

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

Sec. 41. Decree effectual to bar claims.—The decree of the court determining the validity, nature or extent of any such encumbrance shall operate directly on the land as a proceeding in rem, and shall be effectual to bar all the defendants from any claim thereunder contrary to such determination, and such decree so barring said defendants shall have the same force and effect as a release of such claims executed by the defendants in due form of law. The court may, in its discretion, appoint agents or guardians ad litem to represent minors or other defendants (R. S. c. 163, § 40. 1959, c. 317, § 379.)

Effect of amendment.—The 1959 amendment substituted the word “defendants” for the word “respondents” throughout the section. **Effective date of 1959 amendment.**—See note to § 9.

Chapter 178.

Mortgages of Personal Property. Liens. Pledges.

Mortgages of Personal Property.

Sec. 1. Mortgages of personal property; record.—No mortgage of personal property shall be valid against a trustee in bankruptcy or an assignee in insolvency of the mortgagor, or against an assignee under a general assignment for the benefit of the creditors of the mortgagor, or against any person other than the mortgagor, unless and until possession of such property is delivered to the mortgagee within 20 days from the date written in said mortgage, or, when undated, then from the date of execution and delivery of the same, and unless such possession is retained by the mortgagee, or unless and until the mortgage or a memorandum thereof is recorded within the said period of 20 days in the office of the clerk of the city, town or plantation organized for any purpose, in which the mortgagor resides when the mortgage is given, or registry of deeds as hereinafter provided. When all mortgagors reside without the state, the mortgage or a memorandum thereof shall be so recorded in the office of the register of deeds in the registry district where the property is when the mortgage is made; but if a part of the mortgagors reside in the state, then in the cities, towns or plantations so organized in which such mortgagors reside when the mortgage is given. If any mortgagor resides in an unorganized place, the mortgage or a memorandum thereof shall be so recorded in the office of the register of deeds for the registry district in which such unincorporated place is located. A mortgage or a memorandum thereof made by a domestic corporation shall be so recorded in the municipality which the corporation has designated in its certificate of organization as the location of the corporation; and, that of a foreign corporation shall be recorded in the municipality designated by the corporation in its certificate of foreign corporation as its usual place of business in this state. If a municipality in this state is not designated by the corporation as its location, or the location designated is in an unorganized place in the state, then in the office of the register of deeds for the registry district in which such property is when the mortgage is made. Such chattel mortgages or the memorandums thereof need not be acknowledged for presentation for record. If possession is taken or said mortgage or a memorandum thereof is recorded subsequent to said period of 20 days, it shall be valid against mortgages, assignments and bills of sale executed and delivered subsequent to the making of said record, and also against attachments made subsequent thereto, based upon causes of action arising subsequent thereto, and also against trustees in bankruptcy and common law assignees, so far as relates to claims accruing subsequent thereto.

(1961, c. 313.)

Effect of amendment.—The 1961 amendment rewrote the former fourth sentence of the first paragraph, dividing it into two sentences.

As the second paragraph of the section was not affected by the amendment, it is not set out.

Repeal of section.—Section 31, c. 362, P. L. 1963, repealed §§ 1 to 11 of this chapter effective December 31, 1964.

Cited in *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

Sec. 2. Duty of clerk; consent for sale or exchange.—The clerk shall record all such mortgages, and all other papers and documents delivered to him and entitled to be recorded, noting on the mortgage, paper or document the time when it was received. It shall be considered as recorded when received. No consent given by the mortgagee of personal property to the mortgagor for the sale or exchange of the mortgaged personal property shall be valid or be used in evidence in civil process unless in writing and signed by the mortgagee or his assigns. The clerk may, in recording such mortgages, papers and documents, copy the same into a book kept for such purposes or he may bind into such book a photostatic copy thereof or an attested copy thereof or he may microfilm such mortgage papers and documents. The pages of such book and the frames of such roll of microfilm shall be numbered consecutively and within 24 hours of the time when such mortgage, paper or other document was received for record, the clerk shall record in a book kept for that purpose, or on cards kept in a file and open to the public, the names of the parties to said mortgage or other document and the book and page or frame of microfilm where the same is recorded shall be added later. (R. S. c. 164, § 2. 1961, c. 140. 1963, c. 173, § 2.)

Effect of amendments. — The 1961 amendment divided the former first sentence into two sentences, inserted “or he may microfilm such mortgage papers and documents” at the end of the present fourth sentence and also inserted “or frame of microfilm” near the end of the last sentence.

The 1963 amendment deleted “in a book or books kept for that purpose” formerly

preceding “noting” in the first sentence, deleted “therein and” formerly following “noting” in such sentence, and inserted “and the frames of such roll of microfilm” near the beginning of the fifth sentence.

Repeal of section.—See note to § 1 of this chapter.

Cited in *Globe Slicing Machine Co. v. Casco Bank & Trust Co.*, 154 Me. 59, 142 A. (2d) 30.

Sec. 3. Redemption after breach of condition.—When the condition of a mortgage of personal property is broken, the mortgagor or person lawfully claiming under him may redeem it at any time before it is sold by virtue of a contract between the parties or on execution against the mortgagor, or before the right of redemption is foreclosed, by paying or tendering to the mortgagee or the person holding the mortgage by assignment thereof, recorded where the mortgage is recorded, the sum due thereon, or by performing or offering to perform the conditions thereof, when not for the payment of money, with all reasonable charges incurred. The property, if not immediately restored, may be replevied, or damages for withholding it recovered in a civil action. (R. S. c. 164, § 3. 1961, c. 317, § 600.)

