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## For the Minnesota State Bar Association

Chester L. Caldwell

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ADMIRALTY—JURISDICTION—MARITIME TORTS.—The constitution of the United States provides that “The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction.”<sup>1</sup> What characteristics a tort must possess to fall within this exclusive jurisdiction of the federal courts is, as yet, unsettled. Justice Story, after an extended examination of ancient authorities, stated that “the jurisdiction of the admiralty is exclusively dependent upon the *locality* of the act.”<sup>2</sup> That is, the person or thing injured must have been located on the high seas or naviga-

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<sup>1</sup> Article III, sec. 2.

<sup>2</sup> *Thomas v. Lane*, (1834) 2 Sumn. 1, 9, Fed. Cas. No. 13902, p. 960; *De Lovio v. Boit*, (1815) 2 Gall. 398, 464, Fed. Cas. No. 3776, p. 440, dictum in a discussion of maritime contracts; see also *The Plymouth*, (1865) 3 Wall. (U. S.) 20, 36, 18 L. Ed. 125. In *Hughes*, Admiralty Jurisdiction,

ble waters.<sup>3</sup> The location of the person or thing causing the injury is not important.<sup>4</sup> In a recent Oregon case,<sup>5</sup> a stevedore, working on the dock, was injured by a sling load of cement as he was unloading the vessel. Applying the locality test, the tort was held to be non-maritime as the injured party was on the dock, an extension of the land. As a result the federal courts had no jurisdiction, it being in the Oregon courts. If the sling had injured a stevedore on a floating dock or on the ship, the federal courts would have exclusive jurisdiction.<sup>6</sup> Other non-maritime torts are injuries by vessels to the land, or buildings thereon, bridges, marine railways and other structures attached to the earth.<sup>7</sup> Beacons are an exception to the general rule.<sup>8</sup> Persons or maritime structures on navigable waters may be injured by the land itself, or by docks or bridges.<sup>9</sup> The maritime structure may consist of a floating wharf, a vessel tied to a pier, or even a vessel in dry dock.<sup>10</sup>

Despite the wide application of the locality test, its exclusiveness has been denied by the circuit court of appeals for the ninth circuit in a decision in which it is held that in addition to satisfying the locality test, the tort must have some relation to transactions, persons, or events of a maritime nature.<sup>11</sup> This view is followed in England where the Court of Appeal, Queen's Bench Division, after a review of the early English cases, denied that courts of admiralty ever had jurisdiction over torts of a non-mari-

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2nd Ed. p. 19, it is said that "no satisfactory definition has yet been enunciated which will enable the student to say in advance whether a given case is marine or not."

<sup>3</sup> *The Propeller Genesee Chief v. Fitzhugh*, (1851) 12 How. (U. S.) 443, 457, 13 L. Ed. 1058, extended admiralty jurisdiction to include navigable lakes and rivers, as well as tide-waters.

<sup>4</sup> *Martin v. West*, (1911) 222 U. S. 191, 32 S. C. R. 42, 56 L. Ed. 159, 36 L. R. A. (N.S.) 592.

<sup>5</sup> *Cordrey v. The Bee*, (Oregon 1921) 201 Pac. 202.

<sup>6</sup> *Atlantic Transport Co. v. Imbrovek*, (1914) 234 U. S. 52, 34 S. C. R. 733, 58 L. Ed. 1208, 51 L. R. A. (N.S.) 1157.

<sup>7</sup> *The Plymouth*, (1865) 3 Wall. (U.S.) 20, 18 L. Ed. 125; *Johnson v. Chicago, etc., Elev. Co.*, (1886) 119 U. S. 388, 7 S. C. R. 254, 30 L. Ed. 447; *Martin v. West* (1911) 222 U. S. 191, 32 S. C. R. 42, 56 L. Ed. 159, 36 L. R. A. (N.S.) 592; *The Professor Morse*, (1885) 23 Fed. 803.

<sup>8</sup> *The Blackheath*, (1904) 195 U. S. 361, 25 S. C. R. 46, 49 L. Ed. 236.

<sup>9</sup> *O'Keefe v. Staples Coal Co.*, (1910) 201 Fed. 131; *Greenwood v. Town of Westport*, (1893) 62 Conn. 575, 53 Fed. 824, aff'd 60 Fed. 560.

