

GENERAL STATUTES
OF THE
STATE OF MINNESOTA

36

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CHAPTER 82.

CONFESSION OF JUDGMENT WITHOUT ACTION.

§ 2. Statement—Contents.

A statement for judgment by confession should state, not merely the evidence of the debt which the parties have made, as the note, bond, or other writing, but also the facts furnishing the consideration for such note or other writing, far enough to put creditors of the party confessing judgment on inquiry as to the existence of the facts, and direct them so that they can make such inquiry. Stating that the writing was upon full and valuable consideration, without stating its character, is not enough. *Wells v. Gieseke*, 27 Minn. 478, 8 N. W. Rep. 380.

Where the statement is for two or more liabilities, if there be no actual intent to defraud, the judgment may be vacated as to those insufficiently stated, and allowed to stand as to the others. *Id.*

The court cannot allow an amendment *nunc pro tunc* of an insufficient statement for judgment by confession, so as to affect the rights of creditors who have subsequently acquired liens and who have begun proceedings to avoid the judgment. *Id.*

Signing an affidavit verifying a statement for confession of judgment is, under Comp. St. c. 74, sufficient signing of such confession. *Kern v. Chalfant*, 7 Minn. 487, (Gil. 393.)

A confession of judgment for a contingent liability stated that the same was for liability incurred by plaintiff in indorsing a bond for defendant, for the amount confessed. Held insufficient, it not showing a liability incurred in good faith. *Id.*

§ 3. Filing statement—Entry of judgment.

The indorsement of judgment on the statement filed, and the entry of judgment in the judgment book, are each an original. The omission of either, the other being made, does not render void a docketing of the judgment or an execution issued on it. *Wells v. Gieseke*, 27 Minn. 478, 8 N. W. Rep. 380.

CHAPTER 83.

ACTIONS AGAINST BOATS AND VESSELS.

§ 1. Liabilities of boats and vessels.

Chapter 86, Rev. St., providing proceedings for the collection of demands against boats and vessels, by a suit *in rem* against the boat or vessel, has no application to a case where the contract sued upon was made, and the breach complained of occurred, outside of the state; but in such case the action must be against the owner or party contracting. *Steam-Boat Reveille v. Landreth*, 2 Minn. 175, (Gil. 146.) Chapter 86, Rev. St., providing for a specific remedy against boats and vessels, is applicable to causes of action arising upon contracts made and broken within the state, contracts made within and broken without the state, and contracts made without to be performed within the state; and on the same principle, and to the same extent, it governs causes of action mentioned in the statute other than those arising out of contract. In all other cases where parties seek to enforce their rights in our courts they must resort to common-law remedies. *Irvine v. Steam-Boat Hamburg*, 3 Minn. 192, (Gil. 124.)

SUBD. 3. An assignee of a claim against a vessel may maintain an action thereon under chapter 76, Comp. St., the same as could the original owner. *Reynolds v. Steam-Boat Favorite*, 10 Minn. 242, (Gil. 190); *Morin v. Steam-Boat F. Sigel*, 10 Minn. 250, (Gil. 195.)

SUBD. 4. An action may, under Comp. St., c. 76, be brought directly against a boat or vessel for wrongfully causing the death of a person, and the executor or administrator of such party is the proper party plaintiff in such action. *Boutiller v. Steam-Boat Milwaukee*, 8 Minn. 97, (Gil. 72.)

§ 2. Manner of bringing action.

An action brought under this chapter, in the district court of the state, against a steam-boat, *eo nomine*, plying upon the Minnesota river, for breach of contract of affreightment, is an attempt to exercise an admiralty jurisdiction vested alone in the federal district courts. *Griswold v. Steam-Boat Otter*, 12 Minn. 465, (Gil. 364.)

Under c. 76, Comp. St., courts of this state have jurisdiction to entertain actions against vessels by name. Such action is not a proceeding in admiralty, but a common-law remedy. *Reynolds v. Steam-Boat Favorite*, 10 Minn. 243, (Gil. 190;) *Morin v. Steam-Boat F. Sigel*, 10 Minn. 250, (Gil. 195.)

CHAPTER 84.

FORCIBLE ENTRIES AND UNLAWFUL DETAINERS.*

See *Steele v. Bond*, 28 Minn. 267, 272, 9 N. W. Rep. 772; *Gray v. Hurley*, 28 Minn. 388, 10 N. W. Rep. 417; *State v. Municipal Court*, 26 Minn. 162, 2 N. W. Rep. 166; *Hoffman v. Parsons*, 27 Minn. 236, 6 N. W. Rep. 797; *Whitaker v. McClung*, 14 Minn. 170, (Gil. 131.)

§ 2. Jurisdiction of justices of the peace.

To maintain the action under §§ 1 and 2, the entry need not be forcible, but the detainer must be unlawful, and with force and strong hand; that is, under circumstances of actual violence or terror. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

See *Hennessey v. Pederson*, 28 Minn. 461, 11 N. W. Rep. 63; *Petsch v. Biggs*, 31 N. W. Rep. 392, 18 N. W. Rep. 101.

§ 3. Complaint and summons.

A complaint under c. 84, Gen. St., for "forcible entry and detainer," which alleges the plaintiff's actual possession of the premises by his wife, and that defendant did make an unlawful and forcible entry into and upon, and has ever since unlawfully and forcibly detained, the premises, sufficiently alleges plaintiff's possession, and defendant's entry and detainer. *Davis v. Woodward*, 19 Minn. 174, (Gil. 137.)

The complaint in an action for forcible entry and detainer must particularly describe the premises. *Lewis v. Steele*, 1 Minn. 89, (Gil. 67.)

§ 5. Hearing.

In proceedings under this chapter, by a landlord against his tenant, to recover possession of premises for non-payment of rent, no previous demand of the rent is required. *Spooner v. French*, 22 Minn. 37.

In an action before a justice, if defendant fails to call for a jury trial, he will be deemed to have waived his right thereto. *Gibbens v. Thompson*, 21 Minn. 398.

A justice of the peace has a reasonable time after the submission of the case in which to consider the same and enter his judgment. Two days held not an unreasonable time. *Id.*

See *Hennessey v. Pederson*, 28 Minn. 461, 11 N. W. Rep. 63.

§ 6. Summons—Service by leaving copy—Return.

If, at the time of making said complaint, it appears that the person against whom said complaint is made is absent from the county, the justice before whom the same is made shall issue his summons as hereinbefore provided, and make the same returnable not less than six, nor more than ten, days from the time of issuing the same; and such summons may be served by leaving a true and attested copy thereof at the last and usual place of such person's abode, not less than six days before the return-day thereof. Such copy shall be left with some member of the family, or some person residing at such place, of suitable age and discretion, to whom the contents thereof shall

* Jurisdiction of municipal courts in cases of forcible entries and unlawful detainers, see *ante*, c. 64.