

suckers or stickle back for bait, by means of dip nets.

SECTION 5. No kind of nets, except a gill net for catching fish and a dip net for catching bait, shall be set, used or placed in the waters of Lake Winnebago, and no net except a gill, a hoop and a dip net shall be used, set or placed in the waters of the Wolf and Fox rivers, as described in section 1, of this act, or in Lakes Winneconne, Butte des Morts and Poygan.

Nets, what kind may be used.

SECTION 6. No net of any kind shall be set, used or placed across the mouth of any channel, stream or river tributary to the waters described in section 1, of this act.

Not to be placed across mouth of channel.

SECTION 7. All other acts heretofore passed in reference to fishing in the waters above set forth, and the territory described, are hereby repealed.

Repeal.

SECTION 8. This act shall take effect and be in force from and after its passage and publication. Approved April 16, 1889.

[No. 373, A.]

[Published April 17, 1889.]

## CHAPTER 413.

AN ACT relating to liens upon logs, timber, lumber, cord wood, railroad ties, tan and other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts and staves.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Any person who shall do or perform any labor or services in cutting, felling, hauling, running, driving, rafting, booming, cribbing, towing, sawing, peeling, or manufacturing into lumber, any logs or timber, or cutting any stave bolts or staves, in any of the counties of this state, shall have a lien upon such logs, timber, lumber, cordwood, railroad ties, tan and other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, for the amount due

Liens of persons for labor or services on logs, timber, lumber, etc., to have precedence.

or to become due for such labor or services, which shall take precedence of all other claims or liens thereon.

To file claim for, in office of clerk of circuit court (except when work, etc., done on Wolf River).

**SECTION 2.** No debt or demand for such labor or services done and performed shall remain such lien unless a claim therefor in writing shall be made and signed by the claimant or his attorney, and verified by the claimant or some one in his behalf, in the same manner that pleadings in civil actions may be verified, setting forth the nature of the debt or demand for which the lien is claimed, the amount claimed to be due, describing the logs, timber, lumber, cord-wood, railroad ties, tan or other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, against which the lien is claimed, and that the claimant claims a lien thereon pursuant to this act. Such claim for labor or services done or performed shall be filed in the office of the clerk of the circuit court of the county in which such labor or services were done or performed, except that the claims for any such labor or services done or performed upon logs, timber or lumber gotten out upon the Wolf river or any of its tributaries for the purpose of being run down said river or its tributaries, shall be filed in the office of the clerk of the city of Oshkosh. If the labor or services were done or performed between the first day of November and the first day of May, following, the claim for such lien shall be filed on or before the first day of June next thereafter; and if such labor or services shall have been done or performed after the first day of May and before the first day of November, or if the doing or performing of such labor or services shall be continuous from the first day of November or a day prior thereto, and to a date beyond the first day of May following, the claim for lien shall be filed within thirty days after the last day of doing or performing such labor or services; and such labor or services shall be deemed continuous notwithstanding a change of ownership in said logs, timber, lumber, cord-wood, railroad ties, tan or other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts and staves. The clerk with whom such claim for lien is filed shall receive twenty-five cents for filing each such claim or lien. Any person or persons

When work, etc., done between November 1st and May 1st; claim to be filed by June 1st; when to be filed for work, etc., after that date.

Fees of clerk.

who shall or may claim the right of a lien under the provisions of this act may, at any time after he shall contract to do any work, labor or services as specified herein, file in the office of the clerk of the circuit court of the county in which such labor or services are to be performed or are being performed, a notice stating that he or they shall claim the right of a lien for the labor or services so performed or to be performed, and further stating the name of the person, persons, or corporation for whom such labor and services are to be performed or are being performed, and the clerk of said court shall immediately upon the receipt of such notice file the same in his office and enter the name or names of the person or persons filing the same in his lien docket as the claimant or claimants, and the person, persons or corporation for whom such labor or services is to be performed or are being performed as defendant or defendants; and the clerk of said court shall receive for such filing the sum of fifteen cents. Provided, further, that no particular form of notice shall be required, but a letter setting forth the facts shall be deemed in all things a good and sufficient notice, providing it be signed by the person or persons claiming the right to such lien; and said notice when so filed shall be in all things a notice to all persons or corporations who shall become purchasers of any such logs, timber, lumber, cord-wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts and staves.