Effect of amendment.—The 1961 amendment divided this section into two sentences, deleted “as hereinafter provided,” following “foreclosed” in the present first sentence and substituted “a civil action”

for “an action on the case” at the end of the section.

Repeal of section.—See note to § 1 of this chapter.

Secs. 4-10. Repealed by Public Laws 1963, c. 362, § 31.

Effective date.—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

Sec. 11. Recording of personal property titles.—Any instrument entitled by law to be recorded, which by its terms transfers or retains title to personal property as security for the payment of money or the performance of any

obligation, may be discharged by an entry made on the margin of the record of said instrument acknowledging satisfaction thereof, or by a proper written instrument signed by the person to whom the money is payable or the obligation is due, or by his executor, administrator or assignee. When said record shall be contained on a roll of microfilm, such discharge may be made only by a proper written instrument which the clerk shall record on a roll of microfilm and the clerk shall note on the record of the instrument sought to be discharged, whether kept in a book or on a card, the number of the roll of microfilm and the frame where such discharge is recorded. If such person or his executor, administrator or assignee, after full payment of the money or performance of the obligation, whether before or after breach, refuses or neglects for 7 days after thereto requested to make such discharge, he shall be punished by a fine of not less than \$10 nor more than \$50, to be recovered in a civil action. (R. S. c. 164, § 11. 1961, c. 317, § 601. 1963, c. 173, § 3.)

Effect of amendments. — The 1961 amendment deleted “aforesaid” following “obligation” and substituted “a civil action” for “an action on the case” in the last sentence of this section.

The 1963 amendment inserted the present second sentence.

Repeal of section.—See note to § 1 of this chapter.

Liens on Vessels.

Sec. 13. Lien for labor or materials furnished for building vessels; on vessels, by owners of dry docks or marine railways.

Cited in *Hinckley v. Johnson*, 153 Me. 517, 138 A. (2d) 463.

Sec. 14. Writ for enforcing lien.—The form of writ for enforcing such lien shall be in substance as follows:

“State of Maine.

....., ss.

To the sheriff of our county of, or either of his deputies:

We command you to attach the vessel” (here give such a description of the vessel as will identify it,) “in an action brought by” (name of plaintiff) “of” (plaintiff’s place of residence including town and county) “against” (name of defendant) “of” (defendant’s place of residence including town and county) “in the Superior Court for said county of, in which action the said” (name of plaintiff) “claims a lien on said vessel for” (here describe briefly the nature of the lien) “to the amount of dollars and cents, and make due return to this writ with your doings thereon.

.....
Clerk of said Superior Court

(Seal of the court)

Dated

The action shall be brought in the county where the vessel is. (R. S. c. 164, § 14. 1959, c. 317, § 380.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all fur-

ther proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

Sec. 15. Plaintiff shall annex account of demand to the complaint; verification by oath.—The plaintiff shall annex to the complaint a just, true and particular account of the demand claimed to be due to him with all just credits, the names of the persons personally liable to him and names of the owners of the ves-

sel if known to him. It shall be verified by the oath of one plaintiff, or of some person in his behalf, that the amount claimed in said account is justly due from the person named in the complaint and account as owing it, and that he believes that by the law of the state he has a lien on such vessel for the whole or a part thereof. (R. S. c. 164, § 15. 1959, c. 317, § 381.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “The plaintiff shall annex to the complaint” for “The specification annexed to the writ shall contain” and “to him” for “the plaintiff” following “due”

in the first sentence and also substituted “one” for “1” and “complaint and account” for “writ and specification” in the second sentence.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 16. Attachment of vessel on stocks; sale of attached vessel liable to depreciation.—If the vessel at the time is on the stocks, the attachment shall be made by filing in the office of the clerk of the town in which such vessel is, within 48 hours thereafter, a copy of so much of his return on the writ of attachment as relates to the attachment, with the name of the plaintiff, the name of the person liable for the debt, the description of the vessel as given in the writ of attachment, the date of the writ of attachment, the amount claimed and the court to which it is returnable, and by leaving a copy of such certificate with one of the owners of the vessel, if known to him and residing within his precinct, or with the master workman thereon. If the attachment is so made, the officer need not take possession of the vessel before it is launched unless specially directed by the plaintiff or his attorney to do so; but he shall, as soon as may be, afterwards. He may take possession at any time before it is launched; but if he does, he shall not hinder the work thereon or prevent or delay the launching. If at the time of attachment the vessel is launched, it shall be attached like other personal property. Whenever a vessel has been attached and the expense of retaining possession of said vessel is great, or the vessel is liable to depreciate in value by reason thereof, any attaching creditor or an owner of said vessel may bring an action in the superior court by complaint, praying that said vessel attached may be sold, and said court may order a hearing thereon. Due notice shall be given to all parties in interest of the time and place appointed for said hearing and a hearing on said complaint shall be had before said court. If it appears to said court to be for the benefit of all parties in interest that said vessel should be sold, it shall issue to the officer in possession of the same, or to the sheriff of the county in which said vessel has been attached, an order to sell it at public auction, and shall designate in said order the notice to be given of the time and place of said sale. Said vessel shall be sold pursuant to said order, and the proceeds of such sale, after deducting necessary expenses, shall be held by the first attaching officer or the sheriff, subject to the successive attachments, as if sold on execution; provided, however, that if said parties do not consent to a sale as herein provided, the provisions of sections 32 to 41, inclusive, of chapter 112, so far as the same are applicable, shall apply to proceedings under this section. (R. S. c. 164, § 16. 1959, c. 317, § 382. 1963, c. 414, § 147.)

