

company, the maker of any such note, bond, or mortgage or other instrument in writing, may set up by answer as a defence thereto, that the same were obtained by fraud or false representation; and if, upon the trial of such action, the defence so set up shall be sustained, then the verdict of the jury, or the decision of the court therein, shall be for the defendant or defendants in said action.

SEC. 2. That this act shall take effect and be in force Take effect. from and after its passage and publication.

Approved March 17, 1859.

[Published April 2, 1859.]

CHAPTER 150.

AN ACT to amend section two of chapter seventy-three of the revised statutes, entitled "Of joint stock companies."

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:

SECTION 1. Section two, of chapter seventy-three, How amended of the revised statutes, is hereby amended so as to include joint stock companies for the purpose of building and maintaining bridges across navigable streams between two counties.

SEC. 2. This act shall take effect and be in force from Take effect. and after its passage and publication.

Approved March 17, 1859.

Published April 2, 1859.

CHAPTER 151.

AN ACT relating to proceedings for the collection of demands against ships, boats and vessels, and to repeal chapter one hundred and fifty of the revised statutes.

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 Vessels liable of twenty tons or upwards, used in navigating the waters of this state, shall be liable for, and the following causes of action shall constitute, a lien on such ship, boat or vessel:

1. For all debts contracted by the master, owner, agent For what or consignee thereof, on account of supplies furnished debts.

the use of such boat or vessel, or on account of work done or services rendered on board of such 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 boat or vessel.

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

3. For all demands or damages accruing from the non-performance or mal-performance of any contract or affreightment, or any contract touching the transportation of persons or property, entered into by the master, owner, agent, or consignee of the boat or vessel on which such contract is to be performed; and

Provide.

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 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.

Actions, how instituted.

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

Complaint, to specify.

SEC. 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 or claimant, or by some other person or persons for him.

How entered upon docket.

SEC. 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 any other person or persons, as provided in this chapter, and to make return

Duty of clerk.

of his proceedings on such warrant within ten days after the service thereof.

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

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

SEC. 7. Upon return being made to such warrant, the clerk of the circuit court issuing the same shall, unless such warrant shall have been discharged by giving bonds as hereinafter provided, thereupon, and within ten days after such return, cause the notice hereinafter specified to be published in a newspaper printed in the county in which the warrant shall have been issued, if there be one, and if there be none printed in such county, then in such paper (*as they*) as the clerk may direct, once in each week, for three weeks successively; and in case there be a daily paper published in such county, then such notice shall be published daily for twenty days. Return of warrant.
Publication of notice.

SEC. 8. Such notice shall contain the following matters: Notice, to contain.

1. It shall state 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 claims or 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, consignee, or commander thereof, or some other person interested therein, appear and discharge such warrant according to law.

SEC. 9. Any other person having a lien under the provisions of this chapter upon the property so seized, may file with the clerk of the circuit court from which such warrant issued, a complaint in writing, specifying therein the particulars of his claim or demand, and all other facts Person having lien, to file complaint

required to be stated in the complaint of the party applying for the 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.

May appear in defence. SEC. 10. The owner, agent, consignee, master or other person interested in such ship, boat or vessel, may appear and defend in any actions commenced under the provisions of this chapter.

Complaint and answer. SEC. 11. In actions against a ship, boat or vessel, under the provisions of this chapter, the complaint 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 issues of law and fact shall be had as near as may be, as in other civil actions.

Answer, when made. SEC. 12. The time within which the person or persons authorized to defend in an action pending under the provisions of this chapter, may answer or demur to the complaint of the plaintiff in such action, shall in each case be prescribed by the circuit court or the judge thereof, or by a court commissioner, by rule or order for that purpose granted on application of the plaintiff. If any party appear, his answer or demurrer shall be filed in the office of the clerk.

If not answered. SEC. 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 a judgment in favor of such plaintiff for the amount claimed in the complaint, with costs and disbursements, as in other actions.

Application for discharge. SEC. 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.

SEC. 15. Upon such application, the person making the

same, shall deliver to the clerk, an undertaking, executed by himself, and at least two sureties, residents and freeholders of this state, to be approved by such clerk; to the effect that the sureties will pay on demand to the plaintiff or to the plaintiffs in the action, or if there be more than one action pending to the plaintiffs in the several actions 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 said action, together with all costs; which undertaking shall be in at least double the amount claimed by the said plaintiff or plaintiffs, and shall in no case be less than two hundred dollars.

SEC. 16. If at the time of making such application, there shall be any final judgment or judgments rendered against such ship, boat or vessel, in any action or actions commenced at the time of, or subsequent to the issuing of such warrant, 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 warrants, shall also pay all such final judgments, unless an appeal has been taken from such judgment or judgments, in which case they shall be considered actions pending under the preceding provisions of this chapter.

SEC. 17. Upon such undertaking being executed and delivered, 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 were in custody; and judgment may be rendered against the principal and sureties in such undertaking.

SEC. 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 warrant, he shall deliver her with her tackle, apparel and furniture to the person or persons obtaining such order.

