

LIEN ON WATERCRAFT

Act 59 of 1864 (Ex. Sess.)

AN ACT to repeal chapter 122 of the Revised Statutes of 1846, and the amendments thereto, and provide for the collection of demands against water-craft.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864.

The People of the State of Michigan enact:

570.401 Repeal; saving clause.

Sec. 1. That chapter 122 of the Revised Statutes of 1846, and an act entitled "An act to amend an act to regulate proceedings in the collection of demands against ships, boats and vessels," approved April first, 1850, and an act entitled "An act to amend chapter 122 of the Revised Statutes," approved February 17, 1857, the aforesaid laws constituting chapter 149 of the Compiled Laws, be and the same are hereby repealed: Provided, That this act shall not affect any case or proceeding under the aforesaid laws commenced before the passage of this act, but every such case or proceeding may be continued to its final consummation in like manner as if this act had not been passed: And further provided, That this act shall not affect any lien which may have accrued under the aforesaid laws, and is existing at the time of the passage hereof; but every such lien shall be enforced according to the provisions of this act.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6647;—How. 8235;—CL 1897, 10788;—CL 1915, 14891;—CL 1929, 13137;—CL 1948, 570.401.

570.402 Liens upon certain watercraft for certain debts.

Sec. 2. Every watercraft of above 5 tons burthen, used, or intended to be used, in navigating the waters of this state, shall be subject to a lien thereon—

First. For all debts contracted by the owner or part owner, master, clerk, agent or steward of such craft, on account of supplies and provisions furnished for the use of said watercraft; on account of work done, or services rendered, on board of such craft, by seamen, or any employee, other than the master thereof; on account of work done, or services rendered, by any person, in or about the loading or unloading of said watercraft; on account of work done, or materials furnished by mechanics, tradesmen or others, in or about the building, repairing, fitting, furnishing or equipping such craft: Provided, That when labor shall be performed, or materials furnished as aforesaid, by a sub-contractor, or workman, other than an original contractor, and the same is not paid for, said person or persons may give the owner, or his agent, or the master or clerk of said craft, timely notice of his or their said claim, and from thenceforth said person or persons shall have a lien upon said craft, pro rata, for his or their said claims, to the amount that may be due by said owner, to said original contractor, for work or labor then done on said water-craft.

Second. For all sums due for wharfage, anchorage, or dock hire, including the use of dry docks; the lying immediately in front of, or attached to any wharf, dock, or pier, within this state, so as to prevent the use of any portion of such wharf, dock or pier, by other watercraft, with or without the discharge of freight or passengers across such wharf, dock or pier, after a notice to leave, shall be an evidence of an agreement to pay for such use whatever the same may be worth.

Third. For sums due for bottomry, salvage, towage, lighterage, insurance, labor at pumping out or raising such watercraft, and for general average, whether in whole or in part, within this state.

Fourth. For all damages arising from the non-performance of any contract of affreightment, or of any contract touching the transportation of persons or property, entered into by the master, owner, agent or consignee of such water-craft, where any such contract is to be, or shall have been performed, in whole or in part, within this state.

Fifth. For all damages arising from injuries done to persons or property, by such water-craft, where the same shall have occurred through the negligence or misconduct, of the owner, part owner, master, agent or other employee of said water-craft, or through the failure, on the part of such water-craft, to observe any law of the United States relative to the equipment or management of such craft, including injuries to any person, not of the ship's company, from accidents on board said water-craft, occurring as aforesaid.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—Am. 1867, Act 82, Eff. June 27, 1867;—CL 1871, 6648;—How. 8236;—CL 1897, 10789;—CL 1915, 14892;—CL 1929, 13138;—CL 1948, 570.402.

