

*Repealed by C. 62 - 1862 - which
was then passed - 1862*

CAP. LXII.

An Act to make more effectual provisions for the Regulation of Seamen in this Province.

Passed 31st March 1840.

Preamble.

WHEREAS it is expedient that the laws now in force for the regulation of Seamen in this Province should be repealed, and other and more effectual provision be made in lieu thereof;

7 G. 4, c. 12, repealed.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the seventh year of the Reign of His Majesty King George the Fourth, intituled "An Act to repeal all the Laws now in force for the regulation of Seamen, and to make more effectual provision for that purpose," be and the same is hereby repealed.

No capias to be issued against a Mariner for a debt contracted without the allowance of his Master until the voyage be performed.

II. And be it enacted, That if any person shall trust or give credit to any Mariner or Seaman belonging to any ship or vessel, without the knowledge and allowance of the Master or Commander thereof, no capias or other process for the arrest of the person of such Mariner or Seaman for any debt so contracted, shall be issued against or served upon the person of such Mariner or Seaman until he shall have performed the voyage which he may be then entered upon, and be discharged of the same; and every such process so issued shall be deemed and adjudged utterly void in Law; and any one Justice of the Court from whence such process shall issue, or Justice of the Peace (in case the debt demanded may not exceed five pounds,) to whom it shall be made to appear that any Mariner or Seaman is committed or detained upon process granted for any such debt contracted whilst he was engaged, and actually entered and on pay, on any voyage, shall forthwith order his release.

Mariner arrested to be discharged.

Any Mariner having shipped himself on board of any Vessel, or belonging to a vessel arriving, who shall neglect his duty, &c. may be committed to Prison.

III. And be it enacted, That if any Mariner or Seaman having shipped himself on board of any ship or vessel which hath been launched, or is actually preparing for sea, to proceed on any voyage, or belonging to any vessel arriving in the Province and upon pay, shall neglect his attendance, or refuse to do his duty on board, or shall absent himself without leave from his said service, upon complaint thereof made on oath or affirmation, (in the case of persons allowed by law to affirm,) by the owner, consignee, or master or other officer of said ship or vessel, to any justice of the Peace within the said County, such Justice is hereby empowered to cause such Mariner or Seaman to be forthwith brought before him by Warrant, and upon conviction of his neglecting his attendance, or refusing to do his duty on board, or absenting himself without leave as aforesaid, to commit such Mariner or Seaman to prison, that he may be secured and forthcoming to proceed on the voyage he has so agreed for, and to be delivered by order of the Justice who committed him, or some other Justice in the same County, and all necessary charges attending his being so secured, and which have been actually paid by the said owner or master, may be deducted from such Mariner's or Seaman's wages, as the same may become due, and it shall be the duty of the owner or the master or the officer or consignee of such ship or vessel complaining as aforesaid, to supply for the use of the said Mariner or Seaman all necessary bedding, provisions and maintenance during the time of his detention in prison as aforesaid, and pay to the gaoler of said prison his lawful fees on receiving and discharging such Mariner or Seaman; and in default thereof, the said gaoler may make the supplies aforesaid, and maintain an action therefor, together with the fees aforesaid, against the owner of the said vessel, or the master or the officer or consignee complaining as aforesaid, in any Court of Record, or if the same shall not exceed five pounds, before any Justice of the Peace, according to the provisions

All charges attending his being secured to be deducted from his wages.

Mariner to be supplied with bedding, &c. while in Prison.

of the Act, intituled "An Act to regulate proceedings before Justices of the Peace in Civil Suits."

IV. And be it enacted, That if any master or commander of any ship or vessel or any other person or persons, shall hire or engage, harbour or conceal any Mariner or Seaman who shall have signed any former contract or articles, knowing him to have deserted from or to belong to any other ship or vessel in the Province, every such master, commander or other person or persons so offending, and being thereof convicted before any two of Her Majesty's Justices of the Peace for the County where the offence is committed, upon the oath or affirmation, (in the case of persons allowed by Law to affirm,) of one or more credible witness or witnesses, or confession of the party charged, shall forfeit and pay such sum as the said Justices shall adjudge, not exceeding ten pounds and not less than two pounds, to be levied by warrant of distress and sale of the offender's goods, under the hand and seal of such Justices, and when recovered one moiety to be paid to the person so prosecuting for the same, and the other moiety to the County Treasurer where the offence is committed, for the use of such County; and if there be no goods or chattels of such offender whereon the said penalty may be levied, it shall and may be lawful for such Justices, by Warrant under their hands and seals, to commit such offender to the gaol of the County where such offence shall be committed, there to remain for a space of time not exceeding sixty days, and not less than ten days; and such Mariner or Seaman who shall desert at any time during the voyage on which he is engaged by written contract or articles, shall over and above the penalties and forfeitures to which he is now by Law subject, forfeit all the wages he may be entitled to on board the vessel entered by him after such desertion, to be detained by the master or owner of such vessel, to and for the use of the owner of the vessel from which he deserted, and to be sued for and recovered from him by such last mentioned owner by action of debt, or on the case, in any Court of Record, or before any Justice of the Peace, if the sum claimed do not exceed five pounds, agreeably to the above recited Act for regulating the proceedings of Justices in Civil Suits.