SEC. 19. Upon final judgment in favor of any plaintiff or plaintiffs in such action or actions, 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

Sureties to be given.

Unsatisfied judgments.

Discharge of vessel.

Duty of sheriff.

Directing sale &c.

Provisos.

upon application of the owner or owners of such 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 boat or vessel so seized, due notice thereof being given to all parties as provided in the 20th section of this act.

Notice of sale SEC. 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 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.

Returns, how made. SEC. 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 court to be distributed and paid as hereinafter directed.

Application for payment. SEC. 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 a final judgment in such action in his favor, may apply to the circuit court or to the judge of such circuit court in vacation, for an order directing the payment out of said proceeds, of such sum as the plaintiff may be entitled to; eight day's notice of such application shall be given to the plaintiffs or their attorney in any other actions pending against such vessel.

Notice.

Hearing of application. SEC. 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.

Remaining moneys.

SEC. 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 a 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 seaman's wages, shall be first paid out of the proceeds of such sale.

In case of deficiency.

Provide.

SEC. 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 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 the 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.

Actions, not completed.

Provide.

SEC. 26. If an order shall be made for the payment of a portion of any judgment or judgments under the provisions of section twenty-four of this chapter, the court shall, at the time of rendering judgment in favor of any 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 if after final judgment shall be rendered in all the cases pending against such ship, boat or vessel, there

Payment of judgments.

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.

Where process issues from U. S. court.

SEC. 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 liens created by this chapter, the payment of which shall be decreed in any court in the United States.

Commencement of suit.

SEC. 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 such action shall have accrued.

Appeals.

SEC. 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, or writs shall lie as in other cases.

Fees.

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

Relating to judgments.

SEC. 31. If a plaintiff in an action under the provisions of this chapter, recover a judgment for twenty-five dollars or more, he shall recover his costs and disbursements as in other actions in the circuit court; if a plaintiff recover less than twenty-five dollars, he shall recover only his disbursements, unless the defense shall have been in the opinion of the court unreasonably or unfairly conducted, in which case he shall recover costs and disbursement, irrespective of the amount recovered. If there be an appearance on the part of the defendant, and the plaintiff for any reason fail to recover in the action, the defendant shall recover his costs and disbursements against such plaintiff.

Effect of same

SEC. 32. If the 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 section 9, of this chapter, or if there be any such action or actions so instituted still pending against such ship, boat or vessel.

SEC. 33. No judgment shall be rendered in favor of a plaintiff in action instituted under the provisions of this chapter, unless the claim or demand upon which such action is founded, is a lien on the 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. Must be founded on lien.

SEC. 34. Before any warrants shall issue under the provisions of this chapter, the plaintiff, or some one in his behalf, shall make and file with the clerk of the court from whence warrant is to issue, an undertaking 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. Surety, to be given.

SEC. 35. 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 boat or vessel would be entitled, any person or persons having such claims or rights of action as aforesaid, may institute an action as provided in section nine, and the same proceedings shall be had therein as though commenced prior to such order of distribution or payment; and the plaintiff 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. When actions may be commenced. Proceeds, how distributed.

SEC. 36. Chapter one hundred and fifty of the revised statutes of Wisconsin, entitled "of proceedings for the collection of demands against boats and vessels," is hereby repealed. Repealed.

SEC. 37. No proceedings shall be instituted under the provisions of this act against any boat or vessel used ex- Actions, when and for what commenced.

clusively in navigating the inland waters of this state, unless the same shall be commenced within six months after the cause of action shall have occurred, nor shall any such boat or vessel be liable for any other than the causes of action following, to-wit :

1st. On accounts of workdone, or services rendered as master or seaman on board of such boat or vessel, or on account of labor performed or materials furnished by mechanics, tradesmen or others, in, and for building, repairing, fitting out, furnishing or equipping such boat or vessel.

2d. On account of the non-performance or mal-performance of a contract of affreightment or any contract touching the transportation of persons or property, entered into by the owner, master or other authorized agent of the boat or vessel.

3d. On account of supplies furnished for the use of such boat or vessel, or of towage, lockage or wharfage of such boat or vessel.

Take effect.

SEC. 38. This act shall take effect and be in force from and after its passage and publication.

Approved March 17, 1859.

[Published April 4, 1859.]

CHAPTER 152.

AN ACT to appropriate to Edward M. McGraw, state prison commissioner, a certain sum of money therein named.

The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows :

Amount appropriated.

SECTION 1. There is hereby appropriated to Edward M. McGraw, state prison commissioner, out of any money in the state treasury not otherwise appropriated, the sum of forty-nine thousand five hundred dollars, as follows :

For what purpose.

Thirty thousand dollars to defray the current expenses of the state prison for the year 1859; eleven thousand eight hundred and eighty-eight dollars to pay up past indebtedness; seven thousand dollars to purchase material for the construction of shops within the prison yard, and a wall around the same; and six hundred and twelve dollars to purchase furniture for the main building of the state prison. The said thirty thousand dollars to be drawn from the treasury quarterly in advance, to commence on the first day of January, and the said commissioner shall