). Where the tract exceeds the statutory limit it is not necessary for the claimant to carve out the statutory quantity (33–1, 21+740; 33–384, 23+550; 42–1, 43+485; 65–271, 68+21). The building on the land need not be described (70–146, 72+974). A false particular may be disregarded (43–449, 45+868; 65–271, 68+21; 100–380, 111+275). A description of the wrong lot is fatal (50–448, 52+915. Cf. 100–380, 111+275); 125–47, 145+627; 144–120, 174+615.

Where the description of the property is wholly erroneous and the statement contains nothing which, unaided by knowledge gained from extraneous sources as to the actual use of the materials or labor furnished, will identify the property intended, the statute requiring identification of the property has not been complied with, the lien statement is fatally defective, and the lien itself fails. 211+836.

Description of premises in lien statement is sufficient, when definite enough to enable identification. 211+957.

4. **Subd. 1**—Claim of lien (33–384, 23+550).

5. **Subd. 4**—48–18, 50+1018; 52–455, 55+47; 53–57, 54+936; 55–162, 56+594; 77–514, 80+695.

6. **Subd. 6**—47–81, 49+521; 51–202, 53+362. Under former statute (24–300; 28–404, 10+473; 32–486, 21+729; 33–172, 22+302; 35–192, 28+239; 46–336, 48+1134).

7. **Verification**—36–9, 29+338; 42–411, 44+308; 47–565, 50+918; 62–264, 64+565; 118–506, 137+11; 139+133; 120–118, 139+133.

A notary's official seal is essential to a verification of a mechanic's lien statement. 161–147, 201+603.

8. **Amendment**—55–162, 56+594; 83–187, 86+19.

9. **Recording**—Failure of register to record not fatal (33–384, 23+550). Place of recording on organization of new county (77–63, 79+655. See 91–79, 97+412).

8498. Two or more buildings—A lienholder who has contributed to the erection, alteration, removal, or repair of two or more buildings or other improvements situated upon or removed to one lot, or upon or to adjoining lots, under or pursuant to the purposes of one general contract with the owner, may file one statement for his entire claim, embracing the whole area so improved; or, if he so elect, he may apportion his demand between the several improvements, and assert a lien for a proportionate part upon each, and upon the ground appurtenant to each respectively. (3512) [7027]

42–214, 44+3; 43–228, 45+150; 45–61, 47+313; 47–590, 50+826; 50–268, 52+894; 51–364, 53+653, 1017; 52–522, 54+746; 70–146, 72+974; 81–64, 83+497; 128–261, 150+908; 142–235, 171+809; 142–235, 171+809; 144–380, 175+696; 144–380, 175+696; 145–134, 176+497; 145–398, 177+636; 147–303; 180+107; 149–159, 182+995.

Improvements were on a 320-acre farm. Upon the facts stated, in the opinion, a finding that the lien was limited to a particular 40 acres of the farm was without prejudice. 212+22.

8499. Foreclosure of liens—Such liens may be enforced by action in the district court of the county in which the improved premises or some part thereof are situated, or if claimed under Section 8493, of any county through or into which said railway or other line extends, which action shall be begun and conducted in the same manner as actions for the foreclosure of mortgages upon real estate, except as herein otherwise provided, but the owner or any person or party having an interest in or lien upon the property against which a lien has been filed under the provisions of this chapter may bring an action to remove the lien in the nature of an action to determine adverse claims and subject to all the provisions of law regarding actions to determine adverse claims.

When an action has been brought either by the lien claimant to enforce his lien or by the owner, person or party having an interest in or a lien upon the property against which a lien claim has been filed to determine adverse claims as provided herein, application may be made at any time after such action has been commenced by any of the persons or parties above mentioned to have the property affected by any such lien, released from the lien by giving ten days'

notice, or such other and shorter notice as the Court may order and direct, to the lien claimant, or his attorney, of intention to apply to the district court for the release of such lien and of the time and place of hearing. Upon a hearing upon an application the court shall fix a sum of money to be deposited by the applicant with the clerk of the district court, which sum shall not be less than the aggregate amount of, (1) the amount claimed in the lien statement, (2) eighteen dollars ($18.00) for every one hundred dollars ($100) or fraction thereof, to cover interest, (3) the probable disbursements in an action to enforce the claim for which the lien statement was filed, (4) an amount not less than double the amount of attorneys fees allowed upon the foreclosure under Section 8170, General Statutes of 1913, to cover any allowance the court may make upon the trial for costs and attorney's fees in said action or upon appeal. Upon making a deposit in the amount so fixed in the order of court, an order shall be made by the court releasing the premises described in the statement thereof from the effect of such lien. The lien claimant shall have the same right of lien against such money deposit that he had against the property released. The order releasing the lien may be filed in the office of the register of deeds or registrar of titles, if registered land, of the county in which the lien statement is recorded or filed, and thereupon the premises affected shall be released therefrom. The Court shall by the same order discharge any notice of lis pendens filed in any action in which such lien may be asserted if it appears that all mechanics' liens filed or recorded against the property covered by the lis pendens have been released.

After the release of the property affected, the judgment ordered in any action either to enforce such lien or determine adverse claims and remove such lien, in the event that the lien is established, shall provide that it be paid, and it shall be paid without further proceedings out of the deposit made as provided herein. The judgment of the district court establishing a lien, unless a written notice of intention to appeal therefrom is served on the clerk of the district court within thirty days from the entry of such judgment, shall be authority to such clerk to pay the amount specified in such judgment to the person or persons entitled thereto, or his or their attorney of record in the action. The balance of deposits, if any, shall be returned to the depositor. If the lien was not a valid and enforcible one the judgment shall direct the return of the whole deposit to the depositor unless the claimant obtains judgment against such depositor personally, and in such case such judgment shall be paid as hereinbefore specified. (R. L. '05 § 3513, G. S. '13 § 7028, amended '21 c. 521 § 2)

Nature of action (44–97, 46+315; 47–74, 49+398, 645; 51–364, 53+653, 1017; 64–531, 67+639). No right to jury trial (27–312, 7+265); 128–261, 150+908; 145–134, 176+497; 145–398, 177+636; 149–159, 182+995.

The time to redeem from a foreclosure sale under a mechanic's lien dates from the confirmation of the sale and not from the day of sale. 157–369, 196+468.

8500. Summons, pleadings, etc.—The action may be commenced by any lienholder who has filed his lien statement for record, and all other such lienholders shall be made defendants therein. The summons shall state that the complaint has been filed with the clerk and shall be of no effect unless such complaint be in fact so filed. It shall contain a notice that the action is brought to foreclose a lien, giving the amount thereof, and a brief description of the premises affected, and of the improvement out of which the lien arose, and shall require each defendant to file his answer to the complaint with said clerk within twenty days after service on him. Such answer, in addition to all other matters proper to be pleaded, shall set up any lien claimed by the defendant, and demand the enforcement thereof. No copies of such complaint or answer need be served on any party, upon demand or otherwise, and all averments of the answer shall be taken as denied without further pleading. (3514) [7029]

½. **In General.**

163–375, 204+51, note under § 8501.

The coming into existence of the facts which fulfill the statutory requirements to have a mechanic lien creates the lien, and, if he who has such lien desires to preserve and enforce it, he must comply with the remedial provisions of the statute providing for the filing of the lien. 159–245, 199+6

Rugg v. Hoover, 28 Minn. 404, 10 N. W. 473, and Meyer v. Berlandi, 39 Minn. 438, 40 N. W. 513, I. L. R. A. 777, 12 Am. St. Rep. 663, in so far as they hold that the filing of a mechanic lien statement operates as a creation of the lien, are overruled 159–245, 199+6.

1. **Summons**—51–364, 367, 53+653, 1017.

