

CHAPTER 184.

[Published March 18, 1869.]

AN ACT relating to proceedings for the collection of demands against ships, boats and vessels.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows :

SECTION 1. Every ship, boat or vessel of the burthen of twenty tons or upwards, 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:

Ships liable to lien.

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.

For debts contracted by master.

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

For wharfage, etc.

3. For all demands or damages accruing from the non-performance or mal-performance 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 boat or vessel on which such contract is to be performed; and

For non-performance of contract.

4. For all damages arising from injuries done to persons or property by such ship, boat or vessel: *provided, however,* that 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 act, or be entitled to his action in accordance with its provisions.

For injury to property.

SECTION 2. Any person having a demand as aforesaid, instead of proceeding for the recovery thereof against the master, agent, owner or consignee of a ship, boat or vessel, may at his option institute an action against such ship, boat or vessel by name.

May proceed against ships or boats.

May make complaint.

SECTION 3. Any person wishing to institute an action against a ship, boat or vessel under the provisions of this chapter, shall make a complaint in writing, specifying the particulars of his demand, on whose account the same accrued, the amount due to the creditor or claimant over and above all payments and discounts, as near as may be; and such complaint shall be verified by such creditor, claimant or by some person or persons for him.

Clerk of court shall enter complaint on docket.

SECTION 4. On filing such complaint with the clerk of the circuit court, he shall enter the same in his docket as a civil action, making the person named as claimant in such complaint the plaintiff, and the name of the ship, boat or vessel the defendant; said clerk shall thereupon issue a warrant under the seal of said court, directed to the sheriff of the county, commanding him to attach, seize and safely keep such ship, boat or vessel, her tackle, apparel and furniture if to be found within his bailiwick, to answer all such liens as shall be established against it in favor of the plaintiffs, or in favor of any person or persons as provided in this chapter, and to make return of such warrant and of his proceedings on such warrant forthwith to the said clerk.

Sheriff shall execute warrant.

SECTION 5. The sheriff to whom any such warrant shall be directed and delivered shall forthwith execute the same, and shall seize and keep the ship, boat or vessel and the property seized by him, to be disposed of as hereinafter directed.

But one warrant shall be issued.

SECTION 6. Whenever any such warrant shall be issued, no other warrant shall issue against the same ship, boat or vessel while proceedings are pending under such warrant, unless such ship, boat or vessel shall be discharged from custody as hereinafter provided.

Clerk shall publish notice.

SECTION 7. Upon return being made of such warrant, the clerk of the circuit court issuing the same shall thereupon forthwith cause the notice hereinafter specified to be published in a newspaper printed in the county in which the warrant shall have been issued, and if there be none printed in such county, then in such newspaper as the clerk [may] direct, once in each week for three weeks successively.

What notice shall contain.

SECTION 8. Such notice shall contain the following matters :

1. It shall state the title of the cause, the issuing of such warrant, the name of the ship, boat or vessel seized, the name of the person on whose application such warrant was issued, the date of the issue thereof, and the amount claimed by the plaintiff upon whose application the same was issued.

2. It shall require all persons who claim to have any demand against such ship, boat or vessel, her tackle, apparel or furniture under the provisions of this chapter, to file their complaints for their respective demands against such ship, boat or vessel with such clerk.

3. It shall state that such ship, boat or vessel, her tackle, apparel and furniture will be sold for the payment of the claims which shall be established against it, unless the owner, agent, consignee or master thereof, or some other person interested therein shall appear and discharge such warrant according to law.

SECTION 9. Any person having a claim or demand against such ship, boat or vessel so seized, which is a lien thereon under the provisions of this chapter, may file with the clerk of the circuit court from which such warrant issued, a complaint in writing, specifying the particulars of his claim or demands, and all other facts required to be stated in the complaint of the party applying for a warrant, and verified in the same manner as said first complaint, and on filing such complaint the said clerk shall enter the same as a civil action, making the person so filing his complaint plaintiff, and the name of the ship, boat or vessel defendant, and he shall thereupon be deemed an attaching creditor, and be entitled to the same benefits as though the warrant had issued at his instance.

Others having claim may file complaint.

SECTION 10. At the time of filing the complaint as hereinbefore provided, the party so filing the same shall enter in the common rule book a rule of course, requiring the master, owner, agent or consignee of such ship, boat or vessel, or other person interested therein, to appear, answer or demur to such complaint within twenty days from the date thereof.

