AGRICULTURAL LIENS In Illinois

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AGRICULTURAL LIENS IN ILLINOIS

By H. W. Hannah[1]

PRESENT-DAY FARMING involves many of the procedures and technics traditionally associated only with urban business. The progressive farmer is probably a member or even a director in one or more corporations, keeps business records from which earnings on investment, net worth, and tax returns can be computed, and makes frequent use of credit in financing or expanding his operations.

Among the legal devices used in agricultural credit is the lien. Generally speaking, "lien" is the name that has been given to a legal claim against property for some service rendered to the property. These special claims arise either by statute or as a result of common law (custom) and therefore benefit only designated classes of creditors. Some liens have been designed for the benefit of people rendering specified agricultural services. Included in this group are:

Farm landlord's lien

Thresherman's, baler's, huller's, and sheller's lien

Agister's lien (for those who keep or pasture livestock for hire)

Sire owner's lien

Stallion and jack owner's lien

Horseshoer's lien

Stablekeeper's lien

Other liens apply to services which, though not of an agricultural nature, may be performed on the farm or on farm equipment. Included in this category are liens in favor of:

Mechanics and materialmen

Those who furnish specified types of labor and storage

Public carriers and warehousemen

Cold-storage locker-plant operators

Governmental taxing bodies (taxes and assessments)

Some of these liens are particularly important in Illinois because they affect the freedom with which certain types of goods can be exchanged. They are an integral part of the credit relationships be-

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tween landlords, tenants, grain buyers, and custom operators, and to some degree they affect the availability of farm credit and of such services as shelling, farm construction, and the standing of sires. All the liens listed above are "statutory" liens; that is, they have been created by or codified by various acts of the state legislature.

These liens exist "by operation of law." This means they apply regardless of contract or agreement. This distinguishes them from *judgment liens* (the claims created by a court decree), which come into being only as a result of legal action; from the *"lien" of a credit instrument* such as a chattel mortgage, which arises only from a mortgage contract; and from *"equitable" liens,* which exist only when a court of equity feels that justice demands a prior or superior claim. These latter three liens and liens of similar origin will not be considered in this study.

The purpose of this bulletin is to analyze and explain the statutory agricultural liens described above as they have been established by Illinois statutes and influenced by court decisions; to discuss their usage; and where the facts indicate, to suggest changes. The principal sources of information were Illinois statutes, decisions of the Illinois Supreme Court and the Appellate Court, current legal and popular literature, and 802 replies to a lien questionnaire mailed to 2,000 farmers, custom operators, grain dealers, and lawyers.

THEORY OF LIENS

Why should legislative bodies enact laws giving certain classes of creditors special claims for payment? If everyone rendering a service, supplying material, or leasing property were given a statutory lien, the effect would be to leave everyone in the same relative position with respect to payment, except as the laws themselves varied. Also the exchange of goods and services would be hampered by such an arrangement. The policy has been to give liens only to selected groups.

What justifies a legislative distinction? The only thing that justifies a legislative distinction between any two groups of citizens for any purpose is a public need that the distinction be made, and an increase of net public good when it is made. But in what way can the public good be enhanced by giving sire owners a lien, to use just one example, and not giving farm laborers a lien (except for the statutory preference allowed them when property is placed in receivership)? Are we to assume that the services of sire owners are so beneficial to the public that the legislature should recognize them, and that legisla-

tive action is necessary to correct abuses that would drive sire owners out of business, thus causing the livestock industry and eventually the public to suffer? If enough people would continue to stand sires regardless of the certainty of payment for service, the public — in theory at least — would not be harmed by the fact that some farmers did not pay. Would a statutory lien then be justified? Is it a function of the general assembly to legislate people into paying their debts?[2] No public act is justified on that ground alone. As a matter of fact, affording too much legislative security to too many people might induce the hiring of so much service that a man's worldly goods would not cover his commitments. Then in case of insolvency all of a man's creditors would be equipped with special weapons in their fight for priorities, whereas this privilege now rests in a more limited class of preferred claimants and lien holders.

Comparing sire owners and farm laborers, we can easily conclude that each class is essential to agriculture, and any argument as to which is more essential would be meaningless. The fact that sire owners have a statutory lien and that laborers do not must then be based on other grounds, perhaps on some marked difference in the certainty of payment. Laborers, it can be urged, work for employers who for the most part are financially able and responsible, who have visible and relatively immovable assets, and who are or become personally known to the laborer. Owners of breeding females, on the other hand, vary widely in financial ability, may own little or no real estate, and with respect to the sire owners are widely scattered and partly, at least, strangers. Furthermore the sire owner is not by custom entitled to payment until a living, normal offspring is dropped. This introduces a controversial element that does not exist in the employment of farm labor.

These may have been among the legislative reasons. On the other hand, it is possible that the sire owner's lien law and other lien laws are more the result of pressure than of conviction on the part of the legislature. This does not mean that the laws are either good or bad, collectively or individually. After all, a man is expected to pay his just debts, and the operation of a lien law does not add to or subtract from this obligation. But lien laws do give certain classes of creditors preferred standing, and it is at this point that public policy enters.

Every year in the state of Illinois there are many cases of insol-

[2] In replying to the lien questionnaire one lawyer made the following comment: "The fact is these four lien laws tend to make Christians out of the men that owe money. I believe the laws are excellent and should be retained, as they stand as silent guardians of the rights of the parties."

vency. But in all these cases the rights of lien holders will, for the most part, be given preference over those of other creditors when the property involved is a kind against which a lien operates. Is there any good reason for this preference being established as a matter of law, or should each claim "stand on its own," so to speak? Arguments can be advanced to support some kinds of liens, particularly those which have enhanced the value of the property and made it more merchantable — the thresherman's lien, for example. But does the fact that the enhancement is so obvious and direct as in the thresherman's case justify giving this creditor a claim that takes priority over all others? Why, for example, should it take priority over the claim of the person who may have lent the grower the money with which to buy the seed and fertilizer used in producing the crop?

One argument advanced by those whom the law has favored with a lien is that in times of economic distress it is an effective moral inducement as well as legal inducement to those who have obligations to discharge them. May it not be argued that lien laws do not result in the settlement of any more indebtedness, but rather in shifting more risk to other creditors? Favoring or not favoring the operation of a particular lien law in a particular instance depends on which creditor one happens to be. Equitable liens — those that arise in a particular instance because justice seems to so demand — stand or fall on their own merits. Should not all claims be settled on the basis of like considerations, rather than on the arbitrary assumption that a particular kind of claim must and should come first in all instances simply because a statute or even custom has made it possible?

These are questions which it is not the purpose of this bulletin to resolve, but they are questions which pressure groups, legislators, and judges should put to themselves.

Much has been written about the economic and social effect of lien statutes. Most of the popular literature originates during times of economic stress when sympathies naturally run toward debtors. There is virtually no popular literature and very little legal literature that clarifies the basic issues involved in agricultural lien laws.[3] Typical of the language contained in many of the popular writings is this statement by former Governor Birkett of North Carolina regarding the "crop lien" (really a form of chattel mortgage): "It is a pestilence that walketh in darkness — a destruction that wasteth at noonday. . . .

[3] A good discussion of landlords' liens is contained in *Rent Liens and Public Welfare*, C. J. Foreman, Macmillan Company, 1932. See also by the same author, "Agricultural Rent Liens as a Menace to Commerce," Jour. Land and Pub. Util. Econ. 4, 157-170 (1928).

At present the man who gives a crop lien for supplies is virtually a bound man to the merchant. . . ."[4]

Agricultural liens in Illinois do not make Illinois farmers "bound men," but they do play an important part in certain contractual and credit relationships.

HOW AGRICULTURAL LIENS ARE USED IN ILLINOIS

To find to what extent agricultural liens have actually been used in Illinois and to see how they may have affected agriculture and its related economies, a mail survey was conducted among lawyers, grain dealers, farmers, and custom operators. The survey dealt with four of the most important agricultural liens, the landlord's, thresherman's, sire owner's, and agister's.