G. S. 1923, § 9236, is applicable to proceeding under this section. 166–430, 208+136.

The attempted service of the summons in a mechanic's lien action is fatally defective when the copy delivered to the defendant places the venue of the action in the wrong county, recites that the complaint is on file with the clerk of the district court of that county, requires the answer to be filed there, and also misdescribes the real estate as being situated there. 161–143, 201+300.

The summons in an action to foreclose a mechanic's lien will not be set aside for defects therein which do not affect or prejudice the substantial rights of the defendants. 209+868.

The statute provides that the summons in a mechanic's lien action shall require the answers to be filed with the clerk of court. The summons required them to be served as in the ordinary case. The defect was not jurisdictional. 212+194.

2. **Parties**—The owner is a necessary party (44–544, 47+162; 54–499, 56+172; 64–531, 67+639. See 76–434, 79+541). Under a former statute the original contractor was held a necessary party to an action by a subcontractor (43–449, 45+868). Other lien claimants of record are necessary parties (51–364, 53+653, 1017). All incumbrancers should be made parties (47–74, 49+398; 645; 52–121, 53+1064. See 59–456, 61+556). Bringing in parties (43–449, 45+868, 50–525, 52+926). Assignee in insolvency may maintain action (52–455, 55+47).

3. **Complaint**—Must allege due filing of claim within statutory time (34–400, 26+14; 34–403, 26+225; 47–81, 49+521; 59–456, 61+556; 101–375, 112+282); must describe property with reasonable certainty (4–20, 7; 4–461, 358; 42–1, 43+485); must allege all the facts entitling the plaintiff to a lien (see 4–450, 352; 26–329, 4+47; 34–407, 26+227; 43–228, 45+150; 48–13, 50+1016); need not allege filing of lis pendens (61–303, 63+718; 63–154, 65+267); need not show that land is within statutory limit (42–1, 43+485); should demand a lien on the premises (4–461, 358).

4. **Answer**—New matter in defence must be pleaded as in an ordinary action (46–357, 49+57). When a lien claimant appears and answers, setting up his claim, he makes the action his own for the purpose of enforcing his lien and the failure of the plaintiff to recover will not affect him (53–431, 55+540). One who has no interest in the property cannot interpose a defence to a lien claim (11–475, 354). Cited (140+118).

5. **Cross-complaint**—64–531, 67+639.

6. **Variance**—41–483, 43+377; 46–231, 48+1022; 48–18, 50+1018; 53–57, 54+936

7. **No reply necessary**—52–547, 54+739; 57–402, 59+482, 58–508, 60+342.

8. **Burden of proof**—50–525, 52+926; 51–246, 53+464; 90–403, 97+143.

9. **Evidence**—41–235, 42+1022; 43–442, 45+723; 48–18, 50+1018; 68–481, 71+667; 90–403, 97+143; 121–32, 140+118; 124–132, 144+472; 136–120, 161+388; 145–134, 176+497; 145–398, 178+636; 149–159, 182+995; 193+697.

8501. Lis pendens, parties, limitation, etc—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 § 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 § 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; nor shall any person be bound by the judgment in such action unless he is made a party thereto within said year. (3515) [7030]

Lis pendens (54–499, 56+172; 61–303, 63+718; 63–154, 65+267; 64–531, 67+639). But one action authorized. Other claimants to intervene. Consolidation of actions (52–455, 55+47). Claim must be asserted within one year from furnishing the last item (50–445, 52+915; 50–457, 52+915; 50–503, 52+922; 53–431, 55+540; 53–252, 54+1109; 64–269, 66+979; 68–405, 71+386; 100–380, 111+275). Action may be prosecuted to judgment after the end of the year (see 33–1, 21+740). See 121–90, 140+339; 138–24, 163+734; 144–380, 175+696; 145–139, 176+497; 193+697.

Limits the life of a mechanic's lien to one year, and no person can be bound by the judgment in an action to foreclose the lien unless he is made a party thereto by service of the summons upon him within the year. 161–143, 201+300.

§ 9199 is inapplicable to a proceeding under this chapter. 161–143, 201+300.

A stipulation between the attorney for the plaintiff in the foreclosure action and the attorney for the defendant lienholder, permitting the latter to file his answer with the same force and effect as if it had been filed within the year, accompanied by an order of the court to that effect, does not revive the lien. 163–375, 204+51.

Unless a lienholder, joined as a defendant in an action to foreclose another lien, files his answer within one year after the date of the last item of his claim for lien, he loses his right to enforce the lien. The service of the answer on the plaintiff's attorney within the year does not preserve the right. The statute requires the pleadings, in actions to enforce mechanics' liens, to be filed, not served. 163–375, 204+51.

Lien must be asserted within one year after the date of the last item. The action is not controlled by G. S. 1923, § 9199, which says an action is begun when the summons is put in the hands of the officer for service. 212+22.

8502. Bill of particulars—Each lienholder shall attach to and file with his complaint or answer a bill of the items of his claim, verified by the oath of some person having knowledge thereof, and shall file such further and more particular account, as the court may at any time direct. Upon his failure to file such original or further bill, his pleading shall be stricken out and his claim disallowed. But no failure to comply with any of the provisions of this chapter shall affect the right of any person to recover, in an ordinary civil action, from the party with whom he has contracted. (3516) [7031]

51–364, 53+653, 1017; 77–514, 80+695; 140+339; 128–288, 150+1082; 145–398, 177+636; 149–159, 182+995.

167–111, 208+548.

The order striking out the plaintiff's complaint and disallowing his claim in a mechanic's lien action because of his failure to file a bill of particulars as directed by the court, is sustained. 160–479, 200+637.

When the claim involves but a single item, a bill of particulars is not necessary. 211+957.

A party in a mechanic's lien suit, who does not complain during the course of the trial of the want of a bill of particulars, or of its defective verification, and permits the lien claims to be proved without objection, cannot complain afterwards. 212+194.

8503. Postponement, judgment, subrogation, etc.—If upon the trial of such action, or at any time before the execution of final judgment therein, it shall transpire that any proper party who may still be brought in has been omitted, or that any party then entitled to answer has not yet appeared, or that for any other reason the trial or judgment should be delayed, or the judgment as ordered or entered be modified, the court may postpone the trial, or make such other or further order in the premises as shall be just. And if it be found that any indebtedness for which a lien is demanded be not then due, the same shall be allowed for the amount of its present worth. Judgment shall be given in favor of each lienholder for the amount demanded and proved by him, with costs and disbursements to be fixed by the court at the trial, and such amount shall not be included in the lien of any other party; but if, after judgment, a lienholder who is personally indebted for the amount of any lien so adjudged in favor of another shall pay such indebtedness, he shall thereby become subrogated to the rights of the person so paid. (3517) [7032]

Bringing in new parties (43–449, 45+868; 50–525, 52+926; 119–219, 138+28). Opening default (56–476, 58+38). Reasonable attorney's fees may be allowed (106–188, 118+555). Court may allow costs and disbursements, including attorney's fee, to prevailing lienholder, and this statute is constitutional (140+339); 144–380, 175+696; 145–134, 176+553; 145–398, 177+636; 149–159, 182+995.

Evidence in reference to validity of mechanic's lien is conflicting, and there is sufficient evidence to sustain the trial court; hence this court cannot interfere. 158–312, 197+269.