V. And be it enacted, That if proof be made upon oath or affirmation, (in the case of persons allowed by Law to affirm,) by the owner, agent or master of any ship or vessel, before any of Her Majesty's Justices of the Peace in this Province, that any Seaman or Mariner belonging to such ship or vessel, and who may have deserted or absented himself from the same, be kept or concealed on board of any other ship or vessel within any of the Harbours of this Province, or in any Tavern, pot house or other house or place within the County for which such Justice shall be appointed, or if oath or affirmation, (in the case of persons allowed by Law to affirm,) be made, that such owner, agent or master hath good reason to suspect, and doth verily believe that such Seaman or Mariner is so concealed as aforesaid, it shall and may be lawful for such Justice to issue his Warrant to any of the Constables or Peace Officers within the said County, to make search on board such ship or vessel, or in such Tavern, pot house or other place; and if such Seaman shall be found in such suspected place, that such Justice shall cause such Seaman to be brought before him, and upon conviction of his having so deserted or absented himself, shall cause such Seaman to be delivered over to the owner or master of the ship or vessel to which such Seaman shall belong, to be carried on board such ship or vessel, or to be committed to prison, as directed in the third Section of this Act.

VI. And whereas the practice of enticing Seamen to desert their ships is greatly promoted by the encouragement given to Tavern Keepers and others, by

Engaging or concealing a Mariner, knowing him to have deserted.

Penalty.

Recovery and Application.

For want of goods, offender to be imprisoned.

Mariner deserting shall forfeit his wages in vessel entered after desertion.

Recovery.

A Justice may issue a warrant to search upon proof by oath of the fact or suspicion that a Mariner is concealed on board a vessel in harbour, in a tavern, pot house, &c.

If such Seaman be found he shall be delivered to the owner, &c.

No money or reward shall be given to any person for procuring Seamen.

'by giving large sums to them for procuring Seamen;' Be it enacted, That from and after the passing of this Act, it shall not be lawful for any owner, master or agent of any ship or vessel, or other person, either directly or indirectly, to pay or give any money, hire or reward to any Innholder, Tavern Keeper, Shop Keeper or other person or persons, for the procuring of any Seaman or Seamen for any ship or vessel; and that it shall not be lawful for any Innholder, Tavern Keeper, Shop Keeper or other person or persons, to receive any money, hire or reward, either directly or indirectly, for the procuring such Seaman or Seamen; and that any money so to be paid, shall be considered as paid without consideration, and may be recovered back by action or suit in any Court having competent jurisdiction; and that all bonds, notes, bills, agreements, promises or engagements for paying or giving any money, hire or reward for the above mentioned purposes, shall be absolutely null and void to all intents and purposes whatsoever.

Money so paid may be recovered back.

Mariner not to be bound unless agreement be made in writing, &c.

VII. Provided always, and be it enacted, That no Mariner or Seaman shall be bound by entering or shipping himself on board of any ship or vessel, unless the agreement shall be in writing, and declare what wages such Mariner or Seaman is to have for so long a time as he shall ship himself for, and also shall express the voyage for which such Mariner or Seaman was shipped; any thing hereinbefore contained to the contrary notwithstanding.

Enticing or assisting Seamen to desert.

VIII. And be it enacted, That if any person or persons shall aid, entice or assist any Seaman to desert from any ship or vessel, or shall provide or procure, or cause to be provided or procured, for any Seaman the means or assistance to desert from any ship or vessel within the Province, or shall aid or assist any Seaman in the removal of their hammocks, clothing or apparel from on board of any ship or vessel, or shall convey any Seaman from any ship or vessel, without the sanction of the Master or commander of such ship or vessel, such person or persons so offending, for either of the said causes, shall upon conviction thereof be liable to the same penalties and forfeitures as contained in the fourth Section of this Act, to be recovered and applied as hereinbefore provided.

Penalty.

Recovery.

Proceedings in cases of the detention of a Mariner's clothes, chest, hammock or other property.

