

WESTERN AUSTRALIA

ANNO QUINQUAGESIMO PRIMO

VICTORIÆ REGINÆ

No. 6

An Act to amend and extend 'The Inquiries into Wrecks
Ordinance, 1864.' [Assented to 4th August, 1887.

WHEREAS it is expedient further to amend 'The Inquiries into
Wrecks Ordinance, 1864;' and whereas it is expedient to
provide in certain cases for the holding of Inquiries into the wrecks of

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foreign ships, and to provide for the protection of foreign property wrecked upon the coasts : Be it therefore enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

1. That in this Act 'The Principal Act' shall mean 'The Inquiries into Wrecks Ordinance, 1864.' Definitions

- 'The Collector of Customs' shall include a Collector, Sub-Collector, or any Principal Officer of Customs in any port in the Colony.
- 'The Receiver of Wreck' shall mean the Collector of Customs as in this Act defined.
- 'A Nautical Assessor' shall mean a person of nautical skill and knowledge, sitting with the Principal Officer of Customs and Justice.
- 'Apparel' shall mean and include all the furniture, tackle, masts, rigging, and all things in or upon a vessel or ship other than the cargo.
- 'The Inquiry' shall mean the preliminary inquiry mentioned in the 1st section of the principal Act.
- 'The Accusation' shall mean the formal case setting forth the specific charges of incompetency or misconduct against any owner of a certificate of a master, mate, or engineer of a ship or vessel mentioned in the 1st section of the principal Act.
- 'The Investigation' shall mean the formal investigation mentioned in the 1st section of the principal Act.

2. Whereas the first section of the principal Act provides for three several steps or stages in procedure, namely, the Inquiry, the Accusation, and the Investigation, and it is expedient to explain and amend the said section in respect of all such three steps or stages : be it enacted:— Procedure

- (1) As to the Inquiry :
 - (a) That such Inquiry be compulsory on the Officer mentioned in the 1st section of the principal Act.
 - (b) That such Officer may require and request the assistance of any Justice of the Peace for the purpose of such Inquiry, and any Justice of the Peace so required and requested shall act with such Officer for such purpose.
 - (c) That should the said Officer and Justice agree that there is no case for an Investigation, all proceedings in the matter shall cease and determine.
- (2) As to the Accusation :
 - (d) That should the said Officer and Justice agree that there is a case for an Investigation, then the said Officer, with or without the assistance of the said Justice as to him the said Officer shall seem fit, shall draw up a formal case as in the 1st section of the principal Act provided.

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- (e) That should one of the said persons be of opinion that there is a case for an Investigation and the other be not of such opinion, then such one of them as is of such opinion shall draw up a formal case as in the 1st section of the principal Act provided.
- (3) As to the Investigation :
- (f) That in such last mentioned event a nautical assessor shall be called in, as in the 5th section of the principal Act provided, and if there be a difference of opinion between the said Officer and Justice as to the person to be so called in, the Governor shall appoint such person.

Such Officer and Justice, either at the Inquiry or at the Investigation, shall have power to examine any witness upon oath and they or either of them may administer the oaths necessary for that purpose.

Foreign ships

3. Whereas the provisions of the principal Act and of the Acts amending the same relate only to British or Colonial ships or vessels, be it enacted that all such provisions and the provisions of this Act shall apply to ships or vessels of any Foreign State or country in as full and ample a manner as they do to British or Colonial ships or vessels. Provided that, in case of collision or other injury occurring between two vessels or ships of Foreign States or countries, the provisions of those Acts and of this Act shall not apply unless such collision or injury occurred at a less distance than three miles from the coast line of this Colony. Provided also that, in the case of collision or other injury occurring between a British or Colonial ship or vessel and a Foreign ship or vessel, any Consul, Vice-Consul, or Consular representative of the Foreign State or country to which such Foreign ship or vessel belongs, if resident in this Colony, shall, if it be practicable, receive reasonable notice from the Principal Officer of Customs of the holding of the Investigation, and shall be entitled to be present thereat, and to call witnesses and to examine, cross-examine, and re-examine any witness by himself or by counsel. And provided also, that if at the Investigation the Court shall find that the master, mate, or engineer of any Foreign ship or vessel has been guilty of such misconduct or negligence that had he been the master, mate, or engineer of a British ship or vessel they would have cancelled or suspended the certificate of such master, mate, or engineer in accordance with the provisions of the fourth section of the principal Act, then in that case such Court shall report such finding to the nearest Consul, Vice-Consul, or Consular Agent of the country or State to which such ship or vessel belongs who shall be resident in this Colony, or, if there be no such person so resident, then to any such person resident in any Australian Colony.

