

a separate contract, after first contract has been performed. *Brunt v. Farinholt Co.*, 121 Md. 132.

Object of the notice to owner. The material man's right to 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. 171. And see *German, etc., Church v. Heise*, 44 Md. 473; *New England, etc., Co. v. B. & O. R. R. Co.*, 11 Md. 90.

The obligation of complying with this section is imperative, and intention is that notice shall be served personally upon owner whenever that can be done. Place of residence of owner passed upon. *Hill v. Kaufman*, 98 Md. 251.

If after a contract is completed, goods are delivered by a material man for purpose of extending time within which notice may be served on the owner, lien is invalid. *Greenway v. Turner*, 4 Md. 304. And see *Heath v. Tyler*, 44 Md. 317.

The notice is not amendable under sec. 41, after the expiration of the sixty days. *Kenly v. Sisters of Charity*, 63 Md. 311.

While lien may be enforced if this section is complied with, the law raises no *assumpsit* as between owner and claimant. *Kees v. Kerney*, 5 Md. 421.

The notice required by this section, held to have been given. *Wilson v. Simon*, 91 Md. 4; *Hensel v. Johnson*, 94 Md. 735.

This section held inapplicable because contract was made with owner and not with contractor. *First Nat'l Bank v. White*, 114 Md. 615; *Rust v. Chisolm*, 57 Md. 383; *Miller v. Barroll*, 14 Md. 174.

Cited but not construed in *Blake v. Pitcher*, 46 Md. 465; *Pue v. Hetzell*, 16 Md. 549; *Shoop v. Powles*, 13 Md. 309; *Md. Casualty Co. v. Lacios*, 121 Md. 688.

See notes to secs. 10, 12, 16 and 23.

An. Code, sec. 12. 1904, sec. 12. 1888, sec. 12. 1845, ch 176, sec. 2.

12. If such notice can not be given on account of absence or other causes, the claimant or his agent may, in the presence of a competent witness and within sixty days, place said notice upon the door or other front part of said building and shall file a claim with the clerk of the circuit court for the county or the superior court of Baltimore city, as the case may be, as hereinafter mentioned.

This section does not give claimant an option, but can only be availed of when it is proven that notice required by sec. 11 is impracticable. Held that claimant was not entitled to resort to this section. *Hill v. Kaufman*, 98 Md. 251; *Hensel v. Johnson*, 94 Md. 735; *Kenly v. Sisters of Charity*, 63 Md. 309.

The notice prescribed by this section should be addressed to person for whom it is intended, owner or his agent, naming him. *Hensel v. Johnson*, 94 Md. 736; *Kenly v. Sisters of Charity*, 63 Md. 310.

An. Code, sec. 13. 1904, sec. 13. 1888, sec. 13. 1845, ch. 287, sec. 8.

13. In all cases in which a contractor or builder of a house shall have purchased materials or contracted for work and the party with whom such contract was made shall have given notice as required in the two preceding sections to the owner of such building, it shall be lawful for the owner to retain from the cost of such building the amount which he may ascertain to be due to the party giving such notice; and in case any lien be laid by the party giving such notice and be also laid by the contractor or builder, the said contractor or builder shall receive only the difference between the amount due him and that due the person giving the notice.

The notice required by sec. 11 is in order to enable owner to comply with this section. *Fulton v. Parlett*, 104 Md. 66. And see *Greenway v. Turner*, 4 Md. 304.

This section referred to in determining the sufficiency of a notice under sec. 11. *Thomas v. Barber*, 10 Md. 391.

See notes to sec. 1.