570.403 Complaint; filing, jurisdiction of courts in certain counties.

Sec. 3. Any person claiming to have any such lien as is specified in the preceding sections may file a complaint, giving security for costs as hereinafter provided with the clerk of the circuit court of any county,

setting forth, in separately numbered articles, the facts upon which such claim is based, and the amount due over and above all payments and discounts, as near as may be, which shall be verified by affidavit, in the same manner as bills in chancery: Provided, That in Wayne county such complaint shall be filed with the clerk of the recorder's court of Detroit, or the clerk of the circuit court of said Wayne county, and that said courts, and the circuit courts of the counties of Macomb, St. Clair, Monroe, Sanilac and Huron, shall exercise concurrent jurisdiction over all water-craft within the limits of either of said counties, and that process issued, as provided in the next section, from the courts of either of said counties, may be served in the waters of either of said counties by the sheriff of either; and that the circuit courts of the counties of Saginaw and Bay shall exercise concurrent jurisdiction over all water-craft within the limits of either county, and that process issued from either of said last named courts may be served in the waters of either county, by the sheriff of either. The circuit court of the counties of Kent and Ottawa shall in like manner exercise concurrent jurisdiction over all water-craft within the limits of either county, and the circuit courts of the counties of Muskegon and Newaygo shall exercise concurrent jurisdiction over all water-craft within the limits of either county, and process issued from either of said courts exercising such concurrent jurisdiction may be served in the waters of either county by the sheriff of either.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6649;—How. 8237;—CL 1897, 10790;—CL 1915, 14893;—CL 1929, 13139;—CL 1948, 570.403.

570.404 Warrant, summons; issuance, contents, return date.

Sec. 4. Upon filing such complaint, the clerk shall enter the same in a separate calendar to be kept for that purpose, and shall issue a warrant to the sheriff of the county, under the seal of the court, and returnable in not less than 14 nor more than 30 days from its date, containing a brief statement of the claim filed, commanding him to seize and safely keep such water-craft, her tackle, apparel and furniture, to answer all such liens as shall be established against it according to law, and to make return of his proceedings under such warrant within 10 days after seizure; and the clerk shall also issue a summons to the owner or master of such craft, containing a similar statement, and returnable as aforesaid at the same time as the warrant, which said warrant and summons shall be served at least 14 days before the return day thereof.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6650;—How. 8238;—CL 1897, 10791;—CL 1915, 14894;—CL 1929, 13140;—CL 1948, 570.404.

570.405 Warrant; execution by sheriff.

Sec. 5. The sheriff to whom such warrant shall be directed and delivered shall forthwith execute the same, and shall keep the water-craft, and other property seized by him to be disposed of as hereinafter provided.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6651;—How. 8239;—CL 1897, 10792;—CL 1915, 14895;—CL 1929, 13141;—CL 1948, 570.405.

570.406 Warrant; return.

Sec. 6. Such sheriff shall also, within 10 days after such seizure, make a return to the court who issued the warrant, stating therein, particularly, his doings in the premises, and shall make out, subscribe and annex thereto a just and true inventory of all the property so seized.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6652;—How. 8240;—CL 1897, 10793;—CL 1915, 14896;—CL 1929, 13142;—CL 1948, 570.406.

570.407 Warrant; number against same craft, limitation.

Sec. 7. Whenever any such warrant shall be issued, no other warrant shall issue against the said water-craft unless the first warrant be suspended.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6653;—How. 8241;—CL 1897, 10794;—CL 1915, 14897;—CL 1929, 13143;—CL 1948, 570.407.

570.408 Notice on return of warrant; publication.

Sec. 8. Upon return being made to such warrant, unless the vessel has been bonded, as hereinafter provided, the clerk shall immediately cause the notice hereinafter specified, to be published in some daily or weekly newspaper printed in the county in which the warrant shall have been issued, and if there be none printed in such county, then in some other newspaper; said newspaper in which said notice is to be printed, in all cases, to be designated by a general order to be made by the court, specifying the number of insertions, and the time thereof, to be not less than 14 days.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6654;—How. 8242;—CL 1897, 10795;—CL 1915, 14898;—CL 1929, 13144;—CL 1948, 570.408.

570.409 Warrant; contents.

Sec. 9. Such notice shall contain the names of the complainant, of the water-craft, the port to which she belongs, if known, and a brief statement of the alleged claim, with amounts, and a citation to all persons to intervene for their interest, on a day certain, or that said claim will be heard ex parte.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6655;—How. 8243;—CL 1897, 10796;—CL 1915, 14899;—CL 1929, 13145;—CL 1948, 570.409.

