

Tolls to be a
lien on logs.

SECTION 4. All tolls authorized by this act shall be a lien upon all logs or timber so driven down said stream and secured in said boom, which lien may be enforced as the lien of mechanics or laborers.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 2, 1881.

[No. 127, S.]

[Published April 13, 1881.]

CHAPTER 328.

AN ACT to amend sections three thousand three hundred and fourteen, three thousand three hundred and twenty-one, three thousand three hundred and twenty-two and three thousand three hundred and twenty-four of the revised statutes, entitled of liens, and relating to liens for cisterns.

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

What property
liable to lien
for labor and
materials.

SECTION 1. Section three thousand three hundred and fourteen of the revised statutes of 1878, is hereby amended, by adding after the word "fountain" in lines nine, twelve, nineteen and twenty-four of said section, the word "cistern," so that said section when amended, shall read as follows: Every person who, as principal contractor, performs any work or labor, or furnishes any materials in or about the erection, construction, repairs, protection or removal of any dwelling house or other building, or of any machinery erected or constructed, so as to be or become a part of the freehold upon which it is situated, or of any bridge, or in the filling up of any water lot, or the construction thereon of any wharf or permanent erection, or in the dredging of the channel in front of such water lot, or in digging or constructing any well, or fountain or cistern, or in building or repairing any fence upon land, or doing manual labor thereon, shall have a lien thereupon and upon the interests of owner of such dwelling house, building, machinery, bridge, wharf, erection thereon, well, fountain, cistern or fence, in and to the land upon which the same is situated or of the person causing such manual labor to be done, and upon the water lot so filled, or in front of which such dredging is done, not exceeding forty acres, or if within the limits of an incorporated city or village, upon the piece or parcel of land used, or designed for use, in connection with such dwelling house, building, machinery, bridge, wharf, erection thereon, well, fountain, cistern or fence, or

upon such water lot or land on which such manual labor is done, not exceeding one acre. Such lien shall be prior to any other lien which originates subsequent to the commencement of the construction, repairs, removal, or work aforesaid, of or upon such dwelling house, building, machinery, bridge, wharf, or erection thereon, well, fountain, cistern, fence, water lot or land, and may be enforced as provided in this chapter. In case any person shall order or contract for the purchase of any machinery to be placed in, or connected to or with any building or premises, and such person not having an interest in such building or premises in or connected with which such machinery is placed, sufficient for a lien, as provided for in this chapter to secure payment for said machinery, the person furnishing such machinery shall have and retain a lien upon such machinery, and shall have the right to remove from such building or premises, such machinery, in case there shall be default in the payment for such machinery when due, leaving such building or premises in as good condition as they were before such machinery was placed in or on the same.

SECTION 2. Section three thousand three hundred and twenty-one of the revised statutes, is hereby amended by adding after the word "fountain" in the seventh line of said section, the word "cistern," so that said section when so amended shall read as follows: Any person having so filed such claim for a lien may foreclose the same by action in the circuit court or any county court having jurisdiction thereof. All persons having filed such claims for liens, for work done or materials furnished, in the construction, repair, protection, or removal of or upon the same dwelling house, or other building, or the same machinery, bridge, wharf, well, fountain, cistern, fence or water lot, may join as plaintiffs; and if any do not so join, or refuse to so join, they may be made parties defendant. All persons having liens upon the premises by mortgage, judgment, or otherwise, subsequent to the lien sought to be foreclosed, and all purchasers of the premises subsequent to such lien, may be joined as parties defendant. In case any person who has filed such claim for lien prior to the commencement of such action, or who has such subsequent lien, or who is such subsequent purchaser, is not made a party to such action, he may, upon application at any time before judgment, be made a party defendant thereto, and any person who shall file such claim for lien after the commence-

Liens may be foreclosed.

ment of such action, or who shall obtain such subsequent lien by mortgage, judgment or otherwise, or become such subsequent purchaser after the filing of the notice of the pendency of such action, may, at any time before judgment, upon application, be made a party defendant thereto. If such action be brought by a sub-contractor, the principal contractor may also be made a party defendant thereto.

Complaint,
what to be set
forth.

SECTION 3. Section three thousand three hundred and twenty-two, of the revised statutes, is hereby amended by adding after the word "fountain," in the twenty-second line of said section, the word "cistern," so that said section, when amended, shall read as follows: The complaint in such action shall be sufficient, if it set forth the contract, in substance, under which such work was done, or material furnished, with the last date of doing or furnishing the same, and the assignment of the claim, if any; and allege that the plaintiff or his assignee has filed a claim for a lien therefor, as required by law, giving the date of such filing, that such work was done or materials furnished for some of the purposes mentioned in section three thousand three hundred and fourteen, stating for what particular purpose the amount claimed to be due to the plaintiff or plaintiffs, respectively; and give a description of the premises claimed to be affected by such lien; as to defendants who have filed claims for liens on said premises, under the provisions of this chapter, that they have filed such claims, giving the date of filing and the amount claimed by each; as to defendants having subsequent liens or being subsequent purchasers, that they have or claim to have some lien upon the premises, subsequent and subject to the lien of the plaintiff; and shall demand judgment that the demands of all persons having filed claims for liens upon such premises, whether plaintiffs or defendants, be ascertained and adjudged; and that the interest of the person owning such premises at the time of the commencement of the construction, repairs, removal or work of or upon the dwelling house, building, machinery, bridge, wharf, or erection thereon, well, fountain, cistern, fence, water lot, or land, on account of which such liens are claimed, or which he or any other person claiming under him has since acquired, be sold to satisfy the amount of the liens so ascertained and adjudged, with the costs of the action. If the action be brought by a sub-contractor, the complaint shall also set forth in substance the con-

tract between him and the contractor, and allege that he gave the notice required by section three thousand three hundred and fifteen, and the date of the service thereof.

SECTION 4. Section three thousand three hundred and twenty-four of the revised statutes, is hereby amended by adding after the word "fountain" in the seventh line of said section, the word "cistern," so that said section when so amended shall read as follows: The judgment in such action shall adjudge the amount due to the plaintiff, or in case several claims for liens are embraced in the action, the amount due to each claimant who is a party to the action. It shall direct that the interest of the owner in the premises at the time of the commencement of the construction, repairs, removal, or work of or upon the dwelling house, building, machinery, bridge, wharf, or erection thereon, well, fountain, cistern, fence, water lot or land, on account of which such liens are claimed, or which he, or any person claiming under him, has since acquired, or so much thereof as may be necessary, be sold to satisfy the amount of the lien of the plaintiff, or of the several liens embraced in the action, with the costs of such action, including the costs of filing the claims for liens; and that after satisfying the same, together with such costs, that the residue of the proceeds be brought into court with the report of sale, to abide the order of the court. If the premises can be sold in parcels without injury to, or to the advantage of, the parties, the court may adjudge that the sale be so made. If the plaintiff, in any such action, fail to establish his lien upon the premises described in his complaint, and claim for lien, but establish a right to recover upon contract for his alleged work and labor done, or materials furnished, he may have a personal judgment in the action against the party liable for the amount due him, with or without costs, to be taxed in his favor, or favor of the defendant in like manner, as if the action were for the recovery of money only.

SECTION 5. This act shall take effect and be in force from and after its passage and publication.

Approved April 2, 1881.