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No. 212.

4th Session, 3d Parliament, 14 & 15 Vict., 1851.

BILL.

An Act to make better provision for the collection of claims against the owners of vessels, in certain cases.

Received and read a first time, Thursday, 3rd July, 1851.

Second reading, Monday, 7th July, 1851.

Mr. MACFARLAND.

TORONTO: PRINTED BY LOVELL AND GIBSON.

BILL.

An Act to make better provision for the collection of claims against the owners of Vessels, in certain cases.

FOR the relief of persons who furnish provisions for or render services to or sustain injuries from Vessels coming in Upper Canada: Be it enacted, &c. Preamble.

That any debt or liability amounting to *two pounds ten shillings*, or upwards, contracted by the owner, master, agent or consignee of any ship or vessel within the Province of Upper Canada for any of the following causes: Debts of certain kinds contracted with regard to vessels, made a privileged lien on them.

1. For goods, wares, merchandize or provisions, furnished for the use of such ship or vessel:

2. For repairs or any kind of work done to or upon such ship or vessel:

3. For towing such ship or vessel, with any steam vesel, horses or otherwise:

4. For damages done to any other vessel or property by collision:

shall be a lien upon such ship or vessel, and preferred to all others, and shall be recoverable from the owner, master, agent or consignee of such ship or vessel, saving any recourse he may have against any other party.

II. And be it enacted, That it shall and may be lawful for the creditor to whom any debt is due; or towards whom any liability is incurred by the owner, master, agent or consignee of any ship or vessel for any of the causes above mentioned, or for any other person on behalf of such creditor, when the sum claimed does not exceed the jurisdiction of the Division Court, to make application to the Clerk of the Division Court of the Division wherein the ship or vessel may be, or to any Justice of the Peace having jurisdiction where such ship or vessel may be, and to make or cause to be made by some person cognizant of the facts, an affidavit or affirmation to the purport of that in the Schedule to this Act, and which the said Clerk or Justice of the Peace is hereby authorised to administer, and to fyle the said affidavit with the said Clerk or such Justice of the Peace, (and if a Justice of the Peace

Mode of proceeding against the vessel for the recovery of any such debt.

it shall be his duty to transmit the same to the Clerk of the Division Court within whose Division the application is made, to be fyled and kept among the papers in the cause), and it shall then be lawful for such Clerk or Justice of the Peace forthwith to issue a warrant under his hand and seal directed to any Bailiff of the Division Court for the Division within which the same shall be issued, or to any Constable of the County, commanding him to attach, seize, take and safely keep the ship or vessel on account of which the debt or liability was contracted, (designating such ship or vessel by its name, if known, or if not, then by some other description), as being the property or in the possession of the defendant, to answer a certain claim of the plaintiff, (naming him), for (stating the amount), against the said ship or vessel ; and upon receipt of such warrant the said Bailiff or Constable shall forthwith execute the same in the like manner as an attachment against the property of an absconding debtor is now required to be executed by the Statute in such case provided, and shall proceed in the manner by law required in case of any such attachment ; and the said vessel shall be delivered over to the Clerk of the Division Court within whose Division such attachment shall have issued, who shall keep and dispose thereof in the same manner as goods seized under such attachment as aforesaid are by law to be kept and disposed of.

Subsequent proceedings in any such case.

III. And be it enacted, That all the proceedings subsequent to the issuing of such attachment and seizure shall be the same as the proceedings now are upon attachments against absconding debtors in a Division Court, and the like bond with the like sureties may be given by the owner, master, agent or consignee of any such vessel, and the plaintiff may proceed to judgment and execution in the same manner as a plaintiff may now proceed to judgment and execution against an absconding debtor, pursuant to the Statute in that behalf.

Special provision for the case where the cause of such debt shall have arisen in the Welland Canal.

IV. Provided always, and be it enacted, That whenever the cause of action shall have arisen while such ship or vessel was in the Welland Canal, and the amount claimed shall not exceed the sum of _____, it shall be optional with the Plaintiff to declare his intention to have the case tried and determined before the Justice of the Peace, before whom the affidavit aforesaid shall have been taken, and by whom the warrant of attachment shall have been issued, and some other Justice of the Peace having jurisdiction in the place where the ship or vessel shall be found ; and in such case the affidavit shall not be transmitted to the Clerk of the Division Court, but shall be kept by the Justice receiving it, and the Bailiff or Constable shall not deliver over the ship or vessel to the Clerk of the said Court, but shall keep the same safely to await the order of the Justices by whom the case is to be tried and determined ; and the plaintiff shall, at the time of