570.410 Intervening complaints; rights, summons.

Sec. 10. Any person having any interest in, or claim against the water-craft seized may intervene to protect such interest or collect such claim by filing a complaint as hereinbefore provided, entitled an intervening complaint and the complainant or any other person interested may defend any complaint by filing an answer as hereinafter provided, and giving security to the satisfaction of the court to pay any costs arising from such defense; and upon filing any such intervening complaint a summons as hereinbefore provided shall issue; and if the same shall be returned not served, notice by publication shall be given as aforesaid; and several intervening complaints may be united with each other or the original in 1 notice, providing that due filing of 1 intervening complaint shall be deemed the commencement of a separate suit, except that but 1 entry fee need be paid.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—CL 1871, 6656;—How. 8244;—CL 1897, 10797;—CL 1915, 14900;—CL 1929, 13146;—CL 1948, 570.410.

570.411 Intervening complaints; time for filing.

Sec. 11. Intervening complaints may be filed at any time before the sale of the water-craft, as hereinafter provided; and after sale under judgment or decree, any intervening complainant may file his complaint against any surplus proceeds remaining in court after payment of claims filed before sale, and the costs thereon; and the same proceedings shall thereupon be had as in the case of claims filed before sale.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6657;—How. 8245;—CL 1897, 10798;—CL 1915, 14901;—CL 1929, 13147;—CL 1948, 570.411.

570.412 Liens not filed before sale; cessation.

Sec. 12. All liens upon any water-craft, which shall not be filed hereunder, before sale under decree or judgment, as hereinafter provided, shall cease.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6658;—How. 8246;—CL 1897, 10799;—CL 1915, 14902;—CL 1929, 13148;—CL 1948, 570.412.

570.413 Writ of restitution; application, issuance.

Sec. 13. The master or any person interested in such water-craft, so seized as aforesaid may at any time before judgment or decree of sale shall be made as hereinafter provided, apply to the clerk issuing the warrant for a writ of restitution. Said writ shall command the sheriff or other person holding the same to restore such water-craft to the person in whose possession the same was found when seized or his authorized agent and may be served by any person.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—CL 1871, 6659;—How. 8247;—CL 1897, 10800;—CL 1915, 14903;—CL 1929, 13149;—CL 1948, 570.413.

570.414 Bond on restitution; conditions, sureties.

Sec. 14. Such person shall execute and file with the clerk a bond to the parties having previously filed complaints, in a penalty at least double the aggregate of the sums alleged to be due in all such complaints previously filed: Provided, That upon good cause shown by affidavit, the court, or the judge thereof, may, by special order, upon application and like notice as below specified, fix the amount of the penalty at a less sum, and in no case less than 100 dollars, with such surety or sureties as shall be approved by the clerk, as hereinafter provided, conditioned, after a recital of the names of the complainants, and the amount of their claims, that the obligors will pay all moneys adjudged or decreed to be due upon such claims, by the court entertaining the same, or the appellate court, with all costs, and that the judgment or decree of either court may be entered against them for the payment of such moneys, with interest and costs, and that execution may issue against them therefor, in the forms now in use in the circuit courts of this state in personal actions.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6660;—How. 8248;—CL 1897, 10801;—CL 1915, 14904;—CL 1929, 13150;—CL 1948, 570.414.

570.415 Bond on restitution; notice of application; sureties, justification and examination.

Sec. 15. Upon application to the clerk to bond, as aforesaid, notice thereof shall be given to the attorney of the complainants, of at least 3 hours if the attorney reside in the same city or village with the clerk, and if not, the notice shall be of 24 hours, exclusive of Sundays and holidays, in addition to the ordinary time of travel between the residence of the clerk and such attorney; and the surety or sureties offered shall justify their responsibility to the satisfaction of the clerk; and such attorney may examine the surety or sureties, under oath, touching their property and liabilities; and it shall be the duty of the clerk, if requested by such attorney, to reduce such examination to writing, and cause the same to be subscribed by the persons examined, and filed.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6661;—How. 8249;—CL 1897, 10802;—CL 1915, 14905;—CL 1929, 13151;—CL 1948, 570.415.

