

Laws of Her Majesty's Province of Newfoundland, passed in the year 1837.

1 Victoria – Chapter 9

**An Act for the regulating the Service of Merchant Seamen engaged in the Vessels of this Colony.
(18th November, 1837.)**

Whereas the Act of the Imperial Parliament of Great Britain passed in the fifth and sixth years of His late Majesty's Reign, intituled "An Act to amend and consolidate the Laws relating to Merchant Seamen of the United Kingdom," and for forming and maintaining a Register of all the men engaged in that service, has repealed all former Acts of Parliament for the regulating of Merchant Seamen; and by the fifty-fourth clause of the said Act, it is provided and enacted that the said Act should not extend or apply to any Ship registered in or belonging to any British Colony having a Legislative Assembly, or to the Crew of any such Ship while such Ship should be within the precincts of such Colony, any thing therein-before contained to the contrary in any wise notwithstanding :—

- I. And Whereas it is consequently expedient to introduce certain necessary regulations for the government of Merchant Seamen in this Colony: Be it therefore enacted, by the Governor, Council, and Assembly of Newfoundland, that it shall not be lawful for any Master of any Ship or Vessel belonging to any British subject, and registered in this Colony, trading to parts beyond the seas or out of this Colony, to carry to sea on any voyage either from this Colony or from any other place, any Seaman or other Person as one of his crew or complement (apprentices excepted,) without first entering into an agreement in writing with every such Seaman, specifying what monthly or other wages such Seaman is to be paid, the capacity in which he is to act, and the nature of the voyage in which the Ship is intended to be employed, so that the Seaman may have some means of judging of the probable period for which he is likely to be engaged; and the said Agreement shall contain the day of the month and the year in which the same shall be made, and shall be signed by the Master, in the first instance, and by the Seamen respectively, at the Port or Place where such Seamen shall be respectively shipped, and the Master shall cause the same to be, by, or in presence of the party who is to attest their respective signatures thereto, truly and distinctly read to every such Seaman, before he shall be required to sign the same, in order that he may be enabled to understand the purport and meaning of the engagement he enters into and the terms to which he is bound.
- II. And be it further enacted, that every such Agreement shall be in the form, and shall contain true entries, under their respective heads, of the several particulars set forth in the Schedule to this Act annexed, so far as the same can be ascertained.
- III. And be it further enacted, that no Seaman, by entering into or signing such Agreement as aforesaid, shall Forfeit his Lien upon the Ship, nor be deprived of any remedy for the recovery of his wages, which Seamen are now lawfully entitled to, against either the Ship, the Master or Owners thereof; nor shall any Agreement made contrary to or inconsistent with the provisions of this Act, or any claim whereby a Seaman shall consent to forego the right which the Maritime Law gives him to wages, in the case of freight earned by ship subsequently lost, or containing any words to that effect, be valid or binding on any Seaman signing the same; and that in cases in which it may be necessary that

the Agreement should be produced, to sustain a claim on the part of the Seaman, no obligation shall lie upon the Seaman to produce the same, nor shall any Seaman fail in any suit or proceedings for the recovery of his wages, for want of the production of any such Agreement or for the want of any notice to produce the same, any law or usage to the contrary notwithstanding.

IV. And be it further enacted, that in case a Seaman shall at any time after having signed an Agreement as herein-before mentioned, neglect or refuse to join the Ship on board of which he shall have engaged to serve, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, it shall be lawful for any Justice of the Peace in any part of this Colony, near to the place where such Ship shall happen to be, upon complaint of the fact, made upon oath by the Master, Mate, or Owner thereof, and such Justice is hereby required, by his warrant to cause such Seaman to be apprehended and brought before him, and in case such Seaman shall not give a reason to the satisfaction of such Justice, for his neglect, refusal, or absence, as the case may be, upon due proof of such neglect, refusal, or absence, it shall be lawful for any such Justice to commit such Seaman to the District Jail, or House of Correction, there to be kept at hard labour for a period not exceeding thirty days: Provided always, that in case such Seaman, on being apprehended and brought before the said Justice, shall consent to join the Ship and proceed on the voyage for which he shall have agreed, it shall be lawful for the said Justice, at the request of the Master, instead of committing such Seaman, to cause him to be conveyed on board the said Ship, or to be delivered to the Master for the purpose of proceeding on the voyage, and also to award to the Master such costs incurred in the apprehension of the Seaman as to such Justice shall seem reasonable, not exceeding in any case the sum of Two Pounds, which shall be chargeable against, and may be abated from, the wages to grow due to such Seaman.