8504. Judgment, sale, redemption, etc.—The judgment shall direct a sale of the real estate or other property for the satisfaction of all liens charged thereon, and the manner of such sale, subject to the rights of all persons which are paramount to such liens or any of them. It shall require the officer making such sale to pay over and distribute the proceeds of the sale, after deducting all lawful charges and expenses, to and among the lienors to the amount of their respective claims, if there is sufficient therefor; and if there is not sufficient then to divide and distribute the same among the several lienors in proportion to the amount due to each, and without priority among themselves. If the estate sold be a leasehold having not more than two years to run, or be the interest of a vendee under an executory contract of sale the conditions whereof are to be performed within the same period, no redemption shall be allowed; in all other cases the right of redemption shall be the same as upon execution sales. But no sale shall be deemed complete until reported to and confirmed by the court. (3518) [7033]

No priority among lienors in the distribution of proceeds of sale (52–522, 54+746; 54–486, 56+131; 93–501, 101+963. See 50–457, 52+915). Deduction of amount due subcontractor from amount due principal contractor (67–329, 69+1091). Judgment cannot be docketed as a personal judgment (58–365, 59+1086). If plaintiff establishes a cause of action for the recovery of money, but fails to establish his right to a specific lien, he may have an ordinary personal judgment (35–451, 29+65; 37–455, 35+178; 58–365, 59+1086). A sale of an equitable owner's interest may be ordered before the extent of such interest is judicially determined (76–434, 79+541). Redemption (48–223, 50+1038; 51–417, 53+719. See 13–455, 424). See notes above; also '19 c. 142 [Cur.], '19 c. 408 [Cur.])

The time to redeem from a foreclosure sale under a mechanic's lien dates from the confirmation of the sale and not from the day of sale. 157–369, 196+468.

8505. Severance of building, resale, receiver, etc—If, without material injury to the building or other improvement to which the lienholder has contributed, the same can be severed and removed from the land, the judgment, in the discretion of the court, may direct the sale of such improvement, with the privilege to the purchaser of removing the same at any time within sixty days, unless before such removal the owner or other person interested in the land shall pay to the sheriff, for the purchaser, the amount realized from the sale, with interest and all expenses incurred toward such removal. If in any case the sale be not confirmed, the court may direct a resale, or, if deemed

best, may appoint a receiver to lease or otherwise handle the property, under its direction, in the interests of all persons concerned. And in all cases of liens arising under § 8493 such receivership may be created in the first instance instead of directing a sale of the property. (3519) [7034]

139-482, 167+116.

8506. Miners—Whoever performs labor, or furnishes any skill, material, or machinery, in or about the opening or working of any mine, at the request of the owner thereof, or of the lessee of such owner, or of any contractor with either, shall have a lien for the value thereof upon the interest of such owner or lessee, as the case may be, in said mine and its appurtenances, which lien may be asserted and enforced as in this chapter prescribed in respect to other liens upon real estate. (3520) [7035]

153-80, 189+455.

PERSONALTY IN POSSESSION

8507. For keeping, repairing, etc.—Whoever at the request of the owner or legal possessor of any personal property shall store or care for or contribute in any of the modes mentioned in the next section to its preservation, care, or to the enhancement of its value, shall have a lien upon such property for the price or value of such storage, care or contribution, and for any legal charges against the same paid by such person to any other person, and the right to retain the property in his possession until such lien is lawfully discharged; but a voluntary surrender of possession shall extinguish the lien herein given. ('05 c. 328 § 1, amended '07 c. 114 § 1) [7036]

See 43-148, 44+1083; 60-54, 56, 61+830; 60-525, 63+103.

To take timber out of the water, and pile, trim, sort, and prepare it for market, is within 1905 c. 328, as amended by 1907 c. 114. Enforcement of such possessory lien cumulative remedy, not inconsistent with the log lien statute, R. L. §§ 3524-3540 [8529-8547] (109-120, 123+58). See 124-144, 144+750; 148-64, 180+923; 153-115, 189+451.

The lien given is intended to be superior to the lien of a prior chattel mortgage, and as so construed the statute is constitutional. 157-135, 195+773.

Voluntary surrender of possession of the property. 157-135, 195+773.

Not superseded or rendered inapplicable as to work done on motor vehicles by the later motor vehicle lien statute, Gen. St. 1913, § 7053. 157-135, 195+773.

8508. For what given—Such lien and right of detainer shall exist for:

1. Transporting property from one place to another as a common carrier or otherwise;
2. Keeping or storing property as a warehouseman or other bailee;
3. Keeping, feeding, pasturing, or otherwise caring for domestic animals or other beasts, including medical or surgical treatment thereof and shoeing the same;
4. Making, altering or repairing any article, or expending any labor, skill or material thereon.

Such liens shall embrace all lawful charges against such property paid to any other person by the person claiming such lien, and the price or value of such care, storage or contribution and all reasonable disbursements occasioned by the detention or sale of the property. ('05 c. 328 § 2, amended '07 c. 114 § 2) [7037]

Subd. 2 (45-222, 47+784). Subd. 3 (43-148, 44+1083; 64-375, 67+203; 64-472, 67+365; 66-57, 68+514). Subd. 4 (45-222, 47+784; 60-54, 56, 61+830).

8509. Sale—If any sum secured by such lien be not paid within ninety days after it becomes due, the lien holder may sell the property and out of the proceeds of such sale there shall be paid, first, the disbursements aforesaid, and, second, all charges against said property paid by such person to any other person, and, third, the total indebtedness then secured by the lien. The remainder, if any, shall be paid on demand to the owner or other person entitled thereto. ('05 c. 328 § 3, amended '07 c. 114 § 3) [7038]

45-222, 47+784; 145-144, 144+750, 145-134, 176+497; 145-398, 177+636; 148-64, 180+923; 149-159, 182+994.

8510. Sale, when and where made—Notice—The sale herein provided for shall be made at public auction between 9 o'clock in the morning and 5 o'clock in the afternoon in the county where the property or some part thereof is situated. A notice stating the time and place of sale, the amount which will be due on the date of sale exclusive of the expenses of advertising and sale, and the grounds of the lien, giving a general description of the property to be sold, shall be served personally upon the owner of the property if he can be found within the county in which said property is stored, and if he cannot, then it shall be mailed to the owner thereof at least three weeks before the time fixed for such sale if the place of residence or postoffice address of such owner is known to him or with due diligence can be learned by the person claiming such lien, and shall be published once in each week for three successive weeks in a newspaper printed and published in the county where said property or some part thereof is situated, the last publication of such notice to be at least one week prior to the date of sale; or, if there is no newspaper printed and published in the county, then said notice of sale shall be posted in three of the most public places in the county at least three weeks before the time of sale. In case neither the place of residence nor the postoffice address of such owner is known to the person claiming such lien and cannot with reasonable diligence be learned, the publication or posting of notice as herein provided shall be sufficient to authorize such sale. ('05 c. 328 § 4, amended '07 c. 114 § 4) [7039]

8511. Conduct of sale—The property sold as herein provided shall be in view at the time of the sale. Under the power of sale hereby given enough of said property may be sold to satisfy the amount due at the time of sale, including expenses, and said property, if under cover, may be offered for sale and sold in the original packages in the form and condition that the same was received by the lien holder; but after sufficient property has been so sold to satisfy the amount so due no more shall be sold. The lien holder, his representatives or assigns, may fairly and in good faith purchase any property sold under the provisions of this act, provided the sale is conducted by the sheriff, his deputy, or any constable of the county where such sale is made. ('05 c. 328 § 5) [7040]

SHOEING ANIMALS

8512. To whom given—Against whom—Every person who shall shoe or cause to be shod by his employes any horse, mule, ox or other animal shall have a lien upon the animal shod for his reasonable charge for the shoeing of the same, and each lien conferred by this act shall take precedence of all other claims or liens thereon, not duly recorded prior to the recording of the claim of lien, as hereinafter provided, but such lien shall not attach where the property has changed ownership prior to the filing of such lien. ('07 c. 47 § 1) [7041]

8513. Statement and notice, when and where filed—Any person desiring to secure the benefit of this act shall, within six months after the shoeing of such horse, mule, ox or other animal, or in case he shall

have shod such animal more than once within that time, then within six months of the last shoeing, file with the township clerk, city clerk, or village recorder as the case may be, in the township, village or city in which such animal is, a statement made under oath by the claimant, or some one in his or her behalf, and a notice of his intention to claim a lien upon such animal for his charges for the shoeing of the same. ('07 c. 47 § 2) [7042]