570.416 Motion for additional security.

Sec. 16. If such complainant shall at any time become satisfied that his security has become imperiled, he may by motion founded upon affidavit filed, and upon notice served with copy of papers, move the court or judge thereof to direct the giving of additional security, which motion shall be summarily heard and determined, and such order made therein as justice shall require.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6662;—How. 8250;—CL 1897, 10803;—CL 1915, 14906;—CL 1929, 13152;—CL 1948, 570.416.

570.417 Order of appraisement; issuance of writ of restitution; court order for sale to prevent loss.

Sec. 17. If any party in interest so elect, in place of bonding as aforesaid, he may apply to the court or judge thereof upon like notice as aforesaid, for an order of appraisement of such water-craft so seized, by 3 competent persons to be appointed by the court or judge thereof, and named in the order; and upon such party depositing with the clerk the amount of such appraisement in money, or executing and filing with him a bond for said amount, executed as heretofore provided in sections 13 and 14, it shall be the duty of the clerk to issue a writ of restitution as provided in the next section; and if the claimant of such water-craft shall decline any such application, or the property seized shall be liable to decay, depreciation, or injury from delay, the court in its discretion, may order the same or part thereof to be sold, and the proceeds thereof to be brought into court to abide the event of the suit.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6663;—How. 8251;—CL 1897, 10804;—CL 1915, 14907;—CL 1929, 13153;—CL 1948, 570.417.

570.418 Writ of restitution; issuance by clerk upon receipt of security, discharge from lien.

Sec. 18. Upon receiving a bond or deposit as aforesaid, it shall be the duty of the clerk to issue a writ of restitution, directing the person who seized the water-craft to deliver the same to the person from whose possession the same was taken and seized; and the said water-craft shall thenceforth be discharged from all the liens secured by such bond or deposit, unless the court or judge thereof, upon motion as aforesaid, shall order the same again into custody by special writ, on account of the insolvency of the surety or sureties.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6664;—How. 8252;—CL 1897, 10805;—CL 1915, 14908;—CL 1929, 13154;—CL 1948, 570.418.

570.419 Entry of appearance; notice, default.

Sec. 19. Within 14 days after the return day of the summons, if personally served, or if not served then within the time prescribed in the published notice, the owner or any person interested adversely to the claims mentioned in the notice, may enter an appearance by attorney, in the book of common rules, with an order that a copy of the complaint be served upon him, and serve notice of such appearance and order upon the attorney filing the complaint, who shall serve a copy thereof as required, within 10 days thereafter, or the default of the complainant (or intervenor) may be duly entered in said book, made absolute, and judgment of discontinuance entered as in personal actions.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6665;—How. 8253;—CL 1897, 10806;—CL 1915, 14909;—CL 1929, 13155;—CL 1948, 570.419.

570.420 Answer or demurrer; time for filing, effect of answer.

Sec. 20. Within 10 days after service of a copy of complaint unless on cause shown, further time shall be allowed by the circuit judge, or circuit court commissioner of the proper county, the party defending shall demur or file his answer upon oath or affirmation or his default may be entered and judgment rendered against him as upon similar actions. The answer shall be full and distinct to each article and allegation of the

complaint, but such answer shall not have the effect of a sworn answer in chancery as evidence, nor shall it be necessary to answer any allegation or interrogatory (as provided in the next section) involving a liability to prosecution or punishment, or for a penalty or forfeiture.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—CL 1871, 6666;—How. 8254;—CL 1897, 10807;—CL 1915, 14910;—CL 1929, 13156;—CL 1948, 570.420.

570.421 Interrogation; appended to pleadings, filing; answer.

Sec. 21. Any party complaining or defending may append to the complaint or answer, as the case may be, any pertinent interrogatories, or upon such motion or notice the court may permit such interrogatories to be filed at any other time; and the personal answer to all such interrogatories shall be filed upon oath within the same time that pleadings are required to be filed, or as required by special order; and such answers so far as responsive, may be read as evidence by either party on the trial or hearing; and if either party shall refuse to answer to such interrogatories, the court shall make such order as to right shall appertain.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6667;—How. 8255;—CL 1897, 10808;—CL 1915, 14911;—CL 1929, 13157;—CL 1948, 570.421.

