

*Laws of Her Majesty's Province of Newfoundland, passed in the year 1856.*

19 Victoria – Chapter 14

**An Act to Amend the Law of Insolvency. (Passed 12th May, 1856.)**

Whereas it is expedient that the Laws for the Relief of Insolvent Debtors in this Island, should be Amended:

Be it therefore enacted by the Governor, Legislative Council and Assembly, in Legislative Session convened, as follows: —

I. When it shall be made to appear that the Hirer or Employer of any Seaman, Fisherman, or other Servant, is Insolvent or unable to pay his Creditors Twenty Shillings in the Pound, such Seaman, Fisherman, or other Servant, actually employed in the Catching, Curing or Making of Fish or Oil, and such Person as shall have supplied Bait to the Hirer or Employer aforesaid, and who shall be Creditors for Wages, Shares or Bait for the Current Season, shall, upon all such Fish and Oil taken, cured or made, by the Hirer or Employer aforesaid, or out of the produce or value thereof if the same be in the possession of the Hirer or Employer, or of any other person aware, of or privy to the Hiring or Employing of any such Seaman, Fisherman or other Servant, or having notice of the claim of such Seaman, Fisherman or other Servant, whether the same be accruing or due, at or before the time of such other person receiving such Fish or Oil, or the produce or value thereof, or before paying the Hirer or Employer for the same, be considered privileged Creditors, and shall first be paid Twenty Shillings in the Pound, so far as such Fish and Oil, or the produce or value thereof, shall go: Provided further, that where such Fish and Oil shall be insufficient for the full payment of the Wages or Shares of such Seaman, Fisherman or other Servant, and of the Person who shall supply Bait as aforesaid, they shall be paid rateably in proportion to their respective claims.

II. In the event of the Insolvency of any Receiver or Supplying Merchant, the Estate and Effects of such Receiver or Supplying Merchant shall be liable in the first place to the payment of the Wages or Shares of such Seaman, Fisherman or other Servant, so far as the Fish and Oil, or the proceeds thereof, received from the Hirer or Employer by such Receiver or Supplying Merchant, or by the Assignees or Trustees of his Estate, may go; provided such Receiver or Supplying Merchant, or such Assignees or Trustees, would be liable therefor under the first section of this Act.

III. To entitle such Seaman, Fisherman or other Servant, or such Person supplying Bait as aforesaid, to recover the amount of his Wages, Shares or Bait Money, from the Receiver of such Fish or Oil, or the produce or value thereof, it shall not be necessary that the Hirer or Employer should have been formally declared insolvent; but it will be sufficient if it be made to appear, on the trial of any action which such Seaman, Fisherman or other Servant, or Supplier of Bait, may bring (for Money had and received, or for Wages) against the said Receiver, before any Stipendiary Justice of the Peace, Court of Sessions, or any Superior Court in this Island, that the Share, Wages or Bait Money, was due at the time of bringing, such action, and that the said Hirer or Employer was then Insolvent, or unable to pay his Creditors Twenty Shillings in the Pound.

IV. Any defence which the Hirer or Employer could have made if the action had been taken against him by such Seaman, Fisherman or other Servant, or Supplier of Bait, for such Wages, Share or Bait Money, shall, be equally available for such Receiver to make on the trial of any such action that may be brought against him by such Seaman, Fisherman, or other Servant, or Supplier of Bait, for such Wages, Share or Bait Money, or the value of such Fish and Oil, or any part thereof as aforesaid; Provided always that the Receiver of the, voyage, or any, part of the, produce, or value thereof, shall not be liable for the payment of such Wages or Share of such Seaman, Fisherman or other Servant; or Supplier of Bait, unless it be proven on the trial that the Receiver was aware of, or privy to, the Hiring or Employing of any such Seaman, Fisherman or other Servant, or had notice of any such claim for Wages, Shares or Bait Money, at any time before, or at the time of receiving the Fish and Oil, or a part of the proceeds of the same, or before the Hirer or Employer received payment therefor; and then he shall be only liable to the extent of the voyage, or party or produce, or value thereof, received by him: Provided always that any Shareman lawfully selling or disposing of his Share of Fish or Oil, or any part thereof, may sue and recover payment therefor from the purchaser thereof according to the terms of their Contract, before any Stipendiary Justice or Court aforesaid; or any Shareman, Fisherman or other Servant, may, in like manner, sue for and recover his Wages or Shares from his Hirer or Employer, irrespective of and notwithstanding any of the provisions contained in the foregoing sections.

V. All Clerks and Servants of every description shall be entitled to recover and receive Twenty Shillings in the Pound of the Balance of their last preceding year's Wages and Services, out of the Estate and Effects of their Hirers or Employers in case of their Insolvency.

VI. All Monies deposited by the Receiver General or by the Cashier or Directors the Savings Bank of this Island, in any Bank or in the hands of any Banking Company, and all Monies received or collected by them on behalf of the Receiver General or the Government of this Colony; or the said Savings Bank, shall constitute a Crown Debt to the amount thereof, and form a prior claim to all others on any such Bank of Deposit, or Banking Company, receiving or collecting the said Monies, and upon their Property, Estate and Effects, in case of the Insolvency of such Bank or Banking Company, and may be sued for and recovered in the name of Her majesty, or the said Receiver General, or Her Majesty's Attorney General for the said Island. Provided always, that all other Debts and Claims due the Crown shall form a prior claim to all others except those provided for under the First, Second and Fifth Sections of this Act, upon the Estates of Insolvent Companies and Individuals.

