

the Warren County Record, a newspaper published at Indianola, Iowa, without expense to the state.

Approved March 15, 1876.

I hereby certify that the foregoing act was published in the *Iowa State Register*, March 23, and in the *Warren County Record*, March 23, 1876.

JOSIAH T. YOUNG, *Secretary of State*.

CHAPTER 99

TO PROVIDE FOR PAINTING THE PORTRAIT OF ANSEL BRIGGS.

S. F. 188. AN ACT to Appropriate money for Painting the Portrait of Hon. Ansel Briggs, first Governor of the State of Iowa.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That there be appropriated from any money in treasury of the state of Iowa, not otherwise appropriated, the sum of one hundred and twenty-five dollars, or such sum as may be necessary, for the purpose of procuring the portrait of Honorable Ansel Briggs, the first governor of said state of Iowa, that the same may be placed with the portraits of the other chief executives of said state in the state house.

\$125 appropriated.

Executive Council to engage artist.

SEC. 2. The executive council may engage a suitable artist to paint such portrait, and at a price not exceeding the amount hereby appropriated, making the acceptance and payment therefor to depend on such picture being, when painted, satisfactory to said executive council. When such portrait is so painted and accepted, the said council may order the agreed price audited and allowed and paid from this appropriation.

Approved March 15, 1876.

CHAPTER 100.

RELATING TO MECHANICS' LIENS.

S. F. 142. AN ACT Repealing Chapter 8, of Title 14, of the Code, and providing for Mechanics' Liens.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. Chapter eight, of title 14, of the Code, titled "Of Mechanics' Liens," is hereby repealed; *provided*, that this repeal shall not *effect* [affect] any contract already made, executed, or executory, or impair any right whatever, arising under the law hereby repealed.

Code, chap. 8, title XIV. repealed. Not to affect any contract already made.

SEC. 2. No person shall be entitled to a mechanic's lien, who, at the time of executing or making the contract for furnishing material or performing labor, as hereinafter provided; or during the progress of the work, erection, building or other improvement, shall take any collateral security on such contract. But after the completion of such work, and when the contractor or other person shall have become entitled to claim, or have a lien, the taking collateral or other security shall not affect the right to such mechanic's lien, unless such new security shall be by express agreement given and received in lieu of the mechanic's lien.

Collateral security: prevents a lien.

Except.

SEC. 3. Every mechanic, or other person who shall do any labor upon, or furnish any materials, machinery, or fixtures, for any building, erection or other improvement, upon land, including those engaged in the construction or repair of any work of internal improvement, by virtue of any contract with the owner, his agent, trustee, contractor, or sub-contractor, upon complying with the provisions of this chapter, shall have for his labor done, or materials, machinery or fixtures furnished, a lien upon such building, erection or improvement, and upon the land belonging to such owner on which the same is situated, to secure the payment of such labor done, or materials, machinery, or fixtures furnished.

Who may have a lien.

SEC. 4. The entire land upon which any such building, erection, or other improvement is situated, including that portion of the same not covered therewith, shall be subject to all liens created by this chapter, to the extent of all the right, title and interest owned therein by the owner thereof, for whose immediate use or benefit such labor was done or things furnished, and when the interest owned in said land by such owner of such building, erection or other improvement is only a lease hold interest, the forfeiture of such lease for the non-payment of rent, or for non-compliance with any of the other stipulations therein, shall not forfeit or impair such liens so far as concerns such buildings, erections and improvements, but the same may be sold to satisfy said lien, and be moved within thirty days after the sale thereof by the purchaser.

Extent of lien.

SEC. 5. And when such material shall have been furnished or labor performed, in the construction, repair, or equipment of any railroad, canal, viaduct, or other similar improvement, the lien therefor shall extend and attach to the erection, excavations, embankments, bridges, road-bed, and all land upon which the same may be situated, including the rolling stock thereto appertaining and belonging; all of which, except the easement or right of way, shall constitute the building, erection or improvement provided and mentioned in this statute.

Extent of lien on work of internal improvement.

SEC. 6. Every person, whether contractor or sub-contractor, who wishes to avail himself of the provisions of this statute, shall file with the clerk of the district court of the county in which the building, erection or other improvement to be charged with the lien is situated, a just and true statement or account of the demand due him after allowing all credits, setting forth the time when

Contractor or sub-contractor to make and file statement.

such material was furnished or labor performed, and when completed, and containing a correct description of the property to be charged with the lien, and verified by affidavit. Such verified statement or account must be filed by a principal contractor, within ninety days, and by a sub-contractor within thirty days from the date on which the last of the material shall have been furnished, or the last of the labor was performed. But a failure or omission to file the same within the periods last aforesaid, shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, That where a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which such labor was done or material furnished, within which to file his claim therefor.

Time of filing. such material was furnished or labor performed, and when completed, and containing a correct description of the property to be charged with the lien, and verified by affidavit. Such verified statement or account must be filed by a principal contractor, within ninety days, and by a sub-contractor within thirty days from the date on which the last of the material shall have been furnished, or the last of the labor was performed. But a failure or omission to file the same within the periods last aforesaid, shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, That where a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which such labor was done or material furnished, within which to file his claim therefor.

