

# MAINE STATE LEGISLATURE

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# FORTY-NINTH LEGISLATURE.

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HOUSE.

No. 29.

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## STATE OF MAINE.

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

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AN ACT to provide for enforcing liens on logs and  
lumber.

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

SECTION 1. Any person who labors at cutting, haul-  
2 ing, rafting or driving logs or lumber, shall have a lien  
3 thereon for the amount due for his personal services,  
4 which shall take precedence of all other claims except  
5 liens reserved to this state, to continue for sixty days  
6 after the logs or lumber arrive at the place of destina-  
7 tion for sale or manufacture, and be enforced by  
8 attachment of the whole, or a part thereof.

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

## STATE OF MAINE.

4 —, ss. To the sheriff of our respective counties, or  
5 either of their deputies, Greeting.

6 L. S. We command you to attach a quantity of logs,  
7 or lumber, (as the case may be,) [here give such descrip-  
8 tion of the same as will identify it] of the value of—  
9 dollars, and summon all persons interested in the man-  
10 ner directed by law, to appear before our justices of our  
11 — court, next to be holden at —, within and for  
12 the county of —, on the — Tuesday of — next,  
13 then and there in our said court to answer to A. B. of  
14 —, who claims a lien on said logs or lumber [here  
15 briefly describe the nature of the lien] to the amount of  
16 — dollars and — cents, according to the specifica-  
17 tion hereto annexed, which amount C. D. of —, who  
18 owes the same neglects and refuses to pay, to the  
19 damage of the said A. B., as he says, the sum of—  
20 dollars, which shall then and there be made to appear,  
21 with other due damages. And have you there this  
22 writ with your doings thereon.

23 Witness, — at —, the — day of —, in  
24 the year of our Lord one thousand eight hundred and  
25 —.

27 Said writ shall be signed, sealed and tested as other  
28 writs in civil actions are, and shall be returnable to

29 the next term of the court in the county where said  
30 logs or lumber are, if such term is fourteen days after  
31 the date of the writ; otherwise, to the next subsequent  
32 term.

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

SECT. 4. The officer making such attachment may  
2 pay the boomage thereon, not exceeding the rate per  
3 thousand on the quantity actually attached by him,  
4 and if the logs or lumber are in the water at the time  
5 of the attachment, he may take the same out, and at  
6 any time before final judgment, if he believes it to be  
7 for the interest of the owner, whoever he may be, he  
8 may sell them on the writ, as in other cases, after  
9 giving to the owner in hand, or leaving at his last and

10 usual place of abode, if known, and within this state,  
11 fourteen days at least before the time of such sale, a  
12 notice of the time and place thereof, with the quantity  
13 and description of logs or lumber to be sold, together  
14 with the name of the person who is claimed to owe the  
15 sum sued for, and the amount of said claim; and shall  
16 cause a copy thereof to be published in some news-  
17 paper printed in the county where the action is pend-  
18 ing, three weeks successively, before the time appointed  
19 for such sale; and the proceeds of such sale he shall  
20 pay into court, first deducting the amount paid for  
21 boomage, for taking the same out of the water, ex-  
22 penses of said notices and sale, and for care of the logs  
23 or lumber during the time it was under attachment.

SECT. 5. The service of the writ upon the person or  
2 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. 6. The service of the writ upon the owners  
2 of the logs or lumber, or upon such of them as are  
3 known and reside within this state, shall be by notice  
4 addressed in substance as follows:

5 —, ss. To the owners of certain logs or lumber,  
6 (describing as in writ,) Greeting.

7 Take notice, that a quantity of the above described  
8 logs or lumber is attached on a writ in favor of —

9 who claims a lien thereon for the sum of — dollars  
10 and — cents (naming the amount of the claim) due  
11 him by C. D., and that said writ is returnable to the  
12 — court to be holden at —, in and for the county  
13 of —, on the — Tuesday of —, A. D. 18—,  
14 when and where you may appear and defend if you  
15 see fit.

16 Dated, &c.

17 G. H., Sheriff or Deputy Sheriff.

18 Which notice shall be served as summonses are served.  
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. 7. At the return term, the actions shall be  
2 entered on the docket as follows: The person claiming  
3 the lien as plaintiff; the person alleged to be person-  
4 ally liable as defendant, and the description of the  
5 logs or lumber attached.

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

SECT. 9. The defendant may make an offer in writing to be defaulted for such sum as he shall think proper, which offer shall have the same effect in limiting his personal liability for costs, as by law an offer to be defaulted in any civil action has.