VII. Whereas it is expedient to repeal the Twenty-fifth Section of the Act herein after recited, and to make provision in lieu thereof:

Be it therefore enacted, the Twenty-fifth Section of an Act passed by the Imperial Parliament, in the Fifth Year of the Reign of His late Majesty King George the Fourth, intituled "An Act for the better administration of Justice in Newfoundland, and for other purposes," be, and the same is hereby repealed.

VIII. In the distribution of the Estates and Effects of every Person hereafter declared Insolvent, every Creditor for Supplies necessarily and bona fide furnished for the Fishery, during the current Season,

that is to Say—at any time after the close of the last preceding Season of the Fishery, shall be considered as a privileged Creditor, and shall be paid Twenty Shillings in the Pound, so far as the Estates and Effects of such Insolvent Person will go; and all other Creditors shall be paid equally, and, rateably: Provided always, that nothing in this section contained shall in any way affect the prior claims and rights of the parties provided for in and by the First, Second, Fourth, Fifth, and Sixth Sections of this Act.

IX. It shall be lawful for every Superior Court of Record, or a Judge of such Court, either in Term or Vacation, to declare any Person Insolvent upon such Person or any of his Creditors presenting a petition to such Court or Judge, setting forth that such Person is Insolvent and unable to pay his Creditors Twenty Shillings in the Pound, and making it appear, after giving at least Five Days' Public Notice of his application in the Royal Gazette of this Island, (where the party applies to be declared Insolvent in St. John's, or at least Three Days' Notice of such application, to be posted up in the Court House of any Outport, where such party applies to be declared Insolvent in such Outport on his examination before such Court or Judge, or before a Commissioner to be named, by such Court or Judge, for that purpose, to the satisfaction of such Court, or Judge, that he is Insolvent and unable to pay his Creditors Twenty Shillings in the Pound, whether any writ or other legal process shall have been previously taken or issued against such person or no; and if any person shall have been arrested, and in prison or on bail under mesne or final process, it shall be lawful for such Court or Judge to declare such person Insolvent, and to discharge him from prison, and exonerate his bail, as fully and effectually as such Court or Judge thereof can now declare any person charged in execution, Insolvent, and discharge him from prison: Provided always, that if any such person be guilty of fraud, or other misconduct, in relation to any of his Creditors, and would be liable to be imprisoned therefor, if charged in execution, and applying for the benefit of the existing Insolvent laws of this Island, it shall be lawful for the Court or Judge declaring any such person Insolvent, in such case to commit or remand him to prison, for any time not exceeding the period prescribed in the said Laws.

X. It shall be lawful for every such Court, or any Judge thereof, to grant a Certificate and final discharge to such Insolvent person, whether he shall have obtained the consent of any of his Creditors or not, at least Five Days' Notice of his intention to apply for such Certificate having been first published in the Royal Gazette of this Island, or served upon the Trustees of his Insolvent Estate, or upon his Creditors; Provided such Insolvent Person shall not have been guilty of fraud, in relation to any of his Creditors, and shall not have rendered himself liable to imprisonment for fraud or misconduct under any of the existing Insolvent Laws, and shall have made a full discovery, disclosure, and delivery of his property and effects under his Insolvency, according to the requirements of the said laws; and such Certificate shall be as effectual in every respect, as if the same had been granted in conformity, with any of the Insolvent Laws now in force in this Island.

XI. And Whereas it is expedient to repeal the Twenty-sixth Section of the said in part recited Act, in reference to parties dying Insolvent in this Island, and to adopt other provisions in lieu thereof:

Be it therefore enacted, that the said Twenty-sixth Section of the said Act, passed in the Fifth Year of the Reign of His late Majesty King George the Fourth, intituled "An Act for the better Administration of Justice in Newfoundland, and for other purposes," be, and the same is hereby repealed.

XII. As often as any person shall die in this Island or elsewhere, leaving Estates and Effects in this Island, or in any place within the Government thereof, and such Estates and Effects shall not be sufficient to pay and satisfy all his just Debts, it shall be lawful for any of the said Superior Courts of Record, or any Judge thereof, either in term time or vacation, on the petition of the Executor, Administrator, or a Creditor of such deceased person, to cause a true statement of the Effects and Debts of such deceased person to be made in writing by and upon the Oath of the said Executor or Administrator, and laid before any of the said Courts or any Judge thereof; and if it shall appear to the Court, or the said Judge, before whom such statement shall be laid, that the Estate and Effects of such deceased person are not sufficient to pay all his just Debts, it shall be lawful for such Court or Judge to authorize and empower the Executor or Administrator of such deceased person to collect, sell and dispose of all the Estates and Effects of such deceased person, and to distribute the produce thereof amongst his Creditors, according to the manner of distribution by law directed to be made in; respect to the Estates of persons declared Insolvent, subject in all cases to the provisions of this Act: Provided always that nothing herein contained shall be construed to affect the right of any Creditor of such deceased person to recover the full amount of such Debts, as may have been bona fide secured in the life time of such deceased person by Mortgage or other legal conveyance of any portion of the Estate or Effects of such deceased person; Provided also, that the like course shall be pursued with the Estates and Effects of any persons dying Insolvent, where no Executor or Administrator thereof has been appointed or resides in this Island, on the application of any Creditor to any of the said Courts, or any Judge thereof, who may appoint Trustees or Receivers of such Estates and Effects, to realize and distribute the same as aforesaid, subject to the orders and control of any such Court or Judge thereof.