570.422 Pleadings subsequent to answer; amended complaint.

Sec. 22. There shall be no pleadings subsequent to the answer, but within 10 days after filing and service of answer, or demurrer, the complainant or intervenor, may file and serve an amended complaint, to which answer or demurrer shall be filed, as hereinbefore provided in case of original complaints.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6668;—How. 8256;—CL 1897, 10809;—CL 1915, 14912;—CL 1929, 13158;—CL 1948, 570.422.

570.423 Exceptions to answer.

Sec. 23. Complainant, or intervenor, may except to the answer, and either party may except to answer to interrogatories, for irrelevancy, or want of fullness, distinctness, and such exceptions may be noticed for hearing in term, or at chambers.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6669;—How. 8257;—CL 1897, 10810;—CL 1915, 14913;—CL 1929, 13159;—CL 1948, 570.423.

570.424 Trial or hearing; notice.

Sec. 24. Notice of trial or hearing may be for any day in term, and shall be of 10 days, exclusive of both day of service and the day for which the notice is given; and it shall be the duty of the clerk to prepare a separate docket of all such cases noticed, of which a note of issue has been filed within the time required for notices of trial.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6670;—How. 8258;—CL 1897, 10811;—CL 1915, 14914;—CL 1929, 13160;—CL 1948, 570.424.

570.425 Trial or hearing; jury trial, demand.

Sec. 25. The trial or hearing shall be by the court without a jury, unless a jury be demanded by either party, by filing the demand 5 days before the time for which notice shall have been given, and serving a notice of such demand upon the adverse party.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6671;—How. 8259;—CL 1897, 10812;—CL 1915, 14915;—CL 1929, 13161;—CL 1948, 570.425.

570.426 Evidence; taking by attorney or commissioner, report to court.

Sec. 26. The court may, by special order, refer any matter arising in the progress of the cause, to any attorney or circuit court commissioner, to take evidence, and report the same to the court, with his opinion thereon, with all convenient speed, but said opinion shall not be binding on the court.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6672;—How. 8260;—CL 1897, 10813;—CL 1915, 14916;—CL 1929, 13162;—CL 1948, 570.426.

570.427 Admiralty principles; applicability.

Sec. 27. All cases of general average, salvage and collision, and all cases relating to sailors' wages, or to the employment of seamen, arising under this act, shall be determined, upon the trial or hearing, and upon appeal, according to the principles established in courts of admiralty and maritime jurisdiction in such cases.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1867, Act 82, Eff. June 27, 1867;—CL 1871, 6673;—How. 8261;—CL 1897, 10814;—CL 1915, 14917;—CL 1929, 13163;—CL 1948, 570.427.

570.428 Judgment for complainant; in persona.

Sec. 28. If, upon the trial or hearing, judgment or decree shall pass for complainant, and the water-craft has been discharged from custody, as herein provided, said judgment or decree shall be rendered and entered against the principal and sureties in the bond: Provided, That in no case shall the judgment exceed the penalty of the bond, and the subsequent proceedings shall be the same as now provided by law in personal actions in the circuit courts: Provided further, That if the release has been upon deposit, the judgment shall be in form against the party making the deposit, with a clause that it be satisfied out of said deposit, and said party shall not be personally liable upon said judgment.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6674;—How. 8262;—CL 1897, 10815;—CL 1915, 14918;—CL 1929, 13164;—CL 1948, 570.428.

570.429 Judgment for complainant; in rem.

Sec. 29. In case the water-craft has not been discharged from custody, the judgment or decree shall be in form against the water-craft, with an additional order that the same, with the appurtenances, be sold at public vendue by the sheriff, after notice of the time and place of said sale, published as herein required in cases of seizure, at least 10 days before such sale. Provided, That, in case of complaint filed prior to sale, but not in judgment at the time thereof, the judgment or decree shall be the same in form with a clause for payment out of the proceeds of sale; and in case of claims filed against surplus proceeds, the judgment, if in favor of claimant, shall in substance, affirm the claim to be sustained and direct payment thereof from the surplus proceeds.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1867, Act 82, Eff. June 27, 1867;—CL 1871, 6675;—How. 8263;—CL 1897, 10816;—CL 1915, 14919;—CL 1929, 13165;—CL 1948, 570.429.