8514. **To state, what**—Such statement and notice shall state the name of the person claiming the lien, the name of the owner or reputed owner of the animal sought to be charged with the lien, and a description sufficient for identification of the animal upon which the lien is claimed, and the amount due the claimant, as near as may be, over and above all legal off-sets. ('07 c. 47 § 3) [7043]

8515. **Successive liens**—Any person may file successive liens upon the same animal for charges for shoeing the same, and he may include in any one claim of lien his charges for any number of times of shoeing such animal; provided, however, that no lien shall be had for any shoeing of any animal done more than six months prior to the filing of the notice of lien. ('07 c. 47 § 4) [7044]

8516. **Duty of clerk—Fees**—It shall be the duty of the township, city clerk or village recorder, as the case may be, upon the presentation to him of any such statement and notice of lien, to file the same in his office in the same manner as provided by law for the filing and recording of chattel mortgages; and he shall be entitled to charge and receive from the person filing such statement and notice a fee of twenty-five cents, and no more. ('07 c. 47 § 5) [7045]

8517. **Certified copy—Evidence**—A copy of such statement and notice of lien, filed as aforesaid, certified by the township or city clerk, or recorder as the case may be, shall be received in evidence in any proceeding taken to enforce the lien herein provided for, but only of the fact that such statement and notice of lien was received and filed according to the indorsements of the township, city clerk or village recorder thereon and of no other fact. ('07 c. 47 § 6) [7046]

8518. **Action to enforce—Notice**—The person having such lien shall within six months from and after the date of filing such lien statement, commence suit for the recovery of such charges by summons, in the usual form, before any justice of the peace of the township in which he resides, or in any court, as the case may require, against the person liable for the payment thereof. But before any such lien claimant shall commence any action to foreclose such lien, he shall give the person against whom he proposes to bring such action at least twenty days' notice in writing of his intention to foreclose such lien. ('07 c. 47 § 7) [7047]

8519. **Personal service**—If such summons be returned personally served upon the defendant, the same proceedings shall thereon be had in all respects as in other suits commenced by summons, in which there is a personal service of process; the judgment shall be rendered in such suit in like manner as judgments are now rendered in civil actions. ('07 c. 47 § 8) [7048]

8520. **When defendant not found**—If the officer return upon such summons that the defendant cannot be found in this county, the same proceedings shall be had in all respects, as near as may be, as in suits commenced by attachment in which there is not a personal service of the attachment upon the defendant, and judgment shall be rendered in such suits in like manner as judgments are now rendered in such actions. ('07 c. 47 § 9) [7049]

8521. **Execution and sale**—If the plaintiff recover judgment in such suit, execution shall be issued thereon in the same manner and with like effect as upon judgments now rendered in suits commenced by attachment, and the horse, mule, ox, or other animal, upon which the plaintiff holds such lien, shall not be exempt from execution, but may be sold to satisfy such execution in the same manner as if it had been seized and held upon an attachment in such suit. ('07 c. 47 § 10) [7050]

8522. **Expenses**—All expenses which shall have been incurred by the person having such lien after the same had accrued shall be an additional lien upon the property, and shall be computed and ascertained upon the trial or assessment of damages and included in the judgment. ('07 c. 47 § 11) [7051]

8523. **Findings—Judgment**—In all suits or attachments prosecuted under the provisions of this act, the court, jury or justice of the peace who shall try the same, or make an assessment of damages therein, shall, in addition to finding the sum due the plaintiff, also find that the same is due for the cost of shoeing the horse, mule, ox, or other animal described in plaintiff's declaration, and is a lien upon the same; provided, however, that if the court, jury, or justice of the peace shall find that the amount due the plaintiff is not a lien upon the property described in the plaintiff's declaration, the plaintiff shall be non-suited thereby, but shall be entitled to judgment, as in other civil actions, but in such case said plaintiff shall not recover or tax any costs other than those allowed and taxable in such case; and in those cases where the amount due is found to be a lien upon the property mentioned in plaintiff's declaration, the finding or verdict may be in the following form: (The court, jurors or justice, as the case may be) say that there is due the sum of ..... dollars from the said defendant, and that the same is due for plaintiff's reasonable charges for shoeing the animal mentioned in plaintiff's declaration (giving a description sufficient for identification of the animal), and that the plaintiff has a lien upon said animal for said amount. ('07 c. 47 § 12) [7052]

MOTOR-VEHICLES

8524. **To whom given—For what services rendered—Amount of lien**—Whoever performs or contributes any labor or skill, or furnishes or contributes any machinery, materials, storage, in making, altering, repairing, storing, or otherwise caring for any motor vehicle whether pursuant to a contract with the owner of such motor vehicle or at the instance or request of any agent of such owner, shall have a lien upon such motor vehicle for the price, or value, of the labor or skill performed, or machinery, supplies, materials, storage, is furnished pursuant to a contract for an agreed price, the lien shall be for the sum so agreed upon; otherwise, it shall be for the reasonable value thereof. ('11, c. 320, § 1; amended '25, c. 352, § 1) [7053]

Explanatory note—Section 2 of Laws 1925, c. 352 (amending this section, and sections 8525, 8526, 8527, 8528) repeals all inconsistent acts and parts of acts.

Where claimant furnished eight tire casings for automobiles to bankrupt which was engaged in operating taxicabs, claimant was not entitled to lien, unless at time casings were sold they were furnished for particular cars (193 Fed. 265). Priority of materialman's lien for materials furnished for taxicabs owned by a bankrupt (193 Fed. 265). See 135–17, 159+1080.

162–261, 202+481, notes under §§ 8364, 8525.

Did not supercede § 8507. 157–135, 195+773.

8525. **Statement of claim for lien—Contents—Filing**—The lien shall cease at the end of 60 days after the

furnishing of the last item of such labor, machinery, *supplies, materials, and within sixty days after the* termination of such storage, unless within such period a statement of the claim therefor be filed for record with the register of deeds of the county, or with the city clerk of cities of the first class, in which the owner of such motor vehicle resides, as the case may be. Such statement shall, by or at the instance of the lien claimant, be verified by the oath of some person, shown by such verification to have knowledge of the facts stated, and shall set forth:

1. The name of the person claiming the lien, and *notice of intention to claim and hold a lien;*

2. The name of the owner, or reputed owner, of such motor vehicle;

3. The license number of such motor vehicle, if licensed under the laws of the State of Minnesota;

4. The amount claimed to be due, and that such amount is due for labor performed, or machinery, materials, supplies, storage furnished to the owner of such motor vehicle, or at the request of the agent of such owner.

5. The dates when the first and last items of the labor, or other contribution, were made. ('11, c. 320, § 2; amended '25, c. 352, § 1) [7054]

Where the storage has been continuous, it is not an objection to such lien that the statement includes monthly storage charges for a period the last month of which expired more than 60 days before the filing of the lien statement. 162–261, 202+481.

