

Laws of Her Majesty's Province of Newfoundland, passed in the year 1860.

23 Victoria – Chapter 5

An Act to Provide for the Protection of Property Wrecked on the Coast of Newfoundland. (Passed 14th May, 1860.)

Whereas it is necessary that provision be made for the protection of Property wrecked on the Coast of Newfoundland:

Be it therefore enacted, by the Governor, Legislative Council and Assembly, in session convened:

- I. The Governor in Council shall appoint in every Electoral District of this Island one or more Commissioners of wrecked Property, who shall be an officer of Customs, or any other person whom the Governor in Council may think more convenient; and who, before acting, shall take the oath in the Schedule to this Act marked A.
- II. Any such Commissioner shall, immediately on receiving information of a Shipwreck, or of wrecked Property (above the value of twenty-five pounds) being within the District for which he shall be appointed, repair to the place where such Wreck or wrecked Property shall be, and in case the same shall not then be in the custody of the owner or his agent, or, if in such custody, if required so to do by the owner or agent, shall take charge thereof.
- III. Should any wrecked Property be in the possession of any person other than the owner thereof, or his agent, it shall be lawful for such Commissioner to demand and receive the same from such person; and should he refuse to deliver up such Property to such Commissioner, such Commissioner shall command as many men of the neighbourhood to assist him in taking by force possession thereof as may be necessary.
- IV. Should the Commissioner and any person having a claim for salvage, or any other services on such Property, be unable to agree as to the amount due for said services, such claim shall be submitted to the decision of two Arbitrators, in addition to the said Commissioner, one of which Arbitrators shall be appointed by the owner or his agent, and the other by the claimant; and in case either party should be absent, or omit, or refuse, after the expiration of Four Days from the time the said Commissioner shall take possession of such Property, to appoint an Arbitrator, the Commissioner may immediately thereafter appoint an Arbitrator in his place; and the award of the said Arbitrators and Commissioner, or of any two of them, shall be final and binding between the parties. The evidence to be taken by the Arbitrators and Commissioner shall be taken on oath, to be administered by the Commissioner. Provided always, that until all claims for salvage or other services are satisfied, the said Property shall remain in the possession of the said Commissioner. And provided further, that in any case where the whole Property saved shall amount to One Thousand Pounds and upwards in value, and the Commissioner shall be of opinion that the amount or amounts awarded to any person or persons is or are excessive or insufficient, there may be an appeal by petition to any Superior Court of Record, or Judge of such Court, to be prosecuted within One Month by either of the parties or the Commissioner,

which appeal shall be heard and determined in a summary way by such Court or Judge, either upon the evidence as taken before the Arbitrators and Commissioner, or otherwise, as the Court or Judge may direct; and a Judge proceeding under this Section shall have and exercise the like power as a Court of Record; and any party wilfully and corruptly giving false evidence, either before the Arbitrators and Commissioner, or a Court or a Judge, under this Act, shall be deemed guilty of, and punishable for, wilful and corrupt perjury; the Court or Judge proceeding under this Act shall make such order as to costs, as to the justice of the case may appertain.

V. Should the Commissioner be unable to pay the amount of such award, or should the said award specify and define the quantity or portion of such Property to which such person may be entitled for salvage or other services, the said Commissioner is hereby authorized to apply such quantity or portion of such Property in satisfaction of the said award.

VI. If any person finding, or being in possession of such Property, other than the owner or agent, shall secrete the same, or shall not, within reasonable time, make known such finding or possession to the Commissioner, or shall refuse to deliver up possession of such Property to the said Commissioner, he shall forfeit to the said Commissioner double the value thereof, and shall, for each and every of such offences, pay a penalty of One Hundred Pounds to Her Majesty, to be recovered in the name of the said Commissioner in any Court of Record in this Colony and appropriated to the use thereof, and shall forfeit all claim for salvage or other services.

VII. The Commissioner may employ as many persons as he may require to preserve and secure such property, and he shall have full power to suppress all tumults and disturbances; and any person who shall disobey the lawful orders of the Commissioner in relation thereto shall forfeit and pay for every such offence the sum of Ten Pounds, to be recovered and applied in the manner hereinafter provided.

VIII. The Commissioner shall make an inventory in writing of all such Property as shall come into his possession, and shall verify the same by affidavit, which shall be in the form marked B in the Schedule to this Act, and shall deliver a copy of the inventory and affidavit, together with the Property, or so much thereof as may remain in the hands of the said Commissioner, after satisfying salvage, or other services, to the person entitled thereto, on being first paid his commission, as hereinafter provided, and all reasonable and necessary charges that he may have been put to for the care and custody of such Property.