When may file notice of claim for lien, for labor or services performed or to be performed.

Form of notice effect.

SECTION 3. All actions to enforce such liens may be brought in the circuit court of the proper county when the amount stated in the affidavit for the attachment, over and above all legal set offs exceeds one hundred dollars, or before any justice of the peace having jurisdiction of the amount claimed and of the parties. Action may be commenced to enforce such lien, if the same be due, immediately after the filing of such petition or statement and such lien claimed shall cease to be a lien on the property named in such petition or statement unless action be commenced within four months after the filing of such petition or statement. In all such actions the person, persons or corporation liable for the payment of such

Actions to enforce liens, where to be brought.

- debt or claim shall be made the party defendant.
- Party defendant.** Any person claiming to be the owner of such logs or timber may be made a party defendant on application to the court having jurisdiction of the action at any time before final judgment therein.
- Plaintiff may have attachment.** SECTION 4. The plaintiff in such actions may have the remedy by attachment of the property upon which the lien is claimed provided by law in personal actions, and such attachment may be issued and served and returned and like proceedings had thereon, including the release of any attached property upon giving security as in civil actions. The affidavit for the attachment must state that the defendant, who is personally liable to the plaintiff therefor, is indebted to him in the sum named over and above all legal set offs for such labor or services done or performed as entitles the plaintiff to a lien thereon under this act, describing such logs, timber, lumber, cord-wood, railroad ties, tan or other bark, telegraph poles, telephone poles, fence posts, paving timber, stave bolts and staves, and that the plaintiff has filed his claim of lien pursuant thereto, and no other fact need be stated in such affidavit. No undertaking upon such attachment or security for costs in actions hereunder before justices of the peace need be given unless upon application of some defendant in the action showing by affidavit that he has a good and valid defense to the plaintiff's claim, and to how much thereof, and if it be only to a part of such claim, unless the residue be paid to the plaintiff at the time of the application, which payment, if made, shall not affect the jurisdiction of the court; and no order shall be made by any circuit court or a judge thereof requiring the giving of such undertaking or security for costs except upon ten days' notice to the plaintiff.
- Undertaking when given.** The attachment shall direct the officer to whom it is issued to attach the property named in the affidavit or so much thereof as shall be necessary to satisfy the sum claimed to be due thereon, and to hold the same subject to further proceedings in the action. The officer executing the attachment shall pay any boomag due upon the property attached, and the amount so paid shall be taxed as part of the costs of the action.
- Attachment, what to direct.**
- Duty of officer.** SECTION 5. The attachment issued by any jus-

tice of the peace shall be returned as an ordinary summons, and may be in the following form:

—county, ss.

The state of Wisconsin, to the sheriff or any constable of said county:

Form of attachment.

You are commanded to attach the following goods and chattels (here insert a description of the property described in such affidavit), or so much thereof as shall be sufficient to satisfy the sum of—dollars, with interest and costs, and disbursements of suit, in whosever hands or possession the same may be found in your county, and so provide that the same so attached may be subject to the further proceedings thereon as the law requires, and also to summon — —, if to be found, to be and appear before me at my office in said —, on the — day of —, A. D. 18—, at — o'clock in the —noon, to answer to — to his damage, two hundred dollars (\$200) or under.

Given under my hand at —, this — day of —, A. D. 18—.

J. P., Justice of the Peace.

SECTION 6. The taking of a promissory note or other evidence of debt for any such labor or services done or performed shall not discharge the lien therefor hereby given, unless expressly received in payment therefor and so specified therein.