8526. Foreclosure of lien—Summons and notice—Replevin of vehicle—Judgment—Seizure and sale of vehicle—Costs—Such lien may be foreclosed by action within six (6) months after the statement is filed. The summons shall state that the complaint has been filed with *the clerk of court in which the action is com*menced, and shall contain a notice that the action is brought to foreclose a lien, giving the amount thereof, and the license number of the motor vehicle affected. Upon the commencement of the action to foreclose the lien, the lien claimant shall be entitled to the possession of the motor vehicle for the purpose of foreclosing the lien thereon, and may maintain an action of replevin therefor, against the owner or possessor thereof as by statute in such case made and provided. If the lien claimant recover judgment, the court shall order the sheriff, or officer, to seize such motor vehicle forthwith, and sell the same at public vendue, in the manner provided by law for the sale of personal property on execution. Out of the proceeds of such sale, there shall be paid,—first, the expenses thereof, the fees of the officer, and the court costs; second, to the claimant, the amount of his lien, with interest to date; the remainder shall be paid to the owner of the motor vehicle sold, or other person entitled thereto. ('11, c. 320, § 3; amended '25, c. 352, § 1) [7055]

8527. Notice of sale—Posting and service—At or before posting the notice of sale, the sheriff shall serve a copy of said notice of sale upon the judgment debtor. ('11, c. 320, § 4; amended '25, c. 352, § 1) [7056]

8528. "Motor vehicle" and "owner" defined—The term "motor vehicle," used herein, includes all vehicles of locomotion, including tractors, except those propelled by muscular power, and except those which run on rails or tracks. The term "owner" shall include the conditional vendee or mortgager in possession. ('11, c. 320, § 5; amended '25, c. 352, § 1) [7057]

ON LOGS AND TIMBER

8529. To whom given—Services rendered—Preference—Waiver—Whoever performs manual labor or other personal service for hire, in or in aid of the cut*ting, sawing, piling, loading, peeling, hauling, banking,* driving, rafting, towing, cribbing or booming any logs, cross-ties, poles, or other timber shall have a lien thereon for the price or value of such labor or service, which shall be preferred to all other claims on the same except those of the State of Minnesota and of the owner or occupant of the land from which the same may have been unlawfully removed, and no agreement to waive such lien shall be valid. (3524) [7058] (Amended '27, c. 343)

To be liberally construed (64–420, 67+348; 79–114, 81+757). Applicable to camp cook and blacksmith (64–420, 67+348); to contractors and subcontractors (*79–114*, 81+757). Inapplicable to government timber (89–172, 94+548); to one letting team to contractor (119–477, 138+781, distinguishing 42–178, 43+966, 64–420, 67+348). Act of 1876 constitutional (60–216, 62+125; 60–233, 62+123). Enforcement of possessory lien under §§ 8507-8511 cumulative remedy, not inconsistent with §§ 8529–8547 (109–120, 123+58). Sections 7058–7076 cited (101–110, 111+949). *Cited (193 Fed. 265). See 128–5, 150+216; 144–141,* 174+827; 145–134, 176+497; 145–398, 177+636; 149–159, 182+997; 152–471, 189+446.

8530. Lien statement—Filing—Assignment of lien—If the indebtedness so due be not paid within five days after demand therefor made upon the debtor in person, or upon some agent or clerk of the debtor at his business office, the lienholder may file for record with the surveyor general of the lumber district in which such labor or service was performed a statement, verified by the oath of some person having knowledge of the facts, setting forth his postoffice address, the dates of beginning and ending the labor or service, the rate of compensation agreed upon or claimed, the sums, if any, paid thereon, the amount then due, a description of the logs or other timber on which the lien is claimed, and the fact of such claim: Provided, that if such labor or service be terminated by the direction or act of the employer, or by the completion of the work in which the employee is engaged, then no demand for payment shall be necessary, and the lien statement may be filed at once; and provided, further, that, if no mark or description of such logs or other timber be filed for record with said surveyor general, the lien statement shall be filed, not with him, but with the clerk of the district court of the county, in which the labor or service was performed: Provided, further, that any person having a claim upon logs, cross-ties, *poles or other timber as provided in § 8529,* may assign the same in writing to any person either before or after the making and filing of the statement therefor as provided in this section; and the person to whom such claim may be assigned, his agent or attorney, may make and file for record the statement for lien therefor required by this section, in case no such statement has been filed. And when such statement and assignment have been made and filed in the office of the surveyor general of the lumber district in which such logs are situated, or in the office of the clerk of the district court, in case such statement is filed in the office of the clerk of the district court, said person to whom said assignment is made shall be subrogated to all the rights of the original claimant, and is hereby authorized to enforce the lien against said logs, cross-ties, poles and all other timber in his own name, *in the same manner and with the same effect as the* original claimant could have done had not such assignment been made; and any person holding the title to said logs or timber, or any lien by mortgage or otherwise thereon, as security for payment of any sum as stumpage thereon, may in like manner purchase and take an assignment of any or all such claims for labor, or may pay and discharge the same, and in

either case may tack the same to his original claim and hold the same as an additional incumbrance thereon, and may enforce the payment of the same, with interest, in like manner as his original claim thereon, but in no case shall he be required to pay more than the reasonable and current value of such labor. (3525) [7059]

32-126, 19+647; 79-114, 81+757; 114-319, 131+333; 139+133; 139+491.

8531. **Termination of lien**—The lien shall cease unless said statement be so filed within thirty days after the termination of such labor or service, unless the same shall have been wholly performed between October 1 and April 1 next thereafter, in which case the statement may be filed on or before the last day of said April. Such filing shall continue the lien in force for ninety days thereafter, and no longer, unless within that period an action be commenced for its enforcement as herein provided. (3526) [7060]

Cited and applied (101-110, 111+949; 139+491).

8532. **Action—Attachment**—Said lien shall be enforced by attaching the property subject thereto in a civil action in the district court of any county of the judicial district in which the labor or service was performed, or within which judicial district is situated the surveyor general's office wherein the marks of such property are recorded; such county to be determined by the plaintiff's choice, and such attachment to be governed by the rules regulating ordinary attachment proceedings in the district court, except as in this chapter otherwise provided. But no bond or other security shall be required of the plaintiff as a condition of obtaining such writ. (3527) [7061]

32-126, 19+647; 60-216, 62+125; 72-143, 75+122.

Governed by § 8516 as to time of issuing writ, except as modified by § 8531. Remedy provisional, and issuance of writ not jurisdictional. May issue at time of issuing summons, or thereafter within 90 days from filing lien (101-110, 111+949); 145-134, 176+497; 145-398, 177+636; 149-159, 182+995.

8533. **Allowance and issue of writ**—The affidavit for such attachment shall be made by or in behalf of the plaintiff, shall be entitled in said action, shall set forth the amount of indebtedness secured by the lien and then unpaid, with the name of the debtor, and a copy of the lien statement shall be attached thereto as an exhibit. No other averments shall be necessary therein. Any judge of the district or the court commissioner of any county therein may allow the writ, and upon the filing of said affidavit and order of allowance with the clerk said writ shall issue forthwith. (3528) [7062]

8534. **Contents and levy of writ**—Such writ shall contain a description of the property, substantially as set forth in the lien statement and shall require the sheriff or other proper officer to attach and safely keep the same, or so much thereof as shall be sufficient to satisfy the plaintiff's demand, with such costs, disbursements, and charges as he may recover. If the levy be made upon logs or other timber, the marks whereof have been filed with the surveyor general of the lumber district in which the labor or service was performed, the officer shall file for record with said surveyor general a copy of the writ and of his return thereon, which return shall specify such marks and the quantity attached. And in all cases a copy of such writ and return shall be filed with the clerk of the court in which the action is brought. No other filing or service thereof shall be necessary to perfect such levy. (3529) [7063]

60-233, 62+123; 62-528, 64+1132; 79-114, 81+757.

Return of sheriff (118-432, 137+6).

8535. **Logs, etc., scaled to officer—Where held—Fees**—The officer serving such writ, if necessary to save the property from loss, shall have such logs or other timber scaled to him in any boom to which they may have arrived, but he shall not delay the driving thereof to their destination, if within the state: Provided, that logs and timber cut in the first lumber district may be held at Stillwater, and those cut in the second district at Minneapolis, though their destination be below such points. The boomage and scalage fees may be paid by the attaching officer, and the amount so paid returned as a part of his charges. And, whether paid before or after judgment, said amount shall be collected out of the property, as other costs and disbursements are collected. (3530) [7064]

8536. **Pleadings—Priority of liens**—The complaint shall allege the facts upon which the plaintiff's right to a lien depends, and the averments thereof shall be taken as true unless expressly denied by answer. When more than one lien is claimed on the same property, they shall have priority in the order in which the attachments are levied. (3531) [7065]

Cited (101-110, 111+949).

