provisions should be respected by those desiring to avail themselves of the benefits provided for in the legislation now under consideration. The intention was that the mere inspection of a record, to be found at a particular place, should disclose all the information necessary in order to enable those interested therein to determine as to the existence of liens on the property of certain companies. If the claims of such laborers are assigned, the assignee, in order to perfect the lien, must observe the provisions of the statute in the same manner and to the same extent as was required of the assignor. It nowhere appears in the memorandum in said clerk's office, filed for record by the appellant as assignee, that the respective assignors had been employed as laborers by the Liberty Woolen Manufacturing Company, nor is it shown therefrom that said company was of the character that its laborers were entitled to secure their wages by lien; and the insistence that it is presumed to be a manufacturing company, from its name, is without force. Nor is the real and personal property on which a lien was claimed to exist even referred to, let alone designated; and this in the face of the statute, which is evidently intended to permit such companies to own both real and personal property, to which the lien provided for shall not attach. Nor does it appear that the memorandum mentioned was filed with the clerk within 90 days after the claims for labor fell due. And, from all that we can see from such record, there is nothing to show when the labor was performed; and it may be, or not, that the claims for the same had been due more than 90 days when the tickets which are the items of the aggregate of appellant's demand were given to the laborers who assigned them. It may be that the memorandum required to be filed with the clerk for record need not necessarily contain all the information that we have just indicated was omitted from the statement filed by the appellant relative to the claims assigned to it, but we think it would be "the better practice so to do," as has been indicated in the opinions of the courts of last resort in several states, construing statutes similar in character. But we are clearly of the opinion that, because the said record fails to show that the memorandum of the amount and consideration of the claims was filed with the clerk within 90 days after the wages of the laborers were due, no lien attached to the property of said Liberty Woolen Manufacturing Company by the recordation of said memorandum, and that the court below did not err in decreeing against the appellant concerning the same. We do not mean to be understood as saying that the Liberty Woolen Manufacturing Company gave said tickets to its laborers in payment for labor rendered some time theretofore, but we do say that it is not disclosed by said record when the labor represented by such tickets had been performed,—whether the wages were due on the days the tickets were dated, or a week or a year previous thereto. The appellant, realizing that the record was defective, attempted to supply the omitted information by examining a number of witnesses before the master for the purpose of showing that, as a matter of fact, the 90 days allowed by the statute from the time the claim became due to the period when the mem-

orandum was filed with the clerk had not expired. But that fact cannot be shown by parol evidence after suit has been brought, but it must appear from the record, so that all who examine and read it can see, not only what is claimed, but also that the law has been complied with. The statute does not contemplate that the company may give its note, due 60 days or 1 or 2 years after date, for the amount due its laborer, and that then, when such note is due, 90 days shall be allowed thereafter in which to file a memorandum claiming a lien for said amount; but it means that such a claim for a lien shall be made within 90 days from the time the labor was performed,—from the day the laborer was entitled to demand his wages. The legislature, for reasons plainly evident, has wisely limited the time within which such liens can be perfected, and has required that the record shall show that the party claiming has asserted them within 90 days from the time that his demand was due. The appellant is unable, from the record, to do this, and it must suffer the consequences. The statute extended to it certain privileges, and granted to it a security that many others were not permitted to enjoy; and certainly the appellant will not be allowed to accept the favor that was offered, and then to refuse to respect the terms accompanying it. A party desiring to comply with the requirements of the sections of the Virginia Code that we have been considering can easily do it, as the information called for is peculiarly within the knowledge of him who is seeking thereby to create a lien on the property of another; and, if he fails to do so, it is likely for the reason that the full statement of the facts would injure his claim, or because of either ignorance or inadvertence, neither of which will be received as an excuse, especially in cases where the rights of others are affected. The suggestion that the record, as it was made in the clerk's office, was sufficient to put any one who examined it on his guard, and that it was such notice as would induce a prudent business man to make full inquiry, is, we think, without force. No one is required to go outside of the clerk's office for the information he is told by the law he can find therein, nor expected to control his conduct by the conflicting statements made by the parties to the record; the one asserting, and the other denying, as their respective interests may suggest. The only question in such cases is, has the party claiming the lien observed the commands of the law, and been obedient to its requirements?