<sup>10</sup> *The Bart Tully*, (1918) 251 Fed. 856; *The Anglo-Patagonian*, (1916) 235 Fed. 92, 148 C. C. A. 586.

<sup>11</sup> *Campbell v. Hackfeld & Co.*, (1903) 125 Fed. 696, 62 C. C. A. 274, followed in *The St. David*, (1913) 209 Fed. 985, but see contra, *Imbrovek v. Hamburg-American, etc., Co.*, (1911) 190 Fed. 229, aff'd 193 Fed. 1019. See also 16 Harvard Law Review 210.

time nature even when they occurred on the high seas.<sup>12</sup> The Supreme Court of the United States has left the question open. Assuming that the wrong must be of a "maritime nature," it has given these words a broad enough meaning to include an injury to one engaged in a "maritime service absolutely necessary to enable the ship to discharge its maritime duty."<sup>13</sup>

The reason advanced by one text writer why admiralty should not take jurisdiction of injuries of a non-maritime nature, such as slander of one passenger on a ship by another, is that admiralty jurisdiction depends on the relation of the parties to a ship or vessel, and embraces only violations of maritime rights and duties.<sup>14</sup> In further extension of the idea that the maritime character of the tort, rather than the locality, should be determining, it has been insisted that admiralty should take jurisdiction of all injuries a ship might cause either to a person engaged in work of a maritime nature on an instrumentality of maritime commerce such as a wharf, or to the instrumentality itself.<sup>15</sup> On reason it would appear that admiralty courts should have jurisdiction of all maritime transactions and events without regard to the locality of their occurrence. One of the purposes of the framers of the constitution was to secure uniform and consistent rules of law for maritime commerce. Modern commerce requires uniformity.<sup>16</sup> Insofar as torts of a maritime nature occur on a dock or a bridge, the state law governs and the desired uniformity is destroyed. In England the admiralty courts have been granted jurisdiction of "any claim for damages done by any ship."<sup>17</sup> On the continent also the maritime nature of the wrong was emphasized as the test.<sup>18</sup> The fact that Congress, under the constitution, can not extend our admiralty jurisdiction,<sup>19</sup> affords a strong reason for a

<sup>12</sup> *Queen v. Judge of City of London Court*, [1892] 1 Q. B. 273, 294.

<sup>13</sup> *Atlantic Transport Co. v. Imbrovek*, (1914) 234 U. S. 52, 62, 34 S. C. R. 733, 58 L. Ed. 1208, 51 L. R. A. (N.S.) 1157. See 25 *Harvard Law Review* 382.

<sup>14</sup> *Benedict, Admiralty*, 3d Ed., sec. 308, cited in *Campbell v. Hackfeld & Co.*, (1903) 125 Fed. 696, 700, 62 C. C. A. 274.

<sup>15</sup> Dissenting opinion of Ross, J., in *Swayne & Hoyt v. Barsch*, (1915) 226 Fed. 581, 594, 141 C. C. A. 337, and concurring opinion of Brown, J., in *The Blackheath*, (1904) 195 U. S. 361, 368, 25 S. C. R. 46, 49 L. Ed. 236.

<sup>16</sup> *The Lottawanna*, (1874) 21 Wall. (U.S.) 558, 575, 22 L. Ed. 654.

<sup>17</sup> *Admiralty Court Act*, (1861) 24 & 25 Vict., Cap. X, sec. 7.

<sup>18</sup> 25 *Harvard Law Review* 381, citing *Benedict, Admiralty*, 4th Ed., sec. 106.

<sup>19</sup> *The Blackheath*, (1904) 195 U. S. 361, 365, 25 S. C. R. 46, 49 L. Ed. 236. That jurisdiction over maritime injuries is exclusively in the federal courts, and that Congress cannot delegate to the states any portion of such jurisdiction without destroying the harmony and uniformity established by the constitution, see *Southern Pacific Co. v. Jensen*, (1917) 244 U. S.

broad interpretation of the constitution commensurate with the needs of modern commerce.

**AUTOMOBILES—GARAGE KEEPERS' STATUTORY LIENS.**—The ever-increasing size and importance of the automobile and garage business and the recent attempts to revise the Minnesota motor vehicle lien law prompt an examination and study of the progress of legislation in the United States in regard to garage keepers' liens.