Two thousand questionnaires were mailed — 500 to each group — and 802 were returned. At least one came back from every county in Illinois. Ten or more questionnaires were received from each of 26 counties, and fewer than 5 from each of 29 counties. The average was slightly less than 8 per county. Farmers returned 247 (49.4 percent), lawyers 195 (39 percent), custom operators 194 (38.8 percent), and grain dealers 166 (33.2 percent). A breakdown by farming-type areas and tenure of the returns from farmers is given in Table 1.

Analysis of the questionnaire warrants these conclusions:

1. With the exception of the landlord's lien, these laws are not used extensively. The 195 lawyers who returned questionnaires reported only 37 cases involving the agister's lien, 17 the sire owner's, and 42 the thresherman's, over the whole period of their respective practices, which averaged about twenty-three years. These same lawyers reported 746 cases involving the landlord's lien.

2. Lien statutes receive some use as threats or inducements even though no legal action is started. Frequent comments from all four

[4] Progressive Farmer, January 20, 1917. The "sharecropper-cotton-crop-lien-merchant-financing" cycle which became established in southern agriculture has been declared by many writers to be responsible for the one-crop sharecropper system. See "The Cotton Crop Lien," F. W. Gist, Statistician, Alabama Department of Agriculture, Bradstreets, September 5, 1931. These so-called "crop liens" which grew out of the desperate search for credit in the South following the Civil War, are now incorporated into the chattel-mortgage laws of most states in one form or another (Ill. Rev. Stat., 1949, ch. 95, secs. 1-12). An interesting adaptation was made by the provincial government of Saskatchewan during a seed shortage following a crop failure in 1918, by the enactment of a law permitting land mortgagees who advanced money for seed to add up to $250 to the real estate mortgage (Internatl. Rev. of Agr. Econ. 10, 394, June, 1919).

Table 1. — Number of Lawyers, Grain Dealers, Custom Operators, and Farmers in the Different Farming-Type Areas Returning Questionnaires

Farming-type area	Lawyers	Grain dealers	Custom operators	Farmers					Total
				Landlords	Tenants	Owner-operators	Unclassified	Subtotal farmers	
1	28	6	9	1	4	7	1	13	56
2	26	14	14	1	2	6	5	14	68
3	23	29	22	5	6	13	7	31	105
4	63	82	51	8	22	32	21	83	279
5	14	8	20	3	3	14	9	29	71
6	13	18	17	2	3	10	5	20	68
7	18	2	33	1	0	21	7	29	82
8	8	6	15	2	3	9	2	16	45
9	2	1	13	2	0	6	4	12	28
Total	195	166	194	25	43	118	61	247	802

groups indicated this. The extent to which they are so used is not known.

3. Lien statutes are used more extensively during times of depression. It is probable that they follow rather closely the curve of mortgage foreclosures.

4. Lack of knowledge about the existence of lien laws may be reducing their use. Only about 40 percent of the farmers answering the questionnaire said they were familiar with the landlord's lien, about 35 percent with the thresherman's lien, 20 percent with the agister's lien, and 18 percent with the sire-owner's lien (Table 2). Only 19 farmers, or 7.6 of those who returned questionnaires, answered yes to the question, "Have you had any personal experience with any of these four liens?" Some of their remarks in answering were:

"I am familiar in a general way."

"I have heard about such liens but I do not know the law on them."

"My tenants are carefully selected as to ability, integrity, and disposition. When I make a mistake I handle them with gloves and unload them at the end of the season."

"I do know that the above liens are available; however, I have never had occasion to use them and I do not think that many farmers understand the use of them."

"I have known of any of these being used only very rarely in my 35 years of farming experience."

"Would sure like to know more about thresherman's lien. Combined wheat for a fellow three years ago and never did receive any pay but never knew how to go about getting it."

Table 2. — Percent of Farmers Returning Questionnaire Who Claimed Familiarity With Various Types of Lien Laws

Tenure class	Percent claiming familiarity with—			
	Landlord's lien	Agister's lien	Thresherman's lien	Sire owner's lien
Tenant	48.8	30.2	44.2	27.9
Landlord	44.0	20.0	28.0	20.0
Owner-operator	39.0	17.8	33.7	14.4
Unclassified	37.7	16.4	32.8	18.0
All groups	40.6	19.7	34.5	18.1

"Several years ago I had occasion to enforce landlord's lien against a renter."

"I had to collect two threshing bills at the elevator."

"I am not really familiar with any of them. Would like to know more about them."

The answers to the questionnaire are discussed in more detail under each of the four liens concerned.

Enforcing liens in Illinois. Liens do not enforce themselves. They benefit only those who take the steps prescribed by law.

Statutory liens are generally enforced by foreclosure, which enables the creditor to sell the property and satisfy his obligation. Some liens exist only so long as the person claiming the lien still has the property — they terminate the instant the property leaves his possession. This is true of the agister's and hotelkeeper's liens, for example. Other liens may be preserved by taking the steps prescribed by law, even though possession is surrendered. This is true, among others, of the thresherman's and mechanic's liens. Taking property wrongfully from the lien holder does not remove the lien and the holder can sue to get it back.

A proper offer of the amount due a lien holder terminates the lien and entitles the owner of the property to possession. But a note or other instrument given as security does not terminate the lien unless facts show that the lien holder accepted it as payment rather than as additional security.

Except as another order is provided by statute or established by precedent, liens on the same property will be given priority according to the time of their attachment to the property.

The procedure for foreclosing or satisfying statutory liens is generally provided in the law and will be explained in the discussion of the different liens.

LANDLORD'S LIEN

Illinois has had a statutory landlord's lien since 1845. The present law states: "Every landlord shall have a lien upon the crops grown or growing upon the demised [rented] premises for the rent thereof, whether the same is payable wholly or in part in money or specific articles of property or products of the premises, or labor, and also for the faithful performance of the terms of the lease. Such a lien shall continue for a period of six months after the expiration of the term for which the premises are demised and may be enforced by distraint as in this Act provided."[5]

The last clause, providing that the lien may be enforced by distraint (a legal action under which a landlord may take the property of a tenant to satisfy his debt), was added after the Illinois courts, interpreting an earlier lien statute, had held that distraint was not a proper remedy for the enforcement of the lien.

The effectiveness of the act has been determined to a great extent by the interpretation put upon it by the Illinois courts. The language "upon the crops grown or growing" has been definitely interpreted to mean crops only and not other goods and chattels of the tenant.[6] "Grown or growing" refers to the year the crops are in the ground, and the landlord's lien is good only for that year's rent.[7] However, any crop that is sowed in the autumn of one year and harvested in the next is subject to the lien for rent for either or both years.[8] "Upon the demised premises" refers to all land under the lease and includes all crops grown on such demised premises, regardless of who grew them — whether sublessees or someone at the will of the tenant.[9] The lien attaches at the time the crop begins to grow[10] and is good against all crops or any portion of any crop for any rent due from all or any portion of the premises.[11] If a tenant holds under distinct leasings, however, and has paid the rent on part of the leasings, it has been held that the lien on crops grown on these leasings does not extend to rent due on the others.[12]

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[5] Ill. Rev. Stat., 1949, ch. 80, sec. 31.

[6] Felton v. Strong, 37 Ill. App. 58 (1890); Cottrell v. Gerson, 296 Ill. App. 412 (1938), Aff. 371 Ill. 174 (1939).

[7] Frink v. Pratt & Co., 130 Ill. 327, 22 N.E. 819 (1889); Miles v. James, 36 Ill. 399 (1865); Prettyman v. Unland, 77 Ill. 206 (1815).

[8] Nelson v. First Nat. Bank of La Harpe, 184 Ill. App. 349 (1914); Miles v. James (above).

[9] Ill. Rev. Stat., 1949, ch. 80, sec. 32; Uhl v. Dighton, 25 Ill. 154 (1861).

[10] Watt v. Schofield, 76 Ill. 261 (1875); Harvey v. Hampton, 108 Ill. App. 501 (1903).

[11] Thompson v. Mead, 67 Ill. 395 (1873).