Taking of promissory note, etc., not to discharge lien.

SECTION 7. When more than one person has a claim for a lien given hereunder upon the same logs, timber, lumber, cord wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts and staves, any person having such claim may purchase and take an assignment of the debts or claims of the others, subject to all defences and set-offs to such claims against the original owner may file a claim for a lien for all such debts and bring an action to collect the same in his own name; but such claim for a lien and the complaint in the action shall allege such purchase or assignment.

Assignment of claims, person having, may purchase others, but subject to defences, etc.

SECTION 8. The complaint in any action hereunder, to enforce a lien upon logs, timber, lumber, cord wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves shall, in addition

Complaint, what to set forth.

to the ordinary allegations in actions upon contracts, allege the filing of the claim for lien as hereinbefore provided, and such allegation shall be taken to be true unless expressly denied by the defendant or by some one in his behalf in a sworn answer or affidavit, and shall also allege a description of the property upon which a lien is claimed.

Finding of court or jury.

SECTION 9. The court or jury which tries any action hereunder shall, in addition to the sum due the plaintiff, find, if such be proven, that the same is due for the labor or services done or performed or some part of them alleged in the complaint, and that the same is a lien upon the property or some part thereof described in the complaint, and the judgment shall be in accordance with the findings. Costs shall be taxed and allowed as in personal actions, and an attorney's fee of ten per cent. of the claim, but in no case shall the attorney's fee exceed the sum of ten dollars. The execution in addition to the directions and commands of ordinary executions upon judgments for money, shall direct that such logs, timber, lumber, cord-wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, describing them, or so much thereof as may be necessary for such purpose, be sold to satisfy said judgment, costs and attorney's fee, including the costs of sale. If the court, justice or jury shall find that the amount due the plaintiff is not a lien upon any part of such logs, timber, lumber, cord-wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, they shall be released from the attachment, if they have been attached. The plaintiff shall in such case have judgment for the amount so found due, with costs, as in ordinary civil actions, but he shall not recover the costs of executing such attachment.

Costs.

Execution, what to direct.

When to release attachment.

Costs on.

When parties defendant may be added who claims interest in property.

SECTION 10. In any action which has been or shall hereafter be commenced for the enforcement of a lien upon logs, timber, lumber, cord-wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, under any law of this state, any person not a party to such action may at any time, either before or after judgment and

before an actual sale of the property upon which a lien is claimed, become a party defendant to such action by filing with the clerk of the court where such action is pending, or with the justice of the peace in actions pending, in justice courts, an affidavit made by such person or by some one in his behalf to the effect that he is the owner of or of some interest in the property upon which a lien is claimed and that he verily believes that said claim for lien is unjust and invalid, and upon filing such affidavit he shall have the right to defend said action so far as a claim for a lien is concerned; and in case judgment has been previously rendered for a lien, he may appeal within twenty days after the filing of such affidavit, as in other cases; provided, however, that his right to file an affidavit, and appeal said case shall not extend beyond one year from the date of the rendition of the judgment.

SECTION 11. If such party appeals from the judgment, such appeal shall not stay execution, unless the appellant shall file an undertaking with two or more sufficient sureties, who shall each justify in a sum equal to double the amount of the judgment, to the effect that if plaintiff recover judgment for a lien upon such property that they, such sureties, will pay the amount of such judgment with costs. Said undertaking shall be approved by the judge of the appellate court. Upon filing such undertaking all proceedings upon the judgment appealed from shall be stayed during the pendency of such appeal, and in case execution shall have been previously issued, the same shall, upon presenting to the officer in whose custody the same may be, a certified copy of such affidavit and undertaking and certificate of the justice or clerk of the court that an appeal has been perfected, be returned, and all property in which appellant shall claim an interest that may have been levied upon shall be released from such levy.

Appeal not to stay execution, unless undertaking filed.

