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NO. 77.

1st Session, 4th Parliament, 16 Victoria, 1852!

BILL.

An Act to make better provision for the
Collection of claims against the Own-
ers of Vessels.

Received and Read a first time, Monday, 20th
September, 1852.

Second Reading, Monday, 27th September, 1852.

MR. WHITE.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

BILL.

An Act to make better provision for the Collection of claims against the Owners of Vessels.

BE it enacted, &c.,

That whenever a debt amounting to two pounds currency or upwards, shall be contracted by the master, owner, agent or consignee of any ship, vessel or steamboat in Upper Canada for either of the following purposes,
5 viz :—

Certain debts to be a lien on vessels

1. For Mariners' Wages ;

2. For Towing such ship, vessel, or steamboat with any steamboat, horses, cattle or otherwise, or whenever a debt amounting to twelve pounds ten shillings, or upwards, shall be contracted by the master,
10 owner, agent or consignee of any ship or steamboat or vessels within Upper Canada for either of the following purposes, viz :

3. For fuel furnished to any steamboat ;

4. On account of any work done, or materials or articles furnished in Upper Canada, for or towards the building, repairing, fitting, furnishing
15 or equipping such ship or vessel ;

5. For such provisions and stores furnished within Upper Canada as may be fit and proper for the use of such vessel, at the time when the same were furnished ;

6. On account of the wharfage and the expenses of keeping such vessel
20 in port, including the expense incurred in employing persons to watch her.

II. Such debt shall be a lien upon such ship or vessel, her tackle, apparel and furniture, and shall be preferred to all other liens thereon, in the order above specified.

Above debts to be a lien.

25 III. Any person having due to him the sum aforesaid or upwards, upon any debt contracted for any of the purposes hereinbefore specified, may make application to any Justice of the Peace, or to the Judge of the County Court in the County within which such ship or vessel shall then be, for a warrant to enforce the lien of such debt, and to collect the
30 amount thereof.

Warrant to enforce lien; how obtained.

IV. Such application shall be in writing and shall specify :

1. By whom such debt was contracted and for what ship or vessel ;
2. The items composing such debt ;

3. It shall be verified by the affidavit of the creditor or of the person making the application in his behalf, stating that the sum claimed in such account is justly due to the person in whose behalf such application is made, over and above all payments, set off, and discounts ;

4. And the facts and circumstances to establish such demand, shall also be verified by the affidavits of one or more disinterested witnesses.

Contents of warrants.

V. The officer to whom such application shall be made, shall thereupon issue his warrant to the Sheriff of the County or to any Bailiff or Constable commanding him to attach, seize and safely keep such ship or vessel, her tackle, apparel and furniture, to answer all such liens as shall be established against her according to law ; and to make return of his proceedings under such warrant to the said officer, within ten days after such seizure.

Execution of warrant.

VI. The Sheriff, Bailiff or Constable to whom any such warrant shall be directed and delivered, or any Constable of his County to whom such warrant shall be delivered, shall forthwith execute the same, and shall keep the ship or vessel and other property seized by him, to be disposed of as hereinafter directed.

Return, &c.

VII. He shall also, within ten days after such seizure, make a return to the officer who issued the warrant, stating therein particularly his doings in the premises ; and shall make out, subscribe and annex thereto a just and true inventory of all the property so seized which inventory shall be signed by him and annexed to his return.

Only one warrant against the same vessel.

VIII. Whenever any such warrant shall be issued, no other warrant shall issue against the same ship or vessel, unless the first warrant be superseded.

IX. The officer issuing any such warrant shall thereupon immediately order the notice hereinafter directed, to be published in one or more of the newspapers printed in the County to which the warrant shall be issued, and if there be none printed in such County, then in a newspaper printed nearest to such County, once a week for three months successively, or oftener if he shall deem proper.

Such notice shall contain the following matters :

What it shall contain.