[12] Gittings v. Nelson, 86 Ill. 591 (1877).

The landlord's lien, since it is created by statute, attaches ahead of other claims against crops of the tenant, and can be lost only by waiver or failure to enforce within the time specified.[13]

According to the interpretation of the courts, the purchaser must know when he buys, of the existence of a lien before its validity can be established against him. In *Reinhardt v. Blanchard*[14] the court said: "When the purchaser of grain from a tenant knows the fact of such tenancy, and that his vendor, as such tenant, had raised the grain on the demised premises, it will be such notice as to put him upon inquiry as to the landlord's lien." If, however, the purchaser has no knowledge of the tenancy and the origin of the grain, he is not subject to the landlord's lien.[15]

The practical outcome of this interpretation is that a landlord who wants to make certain his lien is preserved should notify all prospective purchasers of the tenant's crop. Landlords who have many tenants find it good practice simply to supply all local elevator companies with lists of their tenants.

A lien does not of itself give the landlord a right to immediate possession of the crops.[16] Before the landlord can recover his share in an action of replevin (a legal action for the recovery of goods wrongly taken), the crop must be divided and the landlord's share designated, because the crop belongs entirely to the tenant until this has been done.[17] While replevin and distress have been frequently used to enforce the landlord's lien, other remedies are available, including foreclosure and the filing of a claim seeking preference among the tenant's creditors.[18]

Many leases contain provisions which attempt to create liens on

[13] Lillard v. Noble, 159 Ill. 311, 42 N.E. 844 (1895); Coleen Mfg. Co. v. Jones, 122 Ill. App. 172 (1905). In Travers v. Cook, 42 Ill. App. 580 (1891), the court refused to allow the landlord a recovery in replevin against a constable who had levied an execution against the crops of the tenant; but the refusal was on the grounds that title and possession still remained with the tenant and that the lien alone did not give the landlord the right to maintain replevin. In Richey v. Ford, 84 Ill. App. 121 (1899), the landlord recovered from a mortgagee who had taken the crops and sold them with knowledge of the landlord's lien.

[14] 78 Ill. App. 26 (1898). See also Lawrence v. Elmwood Elevator Co., 258 Ill. App. 101 (1930); Carter v. Anderson, 56 Ill. App. 646 (1894); Lynch v. Smith, 154 Ill. App. 469 (1910).

[15] Finney v. Harding, 136 Ill. 573 (1891); Faith v. Taylor, 69 Ill. App. 419 (1896).

[16] Wright v. Wilson, 179 Ill. App. 630 (1913); Chapin v. Miles and Ricketts, 151 Ill. App. 164 (1909); Powell v. Daily, 163 Ill. 646 (1896).

[17] Pearson v. Reese, 286 Ill. App. 511, 3 N.E. (2d), 929 (1936); Sargent v. Courrier, 66 Ill. 245 (1872).

[18] Faubel v. Michigan Avenue Boulevard Building Co., 278 Ill. App. 159 (1934); Vincent v. Riling, 168 Ill. App. 445 (1912).

all property belonging to the tenant. Illinois courts hold that such provisions are, in effect, attempts to create chattel mortgages, and to be valid must be acknowledged and recorded according to the law on chattel mortgages.[19]

The Illinois act relating to distress provides that when the landlord's lien is endangered, distress action can be taken before rent is due. A landlord may institute distress "if any tenant shall, without the consent of his landlord, sell and remove, or permit to be removed, or be about to sell and remove, or permit to be removed, from the demised premises, such part or portion of the crops raised thereon, as shall endanger the lien of the landlord upon such crops for the rent agreed to be paid."[20] The right to so distrain is one conferred by statute only, and the courts have construed the statute very strictly, holding that the landlord's lien must be clearly endangered before the right to distrain exists, and that the landlord cannot invoke this section of the statute merely to harass and embarrass his tenant.[21]

Whether a landlord's lien is actually endangered is a hard question to answer. In a case where a tenant actually removed and sold a portion of the crops raised, and it was shown that such action did endanger the landlord's lien, the right to distrain was upheld.[22] In this case the question arose as to whether the execution of a chattel mortgage was such a disposal of crops by the tenant as would allow the distress proceeding. In answering in the negative the court said that the statute must be strictly construed, and that the execution of a chattel mortgage was only a conditional disposal not contemplated by the act. Another court held that feeding crops to livestock might endanger the landlord's lien and constitute a "removal" within the meaning of the act.[23] Illinois law pertaining to chattel mortgages on feed crops makes a distinction between the feeding of such crops to work animals and to productive livestock.[24] The mortgagor may feed mortgaged crops to productive livestock so long as the animals also are included in the mortgage; also he may feed mortgaged feeds to work animals so long as the animals are used to produce crops which are mortgaged, even though the animals are not included. This law might affect a decision on "removal."

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[19] Gubbins v. Equitable Trust Co., 80 Ill. App. 17 (1898); Packard v. Chicago Title & Trust Co., 67 Ill. App. 598 (1896).

[20] Ill. Rev. Stat., 1949, ch. 80, sec. 35.

[21] Hill v. Coats, 109 Ill. App. 266 (1903).

[22] Gross v. Schraeder, 70 Ill. App. 625 (1896); Johnson v. Cippery, 19 Ill. App. 638 (1886).

[23] Hopkins v. Wood, 79 Ill. App. 484 (1898).

[24] Ill. Rev. Stat. 1949, ch. 95, sec. 1a.

The existence of a lien does not affect the tenant's ownership rights in the crop unless the landlord has grounds for enforcing his lien.

One writer has been quite critical of landlord's liens, pointing out that they interfere with freedom of contract, competition, and trade, particularly when they permit the landlord to make claims against third parties, and more especially against third parties who did not know of the lien (see footnote 3, page 142). He classifies the Illinois law as being moderately objectionable in that the landlord can recover either the crop or its value from a purchaser who knew of the lien, and can recover the crop itself even from a purchaser who had no knowledge of the lien. Furthermore he says that the trend in decisions in many states has been toward an unreasonable extension of the lien against third parties.

He cites the language in a Mississippi case as a good example of this growing judicial attitude toward the lien: "Notice by the purchaser of agricultural products could make no difference, and in order to protect the landlord, his right must be made to depend not on notice, but on the fact that the defendant purchased what the landlord had a lien on, and thus the law is settled."[25]

There have been no strong movements to alter or abolish the landlord's lien in Illinois. In other states with harsher lien laws there have been such moves.[26]

Lawyers' experiences with the landlord's lien. Attorneys who answered the questionnaire reported a total of 746 cases involving the landlord's lien, or an average of 3.9 cases per attorney for the period of their practices, estimated at twenty-three years.[27] Five hundred ninety-eight of these cases were handled for landlords as plaintiffs and 148 for tenants as defendants.

[25] Warren v. Jones, 70 Miss. 202 (1892).

[26] See "Change the Landlord's Lien," Wallaces Farmer, January 25, 1941, p. 45, for results of a survey on limiting the Iowa landlord's lien.

[27] In a letter accompanying his questionnaire one lawyer commented as follows: "During the past eighteen years, I have had approximately 50 landlord's lien cases. Very few of these cases were for the lienee. Less than one-third of the cases went to trial; in fact most of the cases were settled before suit was filed. A goodly proportion of those in which suit was filed were settled before trial. In cases of this kind, it is largely a matter of working out a common-sense settlement, since the trial of cases of this character is usually technical and involves not only the proof of the claim of the lien but proof necessary to show that the tenant has not complied with the terms of the lease. The landlord's lien is not a particularly workable statute because usually it is necessary to distress for rent and thereby put someone in possession of the property. The person put in possession is usually from the neighborhood, and he does not like to act against a resident of the neighborhood and in favor of a nonresident who is the land owner."

The 746 cases were disposed of in this way:

Judgment for landlord, 128 (17 percent)

Judgment for tenant, 32 (4 percent)

Settled prior to judgment, 504 (68 percent)

Dropped without judgment or settlement, 82 (11 percent)

Thus in two-thirds of these cases settlement was made out of court. When employed, the lien has been an effective device for the landlord. On the other hand tenants have won enough cases to indicate that their rights are, to some degree at least, being protected.