V. And be it further enacted, that if any Seaman, after signing such agreement as aforesaid, or after the Ship, on board which he shall have agreed to serve, shall have left her first Port of clearance, and before the period for which he shall have agreed to serve shall be completed, shall wilfully and without leave absent himself from the Ship, or otherwise from his duty, he shall (in all cases not of absolute desertion or not treated as such by the Master,) forfeit out of his wages to the Master or Owner of such Ship the amount of Two days' pay, for every twenty-four hours of such absence, and in a like proportion for any less period of time, or, at the option of the said Master, the amount of such expenses as shall have been incurred in hiring a substitute to perform his work; and in case any Seaman, while he shall belong to the Ship, shall without sufficient cause neglect to perform such his duty, as shall be reasonably required of him by the Master or other Person in command of the Ship, he shall be subject to a like forfeiture for every such offence, and of every twenty-four hours continuance thereof; and in case any such Seaman, after having signed such agreement, or after the Ship's arrival at her Port of delivery, and before her cargo shall be discharged, shall quit the Ship without previous discharge, or leave from the Master thereof, he shall forfeit to the Master or Owner One Month's pay out of his wages: Provided always, that no such forfeiture shall be incurred unless the fact of the Seaman's temporary absence, neglect of duty, or quitting the Ship, shall be duly entered or recorded on the Ship's Log Book, which entry shall specify truly the hour of the day at which the same shall have occurred, and the period during which the Seaman was absent or neglected his duty—the truth of which entry it shall be incumbent on the Owner or Master, in all cases of dispute, to substantiate by the evidence of the Mate or some other credible witness.

VI. And be it further enacted, that in all cases where the Seaman shall have contracted for wages by the voyage or by the run, and not by the month or other stated period of time, the amount of forfeitures to be incurred by Seamen under this Act, shall be ascertained in manner following, that is to say—if the whole time spent in the voyage agreed upon shall exceed One Calendar Month, the forfeiture of One Month's pay expressed in this Act, shall be accounted and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages as a Calendar Month shall bear to the whole time spent in the voyage; and in like manner a forfeiture of Two Day's pay, or less, shall be accounted and taken to be a forfeiture of the sum bearing the same proportion to the whole wages as the same period of time shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed One Calendar Month, the forfeiture of One Month's pay shall be accounted and taken to be a forfeiture of the whole wages contracted for; and if such time shall not exceed Two Days, the forfeiture of Two Days' pay shall be accounted and taken to be a forfeiture of the whole wages contracted for; and the Master is hereby authorized to abate the amount of all forfeitures hereinbefore enacted out of the wages of any Seaman incurring the same.

VII. And be it further enacted, that every Seaman who shall absolutely desert the Ship to which he shall belong, shall forfeit to the Owner or Master thereof all his Clothes and Effects which he may leave on board, and all Wages and Emoluments to which he might otherwise be entitled—provided the circumstances attending such desertion be entered into the Log-Book at the time, and certified by the signature of the Master and Mate, or other credible witness, and that an absence of a Seaman from the Ship for any time within the space of Twenty-four hours immediately preceding the sailing of the ship, without permission from the Master thereof, or for any period, however short, under circumstances plainly shewing that it was his intention not to return thereto, shall be deemed an absolute desertion; and in case any such desertion shall take place in parts beyond the seas, or out of this Colony, and the Master of the Ship shall be under the necessity of engaging any Seaman as a substitute for the deserter, at a higher rate of wages than that stipulated in the Agreement to be paid to the Seaman deserting, the Owner or Master of the Ship shall be entitled to recover from the deserter, by summary proceeding, in the same manner as wages are by this Act made recoverable, any excess of wages which such Owner or Master shall pay to such substitute beyond the amount which would have been payable to the deserter in case he had duly performed his service pursuant to his Agreement.

