

CHAPTER 290.

LIENS AGAINST VESSELS.

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290.01 Liens against vessels. Every ship, boat or vessel used in navigating the waters of this state shall be liable for and the claims or demands hereinafter mentioned shall constitute a lien on such ship, boat or vessel, which shall take precedence of all other claims or liens thereon:

(1) For all debts contracted by the master, owner, agent or consignee thereof on account of supplies furnished for the use of such ship, boat or vessel, or on account of work done or services rendered on board of such ship, boat or vessel, or on account of labor done or materials furnished by mechanics, tradesmen or others in and for building, repairing, fitting out, furnishing or equipping such ship, boat or vessel, or on account of any indebtedness for insurance effected upon such ship, boat or vessel, the engines, machinery, sails, rigging, tackle, apparel or furniture thereof, against any fire or marine risk.

(2) For all sums due for wharfage, towage or anchorage of such ship, boat or vessel within this state.

(3) For all demands or damages accruing from the nonperformance or malperformance of any contract of affreightment or any contract touching the transportation of persons or property entered into by the master, agent, owner or consignee of the ship, boat or vessel on which such contract is to be performed; and

(4) For all damages arising from injuries done to persons or property by such ship, boat or vessel; but no person employed as master, or otherwise, on board of any such ship, boat or vessel to collect or receive freights or passage money shall have any lien as provided in this chapter or be entitled to his action in accordance with its provisions. Such lien may be enforced by proceedings in admiralty or in the cases herein mentioned as prescribed in this chapter.

290.02 Receiving note not to waive lien. The receiving of the note or other evidence of indebtedness of the owner, master, agent or consignee of such ship, boat or vessel for any such claim or demand shall not affect the right of the party to his lien under this chapter unless expressly received in payment therefor and so specified therein.

290.03 Owner personally liable. The owner or owners of any such ship, boat or vessel shall be personally liable for the payment of every debt and for every demand and claim arising under the provisions of subsections (1) and (2) of section 290.01. Such liability shall not in any way impair or affect the liability that may exist against the master, agent or consignee for the same debt or demand.

290.04 Attachment; affidavit for. In all cases where the owner of any ship, boat or vessel is personally liable for any claim mentioned in section 290.01, the claimant, his personal representatives or assigns may, in an action against such owner for the recovery of such claim, have a writ of attachment, by virtue of which all the right and title such owner had in such ship, boat or vessel at the time such claim accrued or at any time thereafter may be attached to secure the payment thereof. Before any such attachment shall issue in any such action the plaintiff or some one in his behalf shall make and annex thereto an affidavit stating:

(1) That the defendant in such action is indebted to the plaintiff or has a claim or demand against him in a sum named, over and above all legal set-offs.

(2) That such indebtedness is due for or accrued or arose out of or upon one or more of the causes specified in the first section of this chapter, specifying it.

(3) The name of the ship, boat or vessel, if it have any name, and if not, then a description of the same as near as may be.

(4) That the action in which such attachment is applied for was commenced within twelve months after such debt, demand or claim accrued or became payable, and no other or further affidavit shall be required for the purpose, and except as otherwise provided in this chapter the proceedings upon such attachment in an action in the circuit court shall be

the same as provided in chapter 266, but no attachment shall be issued out of the circuit court in any such action unless the amount claimed in such affidavit shall exceed the sum of one hundred dollars.

290.05 When undertaking not required. In case the plaintiff's claim arises out of or is founded upon any of the causes set forth in the first subdivision of section 290.01 he shall not be required to give the undertaking required by section 266.06 unless required so to do by an order of the court or judge; and no such order shall be made unless the defendant or some one in his behalf shall make an affidavit showing that he has a good and valid defense in whole or in part to the claim or demand of the plaintiff, setting forth the nature of the defense; and where the defense is only to a portion of the claim, before any such order shall be made the defendant shall pay or tender to the plaintiff that portion of the claim to which there is no defense; such payment or tender shall not affect the jurisdiction of the court or prevent a recovery by the plaintiff of the same costs, disbursements and charges as he would have been entitled to had not the amount of his claim been reduced by such payment. No such order shall be made except upon one day's notice to the plaintiff, accompanied by copies of the affidavits and other papers upon which it is founded.