Of all cases, 90.5 percent arose in the northern half of the state, as represented by the first four farming-type areas. On the basis of the survey, 39 percent of all Illinois attorneys have at some time handled a landlord's lien case; in the northern half of Illinois (excluding Chicago) 44 percent of the attorneys have handled landlord's lien cases.

Grain dealers' experience with the landlord's lien. Of the 166 grain dealers answering the questionnaire, 33 reported a total of 100 landlord's lien cases during their total period of operation. Eighty-one percent of these cases arose in the northern half of the state. Fifty-eight percent arose in the cash-grain counties of east-central Illinois Area 4 (Table 3).

Although the total number of lien cases involving grain dealers was not great, the percent of recovery was high — 79 percent for the entire state. This indicates that grain dealers need to take some precautions in buying grain harvested from rented land. In answer to the question: "Do you take any precautions to protect yourselves against lien holders?" (this includes the thresherman's lien also), 93 dealers, or 56 percent of the total, indicated that they did. Of these 93 dealers, 35.5 percent get lists of lien holders (landlords for the most part) and 36.7 make checks out jointly to landlord and tenant.

Table 3. — Disposition of Landlord's Lien Cases Involving Grain Dealers

	Reported for farming-type area 4	Reported for entire state
Number of cases against grain dealers	58	100
Number of recoveries	43	79
Percent of recovery	74	79
Number of grain dealers proceeded against	16	33
Number recovered against	14	28

The following comments indicate the variety of ways in which grain dealers handle the lien problem:

"Use endorsement clause on check." (Several replies)

"Hold up payment until all claims are satisfied."

"Only exercise due caution."

"Make inquiry in questionable cases."

"Use stamp on check." (Several replies)

"Question tenant."

"We try to know with whom we are dealing."

"Releases."

"Have both parties present when settlement is made."

"Have them make statement of ownership."

"Make inquiry of landlord in cases of doubt."

"Have subscribed to lists published weekly of all liens and judgments in the county."

"Secure FSA lists only."

In answer to the question "Has either of these liens (landlord's and thresherman's) interfered with your buying and selling?" 6.6 percent of the grain dealers answered yes, 67.5 percent answered no, and 25.9 percent expressed no opinion. This would indicate that grain dealers are not having serious problems in regard to these liens. On the other hand the few who have had bitter experience are quite definite in their opinions. For example:

"One party usually becomes angry and you lose his business."

"Don't see why grain dealers should have to look out for landlords' and tenants' business and be liable for it."

"I think the grain dealer should have a better way of protecting himself. I had to pay for grain twice through no fault of my own."

"In a good many instances when a check is made out jointly it costs me that farmer's business for a period of three to five years or more."

"We have to take time to investigate whether there is a lien against grain we are buying. We must do this to protect our own interests."

"We have never been proceeded against by a lien holder simply because we have always paid them off ourselves. Responsibility for collection is shifted to the grain dealer and he has to do the dirty work."

However most comments indicated that there has been little trouble:

"Have been here 31 years and have not had any trouble along these lines."

"We have been in business 49 years and have never had a lien against us."

"We know all our customers and when in doubt they have been honest enough to tell us if there is a lien."

When asked "In your opinion are these liens desirable?" 44 percent of the grain dealers answered yes, 25.3 percent no, and 30.7 percent expressed no opinion. There were excellent comments on this question, some of them suggesting ways to improve the landlord's lien:

"In this area it is the practice for shellers and combiners to collect their shares at the elevator in about 80 percent of the cases (Kane county). The fact that there are not many cases of landlord's liens at these times may indicate two things: the tenant is making enough money so that he can pay the rent without it pinching him, and the strength and power and prudence of the landlord's lien have been so emphatically impressed on the mind of the tenant that there is little thought of dodging it or defeating it."

"We believe the landlord's lien is O.K., but we believe the landlord should have the responsibility, before his lien is good, of notifying any grain elevators in the immediate territory of his farm not to pay the renter for grain until the elevator checks with him to see whether his rent has been paid or not. We believe that the thresherman's lien, including shellers, balers, hullers, should be discontinued, with the possible exception that if grain or hay is brought direct into the elevator and the elevator is notified to hold out a certain amount for shelling or threshing or baling, the elevator would be responsible to see that this was done. There should be no objection by the elevator for this service."

"Many wouldn't be able to get their grain shelled or combined unless the threshermen received money for their services at the elevator."

"They are desirable in some respects. However, they place a grain elevator operator on a bad spot and he has little protection for himself. It is practically impossible to avoid these liens altogether. I have had very little trouble from thresherman's liens. Practically all arguments result from landlord-tenant relations. Most of these boil down to private disagreements the landlord and tenant have had and the final touch falls on the elevator operator at harvest or sale time. Usually, if you can get landlord and tenant together at the same time and place, they will agree on a settlement suitable to both."

"If we didn't have such liens we would probably have more need for them."

"Have always felt all claims — doctors, undertakers, or others — should be on an equal basis."

"I do not believe any elevator man would object to collecting rent for the landlord, at least if he is notified to do so, or at least if the landlord would be required by law to record the amount of rent due."

"Should be changed so that landlord or thresherman would have to notify elevators to make liens good."

"Greatest difficulty comes from combining since it is not a practice to subtract these charges at the elevator as is done with corn shelling."

"If properly used they are O.K., but if used to reimburse the landlord or thresherman, using the elevator as the goat, they are entirely wrong."

"It makes a collector out of the grain dealer. I do not feel that the law is just."

THRESHERMAN'S LIEN

The Illinois legislature in 1874 passed a law giving the owners of threshing machines, clover hullers, corn shellers, and hay balers a lien against the crop threshed, hulled, shelled, or baled.[28] The lien attaches when the service is rendered and lasts for eight months. It is security either for the contract price of the job or, if no agreement was made, for a reasonable price.

These are the points to remember about this lien:

1. The lien is good for the period stated, 8 months, even though the owner of the grain, hay, or clover seed retains full possession and control over it.

2. The lien is not valid against a purchaser unless the lien holder gives written notice to the purchaser before the latter has made a final settlement with the seller.

3. Although there are no Illinois decisions on the application of this law, lien laws can be expected to be strictly construed. In the language of one prominent work of law, "Statutory liens have been looked upon with jealousy, and generally will only be extended to cases expressly provided for by the statute, and then only when there has been a strict compliance with all the statutory requisites essential to their creation and existence." If the Illinois courts adopt this strict viewpoint, it is doubtful if the owners of mechanical corn pickers are entitled to a lien for custom work. Certainly custom spray operators would not have a lien under this law. It is true also that combines and pick-up balers were not in the minds of the legislators when the law was passed in 1874; however, the courts would be more likely to include these machines within the present language of the act. Whether they actually will is still a question.

[28] Ill. Rev. Stat., 1949, ch. 82, sec. 59a. This section reads as follows: "Every person who, as owner or lessee of any threshing machine, clover huller, corn sheller or hay baler, threshes grain or seed, hulls clover, shells corn or presses hay or straw at the request of the owner, reputed owner, authorized agent of the owner or lawful possessor of such crops shall have a lien upon such crops, beginning at the date of the commencement of such threshing, hulling, shelling or baling, for the agreed contract price of the job, or, in absence of a contract price, for the reasonable value of the services or labor furnished. Such lien shall run for a period of (8) eight months after the completion of such services or labor notwithstanding the fact that the possession of the crops has been surrendered to its owner or lawful possessor, provided that such lien shall not be valid and enforceable against a purchaser of said crops from the owner or lawful possessor thereof unless the lien holder shall, previous to or at the time of making final settlement for such crops by such purchaser, serve upon such purchaser a notice in writing of the existence of such lien."