VIII. And be it further enacted, that if any Person shall, either on Shipboard or on Shore, harbour or secrete a Seaman who shall have signed an Agreement to proceed on a voyage to parts beyond the seas, and shall have deserted or absented himself without leave from his Ship, knowing or having reason to believe him to be a deserter, or to be absent without leave, every Person so offending shall for every such Seaman so harboured or secreted forfeit and pay the sum of Ten Pounds; and that no debt exceeding in amount Five Shillings, incurred by any Seaman after he shall have signed any such Agreement as aforesaid, shall be recoverable until the voyage agreed for shall have been concluded, nor shall it be lawful for any Keeper of a Public House, or of a Lodging House for Seamen, to withhold or detain any Chest, Bed or Bedding, Clothes, Tools, or other Effects of any Seaman, for any pretended Debt alleged to have been contracted by any such Seaman; and in case any such Chest, Bed, Bedding, Clothes, Tools, or Effects as aforesaid, shall be withheld or detained contrary to this Act, it shall be

lawful for any Justice of the Peace, in any part of this Colony, upon complaint, upon oath, to be made by any such Seaman, or on his behalf, to enquire into the matter, and if he shall see right, by warrant under his hand and seal to cause any such property or effects so withheld or detained, contrary to this Act, to be seized and delivered over to the Seaman.

IX. And be it further enacted, that the Master or Owner of every Ship shall, and he is hereby required to pay to every Seaman entering into such Contracts as aforesaid, his Wages, if the same shall be demanded, within the respective periods following, that is to say—within three days after the cargo shall have been delivered, or within ten days after the Seaman's discharge, whichever shall first happen; in either of which last mentioned cases of Payment being delayed, the Seaman shall at the time of his discharge be entitled to be paid, on account, a Sum equal to one-fourth part of the estimated balance due to him; and in case any Master or Owner shall neglect or refuse to make Payment, in manner aforesaid, he shall, for every such neglect or refusal, forfeit and pay to the Seaman the amount of two days' pay for each day, not exceeding ten days, during which Payment shall without sufficient cause be delayed beyond the period at which such Wages or part Wages, are hereby required to be paid as aforesaid; for the recovery of which Forfeiture the Seaman shall have the same remedies as he is by Law entitled to for the recovery of his Wages; Provided always, that nothing in this clause contained shall extend to the cases of Ships employed on Voyages for which Seamen, by the terms of their Agreement, are compensated by shares in the profits of the adventure.

X. And be it further enacted, that every such Payment of Wages to a Seaman shall be valid and effectual in Law, notwithstanding any Bill of Sale or Assignment which may have been made by any such Seaman of such Wages, or of any Attachment or Incumbrance thereon; and that no assignment or Sale of Wages made prior to the earning thereof, nor any Power of Attorney, expressed to be irrevocable for the receipt of any such Wages, shall be valid or binding upon the party making the same.

XI And be it further enacted, that upon the discharge of a Seaman from the Ship in which he shall have served, he shall be entitled to receive from the Master a Certificate of his service and discharge, specifying the period of Service and the time and place of the discharge of such Seaman, which Certificate shall be signed by the Master; and if any Master shall refuse to give such Certificate to any such Seaman, without having reasonable cause for his refusal, he shall, for every such offence, forfeit and pay to him the Sum of Five Pounds.

