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c 131 Saw Logs Driving Act

Ontario
CHAPTER 131.

An Act respecting the Driving of Saw Logs and other Timber on Lakes, Rivers, Creeks and Streams.

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as The Saw Logs Driving Act. Short title. R.S.O. 1897, c. 143, s. 1.

2. In this Act, Interpretation.
   (a) "Logs" shall include saw logs, timber, posts, ties, "Logs." cordwood and other things being parts of trees.
   (b) "Water" shall mean and include lakes, ponds, "Water." rivers, creeks and streams in Ontario. R.S.O. 1897, c. 143, s. 2.

3. Any person putting or causing to be put logs into any water for the purpose of floating the same in, upon or down such water shall make adequate provision and put on a sufficient force of men to break, and shall make all reasonable endeavours to break, jams of such logs and clear the logs from the banks and shores of such water with reasonable despatch, and shall run and drive the same so as not unnecessarily to delay or hinder the removal, floating, running or driving of other logs, or unnecessarily to obstruct the floating or navigation of such water. R.S.O. 1897, c. 143, s. 3.

4. If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person desiring to float, run or drive logs in, upon or down such water, and whose logs would be obstructed by such jams, to cause them to be broken and the logs to be cleared from the banks and shores of such water, and to be floated, run and driven in, upon or down the same. R.S.O 1897, c. 143, s. 4.

5.—(1) The person who causes such jams to be broken Duty of persons clearing or logs to be cleared, floated, run or driven, pursuant to the next preceding section, shall do the same with reasonable economy and despatch; and shall take reasonable care not to leave logs on the banks or shores, and shall have a lien upon the logs in the jam or upon the logs so cleared, floated, run or driven for the reasonable charges and expenses of breaking the jams and the clearing, floating, running, driv-
ing, booming and keeping possession of such logs, and may take and keep possession of the same or so much thereof as may be reasonably necessary to satisfy the amount of such charges and expenses pending the decision by arbitration as hereinafter provided.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may securely boom and keep possession of the same at or above such place.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts; and if satisfactory security is given for the amount of such charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 5.

6. When logs of any person upon or in any water or the banks or shores of such water are so intermixed with logs of another person, that the same cannot be conveniently separated for the purpose of being floated in, upon or down such water, the several persons owning or controlling the intermixed logs shall respectively make adequate provision and put on a fair proportion of the men required to break jams of such intermixed logs, and to clear the same from the banks and shores of such water with reasonable despatch, and to float, run and drive the same in, upon or down such water; and the costs and expenses thereof shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration as hereinafter provided. R.S.O. 1897, c. 143, s. 6.

7. If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person whose logs are intermixed to put on a sufficient number of men to supply the deficiency and break jams of such intermixed logs and to clear the same from the banks and shores of such water, and to float, run and drive all such intermixed logs in, upon or down such water. R.S.O. 1897, c. 143, s. 7.

8.—(1) The person supplying such deficiency and causing such jams to be broken, or such intermixed logs to be cleared, floated, run or driven, pursuant to the next preceding section, shall do the same with reasonable economy and despatch, and shall take reasonable care not to leave logs on the banks or shores, and shall have a lien upon the logs owned or controlled by the person guilty of such neglect for a fair proportion of the charges and expenses of breaking the jams, and the clearing, floating, running, driving, booming, and keeping possession of such intermixed logs; and may take and keep possession of such logs or so much thereof as may be reasonably necessary to satisfy
the amount of such fair proportion of charges and expenses pending arbitration as hereinafter provided.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may securely boom and keep possession of the same at or above such place.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 8.

9. When logs of any person upon or in any water or the banks or shores of such water are intermixed with logs of another person any of the persons whose logs are intermixed may at any time during the drive require his logs to be separated from the other logs at some suitable and convenient place, and after such separation he shall secure the same at his own cost and expense in such manner as to allow free passage for such other logs; but when any logs reach their place of original destination, if known, so intermixed the same shall be separated there from the other logs, and after such separation each owner shall secure the same at his own cost and expense. R.S.O. 1897, c. 143, s. 9.

10. The several persons owning or controlling the intermixed logs shall respectively make adequate provisions and put on a fair proportion of the men required to make the separation; the cost and expense of such separation shall be borne by the parties in such proportions as they may agree upon, and in default of agreement as may be determined by arbitration as hereinafter provided. R.S.O. 1897, c. 143, s. 10.

