

CHAPTER 154.

[Published March 31, 1862.]

AN ACT providing for a lien for labor and service upon logs and lumber in certain counties.

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

Lien for labor and service on logs, etc.

SECTION 1. Any person, company or corporation, that may do or perform any labor or services in cutting, falling, hauling, driving, running, rafting, booming, cribbing or towing any logs or timber in the counties of Pierce, St. Croix, Polk, Dallas, Burnet, Douglas, [Douglass,] La Pointe and Ashland, in this state, shall have a lien thereon for the amount due for such labor or services, and the same shall take precedence of all other claims thereon. The provisions of this act shall apply to all such labor or services that may have been done or performed prior to the passage of this act, so far as the provisions of this act can be made applicable thereto, and the person, company or corporation that may have done or performed the same, can comply with the provisions of this act.

Provisions of act to apply on labor prior to passage of act.

Petition or statement required to perpetuate lien.

SEC. 2. No such debt, demand or claim shall remain a lien on any such logs or timber, unless a petition or statement thereof, in writing, under oath by the petitioner, or some one in his behalf, shall be made and filed in the office of the clerk of the circuit court of the proper county, at the time or times hereinafter specified. Such statement or petition shall briefly set forth and state the nature of such claim or demand, the amount due, and a description of the logs or timber upon or against which the lien is claimed. If such labor and services be done and performed and completed, between the first day of November and the first day of May, then such petition or statement shall be filed on or before the first day of June next thereafter; but if the same shall be done and performed, either in part or in whole, after the first day of May, then such petition of statement shall be filed within thirty days after the completion or last day of such labor and services; and suit shall be commenced for the recovery and enforcement of such claim or demand under the provisions of this act, within four months after the filing of such statement or petition.

When petition, &c., to be filed.

When suits shall be commenced.

SEC. 3. Any person, company or corporation, having a lien upon or against any logs or timber, pursuant to the provisions of this act, or of any other law, may enforce the same by attachment against such logs or timber, in the circuit court of the proper county, upon the conditions and in the manner prescribed by chapter one hundred and thirty of the revised statutes, entitled "of proceedings against debtors by attachment," so far as the same can be made applicable thereto, and not herein otherwise provided. Before any attachment shall be executed, the petitioner or claimant, or some one in his behalf, shall make and annex thereto an affidavit, stating that the defendant named therein, (being the claimant or petitioner,) and specifying the amount of such indebtedness, as near as may be, over and above all legal set-offs; and such affidavit shall, also, show that such indebtedness is due for, or accrued for, such labor or service on logs or timber, as entitles the plaintiff to a lien thereon, describing the logs and timber; and such affidavit shall also state that the plaintiff has filed his petition or statement for a lien.

Lien may be enforced by attachment.

Affidavit required.

SEC. 4. All suits or proceedings in the premises, in the circuit court, shall be commenced and prosecuted as any other civil suit, with the power and provision of proceeding by attachment against the property upon which lien is claimed, as is provided in proceedings by attachment, by chapter one hundred and thirty of the revised statutes, except as herein otherwise provided, and therein not applicable thereto.

How suits and proceedings shall be prosecuted.

SEC. 5. The attachment shall require the sheriff, or other proper officer of the proper county, to attach and safely keep the logs or timber described in such affidavit, or so much thereof as may be necessary to satisfy the plaintiff's claim, with costs, disbursements, charges and expenses.

Nature of attachment.

SEC. 6. No attachment shall be executed under the provisions of this act, in the circuit or county court, unless the amount stated in such affidavit is due to the plaintiff, over and above all legal set-offs, shall be the sum of one hundred dollars or upwards.

Amount necessary for attachment to issue.

SEC. 7. The plaintiff in any proceedings to enforce such lien as herein provided, shall not be required to give the undertaking or security for costs or damages required by section five of said chapter one hundred and thirty of the revised statutes, unless required by an

Plaintiff not required to give security except in certain cases.

When order shall be made.

order made by the court, the judge thereof, or by the county judge, or a court commissioner of the county in which such attachment is issued; and no such order shall be made, unless the defendant shall make an affidavit, showing that he has a good and valid defence [defense] in whole or in part, setting out the nature of the defence, [defense,] and to how much and what portion thereof; and when the defence [defense] is only to a portion of the plaintiff's claim, before any such order shall be made, the defendant shall pay to the plaintiff that portion of the claim to which there is no defence [defense,] and such payment shall not affect the jurisdiction of the court, or prevent the recovery by the plaintiff of the same costs, disbursements and charges, had not the amount of his claim been reduced by such payment. No such order shall be made without giving at least two days' notice to the plaintiff.

Notice required.

Jurisdiction of justices.

SEC. 8. Justices of the peace, within their respective counties, shall have cognizance and jurisdiction of all cases arising under this act, (and of any cases for a lien upon or against personal property,) when the debt or demand claimed shall not exceed the jurisdiction of a justice of the peace; and any person, or company, or corporation, having any such lien, and the amount thereof being within the jurisdiction of a justice's court, shall be entitled to proceed, by attachment, in a justice's court, against the property upon which he has such lien, for the enforcement of the same, upon the conditions and in the manner prescribed in that portion of chapter one hundred and twenty of the revised statutes, relating [entitled] "of proceedings by attachment and against garnishees," so far as the same can be made applicable thereto, and not herein otherwise provided.

How persons having lien may proceed.

Affidavit required.

