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No. 16.

1st Session, 8th Parliament, 27 Victoria, 1863.

BILL,

An Act for holding Vessels liable for Debt.

Received and read 1st time, Monday, 31st
August, 1863.

Second reading, Wednesday, 2nd September,
1863.

MR. MCGIVERIN.

QUEBEC:

**PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.**

An Act to facilitate the recovery of claims against vessels navigating the waters of Upper Canada.

WHEREAS certain remedies which exist in Lower Canada and other British possessions in which Courts of Vice-Admiralty are established, for the recovery of claims which by the general law of the Empire constitute a lien on the vessels with respect to which they have arisen, cannot be exercised with respect to vessels navigating the lakes and waters of Upper Canada, while they are within that portion of the Province, and the want of such remedies frequently occasions great loss to persons making advances to or for such vessels, or prevents such advances being made when required in the interests of trade: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Preamble.

1. In this Act the word "vessel," means any vessel which is or might be registered under any Imperial Act, or under chapter forty-one of the Consolidated Statutes of Canada; the word "owner," includes any number of owners, unless such construction be inconsistent with the context; the word "master," means any person having charge of a vessel, except merely as a pilot, or for some temporary or other special purpose; the word "seaman," includes any person employed on board a vessel in navigating, or working, or in using her for the purposes for which she is usually employed, whether as engineer, steward, fireman, waiter, or otherwise; and the word "County," includes a union of Counties for judicial purposes.

Interpretation clause.

2. All debts and liabilities contracted in Upper Canada by the master, owner, consignee, or agent of any vessel then being in Upper Canada, of the burden of fifteen tons or upwards, for any of the following purposes:

Certain debts, &c., contracted in Upper Canada to be a lien on the vessel in respect of which they are contracted.

1. On account of the wages of the master or any seaman employed in navigating such vessel; or

2. On account of any work done, or materials or articles furnished, for or towards the building, repairing, fitting, furnishing or equipping of such vessel; or

3. For provisions or stores furnished within Upper Canada, and fit and proper for the use of such vessel when furnished; or

4. For wharfage and expenses of keeping such vessel when in port, including expenses incurred in employing people to watch her; or

5. For pilotage, or towage, or for salvage of such vessel or of life or goods therefrom; or

6. For damage done by such vessel, by collision or otherwise,—

40 Shall be a lien on such vessel, her tackle, apparel, and furniture; and any lawful claims for wages of the master or seamen of such vessel shall be the first lien thereon, and preferred to all others whatsoever; and any lawful claim for any of the other causes above enumerated, shall be a lien on such vessel, and preferred to all others except such claims for wages, as aforesaid.

Rank of such liens.

- Rank among themselves.** 3. The priority or equality of any such enumerated lien as aforesaid, (except wages) over or with any other also enumerated, shall be governed by the circumstances of the case and the rules of the maritime law of England, so far as the same can be applied thereto: but every such lien shall cease and determine unless proceedings to enforce it be instituted within *six months* from the time when the cause of such lien arose. 5
- Limitation.**
- How enforced.** 4. Any such lien as aforesaid may be enforced by suit against the owners of the vessel in the proper Court in Upper Canada, by the ordinary process and procedure of such Court, or if the claim amount to fifty dollars or upwards such lien may be enforced by proceedings *in rem* against the vessel without naming the owner thereof; and any number of seamen of such vessel may join in one such proceeding for wages due to them, and so raise the amount for which such proceeding is brought to or above fifty dollars. 10
- As to wages.**
- Proceeding against the vessel.** 5. Any such proceeding against the vessel shall be brought in a County Court if the claim does not exceed two hundred dollars, but if the claim exceeds that sum then in one of the Superior Courts of Common Law for Upper Canada; and shall be commenced by a writ of attachment against the vessel to be issued by the Clerk of the Court, on the application of the plaintiff or his Attorney and affidavit of the plaintiff or of some person on his behalf cognizant of the facts. 15
- Application for attachment.** 6. Such application shall be in writing, and shall state by whom the debt was contracted, and when, and the items composing the same, and shall describe the vessel by her registered name, if she has one, and if not, by such description as will be sufficient to identify her; and the affidavit in support of such claim shall state that the debt is justly due to the person by whom or on whose behalf the application is made, over and above all payments made, and all discounts or deductions on account thereof. 25
- Affidavit.**
- Form of Writ.** 7. The writ of attachment shall be addressed to the Sheriff of the County, if the proceeding be in a County Court, or to the Sheriff of any County in Upper Canada within which the vessel may be found, if the proceeding be in one of the superior Courts, commanding him to attach, seize and safely keep the vessel, her tackle, apparel and furniture, until discharged in due course of law, and to return the writ and his proceedings thereon into the Court out of which it issued, within ten days after such seizure, which such Sheriff shall accordingly do, and shall annex to his return a true inventory of the property seized, and shall sign the same. 30
- Return.**
- Only one to issue at the same time.** 8. No other writ of attachment under this Act shall issue against the vessel out of the same Court until that first issued be superseded. 40
- Vessel may be released on bond.** 9. The master, owner, consignee or agent for the vessel so attached, may at any time after the seizure have the vessel and property attached released, on entering into a bond to the Sheriff, with two good and sufficient sureties, in double the amount of the claim, and conditioned that such vessel and property shall be forthcoming to answer any judgment or order which may be rendered or made in the matter. 45
- Master, owner, &c., may appear and plead.** 10. The execution of the writ shall be held to be a summons to the master, owner, consignee or agent of the vessel, to appear in Court within days after the return of the Writ, to answer the claim for enforcing which the Writ issued, and the pleadings and other proceedings in the case, not herein specially provided for, shall be as if the 50

same had been commenced by writ of summons only, served and returned: and such master, owner, consignee or agent, may appear and plead accordingly, or if he do not so appear within the period hereinbefore limited, the case shall proceed *ex parte*.

