

LIENS.

CHAPTER 54.

AN ACT TO CREATE A LIEN FOR MECHANICS AND OTHERS IN
CERTAIN CASES.

*Be it enacted by the Legislative Assembly of the Territory of
Dakota :*

Person having
cause of action
amounting to ten
dollars,
may file com-
plaint, to con-
tain what.

SECTION 1. Any person who has a subsisting cause of action to the amount of ten dollars for any labor performed upon any lands, tenements, or hereditaments, or for any materials furnished for any improvements upon any lands, tenements, or hereditaments may, at any time within ninety days next after such cause of action shall have accrued, file his complaint as in other cases, and serve a notice upon the defendant; and such complaint shall, in addition to the facts necessary to constitute a cause of action, contain an accurate description and statement of the location of the lands, tenements, or hereditaments, upon which the labor was performed, or for the improvement of which the materials were furnished; and shall also allege that the defendant therein named is the owner of, or has some interest in, such lands, tenements, or hereditaments, and that such labor was performed, or such materials furnished, pursuant to an agreement, expressed or implied, between the plaintiff and defendant or his agent; the said complaint shall, as soon as filed in the office of the clerk of the district court of the proper courts, constitute and be a lien upon the property therein described, in favor of the plaintiff, to the extent of the defendant's title or interest therein.

Complaint act
as lien, when.

When labor,
&c., was for con-
tractor employed
by owner.

SECT. 2. When the complaint does not allege that the labor was performed or the materials furnished, pursuant to an agreement with the defendant, but shall allege that the labor was performed or the materials furnished pursuant to an agreement with some contractor therein named, which contractor was employed by the defendant or his agent, and

that the plaintiff was employed by said contractor, and had served a notice in writing upon the defendant or his agent, to the effect that he, the plaintiff, was, or had been employed by the said contractor, to perform labor thereon, or to furnish materials for the improvement of such lands, tenements, and hereditaments, and relied upon him, the defendant, or upon such lands, tenements, or hereditaments for his pay, then the filing of such complaint shall constitute and be a lien in favor of the plaintiff, the same as provided in the preceding section, to the amount that the defendant was indebted to the said contractor, when the said notice was served upon him or his agent, and to the amount in which the defendant became indebted to said contractor after the service of said notice, and before the expiration of the plaintiff's lien: *Provided*, The amount thus due, or thus becoming due, does not exceed the amount claimed in the complaint; and upon the trial, the plaintiff shall have judgment for no more than the sum due from the defendant to the contractor at the time of serving such notice, and the amount which becomes due after the service of such notice; and when the lien shall be acquired under this section, it shall be a bar to any action by the said contractor, for the recovery of his claim for moneys due from said defendant, to the amount of the lien, until such claim of lien shall be finally decided, and if decided in favor of the plaintiff, then it shall be to that extent a bar forever.

Proviso.

SECT. 3. The plaintiff may, at any time after filing his complaint as above provided, serve a notice on the defendant, and proceed to judgment as in other actions, but the lien hereby created shall cease to exist after ninety days from the time the labor was performed, or the materials furnished, unless a notice be served within that time: *Provided*, That if the defendant be absent or concealed, he may be proceeded against in the same manner as is provided for in other cases of absent or concealed defendants.

Lien ceases in ninety days, unless case proceeds to judgment.

Proviso.

SECT. 4. The lien hereby created, shall be as effectual as liens created by judgment of courts of record; and if the plaintiff shall recover judgment upon his complaint, the lands, tenements, and hereditaments therein described, or any interest whatever therein, either in law or equity, which the defendant had therein at the time of securing such lien; and

Force of lien.

any interest whatever, either in law or equity, which the defendant shall have acquired therein, after such lien was secured, shall be liable to sale by virtue of any execution issued thereon; and if the property described in such complaint, be not sufficient to satisfy such execution, or if the defendant was not the owner, or had not sufficient interest therein, any other property of the defendant not exempt from sale or execution, may be sold to satisfy such execution.

District court has jurisdiction in actions under this chapter.

SECT. 5. The district court of this territory shall have jurisdiction in all actions and proceedings under this chapter, whatever may be the amount in controversy; and they are hereby authorized to make all orders and decrees which may be necessary for the effectual enforcement of the remedies herein provided.

How complaint may be discharged.

SECT. 6. When any person who shall have filed his complaint pursuant to the provisions of this chapter, shall have received satisfaction for his claim, and the legal costs of his proceedings therein, he shall upon the request of any person interested, and upon the payment or tender of the costs of entering satisfaction therein, within six days after such payment or tender, enter satisfaction of his demand in the office where his complaint is filed, which shall forever thereafter discharge, defeat, and release the same.

If person satisfied does not enter satisfaction.

SECT. 7. If such person, having received satisfaction as specified, in the preceding section, shall not, within six days after request and payment of costs as aforesaid, enter satisfaction as aforesaid, he shall forfeit and pay to the party aggrieved, double the amount of damages which he shall have sustained in consequence of his refusal or neglect.

Lien on articles altered or repaired.

SECT. 8. Any person who shall make, alter, repair, or bestow labor on any article of personal property, at the request of the owner or legal possessor thereof, shall have a lien on such property so made, altered, or repaired, or upon which labor has been bestowed, for his just and reasonable charges for the labor he has performed and the materials he has furnished; and such person may hold and retain possession of the same, until such just and reasonable charges shall be paid; and if they be not paid within three months after the labor shall have been performed or the materials furnished, such person having such lien, may proceed to sell the property by him so made, altered, or repaired, or upon

If charges not paid in three months, may be sold, how.

which labor has been bestowed, at public auction, by giving public notice of such sale by advertisement for three weeks, in some newspaper that has general circulation in the county, or if no newspaper be published in said county, by posting up notice of such sale in three of the most public places in the county, three weeks before the time of sale; and the proceeds of such sale be applied, first, to the discharge of such lien, and the costs and expenses of keeping and selling such property, and the remainder, if any, shall be paid over to the owner thereof.

SECT. 9. Any person who is common carrier, and any person who shall, at the request of the owner or lawful possessor of any personal property, carry, convey, or transport the same from one place to another, and any person who shall safely keep or store any personal property, at the request of the owner or lawful possessor thereof, shall have the same lien and the same power of sale for the satisfaction of his reasonable charges, upon the same condition and restrictions as provided in the preceding section. The provisions of this act shall not interfere with any special agreement between the parties.

Lien of common carrier same as in preceding section.

Special agreement not interfered with.

SECT. 10. This act shall take effect and be in force from and after its passage, and approval by the governor.

Take effect, when.

Approved April 24, 1862.

W. JAYNE, Governor.

LEGISLATIVE ASSEMBLY.

CHAPTER 55.

AN ACT TO FIX THE TIME FOR CONVENING THE LEGISLATIVE ASSEMBLY.

Be it enacted by the Legislative Assembly of the Territory of Dakota:

SECTION 1. That the next session of the legislative assembly of the Territory of Dakota, shall commence on the first

Next session commence when, and of future meetings.