IX. Any person, other than the owner or his agent, intermeddling with such Property after the arrival of the Commissioner at the place where the same may be,—unless with his consent,—shall forfeit a sum not exceeding Fifty Pounds for every such offence, to be recovered and appropriated in the manner hereafter provided.

X. If no person interested in such Property, or no agent of such person, be present where the same may be, such Commissioner shall, as soon after his arrival as practicable, publish in one of the Newspapers of this Colony the particulars of the Shipwreck, and such other information relating to such Property as he may have obtained. And if he should neglect to do so, he shall forfeit One Hundred

Pounds, to be recovered in any Court of Record in this Colony, at the suit and to the use of the person interested in such Property.

XI. The Commissioner may, within Thirty Days after all claims for salvage and other services shall have been paid off and discharged, sell so much of such Property by public sale as shall be sufficient to pay all duties and all other charges and expenses thereon; first giving Fourteen Days' public notice of such sale in one of the Newspapers published in this Colony, and by handbills posted up in at least three of the most public places in the District, and in the vicinity of the place appointed for such sale, at least Three Days immediately preceding the day of such sale.

XII. In case where any wrecked Property in the custody of any such Commissioner is under the value of Twenty-five Pounds, or is of so perishable a nature, or so much damaged, that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of storing or warehousing, the Commissioner may sell the same before the expiration of the said period of Thirty Days; and the money raised by such sale, after defraying the expenses thereof, shall be held by the Commissioner for the same purposes, and subject to the same claims, for and to which the article sold would have been held and liable if it had remained unsold.

XIII. If no person interested in such Property shall appear and establish his claim thereto within Three Months after the publication of such particulars relating thereto as aforesaid, the Commissioner shall, on the expiration of such time, should all claims for salvage and other services be then paid off and liquidated, (but if not, immediately after the discharge of such claims,) deposit with the Receiver General of this Colony a copy, on oath, of the inventory of such Property, so to be taken and made as aforesaid; or if the same shall have been sold, an account of the sales and of all monies paid by the Commissioner for duties, charges, or expenses incurred in any way on account of such Property; and he shall thereupon pay over the balance of the proceeds of such sales, and deliver to the said Receiver General such part of said Property as shall in such case be remaining on hand, first deducting from such proceeds, and from the said Property, a reasonable sum, not exceeding five per cent, exclusive of disbursements and reasonable charges, to satisfy the said Commissioner for all claims he may have against such Property, or the proceeds thereof, for his services or otherwise. And in case any disagreement should arise between him and the Receiver General, in respect of said charges, the same shall be decided by three Arbitrators, one to be appointed by the Commissioner, another by the owner or his agent, and the third by the Receiver General; or, in case a Commissioner or owner, or his agent, shall neglect or refuse, or shall be absent, the Receiver General shall appoint an Arbitrator in his place.

XIV. If any such Commissioner shall, for the space of Thirty Days after the expiration of the said Three Months, limited in the last preceding Section, (should all claims for salvage and other services be paid off and liquidated, but if not, immediately after the discharge of such claim), neglect or refuse to render a copy of such inventory or account to the Receiver General, or to pay to him the balance of such proceeds, or to deliver to him any such Property remaining on hand, Her Majesty's Attorney General shall, at the instance of the Receiver General, prosecute, in Her Majesty's name, such Commissioner, for every such neglect or refusal, and recover from him the balance of such proceeds and such Property, or the value thereof, as he shall so retain in his hands after such time as aforesaid.

XV. If the balance of such proceeds, or of such Property as shall be so deposited in the hands of the Receiver General, as aforesaid, be not claimed by the owner thereof within Twelve Months after the same shall have been received by that officer, he shall immediately thereafter sell such Property at public sale; and after deducting all reasonable costs and charges from the proceeds thereof, pay over the balance, and such money as he shall have so received, as aforesaid, into the Treasury of the Colony, therein to remain until the same shall be claimed by the owner thereof, who, on proof of his right thereto before a Judge of the Supreme Court, shall, upon order of such Judge, receive such money or proceeds out of the Treasury.

XVI. When such Property shall be found in the water within Three Miles of the Coast of this Colony, or on any part of the shores thereof, and be detained by any person, not being the owner thereof or his agent, and such person shall refuse, on demand being made, to deliver up such Property to such Commissioner, in such case it shall be lawful for such Commissioner to apply to any Justice of the Peace in this Colony, who, upon an affidavit of such facts made before him, shall thereupon issue a warrant under his hand commanding a Constable of the District within which such Property shall be so detained, to seize and safely keep the same; which warrant the said Constable shall execute, and thereupon make a true inventory of the Property seized, and return such inventory to the said Justice; and which Property shall remain in the custody of the said Constable, to be disposed of according to the provisions of this Act.