5 **11.** The Court or any Judge thereof, may for cause shewn on the application of any party interested, set aside the writ of attachment and all proceedings had thereon; and the party suing out any such Writ, without just cause, shall be liable to the owner of the vessel for all damages occasioned by the detention thereof. An appeal shall lie from **10** any judgment in any case under this Act, in like manner and on like conditions as from other judgments of the Court. Attachment may be set aside for cause.
Appeal.

12. If the plaintiff become entitled to execution in any case in which the vessel and property seized have been released on bond as aforesaid, and they be not forthcoming to answer the same, then the plaintiff shall **15** have his recourse on such bond; but if no such bond have been given, or the vessel and property be forthcoming, then, if the writ of execution be not satisfied within days after the issue thereof, the said vessel and property shall be liable to be sold under such writ, at the expiration of three months from the first publication of the Notice here- **20** inafter mentioned. Proceedings if the Plaintiff recovers.
In case of bond or no bond.

13. The Sheriff shall thereupon publish a notice in the *Canada Gazette*, and in one or more newspapers published in the County in which the vessel was seized, or if none be published therein, then in some newspaper published in an adjoining County, and such notice **25** shall be so published once a week for three months successively. Notice of sale of vessel.

14. Such notice shall state briefly—the name of the plaintiff, the name of the vessel (or her description if she have no name), the place to which she belongs, the name of her last master, and the date of the writ of execution in the case. It shall state that such vessel will be **30** sold for the payment of the claims against her, unless the writ of execution and all costs be paid and satisfied within three months of the first publication of the notice, and the day of sale shall be named, and shall be after the expiration of such three months. It shall require all persons who have any mortgage or lien upon such vessel, or the proceeds of the sale thereof, to file such claim with the clerk of the Court **35** out of which the execution issued, before the expiration of the said three months, notifying them that in default of their so doing such mortgage or lien will be forfeited. Contents of Notice.
Day of sale.
Claims on vessel to be called in.

15. Any person having any such mortgage or lien as aforesaid, may **40** file his claim with the said clerk within the period aforesaid, with such affidavits and proofs as are hereinbefore required of the plaintiff for attaching the vessel; and he shall thereupon be considered as attaching the vessel for his claim, and all such claimants shall be entitled to share with the plaintiff in the distribution of the proceeds of the sale accord- **45** ing to the amount, rank, and priority of their respective claims, and the sale shall not be stopped unless the claims so filed are withdrawn, dismissed or satisfied. Filing such claims, and its effect.

16. All liens and mortgages for which claims shall not have been **50** filed within the period aforesaid, shall cease after the sale of the vessel by the Sheriff, and the purchaser shall hold her clear of the same, and such claims so filed shall cease as to the vessel and shall be converted into claims on the proceeds of her sale. Liens, &c., to cease after sale.

If all claims can be satisfied by sale of tackle, &c. **17.** If on the day of sale it shall appear to the Sheriff that the claims then filed, and the claim of the plaintiff can be satisfied by the sale of the tackle, apparel, or furniture of the vessel, or part thereof, without selling the vessel herself, then he shall first sell such tackle, apparel, or furniture, or part thereof, and if the same produce sufficient to satisfy all such claims and costs, he shall not sell the vessel herself, otherwise he shall sell the whole in one lot, or in more than one lot as he shall think most for the interest of all concerned: and he shall hold the proceeds of the sale subject to the provisions hereinafter made. 5

Otherwise the vessel shall be sold with her tackle, &c.

Distribution of process.

18. If there be no claimant except the plaintiff the Sheriff shall pay him the amount of his judgment and costs, and shall pay over the overplus if any to the owner of the vessel on his claiming the same and obtaining an order of the Judge to that effect: but if there be another claimant or other claimants, the Court shall make an order directing the amount to be paid to each. 15

Claims filed may be contested.

19. Any claim so filed may be contested by the plaintiff or by any other claimant, or by any party having an interest in contesting the same, in such manner and on such conditions as the Court shall direct, or as may be prescribed by any general rule or rules in that behalf, and the Court may require such further proof of any such claim, or such proof on the part of any party contesting the same, as it may think necessary; and the Court may if it see fit refer any matter of fact arising out of any such claim or any contestation thereof to a jury to be tried. 20

Judges of Superior Courts to make rules, &c., for proceedings under this Act.

20. The Judges of the Superior Courts of Common Law for Upper Canada, or any four of them, of whom the Chief Justices shall be two, may from time to time make such special rules and orders as they may see fit for the effectual execution of this Act, and the conduct of and proceedings in cases under this Act, either in the said Superior Courts or in the County Court, and as to the fees and costs to be allowed and taken in respect of the matters herein contained, and the performance thereof: but as to all matters under this Act in which no such special rule or order shall have been made, and to which there shall be no general rule or order which the Court shall consider applicable, the Court in which the case shall be pending, shall make such order as it may consider fair and right and best adapted to do justice between all parties concerned. 25 30 35