570.430 Sale of craft; writ.

Sec. 30. The clerk shall thereupon issue a writ of sale commanding the sheriff to sell such water-craft as directed in the judgment or decree, and to return said writ within 24 hours after sale, with his doings in the premises, and with proof by affidavit of the requisite notice, with a copy of such notice.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6676;—How. 8264;—CL 1897, 10817;—CL 1915, 14920;—CL 1929, 13166;—CL 1948, 570.430.

570.431 Sale of craft; duty of sheriff.

Sec. 31. It shall be the duty of the sheriff, upon receiving the amount of the bid from the purchaser, or in case the purchaser is the complainant or an intervenor, upon receiving so much of the bid as the court or judge thereof shall direct by special order, reference being had to the relative amount of the buyer's claim, to deliver such water-craft and appurtenances to the purchaser and also a bill of sale thereof, and to deliver to the clerk the amount by him, the sheriff, so received.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6676;—How. 8265;—CL 1897, 10818;—CL 1915, 14921;—CL 1929, 13167;—CL 1948, 570.431.

570.432 Sale of craft; bill of sale, contents, use as evidence, effect on title.

Sec. 32. A copy of the last enrollment, if any, of such watercraft, shall be recited in the bill of sale, if such copy can be obtained; and a copy of the judgment or decree, with the order of sale, shall also be recited in such bill of sale; and such recital, together with a copy of such decree and order, certified by the clerk, under the seal of the court, shall be full and complete evidence of the regularity of the decree and sale in all courts and places, and shall supersede the necessity of any other proof thereof to validate said bill of sale; and all bills of sale containing such recital and supported by such proof shall be as effectual to pass the title of such water-craft therein mentioned, free and clear of all liens existing before such sale under this act or any previous law of this state, and all liens asserted or which might have been asserted in the proceedings prior to sale to the purchaser, as fully as if made by the owners immediately before the sale, and shall also vest in such purchaser an indefeasible title as against all chattel mortgages or other incumbrances created by the owner as well as against the owner himself, and such liens as aforesaid.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6677;—How. 8266;—CL 1897, 10819;—CL 1915, 14922;—CL 1929, 13168;—CL 1948, 570.432.

570.433 Sale of craft; distribution of proceeds.

Sec. 33. The sum delivered by the sheriff, to the clerk as aforesaid, shall be distributed by the court, or by the circuit judge at chambers, upon motion of any party in interest of record, prior to the sale, and due notice to the other parties, and after the following manner:

First. The costs accruing upon all complaints filed before sale, and on which judgment or decree are, or may be within 20 days thereafter, rendered in favor of the complainant.

Second. Salvage.

Third. Seaman's wages.

Fourth. All other claims filed prior to sale, and on which decree, or judgment, may have been, or may, within 20 days thereafter be rendered, in favor of complainant.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—Am. 1867, Act 82, Eff. June 27, 1867;—CL 1871, 6678;—How. 8267;—CL 1897, 10820;—CL 1915, 14923;—CL 1929, 13169;—CL 1948, 570.433.

570.434 Sale of craft; distribution of surplus.

Sec. 34. Any portion of the sum so paid by the sheriff to the clerk, or of a deposit remaining after such distribution as aforesaid shall be denominated surplus proceeds, and when any claim or complaint shall be filed against the same, as provided in section 11 of this act, distribution shall be directed by the court, after decrees or judgment, upon motion and notice as provided in the last section, and after the following order:

First. All costs upon claims passing into decree which were filed after sale:

Second. All other liens enforceable under this act against the water-craft prior to sale in the order in which they were filed:

Third. All claims upon mortgages of such water-craft or other incumbrances created by the owner in proportion to the interest they cover and priority:

Fourth. The owner.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—CL 1871, 6679;—How. 8268;—CL 1897, 10821;—CL 1915, 14924;—CL 1929, 13170;—CL 1948, 570.434.

570.435 Sale of craft; payment of claims based on subsequent decree or appeal.

Sec. 35. In case the sum for which the water-craft is sold, is sufficient to pay all the claims filed before sale, with costs thereon, the court may, from time to time, order such claim and costs thereon to be paid, in whole or in part, as decrees may from time to time be rendered; and in case of appeal from any decree, as hereinafter provided, the court may order distribution of such portion of the sum brought on the sale as may seem just and proper.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6680;—How. 8269;—CL 1897, 10822;—CL 1915, 14925;—CL 1929, 13171;—CL 1948, 570.435.