It is fundamental that, at the common law, the garage keeper has his lien for repairs upon the well established principle that the privilege of a particular lien is extended to those who have by their skill and labor imparted some additional value to the chattel. It is also the settled rule that the relinquishment of possession extinguishes the lien.<sup>1</sup> This, however, is the extent of the protection afforded, and it is here that the garage keepers invoke the aid of legislation.

For the purposes of this discussion the garage business embraces three principal features, viz: repairs, storage and the sale of accessories. As a "storer" of automobiles, the garage keeper has no common-law protection because the business necessarily involves the daily release of possession,<sup>2</sup> while, for the value of his labor and of the replacement parts connected with the repairing, he has a lien at the common law, but only so long as he retains possession of the vehicle.

That the courts recognize the general inadequacy of the protection is evident from the language used in the New Jersey case of *Crucible Steel Co. v. Polack Tyre & Rubber Co.*,<sup>3</sup> where the court in passing upon the constitutionality of the lien law of that state, said:

"Thus the statute gives the garage keeper a lien for the storing and maintaining of automobiles, a present popular means of conveyance unknown to the common law, which has in a great measure supplanted the horse and wagon and revolutionized the

205, 37 S. C. R. 524, 61 L. Ed. 1086, L. R. A. 1918C 451, Ann. Cas. 1917E 900; 4 MINN. LAW REVIEW 444; *Knickerbocker Ice Co. v. Stewart*, (1920), 253 U. S. 149, 40 S. C. R. 438, 11 A. L. R. 1145.

<sup>1</sup>*White v. Smith*, (1882) 44 N. J. L. 105, 43 Am. Rep. 347; 2 Kent Com., 11th Ed., 634 to 640; 17 R. C. L. 601.

<sup>2</sup>*Smith v. O'Brien*, (1905) 46 Misc. Rep. 325, 94 N. Y. S. 673; *Grinnell v. Cook*, (1842) 3 Hill (N. Y.) 485, 38 Am. Dec. 663; *Jackson v. Cummins*, (1839) 5 M. & W. (Eng.) 342; *Berry*, *Automobiles*, 3d Ed., sec. 1317; note 3 A. L. R. 664.

<sup>3</sup>(1918) 92 N. J. L. 221, 104 Atl. 324.

mode of transportation; it gives a right of lien for furnishing gasoline, accessories or other supplies for which no right of lien existed at the common law. The innovation which the statute makes is neither startling nor novel in so far as it enlarges and extends the right of lien to conditions not included at common law, but is in line with the natural progress of the law to meet necessities arising from new business conditions; and the wisdom of this species of legislation is not a court question, but is peculiarly within the province of the law making power to determine."

An analysis of the motor vehicle lien laws of several states shows the progress of legislation toward supplying the protection asserted to be necessary by those engaged in the garage business. There is little difference in the effect of the expressions used to designate the persons entitled to the lien. "A person keeping a garage or place for storage, repair," etc.,<sup>4</sup> "Every keeper of a garage,"<sup>5</sup> and "Every automobile repairer"<sup>6</sup> are standard examples. The provisions concerning the scope of the lien vary in many instances. A number of statutes extend the right to a lien to embrace repairing, storage and supplies.<sup>7</sup> Whether the term "supplies" includes accessories and replacement parts as well as gasoline and oil appears not to have come before the courts for decision. New York, New Jersey and New Mexico expressly include gasoline. Minnesota, Missouri and Oregon<sup>8</sup> use the term "materials," which may fairly be assumed to refer to replacement parts. In Massachusetts, the lien exists for storage only.<sup>9</sup>

A variety of expressions are used to denote who may confer the right to a lien upon the garage keeper. The legal effect of these expressions<sup>10</sup> seems not to have been adjudicated and it may be expected that their presentation will raise some close questions.

<sup>4</sup>New York, Cons. Laws, vol. 3, sec. 184, p. 2166.

<sup>5</sup>Wisconsin, Statutes 1917, c. 143, sec. 3346t.

<sup>6</sup>Oregon, L. O. L., vol. III, sec. 7497.