Shall enter rule requiring owner to plead.

SECTION 11. The owner, agent, consignee, master or other person interested in such ship, boat or vessel, may appear and defend in any action commenced under the provisions of this chapter.

Who may appear and defend

SECTION 12. In actions against a ship, boat or vessel under the provisions of this chapter, the complaint

Practice, pleadings, etc., same as in other civil actions.

required to be filed in the first instance shall be the only complaint required on the part of the plaintiff therein. The answer of the defendant and the other pleadings, practice and proceedings of the parties, and the trial of the issues of law and fact shall be had, as near as may be, as in other civil actions.

If no person appear and defend plaintiff may take judgment.

SECTION 13. If no person properly authorized shall appear on the part of the defendant in an action pending under the provisions of this chapter, and file an answer or demurrer within the time limited by such rule or order, the plaintiff in such action may apply to the court for judgment, and upon filing proof of the publication of such notice, the said court shall enter judgment in favor of such plaintiff for the amount claimed in the complaint, with costs and disbursements, upon due proof as in other actions.

Owner may apply for order of discharge.

SECTION 14. The owner, consignee, agent or master of any ship, boat or vessel seized by virtue of any warrant issued pursuant to the provisions of this chapter, may at any time before an order of sale shall be made, as hereinafter mentioned, apply in person or by attorney, to the clerk of the circuit court who issued the warrant, for an order to discharge the same.

Shall execute and file undertaking.

SECTION 15. Upon such application, the person making the same shall deliver to the clerk an undertaking executed by himself and at least two sureties, who shall justify on notice, in like manner as upon bail on arrest, which undertaking shall be approved by such clerk, to the effect that the sureties will pay on demand, to the plaintiff in the action in which the warrant was issued. And if there be more than one action pending against such ship, boat or vessel, the amount of the final judgment or judgments which may be recovered against such ship, boat or vessel in all of such actions so pending, together with the amount of any judgment or judgments that may be obtained against such ship, boat or vessel by any person or persons who shall come in and file any claim or claims against such ship, boat or vessel within the time prescribed by the provisions of this chapter, together with all costs, which undertaking shall be in a sum at least double the amount claimed in all actions then pending against such ship, boat or vessel, and shall in no case be less than two hundred and fifty dollars.

SECTION 16. If at the time of making such application there shall be any final judgment or judgments entered against such ship, boat or vessel in any action or actions commenced at the time of or subsequent to the issuing of such warrants, under the provisions of this chapter, the person so applying for the release of such ship, boat or vessel and for a discharge of the warrant, shall also pay all such final judgments, unless an appeal or writ of error has been taken from such judgment or judgments, in which case they shall be considered actions pending under the provisions of this chapter.

If any judgments already entered, how applicant for discharge to proceed.

SECTION 17. Upon such undertaking being executed and filed with said clerk, and upon the payment of the judgments specified in the preceding section, the said clerk shall thereupon grant an order discharging the vessel, and thereafter the action or actions shall proceed as if the vessel was in custody; and judgment may be rendered in all such actions against the principal and sureties in such undertaking.

When clerk shall grant order for discharge.

SECTION 18. On the production to the sheriff or other officer having in custody such ship, boat or vessel of a certified copy of the order discharging the vessel, he shall deliver her with her tackle, apparel and furniture to the person or persons obtaining such order.

Sheriff to deliver ship on production of order.

SECTION 19. Upon final judgment in favor of any plaintiff or plaintiffs in such action, the clerk shall in cases where the vessel has not been released, as hereinbefore provided, issue an order of sale directed to the sheriff, commanding him to sell such ship, boat or vessel with her tackle, apparel and furniture, and to bring the entire proceeds thereof into court. Such order of sale shall be under the seal of the court, and shall recite the parties to the judgment and the amount thereof upon which the same was issued: *provided, however,* that there shall be but one order of sale issued: *provided further,* that upon the application of the owner or owners of such ship, boat or vessel seized under the provisions of this act, the judge of the circuit court or a court commissioner may at any time after the seizure thereof and before judgment, make and enter an order of sale of such ship, boat or vessel so seized, due notice thereof being given to all parties as provided in the 20th section of this act.

Proceedings on sale of vessel.

Public notice of sale to be given.