declaring such option, or within twenty-four hours there-
 after, deliver to such Justices his complaint stating briefly
 his cause of action, and requiring such Justice to issue
 his summons to the Defendant, commanding him to ap-
 5 pear before him, and some other Justice as aforesaid, at
 a time (not being less than days nor more than
 days after the service of such summons,) and at a place
 to be named in such summons; and such summons may
 be served by any such Bailiff or Constable as aforesaid,
 10 by delivering a copy thereof and of the complaint, certi-
 fied by such Justice of the Peace, to the Defendant, or if
 he cannot be found within the Division (of which fact the
 return of the Bailiff or Constable shall be evidence) then
 by delivering the same for the Defendant to the person in
 15 charge of such ship or vessel, or if there be no person in
 charge thereof, then by posting the same in some con-
 spicuous place, in such ship or vessel; and at the time
 appointed in such summons, the Justice issuing the same,
 and any other Justice of the Peace having jurisdiction as
 20 aforesaid, shall and may hear the parties or party appear-
 ing before them, and the evidence they may adduce, and
 shall have full power to administer an oath or affirmation
 to any witness adduced by either party, and may, accord-
 ing to the evidence, either dismiss the complaint with
 25 costs (which shall be those of the Division Court in like
 cases) or give judgment for such sum (not exceeding
 the amount aforesaid, as they shall find the Plaintiff ought
 to recover from the Defendant, and the fees of the
 Bailiff or Constable for his services, which shall be the
 30 same as would be allowed him for like services in a case
 in the Division Court,) and the sum of to the
 Justice or his Clerk for the warrant, and all other
 services; and if the amount of the judgment and costs,
 be not forthwith paid, the said Justices may, by warrant
 35 under their hands and seals directed to any Bailiff or Con-
 stable as aforesaid, cause the same to be levied and made
 by the sale of the said ship or vessel or of the tackle and
 apparel thereof, or any goods found on board the same,
 (to whomsoever belonging, but saving the recourse of the
 40 owner against the Defendant) with the costs of such sale
 (which shall be the same as would be allowed in the
 Division Court in like case) and the proceedings in such
 sale shall be as nearly as may be similar to those pre-
 scribed in like cases in the Division Court: and if there
 45 be any surplus of the proceeds of the sale, after paying
 the amount of the judgment and costs, it shall be returned
 to the Defendant, saving the recourse of any party
 entitled to the same.

V. And be it enacted, That if any person shall have
 50 any claim for any of the causes aforesaid, against any
 ship or vessel, the owner or owners whereof is or are
 resident in a foreign country, or out of the jurisdiction
 of the Court, and such claim shall be beyond the juris-
 diction of the Division Courts, it shall be lawful for such

Provision for
 the case
 where the
 amount
 claimed shall
 be beyond the
 jurisdiction of
 the Division
 Courts.

person, upon making an affidavit or affirmation, stating with particularity that the owner or owners of such ship or vessel is or are justly and truly indebted to him or her in the sum of _____ or (when the amount is not ascertained), that he hath a good cause of action against the Defendant as owner of the said ship or vessel, for (stating the cause of action with certainty) and that the defendant is or are resident in a foreign country, or beyond the jurisdiction of the Court, and upon filing the said affidavit with the Clerk of the Crown or Clerk of the Crown and Pleas, or Common Pleas, or any of the Deputy Clerks of the Crown and Pleas, or with the Clerk of any County Courts in any County of Upper Canada, (according as the case may be within the jurisdiction of one or the other of the said Courts), to obtain an attachment against the property of such owner of such ship or vessel directed to the Sheriff of any County in Upper Canada, which shall be in the same form as attachments now are against absconding or concealed debtors, (except that the word "absent debtor" shall be used in the place of "absconding" or "concealed debtors;") and all proceedings upon such attachments shall be in all respects the same as if the attachment were against an absconding or concealed debtor, and the plaintiff may proceed to judgment and execution in the same manner; Provided always, that it shall not be necessary to leave a copy of the summons at the last place of residence of the defendant, but it shall be sufficient, in all cases, to place a copy in some conspicuous part of the office out of which the same shall issue.

Proviso.

Extent of Act

IV. And be it enacted, That this Act shall apply only to Upper Canada.

SCHEDULE.

A. B., of _____ Yeoman, maketh oath and saith that C. D., the owner, (master, agent or consignee, or as the case may be), of the vessel called the _____, (or if no name, then some other description), _____ now as this Defendant believes, within the _____ Division for the County of _____ (or now within the County of _____ or now within the jurisdiction of this Court, as the case may be), is justly and truly indebted to this deponent in the sum of _____, for goods sold and delivered by this deponent to (or as the case may be), _____, Master (or agent, &c.) of the said vessel, for and on account of the said vessel (or as the case may be). And deponent further saith that the said debt was contracted within the County of _____ (County where attachment issues), and that to the best of Deponents belief the owner of the said vessel resides out of the _____ (or, in the case mentioned in the third section of this Act, out of the jurisdiction of this Court),
Sworn, &c.