

# MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE,

1858.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February  
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1858.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1858.

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certificate of the intention of matrimony in violation of the provisions of the preceding section, or shall so deliver a certificate falsely stating the residence of either party named therein, he shall be fined twenty dollars.

SECT. 4. Section nine of the aforesaid chapter is amended by striking out the word "preceding" in the second line, and inserting after the word "provisions" the following words: "of sections one, two, three and four of this chapter," so that said section as amended, shall read as follows:

Ch. 59, sect. 9,  
R. S. amended.

SECT. 9. When residents of this state, with intent to evade the provisions of sections one, two, three and four of this chapter, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage shall be void in this state.

Marriage void  
in certain  
cases.

SECT. 5. If any person shall contract a marriage, or make false representations to the clerk in order to procure a certificate, or procure the solemnization thereof, within this state, contrary to the provisions of this act, or the act to which this is additional, he shall be fined one hundred dollars.

Penalty for  
making false  
representations,  
&c.

SECT. 6. This act shall take effect when approved by the governor.

[Approved March 11, 1858.]

## Chapter 15.

An act to provide for enforcing liens on vessels.

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

SECT. 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 attachment within four days after the work has been completed.

Lien on vessels  
building, for  
labor, &c., how  
enforced.

—on materials,  
how enforced.

—on vessel af-  
ter launching,  
or for repairs,  
how enforced.

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

Writ for en-  
forcing lien.

Form of writ.

\_\_\_\_\_, ss.

To the sheriff of our county of \_\_\_\_\_, or his deputy,

GREETING.

[L. s.] We command you to attach the ship or vessel [here give such a description of the vessel as will identify it] and summon all persons interested; in the manner directed by law, to appear before our justices of our \_\_\_\_\_ court, next to be holden at \_\_\_\_\_, within and for the county of \_\_\_\_\_, on the \_\_\_\_\_ Tuesday of \_\_\_\_\_ next, then and there in our said court to answer to A. B. of \_\_\_\_\_, who claims a lien on said ship or vessel for [here describe briefly the nature of the lien] to the amount of \_\_\_\_\_ dollars and \_\_\_\_\_ cents, according to the specification hereto annexed, which amount, C. D. of \_\_\_\_\_, who owes the same, neglects and refuses to pay, to the damage of the said A. B., as he says, the sum of \_\_\_\_\_ dollars, which shall then and there be made to appear, with other due damages; and have you there this writ with your doings thereon.

Witness \_\_\_\_\_, at \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

E. F., *Clerk.*

Writ, how to be executed, and when returnable.

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

Specification to be annexed, what to contain.

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

—to be verified by oath.

What must be sworn to.

Vessel on the stocks, attachment how made.

SECT. 4. If the vessel, at the time the attachment is made, is on the stocks, said attachment shall be made by filing in the office of the clerk of the town in which such vessel is, a copy of so much of his return on the writ, as relates to the attachment together with the name of the plaintiff, the name of the person or persons liable for the debt, the description of the vessel as given in the writ, the date of the writ, the amount claimed, and the court to which it is returnable, and by leaving a copy of such certificate with one of the

owners of the vessel, if known to him and residing within his precinct, or with the master-workman on said vessel; such filing and service of copy to be within forty-eight hours of the time of making such attachment. If the attachment is so made, it shall not be necessary for the officer to take possession of the vessel before she is launched, unless specially directed by the plaintiff or his attorney so to do; but he shall take possession as soon as may be after she is launched. The officer may take possession of the vessel at any time before she is launched; but if he does, he shall not in anywise hinder the work upon said vessel, or prevent or delay the launching.

Possession, when to be taken by officer.

—if before launching, work not to be hindered.

Attachment on vessel launched, how made.

SECT. 5. If the vessel has been launched at the time of the attachment, she shall be attached in the manner provided by law for the attachment of personal property.

SECT. 6. The service of the writ upon the person or persons named as personally liable for the plaintiff's claim, shall be by summons in the same form as if it were a personal action against him or them.

Service of writ on persons liable.

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

Service of writ on owners.

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

Form of notice to owners.

GREETING.

Take notice, that the above described vessel is attached on a writ in favor of —, who claims a lien thereon for the sum of —, (naming the amount of the claim) due him by C. D. and that said writ is returnable to the — court to be holden at —, in and for the county of —, on the — Tuesday of —, A. D. 18—, when and where you may appear and defend if you see fit.

Dated, &c.

G. H., *Sheriff, or Deputy Sheriff,*

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

Notice, how served. —to be posted on vessel. Attachment, &c., when to be made.

SECT. 8. All writs made subsequent to the first attachment, and while any attachment on the same vessel for liens are pending, shall be served by the same officer in the manner provided for attachment and service on the first writ. If such officer is disqualified from serving any subsequent writ, any other qualified officer may serve such subsequent writ, and may attach said vessel by giving notice

Writs made subsequent to first attachment to be served by same officer.

If officer is disqualified, how served.

**CHAP. 15.** thereof to the first attaching officer, and filing the certificate as hereinbefore provided.

Action, how to be entered on docket.

SECT. 9. At the return term, the actions shall be entered on the docket as follows: The person claiming the lien as plaintiff; the person alleged to be personally liable as defendant, and the name or other description of the vessel attached.

Who may appear and defend.

SECT. 10. The owners or mortgagees of the vessel, or any plaintiff in a suit wherein the same vessel is attached, claiming a lien, may appear and defend any action so far as relates to the validity and amount of the lien claim, but no such plaintiff shall be allowed to

Bond to be given for costs.

defend until he has given bond to the satisfaction of the court to pay such costs as may be awarded against him.