1. It shall state the issuing of such warrant, the name of the vessel seized, the port or place to which she belongs, and the name of her last commander ;

2. It shall require all persons who claim to have any demands against the said ship or vessel, her tackle, apparel or furniture under the pro-

visions of this Act, to deliver an account of their respective claims to the said officer, within three months from the first publication of such notice, or that their remedy against such vessel will be forfeited ;

3. It shall state that such vessel will be sold for the payment of the claims against her, unless the owner, consignee or commander thereof, or some person interested therein, appear and discharge such warrant according to law, within three months from the first publication of such notice.

X. Any person having any lien under the provisions of this Act upon the property so seized, may deliver to the said officer an account in writing of his demand, accompanied by such affidavits and proof as are hereinbefore prescribed in relation to the just application by any creditor, and he shall thereupon be deemed an attaching creditor, and be entitled to the same benefits and advantages, and subject to the same responsibilities and obligations, as the creditor at whose instance such warrant originally issued. Other claimants may come in.

XI. All liens under this Act upon the property so seized, an account of which shall not be presented to the said officer within the time limited in the notice, shall cease. Other liens to cease.

XII. The owner, consignee, agent or commander of any vessel seized by virtue of any warrant issued pursuant to the provisions of this Act, and any person interested in such vessel may, at any time before an order of sale shall be made as hereinafter mentioned, apply in person or by attorney, to the officer who issued such warrant, for an order to discharge the same. Application to discharge the warrant.

XIII. Such person shall execute and deliver to the officer to whom such application is made, a bond to the creditors prosecuting such warrant, in a penalty at least double the amount of the debts sworn to by such creditors, with such security as shall be approved by such officer, conditioned that the obligors therein will pay the amount of all such claims and demands as shall have been exhibited, which shall be established to have been subsisting liens upon such vessel pursuant to the provisions of this Act, at the time of exhibiting the same respectively ; and upon such bond being executed and delivered, the said officer shall thereupon grant his order, discharging the warrant that may have been issued by him, and no further proceedings against the vessel so seized shall be had under the provisions of this Act, founded upon any demand included in such bond. Bond to be given.

XIV. Every such bond shall be held for the common benefit of all the attaching creditors, and may be prosecuted by any of them jointly, or by any one of them, separated, in respect to his separate demand. Bond to enure to benefit of all attaching creditors.

XV. In the suit upon such bond, the attaching creditors respectively shall state in their declaration, their respective demands, alleging the work to have been done, or the materials or articles furnished, or the expenses incurred, at the request of the master, owner, agent, or con- Declaration.

signee of such vessel, as the case really was at the time of the exhibition thereof, as hereinbefore provided, and shall assign as a breach of the condition of such bond, the non-payment of the claim of such creditor.

Pleas.

XVI. To such declaration the defendants may plead as in other actions of debt on bond, and may plead to such assignment of breaches; and the same proceedings shall be had on such bond, as provided by law on bonds with other conditions than for the payment of money.

Plaintiff to have execution for amount found by verdict.

XVII. If it shall be found by the verdict of the Jury in such suit, that the sum of *twelve pounds ten shillings* or upwards was due to any plaintiff in such suit upon any claim or demand which, by the provisions of this Act, was a subsisting lien upon such vessel at the time of the exhibition thereof as herein provided, judgment shall be rendered that such plaintiff have execution for the amount of such claim.

Respecting costs.

XVIII. But if it shall so be found that nothing or a less sum than *twelve pounds ten shillings* was due to any plaintiff in such suit as specified in the last section, judgment shall be entered against such plaintiff that he take nothing by his suit, and the Court shall award to the defendants the costs incurred by them in resisting the claim of such plaintiff; and if it shall be found that *twelve pounds ten shillings* or a greater sum is due to such plaintiff in such suit, the costs of the attachment, together with the Sheriff's fees and expenses in keeping such ship or vessel, shall be taxed in the plaintiff's bill of costs in such suit on such bond so directed to be given as aforesaid.

Sale if warrant be not discharged.

XIX. If the creditors who shall have exhibited their claims as herein provided, shall not have been satisfied, and if such warrant shall not have been discharged, as before provided, within the time for that purpose limited, the officer who issued the same, within *one month* of the time so limited, upon due proof of the publication of the notice herein required, shall issue his order to the Sheriff of the County wherein such vessel was seized under such warrant, directing such Sheriff to proceed and sell the vessel so seized, her tackle, apparel and furniture, and shall state in such order the amount necessary to be raised to satisfy such sums and expenses.