All the provisions of this or any other Act, or of any Ordinance relating to the protection or preservation of, or otherwise dealing with wreck or wreckage, shall apply to the case of a ship or vessel belonging to any Foreign State or country.

4. The provisions of this Act relating to the protection or preservation of wreck or wreckage shall be in addition to and not in derogation

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from any powers possessed by the Harbour Master under the fifth section of 37th Victoria, No. 14, or otherwise.

5. The Collector of Customs is and shall be the Receiver of Wreck, and shall, as such, exercise the powers and perform the duties hereinafter mentioned.

6. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the Colony, the Receiver at the port at which or nearest to which such place is situate shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding Fifty pounds; but it shall not be lawful for such Receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Duty of receiver when any ship is stranded or in distress

7. The Receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo, and apparel, do the following things (that is to say)—

Powers of receiver in case of such accident to any ship or boat

- (1) Summon such number of men as he thinks necessary to assist him :
- (2) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship, or boats as may be in his power :
- (3) Demand the use of any waggon, cart, or horses that may be near at hand :

And any person refusing without reasonable cause to comply with any summons, requisition, or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding One hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart, or horses by reason of the user of the same under this section.

8. All cargo and other articles belonging to such ship or boat as aforesaid, that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the Receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the Receiver or to any person authorised by him to demand the same, shall incur a penalty not exceeding One hundred pounds; and it shall be lawful for such Receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

All articles washed on shore, or lost, or taken from any ship or boat to be delivered to the receiver

9. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder, or obstructs the preservation of such ship, boat, lives, or cargo as aforesaid, it shall be lawful for the Receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder, or

Power of receiver to suppress plunder and disorder by force

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obstruction as aforesaid, with power to command all Her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed, or hurt by reason of his resisting the Receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such Receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, Her Heirs and Successors, as against all persons so killed, maimed, or hurt.

Certain officers
to exercise
powers of
receiver in his
absence

10. During the absence of the Receiver from the place where any such accident as aforesaid occurs, or in places where there is no Receiver the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any Principal Officer of Customs, or Officer of Inland Revenue, or any Justice of the Peace, may do all matters and things hereby authorised to be done by the Receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the Receiver is hereinbefore required, any officer so acting shall be considered as the agent of the Receiver, and shall place the same in the custody of the Receiver; and no person so acting as substitute for any Receiver shall be entitled to any fees payable to Receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

Power in case of
a ship being in
distress to pass
over adjoining
lands with
carriages

11. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo, or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

Penalty on
owners and oc-
cupiers of land
refusing to allow
carriages, &c., to
pass over their
land

12. If the owner or occupier of any land over which any person is hereby authorised to pass or repass for any of the purposes hereinbefore mentioned does any of the following things (that is to say)—

- (1) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses, and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however;
- (2) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned
- (3) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit;

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he shall for every such offence incur a penalty not exceeding One hundred pounds.

13. The following rules shall be observed by any person finding or taking possession of wreck or wreckage within the Colony (that is to say)—

Rules to be observed by person finding wreck

- (1) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to any Receiver in the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished :
- (2) If any person not being the owner finds or takes possession of any wreck or wreckage, he shall as soon as possible deliver the same to such Receiver as aforesaid :

Any any person making default in obeying the provisions of this section shall incur the following penalties (that is to say)—

- (3) If he is the owner and makes default in performing the several things, the performance of which is hereby imposed on an owner,

He shall incur a penalty not exceeding One hundred pounds :

- (4) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage ;

He shall pay to the owner of such wreck or wreckage, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck or wreckage, double the value of such wreck or wreckage (such value to be recovered in the same way as a penalty of like amount) ; and

He shall incur a penalty not exceeding One hundred pounds.

