

No. 8, A.]

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## CHAPTER 139.

AN ACT relating to liens on logs and lumber.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1.** Any person who shall do or perform any labor or services in cutting, hauling, running, felling, driving, rafting, booming, cribbing, towing, sawing, peeling or manufacturing into lumber or timber, any logs or timber, or cutting any stave bolts, or staves, in any of the counties of this state, shall have a lien upon such logs, timber, lumber, cordwood, railroad ties, tan and other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, for the amount due or to become due for such labor and services, which lien shall take precedence of all other claims, liens or incumbrances thereon or sales thereof, whether such claims, liens, incumbrances or sales are made, created or accrue, before or after the time of doing such work, labor and services.

For what services lien given; priority.

**SECTION 2.** No debt or demand for such labor and services, shall become or remain such lien, unless a petition therefor in writing shall be made and signed by the claimant and verified by him or by some one in his behalf under oath, setting forth the nature of the debt or demand for which the lien is claimed, the amount claimed to be due; a description of the property upon which such lien is claimed, and the averment that the petitioner claims a lien thereon pursuant to law. Such petition shall be filed in the office of the clerk of the circuit court of the county in which such labor or services were done or performed. If the labor or services be performed between the first day of November and the first day of May following, or, if such labor and services be commenced on a day prior to the first day of November, and be continuous to a day between the first day of November and the first day of May, the petition for a lien shall

Petition for lien and when to be filed; what to contain.

be filed on or before the first day of June next thereafter; and if such labor and services shall have been done or performed after the first day of May, and shall terminate before the first day of November, or if the doing or performing of such work and labor shall be continuous from the first day of November or a day prior thereto to a date beyond the first day of May following, the petition for a lien shall be filed within thirty days after the last day of doing or performing such labor or services, and such labor or services shall be deemed continuous, notwithstanding a change of ownership in the property on which such lien is claimed. The clerk with whom such petition for a lien is filed shall receive twenty-five cents for filing each petition. Where the property, subject to said lien, has been transported or taken from the county where the work was done, then the person in whose favor such lien exists, may, at his option, file his petition for a lien and bring action to foreclose the same in the county where the property is at the time of filing such petition.

Suits, when  
and where  
brought;  
parties.

SECTION 3. All actions to enforce any such lien may be brought in the circuit court of the county where the work is done when the amount claimed over and above all legal set-offs exceeds one hundred dollars, or before any municipal court or justice of the peace having jurisdiction of the amount claimed, and of the parties. Where the work for which the lien is claimed shall have been done partly in one county and partly in another, the petition for a lien may be filed and foreclosed in either one of said counties. Actions may be commenced to enforce and foreclose any such lien if the same be due immediately after the filing of such petition for a lien, and such claim for labor or services shall cease to be a lien on the property named in the petition for a lien, unless action to foreclose such lien be commenced within four months after the filing of such petition. If the claim be not due at the time of such filing, the time when the same shall become due shall be set forth in such petition, and in such case such claim shall not cease to be a lien on the property named in the petition until thirty days after such claim shall have become due; provided, that such claim shall

continue a lien in all cases for four months after the filing of such petition. In all such actions the person, company or corporation liable for the payment of such debt or claim shall be made the party defendant to such action. Any person claiming to be the owner of such property or of any interest therein, may be made a party defendant, on application to the court in which the action is commenced, at any time before final judgment therein.

**SECTION 4.** No person purchasing or otherwise acquiring any title to, or interest in, the property on which such lien exists, before the time for filing such petition has expired shall be considered a *bona fide* purchaser as against the rights of such lien claimant. If the time-check or time-order given for such work shall become the property of another, either by purchase or otherwise, it shall remain a lien, and the person owning the same shall have the same right to a lien as the person who performed the work for which such time-check or time-order was given.