Before any such warrant of attachment shall be issued, the plaintiff (that is, the person claiming such lien, or some person in his behalf,) shall make and file with the justice an affidavit setting forth the same facts, and making the same statement as is required in the affidavit to be attached to the attachment in the circuit court, as provided by section three of this act.

SEC. 9. The attachment issued by any justice of the peace shall be returned as an ordinary summons, and may be in the following form :

“ County of ———, [—— of ——.]

Form of attachment.

“ The state of Wisconsin to the sheriff or any constable of said county :

“ You are commanded to attach the following goods and chattles, (here insert a description of the property described in such affidavit,) or so much thereof as shall be sufficient to satisfy the sum of ———, with interest and costs, and disbursements of suit, in whosoever hands or possession the same may be found in your county, and so provide that the same, so attached, may be subject to further proceedings thereon, as the law requires ; and also summon ——, if to be found, to be and appear before me, at my office in said ——, on the —— day of ——, A. D. 18——, at —— o’clock in the —— noon, to answer to ——, to his damage one hundred dollars or under.

“ Given under my hand at ——, this —— day of ——, A. D. 18——.

“ J. P., Justice of the peace.”

SEC. 10. In all their proceedings, justices of the peace shall conform to the provisions of the law governing justice’s courts, so far as the same can be made applicable, and as near as may be to the provisions of this act, as they apply in the circuit court, unless otherwise herein expressly provided: *provided, however,* that the justice shall, in no case, require the plaintiff or plaintiffs to give security for costs, unless the defendant or defendants shall first make and file with said justice an affidavit, setting forth that the defendant has a good and valid defence [defense] to the whole of the plaintiff’s demand.

Justices to conform to law of justices’ courts.

Proviso.

SEC. 11. All attachments issued by any justice of the peace, shall be served and returned as ordinary writs of attachment are served and returned in justice’s court [courts.]

Attachment—how served.

SEC. 12. In all suits or actions under the provisions of this act, the person, company or corporation liable for the payment of such debt or claim, shall be defendant.

Defendant.

SEC. 13. In all suits or actions 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, or make an inquest therein, shall, in addition to finding the sum due to the plaintiff, also find, gener-

Nature of judgment to be rendered.

ally, that the same is due for the labor and services for which the action was brought, and was performed on the logs or timber set forth in the complaint therein, and that the same is a lien thereon; and the court (or justice of the peace, as the case may be,) shall render judgment in accordance with such finding, and execution shall issue therefor; and such execution, in addition to the direction and commands contained in ordinary executions in civil actions, may direct and command that the said logs and timber, or so much thereof as shall be necessary for that purpose, be sold to satisfy such judgment, and all costs, charges and disbursements; *provided, however,* that if the court, jury or justice shall find that the amount due the plaintiff is not a lien upon the property described in the complaint, the plaintiff's action shall not be defeated thereby, but he shall be entitled to judgment as in other civil actions.

Proviso.

Officer may pay boorage.

SEC. 14. The officer making the attachment, may pay the boorage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ, which shall be included and taxed in the bill of costs as disbursements; but if paid after judgment, then the officer may charge and collect the same out of [the] property, as other costs or disbursements.

Action shall not be defeated.

SEC. 15. The action or lien, under the provisions of this act, shall not be defeated by taking a note, unless it was taken in the discharge of the amount due, and of the lien.

Plaintiff shall allege.

SEC. 16. The plaintiff shall allege in his complaint, the filing of such statement or petition for a lien. All such allegations relating thereto, shall be taken to be true, unless expressly denied by the defendant in his answer under oath, or by the affidavit of the defendant, or some one in his behalf.

Duty of clerk of circuit court.

SEC. 17. The clerk of the circuit court of the proper county, is hereby required to file all such petitions or statements, and shall receive therefor twenty-five cents for each statement or petition filed, and when demanded shall give a certified copy thereof, for making which he shall be entitled to receive the same fee allowed registers of deeds for making a copy of any record; and any such certified copy may be read and introduced in evidence in any of the courts of this state.

Fee.

Appeal.

SEC. 18. An appeal from any judgment rendered

by any justice of the peace, in any action or suit under the provisions of this act, may be taken, as provided in other civil actions before justices of the peace, and the same shall be taken in the same time and in the same manner.

SEC. 19. Any judgment rendered in the circuit or county court, in any proceeding under this act, may be reviewed by the supreme court in the same manner as in other civil actions. Judgment may be reviewed.

SEC. 20. Whenever there are more than one person having a claim upon the same raft of logs or timber, as hereinbefore provided, it shall be lawful for any one person having such a claim, to purchase the claims of those having claims against the same raft of logs or timber, and take a written assignment of such interest; and it shall be the duty of the person taking such assignment, to file the same with the petition required to be filed by this act; and the assignee is hereby authorized to commence an action, as in this act provided, for the whole of the sum so assigned to him, without making his assignors parties to the action. When more than one claimant. Duty of assignee.

SEC. 21. The county court of any county having jurisdiction in civil actions, shall have cognizance and concurrent jurisdiction with the circuit court, in all cases arising under this act, when the demand claimed shall not exceed the jurisdiction of said court, and shall be governed by the provisions of this chapter relative to circuit courts. Jurisdiction of county court.

SEC. 22. This act shall take effect and be in force from and after its passage and publication.

Approved March 27, 1862.

CHAPTER 155.

[Published March 28, 1862.]

AN ACT to authorize the board of supervisors of Sheboygan county, to raise a tax for the improvement of the harbor at the mouth of Sheboygan river, in said county.

(See supplement to local laws.)