4. To enforce the thresherman's lien, the holder must give the owner 10 days' written notice that he intends to sell the property at a designated time and place. If the owner does not settle with the lien holder, the property may be sold and the lien satisfied, any balance going to the owner.[29]

Lawyers' experience with the thresherman's lien. Replies to the questionnaires sent to lawyers show that they handled only 42 thresherman's lien cases, while during the same period they had 746 landlord's lien cases. Of the 42 thresherman's lien cases, 39 were handled for claimants (custom operators) and 3 for the defendants. In 13 of these 42 cases judgment was rendered for the claimants and in 3 cases for the defendant. In 25 cases settlement was made prior to judgment and in 1 case there was no judgment and no settlement. In only 6 of the 13 cases where judgment was rendered for the claimants was full satisfaction received.

Only about one-fourth as many lawyers have handled thresherman's lien cases as have handled landlord's liens — 10.3 percent and 39.0 percent respectively.

Grain dealers' experience with the thresherman's lien. Although this lien is involved in sales from one farmer to another — baled hay, for example — most of the cases have arisen out of sales to grain dealers. It is not surprising therefore that according to returns on the questionnaire, grain dealers have been involved in more thresherman's lien cases than landlord's lien cases — 132 as compared with 100. One hundred six of these 132 cases were reported from Area 4, the cash-grain area. The lien holder (thresherman or sheller) recovered in all but one of these cases. This is a higher percent of recovery than these dealers indicated for the landlord's lien, 79 percent (page 150).

Custom operators' experience with the thresherman's lien. Only 42, or 21.6 percent, of the 194 custom operators returning the question-

[29] Ill. Rev. Stat., 1949, ch. 141, sec. 3: "All persons other than common carriers having a lien on personal property, by virtue of an act entitled 'An Act to revise the law of liens,' approved March 25th, 1874, may enforce said lien by a sale of said property, on giving to the owner thereof, if he and his residence be known to the person having such lien, ten (10) days' notice, in writing of the time and place of such sale, and if said owner or his place of residence be unknown to the person having such lien, then upon his filing his affidavit to that effect with the Clerk of the County Court in the county where said property is situated; notice of said sale may be given by publishing the same once in each week for three (3) successive weeks in some newspaper of general circulation published in said county, and out of the proceeds of said sale all costs and charges for advertising and making the same, and the amount of said lien shall be paid, and the surplus, if any, shall be paid to the owner of said property."

naire said that they were familiar with the thresherman's lien. Only 19 instances of its use were reported, 9 involving threshing, 8 shelling, and 2 hulling. A recovery was had in all 19 cases. One case involved recovery against a purchaser from the owner. Seventeen of the 42, or 8.8 percent of all operators, said they had mentioned the lien to their customers as an inducement or threat; 59 such instances were reported.

When asked "Do you feel that this lien law gives you any added protection?" 20.1 percent answered yes and 79.9 percent expressed no opinion. In answer to the question "Do you feel that this law is needed?" 19.6 percent said yes, 1.0 percent said no, and 79.4 percent expressed no opinion.

Among their comments were the following:

"I think this is a good law. I think this should include trucking."

"It is good insurance that the custom operator will be reimbursed for his services. The existence of the law acts as a threat."

"All I have to do is tell the elevator man to whom the corn is hauled from my sheller to pay shelling and hauling and he does it."

"At least causes a farmer to be concerned over his debt."

"If there were no lien law lots of farmers would take advantage of custom operators."

"Most people are fairly familiar with the law and pay without being pressed."

"Custom operation is not a high-profit business that can absorb a lot of bad debts. It is a service proposition like a doctor's work, where time is important and terms are not likely to be discussed in advance."

"I think this law is the means of many bills being paid without further trouble."

"Not needed so much just now when there is a period of good times but when bad times come there is a definite need for it."

"Helps to collect from professional dead beat who would slip out of paying if he could."

"I have never had to use this law but I figure I would have lost some bills if it had not been for the law."

"I used it once (thresherman's) out of about 500 jobs."

In view of the high percent of farmers answering the questionnaire who were not familiar with the lien (65.5 percent), it is doubtful if the law has the moral effect that many custom operators think it has. Considering the shift from large machines to combines, pick-up balers, and smaller equipment, and in view of other services which have grown up, such as trucking and spraying, it is fair to ask whether the thresherman's lien law should not be either expanded or repealed.

AGISTER'S LIEN

English law long ago recognized that those who pasture or feed the livestock of others have a right to keep such livestock until paid for the pasture or feed. The person entitled to such a lien is called an *agister.* An Illinois law provides that "agisters and persons keeping, yarding, feeding, or pasturing domestic animals, shall have a lien upon the animals agisted [pastured], kept, yarded, or fed, for the proper charges due for the agisting, keeping, yarding, or feeding."[30]

In interpreting this law, the Illinois courts have established three important rules:

1. To be entitled to an agister's lien, the person claiming it must have the animals in his charge and under his control. An elevator company or feed company is not entitled to a lien simply because it supplies feed to another on credit.[31] A party wrongfully in possession of another's animals cannot claim the lien.[32]

2. There must be an agreement for the pasturing, feeding, or care before the lien can attach[33] and the agistment must be for hire or adequate consideration.[34] The relationship of employee,[35] landlord,[36] tenant, mortgagee, partner, or co-owner does not create a lien.[37]

3. An agister's lien takes precedence over a chattel mortgage if the one who holds the chattel mortgage leaves the animals in the custody and possession of the mortgagor.[38]

To enforce this lien, the one entitled to it, while he still has the animals[39] and after requesting reasonable or agreed compensation from the owner, may give 10 days' written notice to the owner of the time and place at which the property will be sold. After publication of notice as required by law, the animals may be sold and the amount

[30] Ill. Rev. Stat., 1949, ch. 82, sec. 59.

[31] W. H. Howard Commission Co. v. National Livestock Bank, 93 Ill. App. 473 (1900).

[32] Reynolds for the use of Jones v. Earl Weakly, et al., 293 Ill. App. 384 (1938).

[33] Jones v. Weakly (above); A. A. Roat, et al., v. John Utter, 173 Ill. App. 473 (1912).

[34] McNamara v. Godair, 161 Ill. 228, 43 N.E. 1071 (1896); Millikin v. Jones, 77 Ill. 372 (1875).

[35] McNamara v. Godair (above).

[36] Jones v. Weakly (see footnotes 32 and 33).

[37] 107 A.L.R. 1072.

[38] Blain v. LaFond, 36 Ill. App. 214 (1889).

[39] If possession is voluntarily surrendered the lien ceases to exist (Blain v. LaFond, above). But if part of the animals are retained, the lien may be enforced against them (43 Idaho 93, 1926).

claimed for feed, keep, or pasture retained, together with the costs of the proceeding. The balance, if any, is paid to the owner.[40]

The amount allowed an agister for his services is either that specified in the contract, or if no definite amount is specified then a reasonable charge.[41] Lack of any records showing what or how much feed has been fed may sometimes negative a claim that the animals are under agistment.[42] The lien can be enforced only in strict accordance with the law and is not subject to a writ of execution.[43]

An agister has certain responsibilities in caring for the animals. He has to exercise only ordinary care in looking after the animals,[44] but if he is so negligent or careless that damage to the animals exceeds the compensation to which he would have been entitled, he may in effect lose his lien.[45] An agister is liable for the trespass of animals placed under his control. If the owner knew his animals were difficult to restrain or selected an incompetent agister, he may also be held liable.[46] When animals are stolen or removed from the agister's premises, it is his duty to try to recover them.[47]

The lien may be removed by payment of the charges, surrender of the animals, actions inconsistent with an agistment, or by agreement.[48] The lien is not lost when animals are taken from the agister without his consent.[49]

Lawyers' and farmers' experiences with the agister's lien. The 195 lawyers in the survey reported only 37 cases over the whole period of their practices. Thirty-six of these were on behalf of agisters and 1 for the livestock owner. Judgment was entered for the agister in 11 cases, for the owner in 1 case, and in 25 cases settlement was made prior to judgment. Only 15 of these attorneys (7.7 percent) have ever handled an agister's lien case. Only 19.7 of the farmers returning the questionnaire were familiar with this lien law.

