

GENERAL STATUTES

OF

MINNESOTA

1913

PUBLISHED UNDER THE AUTHORITY OF THE
LEGISLATURE BY VIRTUE OF AN ACT
APPROVED APRIL 20, 1911
(LAWS 1911, CH. 299)

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WEST PUBLISHING CO.
1913

disbursements shall be allowed any party to such appeal, nor shall any of the papers used on such hearing be required to be printed. (4602)

Trial de novo (110-103, 124+634). Errors and irregularities occurring on trial below need not be considered (119-368, 138+315, 42 L. R. A. [N. S.] 978). Rules as to service of briefs and assignments of error have no application (116-1, 133+86). Cited (98-533, 107+1134; 99-49, 108+880).

CERTIORARI

8313. Within what time writ issued—No writ of certiorari shall be issued, to correct any proceeding, unless such writ shall be issued within sixty days after the party applying for such writ shall have received due notice of the proceeding sought to be reviewed thereby. ('09 c. 410 § 1)

8314. When served—Such writ must also be served upon the adverse party within said period of sixty days. ('09 c. 410 § 2)

8315. Surety for costs in civil case—Each writ of certiorari in a civil case shall be indorsed by some responsible person as surety for costs. ('09 c. 410 § 3)

8316. Costs—The party prevailing on a writ of certiorari in any proceeding of a civil nature shall be entitled to his costs against the adverse party; and in case such writ shall appear to have been brought for the purpose of delay or vexation, the court may award double costs to the prevailing party. ('09 c. 410 § 4)

8317. When dismissed—Costs—If any writ of certiorari shall hereafter be issued contrary to any provision of this act, or shall not be served upon the adverse party within said period of sixty days, the party against which the same is so issued may have the same dismissed on motion and affidavit showing the facts and shall be entitled to his costs and disbursements the same as in other civil actions. ('09 c. 410 § 5)

CHAPTER 88

ACTIONS AGAINST BOATS AND VESSELS

8318. For what liable—Every boat or vessel used in navigating the waters of this state shall be liable for the claims or demands hereinafter mentioned, and which shall constitute liens thereon:

1. For all debts contracted by the master, owner, agent, or consignee thereof on account of supplies furnished for its use, or on account of work done or services rendered on board for its benefit, or on account of labor done or materials furnished by mechanics, tradesmen, or others in and for building, repairing, fitting out, furnishing, or equipping the same;

2. For all sums due for wharfage or anchorage of such boat or vessel within the state;

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, owner, agent, or consignee of the boat or vessel on which such contract is to be performed; and

4. For all injuries done to persons or property by such boat or vessel.

Provided, that no boat or vessel shall be so liable for any debt contracted on account of work done or services rendered on board of or for the benefit of such boat or vessel until such contract is fully performed. (4603)

Constitutional (43-192, 45+430; 44-510, 47+160). Liability of boat for death by wrongful act (8-97, 72). A common law remedy. Assignee of claim may sue (10-242, 190; 10-250, 195). Jurisdiction when cause arises out of state (2-178, 146; 3-192, 124). Jurisdiction of state court of cause of action for breach of contract of affreightment (12-465, 364, 93 Am. Dec. 239). Extent of lien for supplies and service (69-537, 72+809). Jurisdiction of federal court (36 Fed. 197).

8319. Action—Warrant—Procedure—An action against a boat or vessel may be instituted by the filing in the district court of the county where it may be of a complaint against it by name, or if it have no name by description, verified by the plaintiff or some person having knowledge of the facts, and setting forth the demand, and on whose account it accrued. Thereupon the clerk shall issue a warrant, returnable in twenty days, directing the sheriff to seize such boat or vessel and detain it in custody, with its tackle, ap-

parel, and furniture, until discharged by due course of law. Such warrant shall be served and returned as in the case of a writ of attachment. Upon the return of the warrant, proceedings shall be had against the boat or vessel seized in the same manner as if the action had been instituted against the person on whose account the demand accrued. The master, owner, agent, or consignee of the boat or vessel may appear on its behalf and answer the complaint. For sufficient cause shown, he shall be entitled to a continuance, but such continuance shall not operate as a discharge of the boat or vessel from custody, and no continuance shall be granted to the plaintiff. (4604)

8320. Discharge of boat—Bond—If before judgment, the master, owner, agent, or consignee give bond to the plaintiff, to be approved by the court, or by a judge or the clerk thereof in vacation, conditioned to satisfy the amount which shall be adjudged to be due to the plaintiff, with costs, the boat or vessel, with its tackle, apparel, and furniture, shall be discharged from custody. (4605)

44-510, 47+160.

8321. Sale—Execution—If judgment be rendered in favor of the plaintiff against the boat or vessel, the court shall make an order, directing the sheriff to sell it, with its tackle, apparel, and furniture, or such part thereof or interest therein as shall be necessary, to satisfy the judgment and costs, and the order shall be executed and returned in the same manner as an execution. If a bond has been given, as provided in § 8320, and judgment rendered in favor of the plaintiff, execution shall issue for the amount thereof and costs against the principal and sureties on the bond. (4606)

44-510, 47+160.

8322. Owner, etc., summoned to show cause—When judgment is rendered in favor of the plaintiff against a boat or vessel, and prior thereto it has been discharged from custody by the giving of bond or otherwise, or when for any reason such judgment or any part thereof remains unpaid for sixty days, the master and owner, or either, may be summoned to show cause why they should not be personally bound by the judgment. Such summons shall be subscribed by the judgment creditor, his agent or attorney, and shall describe the judgment, specify the amount due thereon, and require the party summoned to show cause within twenty days after the service thereof, and may be served in the same manner as a summons in a civil action. It shall be accompanied by an affidavit of the person subscribing it, to the effect that the judgment has not been paid or satisfied, except as specified in the summons, to his knowledge, information, or belief. (4607)

8323. Pleadings—Trial—Judgment—The party summoned may by answer deny that the judgment was duly rendered, or that he was master, owner, or part owner of the boat or vessel when the cause of action against it arose, and he may set up any defence which has arisen since the rendition of judgment, but no other defence. The party issuing the summons may demur or reply to the answer, and the party summoned may demur to the reply. The issues shall be tried, and judgment, with costs, shall be rendered and enforced in the same manner as in a civil action. (4608)

8324. Appeals—In all cases under this chapter, if judgment be rendered in favor of the plaintiff, the master, owner, agent, or consignee of the boat or vessel, and any other person interested, may appeal from the orders or judgment of the court as in other cases. (4609)

12-388, 269.

8325. Limitation of action—All actions under this chapter shall be commenced within one year after the cause of action accrues. (4610)

36 Fed. 197.