XII. And be it further enacted, that if after a Seaman shall have been discharged from any Ship or Vessel three days, he shall be desirous of proceeding to Sea on another Voyage, and in order thereto shall require immediate Payment of the Wages due to him, it shall be lawful for any Justice of the Peace, in any part of this Colony, on application from such Seaman, and on satisfactory proof that he would be prevented from employment by delay, to Summon the Master or Owner of such Ship or Vessel before him, and to require cause to be shown why immediate Payment of such Wages should not be made; and if it shall appear to the satisfaction of such Justice that there is no reasonable cause for delay, he shall order Payment to be made forthwith, and in default of compliance with such order, such Master or Owner shall forfeit and pay the Sum of Five Pounds.

XIII. And be it further enacted, that in all cases of Wages not exceeding Twenty Pounds, which shall be due and payable to a Seaman for his Services in any Ship as aforesaid, it shall be lawful for any Justice of the Peace in any part of this Colony near to the place where the Ship shall have ended her Voyage, cleared at the Custom-House, or discharged her Cargo, or near to the place where the Master or Owner upon whom respectively the Claim is made shall be or reside, upon complaint, upon oath, to be made to such Justice by any such Seaman, or on his behalf, to Summon such Master or Owner to appear before him to answer such complaint, and upon the appearance of such Master or Owner, or in default thereof on due proof of his having been so summoned, such Justice is hereby empowered to examine, upon the Oath of the parties and their respective Witnesses (if there be any,) touching the complaint and the amount of Wages due, and to make such order for Payment thereof, as shall to such Justice appear reasonable and just: and in case such order shall not be obeyed within two days next after the making thereof, it shall be lawful for such Justice to issue his Warrant to levy the amount of the Wages awarded to be due, by distress and sale of Goods and Chattels of the Party on whom such order for Payment shall be made, rendering to such Party the overplus (if any shall remain of the produce of the sale,) after deducting thereout all the charges and expences incurred by the Seaman in making and hearing of the complaint, as well as those incurred by the distress and levy and in the enforcement of the Justice's order; and in case sufficient distress cannot be found, it shall be lawful for the said Justice to cause the amount of the said Wages and Expences to be levied on the Ship in respect of the Services on board which the Wages are claimed, or the tackle and apparel thereof; and if such Ship shall not be within the jurisdiction of such Justice, then, he is hereby empowered to cause the party upon whom the order for Payment shall be made, to be apprehended and committed to the common Gaol of the District, there to remain without Bail until Payment shall be made of the amount of Wages so awarded, and of all Costs and Expences attending the recovery thereof; and the award and decision of such Justice as aforesaid shall be final and conclusive, as well on every such Seaman as on the Owner and Master of the Ship.

XIV. And be it further enacted, that if any suit for the recovery of a Seaman's Wages shall be instituted against the Master or Owner of any such Ship as aforesaid, in any Court of Record in this Colony, it shall appear to the Judge, in the course of such suit, that the Plaintiff might have had as effectual a remedy for the recovery of his Wages by complaint to a Justice of the Peace, as hereinbefore provided, then and in every such case it shall be lawful for such Judge, and he is hereby required, to certify to that effect, and thereupon no costs of suit shall be awarded to the Plaintiff.

XV. And Whereas it is necessary that due provision should be made for the preservation of the Health and Lives of the Seamen employed in the Merchant Service—Be it further enacted, that every Ship belonging to any British subject, and sailing from this Colony to any place out of the same, shall have and keep constantly on board the same a sufficient supply of Medicines suitable to accidents and diseases arising on Sea Voyages, which shall be renewed from time to time as shall be requisite; and in case any default shall be made in providing or keeping supplied such Medicines as aforesaid, or in case any of the Seamen shall receive any hurt or injury in the Service of the Ship, the expense of providing the necessary Surgical or Medical Advice and Attendance, and Medicines, which the Seaman shall stand in need of, until he shall have been cured, or shall have been brought back to this Colony, shall be borne and defrayed by the Owner and Master of the Ship, or one of them, without any deduction whatsoever on that account from the Seaman's Wages.