<sup>7</sup>Minnesota, G. S. 1913, secs. 7053-7057; New Jersey, Acts 1915, c. 312, p. 556; New Mexico, Laws 1917, c. 65, sec. 16; New York, Cons. Laws, vol. 3, sec. 184, p. 2166; Indiana, Acts of 1913, c. 288, p. 764. New Jersey and New Mexico expressly include "accessories."

<sup>8</sup>Minnesota, G. S. 1913, sec. 7053, "supplies and materials;" Missouri, Laws of 1915, p. 327; Oregon, L. O. L., vol. III, secs. 7497.

<sup>9</sup>Massachusetts, Statutes 1913, c. 300, sec. 1, p. 230, lien for "storage and care." The labor necessary to the repairing of tires is held to give a right to a lien under the Oregon statute. *Courts v. Clark*, (1917) 84 Ore. 179, 164 Pac. 714.

<sup>10</sup>Massachusetts, Statutes 1913, c. 300, sec. 1, "by or with the consent of the owner."

Minnesota, G. S. 1913, sec. 7053, "whether pursuant to a contract with the owner or at the instance or request of any agent of such owner,"

The request of the owner is, of course, sufficient and all states so declare. Different terms also appear in stating the amount for which the lien attaches.<sup>11</sup> Missouri provides that the work or materials to be furnished must be agreed upon and placed in the form of a memorandum before the work or labor is commenced.<sup>12</sup> This statute was doubtless intended to prevent disputes concerning the work ordered, but it is not clear that it would have that effect. The difficulty of diagnosing mechanical trouble in an automobile without "tearing it down" would appear to give rise to alterations alleged to be authorized orally which would be susceptible of equally as much dispute.

Two states have construed the liens to be dependent upon possession,<sup>13</sup> the statutes of four states expressly provide that the liens shall not be dependent upon possession,<sup>14</sup> and four states appear not to have decided the point.<sup>15</sup> Sec. 2 of the New Jersey act provides that the garage keeper shall not lose his right to a lien by allowing the automobile to be removed from his control and, in

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defining "owner" to include a conditional vendee or mortgagor in possession, in sec. 7057.

Missouri, Laws of 1915, p. 327, "owner," in case of repairs.

New Jersey, Acts 1915, c. 312, p. 556, "at the request or with the consent of the owner or his representative, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise."

New Mexico, Laws 1917, c. 65, sec. 16, similar to the New Jersey provision.

New York, Cons. Laws, vol. 3, sec. 184, p. 2166, "at the request or with the consent of the owner, whether such owner be a conditional vendee or a mortgagor remaining in possession or otherwise."

Oregon, L. O. L., vol. III, sec. 7497, "at the request of the owner, reputed owner or authorized agent of the owner."

Washington, Rem. and Bal. Code, vol. 1, sec. 1154, "at the request of the owner or authorized agent of the owner," defining "owner" to include a conditional vendee, in sec. 1156.

Wisconsin, Statutes 1917, c. 143, sec. 3346t, "at the request of the owner or legal possessor."

<sup>11</sup>Massachusetts, "for the proper charges;" Minnesota, "for the sum agreed upon," otherwise "for the reasonable value thereof;" Missouri, "for the amount due;" New Jersey, New Mexico and New York, "for the sum due;" Oregon and Washington, "for the contract price," or in the absence of such contract price, "for the reasonable worth;" Wisconsin and Indiana, "for charges."

<sup>12</sup>Laws 1915, p. 327.

<sup>13</sup>Indiana, *Vaught v. Knue*, (1917) 64 Ind. App. 467, 115 N. E. 108; and New York, *Grand Garage v. Pacific Bank*, (1918) 170 N. Y. S. 2.

<sup>14</sup>New Jersey, Acts 1915, c. 312, p. 557; New Mexico, Laws 1917, c. 65, sec. 22; Oregon, L. O. L., vol. III, sec. 7497; Washington, Rem. and Bal. Code, vol. 1, sec. 1154.

<sup>15</sup>Massachusetts, Statutes 1913, c. 300, sec. 1; Minnesota, G. S. 1913, secs. 7053-7057; Missouri, Laws 1915, p. 327, 328; and Wisconsin, Statutes 1917, c. 143, secs. 3344 and 3346t.

the event it is so removed, he may seize it or any part or parts thereof without further process of law wherever the same may be found within the state.<sup>16</sup> From the general standpoint of the law of liens, it appears that this is an unusual provision and a radical departure from the common law rule.