The conclusion we have reached is in consonance with the reasoning as found in the opinions of a number of the courts of the country, to which, without quoting the language of the judges, we here refer: Boston v. Railroad Co., 76 Va. 182; Shackleford v. Beck, 80 Va. 573; Mayes v. Ruffners, 8 W. Va. 384; Phillips v. Roberts, 26 W. Va. 783; Davis v. Livingston, 29 Cal. 283; Hooper v. Flood, 54 Cal. 218; Noll v. Swineford, 6 Pa. St. 187; Witman v. Walker, 9 Watts & S. 186; Thomas v. Barber, 10 Md. 380; Delaware Railroad Const. Co. v. Davenport & St. P. Ry. Co., 46 Iowa, 406; Valentine v. Rawson, 57 Iowa, 179, 10 N. W. 338; Lyon v. Railroad Co., 127 Mass. 101; Mulloy v. Lawrence, 31 Mo. 583; Cook v. Vreeland, 21 Ill. 430; Vane v. Newcombe, 132 U. S. 220, 10 Sup. Ct. 60; Van

Stone v. Manufacturing Co., 142 U. S. 128, 12 Sup. Ct. 181. See, also, Phil. Mech. Liens, 576.

Holding, as we do, that the appellant did not acquire liens on the property mentioned in the bill by filing the memorandums referred to in the office of the clerk of the county court of Bedford county, it is consequently unnecessary for us to consider other points relied upon by counsel, presented so forcibly at the bar of this court, and passed upon by the court below. The decree appealed from will be affirmed.

BRAWLEY, District Judge. I am of opinion that the memorandum put upon record in this case was a sufficient compliance with the statutory requirements, and therefore dissent.

UNION CASUALTY & SURETY CO. v. SCHWERIN.

(Circuit Court of Appeals, Fourth Circuit. May 14, 1897.)

No. 216.

1. PRACTICE—MOTION FOR NONSUIT—ABANDONMENT.
   When a defendant, after the denial of his motion for a nonsuit, proceeds to examine witnesses and make his case upon the merits, he thereby abandons the motion for a nonsuit, and cannot assign the denial thereof as error.
2. REVIEW ON ERROR—ASSIGNMENTS—EVIDENCE.
   An assignment of error relating to the refusal of the trial court to give instructions to the jury cannot be considered when the evidence showing the relevancy of the propositions of law involved is neither quoted in full nor its substance referred to in the assignment of error.

In Error to the Circuit Court of the United States for the District of South Carolina.

T. Moultrie Mordecai, for plaintiff in error.
Marion Moise, for defendant in error.

Before GOFF, Circuit Judge, and HUGHES and BRAWLEY, District Judges.

GOFF, Circuit Judge. The plaintiff below, Cecile F. Schwerin, instituted her suit in the court of common pleas for the county of Sumter, in the state of South Carolina, against the defendant below, the Union Casualty & Surety Company of St. Louis, claiming the sum of $3,000 as due her on a policy of insurance issued by said defendant on the life of one Herman Schwerin, dated April 24, 1895. The plaintiff was the beneficial owner and holder of said policy, and it was alleged in the complaint that the assured died on the 19th day of December, 1895, in said county of Sumter, during the time that the policy was in force. The case was duly removed to the circuit court of the United States for the district of South Carolina, where it was tried before a jury on the 17th day of December, 1896, when a verdict was returned for the plaintiff, on which a judgment was entered against the defendant for the sum of $3,124.83 and the costs. The writ of error we are now considering was then sued out. During the