

MAINE STATE LEGISLATURE

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OF THE
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CHARLOTTESVILLE, VIRGINIA
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Proceedings at Law to Quiet Title.

Sec. 48. Summary proceedings to quiet title to real estate.

Concurrent remedies.—Proceedings to quiet title may be brought either at law under the provisions of §§ 48 to 51, inclusive, of this chapter, or in equity under the provisions of §§ 52 to 55, inclusive. The remedies are concurrent and

the mere fact that an alternative remedy at law is provided does not defeat equity jurisdiction in this instance. *Socec v. Maine Turnpike Authority*, 152 Me. 326, 129 A. (2d) 212.

Proceedings in Equity to Quiet Title.

The fact that a concurrent remedy at law exists, etc.

In accord with 1st paragraph in origi-

nal. See *Socec v. Maine Turnpike Authority*, 152 Me. 326, 129 A. (2d) 212.

Chapter 176.

Partition of Real Estate.

Sec. 13. Commissioners appointed.

Commissioners decide questions relating to valuation and division of land.—The legislature has placed in the commissioners, and not in the court, the responsibility

for deciding questions relating to the valuation and division of real estate. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Sec. 21. Report; judgment; effect.

The court may confirm, recommit, or set aside, but may not alter or change the report. The final decision upon the partition must come from the commissioners. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

for partition. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Report set aside or recommitted for bias, prejudice or gross error.—If the commissioners reach their result through bias or prejudice, or gross error clearly and unmistakably shown, the report should be set aside or recommitted. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Grounds for objection to confirmation.—The report is not final. Commissioners must follow the warrant, and failure so to do is good ground for objection to the confirmation of the report. There must be no irregularities in procedure. Examples are: lack of proper notice by the commissioners; the report not showing equal division as to value; and the appraisal of a building by commissioners when the duty to appraise was not included in the judgment

Unequal allotments.—The action of commissioners in partition will not be set aside on the ground of unequal allotments except in extreme cases. *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Evidence to be considered by court in passing on objections.—See *Morse v. Morse*, 150 Me. 174, 107 A. (2d) 496.

Chapter 178.

Mortgages of Personal Property. Liens. Pledges.

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.

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 perform-

ance 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

Sec. 35. Lien prevented.

Section presupposes that owner has knowledge, etc.

In accord with original. See *Bangor*

Sec. 39. Lien extended.

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

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.

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

IV. CONTRACT WITH OR CONSENT OF OWNER.

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.

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.

Roofing & Sheet Metal Co. v. Robbins Plumbing Co., 151 Me. 145, 116 A. (2d) 664.

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.