Only two comments were made by farmers. One of these indicates a proper — if somewhat rigid — appreciation of the lien law:

[40] Ill. Rev. Stat., 1949, ch. 141, sec. 3.
[41] 180 Mo. App. 118 (1914).
[42] Roat v. Utter (see footnote 33).
[43] McNamara v. Godair (see footnotes 34 and 35).
[44] Umlauf v. Bassett, 38 Ill. 96 (1865); Hatly v. Markel, 44 Ill. 225 (1867); Hogan v. Carlson, 182 Ill. App. 21 (1913); Mansfield v. Cole, 61 Ill. 191 (1871).
[45] Reeve v. Fox, 40 Ill. App. 127 (1891).
[46] Ward v. Braun, 64 Ill. 307 (1872); Weide v. Thiel, 9 Ill. App. 223 (1881).
[47] 106 Ind. 218 (1885); 186 S.W. 433 (Texas, 1916).
[48] 21 Kansas 687 (1874); 100 Ore. 673 (1921); 209 Ky. 49 (1925); 89 Vt. 502 (1916); 217 Cal. 377 (1933).
[49] 193 Mo. App. 670 (1916); 93 Okla. 148 (1923).

"The agister's lien was not exercised against tenants but against outsiders who rented pasture for the season, promising to pay later. When fall came without payment and no valid reason for the failure was given, heavy chains and padlocks were put on the pasture gates to prevent the stock's being removed in the night to prevent payment. This may not be a lien strictly speaking but I mention the case. We never went to court, those owing the money acknowledged the debts and paid without dispute."

The other seems to have confused the agister's and landlord's lien:

"I once had to bring an action against a tenant to collect pasture rents. He had given a chattel mortgage on his part of the wheat crop and I brought suit to set aside this mortgage so the overdue pasture rent would have first claim against his crop."

A review of the cases creates the impression that the agister's lien has been seized upon by persons who were plainly not agisters in an attempt to squeeze in ahead of other creditors, and that it has been used legitimately in only a few cases.

SIRE OWNER'S LIEN

The Illinois legislature in 1887 passed an act to " . . . protect farmers in this State against damage resulting from breeding to sires advertised with bogus or fraudulent pedigrees, and to secure to the owners of sires payment for service . . ."[50]

Every owner charging a service fee for the use of a sire may have a lien on the get of the sire for the fee, but he must do two things:

1. File a verified statement with the State Department of Agriculture, giving the name, age, description, and pedigree of the sire, together with the terms and conditions upon which the sire will be advertised for service. The Department, upon payment of the required fee, issues a certificate of pedigree to the applicant and another to the county clerk.

2. Post a copy of the certificate of pedigree in a "conspicuous place where said sire may be stationed."

The lien upon the get of sire for nonpayment of the service fee exists for one year after the date of birth of the progeny and may be enforced in any court of competent jurisdiction. There are several important considerations in connection with this lien:

1. It is for the service of any kind of sire — stallion, jack, bull, boar, or ram.

2. It exists only against the progeny; it is not effective against the dam.

[50] Ill. Rev. Stat., 1949, ch. 8, secs. 25-33.

3. It must be distinguished from the more comprehensive law, described below, in favor of the owners of stallions and jacks.

4. Any person who by false pretense obtains the registration of a sire with a breed association, or who issues a false pedigree, is subject, upon conviction, to fine or imprisonment or both.

Lawyers' and farmers' experiences with sire owner's lien. The questionnaire gave little information about this lien. Only 18.1 percent of the farmers answering indicated that they had any familiarity with the law, and only 5.6 percent of the attorneys responding reported any cases. Of the 17 cases listed by attorneys, 7 resulted in judgments for the lien claimant, and 10 were settled prior to judgment. In only 2 of the 7 cases where judgment was entered were the lien claimants paid in full following judgment. It may be suggested, though there are no data to prove it, that often a lien case is permitted to go to judgment just because there are no assets with which to make an earlier settlement — and that assets are likely to be insufficient after judgment also.

Annual reports of the Division of Livestock Industry have no information about registrations under this law, but a communication from the superintendent of the Division reported that 1,032 stallions and jacks were licensed in 1945, 917 in 1946, and 864 in 1947. He had no information on the extent to which the lien law has been employed by owners of sires.

The only comment made by a farmer about this lien was: "The colt stands good for the season, but when you tell them you are going to take the colt they will always pay."

STALLION OR JACK OWNER'S LIEN

Owners of licensed stallions or jacks kept for public service have a lien on the mare or jennet served and first lien on their progeny for the service fee.[51] The Illinois law also provides that:

1. The lien will not attach unless the stallion or jack is licensed by the State Department of Agriculture.

2. The service must have been requested by the owner of the dam or his agent.

3. The lien is not effective unless, within 24 months after service, a claim of lien in writing and under oath is filed with the county recorder of the county in which the dam is located.

4. A recorded claim of lien for service takes precedence over all other liens or claims not previously recorded. The claim must state the

[51] Ill. Rev. Stat., 1949, ch. 8, secs. 51-61.

name and residence of the person claiming, the amount due, and the name of the owner of the dam or progeny and enough description of the animals for identification.

A claim for lien expires if it is not enforced within 30 months after the date of service.

The lien may be enforced by foreclosure before a Justice of the Peace. If the service fee is not paid, an execution is issued and the animal or animals subject to the lien may be sold at public sale to the highest bidder.[52] The service fee, filing, and other fees and costs are taken out, and the balance, if any, given to the owner. Animals sold under this lien law may be redeemed by the owner within 30 days after sale by paying to the proper parties the amount of the purchase price with 5 percent interest, together with all costs, expenses, and the keep of the animal from the day of the sale to the time of redemption.

No Illinois Supreme Court cases or Appellate Court cases have been reported that interpret either this law or the general sire owner's lien law. There is one case holding that a stallion owner was entitled to a reasonable fee for his services, even though he had not posted his terms, but in this case he was not proceeding under the lien law.[53]

HORSESHOER'S LIEN

Horseshoers were given a lien for their services by a law passed in 1907.[54] The lien applies to the animal shod (it includes "horse, mule, or other animal"), covers a reasonable charge for shoeing, and takes precedence over all other claims except those duly recorded prior to the shoeing.

To take advantage of the lien, the horseshoer must, within 6 months after shoeing the animal, file a claim for his lien with the recorder of deeds; and within 3 days after filing his claim bring suit to foreclose the lien. The animal may be sold to satisfy the debt, but the owner may redeem within 90 days by paying the amount of the purchase price, all costs, and interest. The lien does not attach if the animal changes ownership before a claim for lien is filed. Suit may be brought in a municipal court or before a Justice of the Peace.

According to the language in the law "every person who at the request of the owner" shoes an animal is entitled to the lien. But in

[52] Section 60 of Illinois Revised Statutes, 1949, ch. 8, sets out in considerable detail the exact procedure for selling the mare or jennet or progeny and satisfying the lien.

[53] Gschwendtner v. Gebhardt, 142 Ill. App. 260 (1908).

[54] Ill. Rev. Stat., 1949, ch. 66, secs. 1-12.

view of the fact that horseshoers are required to have a license,[55] it is problematical whether one engaging in horseshoeing who is not licensed would be entitled to claim a lien.

STABLEKEEPER'S LIEN

Illinois recognized at common law no right to a lien on behalf of stable and livery barn operators.[56] So in 1874, the same year the innkeeper's, agister's, and thresherman's lien laws were enacted, a stablekeeper's lien law was passed. It provides that "stablekeepers and any persons shall have a lien upon the horses, carriages, and harness kept by them for the proper charges due for the keeping thereof and expenses bestowed thereon at the request of the owner, or the person having the possession thereof."[57] Foreclosure and sale under this lien are controlled by the law discussed under the agister's lien (page 157, footnote 40). As with the agister's lien, possession is essential, and if the property is voluntarily surrendered, the lien ceases to exist. A wrongful taking from the stablekeeper does not, however, destroy the lien, and he can take action to recover possession.[58]

If one holding a chattel mortgage knows or has reason to believe that a horse is being "boarded" or kept in a stable, his claim is not superior to that of the stablekeeper.[59] The mortgagee has a superior claim if the "boarding" is done without the knowledge or consent of the mortgagee.[60] It has been held that an assignee of chattel mortgage notes past due takes the assignment subject to claims of a stablekeeper or agister.[61]

Though this stablekeeper's law was intended for another era, it still operates for the benefit of stable operators and anyone who "boards" riding horses or ponies for another. Like the agister's lien it does not apply to laborers, tenants, or landlords simply because they may feed, keep, or care for an animal. This lien can arise only where there has been a request that animals be kept, and where it is understood that compensation for the keeping will be paid.