14. If any Receiver suspects or receives information that any wreck or wreckage is secreted or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any Justice of the Peace for a warrant, and such Justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the Receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain any such wreck as aforesaid there found ; and if any such seizure is made in consequence of information that may have been given by any person to the Receiver, the informer shall be entitled by way of salvage to such sum (not exceeding in any case Five pounds) as the Receiver may allow. Provided always, that if the Receiver be a Justice of the Peace, he shall apply to some other Justice.

Power for receivers to seize concealed wreck

15. Every Receiver shall within forty-eight hours after taking possession of any wreck or wreckage cause to be posted up in the Custom House of the port nearest to the place where such wreck or

Notice of wreck to be given by receiver

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wreckage was found or seized a description of the same and of any marks by which it is distinguished.

Goods deemed
perishable or of
small value may
be sold im-
mediately

16. In cases where any wreck or wreckage in the custody of any Receiver is under the value of 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 warehousing, the Receiver may sell the same before the expiration of the period hereinafter mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the Receiver 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.

Payments to be
made to receiver

17. There shall be paid to any Receiver the expenses properly incurred by him in the performance of his duties, and also, should any wreckage be taken into his custody, a fee of five per centum on the value thereof, such percentage in no case exceeding the sum of Twenty pounds; and a Receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and such fee as a salvor has or is entitled to in respect of salvage due to him.

Disputes as to
sums payable to
receiver to be
determined by
the Governor in
Council

18. Whenever any dispute arises as to the amount payable to any Receiver in respect of expenses or fees, such dispute shall be determined by the Governor in Council, whose decisions shall be final.

Application of
fees

19. All fees received by any Receiver appointed under this Act, in respect of any services performed by him as Receiver, shall be paid to the Colonial Treasurer for the purposes of the Government of the Colony.

Salvage in re-
spect of services
rendered in the
Colony

20. In the following cases (that is to say)—

Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the Colony, and services are rendered by any person,

- (1) In assisting such ship or boat;
- (2) In saving the lives of the persons belonging to such ship or boat;
- (3) In saving the cargo or apparel of such ship or boat, or any portion thereof;

And whenever any wreck is saved by any person other than a Receiver within the Colony;

There shall be payable by the owners of such ship or boat, cargo, apparel, or wreck, to the person by whom such services or any of them are rendered or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Disputes as to
salvage how to
be settled

21. Whenever any dispute arises between the owners of any such ship, boat, cargo, apparel, or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

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Then, if the sum claimed does not exceed Two hundred pounds,
Such dispute shall be referred to the arbitration of any two
Justices of the Peace resident as follows (that is to say)—

In case of wreck, resident at or near the place where
such wreck is found :

In case of services rendered to any ship or boat,
or to the persons, cargo, or apparel belonging
thereto, resident at or near the place where such
ship or boat is lying, or at or near the first port
or place in the colony into which such ship or
boat is brought after the occurrence of the
accident by reason whereof the claim to salvage
arises ;

But if the sum claimed exceeds Two hundred pounds,

Such dispute may, with the consent of the parties,
be referred to the arbitration of such Justices
as aforesaid, but if they do not consent shall
be decided by any person appointed by the
Governor for that purpose, who shall have all the
powers of a Special Referee within the meaning
of 'The Supreme Court Act, 1880,' and his
award shall be dealt with in all respects by the
Supreme Court as if he had been appointed
Special Referee by the Supreme Court under
the provisions of the said Act.

And every dispute with respect to salvage may be heard and
adjudicated upon on the application either of the salvor or of the
owner of the property salvaged, or of their respective agents.

22. Whenever in pursuance of this Act any dispute as to salvage is
referred to the arbitration of two Justices, they may either themselves
determine the same, with power to call to their assistance any person
conversant with maritime affairs as assessor, or they may if a difference
of opinion arises between them, or without such difference, if they think
fit, appoint some person conversant with maritime affairs as umpire
to decide the point in dispute.

Manner in which
Justices may
decide disputes

23. The said Justices or their umpire may call for the production
of any documents in the possession or power of either party, which
they or he may think necessary for determining the question in dispute,
and may examine the parties or their witnesses on oath, and administer
the oaths necessary for that purpose.

Justices may call
for documents
and administer
oaths

24. This Act shall be read and construed together with the principal
Act and any Act or Ordinance amending the same.

Construction

25. This Act may be cited as 'The Wreck Act, 1887.'

Short title

F. NAPIER BROOME,
GOVERNOR.