

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1851. Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1851.

14 Victoria – Chapter 11

An Act in addition to and in amendment of the Acts now in force for the collection and protection of the Revenue of this Province. Passed 30th April 1851.

Whereas it is necessary that some Legislative provision should be made for holding persons to bail who may be prosecuted for penalties that have or may hereafter be incurred by reason of offences against the Revenue Laws of this Province, and for simplifying the practice of the Court of Exchequer in Revenue cases, and to make other alterations and amendments to the Acts now in force for the collection and protection of the Revenue;

I. Be it enacted by the Lieutenant Governor, Legislative Council and Assembly, That from and after the passing of this Act, when any penalty or penalties shall be sued for by action of debt, bill, plaint or information, against any person or persons, in any of Her Majesty's Courts of Record in this Province, a Capias shall and may thereupon issue as the first process, specifying the amount of the penalty or penalties sued for; and such person or person against whom such Capias shall issue, shall be obliged to give sufficient bail or security, by natural born subjects or denizens, to the person or persons to whom such Capias shall be directed, to appear in the Court out of which such Capias shall issue, at the day of the return of such "Writ, to answer such suit and prosecution; and shall likewise at the time of such appearing, give sufficient bail or security, by such persons as aforesaid, in the said Court, to answer and pay all the forfeitures and penalties incurred for such offence or offences, in case he, she or they shall be convicted thereof, or yield his, her or their body and bodies to prison, according to the recognizance of special bail in civil cases.

II. And be it enacted, That when any Writ of Capias or other process shall issue out of any of the Courts aforesaid, directed to any Sheriff, Coroner, Bailiff, or other person having the execution of Capias or process, in any County or City and County, against any person or persons who shall be guilty of any offence or offences whatsoever against any Act or Acts of Assembly relating to the Revenue, or to the collection of the Revenue of this Province, every such Sheriff, Coroner, or Bailiff, and other person having the execution of such Capias or process as aforesaid, and their and every of their Under Sheriffs, Deputies, and other persons acting for them in the said office and offices respectively, shall and are hereby enjoined and required, upon the request or application of the Treasurer, or of any Deputy Treasurer, or of Her Majesty's Attorney or Solicitor General, (such request to be in writing, and endorsed upon the back of the said process, and signed by such Treasurer, Deputy Treasurer, or Attorney or Solicitor General as aforesaid, with his name and addition,) to grant a Special Warrant or Warrants to such person or persons as shall be named to them by such Treasurer, Deputy Treasurer, or Attorney or Solicitor General as aforesaid, for the apprehending such offender or offenders; or in default thereof, every such Sheriff, Coroner, Bailiff, Under Sheriff, and other person acting in the said office or offices respectively, shall be subject and liable to such process of contempt, fines, amerciaments, penalties and forfeitures, as they or any of them are now by any law, custom or usage liable to in case of refusing or neglecting to execute

the like process when the defendant might have been taken thereupon in the common and usual method of proceeding.

III. And be it enacted, That all and every such Sheriff, Coroner, Bailiff, Under Sheriff, and other person so granting or making out such Special Warrant as aforesaid, shall be and they are hereby saved harmless, and indemnified against Her Majesty, Her Heirs and Successors, and against all and every other person and persons whomsoever, of and from all escapes of any person or persons who shall or may be taken by virtue of any such Warrant as aforesaid, which shall or may happen from the time of taking such offender or offenders till he, she or they shall be committed to the proper gaol or prison, or offered and tendered to the Gaol Keeper, or other person having charge of such gaol or prison, (who is hereby enjoined and required to receive every such person or persons so apprehended as aforesaid, and give a receipt for his, her and their body or bodies,) and of and from all actions, prosecutions, processes of contempt, and other proceedings for or by reason of such escape, any law, custom or usage to the contrary notwithstanding.