The question of the superiority of the prior acquired rights of third parties has given rise to more litigation than any other phase of this branch of legislation. Several states have expressly given precedence to the lien over these prior acquired rights by providing that the "owner" may be a conditional vendee or mortgagor remaining in possession.<sup>17</sup> The difficulty arises, however, where the priority is not stated. At the common law it may be said generally that, in the absence of express or implied authority, a lien exists for services rendered at the request of the mortgagor in possession subordinate to the lien of a prior recorded chattel mortgage, upon the principle that a prior lien gives a prior claim that is entitled to prior satisfaction.<sup>18</sup> An exception is made, however, both at the common law and under the statutes, in cases involving repairs to machinery on the ground that the nature of the property is such that the parties are said to have contemplated at the time of the execution of the mortgage that the machine would require necessary repairs and that the mortgagee thereupon constituted the mortgagor his agent to procure the repairs to be made, and inasmuch as the repairs were for the betterment of the property, a lien exists in favor of the repairman that is superior to the lien of the mortgagee.<sup>19</sup> The weight of authority holds with the

<sup>16</sup>Acts 1915, c. 312, sec. 2, p. 557.

<sup>17</sup>Minnesota, G. S. 1913, sec. 7057; New Jersey, Acts 1915, c. 312, p. 556; New Mexico, Laws 1917, c. 65, sec. 16; New York, Cons. Laws, vol. 3, sec. 184, p. 2166; Washington, Rem. and Bal. Code, vol. 1, sec. 1156, priority given over "antedating" liens; Oregon, L. O. L., vol. III, sec. 7500 same as Washington. See *Jesse A. Smith Auto Co. v. Kaestner*, (1916) 164 Wis. 205, 159 N. W. 738, for a statement of the effect of these provisions.

<sup>18</sup>*Denison v. Shuler*, (1882) 47 Mich. 598, 11 N. W. 402, 41 Am. Rep. 734; *Storms v. Smith*, (1884) 137 Mass. 201.

<sup>19</sup>*Watts v. Sweeney*, (1890) 127 Ind. 116, 26 N. E. 680, 22 A. S. R. 615, locomotive; *Reeves & Co. v. Russell*, (1914) 28 N. D. 265, 148 N. W. 654, L. R. A. 1915D 1149, threshing engine; *Drummond Carriage Co. v. Mills*, (1898) 54 Neb. 417, 74 N. W. 966, 40 L. R. A. 761, 69 A. S. R. 719, buggy; *Broom & Son v. Dale & Sons*, (1915) 109 Miss. 52, 67 So. 659, L. R. A. 1915D 1146, automobile; *City Nat. Bank v. Laughlin*, (Tex. Civ. App. 1919) 210 S. W. 617, automobile; *Jesse A. Smith Auto Co. v. Kaestner*, (1916) 164 Wis. 205, 159 N. W. 738, automobile; *Willys Overland Co. v. Evans*, (1919) 104 Kan. 632, 180 Pac. 235; notes L. R. A. 1915D 1151 and 39 Ann. Cas. 630. It should be noted that these cases carefully distinguish

exception to the rule and in connection with statutory liens holds that the statute itself operates as a notice to the mortgagee of the rights of the lienec.<sup>20</sup> The constitutionality of a statute under which the garage keeper attempted to assert his lien as prior to that of a prior recorded chattel mortgage was brought before the Illinois court in the case of *Jensen v. Wilcox Lumber Co.*<sup>21</sup> The statute was held unconstitutional on the ground inter alia that the successful assertion of the lien would deprive the mortgagee of a vested property right without due process of law, and on the further ground that it would impair the obligation of the contract rights between the mortgagor and the mortgagee, depriving the mortgagee of his right to re-take the car upon default in payment. The New Jersey and Washington courts,<sup>22</sup> however, see nothing unconstitutional in similar provisions, the New Jersey court basing its decision on the principle announced by the United States Supreme Court:<sup>23</sup>

“That which is given for the preservation or betterment of the common pledge is in natural equity fairly entitled to the first rank in the tableau of claims. Mechanics’ lien laws stand on the same basis of natural justice.”

