

An. Code, sec. 1. 1904, sec. 1. 1888, sec. 1. 1838, ch. 205, sec. 1. 1845, ch. 176, sec. 3. 1898, ch. 502. 1902, ch. 432. 1910, ch. 52 (p. 564).

1. Every building erected and every building repaired, rebuilt or improved to the extent of one-fourth its value in Baltimore city and in any of the counties shall be subject to a lien for the payment of all debts contracted for work done for or about the same, and in the counties every such building shall also be subject to a lien for the payment of all debts contracted for materials furnished for or about the same.¹

When a lien exists.

Material man's right to the lien is not affected by whether owner has money in his hands due builder, or whether former has performed his contract with latter. *Treusch v. Shryock*, 51 Md. 173.

It is no defense to mechanics' lien claim that the materials were furnished on personal credit of contractor, or that there was no contract between material man and owner. *Agency. Blake v. Pitcher*, 46 Md. 465; *Sodini v. Winter*, 32 Md. 134.

Before owner can be made responsible for materials furnished contractor, an active and subsisting contract must be established between owner and contractor. *Greenway v. Turner*, 4 Md. 304.

A sub-contractor who does the work in the sense of giving it direction and being responsible for its execution is entitled to lien, and it makes no difference that work was not done on premises erected. *Evans Co. v. International Trust Co.*, 101 Md. 213.

This section held inapplicable because repairs did not amount to one-fourth of value of building. A range, furnace, heaters, registers, etc., for heating a dwelling, are within contemplation of this section. *Stebbins v. Culbreth*, 86 Md. 657. See also *Schaper v. Bibb*, 71 Md. 150; *Weber v. Weatherby*, 34 Md. 659.

Where materials are furnished on a contract with one partner and used by both partners in construction of building, they being owners as well as builders, the lien can be enforced against the other partner and his assignee. *Real Estate Co. v. Phillips*, 90 Md. 528.

A material man's lien will attach although owner of lots upon which houses are built has only an equitable interest. The fact that lien is filed against a lesser interest than it might have been does not destroy lien. *Goldheim v. Clark*, 68 Md. 504.

Fact that part of builder's compensation is to be one of houses built does not affect fastening of lien. *McLaughlin v. Reinhart*, 54 Md. 78.

Lands or buildings belonging to the state (such as a building being erected for Springfield state hospital) are not subject to mechanics' liens; neither secs. 13, 20 nor 41 affect this conclusion. *In re Fowble*, 213 Fed. 676.

Where the cost of a heating plant is not one-fourth of value of building in which it is installed, there can be no lien under this section. *Shacks v. Ford*, 128 Md. 288.

When lienable and non-lienable items are included in one entire contract for a lump sum, there being no apportionment between them, lien cannot be enforced. The fact, however, that in connection with operation of a steam shovel coal, oil, depreciation and profit were included in lump price, does not defeat right to lien (there being no lien in Baltimore city for materials). Cases reviewed. *Gill v. Mullan*, 140 Md. 5.

¹ Art. 63, sec. 1, as repealed and re-enacted by act of 1910, ch. 52 (p. 563), appears as follows in the official acts: "Every building erected and every building repaired, rebuilt or improved to the extent of one-fourth its value in Baltimore city and in any of the counties shall be subject to a lien for the payment of the debts contracted for, work done for, or about the same and in the counties. Every such building shall also be subject to a lien for the payment of all debts contracted for, materials furnished for or about the same." The case of *Dunn v. Brager*, 116 Md. 244, is, however, authority for the above codification of the act of 1910.

Act of 1898, ch. 502, repealed secs. 1, 2, 10, 11, 13, 14, 17, 20, 21, 23, 29, 30, 36 and 42 of this article, so far as these sections relate to Baltimore city, and re-enacted them with amendments limiting the right of lien in Baltimore city to mechanics and workmen for unpaid work and labor and putting an end as to Baltimore city to the lien in favor of material men—see notes to sec. 1. The pre-existing law was not changed by act of 1898 as to the counties.