

GENERAL STATUTES
of
MINNESOTA
1923

PUBLISHED UNDER THE AUTHORITY OF
LAWS OF 1923, CHAPTER 95,
APPROVED MARCH 26TH, 1923

COMPILED AND EDITED BY
HUBERT HARVEY, OF THE ST. PAUL BAR

PUBLISHER
REVIEW PUBLISHING COMPANY
ST. PAUL, 1924

127-519, 148+1082; 129-300, 152+541; 134-191, 153+826; 136-461, 161+714; 137-267, 161+1055; 148-336, 181+858; 194+403.

9770. When served—Such writ must also be served upon the adverse party within said period of sixty days. ('09 c. 410 § 2) [8314]

137-265, 161+714.

9771. 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) [8315]

149-116, 182+986.

9772. 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) [8316]

9773. 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) [8317]

129-301, 152+541.

CHAPTER 88

ACTIONS AGAINST BOATS AND VESSELS

9774. 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 malperformance 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) [8318]

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). Extent of lien for supplies and service (69-537, 72+809). Jurisdiction of federal court (36 Fed. 197).

9775. 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, apparel, 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) [8319]

9776. 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) [8320]

44-510, 47-160.

9777. 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 § 9776 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) [8321]

44-510, 47-160.

9778. 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) [8322]

9779. 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 defense which has arisen since the rendition of judgment, but no other defense. 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) [8323]

9780. 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) [8324]

12-388, 269.

9781. Limitation of action—All actions under this chapter shall be commenced within one year after the cause of action accrues. (4610) [8325]

9782
172m 149

CHAPTER 89

9782-91
214-NW 787

ASSIGNMENTS FOR BENEFIT OF CREDITORS

9782. Requisites—Every assignment made by a debtor of the whole or any part of his estate, real or personal, in trust for the benefit of creditors, shall be void unless the assignee be a resident freeholder of the state, and unless the assignment be in writing, subscribed and acknowledged by the assignor, and be filed with the clerk of the district court of the county wherein the assignor, or one of the assignors if there be more than one, resides, or wherein the business in reference to which the same is made has been principally carried on. (4611) [8326]

1. Nature of proceeding—Statute a regulation not a grant of power. A mere regulation of common law assignments for the benefit of creditors. Such assignments are the voluntary acts of the debtor. No statutory authority can exact them and when made they partake of the nature of a contract (28-93, 95, 9+585; 33-412, 414, 23+856; 39-520, 522, 40+827; 77-407, 409, 80+361; 93-274, 101+167). The existence of a bankrupt act does not suspend right to make a voluntary assignment for the benefit of creditors (39-520, 522, 40+827). Proceeding is of a judicial nature (24-232, 241; 24-295, 297; 26-141, 143+830; 32-122, 123 19+652). It is under the general supervision of the court (see § 8335). The assignee is the officer of the court (69-69, 74; 71+921), and the property assigned is in custodia legis (69-69, 74, 71+921). See 32-60, 64, 19+347; 33-412, 415, 23+856). Object of statute to protect creditors of assignors and to regulate the duties of assignees. Its aim is to secure an equal distribution of the debtor's property without preferences and to place the estate and the assignee under the control of the court so as to insure a faithful administration of the trust (41-304, 307, 43+67; 93-274, 277, 101+167. See 32-122, 123, 19+652). The statute is not, like the insolvency law of 1881, a bankrupt act (32-60, 19+347).

2. Compared with insolvency law of 1881—32-60, 19+347; 33-412, 414, 23+856; 62-501, 505, 65+78; 632; 77-407, 409, 80+361.

3. To what applicable—An assignment not good under the insolvency law of 1881 may be held good under this section (41-3, 4 42+539). If an assignment does not affirmatively appear on its face to be under the insolvency law of 1881 it will be conclusively presumed to be under this section (77-407, 80+361).

4. Assignor must be resident freeholder—46-138, 48+687; 60-358, 62+325; 77-407, 80+361.

5. Formal requisites—A failure to comply with the provisions of this section does not render the assignment void but merely voidable at instance of creditors and subsequent purchasers in good faith. It is good between the parties (93-274, 101+167. See 68-414, 418, 71+679). Statutory requirements not applicable to foreign assignments (31-136, 16+700). Provisions as to execution etc, mandatory (28-118, 9+636; 68-414, 417, 71+679). Assignment must be the personal act of the assignor. Power of attorney held insufficient (68-414, 71+679). Acknowledgment by corporation held insufficient (66-4, 68+111). Assignment held void for want of notary's seal to acknowledgment (28-118, 9+636). Acknowledgment by surviving partner held sufficient (46-25, 48+441). Subscription and acknowledgment of partnership assignment held sufficient (27-255 6+793).