IX. And be it enacted, That if any person shall detain any Seaman or Mariner's clothes, chest, hammock or other property, it shall and may be lawful for any two of Her Majesty's Justices of the Peace, upon complaint made to them by any such Seaman or Mariner, on oath or affirmation, (in the case of persons allowed by Law to affirm,) to issue their Warrant, directed to any Constable of the County in which such Justices shall have jurisdiction, requiring the said Constable to bring such clothes, chest, hammock or other property before them, and to summon the person so detaining the same to appear before them, to answer for such detainer; and upon a full hearing of the case, on the oath or affirmation (in the case of persons allowed by Law to affirm) of the parties and their witnesses, taken *viva voce*, or on proof that the person required to be summoned could not be found, and that a copy of such Warrant was left at his last place of abode, the said Justices shall and may make such order touching the articles mentioned in the said Warrant, and so brought before them, and the delivery thereof to the party complaining, or the restoration thereof to the party charged with detaining the same, as may be reasonable and just; and in case the articles cannot be found, on proof thereof, and on the appearance of the party charged, and hearing all parties as aforesaid, or proof of the service of a copy of the said Warrant as aforesaid, then the said Justices shall and may order payment of the value thereof, together with the costs of prosecution, if the same shall to them appear reasonable and just, to be levied by warrant of distress and sale of the goods and chattels of the party upon whom such

479

such orders shall be made, to the use of the said Seaman or Mariner; and in default thereof, the said person so detaining the same, to be committed to gaol, there to remain without bail, until the payment of the sum so ordered, and costs aforesaid: Provided always, that no proceedings shall be had unless the value of the articles alleged to be detained shall not exceed ten pounds; and provided also, that no Innholder or Tavern keeper, or other such person shall be allowed to make any claim before the said Justices, for any lien on the said articles mentioned in the said Warrant, or any debt due from the said Seaman or Mariner, if it shall appear that the said Seaman or Mariner was at the time of such application a deserter from or belonging to any ship or vessel.

Proviso as to value of articles and lien of Tavern Keepers.

X. And be it enacted, That all prosecutions instituted for the recovery of any of the penalties imposed for the breach or breaches of any of the provisions of this Act, may be brought in the name of the owner or owners, master, agent or consignee of the ship or vessel to which such Mariner or Mariners, at the time of such breach or breaches shall belong, on account of whom such penalty or penalties shall be incurred.

Prosecutions for penalties may be instituted in the name of the owner, &c. of the vessel to which the Mariner shall belong.

XI. And be it enacted, That this Act shall continue and be in force until the first day of April which will be in the year of our Lord one thousand eight hundred and forty five.

Limitation.

Revised by 13th Dec
53
Cap.

CAP. LXIII.

An Act further to regulate proceedings in Replevin, by allowing damages in certain cases to the Defendant.

Passed 31st March 1840.

WHEREAS great injustice is sometimes committed by the wrongful Replevin of goods and chattels, in consequence of the party from whose possession such goods and chattels may be taken by Replevin not being entitled to recover damages where a return may be awarded; Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That if, upon the trial of any issue respecting the property in any action of Replevin, or of any other issue which, upon the same being found in his favour, will entitle the Defendant to judgment for the return of the goods and chattels replevied, or any part thereof, the Jury shall find such issue in favor of the Defendant, such Jury may if they shall think fit, give damages to the Defendant; and the Defendant may enter up his judgment thereupon with such damages and the costs of suit, and may issue execution for such damages and costs in like manner as he now may for the costs of suit only.

Jury may give damages to the Defendant where he would be entitled to judgment for return of goods replevied.

Judgment may be entered up for damages and costs.

II. And whereas it may often be of advantage to allow the goods and chattels which may be wrongfully replevied to be valued by the Jury at the trial of any such issue as aforesaid, and such value to be awarded to the Defendant in damages; Be it enacted, That in all cases where the property may not have been already restored to the Defendant, the Jury on the trial of any such issue as aforesaid may, at the instance and request of the Defendant in whose favour such issue may be found, award to such Defendant the value of the goods and chattels in damages; and in such case it shall be so specifically stated in the rendering of their verdict; and the Defendant shall be thereupon entitled to enter up his judgment for the recovery of such damages, and to issue execution thereupon, instead of entering up judgment *de retorno habendo* as heretofore accustomed; and upon the award of such value in damages and judgment thereupon, the Defendant's right and interest in such goods and chattels shall become vested in the Plaintiff.

Jury may award the value of the goods in damages at the request of the Defendant.

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III.

a) See 50 Geo. 3. c. 21 440 di 4. c. 38