Sale of tackle only

XX. And if it shall appear to such officer that the claims exhibited before him, and the expenses of the proceedings can be satisfied by a sale of the tackle, apparel and furniture of such vessel, or of some part thereof, without selling such vessel, he shall modify his order accordingly.

Sale.

XXI. Within twenty days after the service of such order, the Sheriff shall proceed and sell the vessel so seized by him, her tackle, apparel and furniture, or such part thereof as shall be sufficient to satisfy the claims exhibited and the expenses incurred upon the same notice, in the same manner, and in all respects subject to the provisions of law in case of the sale of personal property upon execution.

Return.

XXII. The Sheriff shall return to the officer granting such order, his proceedings under the same; and the proceeds of such sale, after de-

ducting his fees and expenses in seizing, preserving, watching, and selling such vessel, shall be retained by such Sheriff in his hands, to be distributed and paid as hereinafter directed.

XXIII. At the time of issuing any such order of sale, the Officer Notice of sale.
 5 granting the same shall order a notice to be published in the same newspaper in which the notice of seizure was printed, as hereinbefore directed, once in each week for three weeks, requiring all persons who have exhibited any claims against such vessel, and the owner, agent, consignee, master, and all other persons interested in such vessel, to appear before
 10 him at a day therein to be specified, not less than thirty days, and not more than forty days from the first publication of such notice, to attend a distribution of the proceeds arising from the sale of such vessel, her tackle, apparel and furniture.

XXIV. On the day appointed in such notice, the Officer shall hear the Distribution of proceeds.
 15 allegations and proofs of the parties, and make distribution of the proceeds arising from such sale, after deducting the expenses of the proceedings, among the creditors who shall have exhibited their claims as herein provided; unless the claims of such creditors, or of some of them, be contested by the owner, agent, consignee, or master of such vessel, or by some other of such creditors.

20 XXV. In case of such contest, the party making the objection Reference of contestation.
 shall file, in the County Court of the county where such vessel was seized, a written statement thereof, and his desire that the claims so objected to be referred to referees, to examine and report thereon.

XXVI. The party making such objection, and the creditors whose Referees if party agree.
 25 claims are contested, may agree upon three different persons by a writing to that effect, signed by them, and filed in such County Court.

XXVII. If such referees be not so selected by agreement, then the How named if they differ.
 party making such objection shall nominate two disinterested persons, and the creditor or creditors whose claims are contested, shall also nominate two in different persons; or if either of them refuse or neglect, the
 30 Judge of such County Court shall name two indifferent persons for the party or parties so neglecting or refusing.

XXVIII. The names of the persons thus nominated, shall be written Drawing for referees.
 on four distinct pieces of paper, as similar in all respects as may be,
 35 which shall be rolled up separately and put into a box; and from thence the said Judge of the County Court shall draw out three of them, and the persons whose names are so drawn shall be the referees to determine the controversy.

XXIX. The officer before whom they shall be selected, shall certify Certificate of selection.
 40 such selection in writing, and deliver a duplicate of the same, or of the written agreement of the parties appointing referees, to each of the parties.