11.—(1) If any person neglects to comply with the provisions of the next preceding section it shall be lawful for any other person whose logs are intermixed to put on a sufficient number of men to supply the deficiency, and the logs owned by or controlled by the person guilty of such neglect shall be subject to a lien in favour of the person supplying the deficiency for a fair proportion of the charges and expenses of making the separation, and for the reasonable charges and expenses of booming and keeping possession, and such person may take and keep possession of such logs or so much thereof as may be reasonably necessary to satisfy the amount of such fair proportion of charges and expenses pending arbitration as hereinafter provided.

(2) The person taking possession of logs under this section shall use all reasonable care not to take such logs beyond the place of their original destination, if known, but may
securely boom and keep possession of the same at or above such place.

(3) The owner or person controlling such logs, if known, shall be forthwith notified of their whereabouts, and if satisfactory security is given for the amount of such proportion of charges and expenses possession of the logs shall be given up. R.S.O. 1897, c. 143, s. 11.

12. The security referred to in sections 5, 8 and 11 may be by bond, Form 1, or by deposit of money, or in such other way as the parties may agree upon. R.S.O. 1897, c. 143, s. 12.

13. If it is determined by arbitration that any person acting under the assumed authority of this Act has without just cause taken possession of or detained or caused to be taken possession of or detained logs of another person, or has after offer of security which the arbitrators may think should have been accepted detain such logs, or has through want of reasonable care left logs of another person on the tanks or shores, or has taken logs of another person beyond the place of their original destination contrary to the provisions of sections 5, 8 or 11, such first mentioned person shall pay to such last mentioned person such damages as the arbitrators may determine. R.S.O. 1897, c. 143, s. 13.

14. The lien given by sections 5, 8 and 11 shall be subject to the lien, if any, of any person for tolls or dues for the use of any works or improvements made use of in running or driving logs. R.S.O. 1897, c. 143, s. 14.

15. Nothing in this Act shall affect the liens or rights of the Crown upon or in respect of any logs. R.S.O. 1897, c. 143, s. 15.

16. All claims, disputes and differences arising under this Act shall be determined by arbitration and not by action. R.S.O. 1897, c. 143, s. 16.

17.—(1) The person claiming that another person has not complied with the provisions of this Act, or claiming payment of any charges or expenses under this Act, or claiming a lien upon any logs, or claiming damages under section 13, shall give to such other person notice in writing stating the substance of the claims made and appointing an arbitrator, and calling upon such other person to appoint an arbitrator within ten days after the service of the notice.

(2) If such other person does not within the ten days appoint an arbitrator the Judge of the County or District Court of the county or district, as the case may be, in which the logs in connection with which the claim or part of the claim is made, or the greater part of the logs are situate at
the time of the service of the notice shall, on the application of the person giving the notice, appoint a second arbitrator.

(3) The two arbitrators so appointed shall within ten days after the appointment of the second arbitrator appoint a third; and in default of their doing so the Judge shall, on the application of either party, appoint the third arbitrator. R.S.O. 1897, c. 143, s. 17.

(4) If at the time of the service of the notice the greater part of the logs has been cut into lumber or has been sold or removed from the last county or district in which they were driven, and the person notified does not within the ten days appoint an arbitrator a Judge of the Supreme Court shall, on the application of the person giving the notice, appoint a second arbitrator, and if the two arbitrators do not within the said period of ten days appoint a third any such Judge shall, on the application of either party, appoint the third arbitrator. 1 Edw. VII. c. 17, s. 1, amended.

18. If an arbitrator refuses to act or becomes incapable of acting or dies, and the parties do not concur in appointing a new arbitrator, the Judge of the County or District Court of such county or district or a Judge of the Supreme Court, as the case may be, shall, on the application of either party, appoint a new arbitrator. R.S.O. 1897, c. 143, s. 18; 1 Edw. VII. c. 17, s. 3, amended.

19. The parties may agree that the arbitration shall be by one arbitrator instead of by three, and in that event, if the arbitrator is not also agreed upon, either party may apply to the Judge of the County or District Court of such county or district or to a Judge of the Supreme Court to appoint one. R.S.O. 1897, c. 143, s. 19; 1 Edw. VII. c. 17, s. 3, amended.

20. The person on whom a claim is made and notice of arbitration served, at any time before the arbitration is entered upon or with leave of the arbitrators during the arbitration, may give the claimant notice in writing by way of counterclaim, stating the substance of any claim arising under this Act which such person may have against the claimant, and such counterclaim, unless barred under section 27, shall be determined in the arbitration and an award made with respect thereto. R.S.O. 1897, c. 143, s. 20.

21.—(1) The three arbitrators or the sole arbitrator, as the case may be, shall make their or his award in writing under their or his hand within thirty days from the date of the appointment of such arbitrator, or the last of such three arbitrators, as the case may be.