Effect of amendments. — The 1959 amendment divided the first sentence into two sentences and the former fourth sentence into the fifth and sixth sentences, added “of attachment” three times following “writ” in the first sentence, and deleted “as aforesaid” twice following “attached” and “in term time or vacation” following “vessel may” in the fifth sentence.

The 1963 amendment substituted “bring an action in the superior court by complaint” for “petition a justice of the su-

perior court” in the fifth sentence, substituted “court” for “justice” near the end of that sentence, substituted “complaint” for “petition” in the sixth sentence, deleted “a justice of” near the end of that sentence, substituted “court” for “justice” near the beginning of the seventh sentence, and substituted “it” for “he” near the middle of that sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 17. Service of summons and complaint on debtors and on owners.—The summons and complaint shall be served as in other actions on persons named as personally liable for the plaintiff's claim. A copy of the summons and complaint and writ of attachment shall also be posted in some conspicuous place on the vessel attached and mailed to all owners whose identity and whereabouts are known if they have not been named as personally liable. (R. S. c. 164, § 17. 1959, c. 317, § 383.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 18. Subsequent writs of attachment served by same officer unless disqualified.—On all writs of attachment made after the first attachment and while any lien attachment is pending, the attachment and services shall be made by the same officer, or, if he is disqualified, by any qualified officer, by his giving notice thereof to the first attaching officer. (R. S. c. 164, § 18. 1959, c. 317, § 384.)

Effect of amendment.—The 1959 amendment added "of attachment" after "writs" near the beginning of the section and deleted "as aforesaid" after "made" and be-

fore "by."

Effective date of 1959 amendment.—See note to § 14.

Sec. 19. Entry of action; who may defend; bond.—The actions shall be entered on the docket as follows: The person claiming the lien, as plaintiff; the person alleged to be personally liable, as defendant, and the name or other description of the vessel attached. The owners or mortgagees of the vessel, or any plaintiff in an action wherein it is attached for a lien, may appear and defend any action so far as relates to the validity and amount of the lien claim; but no such plaintiff shall so defend until he gives bond, to the satisfaction of the court, to pay the costs awarded against him. (R. S. c. 164, § 19. 1959, c. 317, § 385.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, deleted "At the return term" at the beginning of the first sentence and sub-

stituted "an action" for "a suit" in the second sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 21. Court to apportion costs.—The court, except as provided in section 20, may decide all questions of costs and apportion them as they think proper. (R. S. c. 164, § 21. 1959, c. 317, § 386.)

Effect of amendment.—The 1959 amendment substituted "section 20" for "the preceding section" near the beginning of the section and deleted "as in cases of

equity" formerly appearing at the end of the section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 22. Issue framed.—At the request of either party, the following questions of fact shall be submitted to a jury: "What amount claimed in the complaint is due from the defendant to the plaintiff?" and "For how much of such amount has the plaintiff a lien on the vessel attached?" The verdict shall be in answer to these questions. If the parties waive a jury trial, these questions shall be decided by the court on a hearing or report of a referee appointed by the court. (R. S. c. 164, § 22. 1959, c. 317, § 387.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "writ" in the first question and "a referee" for "an

auditor" near the end of the section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 24. Repealed by Public Laws 1959, c. 317, § 388.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 25. Court may order vessel sold and proceeds paid into court.—When judgment is recovered in any action on which a vessel was attached,

the court may issue an order to the attaching officer to sell it at auction, and to pay the proceeds thereof into court after deducting the expenses of sale and for taking care of the vessel while under attachment. Such officer shall sell it as other personal property is sold on execution. The purchaser shall hold it free from any prior claim. (R. S. c. 164, § 25. 1961, c. 317, § 602.)

Effect of amendment.—The 1961 amendment substituted “action” for “suit” in the first sentence of this section and divided the former second sentence into two sentences.

Sec. 26. Distribution of proceeds and of any surplus.—If such proceeds are more than all the judgments recovered against such vessel and the amounts claimed in the undecided actions, the court may order the judgments, as fast as they are recovered against said vessel, to be paid from said fund until all such actions are terminated and all judgments satisfied. The court may, on complaint, order the balance, if any, to be paid to the persons legally entitled thereto. (R. S. c. 164, § 26. 1961, c. 317, § 603.)

Effect of amendment.—The 1961 amendment substituted “actions” for “suits” in two places in the first sentence of this section and substituted “complaint” for “petition” in the second sentence.

Sec. 27. When proceeds not enough distributed pro rata, and double liens prevented.—If such proceeds are not enough to pay in full the judgments recovered and the claims still undecided, the court may order the money to remain until all the actions are terminated, and then divide pro rata; or it may direct a sufficient amount to be retained to pay on the undecided claims their proportion and divide the residue ratably among the judgments recovered, and if, after all the actions are terminated, and the judgments recovered subsequent to the first division have received the same proportion as prior judgments, there is any sum remaining, it shall be divided among the judgments pro rata, and in such division the court shall make such orders as will prevent the enforcement of a double lien and will secure the just rights of all. (R. S. c. 164, § 27. 1961, c. 317, § 604.)

Effect of amendment.—The 1961 amendment substituted “actions” for “suits” in two places in this section.

Sec. 28. Vessel under attachment attached on lien claim.—If the vessel has been already attached by a sheriff or his deputy when a writ of attachment is issued for such lien claim, such writ of attachment shall be served by such officer. If attached by a constable, he shall give up to the officer having the lien writ of attachment the possession and the precept upon which he attached it with his return of the facts thereon. The attachment shall hold subject to the legal priorities of the lien claim. (R. S. c. 164, § 28. 1959, c. 317, § 389.)