Nor is the obligation of contracts impaired, since, according to the same court, the inhibition of the federal constitution is wholly prospective and it is only those contracts in existence at the time the hostile law is passed that are protected from its effect.<sup>24</sup>

But few states have given attention to the effect of the statutory lien upon rights subsequently acquired in the automobile by third parties, without notice of the lien, where the garage keeper has surrendered possession. It would appear that the innocent third parties should be protected from the possibility of the as-

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between a lien statute merely declaratory of a common law lien and one creating a purely statutory lien, the courts refusing to apply the common law rule to a lien not strictly a common law lien. The garage keeper’s lien for repairs and materials falls within the rule granting priority but quere as to his lien for storage, a purely statutory lien.

<sup>20</sup>See dictum in *Smith v. Stevens*, (1886) 36 Minn. 303, 31 N. W. 55. The Missouri Laws of 1917, sec. 3, p. 327, provide that the lien shall not take precedence over the prior lien of a chattel mortgage.

<sup>21</sup>(1920) 295 Ill. 294, 129 N. E. 133, followed in *Thurber Art Galleries v. Renzi Garage*, (1921) 297 Ill. 272, 130 N. E. 747.

<sup>22</sup>*Crucible Steel Co. v. Polack Tyre & Rubber Co.*, (1918) 92 N. J. L. 221, 104 Atl. 324; *Crosier v. Cudihee*, (1915) 85 Wash. 237, 147 Pac. 1146.

<sup>23</sup>*Provident Institution v. Jersey City*, (1884) 113 U. S. 506, 5 S. C. R. 612, 28 L. Ed. 1102.

<sup>24</sup>*Denny v. Bennett*, (1888) 128 U. S. 489, 9 S. C. R. 134, 32 L. Ed. 491.

sersion against the car of any number of garage keepers' liens, the existence of which they had no means of determining. A few states<sup>25</sup> have approached this problem by providing for the recording of the lien with the proper officials. The Washington statute, however, expressly provides that the lien will not attach as against purchasers without "actual" knowledge, which nullifies the effect of the recording provision if such provision were intended to grant priority to the lien.<sup>26</sup> The Oregon law provides for record of the lien but is silent as to precedence over after acquired rights of third parties. The Minnesota statute is indefinite in this regard inasmuch as no record is required for the first sixty days following the performance of the first item of labor and whether or not the recording affects innocent third parties is an open question.

Statutory liens now in existence are of comparatively recent enactment, and sufficient time has not yet elapsed in which the difficulties of their operation may be ascertained. The sudden rise of a new mode of conveyance and transportation has resulted in a lack of uniformity in this branch of legislation.

### RECENT CASES

ADMIRALTY—JURISDICTION—MARITIME TORTS.—A stevedore, while working on a dock unloading a ship, was injured by a sling load of cement operated from the ship. *Held*, that the admiralty (federal) courts had no jurisdiction, as the tort occurred on land. *Cordrey v. The Bee*, (Ore. 1921) 201 Pac. 202.

For a discussion of the principles involved, see NOTES, p. 230.

ATTORNEY AND CLIENT—CHAMPERTY AND MAINTENANCE—RECOVERY BY ATTORNEY ON QUANTUM MERUIT WHERE EXPRESS CONTRACT IS CHAMPERTOUS.—Action was brought by plaintiff, attorney for a third party, against the defendant railroad to recover compensation specified in a champertous contract with his client, the latter and the defendant having compromised the case. *Held*, although the contract between the plaintiff and the third party was champertous and void, the plaintiff did not forfeit his right to compensation and may recover on a quantum meruit. *Proctor v. Louisville & N. R. Co.*, (Ky. 1921) 233 S. W. 736.

The weight of authority seems to support this case. If the service performed by the attorney is not in itself illegal, either intrinsically or by reason of circumstances under which it is rendered, he may recover upon

<sup>25</sup>Minnesota, G. S. 1913, sec. 7054; Oregon, L. O. L., vol. III, sec. 7498; Washington, Rem. and Bal. Code, vol. 1, sec. 1155.

<sup>26</sup>The provision of the Washington statute is not found in the New Mexico statute but the court reaches the same conclusion in *Abeytia v. Gibbons Garage of Magdalena*, (N. M. 1921) 195 Pac. 515.