8537. **Discharge of attachment—Bond**—The defendant, or any person entitled to defend, upon presenting an affidavit showing that he has a valid defence to the whole or some part of the plaintiff's claim, and upon paying into court such part thereof as he admits, with costs and disbursements then incurred, may have the attachment dissolved by giving a bond, to be approved by the judge, conditioned for the payment of any sum that may be recovered in the action. At least five days' notice shall be given of the application for such dissolution, and at the hearing thereof the judge, in his discretion, may require the sureties to justify orally at such time and place as he may direct. The bond so approved, the affidavit and notice, and the order of dissolution shall be filed with the clerk, whereupon the property shall be released. (3532) [7066]

8538. **Findings, judgment, costs**—Upon the trial of such action the court or jury, in addition to finding the sum due to plaintiff, shall find how much thereof is due for labor or service upon the property described in the complaint, and how much of such property is subject to plaintiff's lien. The judgment entered thereon shall include costs and disbursements as follows:

1. The costs allowed in ordinary actions in the district court, and in addition an attorney's fee of twenty dollars;

2. The disbursements made by or in behalf of the plaintiff in enforcing the lien including all scalage, boomage, and officers' fees;

3. If the plaintiff be the original lienholder his fees and mileage as a witness. (3533) [7067]

60-233, 62+123; 79-114, 81+757; 144-141, 174+827.

8539. **Execution sale**—The judgment shall be enforced by execution sale of the property found subject to the lien, if any there be; if not, execution shall issue in ordinary form for the amount recovered. And if a part only of the recovery be secured by the lien, separate executions may issue as the case shall require. The levy upon property covered by the lien shall be made in the manner provided for the levy of the attachment, and notice of the sale shall be given as in the case of ordinary execution sales, except that such notice shall also be posted in the office of the surveyor general of the district; and if the sale be made in the county wherein the surveyor general's office is situated, it shall take place at said office. The officer making the sale shall give his certificate thereof

to the purchaser, which shall vest in him the title of all parties to the action, and entitle him to a scale bill for such part of said property as is described by recorded marks. (3534) [7068]

8540. Obstructing or intermixed logs—Any person desiring to float logs or other timber in any of the streams or waters of this state, and being hindered or obstructed in so doing by the logs or timber of another, or any person whose logs or timber shall become so intermingled therein with those of another as to make it difficult to separate his own without floating all to other waters, may drive all such obstructing or mingled logs or timber, with his own, to some point where the same can conveniently be assorted and his own separated from the mass. And he shall have a lien upon the logs or timber so driven for the reasonable value of his services in driving the same, which shall be asserted and enforced as in the case of other liens. (3535) [7069]

To be liberally construed (33-455, 457, 23+843; 78-438, 81+216). What constitutes hindrance or obstruction (32-76, 19+387). Notice to person to be charged unnecessary. Custom cannot affect statutory liability (33-285, 22+540). Applicable where artificial supply of water necessary (33-455, 23+843; 35-324, 29+142); where logs are intermingled by consent or under a contract for driving the performance of which has been abandoned (34-427, 26+232; 35-324, 29+142). Driver must exercise care and skill (35-324, 29+142; 77-153, 79+664), and actually drive the logs (46-338, 48+1109). Statute does not abrogate common law action for obstructing stream (46-338, 48+1109). Driving beyond destination. Separation of logs belonging to different owners (35-415, 29+167). Filing lien statement not a condition precedent to action for personal judgment (72-135, 75+7). Driving to limits of boom company with exclusive privileges sufficient (77-153, 79+664). Duty of several owners to supply men for driving mass of commingled logs. Lien where one of several owners is required to furnish more than his share (78-438, 81+216). Measure of compensation (32-76, 19+387; 33-285, 22+540; 35-415, 29+167; 78-438, 81+216); 121-282, 141+179.

8541. Submerged, buried or sunken logs—Bond—Lien—Conversion—Any person desiring to raise or float any submerged, buried or sunken logs or other timber owned by him in any of the waters of this state and being hindered or obstructed in so doing by the logs or timber of another, and any person whose logs are sunken, buried or submerged, and so intermingled with those of another as to make it difficult to raise or float his own without raising and floating all, and who shall have filed in the office of the surveyor general of the log and lumber district wherein such logs or timber is situate a bond in the amount and with sureties approved by such surveyor general conditioned that such person will, on demand and on payment of any lien he may have thereon, deliver to the owners thereof at the nearest convenient place of separation, or the nearest advantageous market, all submerged, buried or sunken logs raised or floated by him in pursuance hereof, or in case such delivery be not so demanded, pay to the owner thereof, in pursuance of and according to the provisions of this section, and who shall from time to time renew such bond or give such additional bond as said surveyor general shall require, may raise and float all such obstructing or mingled logs or timber with his own and transport the same to some safe point where the same may be conveniently sorted and separated or advantageously marketed. And he shall have a lien upon the logs or timber so raised or floated for the reasonable value of his services in raising and floating the same, which shall be asserted and enforced as in the case of other liens upon logs and timber. Any person who shall convert to his own use any logs or timber of another upon which he has a lien under the provisions of this section, and the delivery of which has not been demanded by the owner thereof, shall be liable to the owner of the logs or timber so converted for the full value thereof at the time of such conversion, with interest, less the amount of such lien and payment of the amount of such liability shall be full compensation for all logs or timber so converted. (R. L. § 3535a, amended '07 c. 428 § 1) [7070]

144-381, 175+696.

8542. Same—Scaling and marking—Duty of surveyor general—Fees—Every person who shall engage in raising or floating logs or timber under the provisions of 8541 shall cause all logs and other timber raised or floated by him to be scaled at time of such raising or floating by the surveyor general of the log and lumber district within which such logs or timber is raised or floated, and shall place on each log and piece of timber so raised a suitable log mark, which mark shall only be used on logs or timber so raised or floated. The surveyor general of the proper log and lumber district shall attend in person or by deputy at the raising and floating of such logs or timber, and promptly scale the same, recording the size, kind, and all marks on each piece thereof. For such service said surveyor general shall receive in addition to all fees now allowed by law the further sum of five dollars for each day's attendance under the provisions hereof, and such fees shall be paid by the person so employing him and shall be taken and held to be a part of the cost of raising and floating such logs and timber. Provided, however, that no such work shall be performed within the limits of any operating boom company organized under the laws of the state of Minnesota, except under the supervision and direction of some representative of the boom company within whose limits such work is being carried on. (R. L. § 3535b, amended '07 c. 428 § 1) [7071]

8543. Logs, etc., cut in other states—If such logs or other timber are cut in another state, and are thence rafted or otherwise transported into this state, any person who has performed labor or service thereon for which he would have been entitled to a lien if the same had been performed in Minnesota shall have the same lien therefor, and may enforce it at any place where said logs or timber may be found, to the same extent and with like effect as though the same had accrued in this state. (3536) [7072]

8544. Stray logs, etc., secured in other states—Any person authorized by the laws of another state so to do, who shall pick up or secure lost or stray logs, timber, or other floating property upon any waters of said state whereon there is, during the season of navigation, an actual commerce carried by vessels drawing eight feet of water, or more, which property shall thereafter be rafted or otherwise transported to waters of the same description within this state, shall have a lien thereon for the value of such services and the expenses thereof, to the same extent and effect as that given by law to persons authorized to perform like services upon such waters in this state. (3537) [7073]

8545. How preserved and enforced—The liens provided for in §§ 8543, 8544 shall be preserved and enforced as in the case of labor liens, except that no demand for payment need be made before the lien statement is filed, and that said lien statement, in addition to the other facts required, shall specify under which of said sections the lien is claimed; and except, further, that in no case need the same be filed for record elsewhere than with the surveyor general of the lumber district in which said property is found. (3538) [7074]

8546. Surveyor general—Lien for charges—To secure the payment of his fees, mileage, and other charges for official services relating to logs, timber, and lumber, any surveyor general shall have a lien upon the same, which he may retain by affixing to the scale bill of such logs, timber, or lumber a statement of the amount due him, with a declaration that he claims and is entitled to such lien, and by taking actual possession of a quantity of such logs, timber, or lumber sufficient to pay such amount, with the expenses of seizure and sale. (3539) [7075]

75-343, 345, 77+991.

