

ARTICLE LXIII.

MECHANICS' LIEN.

Jewelers.

53. Lien of jewelers and silversmiths; sale.

1.

The right to a mechanics' lien is not a vested one, but is a remedy only, created by statute; the right to the lien depends entirely upon the statute, and the party seeking the remedy must come within the provisions of the 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 an act; the act of 1910, chapter 52, interpreted. *Dunn v. Brager*, 116 Md. 244. And see *Dipaula v. Green*, 116 Md. 494.

There being no lien for materials in Baltimore City, an agreement to pay a claim provided no lien (for materials) be filed, is void because it has no consideration. *Dipaula v. Green*, 116 Md. 494.

The act of 1910, chapter 52 (p. 564), was validly passed and is constitutional. *Baltimore Warehouse Co. v. Canton Lumber Co.*, 118 Md. 138.

To the second note to this section under the heading "Act 1898, Ch. 502," on page 1455 of volume 2 of the Annotated Code, add the case of *Md. Casualty Co. v. Lacios*, 121 Md. 688.

As to liens of the owners of stallions, see article 27, sections 198 and 199.

3.

While the mere acceptance of a note and its transfer by the claimant is not a waiver of his lien, if the endorsee, when the note comes due with the knowledge and assent of the claimant, accepts a new note from the maker without the claimant's endorsement, and so disposes of the new note that it is beyond the control of the claimant and cannot be produced or accounted for by him, the inference arises that the note was regarded as a payment and that the claimant waived his lien. *Wix v. Bowling*, 120 Md. 273.

11.

A material-man may not keep alive or revive his right to a lien by furnishing materials outside of, and in addition to, those contemplated by a contract, or under a separate contract, after the first contract has been performed. *Brunt v. Farinholt Co.*, 121 Md. 132.

To the first note to this section on page 1458-1459 of volume 2 of the Annotated Code, add the case of *Brunt v. Farinholt Co.*, 121 Md. 130.

Cited but not construed in *Maryland Casualty Co. v. Lacios*, 121 Md. 688.

15.

When a mechanics' lien attaches prior to a judgment, the former is the superior claim and a purchaser under a *sci. fa.* to enforce the judgment takes subject to the mechanics' lien. Held that the validity of the mechanics' lien claim was established for the purposes of the decree and that it was not subject to an attack in a proceeding of the character of the case at bar upon the grounds alleged in the bill by one holding a lien like that of the appellee. *Long Contracting Co. v. Albert*, 116 Md. 115.