IV. And be it enacted, That on filing any information for the recovery of any penalty or other matter in which the Crown is interested, where the prosecuting officers may deem it unnecessary to hold the defendant to bail, a Summons or Subpoena, in the form now in use, may issue in the first instance instead of a Capias; and if the defendant do not appear and plead to such information in twenty days after the return of such Summons or Subpoena, the service of such Summons or Subpoena being made to appear by the affidavit of the person serving the same in the usual manner, judgment by default may be signed for and on the behalf of the Crown, and an extent or extents, or other usual process, may thereupon issue in the usual manner, or such other proceedings may be had as if the Crown had obtained such judgment on appearance and plea.

V. And be it enacted, That any action of debt, bill, plaint or information which shall be commenced, sued or prosecuted for any offence against any Act made or to be made relating to the Revenue of this Province, shall and may be dealt with, tried and determined in any County of the said Province; and if any such offence shall be committed, or any penalty or forfeiture incurred, or any seizure be made for breach of any such Acts, out of the body of any County in this Province, but within the limits of the said Province, such offence shall, for the purposes of prosecution, be deemed and taken to have been committed, and such penalties and forfeitures to have been incurred, and such seizures to have been made, in any County of this Province where the bill, plaint or information may lay the same; and it shall be sufficient to state in the said bill, plaint or information that any of such facts occurred in the said County where laid, without alleging the place where the same actually happened.

VI. And be it enacted, That whenever any valuation of any goods or chattels seized under any Act relating to the said Revenue shall be made pursuant to the provisions of such Act, such valuation shall be forthwith returned in writing, together with the claim of the owner thereof, (if any made,) into the Office of the Clerk of the Crown, and no Writ of appraisement or proclamation shall be necessary, but a copy of the information for each seizure shall be served on the claimant or his attorney, with notice to appear and plead and prosecute his claim in twenty days, or judgment will be entered by default; and such claimant shall be at liberty so to do on entering into

a recognizance to prosecute his claim for the amount required by law, himself and two sufficient sureties, in the ordinary form, before any Judge of the Court in which the same may be prosecuted, or Justice of the Peace, such sureties being first approved by the prosecuting officer, or Treasurer or Deputy Treasurer of the place where or near to which the penalty or forfeiture was incurred, or seizure made; which recognizance shall be forthwith delivered or transmitted to the prosecuting officer, or such Treasurer or Deputy Treasurer, to be filed in the Office aforesaid, and if such appearance, plea and recognizance be not entered within the time aforesaid, judgment of condemnation may be entered by default.

VII. And be it enacted, That in all informations for any seizure, penalty or forfeiture, it shall be averred therein that the officer proceeding prosecutes as well for the Revenue as for the Treasurer or Deputy Treasurer, as the case may be, although such Treasurer or Deputy Treasurer may not be the person actually making such seizure; and the net proceeds of the same shall be alleged to be payable, when recovered, to the person or persons really entitled to the same; but no proof shall be necessary as to any such averments.

VIII. And be it enacted, That hereafter the Treasurer and Deputy Treasurers shall annually on the thirtieth day of November close the Accounts for the year, and the Deputy Treasurers respectively shall forward to the Treasurer on or before the tenth day of December in each year, their said Accounts, duly attested, with all necessary vouchers.

IX. And be it enacted, That from and after the passing of this Act it shall be the duty of the Treasurer of the Province forthwith, or as soon as practicable after the annual returns of the respective Deputy Treasurers are made in pursuance of the provisions of this Act, to point out and bring under the notice of the Provincial Auditor any overcharges of commission or any other overcharges, omissions or errors which may appear in the Account or Accounts of any such Deputy or Deputies.

X. And be it enacted, That so much of the Act for the collection and protection of the Revenue as provides that Deputy Treasurers may retain for their services ten per centum upon all Duties collected by them under and by virtue of any law or laws of this Province, to the extent of three hundred pounds, as the maximum salary for any one year, be and the same is hereby repealed; and in lieu thereof, that from and after the passing of this Act, it shall and may be lawful to and for the several and respective Deputy Treasurers to retain for their services for any one year, ten per centum upon all Duties collected by them respectively under and by virtue of any law or laws of this Province; provided always, that no Deputy Treasurer shall be authorized to retain for his services in any one year a larger sum than two hundred pounds.

