

MAINE STATE LEGISLATURE

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Wm. F. Hill
DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1856.

PART SECOND.

Augusta:

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1856.

THIRTY-FIFTH LEGISLATURE.

SENATE.

No. 30.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED
AND FIFTY-SIX.

AN ACT to provide for enforcing liens on vessels.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:

SECTION. 1. Any person who has or may hereafter
2 have a lien created by statute of this state, on a ship
3 or vessel, may enforce the same in the manner herein
4 provided.

SECT. 2. The form of a writ for enforcing a lien
2 upon a ship or vessel, shall be in substance as fol-
3 lows:

4 "STATE OF MAINE.

5 " ——— ss.]

6 " To the sheriff of our county of ———, or his dep-
7 uty,

GREETING :

8 " [L. s.] We command you to attach the ship or ves-
9 sel [here give such a description of the vessel as will
10 identify it] and summon all persons interested, in the
11 manner directed by law, to appear before our justices
12 of our ——— ——— court, next to be holden at
13 ———, within and for the county of ———, on the
14 ——— Tuesday of ——— next, then and there in
15 our said court to answer to A. B., of ———, who
16 claims a lien on said ship or vessel for [here describe
17 briefly the nature of the lien] to the amount of ———
18 dollars and ——— cents, according to the specification
19 hereto annexed, which amount C. D., of ———,
20 who owes the same, neglects and refuses to pay, to
21 the damage of the said A. B., as he says, the sum of
22 ——— dollars, which shall then and there be made
23 to appear with other due damages; and have you
24 there this writ with your doings thereon.25 " Witness, ——— at ———, the ——— day of ———,
26 in the year of our Lord, one thousand eight hundred
27 and ———.

E. F., Clerk."

23 said writ shall be signed, sealed and tested as other
29 writs in civil actions are, and shall be returnable to
30 the next term of the court in the county where said
31 ship or vessel is, if such term is fourteen days after
32 the date of the writ, otherwise, to the next subsequent
33 term.

SECT. 3. The specification to be annexed to the
2 writ, shall contain a just, true and particular account
3 of the demand claimed to be due him, with all just
4 credits ; also the name of the person or persons who
5 are personally liable to him, and the names of the
6 owners of the ship or vessel, (if known to him,) and
7 said specification shall be verified by the oath of one
8 of the plaintiffs, or of some person in behalf of the
9 plaintiff or plaintiffs, that the amount claimed in said
10 specification is justly due from the person named in
11 the writ and specification as owing it, and that he
12 believes that, by the laws of this state, he has a lien
13 on such ship or vessel for the amount thereof, or for
14 a part of said amount.

SECT. 4. If the vessel, at the time the attachment
2 is made, is on the stocks, said attachment shall be
3 made by filing in the office of the clerk of the town
4 in which such vessel is, a copy of so much of his

5 return on the writ as relates to the attachment, to-
6 gether with the name of the plaintiff, the name of the
7 person or persons liable for the debt, the description
8 of the vessel as given in the writ, the date of the writ,
9 the amount claimed and the court to which it is re-
10 returnable, and by leaving copy of such certificate
11 with one of the owners of the vessel, if known to him
12 and residing within his precinct, or with the master-
13 workman on said vessel; such filing and service of
14 copy to be within forty-eight hours of the time of
15 making such attachment. If the attachment is so
16 made, it shall not be necessary for the officer to take
17 possession of the vessel before she is launched, unless
18 specially directed by the plaintiff or his attorney so to
19 do; but he shall take possession as soon as may be
20 after she is launched. The officer may take posses-
21 sion of the vessel at any time before she is launched;
22 but if he does, he shall not in anywise hinder the work
23 upon said vessel, or prevent or delay the launching.

SECT. 5. If the vessel has been launched at the
2 time of the attachment, she shall be attached in the
3 manner provided by law for the attachment of per-
4 sonal property.

SECT. 6. The service of the writ upon the person

2 or persons named as personally liable for the plaintiff's
 3 claim, shall be by summons, in the same form as if it
 4 were a personal action against him or them.

SECT. 7. The service of the writ upon the owners
 2 of the vessel, or upon such of them as are known and
 3 reside within the county where the vessel is, shall be
 4 by a notice addressed in substance as follows :

5 "——, ss. To the owners of the ship or vessel,
 6 (describing it as in the writ,) GREETING.

7 "Take notice, that the above described vessel is at-
 8 tached on a writ in favor of ——, who claims a lien
 9 thereon for the sum of ——, (naming the amount of
 10 the claim.) due him by C. D., and that said writ is
 11 returnable to the —— court to be holden at
 12 ——, in and for the county of ——, on the ——
 13 Tuesday of ——, A. D. 18——, when and where you
 14 may appear and defend if you see fit. Dated, &c.

15 "G. H., *Sheriff*, or *Dep'y Sheriff*."

16 Which notice shall be served as summonses are served.
 17 A notice in form like the above shall also be posted
 18 in some conspicuous place on the vessel attached.
 19 The attachment, service and notices shall be made
 20 fourteen days at least before the term of the court to
 21 which the writ is returnable.