SECT. 10. The owner of the logs or lumber may, in writing filed with the clerk, admit a certain amount to be due the plaintiff as a lien on the logs or lumber; and if the plaintiff shall not recover judgment for a lien greater in amount than the sum so admitted, he shall recover no costs against such owner, or against the logs or lumber or the proceeds thereof after the time such admission is filed; but such owner shall recover costs from that time, to be deducted from the lien claim.

SECT. 11. The court, except as provided in the ninth and tenth sections, shall have power to decide all questions of costs, in the same manner as they have in cases in equity, and may apportion them as may seem proper, on the principles which govern a court of equity.

SECT. 12. Questions of fact arising in the actions herein provided for, shall be submitted to a jury on application of any party to the suit, upon an issue made up under direction of the court, and the questions 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 whole lot  
9 of logs or lumber, a part of which are attached?" and  
10 the verdict of the jury shall be in answer to these  
11 questions.

SECT. 13. If the parties waive a trial by jury, the  
2 questions in the twelfth 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. 14. Upon the ascertainment of the amounts so  
2 due to the plaintiff, judgment shall be rendered in his  
3 favor against the defendant as in other personal ac-  
4 tions, for the amount decided not to be a lien on the  
5 logs or lumber, with such costs as the court may  
6 award, and a separate judgment shall be rendered in  
7 his favor against said defendant and the logs or lumber  
8 attached for the amount decided to be a lien, with  
9 such costs as the court may award, and separate exe-  
10 cutions shall be issued thereon; *provided*, parties in  
11 suits brought under this act shall have the same right  
12 to exceptions, motions for new trials and writs of  
13 errors, as in other civil actions.

SECT. 15. Whenever judgment has been recovered  
2 in any suit on which the logs or lumber was attached,  
3 and the logs or lumber attached has not been sold



4 by the officer, the court may issue an order to the  
5 officer who made the attachment, which order may be  
6 executed by any other officer qualified to make the  
7 original attachment, directing him to sell said logs or  
8 lumber at auction, and to pay the proceeds, first de-  
9 ducting the amount paid for boomage, for taking the  
10 same out of the water, expenses of said sale and care  
11 of the same during the time it has been under attach-  
12 ment, into court. And the officer executing such  
13 order shall sell said logs or lumber in the same manner  
14 as is provided for selling personal property or execu-  
15 tion; and the purchaser at such sale, or at the sale  
16 upon the writ shall hold said logs or lumber free from  
17 any claim prior to such sale.

SECT. 16. If the proceeds of sale paid into court  
2 shall amount to more than the judgment recovered by  
3 the plaintiff against said logs or lumber, and there are  
4 other suits pending in the same court against the  
5 same lot of logs or lumber, the court may order  
6 plaintiff's judgment for his lien to be paid out of  
7 said fund, the balance to be retained and applied  
8 to make up any deficiencies which may be found in  
9 the satisfaction of subsequent judgments against the  
10 same lot of logs or lumber. The balance, (if any,)  
11 the court may on petition order to be paid to the per-  
12 son or persons legally entitled to receive it; unless

13 there is on file in the office of the clerk thereof a  
14 notice of the pendency of a suit or suits against the  
15 same lot of logs or lumber, to recover lien claims by  
16 virtue of this act, in one or more other counties of this  
17 state, in which case said court shall hold said balance  
18 to be applied to satisfy such deficiencies, in the order  
19 in which the notices aforesaid were filed. On proof  
20 that all suits against said lot of logs or lumber, notices  
21 of the pendency of which have been filed as aforesaid,  
22 have terminated, and all judgments for lien claims  
23 in the same have been satisfied, then said balance to  
24 be paid to the person entitled as aforesaid.

SECT. 17. The action or lien shall not be defeated  
2 by taking a note, unless it was taken in discharge of  
3 the amount due and of the lien.

SECT. 18. 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 pro-  
4 visions of this act according to its true intent and  
5 meaning.

SECT. 19. All acts or parts of acts inconsistent  
2 herewith are hereby repealed. This repeal shall not  
3 affect any actions brought to enforce lien claims  
4 which are now pending.



STATE OF MAINE.

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IN HOUSE OF REPRESENTATIVES, }  
February 5, 1870. }

Presented by Mr. VOSE of Winterport, ordered printed and referred to the Committee on the Judiciary.

S. J. CHADBOURNE, *Clerk.*