8547. Sale and distribution of proceeds—If the amount of such lien be not paid within sixty days after delivery of the scale bill and statement aforesaid, the property so seized may be sold at auction by the sheriff or any constable of the county upon ten days' posted notice. One copy of the notice shall be posted in the office of said surveyor general, who may become a purchaser at the sale. Out of the proceeds of the sale the officer making the same shall retain his fees and charges therefor, and pay to the surveyor general the amount of his lien and all expenses lawfully incurred by him in enforcing the same. The remainder, if any, shall be paid to the owner or other person entitled thereto. (3540) [7076]

IN OTHER CASES

8548. For wages, as against attachment, etc.—Every mechanic, salesman, clerk, operative, or other employee of a manufacturer, merchant, or dealer in merchandise shall have a lien upon all the property of his employer, as against any attachment or execution levied thereon, for the security of his wages earned within the six months last preceding, to an amount not exceeding two hundred dollars. Such lien shall not be affected by any agreement with the employer to waive the same, and shall be preferred to mortgages, judgments, and other liens which shall have attached after the beginning of the labor or services in which said wages were earned. (3541) [7077]

26-424, 4+814; 35-287, 28+658; 37-298, 33+791; 46-488, 49+250.

8549. Notice to sheriff—Property held—Within five days after such levy the lienholder shall give to the officer making the same a written notice of the amount and grounds of his claim; whereupon the officer shall hold the property, or the proceeds thereof in case of sale, subject to such claim until the same is determined by agreement of the parties concerned or by the judgment of a court. But the lien shall cease unless such agreement be reached, or an action to determine the claim be commenced, within thirty days after such notice was served. Upon a sale of the property by the officer holding the sale he shall pay said liens, in the order of the giving of said notices, out of the moneys derived therefrom. (3542) [7078]

26-424, 4+814; 46-488, 49+250.

8550. Death or dissolution of employer—Said lien shall also exist, as against all other creditors, in case of the death, dissolution, or insolvency of the employer. The notice provided for in § 8549 shall in such case be given to the personal representative of the decedent, or to the receiver or other officer of court entitled to possession of the assets of the employer, within five days after his qualification as such. And the lien shall cease unless determined or sued upon as in said section prescribed. (3543) [7079]

8551. For service of stallions, etc.—The owner of any stallion, jack, bull, ram, or boar kept for public service shall have a lien upon the offspring of such animal for the price or value of its service. (3544) [7080]

8552. How preserved and enforced—To preserve said lien the holder thereof, within six months after such service, shall file for record, with the clerk of the town wherein the female bred to such animal may be, a verified statement containing a description of said female, and stating the time and place of the service and the amount due therefor. A certified copy of such statement shall be sufficient to authorize the lienholder to take possession of said offspring at any time within one year after its birth, and to foreclose his lien thereon by advertisement and sale, as in the case of a chattel mortgage. (3545) [7081]

8553. Lien for services.—Every owner of a stallion or a jackass kept and used for breeding purposes shall hereafter have a lien upon any dam served and upon colt gotten by such stallion or jackass, from date of service, for the sum stipulated to be paid for the service thereof, and may seize and take possession of said dam and colt or either, without process, at any time after such service fees are due and within eighteen months from date of such service, in case the price agreed upon for such service is unpaid, and may sell the same at public auction upon 10 days' notice, to be posted in at least three public places in the county where said dam is kept at the time of such service, and apply the proceeds of such sale to the payment of the amount due for such service and the expenses of such seizure and sale, returning the residue, if any, to the party entitled thereto. Provided, no such lien shall be effectual, for any purpose, as against an innocent purchaser of such colt or the dam thereof, for value, unless such owner having a claim for the services of such stallion or jackass shall file with the register of deeds of the county where the mare bred was kept at the time of such breeding, a statement showing that such service has been rendered and the amount due therefor.

Any person who shall sell or dispose of any dam, which to his knowledge, has been served by a stallion or jackass, or who sells or disposes of the offspring therefrom, the fee for which service has not been paid, with knowledge that such dam or offspring is to be removed from the county where kept as aforesaid, without the written consent of the owner of such lien, shall be guilty of a misdemeanor.

Whenever it is provided in the contract for service that the service fees shall become due in case of a sale or other disposition of the animal bred then such fees shall be deemed due within the meaning of this act as of the date of such sale. ('19 c. 476 § 1)

8554. Application—This act shall not be construed as repealing sections 7080 or 7081 of the General Statutes of 1913, [8551 or 8552] except insofar as the same relates to liens for the service fees of stallions and jackasses for services hereafter rendered and all liens existing thereunder at the time of the taking effect of this act are preserved, and as to such liens the proceedings to perfect same shall be had under said section 8552. ('19 c. 476 § 2)

8555. Lien for threshing grain—Any person owning or operating a threshing machine, clover huller, corn sheller, corn shredder or hay baler shall have a lien upon the grain threshed, clover hulled, corn shelled or shredded, 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, amended '23 c. 132 § 1)

Constitutional (101–454, 112+872).

Thresher, retaining in his possession part of grain threshed as security for his charges, may have lien without proceeding in accordance with §§ 8555, 8556; (112–482, 128+834). Cited (193 Fed. 265).

160–38, 199+748, note under § 8556.

8556. How preserved and enforced—Within fifteen days after such threshing, clover hulling, 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 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. 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 whereof shall be a fine of $25.00. (R. L. '05 § 3547, G. S. '13 § 7083, amended '21 c. 248, § 1; '23 c. 132 § 2)

Statement held sufficient (101–454, 112+872). Rules applicable to foreclosure of chattel mortgages apply (101–454, 112+872). Claimant, having perfected lien may maintain claim and delivery (101–454, 112+872).

A thresher's lien, being wholly statutory, expires, unless steps are taken to enforce it in the manner and within the time specified in the statute. 160–38, 199+748.

Expiration of the lien terminates all rights growing out of it, and an action for conversion brought thereafter cannot be maintained. 160–38, 199+748.

8556-1. Lien of charges and expenses for inspections, examinations, or other governmental services authorized or required by law on property of persons liable therefor—Record not necessary—Presentation and proof of—That all charges and expenses for any inspection, examination, or other governmental service of any nature now or hereafter authorized or required by law shall constitute and be a first and prior lien from the date of such inspection, examination or service upon all property in this state subject to taxation as the property of the person from whom such charges and expenses are by law authorized or required to be collected. No record of such lien shall be deemed necessary, but the same shall be duly presented or proven in any bankruptcy, insolvency, receivership or other similar proceeding, or be barred thereby. ('25, c. 188, § 1)

8556-2. Same—Definitions—As used in this act the following words and terms have the following meanings, to-wit:

(a) The word "person" means and includes any natural person in any individual or representative capacity, and any firm, co-partnership, corporation or other association of any nature or kind; and includes the plural as well as the singular.

(b) The term "first and prior lien" means a lien equivalent to, and of the same force and effect as a lien for taxes; but any such lien or claim shall be deemed barred unless proceedings to enforce same shall have been commenced within two years from the date when such claim becomes due. ('25, c. 188, § 2)

GENERAL PROVISIONS

8557. Liens assignable—All liens given by this chapter are assignable, and may be asserted and enforced by the assignee, or by the personal representatives of any holder thereof in case of his death. (3548) [7084]

14–145, 113; 58–455, 60+23. See 57–402, 59+482. Cited (139+491). See 120–247, 139+498.

A purchaser who pays an incumbrance which he had agreed to pay as part of the purchase price is not entitled to a lien against his vendors for the amount so paid. 161–429, 201+916.