290.06 Attachment, what to direct. Such writ of attachment, when issued by the circuit court, shall command the officer to whom the same is directed to attach and safely keep the ship, boat or vessel named or described in the affidavit, her tackle, apparel and furniture, if to be found within his county, to satisfy the plaintiff's demand, with costs and expenses. The issuing of such writ of attachment shall not exclude the right to an attachment against the other property of the defendant under the provisions of chapter 266.

290.07 Jurisdiction of justices. Justices of the peace within their respective counties shall have jurisdiction of all cases arising under this chapter where the claim shall not exceed two hundred dollars, and when the owner of such ship, boat or vessel is personally liable therefor the claimant may proceed by attachment against such ship, boat or vessel in an action against such owner in a justice's court in the manner prescribed in chapter 304, so far as the same can be made applicable thereto and not herein otherwise provided. Before any such attachment shall be issued in a justice's court the plaintiff or some one in his behalf must make and file with the justice an affidavit setting forth the same facts as are required in the affidavit mentioned in section 290.04, and no other or further affidavit shall be required for that purpose.

290.08 Form of attachment in justice's court. The attachment issued by any justice of the peace shall be returned as an ordinary summons, and may be in the following form:

.... county.

THE STATE OF WISCONSIN, to the sheriff or any constable of said county:

You are commanded to attach the (here insert the name of the ship, boat or vessel, or, in case she has no name, a description thereof as near as may be), together with her tackle, apparel and furniture, to satisfy the sum of, with interest and cost of suit, in whose-soever hands or possession the same may be found in your county, and so provide that the same so attached may be subject to further proceedings thereon, as the law requires, and also to summon, if to be found, to be and appear before me, at my office, in the county of, on the day of, A. D. 19 . . ., at o'clock in the noon of that day, to answer to to his damage two hundred dollars or under.

Given under my hand at, county of, this day of, A. D. 19 . . .

J. P., Justice of the Peace.

290.09 Vessel, how released. (1) Whenever any ship, boat or vessel, its tackle, apparel or furniture has been seized by virtue of any attachment issued under the provisions of this chapter the defendant or any other person in his behalf may file with the court from which the same issued, at any time before a final judgment, an undertaking with at least two sureties, to the effect that the defendant will pay to the plaintiff on demand any judgment that may be rendered in his favor, not exceeding double the amount claimed by the plaintiff in his affidavit.

(2) Such undertaking shall be of no effect unless accompanied by the affidavit of the sureties, in which each surety shall state that he is worth a certain sum, mentioned in such affidavit, over and above all his debts and liabilities, in property within this state, not by law exempt from execution, and which sum so sworn to by such sureties shall, in the aggregate, amount to the sum specified in such undertaking; and such sureties shall, upon notice, justify in like manner as upon bail on arrest. Upon filing such undertaking the clerk of the court or justice of the peace shall make an order discharging the property attached, and upon delivery to the officer having such ship, boat or vessel in his custody of a certified copy of such order he shall deliver the property attached to the person obtaining such order.

290.10 Findings and judgment; execution. In all actions under this chapter, unless the defendant or some one in his behalf shall have given the undertaking prescribed in section 290.09, the court or jury who shall try the same or make an assessment of damages therein shall find whether or not such debt or damages are due for or accrued or arose out of or upon any of the causes mentioned in section 290.01, and specify such cause and the date when the same became due or accrued in the verdict or finding. If such court or jury shall find that such debt or damages are for any of the causes specified in such section and that the defendant is liable to the plaintiff therefor then the court shall render judgment accordingly, and that the amount of such debt or damages so found, together with the costs, charges and disbursements, are a lien upon such ship, boat or vessel to the extent of the interest of the defendant therein at the time the same became due or accrued or at any time thereafter, and the execution issued thereon may, in addition to the directions contained in other executions against the property of a defendant, direct that such interest of the defendant in such ship, boat or vessel, her tackle, apparel and furniture be sold to satisfy such judgment, and the same shall be sold accordingly; but if the court or jury shall find that the amount due the plaintiff for such debt or damages is not for any of the causes mentioned in said section or if the defendant shall have given such undertaking the plaintiff shall only be entitled to judgment as in other civil actions.