

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1838. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1838.

1 Victoria – Chapter 37

An Act to amend an Act, intituled "An Act establishing the rates to be taken for Wharfage and Cranage of Ships and other Vessels within the limits of this Province." Passed 9th March 1838.

Whereas by the fifth section of an Act made and passed in the twenty sixth year of the reign of His Majesty King George the Third, intituled "An Act establishing the rates to be taken for Wharfage and Cranage of Ships and other Vessels within the limits of this Province," the owner or owners of wharves, by themselves or their agents, are empowered to remove any lumber, mill stones, or other goods, which may encumber their wharves, or incommode or obstruct the passing or repassing of any carts or carriages employed for the purpose of loading or unloading any ship or other vessel, and to keep the same in custody, but no power is given by the said Act to charge such goods with the expenses of yarding or housing, or to sell the same in the event of their not being claimed.

I. Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, when any wharf shall be encumbered by merchandize of any description, or rubbish or ballast, so as to obstruct the free passage of carts and other carriages, the owner or owners of such wharf, or his or their agent, shall give notice to the owner, owners, or consignee of such merchandise, or to the person who may have deposited rubbish or ballast thereon, which notice may be given personally or in writing and left at the residence or office of such owner, consignee or person as aforesaid, to remove the same; and if such merchandize or rubbish or ballast is not removed in a reasonable time after such notice, then it shall and may be lawful to and for the said owner or owners of such wharf, or his or their agent, to remove the same, and to keep such merchandize in custody until the whole costs of removing and keeping the same is fully paid; and in case the owner or consignee of such merchandize is unknown, or not to be found, the owner or agent as aforesaid of such wharf may at his discretion remove and keep the same, until some person appears to claim the same, and pay the costs of removing and keeping as aforesaid; Provided always, that when any merchandize so removed shall be of a perishable nature, the same may, within twenty four hours after such removal or as soon after as possible, be sold at public auction by a licenced auctioneer, and if such merchandize is not of a perishable nature, the same may be so sold in thirty days after such removal; and the proceeds of such sale respectively, after deducting the expense of removal and keeping and all other charges, shall be paid by the auctioneer to the owner or consignee of the merchandize so sold, when applied for.

II. And be it enacted, That no ballast of any kind or rubbish shall be placed or landed on any wharf or wharves, without the permission or consent of the owner, owners or agent of such wharf or wharves, under the penalty of ten pounds to be sued for and recovered with costs in the name of such owner or owners, or agent, and to the use of such owner or owners, in any Court of competent jurisdiction, and the person who may have so placed or landed or caused to be placed

or landed such ballast or rubbish, may be held to bail in any such action by order of a Judge of the Court in which the action may be brought, upon the facts being made sufficiently to appear by affidavit: Provided also, that if any merchandize or ballast which may have been obstructing or encumbering any wharf or wharves, and removed by the owner, owners, or agent of such wharf should not be sufficient when sold to defray the expense of removing the same, together with all other charges, the expense so incurred with all other charges after deducting the proceeds of sale as the case may be, shall be paid by the owner of such merchandize, rubbish or ballast, or person who may have deposited or landed the same on any wharf, to be sued for and recovered in an action of debt before any Court of competent jurisdiction.