

[No. 79, S.]

[Published April 8, 1881.]

CHAPTER 329.

AN ACT to amend sections two thousand seven hundred and forty-two and two thousand seven hundred and forty-four of the revised statutes, relating to attachment.

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

Defendant may deny allegations of complaint.

SECTION 1. Section two thousand seven hundred and forty-two of the revised statutes, is hereby amended by adding at the conclusion thereof, the following, to-wit: The defendant, notwithstanding the delivery of such undertaking, may deny any or all of the allegations, of the affidavit annexed to the writ of attachment as provided in section two thousand seven hundred and forty-five.

SECTION 2. This act shall take effect and be in force from and after its passage and publication.

Approved April 2, 1881.

[No. 53, S.]

[Published April 11, 1881.]

CHAPTER 330.

AN ACT relating to liens upon logs and timber, and amendatory of chapter one hundred and forty-three, of the revised statutes of 1878, and to repeal chapter one hundred and sixty-seven of the general laws for the year 1879, and chapter sixty-two of the general laws for the year 1880.

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

Lien upon logs and timber.

SECTION 1. Section three thousand three hundred and twenty-nine of chapter one hundred and forty-three of the revised statutes of the state of Wisconsin for the year 1878, entitled of liens, is hereby amended so as to read as follows: Section 3329. Any person who shall do or perform any labor or services in cutting, felling, hauling, running, driving, rafting, booming, cribbing, towing, sawing or manufacturing into lumber, any logs or timber in any of the counties of this state, shall have a lien upon such logs or timber for the amount due or to become due for such labor or services, which shall take precedence of all other claims or liens thereon: provided, that in the counties of Door, Lincoln, Marathon and Waupaca, such liens shall extend to and include all labor and services done or performed in cutting, felling, hauling, running, driving, rafting, booming, cribbing, towing or piling telegraph poles and railroad ties: and provided further, that in

said county of Door, such lien shall also extend to and include all labor and services done or performed, in cutting, felling, piling, handling or hauling cord wood, or in cutting, peeling, piling, handling or hauling any tan or other bark.

SECTION 2. Section three thousand three hundred and thirty-one of said chapter one hundred and forty-three, is hereby amended so as to read as follows: Section 3331. No debt or demand for such labor or service shall remain such lien, unless a claim therefor in writing shall be made and signed by the claimant or his attorney, and verified by the claimant, or some one in his behalf, in the same manner that pleadings in civil actions may be verified, 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 logs or timber against which the lien is claimed, and that the claimant claims a lien thereon pursuant to this chapter and the chapter to which this is amendatory. Such petition, except for labor or services done in the counties hereinafter particularly named, 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; and for such labor or services done or performed in the counties of Shawano, Waupaca, Outagamie, Winnebago and Fond du Lac, or in such parts of the counties of Brown, Oconto and other counties wherein such logs or timber are got out upon the Wolf river or any of its tributaries, or for the purpose of being run down said river or its tributaries, such claim for lien shall be filed in the office of the clerk of the city of Oshkosh. If the labor or services are done between the first day of November and the first day of May following, the claim for lien shall be filed on or before the first day of June next thereafter, except as hereinafter provided; but if done after the first day of May and before the first day of November thereafter, or if said labor or services shall be continuous from the first day of November beyond the first day of May following, the claim for 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 said logs or timber, or employers for whom said labor or services shall be done or performed: provided, that such claim for lien for labor or services done or performed on telegraph poles, railroad ties, cordwood and tan or other bark as aforesaid, shall be

Lien waived unless claim and statement filed.

filed within thirty days from and after the last day of doing and performing such labor or services. Such clerks shall receive twenty-five cents for filing each such claim for lien, and for certified copies thereof, the fees allowed by law for certified copies of papers to clerks of circuit courts.

Plaintiff may have remedy by attachment.

SECTION 3. Section three thousand three hundred and thirty-three, of said chapter one hundred and forty-three is hereby amended so as to read as follows : Section 3333. The plaintiff in such actions may have the remedy by attachment of the property upon which the lien is claimed provided by law in personal actions, and such attachments may be issued and be 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 or services done or performed, as entitles the plaintiff to a lien thereon under this chapter and the chapter to which this is amendatory, describing such logs or timber, and that the plaintiff has filed his claim for a lien pursuant thereto, and no other matter need be stated in such affidavit. No undertaking upon such attachment, or security for costs in actions hereunder, before justices of the peace, 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, and to how much thereof, and if it be only to a part of such claim, unless the residue be paid to the plaintiff at the time of the application, which payment, if made, shall not affect the jurisdiction of the court, and no order shall be made requiring the giving of such undertaking or security for costs, except upon ten days' notice to the plaintiff. The attachment shall direct the officer to whom it is issued to attach the property named in the affidavits, or so much thereof as shall be necessary to satisfy the sum claimed to be due therein, and to hold the same subject to further proceedings in the action. The officer executing the attachment, shall pay any boomage due upon the property attached, and the amount so paid shall be taxed as part of the costs of the action.

Affidavit for attachment, what to state.

Taking note not to waive lien.

SECTION 4. Section three thousand three hundred and thirty-five of said chapter one hundred and forty-three, is hereby amended so as to read as follows : Section 3335. The taking of a promissory note or other

evidence of debt, for any such labor or services done, shall not discharge the lien therefor, hereby given, unless expressly received in payment therefor, and so specified therein.

SECTION 5. Section three thousand three hundred and forty of said chapter one hundred and forty-three, is hereby amended so as to read as follows: Section 3310. The court or jury which tries any action hereunder, shall, in addition to the sum due the plaintiff, find, if such be proven, that the same is due, for the labor or services done, or some part of them alleged in the complaint, and that the same is a lien upon the property, or some part thereof, described in the complaint, and the judgment shall be in accordance with the findings, with costs to be taxed and allowed as in personal actions. The execution, in addition to the directions and commands of ordinary executions upon judgments for money, shall direct that such logs or timber, describing them, or so much thereof as may be necessary for such purpose, be sold to satisfy said judgment, costs, and costs of sale. If the court, justice or jury, shall find that the amount found due the plaintiff is not a lien upon any part of such logs or timber, they shall be released from the attachment, if they have been attached, but the plaintiff shall have judgment for the amount so found due, with costs as in ordinary civil actions; but he shall not recover, but shall pay the costs of executing such attachments. Findings and judgment.

SECTION 6. Section three thousand three hundred and thirty of said chapter one hundred and forty-three, chapter one hundred and sixty-seven of the general laws of 1879, entitled an act to amend sections three thousand three hundred and twenty-nine and three thousand three hundred and thirty of chapter one hundred and forty-three of the revised statutes of 1878, entitled of liens, and chapter sixty-two of the general laws of 1880, entitled an act to amend chapter one hundred and sixty-seven of the general laws of 1879, entitled an act to amend sections three thousand three hundred and twenty-nine and sections three thousand three hundred and thirty of the revised statutes of 1878, entitled of liens, and all other acts and parts of acts conflicting with the provisions of this act, are hereby repealed. Execution.

SECTION 7. This act shall take effect and be in force from and after the first day of July, 1881. Repealed.

Approved April 4, 1881.