SECT. 8. All writs made subsequent to the first
2 attachment, and while any attachment on the same
3 vessel for liens are pending, shall be served by the
4 same officer, in the manner provided for attachment
5 and service on the first writ. If such officer is dis-
6 qualified from serving any subsequent writ, any other
7 qualified officer may serve such subsequent writ, and
8 may attach said vessel by giving notice thereof to the
9 first attaching officer and filing the certificate as
10 herein before provided.

SECT. 9. At any time after four days from the time
2 the vessel is launched, or after four days from the
3 time the repairs for which liens are claimed are com-
4 pleted, the owner of the vessel may release the attach-
5 ment by giving bonds to the plaintiffs, severally, with
6 good and sufficient sureties, in a penal sum equal to
7 the ad damnum in the plaintiffs' writs, respectively,
8 conditioned to pay such sum as the plaintiffs may
9 respectively recover as liens upon said ship or vessel,
10 with such costs as the court may award. If such
11 bond or bonds are given before any of the actions are
12 entered in court, the sufficiency of the sureties shall
13 be decided by the officer having the writs, who shall
14 be under the same liability as in taking bonds in re-

15 plevin suits. If such bonds are given after any of
16 said actions are entered in court, and whilst they are
17 there pending, the bond shall be approved by the
18 court.

SECT. 10. At the return term, the actions shall be
2 entered on the docket as follows: The person claim-
3 ing the lien as plaintiff; the person alleged to be per-
4 sonally liable as defendant, and the name or other
5 description of the vessel attached.

SECT. 11. The owners or mortgagees of the vessel,
2 or any plaintiff in a suit wherein the same vessel is
3 attached, claiming a lien, may appear and defend any
4 action so far as relates to the validity and amount of
5 the lien claim; but no such plaintiff shall be allowed
6 to defend until he has given bond to the satisfaction
7 of the court to pay such costs as may be awarded
8 against him.

SECT. 12. The defendant may make an offer in
2 writing to be defaulted for such sum as he shall think
3 proper, which offer shall have the same effect in
4 limiting his personal liability for costs, as by law an
5 offer to be defaulted in any civil action has.

SECT. 13. The owner of the vessel may in writing,
2 filed with the clerk, admit a certain amount to be due
3 the plaintiff as a lien on the vessel; and if the plaintiff

4 shall not recover judgment for a lien greater in
5 amount than the sum so admitted, he shall recover
6 no costs against such owner, or against the vessel or
7 the proceeds thereof, after the time such admission is
8 filed; but said owner shall recover costs from that
9 time, to be deducted from the lien claim.

SECT. 14. The court, except as provided in the
2 eleventh and twelfth sections, shall have power to
3 decide all questions of costs, in the same manner as
4 they have in cases in equity, and may apportion them
5 as may seem proper, on the principles which govern a
6 court of equity.

SECT. 15. Questions of fact arising in the actions
2 herein provided for, shall be submitted to a jury on
3 application of any party to the suit, upon an issue
4 made up under direction of the court, and the ques-
5 tions submitted to the jury, shall be, First—"What
6 amount is due from the defendant to the plaintiff, and
7 claimed in the writ?" Second—"For how much of
8 said amount has the plaintiff a lien upon the vessel
9 attached?" And the verdict of the jury shall be in
10 answer to these questions.

SECT. 16. If the parties waive a trial by jury, the
2 questions in the fifteenth section hereof shall be de-
3 cided by the court upon a hearing, or upon the report
4 of an auditor to be appointed by the court.

SECT. 17. Upon the ascertainment of the amounts
2 so due to the plaintiff, judgment shall be rendered in
3 his favor against the defendant as in other personal
4 actions, for the amount decided not to be a lien on
5 the vessel, with such costs as the court may award,
6 and a separate judgment shall be rendered in his
7 favor against said defendant, and the vessel attached
8 for the amount decided to be a lien, with such costs
9 as the court may award, and separate executions shall
10 be issued thereon; *provided*, parties in suits brought
11 under this act shall have the same right to exceptions,
12 motions for new trial and writs of error, as in other
13 civil actions.

SECT. 18. If before judgment the vessel attached
2 has been released upon a bond, as provided in section
3 eighth, the judgment rendered on the lien claim as
4 herein provided, shall be proof of the breach of the
5 conditions of the bond and of the amount due there-
6 on; and if the owner or his sureties on said bond
7 shall pay the amount, he or they shall be entitled to
8 an assignment of said judgment, which, on motion,
9 the court may order to be made.

SECT. 19. If the vessel at the time of judgment in
2 any suit on which she was attached has not been
3 released from attachment, in the manner provided in

4 the eighth section hereof, the court may issue an
5 order to the officer who made the attachment, direct-
6 ing him to sell said vessel at auction, and to pay the
7 proceeds of such sale, first deducting the expenses of
8 said sale and the expense of taking care of the vessel
9 during the time it has been under attachment, into
10 court. And the officer receiving such order shall sell
11 said vessel in the same manner as is provided for sell-
12 ing personal property on execution. And the pur-
13 chaser at such sale shall hold said vessel free from
14 any claim prior to such sale.