- Order ap-
pointing them. **XXX.** Such certificate of agreement shall be filed in the office of such County Court, and a rule shall thereupon be entered by the Clerk of such Court, in vacation or term, appointing the persons so selected, referees to determine such controversy.
- Powers. **XXXI.** Such referees shall have power to examine witnesses on oath, and shall make their report on the contested claim in one month after it is referred to them, and they shall be each entitled to the sum of one pound for their services as referees as soon as their report is made, such sum to be paid in the first instance by the successful party, and afterwards to be taxed as costs against the other party. 5
- Fees. **XXXII.** The report of the referees shall be filed in the same office where the rule for their appointment was entered, and shall be conclusive on the parties if not vacated by the Court to which it was made. 10
- Filing re-
port. **XXXIII.** Either party shall have the same right to except to such report as in cases of reference during the pending of a suit; and the Court shall proceed thereon in the like manner, and may, in its discretion, appoint new referees and direct a new hearing. Judgment for costs shall be rendered against the failing party, and execution shall be awarded thereon, as in other cases. 15
- Exception to
report. **XXXIV.** Upon the final report of such referees being confirmed, the officer before whom the proceedings were pending, shall proceed to make distribution of the proceeds of the sale of such vessel, her tackle, apparel and furniture, after deducting the expenses of the proceedings before him among the attaching creditors, according to such report. 20
- Distribution
according to
report. **XXXV.** When a distribution shall be made by such officer, pursuant to either of the foregoing provisions, he shall make an order on the Sheriff having such proceeds in his hands, directing him to pay the same to the several attaching creditors entitled thereto according to such distribution, and the same shall be paid accordingly; and all moneys remaining in the hands of such Sheriff, after such payment and after deducting his commission, shall be paid to the owner, agent, consignee or master of such vessel. 25
- Payment of
sums awarded **XXXVI.** If the proceeds arising from the sale of any vessel shall not be sufficient, after deducting all legal charges, to satisfy all the liens against such vessel, exhibited as herein provided, the Judge of such County Court as aforesaid shall order a fair and just distribution of such proceeds among the creditors whose claims shall have been ascertained by him, or by the report of referees as herein provided, in a just and equal proportion to the amount of such claims respectively. 30
- If proceeds be
insufficient to
pay all claims. **XXXVII.** Every officer who shall issue any warrant, pursuant to the foregoing provisions, shall cause the applications, affidavits and proofs presented to him by the attaching creditors, and copies of all warrants issued, and all orders made by him, with a bill of the fees and expenses allowed by him, and a report of all the proceedings had before or done by him, to be filed in the office of such County Court as aforesaid, 45
- Filing pro-
ceeds in Coun-
ty Court. within thirty days after the order for distribution made by the Judge of such Court.

XXXVIII. Such report, and a duly certified copy thereof by the clerk, shall be conclusive evidence that the proceedings stated therein were had before such officer. Legal effect of report or certified copy thereof.

XXXIX. Upon such report being made, the Court may correct any errors that shall appear to have been committed in the proceedings, and make such order as shall be just, and may remit the proceedings to the officer who issued the warrant, or the Court may proceed to do such acts and things as shall be necessary. Correcting errors, &c.

XL. Every Sheriff to whom a warrant may have been delivered, may be compelled by the County Court having jurisdiction over the proceedings thereon, to return the inventory required to be taken by him, and to pay over moneys in his hands pursuant to any order for that purpose, by an order of such County Court, and by process of attachment for disobedience thereof, on the application of any creditor. Compelling Sheriffs to make return.

XLI. Whenever any ship or vessel shall have been run down or run foul of any other ship or vessel, through the negligence or wilful misconduct of those navigating such other ship or vessel, and shall thereby have sustained damage to the extent of *twelve pounds ten shillings* or upwards, the owner of such ship or vessel so sustaining damage shall have a lien upon the ship or vessel causing such damage in manner aforesaid, her tackle, apparel, and furniture to the extent of such damage. Lien for damage for running foul, &c.

XLII. The master, owner, agent or consignee of the ship or vessel so receiving damage, may make an application, in writing to the same officer authorized as aforesaid, setting forth the name of the ship or vessel causing the damage, and the manner in which such damage was done, and the amount of said damage; and such application shall be verified by the owner or master navigating the vessel so damaged, and the facts contained in such affidavit shall also be verified by one or more disinterested witnesses. Warrant may be obtained as aforesaid.

XLIII. The officer to whom such application is made, in case he is satisfied that such damage arose from negligence or wilful misconduct on the part of those navigating the vessel causing the damage, may issue his warrant as provided in the fifth section of this Act; and all proceedings under such warrant shall conform to the provisions of this Act. Warrant may issue.

XLIV. The lien provided for under this Act shall cease, unless a Direction of warrant shall issue within twenty days after the damage shall be done. Direction of lien.