570.436 Appeal to supreme court; claim, bond.

Sec. 36. Any party complaining or defending, who may think himself aggrieved by the final decree or judgment of the court, may appeal therefrom to the supreme court; a claim of appeal shall be filed with the clerk within 10 days after the making of the decree or judgment appealed from, and the appellant shall within 5 days thereafter, file a bond to the adverse party with the clerk, with surety or sureties to be approved as hereinbefore provided in case of bonding the water-craft, and to be in case of an appeal by a defendant, in a penalty double the amount of the decree or judgment conditioned to abide the order of the appellate court, and further conditioned that judgment may be entered against them in accordance with such order; in case of appeal by complainant the penalty shall be 200 dollars, and the condition as above provided.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6681;—How. 8270;—CL 1897, 10823;—CL 1915, 14926;—CL 1929, 13172;—CL 1948, 570.436.

570.437 Appeal to supreme court; transcript of record.

Sec. 37. Upon such appeal being perfected, it shall be the duty of the clerk to prepare a transcript of the pleadings, and the judgment or decree of the court below, and send up the same with any original depositions taken in the case, within 20 days thereafter.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6682;—How. 8271;—CL 1897, 10824;—CL 1915, 14927;—CL 1929, 13173;—CL 1948, 570.437.

570.438 Appeal to supreme court; hearing de novo.

Sec. 38. The hearing in the supreme court shall be de novo upon such transcript and depositions, and further testimony taken as provided in the next section.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6683;—How. 8272;—CL 1897, 10825;—CL 1915, 14928;—CL 1929, 13174;—CL 1948, 570.438.

570.439 Appeal to supreme court; jurisdiction, acquisition, taking of testimony.

Sec. 39. The causes shall be considered as in the supreme court, from the perfecting of the appeal; and at

any time within 60 days thereafter, unless the time shall be extended by order of any justice of the court, either party may take testimony by deposition or commission, in the mode now provided by law in any case, without regard to the place of residence of the witness.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6684;—How. 8273;—CL 1897, 10826;—CL 1915, 14929;—CL 1929, 13175;—CL 1948, 570.439.

570.440 Appeal to supreme court; order.

Sec. 40. The supreme court shall hear and determine such appeal, and shall have power to reverse, affirm or modify the judgment or decree of the court below, and to make such other order as shall be just.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6685;—How. 8274;—CL 1897, 10827;—CL 1915, 14930;—CL 1929, 13176;—CL 1948, 570.440.

570.441 Appeal to supreme court; judgment on order.

Sec. 41. Upon filing a certified copy of the order of the supreme court in the court below, judgment shall be entered in accordance therewith, against such parties as the court shall direct, and against all principals and sureties in any bond or bonds filed by such parties.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6686;—How. 8275;—CL 1897, 10828;—CL 1915, 14931;—CL 1929, 13177;—CL 1948, 570.441.

570.442 Fees; clerk, sheriff, attorney.

Sec. 42. The fees of the clerk and sheriff, shall be the same as now provided by law, in personal actions, in the circuit court, as near as may be, and the court shall have power, by general order, to make all needed modifications. The court shall also have power, in any particular case, to make a further allowance to the sheriff, or his deputies, when the circumstances of the case shall require. The sheriff shall receive, for the custody of any craft, under 75 tons, 1 dollar per day; if over 75 tons, 1 dollar and 50 cents per day. The fees of attorneys, to be taxed in favor of the prevailing party, shall be the same as provided in personal actions, by the rules of the circuit court.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1867, Act 82, Eff. June 27, 1867;—CL 1871, 6687;—How. 8276;—CL 1897, 10829;—CL 1915, 14932;—CL 1929, 13178;—CL 1948, 570.442.

570.443 Rules of practice.

Sec. 43. The supreme court may make any rules deemed necessary for the regulation of proceedings under this act, not conflicting with any of its provisions.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6688;—How. 8277;—CL 1897, 10830;—CL 1915, 14933;—CL 1929, 13179;—CL 1948, 570.443.