SECT. 20. If the proceeds of sale paid into court
2 shall amount to more than all the judgments recovered
3 against said vessel, and the amounts claimed in the
4 suits still pending, the court may order the judgments
5 which have been recovered to be paid out of said
6 fund; and as fast as judgments are rendered against
7 said vessel, the court may order them to be satisfied,
8 until all the suits against said vessel are terminated
9 and all the judgments satisfied. The balance, if any,
10 the court may, on petition, order to be paid to the
11 person or persons legally entitled to receive it.

SECT. 21. If the proceeds of sale paid into court
2 shall not appear to be enough to pay in full the judg-
3 ments recovered and the claims still undecided, the

4 court may in its discretion order the money to re-
5 main until all the suits are terminated, and then divide
6 it pro rata, or it may direct a sufficient amount to
7 pay the claims not yet determined their proportion, to
8 be retained, and divide the rest among the judgments
9 recovered, in proportion to the several amounts;
10 and if, after all the suits are terminated, and the judg-
11 ments recovered subsequent to the first division, have
12 received the same proportion as the prior judgments,
13 there shall be any amount remaining, it shall be divi-
14 ded amongst all the judgments, pro rata. And in
15 dividing the funds under this and the preceding sec-
16 tion, the court shall make such orders and decrees as
17 will prevent the enforcement of a double lien, and se-
18 cure the just rights of all.

SECT. 22. When a contract is made by the owner
2 of a vessel with any person to furnish materials or
3 perform labor at an agreed price, persons furnishing
4 materials to such contractor, or performing labor for
5 him in completing such contract, shall not have a lien
6 on said vessel therefor, unless at the time of furnish-
7 ing the materials or commencing the labor, they shall
8 notify such owner, or his agent having charge of the
9 building of the vessel, that they rely upon their lien,

10 nor in any such case shall the amount for which such
11 vessel shall be held, exceed the amount agreed to be
12 paid for such labor and materials by the contract
13 aforesaid, and the claims of such persons shall be re-
14 duced so as to give each one a fair proportion for the
15 materials and labor furnished by him, according to
16 the price fixed by the contract. And such contractor
17 shall not be allowed to recover on his contract, unless
18 he shows that said vessel is free from claims of those
19 who furnished labor or materials under him in the
20 performance of his contract. But the provisions of
21 this section shall not be applied to materials furnished
22 or labor performed prior to the passage of this act,
23 except so far as to prevent a contractor from recover-
24 ing on his contract, until those who furnished labor or
25 materials under him are paid.

• SECT. 23. The provisions of this act shall not be
2 applied to any pending actions in such a way as to
3 defeat any lien or attachment already existing; but it
4 may be applied to pending actions where it can be
5 done without affecting the rights of the parties, so
6 far as to allow the owners of the vessel attached, or
7 plaintiffs having lien claims on which the same vessel
8 is attached, to appear and defend as in the tenth sec-

9 tion is provided, and to allow the questions in the
10 fifteenth section to be submitted to the jury, and
11 separate judgments for the lien and non-lien parts
12 of the plaintiffs' claim, to be rendered. And the
13 court may order such notice to the owners of vessels
14 attached in suits now pending, as will enable them,
15 if they see fit, to appear and defend such claims of
16 lien. The court may also, in such cases, allow the
17 vessel to be released from attachment on bonds of the
18 owner, as provided in the eighth section. They may
19 also order a sale and distribution as herein provided
20 in case of vessels attached under this act.

SECT. 24. Where process is sued out under this act
2 against a vessel which is under attachment for a lien
3 when this act takes effect, the writ shall be served by
4 the officer who made such attachment, if he be quali-
5 fied; otherwise, as in section seventh hereof.

SECT. 25. If when process issues under this act the
2 vessel is under attachment by a sheriff, or deputy
3 sheriff, the process under this act shall be served by
4 such officer; if under attachment by a constable, he
5 shall yield possession of her to the officer having pro-
6 cess under this act, together with the precept on
7 which such constable had made his attachment, with

8 a return thereon, setting forth the facts ; and in all
9 such cases the attachment shall hold good, subject to
10 the legal priority of the lien claim.

SECT. 26. A vessel attached under this act may
2 also be attached in the ordinary method, in suits
3 against the owner of such vessel, and the attachment
4 shall be made by the officer holding the vessel upon
5 attachments made under this act, which attachments
6 shall be good, subject to the legal priority of the lien
7 attachments.

SECT. 27. When a vessel under attachment for
2 liens, and also in the ordinary method, is sold by
3 order of the court, and the proceeds are more than
4 sufficient to satisfy the lien judgments, the surplus
5 shall be paid to the officer to hold on the writs not
6 founded on lien claims.

SECT. 28. The court, in the manner of a court
2 sitting in admiralty, may make such orders and de-
3 crees as may be necessary for carrying out the provis-
4 ions of this act according to their true intent and
5 meaning.

STATE OF MAINE.

IN SENATE, March 19, 1856.

ORDERED, That 700 copies of the bill entitled "An act to provide for enforcing liens on vessels," reported by the Joint Standing Committee on the Judiciary, be printed for the use of the Legislature.

WM. G. CLARK, *Secretary.*