XVII. Upon the said Constable making such return, the Justice shall summon the person from whom such Property was so taken, as aforesaid, to appear at a time and place to be mentioned in such summons; and if, upon appearing thereto, he shall claim such Property, or a lien thereon, in his own right, the Justice shall then, or upon some other day to be appointed by him for that purpose, consider such claim; and if the Property seized be proved to be that of such person, the Justice shall order the same to be returned to him, and in case the Justice shall certify that the Commissioner acted without reasonable or probable cause, that he be paid by the Commissioner such damages, costs and charges, as such Justice shall order in the premises; but should the Justice find by the evidence given before him that such Property was wrecked Property, found by such person, then the Justice shall adjudge to such person such salvage, costs and charges, as the Judge may deem reasonable; which salvage, costs and charges shall be paid by the said Commissioner out of the Property, which Property he shall dispose of in like manner as other Property coming into his possession under the provisions of this Act.

XVIII. Any judgment of a Justice given under this Act may be appealed from to any Superior Court of Record of this Colony, or to a Judge thereof, within Six Months from the giving of such judgment, in the same manner, as nearly as may be, and with the like power as provided in the Fourth Section of this Act.

XIX. If any proceedings under this Act shall be removed into, or be moved to be set aside by or be appealed from to any superior Court of Record, or a Judge of such Court, and they shall appear to have been in accordance with the justice of the case, the said Court shall confirm the same, notwithstanding the want of legal form therein, or may correct or amend the same, and give final judgment upon the merits, and shall wholly reverse the proceedings only for wilful and corrupt error, or excessive or insufficient award.

XX. All fines, penalties, or forfeitures imposed by this Act and not hereinbefore appropriated to any person, or for any purpose, shall be paid to Her Majesty for the use of the Colony, and sued for and recovered in any Court of Record therein, in Her Majesty's name.

XXI. In case any person convicted under any of the provisions of this Act shall make default in the due payment of such fine, penalty, or forfeiture, as shall or may be imposed on him, and shall have no property on which the same can be levied, he shall be committed to gaol for a period not exceeding Six Months, with or without hard labor.

XXII. The word "Property" used in the foregoing Sections of this Act, so far as the same are not repugnant to the context thereof, shall include and mean all wrecks of the sea, or any goods or chattels, jetsam, floatsam, lagan, or derelict, or any boat, vessel, apparel, anchor, cable, tackle, stores, or materials, or any goods, merchandize, or other article or thing whatsoever which shall have been found floating or sunk at sea, or elsewhere, in any tideway, shore, or coast of this Island, or cast, thrown, or stranded upon the shore or coast thereof, and whether the same be found above or below high water mark, and whether wholly in water or partly on land, or partly in the water.

XXIII. For the purposes of this Act the Consul, Vice-Consul, or Consular Agent, of the country of any foreign owner of property, shall, in case of the absence of the owner, or his agent, be deemed, ipso facto, the agent of such owner.

XXIV. This Act shall not be of any force or effect until Her Majesty's assent shall have been first given thereto.

Schedule referred to in the foregoing Act,

SCHEDULE [A.]

I, A. B., of _____ in the _____ District of the Island of Newfoundland, a Commissioner appointed for the said District, under and by virtue of an Act passed in the twenty-third year of Her Majesty's reign, entitled " An Act to Provide for the Protection of Property Wrecked on the Coast of Newfoundland," make oath and say, that I will honestly, diligently, and faithfully discharge the duties of such Commissioner, according to the provisions of that Act.

Sworn to at _____ in the District of _____ in the said Island, on the _____ day of _____ A.D.,
186____

before me, _____
Justice of Peace.

SCHEDULE [B.]

I, A.B., of _____ in the _____ District of the Island of Newfoundland, a Commissioner appointed for the said District, under and by virtue of an Act of the Legislature passed in the twenty- third year of the reign of Her Majesty, entitled “ An Act to Provide for the Protection of Property Wrecked on the coast of Newfoundland,” make oath and say, that the above and within is a just and true inventory of all and singular the goods, chattels, and property saved from the ship or vessel called the _____ recently wrecked at _____ and which have come to my hands or to my knowledge as such Commissioner, to be disposed of according to the said Act; and also a just and true account of the disbursements made on account of the said goods, chattels and property.

Sworn to at _____ in the District of _____ in the said Island, on the _____ day of _____ A.D.,
186__

Before me,
Justice of the Peace.