XVI. Provided always, and be it further enacted, that nothing in this Act, or in any Agreement, contained, shall be deemed to extend to prevent any Seaman or Person belonging to any Merchant Ship whatever from entering or being received into the Naval Service of Her Majesty, nor shall any such entry be deemed a desertion from the Merchant Ship, nor incur any Penalty or Forfeiture whatever, either of Wages, Clothes, or Effects, or other matter or thing, notwithstanding any agreement made to the contrary hereof; and all Masters and Owners of Ships are strictly prohibited from introducing into any Ships' Articles or Agreement with the Crew, any Clause or Matter by which any Penalty or Forfeiture of any kind is agreed to be incurred by a Seaman upon his entry into Her Majesty's Service.

XVII. And be it further enacted, that when any Seaman shall quit a Merchant Ship in order to enter Her Majesty's Naval Service and shall thereupon be actually received into such Service, not having previously committed any act amounting to and treated by the Master as a total desertion, he shall be entitled immediately upon such entry to the delivery up of all his Clothes and Effects on board such Merchant Ship, and (in case the Ship shall have earned Freight) to receive from the Master the payment of the proportionate amount of his Wages up to the period of such entry, either in Money or by a Bill on the Owner thereof, all which Clothes, Effects, Money and Bill, such Master is hereby required to deliver up to him accordingly, under a Penalty of Twenty-five Pounds for every refusal or neglect: Provided always, that if no freight shall have been earned at the time of such entry, then the Master shall and he is hereby required to give the Seaman so entering, a Bill upon the Owner for his Wages to the period of such entry, payable on the Ship's safe arrival at her destined Port; but in case the Master shall have no means of ascertaining the balance justly due, he shall make out and deliver to such Seaman a Certificate of the period of his Services and the rate of Wages he is entitled to, producing at the same time to the Commanding or other Officers of Her Majesty's Ship the Agreement entered into with the Seaman for the Voyage, and every such Master upon the delivery up of such Clothes and Effects, and the settlement of such Wages in manner herein-mentioned, shall be entitled to receive from the Officer in Command of the Ship of Her Majesty into which such Seaman shall have entered, a Certificate signed by the said Officer, which such Officer is hereby required to give upon the request of the Master, testifying that such Seaman has entered into such Ship of Her Majesty, to serve as proof that the Master had not parted with the Seaman contrary to the provisions of this Act.

XVIII. And to avoid doubts in the construction of this Act, be it further enacted, that every Person having the Charge or Command of any Ship belonging to or registered in this Colony, shall within the meaning and for the purposes of this Act, be deemed and taken to be the Master of such Ship, and that every Person (Apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same, shall in like manner be deemed and taken to be a Seaman, within the meaning and the purposes of this Act; and that the term "Ship" as used in this Act, shall be taken and understood to comprehend every description of Vessel navigating on the sea; and that the term "Owner," as applied to a Ship, shall be understood to comprehend all the several Persons, if more than one, to whom the Ship belongs; and that all Steam and other Vessels employed in carrying Passengers or Goods, shall be deemed Trading Ships, within the meaning and for the purposes of this Act.

XIX. And be it further enacted, that any Two or more Justices of the Peace, residing at or near to any Port at which any Ship as aforesaid, having on board thereof any Sea-Apprentice, shall at any time

arrive, shall have full power and authority to enquire into and examine, hear, and determine all claims of Apprentices upon their Masters, under their Indentures; and all complaints of hard or ill usage exercised by their respective Masters towards any such their Apprentices, or of misbehaviour on the part of any such Apprentice; and to make such orders therein as they are empowered by Law to do in other cases between Masters and Apprentices, or which Justices of the Peace are empowered to do by the Law of England.

