

CHAPTER 40.

(ASSISTANT CLERKS.)

AN ACT to Provide the Amount of time for which the Assistant Clerks of the Council and House of Representatives of the Legislative Assembly shall be paid for.

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

[§ 1.] TIME FOR WHICH CLERKS SHALL BE PAID.] That the assistant clerks of this Legislative Assembly shall be allowed compensation for forty days' services.

Approved, February 20, 1879.

Liens.

CHAPTER 41.

AN ACT to create a Lien for Miners and Laborers, in Certain Cases.

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

§ 1. MINER TO HAVE LIEN UPON MINE FOR WORK DONE OR MATERIAL FURNISHED.] That every miner or other person who, at the request of the owner or owners, or his or their agents of any lode, lead, ledge, mine or deposit bearing gold, cinnabar or copper, or of any coal bank or mine, or at the request of any contractor or sub-contractor, shall perform any labor whatever on said mine, or furnish any timber, rope, nails or

any other materials for timbering shafts or levels for the mine owned by such owner or owners, or who shall furnish any kind of materials for erecting any windlass, whims, or any other hoisting apparatus or machinery, or for any car track, cars, tunnels, drifts or openings thereon, or shall perform any labor on any tunnel, shall have a lien upon such lode, lead, ledge, mine, deposit, bank or tunnel to secure the payment of the same.

§ 2. WHEN LABOR IS PERFORMED FOR CONTRACTOR, OWNER TO PAY, WHEN.] Every miner or other person doing and performing any work or furnishing any materials as specified in section one of this act under a contract, either express or implied, between the owner or owners of any mine, or his or their agent, and any contractor working on such mine whether such work shall be performed or materials furnished as miner, laborer or otherwise, whose demand for work so performed or materials so furnished has not been paid, may deliver to the owner or owners of such mine or tunnel, or to his or their agent or superintendent an attested account of the amount and value of the work and labor thus performed, or of the materials thus furnished and remaining unpaid, and thereupon such owner or owners or his or their agent, shall retain out of the first subsequent payments to such contractor the amount so due for such work and labor, or materials furnished for the benefit of the person so performing or purchasing the same.

§ 3. DUTY OF OWNER, WHEN ACCOUNT FOR LABOR IS PRESENTED.] Whenever any account for labor performed or materials furnished as specified in the last preceding section shall be placed in the hands of the owner or owners of any mine or tunnel or his or their agent, it shall be the duty of such owner or owners or agent, to furnish such contractor with a copy of such papers so that if there be any disagreement between such contractor or his sub contractor and the creditor of either, as the case may be, they may by amicable adjustment or by arbitration ascertain the sum due, if any; and if such contractor or sub contractor shall not within ten days after the receipt of such papers give such owner or owners or agent written notice that he intends to dispute the claim, or if ten days after giving such notice he shall refuse or neglect to have

the matter adjusted as aforesaid, he shall be considered as assenting thereto; and such owner or owners or agent may pay the same when it becomes due, and for that purpose may deduct the amount out of any moneys due such contractor, who may in like manner deduct such amount from any moneys due by him to his sub-contractor in case such account or demand is against such sub-contractor for work and labor performed or materials furnished as aforesaid.

§ 4. AMOUNT DUE FROM CONTRACTOR MAY BE RECOVERED, HOW.] The amount which may be due from any contractor to his creditor may be recovered from said owner or owners by the creditor of said contractor in any action at law to the extent in value of any balance due by the owner or owners to his or their contractor under the contract with him, at the time of the notice first given as aforesaid, or subsequently, according to such contract or under the same.

§ 5. PERSON ENTITLED TO LIEN TO MAKE ITEMIZED STATEMENT AND FILE SAME.] Any person entitled to a lien under this act shall make an account in writing of the items of labor, skill, machinery and material furnished as the case may be, and after making oath thereto shall within sixty days from the time of completing such labor and skill, or furnishing the last item of machinery or materials, file the same in the office of the clerk of the district court of the county or subdivision in which the lode, lead, ledge, mine, deposit, bank or tunnel may be situated, for or upon which such labor, skill, machinery, or materials shall have been furnished; and also file at the same time a correct description of the property to be charged with said lien, which account and description so made and filed shall be recorded in a separate book to be provided for that purpose by such clerk of court, and thereupon the same shall from the time of the completion of the work or furnishing the last item of machinery or materials, and for one year thereafter, operate as a lien on the property charged in such description; when any work and labor has been performed or materials furnished as aforesaid under a written contract, the same or a copy thereof shall be filed with said account and description: *Provided*, That all lien claims for labor performed or materials furnished shall be concurrent liens upon the property charged, and shall be paid *pro rata* out of

proceeds arising from the sale thereof, if the same shall be sold or upon settlement without sale.

§ 6. HOLDER OF LIEN MAY OBTAIN JUDGMENT.] Any person holding such lien may proceed to obtain a judgment for the amount of his account thereon by civil action, and when any suit or suits shall be commenced thereon such lien shall continue until said suit or suits be finally determined and satisfied; and in all actions instituted under this act, all persons claiming liens upon the property charged shall be made parties to such action or proceeding, and the rights of all parties therein shall be determined by the court, and such order made in regard thereto as shall preserve and protect the rights of all such parties under the provisions of this act.

§ 7. WHEN LIEN IS PAID, SATISFACTION THEREOF SHALL BE ENTERED.] Any person who shall have filed his account and perfected his lien under the provisions of this act, shall have received satisfaction of his claim or demand, and the legal cost of his proceedings thereunder, he shall upon the request of any person interested and within six days after such request, enter satisfaction of his lien in the office where such account and lien is of record, which shall forever thereafter discharge, defeat and release the same; and if any person holding a lien as aforesaid shall receive satisfaction as hereinbefore specified, or having been tendered the amount due on his claim or demand with legal costs, shall not within six days after receiving such satisfaction or tender of payment, enter satisfaction as aforesaid, he shall forfeit and pay to the person or persons aggrieved double the amount of damages which may have been sustained in consequence of such failure or neglect: *Provided*, He shall have been requested in such case to enter satisfaction as aforesaid.

§ 8. THIS ACT TO APPLY TO OIL WELLS, ETC.] The provisions of this act shall apply to oil wells or springs, iron and lead mines, as well as all other mines not herein specified, so far as the same may be applicable.

§ 9. This act shall take effect and be in force from and after its passage and approval.

Approved, February 1, 1879.