*Bona fide purchasers; who are not; time checks.*

**SECTION 5.** The plaintiff in such action may have the remedy by attachment of the property upon which the lien is claimed, provided by law in personal actions, and such attachment may be issued, served and returned, and like proceedings had thereon including the release of any attached property, upon giving security as in civil actions. The affidavit for the attachment must state that the defendant, who is personally liable to the plaintiff therefor, is indebted to him in a sum named over and above all legal set-offs for such labor and services done or performed as entitles the plaintiff to a lien thereon under this act, describing the property on which it is claimed such work was done or performed, and averring that the plaintiff has filed his petition for a lien pursuant to law; and no other fact need be stated, in such affidavit. No undertaking upon such attachment or security for costs in actions hereunder before justices of the peace or municipal courts, need be given unless upon application of some defendant in the action showing by affidavit that he has a good and valid defense to the plaintiff's claim or to some part thereof, and if it be to a part only of such claim, unless the residue be paid to the

*Proceedings to enforce lien, attachment; affidavit; undertaking.*

plaintiff at the time of such application, which payment, if made, shall not affect the jurisdiction of the court; and no order shall be made by any circuit court or a judge thereof, requiring the giving of such undertaking or security for costs except upon ten days' notice to the plaintiff. The writ of attachment shall direct the officer to whom it is issued, to attach the property named, or so much thereof as shall be necessary to satisfy the sum claimed to be due thereon, and to hold the same subject to further proceedings in the action. The officer executing the writ of attachment shall pay any charges for booming or driving the property attached that may be due, and the amount so paid shall be taxed as a part of the costs of the action. Where the property on which the lien is claimed has been taken out of the county in which the labor and services were done or performed, the action may be commenced in the circuit court of such county, without regard to the amount claimed, and in such case the writ of attachment shall run to the sheriff of the county in which the property then is, who shall serve and execute the writ; and in like manner the execution upon any judgment obtained shall run to the sheriff of the county where the property is, and he shall have power to make sale and proceed as on executions issued from the circuit court of his county. When the action is commenced in justice court or municipal court, the rules of practice and procedure provided by statute for such court shall govern, except as otherwise specially provided in this or other statutes relating to the enforcement of such lien. Where personal service cannot be made upon the defendant, and the action is in the circuit court, service shall be made as provided by law for service of summons on non-residents or persons who cannot be found in other actions in the circuit court, and if the action be in justice or municipal court, the provisions of law relating to service of summons upon non-residents or persons who cannot be found, in other actions in such courts shall govern and apply to such action to foreclose a lien.

Persons removing property, liable for amount.

SECTION 6. Any person who shall cause the property upon which such lien exists to be transported out of the state of Wisconsin, or who shall

secrete or destroy the same, or so change its character, as to prevent the lien-claimant from subjecting the same to the payment of his claim, shall be liable to such lien-claimant for the amount of his claim, as and for a conversion.

SECTION 7. When more than one person has a claim, for a lien given hereunder upon the same property, any person having such a claim, may have assigned to him the debt or claims of the other, subject to all defense and set-offs to such claim against the original owner, and may file a petition for his own lien and for the claims for liens so assigned to him and bring an action to enforce the same in his own name; but such petition and the complaint in the action shall allege such assignment.

Claims assign-  
able to other  
claimants.  
Petition and  
complaint to  
allow assign-  
ment.

SECTION 8. Any person who shall sell or incumber any property upon which such lien exists, knowing that such lien is unsatisfied, without informing the purchaser or incumberer of the existence of such lien, shall be deemed guilty of a misdemeanor and punished accordingly.

Persons selling  
or incumbering  
property levied  
on guilty of a  
misdemeanor.

SECTION 9. Sections 1, 2, 3, 4 and 7, of chapter 413, of the general laws of Wisconsin for the year 1889, and chapter 454, of the general laws of Wisconsin for the year 1889, are hereby repealed; provided, that this act shall not affect rights of actions or remedies already accrued under existing laws. All acts and parts of acts conflicting with the provisions of this act are hereby repealed.

Repeals sec-  
tion 1, 2, 3, 4  
and 7, chapter  
413, and chap-  
ter 454, laws of  
1889.

SECTION 10. This act shall take effect and be in force from and after its passage and publication.

Approved April 3, 1891.