(2) The parties may, by consent in writing, from time to time enlarge the time for making the award, or such Judge or a Judge of the Supreme Court may from time to time,
either before or after the expiration of such time, enlarge the time for making the award. R.S.O. 1897, c. 143, s. 21; 1 Edw. VII. c. 17, s. 3, amended.

22.—(1) The arbitrators or arbitrator may require the personal attendance and examination upon oath of the parties and their witnesses and the production of all books and documents relating to the matters in question, and may determine by whom the expense of the arbitration and the costs of the parties shall be paid, and the amount thereof.

(2) Any costs or expenses payable to a person having a lien upon logs by virtue of this Act shall be added to the amount of such lien. R.S.O. 1897, c. 143, s. 22.

23. Sections 18 to 27 inclusive of The Arbitration Act shall apply to arbitrations under this Act. R.S.O. 1897, c. 143, s. 23.

24.—(1) The person having a lien upon logs by virtue of this Act may sell such logs or a sufficient part thereof in order to realize the amount of such lien, and of the costs, charges and expenses connected with the sale.

(2) The arbitrators or arbitrator shall determine either by the award or by a separate document the time, place and manner of such sale, and may from time to time give directions in writing respecting such sale, and the realization of such lien and of the costs, charges and expenses connected therewith. R.S.O. 1897, c. 143, s. 24.

25. The award and directions in writing of any two of the three arbitrators or of the sole arbitrator, as the case may be, shall be final and without appeal and shall be binding upon and shall be obeyed by the parties, and shall be valid notwithstanding any want or defect of form or other technical objection. R.S.O. 1897, c. 143, s. 25.

26. The Judge of the County or District Court or a Judge of the Supreme Court, as the case may be, may on the application of either party order any person to attend and give evidence upon the arbitration and to produce all books and documents relating to the matters in dispute, and obedience to his order may be enforced in the same way as obedience to an order of such Judge made in a cause or matter pending before him in court may be enforced, and the person neglecting or refusing, without lawful excuse, to obey such order shall be liable to an action by any person aggrieved by such neglect or refusal for the damages sustained by him thereby. R.S.O. 1897, c. 143, s. 26; 1 Edw. VII. c. 17, s. 3.

27. All claims arising under this Act shall be made by notice in writing under section 17 within one year after the
same have arisen otherwise they shall be barred; but in the event of such claims arising between the same parties in two successive seasons the same shall be so made within one year after the last of such claims has arisen. R.S.O. 1897, c. 143, s. 27; 1 Edw. VII. c. 17, s. 2, amended.

28. The Lieutenant-Governor in Council may from time to time by proclamation published in the Ontario Gazette declare that any part of Ontario or any water therein shall, until further proclamation, be exempt from the operation of this Act, and thereupon the same shall be exempt accordingly. R.S.O. 1897, c. 143, s. 28.

29. Any part of Ontario or any water therein exempted by proclamation from the operation of this Act may, by proclamation published in the Ontario Gazette, be again brought within its operation until further proclamation and so on from time to time. R.S.O. 1897, c. 143, s. 29.

FORM 1.
(Section 12.)

Know all men by these presents that we (here insert names of obligors, being the owner of the logs and at least one sufficient surety; or, if the signature of the owner cannot be obtained without unreasonable delay, then being two sureties) are held and firmly bound unto A.B. (here insert the name of the person claiming the lien) in the penal sum of (double the amount of the claim) $ , to be paid to the said A.B., his executors, administrators and assigns, for which payment well and truly to be made we and each of us, bind ourselves, and each of us our and each of our executors and administrators jointly and severally, firmly by these presents, sealed with our seals, and signed by us this day of , 19 .

Whereas the said A.B., claiming to act under the authority of The Saw Logs Driving Act has taken possession of certain (saw logs, timber, etc., as the case may be) owned or controlled by and claims a lien thereon for the sum of $ , under the provisions of section (5, 8 or 11, as the case may be) of the said Act.

And whereas this bond is given as security for payment to the said A.B., of such sum as he may be held entitled to by arbitration pursuant to the said Act, and of any costs and expenses of the arbitration which may become payable to him.

Now the condition of the above obligation is such that if the said A.B., his executors, administrators or assigns, such sum as may be determined by arbitration pursuant to the said Act, to be payable to the said A.B., his executors, administrators or assigns for charges and expenses under section (5, 8 or 11, as the case may be) of said Act, and also such sum as may become payable to the said A.B., his executors, administrators or assigns, for costs and expenses of such arbitration, then the above obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered in the presence of X.Y.}

C. D [Seal.]
F. G. [Seal.]

R.S.O. 1897, c. 143, Sched.