

When a lien exists.

Mechanics' lien for work and labor on building preferred to unrecorded installment contract of sale of land for unpaid purchase price where vendors of land permitted, without warning or protest, work on improvements ordered by vendee in spite of vendee's default. *Moreland v. Meade*, 162 Md. 95.

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 32 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. 238.

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.

The right to a mechanics' lien is not a vested one, but is a remedy only, created by statute; right to lien depends entirely upon statute, and party seeking remedy must come within provisions of statute. *Maryland Casualty Co. v. Lacios*, 121 Md. 690.

In Baltimore City there is a mechanics' lien only for labor and not for materials. Where an indivisible building contract includes labor and materials, there is in Baltimore City no lien for either. Punctuation is not an essential part of act; act of 1910, ch. 52, interpreted. *Dunn v. Brager*, 116 Md. 244. And see *Dipaula v. Green*, 116 Md. 494.

The sale of a house and lot while the building is in process of erection cannot affect right to a lien of a mechanic previously employed, and who continues to be employed thereafter. *Miller v. Barroll*, 14 Md. 183.

For a case holding that articles were furnished under authority of owner, and hence that lien could be enforced, see *Weber v. Weatherby*, 34 Md. 661. And see *Real Estate Co. v. Phillips*, 90 Md. 527.

Release of certain houses.

Where materials are furnished for two houses, and material man releases his lien as to one of them, he cannot claim lien against the other for materials furnished for house so released. *Wilson v. Wilson*, 51 Md. 160; *Nickel v. Blanch*, 67 Md. 460.

Where there is an entire contract to furnish materials for certain houses, and claimant releases some of houses from his lien, the burden is on parties attacking lien to show which materials went into houses released, and for which therefore there should be no lien. Waiver of liens. *Maryland Brick Co. v. Dunkerly*, 85 Md. 212.

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 1893, ch. 502, repealed secs. 1, 2, 10, 11, 13, 14, 17, 20, 21, 23, 25 and 33 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.