SECTION 20. Upon the receipt of such order, the sheriff shall proceed to sell the ship, boat or vessel so seized by him, her tackle, apparel and furniture at public sale, first giving at least twenty days' public notice thereof by advertisement in some newspaper printed in the county, and if there be a daily paper printed in said county, such notice shall be printed daily, and the purchaser at such sale shall acquire title to the ship, boat or vessel so sold, free and discharged of all liens thereon created by this act and existing at the time of such sale, and if there be no newspaper printed in such county, then by posting such notice of sale in at least five of the most public places in said county twenty days before such sale.

Return of order.

SECTION 21. The sheriff shall return said order forthwith after such sale with his proceedings under the same, and the entire proceeds of such sale he shall pay into the court, to be distributed and paid as hereinafter directed.

Plaintiff may apply for payment out of proceeds, on notice.

SECTION 22. At any time after the return made by the sheriff as provided in the preceding section, the plaintiff in any action against such ship, boat or vessel who shall have obtained final judgment in such action in his favor, may apply to the circuit court, or to the judge of such court in vacation, for an order directing the payment out of said proceeds of such sum as the plaintiff may be entitled to; eight days' notice of such application shall be given to the plaintiffs or their attorney, in any other actions now pending against such vessel.

When judge shall order payment.

SECTION 23. On the hearing of such application by the judge or court, if it shall appear that final judgment has been entered in all the actions pending against such ship, boat or vessel under the provisions of this chapter, and if it shall also appear that the proceeds of the sale of such ship, boat or vessel in the hands of the sheriff are sufficient to pay all such judgments which shall have been rendered against such ship, boat or vessel as shall remain unsatisfied at the time of the hearing of such application, together with all costs, the court or judge shall order the payment to the plaintiffs in such action or their attorney, the sum due to them on their respective judgments, and all moneys remaining in court after such payment shall be paid to the owner of

such vessel or other person or persons who may show themselves entitled thereto.

SECTION 24. If the proceeds arising from the sale of any ship, boat or vessel shall not be sufficient, after deducting all costs and legal charges, to satisfy all the judgments rendered against it as herein provided, the court or judge shall order a fair and just distribution of such proceeds among the parties in whose favor judgments have been rendered under the provisions of this chapter, against such ship, boat or vessel, in just and equal proportion to the amount of such judgments, respectively: *provided*, that all costs and all judgments rendered against such ship, boat or vessel, under the provisions of this chapter, for seamen's wages, shall first be paid out of the proceeds of such sale.

When proceeds not sufficient, judgments to be paid in equal proportion.

SECTION 25. If on the hearing of such application for payment out of the proceeds of such ship, boat or vessel as aforesaid, it shall appear to the court or judge before whom such an application is pending that there is any action or actions pending against such ship, boat or vessel in which final judgment has not been entered at the time of such hearing, and that the proceeds of the sale in the hands of the sheriff are not sufficient to pay all judgments rendered against such ship, boat or vessel, and which remain unsatisfied, together with the sum or sums claimed in the complaints of the plaintiff or plaintiffs in those actions in which final judgment has not been rendered, the court or judge may in his discretion, refuse to make an order for the payment of the judgment or judgments then rendered, or any part thereof, until after final judgment shall be rendered in all the actions pending against such ship, boat or vessel, or the court or judge may make an order directing the payment of a proportion of the judgments then rendered: *provided*, that the payment of such proportion will leave of the proceeds of such sale a sum sufficient to pay an equal proportion of the sums claimed by the plaintiffs in those actions which are still pending and undetermined, together with such costs as will accrue thereon, should judgments be thereafter rendered in such actions for the whole amount claimed.

If any actions pending, how proceed.

SECTION 26. If an order shall be made for the payment of a portion of any judgment or judgments under the provisions of section 24 of this chapter, the court shall at the time of rendering judgment in favor of any

When order made for payment of portion of judgment, how proceed.

plaintiff in an action which was undetermined at the time of making such first order, make an order directing the payment of a like portion of the judgment so rendered; and after final judgment shall be rendered in all cases pending against such ship, boat or vessel, there shall remain any part of the proceeds of the sale of such ship, boat or vessel applicable to the payment of the balance due on such judgments, the court shall make a further order, directing payment to the plaintiffs in such judgments, such balance in just proportion, according to the amounts due on such judgments respectively.

When vessel held under process of United States court, no proceedings to be had.

SECTION 27. No proceedings under this chapter to enforce the liens authorized by the provision thereof shall be had against any vessel which shall have been seized by virtue of process issuing from any court of the United States while such vessel is actually held under such seizure, nor against any vessel which shall have been sold under any decree or order of a court of admiralty jurisdiction, except for debts contracted or damages sustained after such sale; but nothing in this section contained shall be construed to impair the validity of any lien created by this chapter the payment of which shall be decreed in any court in the United States.