Failure to file shall not defeat the lien. or omission to file the same within the periods last aforesaid, shall not defeat the lien, except against purchasers or encumbrancers in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, That where a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which such labor was done or material furnished, within which to file his claim therefor.

Except. in good faith without notice, whose rights accrued after the thirty or ninety days, as the case may be, and before any claim for the lien was filed; *Provided*, That where a lien is claimed upon a railway, the sub-contractor shall have sixty days from the last day of the month in which such labor was done or material furnished, within which to file his claim therefor.

Sub-contractor must give notice of filing claim. To preserve his lien as against the owner and to prevent payments by the latter to the principal contractor or to intermediate sub-contractors, but for no other purpose, the sub-contractor must, within the thirty days as provided in section six (6) serve upon such owner, his agent or trustee, a written notice of the filing of said claim, which notices may be served by any sheriff or constable, or other person; and if the party to be served, his agent or trustee, is out of the county wherein the property is situated a return of that fact by the officers shall constitute sufficient service from and after it is filed with the clerk. But the lien of the sub-contractor may at any time be vacated and discharged by the owner, contractor, or intermediate sub-contractor, *filed* [filing] with the clerk of the said district court a bond in twice the amount of the sum for which the mechanic's lien is claimed and filed with two or more sureties to be approved by the clerk, conditioned for the payment of any sum for which the mechanic may obtain judgment upon the demand of which such statement or account has been filed. But if no claim for a lien is filed within the periods hereinbefore provided and the notice thereof is not served, or if such thing being done and the bond as above provided is filed, then the owner or contractor may thereafter proceed, make payments and adjust their claims, without regard to the lien of the sub-contractor, and nothing in this act contained shall be construed to require the owner to pay a greater amount or in any other manner or at earlier dates than those provided in his contract. But the liens created by this act are for the full enforcement thereof for the use and benefit of the holders of said liens.

Sufficient service. To preserve his lien as against the owner and to prevent payments by the latter to the principal contractor or to intermediate sub-contractors, but for no other purpose, the sub-contractor must, within the thirty days as provided in section six (6) serve upon such owner, his agent or trustee, a written notice of the filing of said claim, which notices may be served by any sheriff or constable, or other person; and if the party to be served, his agent or trustee, is out of the county wherein the property is situated a return of that fact by the officers shall constitute sufficient service from and after it is filed with the clerk. But the lien of the sub-contractor may at any time be vacated and discharged by the owner, contractor, or intermediate sub-contractor, *filed* [filing] with the clerk of the said district court a bond in twice the amount of the sum for which the mechanic's lien is claimed and filed with two or more sureties to be approved by the clerk, conditioned for the payment of any sum for which the mechanic may obtain judgment upon the demand of which such statement or account has been filed. But if no claim for a lien is filed within the periods hereinbefore provided and the notice thereof is not served, or if such thing being done and the bond as above provided is filed, then the owner or contractor may thereafter proceed, make payments and adjust their claims, without regard to the lien of the sub-contractor, and nothing in this act contained shall be construed to require the owner to pay a greater amount or in any other manner or at earlier dates than those provided in his contract. But the liens created by this act are for the full enforcement thereof for the use and benefit of the holders of said liens.

Lien may be discharged by filing bond. To preserve his lien as against the owner and to prevent payments by the latter to the principal contractor or to intermediate sub-contractors, but for no other purpose, the sub-contractor must, within the thirty days as provided in section six (6) serve upon such owner, his agent or trustee, a written notice of the filing of said claim, which notices may be served by any sheriff or constable, or other person; and if the party to be served, his agent or trustee, is out of the county wherein the property is situated a return of that fact by the officers shall constitute sufficient service from and after it is filed with the clerk. But the lien of the sub-contractor may at any time be vacated and discharged by the owner, contractor, or intermediate sub-contractor, *filed* [filing] with the clerk of the said district court a bond in twice the amount of the sum for which the mechanic's lien is claimed and filed with two or more sureties to be approved by the clerk, conditioned for the payment of any sum for which the mechanic may obtain judgment upon the demand of which such statement or account has been filed. But if no claim for a lien is filed within the periods hereinbefore provided and the notice thereof is not served, or if such thing being done and the bond as above provided is filed, then the owner or contractor may thereafter proceed, make payments and adjust their claims, without regard to the lien of the sub-contractor, and nothing in this act contained shall be construed to require the owner to pay a greater amount or in any other manner or at earlier dates than those provided in his contract. But the liens created by this act are for the full enforcement thereof for the use and benefit of the holders of said liens.

