

# MAINE STATE LEGISLATURE

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DOCUMENTS

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THE LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1858.



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1858.

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# THIRTY-SEVENTH LEGISLATURE.

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HOUSE.]

[No. 17.

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## STATE OF MAINE.

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

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AN ACT to provide for enforcing liens on vessels.

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

SECTION 1. Any person who furnishes labor or materials for building a vessel, shall have a lien upon such vessel therefor, which may be enforced by attachment of the vessel within four days after she is launched. He shall also have a lien upon the materials before they become part of the vessel for which they are furnished, which may be enforced by attachment; and a person who furnishes such labor or materials for a vessel after she is launched or for her repair, shall have a lien on her therefor, which may be enforced by

11 attachment within four days after the work has been  
12 completed.

SECT. 2. The form of a writ for enforcing said lien  
2 upon a vessel, shall be in substance as follows :

3 STATE OF MAINE.

4 “ ——— ss.

5 “To the sheriff of our county of ——— or his  
6 deputy, GREETING :

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

24 “ Witness, ——— at ———, the ——— day of ——— in the

25 year of our Lord one thousand eight hundred and  
26 ———.

27

E. F., *Clerk.*”

28 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  
10 said specification is justly due from the person named  
11 in the writ and specification as owning it, and that  
12 he believes that, by the laws of this state, he has a  
13 lien on such ship or vessel for the amount thereof, or  
14 for 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  
7 the person or persons liable for the debt, the descrip-  
8 tion of the vessel as given in the writ, the date of the  
9 writ, the amount claimed and the court to which it  
10 is 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  
19 to do; but he shall take possession as soon as may  
20 be after she is launched. The officer may take pos-  
21 session of the vessel at any time before she is launched;  
22 but if he does, he shall not in anywise hinder the  
23 work upon said vessel, or prevent or delay the launch-  
24 ing.

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 plain-  
 3 tiffs' claim, shall be by summons, in the same form as  
 4 if it 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  
 4 be by a notice addressed in substance as follows:

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

7 "Take notice, that the above described vessel is  
 8 attached 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 re-  
 11 turnable to the— court to be holden at—, in  
 12 and for the county of— on the— Tuesday of  
 13 — A. D. 18—, when and where you may appear  
 14 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 herein  
10 before provided.

SECT. 9. 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  
4 personally liable as defendant, and the name or other  
5 description of the vessel attached.

SECT. 10. 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. 11. 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. 12. 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 plain-  
4 tiff shall not recover judgment for a lien greater in  
5 amount than the sum so admitted, he shall recover  
6 no costs against such owners 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. 13. 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. 14. 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,  
7 and claimed in the writ?" Second—"For how much  
8 of 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. 15. 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. 16. 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. 17. Whenever judgment has been recovered  
2 in any suit on which she was attached, the court may  
3 issue an order to the officer who made the attach-  
4 ment, directing him to sell said vessel at auction, and  
5 to pay the proceeds of such sale, first deducting the  
6 expenses of said sale and the expense of taking care  
7 of the vessel during the time it has been under  
8 attachment, into court. And the the officer receiving  
9 such order shall sell said vessel in the same manner  
10 as is provided for selling personal property on execu-

11 tion. And the purchaser at such sale shall hold said  
12 vessel free from any claim prior to such sale.

SECT. 18. 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 judgments satisfied. The balance, if any, the  
10 court may, on petition, order to be paid to the person  
11 or persons legally entitled to receive it.

SECT. 19. 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 remain  
5 until all the suits are terminated, and then divide it  
6 pro rata, or it may direct a sufficient amount to pay  
7 the claims not yet determined their proportion, to be  
8 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  
11 judgments recovered subsequent to the first division,  
12 have received the same proportion as the prior judg-

13 ments, there shall be any amount remaining, it shall  
14 be divided amongst all the judgments, pro rata. And  
15 in dividing the funds under this and the preceding  
16 section, the court shall make such orders and decrees  
17 as will prevent the enforcement of a double lien, and  
18 secure the just rights of all.

SECT. 20. 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 eighth hereof.

SECT. 21. If when process issues under this act  
2 the 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  
6 process 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. 22. A vessel attached under this act may also  
2 be attached in the ordinary method, in suits against  
3 the owner of such vessel, and the attachment shall  
4 be made by the officer holding the vessel upon at-  
5 tachments made under this act, which attachments

6 shall be good, subject to the legal priority of the lien  
7 attachments.

SECT. 23. 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. 24. The court, in the manner of a court sit-  
2 ting in admiralty, may make such orders and decrees  
3 as may be necessary for carrying out the provisions  
4 of this act according to their true intent and mean-  
5 ing.

SECT. 25. Sections six, seven, eight, nine, ten,  
2 eleven, twelve, thirteen and fourteen of chapter nine-  
3 ty-one of the revised statutes are hereby repealed.  
4 This repeal shall not effect any action brought to  
5 enforce lien claims, which are now pending.

STATE OF MAINE.

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HOUSE OF REPRESENTATIVES, Feb. 18, 1858.

This bill was read twice, and on motion of Mr. PIKE of Calais, laid on the table, and 350 copies ordered to be printed for the use of the Legislature.

G. W. WILCOX, *Clerk.*