Effect of amendment.—The 1959 amendment divided the section into three sentences and added “of attachment” after “writ” twice in the first sentence and once in the second sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 29. If attached for lien, how attached for non-lien claims.—A vessel attached for a lien claim may be attached by the same officer in the ordinary manner in an action against the owners thereof, and such attachment shall be valid, subject to the legal priorities of the lien attachments. (R. S. c. 164, § 29. 1961, c. 317, § 605.)

Effect of amendment.—The 1961 amendment substituted “an action” for “a suit” in this section.

Sec. 30. Sale of vessel, attached on both kinds of claims.—When a vessel attached for liens and also in the ordinary manner is sold by order of the

court and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer to be held upon the writs of attachment not founded on the lien claims. (R. S. c. 164, § 30. 1959, c. 317, § 390.)

Effect of amendment.—The 1959 amendment added “of attachment” after “writs” near the end of this section.

Effective date of 1959 amendment.—See note to § 14.

Liens on Buildings and Lots, Wharves and Piers.

Sec. 34. Liens on buildings and lots for labor and materials.

I. GENERAL CONSIDERATION.

A lien is given upon the ground, etc.

In accord with original. See *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

But rights of owner and subsequent, etc.

In accord with 2nd paragraph in original. See *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Extent of lien generally.—When this section speaks of securing “payment thereof” it refers to the debt created by the acts of the parties. When by express contract the parties fix the compensation to be paid for full and complete performance of the contract, they have themselves established the debt to be secured by lien. In a sense they have by binding agreement determined the extent to which the owner’s property will be enhanced by the labor and materials to be incorporated in the realty, and to that extent the contractor is protected by lien. When the owner is not a party to the contract, the determination must be as to what is the fair and reasonable value of the labor and materials in place. *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

A subcontractor cannot assume that he has a lien for the amount of his subcontract in all cases, but he may rely upon the lien security to protect the payment contracted for provided the fair value of what he furnishes at least equals that amount. *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

Items as profit, overhead, taxes, insurance, and even transportation, as such and standing by themselves, are non-lienable, since such items as these are neither labor nor materials. But it does not follow that they can be completely and summarily disregarded in assessing the whole evidence as to just what the plaintiff has furnished. Profits and commissions ordinarily are not lienable items

unless included in the contract price or in the reasonable worth of the labor or materials furnished. *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

Burden of proof.—One who seeks the benefit of the so-called lien statute has a burden of establishing by probative evidence the fact that the materials for which he seeks a lien were furnished for one or more of the purposes set forth in the statute and that the materials were in fact so used. *Andrew v. Dubeau*, 154 Me. 254, 146 A. (2d) 761; *E. A. Thompson Lumber Co. v. Heald*, 157 Me. 78, 170 A. (2d) 156.

Cited in *Carpenter v. Susi*, 152 Me. 1, 121 A. (2d) 336.

II. LABOR AND MATERIALS FOR WHICH LIEN ATTACHES.

And if not furnished under contract with owner, etc.

In accord with original. See *Andrew v. Dubeau*, 154 Me. 254, 146 A. (2d) 761.

IV. CONTRACT WITH OR CONSENT OF OWNER.

Claimant must show materials were furnished under contract, etc.

Where the materials were not furnished under a contract with the owner, the plaintiff must show that they were furnished with the owner’s consent. *Andrew v. Dubeau*, 154 Me. 254, 146 A. (2d) 761.

A mortgagee, in or out of possession, is an owner of the mortgaged property to the extent of his mortgage interest for purposes of this section. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Lien is dependent upon existence of contract.

In accord with original. See *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

It is not incumbent upon the lienor to notify the owner of the performance of labor or the furnishing of materials. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

But owner must have knowledge there-

of.—In order to subject the interest of the owner of property to a lien claim, the owner must at least have knowledge that labor and materials are being furnished. Without such knowledge he cannot protect his property by giving the statutory notice. Whether more than such knowledge is necessary depends upon the circumstances of the case. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Lack of notice is no substitute for consent. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Consent depends upon facts.—Generally, whether consent appears in any given case depends wholly upon the facts in that case. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Evidence showing consent of owner.—The evidence discloses ample circumstances to support the finding of the justice below that the owner knew of and consented to the work being done by subcontractor where in its prime contract the owner consented that others were expected to be employed as subcontractors and materialmen. *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

The owner may prevent the lien by giving notice of nonresponsibility. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Sec. 35. Lien prevented.

Section presupposes that owner has knowledge, etc.

In accord with original. See *Bangor Roofing & Sheet Metal Co. v. Robbins Plumbing Co.*, 151 Me. 145, 116 A. (2d) 664.

Sec. 36. Lien dissolved unless claim filed.

Stated in *Andrew v. Dubeau*, 154 Me. 254, 146 A. (2d) 761.

Sec. 38. Liens preserved and enforced by action.—The liens mentioned in sections 34 to 37 may be preserved and enforced by action against the debtor and owner of the property affected and all other parties interested therein, filed with the clerk of courts in the county where the house, building or appurtenances, wharf, pier or building thereon, on which a lien is claimed, is situated, within 90 days after the last of the labor or services are performed or labor, materials or services are so furnished, and not afterwards, except as provided in section 39. (R. S. c. 164, § 38. 1949, c. 19, § 5. 1959, c. 317, § 391.)

Effect of amendment.—The 1959 amendment substituted “sections 34 to 37” for “the 4 preceding sections” and “action” for “bill in equity” near the beginning of the section and substituted “section 39” for “the following section” at the end of the

section.

Effective date of 1959 amendment.—See note to § 14.

Applied in *E. A. Thompson Lumber Co. v. Heald*, 157 Me. 78, 170 A. (2d) 156.