Extent of lien if claim is filed after expiration of thirty days. A sub-contractor may at any time after the expiration of said thirty days, file his claim for a mechanic's lien, with the clerk of the district court, as hereinbefore provided, and give written notice thereof to the owner, his agent or trustee, as provided in section seven (7) and from and after the service of such notice his lien shall have the same force and effect, and be prosecuted or vacated by bond, as if filed within the thirty days; but shall be enforced against the property or upon the bond, if given by the owner only to the extent of the balance due from the owner to the contractor at the time of the service of such notice

upon the owner, his agent or trustee. But if in such case the bond is given by the contractor or person contracting with the sub-contractor filing the claim for a lien, such bond shall be enforced to the full extent of the amount found due the sub-contractor.

SEC. 9. The mechanic's lien provided for by this statute shall take priority as follows: Priority.

First. As between persons claiming mechanics' liens upon the same property, according to the order of the filing of the statements and accounts therefor.

Second. They shall take priority to all garnishments upon the person of the owner for the contract debt, made prior or subsequent to the commencement of the furnishing of the material or performance of the labor, without regard to the date of filing the claim for mechanic's lien. Over garnishments.

Third. They shall be preferred to all other liens and incumbrances which may be attached to or upon such building, erection or other improvements, or either of them, and to the land upon which they are situated, made subsequent to the commencement of said building, erection or other improvement. *Provided,* That the rights of purchasers, *encumbrances* [encumbrancers] and other persons, who acquire interests in good faith for valuable consideration, and without notice after the expiration of the time for filing claims for liens as provided in section six (6), shall be prior and paramount to the claims of all contractors or sub-contractors, who have not, at the date such rights and interests were acquired, filed their claims for mechanics' liens. Over all other liens and incumbrances. Proviso: interests in good faith without notice.

Fourth. The liens for the things aforesaid or the work, including those for additions, repairs and betterments, shall attach to the buildings, erections or improvements for which they were furnished or done, in preference to any prior lien or encumbrance or mortgage upon the land upon which such erection, building or improvement belongs, or is erected or put. If such material was furnished or labor performed in the erection or construction of an original and independent building, erection or other improvement commenced since the attaching or execution of such prior lien, encumbrance or mortgage, the court may in its discretion order and direct such building, erection or improvement to be separately sold under execution, and the purchaser may remove the same within such reasonable time as the court may fix. But if in the discretion of the court such building should not be separately sold, the court shall take an account and ascertain the separate values of the land, and the erection, building or other improvement, and distribute the proceeds of sale so as to secure to the prior mortgage or other lien, priority upon the land, and to the mechanic's lien, priority upon the building, erection, or other improvement. If the material furnished or labor performed was for addition to, repairs of, or betterments upon buildings, erections or other improvements, the court shall take an account of the values before such material was furnished or labor performed, and the enhanced value caused by such additions, repairs or betterments and upon the sale of the premises, distribute Shall attach any building &c. in preference to prior lien on land where building is situated. Court may direct building to be sold separately. Where labor was on additions, the mechanic's lien shall take priority on enhanced value caused by such repairs.

the proceeds of sale so as to secure to the prior mortgage or lien priority upon the land and improvements as they existed prior to the attaching of the mechanic's lien, and to the mechanic's lien priority upon the enhanced value caused by such additions, repairs or betterments. In case the premises do not sell for more than sufficient to pay off the prior mortgage or other lien, the proceeds shall be applied on the prior mortgage or other liens.

Definition of "owner." SEC. 10. Every person for whose immediate use or benefit of any building, erection, or other improvement is made, having the capacity to contract, including guardians of minors, or other persons shall be included in the word "owner" thereof.

Definition of "sub-contractor." SEC. 11. All persons furnishing things or doing work provided for by this act shall be considered sub-contractors, except such as have therefor contracts directly with the owner, proprietor, his agent or trustee.

Lien—How enforced. SEC. 12. Any person having filed a claim for a lien by virtue of this chapter, may at once bring suit to enforce the same, or upon any bond given in lieu thereof, in the district or circuit court of the county wherein the property is situated.

Suit shall be begun on demand, or lien forfeited. SEC. 13. Upon the written demand of the owner, his agent or contractor, served on the person claiming the lien requiring him to commence suit to enforce such lien, such suit shall be commenced in thirty days thereafter, or the lien shall be forfeited. The mechanic's liens are assignable, and shall follow the assignment of the debt; and where such lien is for personal services, the same shall be exempt from execution, as now provided for such services.

Assignable. SEC. 14. The clerk of the district court shall endorse upon every account or statement the date of its filing, and make the abstract thereof in a book by him to be kept for that purpose, and properly indexed, containing the date of its filing, the name of the person filing the lien, the amount of the lien, the name of the person against whom the lien is filed, and a description of the property to be charged with the same.

Duty of clerk. SEC. 15. Whenever a lien has been claimed by filing the same in the clerk's office, and is afterwards paid, the creditor shall acknowledge satisfaction thereof upon the proper book in such office, or otherwise, in writing; and if he neglect to do so for ten days after the demand, he shall forfeit and pay twenty-five dollars to the owner or contractor and be liable to any person injured, to the extent of his injury.

Acknowledgment of satisfaction; penalty for failure. Approved March 15, 1876.