Where actions to be commenced.

SECTION 28. All actions against a ship, boat or vessel under the provisions of this chapter shall be commenced within one year after the cause of action shall have accrued, and the parties may be sworn and examined in their own behalf as in other actions.

Appeals may be taken.

SECTION 29. Appeals may be taken from all final judgments of the circuit courts rendered under the provisions of this chapter the same as in other civil actions, and writs of error shall lie as in other cases.

Sheriff's fees.

SECTION 30. Sheriffs and other officers shall receive the same compensation and fees for their services under this chapter, as are allowed them in proceedings on an attachment in other actions.

Plaintiff's costs

SECTION 31. In actions under the provisions of this chapter, the plaintiff shall recover costs and disbursements irrespective of the amounts recovered. If the plaintiff fail to recover in the action, the defendant shall recover costs and disbursements against such plaintiff.

SECTION 32. If judgment be rendered against the plaintiff upon whose application the warrant was issued, such judgment shall not affect the proceedings under such warrant. If there be a judgment or judgments in any other action or actions, against such ship, boat or vessel, instituted under the provisions of this chapter, or any proceedings in any action or actions so instituted under the provisions of this chapter still pending against such ship, boat or vessel, and if the proceedings in such action in which such warrant is issued be discontinued or dismissed, or such warrant for any cause be quashed, dismissed, set aside or vacated, the clerk of the circuit court in which such warrant was issued shall forthwith on demand of any other plaintiff who has filed his complaint under the provisions of this chapter, issue another warrant in such action, and like proceedings shall be had as under the first warrant issued. Any person who has filed or may file his complaint against such ship, boat or vessel as hereinbefore provided, shall be entitled to the same benefits as he would have been under such first warrant.

If judgment be against plaintiff or warrant be quashed, how proceed.

SECTION 33. No judgment shall be rendered in favor of a plaintiff in an action instituted under the provisions of this chapter, unless the claim or demand upon which such action is founded is a lien on such ship, boat or vessel proceeded against under the provisions of this chapter, and every judgment rendered in such action in favor of the plaintiff therein, shall expressly adjudge that the claim or demand of the plaintiff for which judgment is rendered is a lien on such ship, boat or vessel under the provisions of this chapter.

No judgment shall be rendered except upon lien.

SECTION 34. Any person having such a claim or cause of action as is specified in section one of this chapter, may at any time before any order for distribution or payment of proceeds be made, commence his action as provided in section nine; and if after a sale of the vessel, the same proceedings shall be had thereon as though commenced prior to such sale; and if after an order of distribution or payment there shall remain any surplus of proceeds in court to which the owner of the ship, boat or vessel would be entitled, any person or persons having such claim or rights of action as aforesaid, may institute an action as provided in section nine, and the same proceedings shall be had therein as

When may commence action.

though commenced prior to such order of distribution or payment; and the plaintiffs in such last mentioned actions shall be entitled to share in and have distributed to them such surplus proceeds in the proportions, and the same as they would have been entitled to share in the entire proceeds of sale had they commenced action or actions prior to any order of distribution or payment.

Repealed.

SECTION 35. Chapter 150 of the revised statutes of Wisconsin, entitled "of proceedings for the collection of demands against boats and vessels," and chapter 99 of the acts of a general nature of 1858, amendatory of said chapter 150 and chapter 134 of the general laws of 1862, entitled "an act to amend chapter 151 of the general laws of 1859, entitled 'an act relating to proceedings for the collection of demands against ships, boats and vessels, and to repeal chapter 150 of the revised statutes,'" and chapter 17 of the general laws of 1863, entitled "an act to authorize parties to be sworn and examined as witnesses in their own behalf," are, and each of them is hereby repealed.

Plaintiff shall file undertaking, except for mariners' wages

SECTION 36. Before any warrant shall issue under the provisions of this chapter, except in actions for the recovery of mariners' wages, the plaintiff or some one in his behalf shall make and file with the clerk from whom warrant is to issue, an undertaking with sufficient surety to be approved by such clerk, in the sum of two hundred dollars, conditioned to the effect that the plaintiff will pay all costs which may be adjudged against him in the action.

SECTION 37. This act shall take effect and be in force from and after its passage and publication.

Approved March 11, 1869.