Offer of defendant to be defaulted, its effect.

SECT. 11. 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.

Owner may admit certain amount to be due, effect.

SECT. 12. The owner of the vessel may in writing, filed with the clerk, admit a certain amount to be due the plaintiff as a lien on the vessel; 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 vessel or the proceeds thereof after the time such admission is filed; but said owner shall recover costs from that time to be deducted from the lien claim.

Power of court to decide questions of costs.

SECT. 13. The court, except as provided in the eleventh and twelfth 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.

Questions of fact to be submitted to a jury.

SECT. 14. 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 amount is due from the defendant to the plaintiff, and claimed in the writ?" second, "for how much of said amount has the plaintiff a lien upon the vessel attached?" and the verdict of the jury shall be in answer to these questions.

What questions shall be submitted.

Verdict.

Parties waiving trial, questions how to be decided.

SECT. 15. If the parties waive a trial by jury, the questions in the fourteenth section hereof shall be decided by the court, upon a hearing, or upon the report of an auditor to be appointed by the court.

Judgment, how to be rendered against defendant.

SECT. 16. Upon the ascertainment of the amounts so due to the plaintiff, judgment shall be rendered in his favor against the defendant as in other personal actions, for the amount decided not to be a

lien on the vessel, with such costs as the court may award, and a separate judgment shall be rendered in his favor against said defendant, and the vessel attached for the amount decided to be a lien, with such costs as the court may award, and separate executions shall be issued thereon; *provided*, parties in suits brought under this act shall have the same right to exceptions, motions for new trial and writs of error, as in other civil actions.

Right to exceptions, &c.

SECT. 17. Whenever judgment has been recovered in any suit on which she was attached, the court may issue an order to the officer who made the attachment, directing him to sell said vessel at auction, and to pay the proceeds of such sale, first deducting the expenses of said sale and the expense of taking care of the vessel during the time it has been under attachment into court. And the officer receiving such order shall sell said vessel in the same manner as is provided for selling personal property on execution. And the purchaser at such sale shall hold said vessel free from any claim prior to such sale.

Court may order officer to sell vessel on execution.

Proceeds to be paid into court.

Manner of sale.

Title of purchaser.

SECT. 18. If the proceeds of sale paid into court shall amount to more than all the judgments recovered against said vessel, and the amounts claimed in the suits still pending, the court may order the judgments which have been recovered to be paid out of said fund; and as fast as judgments are rendered against said vessel, the court may order them to be satisfied, until all the suits against said vessel are terminated and all judgments satisfied. The balance, if any, the court may on petition, order to be paid to the person or persons legally entitled to receive it.

Disposition of proceeds, when a surplus.

SECT. 19. If the proceeds of sale paid into court shall not appear to be enough to pay in full the judgments recovered and the claims still undecided, the court may in its discretion order the money to remain until all the suits are terminated, and then divide it pro rata, or it may direct a sufficient amount to pay the claims not yet determined, their proportion to be retained, and divide the rest among the judgments recovered, in proportion to the several amounts; and if, after all the suits are terminated, and the judgments recovered subsequent to the first division, have received the same proportion as the prior judgments, there shall be any amount remaining, it shall be divided among all the judgments, pro rata. And in dividing the funds under this and the preceding section, the court shall make such orders and decrees as will prevent the enforcement of a double lien, and secure the just rights of all.

—when not enough.

Court, discretionary power of.

—to make decrees to prevent double lien, &c.

SECT. 20. Where process is sued out under this act against a vessel which is under attachment for a lien when this act takes effect,

Writ, under this act, how served.



CHAP. 16.

the writ shall be served by the officer who made such attachment, if he be qualified; otherwise, as in section eighth hereof.

Process to be served by sheriff or deputy.

Duty of constable in possession.

SECT. 21. If when process issues under this act the vessel is under attachment by a sheriff or deputy sheriff, the process under this act shall be served by such officer; if under attachment by a constable, he shall yield possession of her to the officer having process under this act, together with the precept on which such constable had made his attachment, with a return thereon, setting forth the facts; and in all such cases the attachment shall hold good, subject to the legal priority of the lien claim.

Attachment in ordinary method, by what officer to be made.

SECT. 22. A vessel attached under this act may also be attached in the ordinary method, in suits against the owner of such vessel, and the attachment shall be made by the officer holding the vessel upon attachments made under this act, which attachments shall be good, subject to the legal priority of the lien attachments.

When lien and other attachments, surplus over lien, how applied.

SECT. 23. When a vessel under attachment for liens, and also in the ordinary method, is sold by order of the court, and the proceeds are more than sufficient to satisfy the lien judgments, the surplus shall be paid to the officer to hold on the writs not founded on lien claims.

Admiralty powers of court.

SECT. 24. The court, in the manner of a court sitting in admiralty, may make such orders and decrees as may be necessary for carrying out the provisions of this act according to their true intent and meaning.

Sects. 6 to 14, R. S. repealed, saving pending actions.

SECT. 25. Sections six, seven, eight, nine, ten, eleven, twelve, thirteen and fourteen of chapter ninety-one of the revised statutes are hereby repealed. This repeal shall not affect any actions brought to enforce lien claims, which are now pending.

[Approved March 15, 1858.]

## Chapter 16.

An act relating to the discipline of the state prison.

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

Warden to keep record of conduct of convicts.

SECT. 1. The warden of the state prison shall keep a record of the conduct of each convict, and for every month that such convict shall appear by such record to have faithfully observed all the rules and requirements of the prison, and shall not have been subjected