[55] Under a law passed in 1915, horseshoers are required to have a license. A Board of Examiners of Horseshoers first administered this law, but in 1935 its functions were transferred to the Department of Registration and Education.

[56] Rathbun v. Ocean Accident and Guarantee Corporation, Ltd., 219 Ill. App. 514 (1921).

[57] Ill. Rev. Stat., 1949, ch. 82, sec. 58.

[58] Tumalty v. Parker, 100 Ill. App. 382 (1901).

[59] McGlasson v. Hennessy, 161 Ill. App. 387 (1911); Swanson v. Smith, 185 Ill. App. 440 (1914).

[60] Charles v. Neigelsen, 15 Ill. App. 17 (1884).

[61] Blain v. LaFond (see footnotes 38 and 39).

MECHANIC'S LIEN

Those who furnish materials, labor, or skilled service for the construction of buildings have a claim against such buildings for payment; this claim extends not only to the building but to the owner's interest in any land connected with the building.[62] The lien is based on the theory that since the labor and materials involved become a part of the real estate, those furnishing the labor or materials should have a prior claim against the real estate.[63] Lumber dealers, materialmen, architects, carpenters, painters, contractors, subcontractors, and their laborers are examples of persons entitled to the lien.

The lien attaches to the property on the date of the contract for service or materials. The existence of a contract is necessary as a basis for the lien,[64] but the contract may be either express or implied and does not have to be in writing.[65] To be effective against other creditors, this lien must be either foreclosed or filed with the clerk of the circuit court within four months after the contract is completed.

In general the law applies to buildings and permanent fixtures. Improvements or repairs to buildings (roofing, a new room or porch, bathroom or kitchen installations, electrical work, a heating plant) entitle the materialmen and contractors to a lien. Insulation, plumbing, forms for concrete, well, and landscaping are also included. The courts have said that sale and installation of lightning rods,[66] building fences, furnishing fence posts,[67] and moving buildings are not the kind of service and material contemplated by the act and that the lien does not apply.[68] The law has been amended, however, and now seems to include both fencing and house moving, though the language is rather difficult to interpret.

Any property against which a mechanic's lien has been foreclosed may be redeemed within the same period allowed for redeeming real estate (12 months) by paying for the services or materials plus costs and interest.[69]

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[62] Ill. Rev. Stat., 1949, ch. 82, secs. 1-39. The mechanic's lien should not be confused with the lien accorded garagemen and others for labor or storage in connection with chattels.

[63] Ley Fuel Co. v. Weisman, 265 Ill. App. 185 (1932).

[64] Rittenhouse and Embree Co. v. Warren Construction Co., 264 Ill. 619, 106 N.E. 466 (1914).

[65] Interstate Contracting and Supply Co. v. Belleville Savings Bank, 197 Ill. App. 30 (1916); Stepina v. Conklin Lumber Co., 134 Ill. App. 173 (1907).

[66] Drew v. Mason, 81 Ill. 498, 25 Am. Rep. 288 (1876).

[67] Canisius v. Merrill, 65 Ill. 67 (1872).

[68] Stephens v. Holmes, 64 Ill. 336 (1872).

[69] Ill. Rev. Stat., 1949, ch. 82, sec. 20.

In buying farm property it is important to find out if any unsatisfied mechanic's lien exists against the house, barn, crib, or other farm buildings and improvements. If such claims exist, the purchaser, on failure of the original owner to pay the claims, will either have to pay them or suffer a foreclosure against the property.

The courts have held that a mechanic's lien attaches only to the real estate on which the improvement is made and cannot be enforced against separate tracts belonging to the same owner.[70]

When a building is by mistake erected on property not belonging to the one contracting for its construction, the mechanic's lien is good against the building but not against the property.[71]

When a husband and wife own property jointly, either may make a contract that will subject the property to a mechanic's lien.[72] The statute expressly provides that a husband may contract for work which will subject his wife's property to the lien if it is ". . . with her knowledge and not against her express protest in writing."[73] A tenant or lessee for years, a trustee, or anyone acting for an owner may subject the property to a lien through contracts for construction or improvement, if the owner agrees and permits the work to be done. However, if a tenant causes a permanent construction to be made without the consent of the landlord and without such authority in a lease, the landlord's property is not affected though the tenant's leasehold interest might be proceeded against. Likewise, a life tenant may subject his life interest to a lien but not the fee interest.[74]

If a contract is not completed and the materialman or contractor is not at fault, he may stop work and enforce his lien for what he has done.[75] The lien applies even though no time for completion or payment is stated if the contract is completed within three years after the work is started or materials were first supplied.[76] So that owners may expedite the clearance of their title, the law provides that upon written notice to a mechanic's-lien claimant, suit to enforce the lien or an answer in a pending suit shall be made within 30 days.[77]

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[70] Paddock v. Stout, 121 Ill. 571, 13 N.E. 182 (1887).

[71] Ill. Rev. Stat., 1949, ch. 82, sec. 2.

[72] Same, sec. 3.

[73] Same, sec. 3. This seems to represent a divergence from other Illinois statutes that give women separate property rights and that attempt to give them equal rights with men.

[74] F. K. Ketler Co. v. County Fair Grounds Corp., 301 Ill. App. 117, 21 N.E. 2d, 779 (1939).

[75] Ill. Rev. Stat., 1949, ch. 82, sec. 4.

[76] Same, sec. 6.

[77] Same, sec. 34.

Agricultural or farm labor is not included in the mechanic's lien. The nearest approach is probably the landscape gardener.[78]

The interpretation and use of this statute presents a complex problem to the legal profession, as indicated by the large number of reported cases and by the legal articles and publications, including books, which have been written on the Illinois mechanic's lien. Much of the controversy has had to do with enforcement procedure rather than with the substance of the law.

LIEN FOR LABOR AND STORAGE

Those who expend labor, skill, or materials on personal property at the request of the owner or furnish storage for it have a lien against that property.[79] The lien begins on the date when the labor or materials are supplied or the storage is provided.

Garagemen and automobile mechanics form the largest class of persons benefiting from this law. A farmer who has work done on his automobile, truck, or tractor is subject to the lien. A farm employee is not entitled to a lien, however, even though he may do repair work on a tractor or other farm machinery.

After the property has been returned to the owner, this lien lasts for only 60 days, unless within the 60 days the lien claimant files a notice of claim with the county recorder. The recorder is required to maintain all such entries in an "index of liens upon chattels."

The statute itself[80] and decisions of the Illinois Supreme Court[81] have determined that a chattel mortgage or conditional sales contract made before the labor or storage is provided takes precedence over the lien created by this law. This means that when an automobile or tractor is sold to satisfy the debts of the owner, the sales agency or implement company holding a chattel mortgage or conditional sales contract will be paid any balance due them before a garageman will be paid for storage or labor.

This lien may be enforced by foreclosure and sale, as provided by law.

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[78] Werty v. Mallay, 144 Ill. App. 329 (1908).

[79] Ill. Rev. Stat., 1949, ch. 82, secs. 40-47.

[80] Same, sec. 43.

[81] Ehrlich v. Chapple, 311 Ill. 467, 143 N.E. 61, 32 A.L.A. 989 (1924); Walman v. Raphael, 278 Ill. App. 172 (1934).