Sec. 39. Lien extended.—When the owner dies, is adjudicated a bankrupt or a warrant in insolvency issues against his estate within the 90 days and before

V. PRIORITIES.

Lien may be inferior or superior, etc.

The claim of one who furnished labor and materials in a building may be inferior or superior to the mortgagee's lien according to circumstance. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Priority of lien over mortgage requires knowledge on part of mortgagee.—A mechanic's lien cannot have priority over the mortgage without knowledge on the part of the mortgagee of the nature and extent of the work being performed on the mortgaged premises. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

Proof required to establish priority of lien over mortgage.—Contractors, to establish the priority of a mechanic's lien over a mortgage, have the burden of proving (1) knowledge on the part of the mortgagee of the nature and extent of the work being performed on the mortgaged premises, and (2) conduct on the part of the mortgagee justifying the expectation and belief that it had consented to the making of the alterations on the credit of the building. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

664.

Lack of notice is no substitute for the consent necessary in § 34 of this chapter. *Carey v. Boulette*, 158 Me. 204, 182 A. (2d) 473.

the commencement of an action, the action may be commenced within 60 days after such adjudication, or after notice given of the election or appointment of the assignee in insolvency, executor or administrator, or the revocation of the warrant. The lien shall be extended accordingly. (R. S. c. 164, § 39. 1959, c. 317, § 392.)

Effect of amendment.—The 1959 amendment divided the section into two sentences, substituted “an action” for “a suit” preceding “the action” and deleted “in law or equity” following “the action” in the

first sentence of this section.

Effective date of 1959 amendment.—See note to § 14.

Cited in State v. Crommett, 151 Me. 188, 116 A. (2d) 614.

Sec. 40. Necessary allegations of complaint; other lienors may join and be made parties, also mortgagees.—The complaint shall state that the plaintiff claims a lien on the house, building or appurtenances, or on the wharf, pier or building thereon, as the case may be, described therein, and the land on which it stands, for labor or services performed or for labor, materials or services furnished, in erecting, altering, moving or repairing said house, building or appurtenances, or in constructing, altering or repairing said wharf, pier or building thereon, as the case may be; whether it was by virtue of a contract with or by consent of the owner, and if not, that the claimant has complied with section 36. The complaint shall pray that the property be sold and the proceeds applied to the discharge of such lien. Two or more lienors may join in filing and prosecuting such a complaint. Other lienors may be made parties. Other lienors may become parties and preserve and enforce their liens on said property, provided their complaints therefor, setting forth their claims in substance as required in a complaint be filed with the clerk within 90 days after the last labor or services are performed or the last labor, materials or services are furnished by them or within the additional time prescribed in section 39. The court may consolidate 2 or more actions claiming liens on the same property into one proceeding, if justice shall so require. Any mortgagee or other person having a claim upon, or interested legally or equitably in, said property may be made a party. The court shall have power to determine all questions of priority of lien or interest, if any, between parties to the proceeding. (R. S. c. 164, § 40. 1949, c. 19, § 6. 1959, c. 317, § 393.)

Effect of amendment.—The 1959 amendment divided the fourth sentence into two sentences; substituted “c o m p l a i n t” for “bill” in the first, second, third and fifth sentences; deleted “the provisions of” preceding “section 36” in the first sentence; substituted “complaints” for “petitions,”

deleted “as aforesaid” following “complaint” and following “them” and substituted “section 39” for “the preceding section” in the fifth sentence; and substituted “actions” for “bills” in the sixth sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 41. Amount determined by jury trial or otherwise. — The court shall determine the amount for which each lienor has a lien upon the property by jury trial, if either party so requests in complaint or answer; otherwise in such manner as the court shall direct. Such determination shall be conclusive as to the fact and amount of the lien, subject to appeal as in other actions. Any lienor may contest another lienor’s claim upon issues framed under direction of the court. (R. S. c. 164, § 41. 1959, c. 317, § 394.)

Effect of amendment.—The 1959 amendment substituted “complaint” for “bill, petition” in the first sentence and “as in other actions” for “and exceptions according to

the practice in equity” in the second sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 42. Court may decree that property be sold; redemption; lienors to share pro rata.—If it is determined that the parties or any of them, claiming a lien, have a lien upon said building and land or upon said wharf, pier, building and land, the court may decree that said property, or such interest in it as is subject to the liens or any of them, shall be sold, and shall prescribe the place, time, terms, manner and conditions of such sale. The court may order an

adjournment of such sale from time to time, or the manner and conditions of any adjournment of such sale may be prescribed in the decree. A deed of the officer of the court, appointed to make such sale, recorded in the registry of deeds where the land lies, within 3 months after the sale, shall convey all the title of the debtor and the owner in the property ordered to be sold. If justice requires, the court may provide in the order of sale that the owner shall have a right to redeem the property from such sale within a time fixed in the order of sale. If the court shall determine that the whole of the land on which the lien exists is not necessary therefor, it shall describe in the order of sale a suitable lot therefor; and only so much shall be sold. The lienors shall share pro rata, provided their complaints or motions therefor are filed with the clerk of courts prior to the order of sale and within the time mentioned in sections 38, 39 and 40. The court may make such decree in regard to costs as is equitable. (R. S. c. 164, § 42. 1951, c. 67. 1961, c. 317, § 606.)

Effect of amendment.—The 1961 amendment divided the former first sentence of this section into three sentences and substituted "The court" for "any justice, in term time or vacation" at the beginning of

the present second sentence and "complaints or motions" for "bills or petitions" in the present sixth sentence.

Cited in E. A. Thompson Lumber Co. v. Heald, 157 Me. 78, 170 A. (2d) 156.

Sec. 43. If proceeds insufficient to pay claims, court may render judgment for balance.