6. By partnerships—27-255, 6+793; 46-25, 48+441. See 6-375, 260; 13-412, 381; 37-527, 35+435; 65-184, 68+5; 74-439, 447, 77+236.

7. Filing—24-295, 297; 26-141, 143, 1+830; 36-305, 30+812; 73-308, 76+41.

8. Conflict of laws—31-136, 16+700; 33-403, 38+104; 41-325, 43+385; 46-138, 48+687; 55-18, 56+255; 58-205 59+1003; 58-301, 59+1023; 64-339, 67+73; 89-98, 109, 94+218.

9. Fraudulent intent renders voidable—28-93, 9+585; 33-412, 415, 23+856; 35-194, 28+252. See 2-264, 226; 3-364, 257; 3-377, 271; 3-389, 282; 4-148, 99; 4-204, 146; 6-305, 213; 6-375, 260; 6-5, 35, 372; 7-40, 24; 7-345, 271; 8-477, 427; 13-326, 299; 22-247; 23-242; 36-49, 30+126.

10. Qualifications of assignee—The assignor must appoint a person competent to protect the rights of all parties interested in the assignment (6-375, 260. See 58-205, 59+1003; 58-313, 59+1044).

11. Releases—An assignment in favor of only those creditors who will file releases is void (35-194, 28+252. See 39-520, 40+827; 70-290, 73+146; 116-142, 133+561).

12. Effect of defaults of assignee—After the court has acquired jurisdiction of the proceedings by the filing of a proper assignment no defaults of the assignee will affect the validity of the trust or the jurisdiction of the court (32-71, 19+385; 41-304, 43+67).

13. Construction—Statute remedial and to be liberally construed (24-232, 240; 41-304, 307, 43+67). Schedule held not to limit general description in deed (38-315, 37+448). See 6-375, 260). General words of transfer are limited by subsequent words of description (6-375, 260).

14. Collateral attack—If the assignment is void creditors may seize the property on legal process as if no assignment had been made and set up its invalidity in an action by the assignee (77-407, 80+361).

15. Effect—Does not supersede prior attachment or garnishment (36-305, 30+812). Gives to creditors through assignee rights of attaching creditors (89-98, 94+218). On a prior deposit to pay a creditor (24-216).

16. Title of assignee—Assignee not a bona fide purchaser (6-305, 213; 23-242, 254; 28-93, 96, 9+585; 38-315, 316, 37+448). Holds legal title and all the equitable interest of the assignor in respect to the property covered by the assignment (4-270, 190; 31-244, 246, 17+381; 90-169, 95+1114). Succeeds to all the personal property wherever situated (31-136, 16+700; 55-18, 56+255). Except as modified by statute assignee takes subject to all defenses against his assignor (75-168, 77+820). He does not, as at common law, stand in the shoes of his assignor (89-98, 108, 94+218). He takes free from statutory interest of the wife of the assignor (see 71-61, 73+640). Legal title of assignor's unexempt real estate vests in assignee, and when trust has been executed, or proceedings terminated, if any real estate remains not disposed of, it reverts to assignor (103-104, 114+360). See note under § 7904.

17. Powers and duties of assignee—Assignee bound to exercise due diligence and good faith in the administration of his trust (24-232; 36-66, 68, 30+304). Represents the creditors not the assignor (60-397, 62+383; 69-69, 71+921; 69-124, 71+924; 89-98, 108, 94+218). He cannot delegate his trust but he may employ agents and attorneys to assist him (25-509). His authority extends to the property of the assignor in other states. He receives the property belonging to the insolvent estate, converts it into money, and pays and discharges the debts by equal proportional distribution among the creditors, recognizing valid and subsisting contracts theretofore entered into by the assignor and instituting proceedings to set aside all such conveyances and transfers as are fraudulent or void as to creditors (89-98, 108, 94+218). Holds any surplus in trust for assignor (32-60, 19+347). Duty to protect and defend the assigned property and make it available for the payment of claims (31-505, 510, 18+645). Not required to invest funds. When liable for interest (49-170, 51+909).

18. Miscellaneous—Irrevocable (48-396, 51+222). Preferences allowable (48-396, 51+222). Reformation (53-201, 54+111). Estoppel to attack (51-1, 52+974). Effect of appointment of receiver under G. S. 1894 c. 76 (62-501, 65+78, 632). Assignor must convey his entire interest in the property (3-389, 282). Liability of assignee for rent (57-121, 58+689; 60-305, 62+335). Deed of assignment how far controlling (39-520, 40+827; 41-3, 6, 42+539; 42-22,