8558. Inaccuracies in lien statement—In no case shall the liens given by this chapter be affected by any inaccuracy in the particulars of the lien statement; but, as against all persons except the owner of the property, the lien claimant shall be concluded by the dates therein given, showing the first and last items of his account. And in no case shall a lien exist for a greater amount than the sum claimed in the lien statement, nor for any amount whatever, if it be made to appear that the claimant has knowingly demanded in such statement more than is justly due. (3549) [7085]

51–202, 206, 53+362; 52–114, 119, 53+1063; 52–121, 127, 53+1064; 65–271, 68+21; 139+133.

See 120–121, 139+133; 125–45, 145+620; 128–291, 150+1083; 144–24, 173+849; 147–304, 180+106; 148–468, 182+619; 149–159, 182+995; 152–327, 188+570.

166–183, 207+324; 167–5, 208+198.

The claim that the lien claimants demanded in their lien statements more than is justly due, was not made an issue by the pleadings or urged in the trial. The absence of a finding thereon was not challenged, even by the notice of motion for a new trial. It is therefore too late to raise the question on appeal. 160–324, 200+299.

An agent engaged in a scheme to defraud his principal, who falsifies a lien statement to conceal his wrongdoing, is not within the scope of his employment. Under such circumstances the principal cannot be charged with notice of the fact that a lien for more than was justly due was claimed, and will not be deprived of his lien. 161–353, 201+548.

Where a creditor having a llenable claim for $654.53 waives his lien right, and then later files a lien statement covering such item, and an additional item of $17.6 subsequently incurred, he knowingly demands more than is justly due, hence the right to a lien for the $17.86 is lost. 164–99, 204+647.

In order to defeat a lien because the statement filed claims more than justly due, such issue must be raised by the answer or in the course of the trial. 166–183, 207+324.

Inaccuracies of description in a lien statement may be disregarded and the lien sustained only if, after eliminating the inaccurate and misleading parts, there remains in the statement sufficient to identify the premises with reasonable certainty. 211+836.

Amendment to complaint was properly allowed as relating to an inaccuracy in the lien statement. 212+22.

8559. Promissory note—Effect—The taking of a promissory note or other written obligation to pay any indebtedness for which a lien is given by this chapter shall not discharge such lien unless the obligation by its terms shall so provide, or the time for payment be thereby extended beyond the date fixed by law for enforcing such lien. (3550) [7086]

3–147, 92; 42–433, 44+311; 46–426, 49+195; 64–269, 66+979; 70–507, 512, 73+406, 510.

8560. Satisfaction—Penalty for refusal—Every lien claimed under any provision of this chapter shall be satisfied of record, at the expense of the claimant upon payment or tender to him of the amount actually due thereon, or upon written demand made at any time after expiration of the time within which it may be asserted in an action or other proceeding to enforce

the same, if it has not been so asserted. Refusal to cause satisfaction to be entered within ten days after such payment, tender, or demand shall render the party so refusing liable in a civil action, to any person interested, for twenty-five dollars as liquidated damages if the lien was claimed upon real estate; otherwise, ten dollars. Also, in either case, for any further damages which the plaintiff may have suffered therefrom. (3551) [7087]

34–407, 26+227.

8561. Pledgee permitted to buy pledge where sold at public sale—Whenever a pledgee of personal property has a remedy to enforce his lien upon such property by sale thereof in case of default, by virtue of the contract creating such lien, any such pledgee, his legal representatives or assigns, may, fairly and in good faith, purchase such property or any part thereof, at any sale so made: provided, that such sale, if such pledgee shall wish to bid thereat, shall be at public auction and upon like notice as is required in case of execution sales of personal property in this state, and shall be conducted by the sheriff or his deputy of the county, or by a constable of the town in which such pledged property or some part thereof is situated at the time of giving such notice. ('17 c. 305 § 1)

The pledgee's actual interest is purely contingent in this, that it depends for effect on something that may or may not occur; and the term "indebtedness" as used is construed as meaning a direct and not a contingent liability. 162–455, 203+220.

CHAPTER 70

MARRIAGE

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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. (3552) [7088]

23–528.

Essentials to common law marriage stated. (122–407, 142+593).

Breach of marriage promise—damages. 159–258, 198+669.

8563. Persons capable of contracting—Every male person who has attained the full age of 18 years, and every female person who has attained the full age of 16 years, is capable in law of contracting marriage, if otherwise competent. Provided that a female person of the full age of 15 years may with the consent of her parents and her guardian if there be one, receive a license to marry, when, after a careful inquiry into the facts and surrounding circumstances, her application for a license is approved by the judge of the juvenile court of the county in which she resides. (3553) [7089] (Amended '27, c. 166)

166–381, 208+14, note under § 8569.

78–166, 80+877; 80–216, 83+141.

Cited (99–54, 108+812).

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. (R. L. § 3554, amended '11 c. 222 § 1) [7090]

55–464, 57+205.

Marriage of divorced persons within six months valid until dissolved by judicial decree (113–503, 130+10).

Epilepsy is not a ground for annulment of marriage (144–95, 174+611; 195+901).

157–250, 195+901; 166–381, 208+14, note under § 8569.

8565. By whom solemnized—Marriages may be solemnized by any justice of the peace in the county in which he is elected, and throughout the state by any judge of a court of record, the superintendent of the department for the deaf and dumb, in the state school for the deaf and blind, or any licensed or ordained minister of the gospel in regular communion with a religious society. (3555) [7091]

8566. Credentials of minister—Ministers of the gospel, before they are authorized to perform the marriage rite, shall file a copy of their credentials of license or ordination with the clerk of the district court of some county in this state, who shall record the same and give a certificate thereof; and the place where such credentials are recorded shall be indorsed upon and recorded with each certificate of marriage granted by a minister. (3556) [7092]

8567. Parties examined—Every person authorized by law to perform the marriage ceremony, before solemnizing any marriage, may examine the parties on oath, which oath he is authorized to administer, as to the legality of such intended marriage, and no such person shall solemnize a marriage unless he is satisfied that there is no legal impediment thereto. (3557) [7093]

8568. License—Before any persons shall be joined in marriage, a license shall be obtained from the clerk of the district court of the county in which the woman resides, or, if not a resident of this state, then from such clerk of the county where the marriage is to take place in this state. (3558) [7094]

166–381, 208+14, note under § 8569.

8569. Examination—License—Consent of parents—The clerk shall examine upon oath the party applying for a license, relative to the legality of such contemplated marriage, and, if satisfied that there is no legal impediment thereto, he shall issue such license, with his official seal attached, and make a record thereof. If any person intending to marry shall be under age, and shall not have had a former husband or wife, such license shall not be issued unless the consent of the parents or guardians shall be personally given before

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, 282 NW661. 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.

½. 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., 185 M370, 241NW45. See Dun. Dig. 3928a.

In action to set aside conveyance as fraudulent, evidence held to establish that intervener'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., 204M 30, 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, 241NW45. See Dun. Dig. 3925.

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, 241NW45. 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, 220NW660.

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. 174 *M423, 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, 231 NW397.

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), 78 *F(2d)858, 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 being 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.

½. 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 grantee 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 judgmnet 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. 171M 445, 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 priority 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, 224 NW847.

Materialman held to have waived lien as against subsequent mortgage. Thompson Lumber Co. v. G., 177M 111, 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, 214NW56.

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. 179M280, 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, 270 NW575. 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 foreclosuse 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, 243NW 105. 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., 195 M385, 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. 14Minn LawRev779.

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, 218 NW172.

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, 269NW825. 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 therfor, 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.

8561½.

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., 287NW 233. See Dun. Dig. 5577b.

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, 214 NW650.

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. 177M 270, 224NW839.

Essentials of common-law marriage between single man and married woman by cohabitation and consent following death of husband of woman. 180M463, 231NW 199.

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. Ghelin v. J., 186M405, 243NW443. See Dun. Dig. 5796.

General reputation alone that parties are married is not alone sufficient to show common-law marriage. Ghelin 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, 196M447, 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 8½ 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.

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, feebleminded 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. 175 M547, 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, 235NW529. 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, 235NW529. 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-