Inclusion of non-lienable items in judgment.—This section does not prevent the inclusion in a deficiency lien judgment of non-lienable items found to be due from the contractor. E. A. Thompson Lumber Co. v. Heald, 157 Me. 78, 170 A. (2d) 156.

Ascertainment of debt which underlies the lien is an essential part of a proceeding

under this section, and equity should finally resolve all of the issues which are inextricably related in the controversy. E. A. Thompson Lumber Co. v. Heald, 157 Me. 78, 170 A. (2d) 156.

Procedure under this section.—See E. A. Thompson Lumber Co. v. Heald, 157 Me. 78, 170 A. (2d) 156.

Sec. 44. Clerk shall file certificate with register of deeds.—When any complaint provided for in this chapter in which a lien is claimed on real estate is filed with the clerk, he shall forthwith file a certificate, setting forth the names of the parties, the date of the complaint and of the filing thereof, and a description of the said real estate as described in said complaint, in the registry of deeds for the county or district in which the land is situated. (R. S. c. 164, § 44. 1959, c. 317, § 395.)

Effect of amendment.—The 1959 amendment substituted "complaint" for "bill or petition" at three places in the section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 45. Liens mentioned in §§ 34-37 enforced by attachment. — In addition to the remedy provided, the liens mentioned in sections 34 to 37 may be enforced by attachment in actions commenced in any court having jurisdiction in the county where the property on which a lien is claimed is situated, which attachment shall be made within 90 days after the last of the labor or services are performed, or labor, materials or services are furnished, and not afterwards, except as provided in section 39. (R. S. c. 164, § 45. 1949, c. 19, § 7. 1959, c. 317, § 396.)

Effect of amendment.—The 1959 amendment deleted "hereinbefore" following "remedy," substituted "sections 34 to 37" for "sections 34, 35, 36 and 37," and deleted "at law" following "actions."

Effective date of 1959 amendment.—See note to § 14.

Applied in Carey v. Boulette, 158 Me. 204, 182 A. (2d) 473.

Sec. 46. Owner may petition for release. — Any owner of a building, wharf, pier or real estate upon which a lien is claimed may petition in writing a justice of the superior court setting forth the name of the lienor, the court and

county in which the action is pending, the fact that a lien is claimed thereon under sections 34 to 37, the particular building, wharf, pier or real estate, and his interests therein, its value and his desire to have it released from said lien. Such justice shall issue a written notice which shall be served on the lienor or his attorney 10 days at least prior to the time fixed therein for a hearing. At the hearing, such justice may order such owner to give bond to the lienor in such amount and with such sureties as he may approve, conditioned to pay the amount for which such lienor may be entitled to a lien as determined by the court, with his costs in the action, within 30 days after final decree or judgment. The clerk shall give the plaintiff an attested copy of the complaint and proceedings, with a certificate under seal of the court attached thereto, that such bond has been duly filed in his office. The record of such copy and certificate in the registry of deeds, in the county or district where such real estate or interest therein lies, vacates the lien. (R. S. c. 164, § 46. 1959, c. 317, § 397.)

Effect of amendment.—The 1959 amendment divided the fourth sentence into two sentences; deleted “in term time or vacation” following “superior court,” “bill in equity or” preceding “action,” “at law” following “action” and “returnable or” preceding “pending,” and substituted “sections 34 to 37” for “the provisions of sections 34,

35, 36 and 37” in the first sentence; substituted “in the action” for “on the petition” in the third sentence; and substituted “plaintiff” for “petitioner” and “complaint” for “petition” in the fourth sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 47. Proceedings pending at same time transferred to one court.—When 2 or more proceedings are pending at the same time, in whatever court or courts, to enforce liens on the same house, building or appurtenances, wharf, pier and building thereon, upon complaint of any lienor who has commenced such proceedings, or of the owner of the building, wharf or pier, a justice of the superior court after notice and hearing may, if justice requires it, order all such actions to be transferred to the superior court and require the parties in all such proceedings, in whatever court commenced, to plead substantially in the manner prescribed in section 40, and thereafter all the proceedings shall be in accordance with the provisions of said section and sections 48 to 52. While such complaint is pending all such actions shall stand continued. (R. S. c. 164, § 47. 1959, c. 317, § 398.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 48. Property taken and sold on execution to satisfy judgment; proceedings when two or more rendered at same term; redemption.—When a judgment is rendered in any action authorized by this chapter against any house, building or appurtenances, wharf, pier or building thereon, and the land on which it stands, or any interest that the owner of such house, building or appurtenances, wharf or pier has in such land, said property shall be taken and sold on execution in the same manner that rights of redeeming mortgaged real estate may be taken and sold. If 2 or more such judgments are rendered at the same term of the same court, the court shall direct in writing on which execution the property shall be sold, and in that event, and also in the event that the officer holding any execution recovered under this chapter shall be notified in writing by any lienor who has caused said property to be attached or who has filed his action claiming a lien as provided, that he claims a portion of the proceeds of the sale, said officer, unless all owners of such judgments and all lienors so notifying such officer otherwise direct, shall thereupon sell said property and after deducting the fees and expenses of sale, shall return the balance into the court of highest jurisdiction in which any such lien action is pending or in which such a lien judgment has been rendered, and such court shall distribute such fund pro rata among the lienors who shall satisfactorily prove their right to share in the same. The court issuing execution on which the sale is made may fix the time within which the

owner shall have the right to redeem the property from such sale. The court distributing the fund may make such decree in regard to costs as is equitable. Any balance not required to pay such lien claims and costs shall be paid to the person or persons legally or equitably entitled thereto. (R. S. c. 164, § 48. 1959, c. 317, § 399. 1961, c. 317, § 607.)