SECTION 12. If upon the trial in the appellate court the plaintiff shall recover judgment of lien upon such property, such judgment may be entered against the appellants and their sureties. If upon such trial the plaintiff does not establish his right to a lien, the said appellant shall recover judgment for costs.

Judgment and costs on.

When notice and undertaking on appeal from justice filed with clerk

**SECTION 13.** When the judgment to be appealed from is one rendered in justice's court, and when by reason of the death of such justice or his absence from the county, or any other cause, the said affidavit and undertaking cannot be presented to him, they may, with notice of appeal and affidavit upon appeal, be filed with the clerk of the court to which such appeal is taken, within the time aforesaid.

Camp cooks, etc., to have lien for services.

**SECTION 14.** All persons doing or performing any labor or services by cooking food for the men doing or performing any labor or services upon such logs, timber, lumber, cord-wood, railroad ties, tan or other barks, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, at the request of the person, persons or corporation employing said men, for whom such food is cooked, or manufactured, shall in all things be deemed to have performed work, labor and services, and have the right of lien therefor, the same as the men for whom such food was cooked or manufactured.

All persons doing or performing labor on logs, etc., to have lien.

**SECTION 15.** All persons doing or performing any labor upon any logs, timber, lumber, cord-wood, railroad ties, tan or other bark, piling, telegraph poles, telephone poles, fence posts, paving timber, stave bolts or staves, the nature of which said property shall be changed by reason of any process of manufacturing, shall have his right of a lien upon the manufactured product the same as though the labor had been performed directly upon the manufactured article.

Lien for labor on lumber, or peeling, piling or hauling bark, ties, etc.

**SECTION 16.** Any person performing any labor upon any lumber or in cutting, peeling, piling or hauling any hemlock or other bark, ties or other product of labor heretofore mentioned in this act, for or on account of the owner, agent or assignee thereof, at any place within this state, for such owner, agent or assignee, shall have a like lien upon such lumber, etc., as given in this act for work and services upon logs, timber, etc., and he may avail himself of the provisions of this act in relation to a lien upon logs, etc., to enforce such lien. The notice of and claim for such lien shall in all cases be filed in the office of the clerk of the circuit court of the county in which work was done, in the manner and within the time prescribed in sections 2 and 3, of this act, and an ac-

To be filed in office of clerk of circuit court, of county where work, etc., done as provided in secs. 2 and 3.



tion to enforce the same may be commenced without any notice given to the owner or any other person of his claim.

SECTION 17. Appeals may be taken from all judgments rendered by justices of the peace, and the judgment of circuit and county courts hereunder may be revised by the supreme court as in ordinary civil actions, and no lien for supplies shall be had under this act, except in the counties of Oconto and Douglas.

Appeals.

Lien for supplies to be had only in counties of Oconto and Douglas.

SECTION 18. Sections 3329, 3330 and 3331, of chapter 143, of the revised statutes of 1878, chapter 469, of the laws of 1885, and chapter 530, of the laws of 1887, and all other acts or parts of acts in any wise conflicting with the provisions of this act, are hereby repealed, except chapter 222, of the laws of 1880.

Repealed.

SECTION 19. This act shall take effect and be in force from and after its passage and publication.

Approved April 16, 1889.

[No. 301, A.]

[Published April 23, 1889.]

## CHAPTER 414.

AN ACT to amend chapter 456, of the laws of 1887, relating to game and fish.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

SECTION 1. Section 1, of chapter 456, of the laws of 1887, is hereby amended by adding at the end of said section, the following words: "One-half of the fines collected for any violation of any law of this state relating to the preservation of fish, game or birds, shall be paid to the county treasurer of the county in which said fines may be collected; and such treasurer shall pay the same into the school fund. The remaining one-half of such fines shall be paid to the game or fish warden or deputy warden making the arrest;" so that said section, when so amended, shall read as follows: Section 1. It shall be the

Amending ch. 456, 1887.

Fines, how divided.