570.444 Proceedings upon cases arising in other states.

Sec. 44. In cases where by the general maritime law or laws of any other of the United States, now or hereafter to be passed, liens similar to those provided for in this act shall have been created against water-craft, the same may be enforced under the proceedings established by this act, in like manner as if they accrued in this state, and chattel mortgages upon such water-craft, or other interest therein held in such other states under the laws thereof, may be enforced hereunder against surplus proceeds, in like manner as if held in this state under its laws.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6689;—How. 8278;—CL 1897, 10831;—CL 1915, 14934;—CL 1929, 13180;—CL 1948, 570.444.

570.445 Enforcement of lien; time limitation, effect of bona fide purchase of craft.

Sec. 45. Liens may be enforced under this act at any time within 6 years from their origin: Provided, That no lien shall be enforced against a water-craft in the hands of a bona-fide purchaser without notice, unless a complaint to enforce the same shall have been filed in the proper court in the county where the party claiming the lien resides, within 1 year from the time when the same accrued.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6690;—How. 8279;—CL 1897, 10832;—CL 1915, 14935;—CL 1929, 13181;—CL 1948, 570.445.

570.446 Costs; security; taxation, appeal.

Sec. 46. The complainant and intervenors shall, at the time of filing their complaints, file security for costs to the satisfaction of the clerk; and the attorney for complainant or intervenor shall be liable for all costs and expenses until such security shall be given, and payment of the same may, upon motion of the court, be enforced by summary process of attachment: Provided, That in suits for seamen's wages no security for costs

shall be required, except by special order of the court or judge thereof, upon motion and notice, and for good cause shown. Costs shall be taxed by the clerk upon notice as provided by the rules of the circuit courts, and either party may appeal from the taxation to the court, by filing his objections, serving a copy thereof upon the adverse party, and bringing the same to hearing upon notice.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6691;—How. 8280;—CL 1897, 10833;—CL 1915, 14936;—CL 1929, 13182;—CL 1948, 570.446.

570.447 Proceedings and practice; depositions, writs, costs.

Sec. 47. The proceedings and practice under this act shall be the same as in personal actions at law except as herein otherwise provided so far as the same may be applicable, and the depositions of witnesses may be taken for the same causes, in the same manner and with the like effect as in personal actions. Forms of writ under this act shall be devised by the court in analogy to those in use in such actions and in case the claimant of such water-craft or any person interested therein defending such suit shall prevail either upon an issue of law or of fact, the court shall render judgment in his favor for all costs incurred in such said suit and for all damages which he may have sustained by reason of the seizure of such water-craft to be assessed by the court or a jury the same as in personal actions, and the court may render judgment against the complainant and his surety for costs, and in favor of the party interested defending such claim. And execution may issue for the collection of such damages and costs, the same as in personal actions.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—Am. 1865, Act 323, Eff. June 22, 1865;—CL 1871, 6692;—How. 8281;—CL 1897, 10834;—CL 1915, 14937;—CL 1929, 13183;—CL 1948, 570.447.

570.448 Record of proceedings; fee for certifying copies.

Sec. 48. The proceedings under this act shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept and numbered, being fastened together in the clerk's office, and a docket, calendar or short memorandum thereof, with the numbers, kept in a book by the clerk; and the clerk for affixing his name and the seal of the court to any form or paper, or certifying a copy thereof, shall be entitled to receive as compensation \$1.00 per page.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6693;—How. 8282;—CL 1897, 10835;—CL 1915, 14938;—CL 1929, 13184;—CL 1948, 570.448;—Am. 1963, Act 28, Imd. Eff. Apr. 25, 1963.

570.449 Clerk of recorder's court; bond.

Sec. 49. The clerk of the recorder's court of the city of Detroit, before performing any duties under this act, shall file with the city clerk, a bond to the people of the state, in a penalty of 5,000 dollars, with 2 sufficient sureties to be approved by the recorder or judge of the court, conditioned to safely keep and account for all moneys received by him under this act, and to abide by all orders of the court relative thereto; and said bond may be prosecuted by any party injured, in his own name.

History: 1864, Ex. Sess., Act 59, Eff. May 7, 1864;—CL 1871, 6694;—How. 8283;—CL 1897, 10836;—CL 1915, 14939;—CL 1929, 13185;—CL 1948, 570.449.