LIENS FOR PUBLIC CARRIERS, WAREHOUSEMEN, AND COLD-STORAGE LOCKER PLANTS

Railroads and other common carriers have a lien for their services. Even though a negotiable bill of lading has been issued, the carrier still has a lien on the goods for ". . . freight, storage, demurrage and terminal charges, and expenses necessary for the preservation of the goods or incident to their transportation . . . subsequent to the date of the bill."[82] When goods are lawfully sold to satisfy the carrier's lien, the carrier is not liable to the one to whom the goods were shipped.[83]

In interpreting the rights of a carrier, the Illinois courts have held that a carrier may lawfully keep the property until freight actually due has been paid or tendered[84] and that this lien exists as long as the carrier retains "dominion and control" of the goods.[85] Furthermore goods not called for may be stored and a lien claimed for the storage or warehousing charges.[86] Partial delivery of the goods does not destroy the lien,[87] but an excessive charge and demand may destroy the lien and amount to a conversion or illegal holding of the goods.[88]

Truckers operating "intrastate" in Illinois are not classed as common carriers but are subject to provisions of the Illinois Truck Act.[89]

Elevators and other public warehouses are entitled to a lien or claim for storage charges. The statutes provide that "a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also, for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering, and other charges and expenses. . . ."[90] If a negotiable receipt is issued, the warehouseman has only a lien for storage after the date of the receipt.[91] Goods may be held until the lien is satisfied[92] and may be lost only by surrendering possession or refusing to deliver after an offer of the storage charges.[93]

Special provisions permit a speedier sale of perishable goods when

[82] Ill. Rev. Stat., 1949, ch. 27, sec. 27.
[83] Same, sec. 28.
[84] Ohio and Mississippi Railroad Co. v. Nol, 77 Ill. 513 (1875).
[85] Gregg v. Illinois Central Railroad Co., 147 Ill. 550, 35 N.E. 343, 37 Am. St. Rep. 238 (1893).
[86] Schumacher v. Chicago and N. W. Railway Co., 207 Ill. 199, 69 N.E. 825 (1904). Illinois Central Railroad Co. v. Alexander, 20 Ill. 24 (1858).
[87] Schumacher v. Chicago and N. W. Railway Co., above.
[88] Northern Transportation Co. of Ohio v. Sellick, 52 Ill. 249 (1869).
[89] Ill. Rev. Stat., ch. 95½, secs. 240-282.
[90] Same, ch. 114, sec. 259.
[91] Same, sec. 262. [92] Same, sec. 263. [93] Same, sec. 261.

necessary to satisfy the lien.[94] After a sale to satisfy the lien a warehouseman is no longer liable for the keeping or delivery of the goods.[95]

The Illinois locker-plant law[96] provides that "every operator of a locker plant or branch locker plant shall have a lien upon all property of every kind in his possession for all locker rentals, processing, handling, or other charges due from the owner of such property. Such liens may be secured and enforced in the same manner as mechanic's liens are secured and enforced."[97]

PUBLIC LIENS

Generally speaking, any service rendered by the state, county, other governmental agency, or public corporation to private property, and any taxes, assessments, or other payments due a public agency or public corporation from a private citizen create a lien against the private property involved.

Illinois follows the English common-law rule that the state has priority in the payment of debts due it. Accordingly, statutory liens have been included as a part of those laws which cover the rights of the public in private property.

Among the more important ones to an Illinois farmer are:

A lien for taxes against real property.[98]

A lien for taxes against personal property.[99]

A lien against farm land for drainage assessments.[100]

A lien for state inheritance and transfer taxes.[101]

A lien for all taxes collected by the United States.[102]

A lien against land on which a county or township weed commissioner has to destroy noxious weeds.[103]

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[94] Ill. Rev. Stat., 1949, ch. 114, sec. 266. [95] Same, sec. 268.

[96] Same, ch. 56½, secs. 93.1-93.20.

[97] Same, sec. 93.18. See "Mechanic's Lien," pages 162 to 164.

[98] Same, ch. 120, sec. 697: "The taxes upon real property, together with all penalties, interests, and costs, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and encumbrances. . . ."

[99] Same, sec. 698. Attaches after tax books are received by collector.

[100] Same, ch. 42, sec. 23 (levee districts); sec. 112 (farm drainage districts); sec. 157 (special drainage districts under the farm drainage act).

[101] Same, ch. 120, sec. 397.

[102] 26 U.S.C. 3670: "If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person." [103] Ill. Rev. Stat., 1949, ch. 18, sec. 3.

A lien against motor vehicles for unpaid fees and penalties.[104]

A lien in favor of nonprofit and county hospitals against claims or causes of action existing on the part of injured persons treated, cared for, or maintained by them.[105]

SUMMARY OF ILLINOIS LIEN LAWS AFFECTING FARMERS

1. The lien law having the greatest effect on Illinois agriculture is the landlord's statutory lien for rent. It exists as a matter of law in favor of all landlords, regardless of type of lease — whether cash, crop-share, or livestock-share. It has been in litigation more than all other strictly agricultural liens combined. Third parties most affected are elevator operators and other grain dealers.

2. The thresherman's lien law, which includes threshing, baling, hulling, and shelling, operates primarily as a warning to elevators and grain dealers to inquire about the payment of shelling and threshing bills. It may also operate to establish priorities among creditors claiming the grain or hay of an insolvent farmer.

3. The agister's lien has apparently had some slight use in inducing payment for pasture rent. More often it has been brought into play by feed companies and others not entitled to it, in an attempt to establish priorities over secured creditors of a cattle or sheep feeder.

4. The sire owner's lien and stallion and jack owner's liens have been only rarely enforced.

5. The horseshoer's and stablekeeper's liens are now of little significance to farmers.

6. Among the nonagricultural liens affecting farmers, the mechanic's lien is the most important because it can give rise to claims against specific items or tracts of farm real estate. Furthermore the mortgagor-mortgagee, landlord-tenant, and principal-agent relations all may have an effect on its application. Liens for labor and storage are important when farm machinery or equipment is stored for hire or repaired by a skilled mechanic.

7. Certain public liens, particularly those against real estate for taxes and assessments, are important to the government as a means of securing revenue and to agriculture generally because of their effect on land values and management. They are most likely to be enforced in times of economic depression and on low-income properties.

[104] Ill. Rev. Stat., 1949, ch. 95½, sec. 12a. [105] Same, ch. 82, sec. 97.

RECOMMENDATIONS

As a matter of broad theory, it is difficult to support the existence of any lien except those in favor of the public. Particular liens must be justified on particular grounds, for example, that abuses out of the ordinary exist. But any class of creditors can enumerate abuses and difficulties with regard to payment. Unless conclusive evidence can be produced to show that they are faring worse than other creditors they should not be awarded a statutory priority merely because some difficulties exist. If the situations out of which most lien statutes have arisen were investigated, it might well be found that only a few of them should have received legislative sanction. Anyone interested in improving the operation of lien statutes ought therefore to consider the possibility that there should be none except public liens.

The landlord's lien could be improved by a statutory clarification of its operation against third parties, both those who are aware of the existence of a lien and those who are not. If there must be a landlord's lien, the Illinois law seems fair and workable. More specific provisions on enforcement and how it ties up with the distress proceeding would be helpful.

The thresherman's lien should either be repealed or expanded to include corn picking, crop dusting and spraying, trucking, feed grinding, and other custom operations. The day of the large stationary thresher, baler, and huller is past, and there is no more reason to favor the combine operator or pick-up baler than to favor the corn picker or itinerant feed grinder. Since these services have become so numerous and since so many of them are performed by neighbors or by local small-scale operators, repeal would seem to be the best solution.

If not repealed, then this law should be amended so that the lien may be perfected by filing a claim — as can now be done with the mechanic's lien — rather than by informing a prospective purchaser in writing, which is usually difficult to do.

The stallion and jack lien and sire owner's lien should be combined if they are to be retained.

The agister's, horseshoer's, and stablekeeper's liens should be repealed, or if retained combined. There should be a provision for preserving them by filing, as is now the case with the mechanic's lien.

The mechanic's lien law should be rewritten and clarified. At present it is a cumbersome piece of legislation, lengthy, and like our drainage laws, difficult for the average lawyer to employ with certainty.

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