XI. And be it enacted, That the salary of the Provincial Treasurer shall be five hundred pounds per annum and no more.

XII. And be it enacted, That from and after the passing of this Act it shall not be lawful for any ship or vessel arriving with goods on board within the Province, liable to the payment of duties, (under any Act or Acts of the General Assembly of this Province now in force, or that may hereafter be in

force, if landed or brought into this Province), to enter into any harbour, roadstead, river, creek or place within this Province, with such goods on board, other than into some duly appointed port or place of entry, (unless from stress of weather, or some other unavoidable and justifiable cause to be shewn by the master, owner or consignee of such ship, vessel or goods), under the penalty of such ship or vessel and all the goods on board being forfeited; provided always, that nothing in this section contained shall extend or be construed to extend to render the goods of any innocent consignee or consignees, or owner or owners, on board of such ship or vessel, liable to forfeiture, upon his making it appear to the satisfaction of the Treasurer or Seizing Officer, by legal proof, that he had nothing to do with, and was not concerned in such ship or vessel so entering into such river, roadstead, creek or place.

XIII. And whereas doubts have arisen as to the construction of the fortieth section of the said Act made and passed in the eleventh year of the Reign of Her present Majesty, intituled *An Act to provide for the collection and protection of the Revenue of this Province* Be it therefore enacted, That from and after the passing of this Act, the words "Goods liable to forfeiture," mentioned in the said section of the said Act, shall apply to and be construed to mean not only goods liable to forfeiture from being prohibited, but to goods liable to forfeiture for nonpayment of Duties for being discharged or landed contrary to the provisions of any Act or Acts of the General Assembly now in force, or which hereafter may be in force relating to the Revenue of this Province.

XIV. And be it enacted, That it shall and may be lawful for the Lieutenant Governor of this Province, by and with the advice of the Executive Council, to make and appoint such regulations for the carrying coastwise of any goods, or for the removing of goods for shipment within this Province, as to them shall appear expedient; and that all goods laden, water borne or unladen contrary to such regulations so made and appointed, shall be forfeited.

XV. And be it enacted, That whenever it shall appear to the Lieutenant Governor in Council expedient to establish a Coasting Trade for the removal of goods generally, or for the removal of such goods as are reciprocally made free between this Province and any other of the British Possessions in North America, it shall and may be lawful for the said Lieutenant Governor, by and with the advice of said Council, to issue directions for that purpose by Proclamation in the Royal Gazette; and the said Coasting Trade shall be subject to the like rules and regulations as the said Lieutenant Governor in Council are authorized to make for the carrying coastwise of any goods under the provisions of this Act; and for any breach thereof the said goods shall be forfeited.

XVI. And be it enacted, That any person or persons who shall or may be guilty of smuggling into this Province any goods, wares or merchandise subject to Duty, under any law of this Province, now or that may hereafter be in force, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be liable to be imprisoned for any term not exceeding twelve months, or to pay a penalty not exceeding one hundred pounds, at the discretion of the Court.

XVII. And be it enacted, That from and after the passing of this Act, the Tidewaiters, Preventive and Revenue Officers respectively employed in the Revenue and preventive service in this Province, are hereby respectively required to be sworn to the faithful discharge of their duty

before the Treasurer or Deputy Treasurer of the port or place in which they shall be respectively employed; and such Treasurer or Deputy Treasurer are hereby authorized and empowered to administer the oaths of office by this section required to be administered as aforesaid.

XVIII. And be it enacted, That any and every of the penalties and forfeitures imposed under and by virtue of this or any Act or Acts hereafter to be made relating to the Revenue of this Province, may be prosecuted, sued for, recovered, levied and applied as provided in and by the forty seventh section of an Act made and passed in the eleventh year of the Reign of Her present Majesty, intituled *An Act to provide for the collection and protection of the Revenue of this Province*.

XIX. And be it enacted, That this Act shall continue and be in force until the thirtieth day of March which will be in the year of our Lord one thousand eight hundred and fifty eight.