XX. And whereas by an Act of the Imperial Parliament passed in the Ninth year of the Reign of His late Majesty King George the Fourth, for consolidating and amending the Statutes in England relative to the offences against the Person, a Summary Jurisdiction is provided for the punishment of Persons guilty of Common Assaults and Batteries: And whereas it is expedient that the provisions of the said Act should be extended to similar offences committed on board Merchant Ships as hereinafter provided; be it therefore further enacted, that in case of any Assault or Battery which shall, after the commencement of this Act, be committed on board any Merchant Ship belonging to any British Subject in this Colony, in any place at sea, it shall be lawful for any Two Justices of the Peace, in any part of this Colony, upon complaint of the party aggrieved, to hear and determine any such complaint and proceed to make such adjudication thereon as by the said Act any Two Justices are empowered to do—subject, however, to such provisions and limitations as are contained in the said Act with respect to the causes of Assault and Battery therein mentioned; and the fine and forfeiture to be imposed in any such case shall be paid to the party aggrieved.

XXI. And be it further enacted, that all Penalties and Forfeitures imposed by this Act, and for the recovery whereof no specific mode is herein-before provided, shall and may be recovered with Costs of Suit in manner following, that is to say—all Penalties and Forfeitures not exceeding Ten Pounds, shall be recoverable at the Suit of any Person, by information and summary proceeding, before any Two or more Justices of the Peace in any part of this Colony where the offence shall be committed, or where the offender shall be, which Justices shall have full power to levy the amount of any such Penalty or Forfeiture, and Costs, by distress and sale of the Offender's Goods, or by the commitment of the Offender for the nonpayment of the amount; and all Penalties and Forfeitures exceeding Ten Pounds shall and may be recovered, with Costs of Suit, in any of Her Majesty's Courts of Record in this Colony, at the Suit of Her Majesty's Attorney-General; and that all Penalties and Forfeitures mentioned in this Act, for which no specific application is herein-before provided, shall, when recovered, be paid and applied in manner following, that is to say—One Moiety of every such Penalty shall be paid to the Informer or Person upon whose discovery or information the same shall be recovered, and the residue shall be paid into the Treasury of this Island.—Provided always, that it shall be lawful for the Court before which, or the Justice or Justices before whom, any proceedings shall be instituted for the recovery of any pecuniary Penalty imposed by this Act, to mitigate or reduce such Penalty, as to such Court or Justices respectively, shall appear just and reasonable; in such manner, however, that no such Penalty shall be reduced below one-half of its original amount; And provided also, that all proceedings so to be instituted shall be commenced within two years next after the commission of the Offence or within Six Calendar Months after the return of the Offender, or the Complaining Party, to this Colony.

Schedule

In This Act Referred to.

An Agreement made pursuant to the directions of an Act of the General Assembly of Newfoundland, passed in the First year of the Reign of Her Majesty _____ between _____ the Master of the Ship _____ of the Port of _____ of the Burthen of _____ Tons, and the several Persons whose names are subscribed hereto.

It is agreed, by and on the part of the said Persons, and they severally hereby engage to Serve on board the said Ship, in the several capacities against their respective names expressed, on a Voyage from the Port of _____ to _____ and back to the Port of _____ and the said Crew further engage to conduct themselves in an orderly, faithful, honest, careful, and sober manner, and to be at all times diligent in their respective duties and stations, and to be obedient to the lawful command of the Master in every thing relating to the said Ship and the Materials, Stores and Cargo thereof, whether on board such Ship, in Boats, or on Shore.

In consideration of which service to be duly, honestly, carefully and faithfully performed, the said Master doth hereby Promise and Agree to pay the said Crew, by way of Compensation or Wages, the amount against their names respectively expressed.—In Witness whereof the said Parties have hereunto Subscribed their names on the days against their respective Signatures mentioned.

Place and time of Entry.			Men's Names	Age.	Place of abode.	Amount of Wages			Quality.	Witness to Execution.	Name of Ship in which Seaman has served.
Day.	Month.	Year.				Wages.	Calendar Month.	Share of Voyage.			