Effect of amendments. — The 1959 amendment deleted “the provisions of” preceding “this chapter,” deleted “as aforesaid” twice, once following “attached” and once preceding “and after,” substituted “action claiming a lien” for “bill in equity,” deleted “herein” preceding “provided,” and

substituted “action” for “suit” in the second sentence of this section.

The 1961 amendment substituted “action” for “suit” near the beginning of the first sentence.

Effective date of 1959 amendment.—See note to § 14.

Liens on Logs, Lumber, Wood and Bark.

Sec. 53. Boomage paid by officer; lien not defeated by taking note; notice.—The officer making such attachment may pay the boomage thereon, not exceeding the rate per thousand on the quantity actually attached by him, and return the amount paid on the writ of attachment, which shall be included in the damages recovered. The action or lien is not defeated by taking a note, unless it is taken in discharge of the amount due and of the lien. Such notice of the action as the court orders shall be given to the owner of the logs or lumber, and he may be admitted to defend it. (R. S. c. 164, § 53. 1959, c. 317, § 400. 1961, c. 317, § 608.)

Effect of amendments. — The 1959 amendment added “of attachment” after “writ” in the first sentence of this section.

The 1961 amendment substituted “ac-

tion” for “suit” near the beginning of the last sentence.

Effective date of 1959 amendment.—See note to § 14.

Liens on Vehicles.

Sec. 62. Liens on vehicles, aircraft and parachutes.

Possession need not be retained for preservation of lien.—Possession need not be retained by a garageman for preservation of his statutory lien for repairs. *Universal C. I. T. Credit Corp. v. Lewis*, 150 Me. 337, 110 A. (2d) 595.

Garageman may treat vendee under unrecorded conditional sale contract as owner.—Until a conditional sales agreement is properly recorded, a garageman

may properly treat a conditional vendee as owner under the lien statutes. *Universal C. I. T. Credit Corp. v. Lewis*, 150 Me. 337, 110 A. (2d) 595.

Repossession by a conditional vendor is not a “changed ownership” within the meaning of the last sentence of this section. *Universal C. I. T. Credit Corp. v. Lewis*, 150 Me. 337, 110 A. (2d) 595.

Sec. 63. Lien claim filed in office of town clerk; inaccuracy of statement does not invalidate lien.

Applied in *Universal C. I. T. Credit Corp. v. Lewis*, 150 Me. 337, 110 A. (2d) 595.

Liens on Monumental Work.

Sec. 68. Lien on monumental work.—Whoever, under express contract fixing the price to be paid by the other party thereto, sells, erects or furnishes any monument, tablet, headstone, vault, posts, curbing or other monumental work has a lien thereon to secure the payment of such contract price, which continues for 2 years after the completion, delivery or erection of such monument, tablet, headstone, vault, posts, curbing or other monumental work. Such lien may be enforced by an action for damages with an attachment, which shall be recorded within said 2 years by the clerk of the town in which the property subject to the lien is then situated; or such lien may be enforced by complaint set-

ting forth the names and residences of the parties to the contract, the contract price, the sum due, the description and location of the property on which the lien is claimed and such other facts as are necessary to make it appear that such plaintiff is entitled to an enforcement of such lien, and praying for judgment for title and possession of the property therein described. Said complaint, before service thereof and within said 2 years, shall be recorded by the clerk of the town in which such property is situated and a certificate of such record indorsed thereon. The sum alleged to be due shall be deemed to be the damage and after the complaint has been recorded, an action may be commenced upon the complaint in any court of proper venue for a transitory action between the parties. Service shall be made as in other actions. If the plaintiff prevails, he shall recover judgment for title and possession of the property on which the lien is claimed, and for his costs, and a possessory execution may issue. By virtue of such judgment the judgment creditor, if unopposed, may take possession and remove the property described in his execution, otherwise any officer qualified to serve civil process, having said execution, may take possession of said property and deliver the same to the judgment creditor, and shall make his return on said execution accordingly. Said lien may be discharged at any time before final judgment by tendering the plaintiff the amount of the debt and costs. (R. S. c. 164, § 67. 1959, c. 317, § 401.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

General Provisions for Enforcement and Discharge.

Sec. 72. Lien attachments have precedence; upheld although debtor dies and estate insolvent.—Actions to enforce any of the liens before named have precedence over attachments and encumbrances made after the lien attached and not made to enforce a lien, and may be maintained although the employer or debtor is dead and his estate has been represented insolvent. His executor or administrator may be summoned and held to answer to an action brought to enforce the lien. The complaint must show that the action is brought to enforce the lien; but all the other forms and proceedings therein shall be the same as in other actions. (R. S. c. 164, § 71. 1959, c. 317, § 402.)

Effect of amendment.—The 1959 amendment divided the first sentence into two sentences, substituted "Actions" for "Suits" at the beginning of the first sentence, substituted "over" for "of" following "precedence" in the first sentence, and sub-

stituted "complaint" for "declaration," "action" for "suit" and "other actions" for "ordinary actions of assumpsit" in the last sentence.

Effective date of 1959 amendment.—See note to § 14.

Sec. 74. Appearance of owner.—In all lien actions, when the labor or materials were not furnished by a contract with the owner of the property affected, such owner may voluntarily appear and become a party to the action. If he does not so appear, such notice of the action as the court orders shall be given him and he shall then become a party to the action. (R. S. c. 164, § 73. 1961, c. 317, § 609.)

Effect of amendment.—The 1961 amendment substituted "action" for "suit" in three places in this section.

Enforcement of Liens on Goods in Possession and Choses in Action.

Sec. 76. Enforcement by sale.—Whoever has a lien on personal property in his possession which is not covered by article 9 of chapter 190 may enforce it by a sale thereof in the manner provided for in the contract creating

such lien, if in writing, or as hereinafter provided for in sections 77 to 83. (R. S. c. 164, § 75. 1963, c. 362, § 32.)

Effect of amendment.—The 1963 amendment, effective December 31, 1964, rewrote this section.

Sec. 77. Complaint filed; contents.—The person claiming the lien may file, in the superior court in the county where he resides a complaint briefly setting forth the nature and amount of his claim, a description of the article possessed and the names and residences of its owners, if known to him, and a prayer for enforcement of his lien. (R. S. c. 164, § 76. 1959, c. 317, § 403.)

Effect of amendment.—The 1959 amendment deleted “or in the office of the clerk thereof” following “resides” and substituted “complaint” for “petition” and “enforcement of” for “process to enforce” in this section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 78. Service if names of owners set forth in complaint.—If the names of the owners are set forth in the complaint, service shall be made as in other actions. (R. S. c. 164, § 77. 1959, c. 317, § 404.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 79. Service on owners, when unknown.—If the identity or whereabouts of the owners are not known, notice shall be given by publication as in other actions where publication is required. (R. S. c. 164, § 78. 1959, c. 317, § 405.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—See note to § 14.

Sec. 80. Appearance by owner.—Any person interested in the article as owner, mortgagee or otherwise may appear and defend. Questions of fact at the instance of either party shall be submitted to a jury on an issue framed under the direction of the court. (R. S. c. 164, § 79. 1959, c. 317, § 406.)

Effect of amendment.—The 1959 amendment rewrote the first sentence of this section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 81. Owner required to give bond for costs.—If, in the opinion of the court, the article on which the lien is claimed is not of sufficient value to pay the plaintiff's claim with the probable costs of suit, the court may order the defendant to give bond to the plaintiff, with sufficient sureties approved by the court, to pay such costs as are awarded against him, so far as they are not paid out of the proceeds of the articles on which the lien is claimed. (R. S. c. 164, § 80. 1959, c. 317, § 407.)

Effect of amendment.—The 1959 amendment substituted “plaintiff's” for “petitioner's” and “plaintiff” for “petitioner.”

Effective date of 1959 amendment.—See note to § 14.

Sec. 82. Court may order property sold to pay lien.—After trial and final adjudication in favor of the plaintiff, the court may order any competent officer to sell the article on which the lien is claimed, as personal property is sold on execution, and out of the proceeds, after deducting his fees and the expenses of sale, to pay to the plaintiff the amount and costs awarded him, and the balance to the person entitled to it, if he is known to the court, otherwise into court. (R. S. c. 164, § 81. 1959, c. 317, § 408.)

Effect of amendment.—The 1959 amendment substituted “plaintiff” for “petitioner” twice in this section.

Effective date of 1959 amendment.—See note to § 14.

Sec. 83. Disposal of proceeds.—Money paid into court may be paid over to the person legally entitled to it, on motion and order of the court. If it is not called for at the first term after it is paid into court, it shall be paid into the county treasury. If afterwards the person entitled to it upon motion establishes his claim to it, the court may order the county treasurer to pay it to him. (R. S. c. 164, § 82. 1961, c. 317, § 610.)

Effect of amendment.—The 1961 amendment divided the former second sentence of this section into two sentences, substituted “motion” for “petition” in the pres-

ent first sentence and substituted “upon motion” for “petitions and” in the present last sentence.

Secs. 84, 85. Repealed by Public Laws 1963, c. 402, § 276.

Application of repealing act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the

laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Pledges.

Secs. 86, 87. Repealed by Public Laws 1963, c. 362, § 31.

Cross reference.—For provisions of the Uniform Commercial Code re secured transactions, see c. 190, §§ 9-101 to 9-507.

Effective date.—Section 43, c. 362, P. L. 1963, makes the act effective December 31, 1964.

Chapter 179.

Personal Property Forfeited. Lost Goods. Stray Beasts.

Personal Property Forfeited.

Sec. 4. Inventory and appraisal, if no claimant.—If no person claims the property after such seizure, the party seizing shall cause an inventory and appraisal thereof to be made by 3 disinterested persons, under oath, appointed by a justice of the peace in the county; which shall be the rule for deciding in what court the complaint shall be filed. (R. S. c. 165, § 4. 1961, c. 317, § 611.)

Effect of amendment.—The 1961 amendment substituted “complaint” for “libel” near the end of this section.

Sec. 5. If value exceeds \$20, complaint filed in superior court; notice.—If the value of the property seized exceeds \$20, the party seizing, within 20 days, shall file a complaint in the clerk’s office of the superior court in the county where the offense was committed, stating the cause of seizure and praying for an order of forfeiture. The clerk shall thereupon make out a notice to all persons to appear at such court at the time appointed to show cause why such order should not be passed, which notice shall be published in some newspaper printed in the county, if any, if not, in the state paper, at least 14 days before the time of trial. (R. S. c. 165, § 5. 1961, c. 317, § 612.)

Effect of amendment.—The 1961 amendment substituted “complaint” for “libel” and “an order” for “a decree” in the first sentence of this section and substituted “order” for “decree” in the second sentence.

Sec. 6. Court may order party seizing to give bond.—When there is a claimant, the court may order the party seizing to give bond to him with sufficient surety for the safekeeping of the property seized, compliance with the order of court for restoration, and the payment of costs and damages, if not forfeited, and may hear and determine the cause by a jury, or without, if the parties agree, and may allow costs against the claimant. If there is no claimant, the court shall