

THE WRECK AND SALVAGE ORDINANCE OF 1902.⁽¹⁾

No. 8 of 1902.

An Ordinance respecting Wrecks and Salvage.

BE it enacted by the Administrator of British New Guinea with the advice and consent of the Legislative Council thereof as follows:—

1. The Treasurer shall have the general superintendence of all matters relating to wreck and he may with the consent of the Administrator appoint any person to be a Receiver of Wreck. All resident magistrates and sub-collectors of Customs shall be *ex officio* Receivers of Wreck.

Receivers of Wreck.

2. When any vessel is wrecked stranded or in distress at any place on or near the shore of the sea or of any tidal waters within the limits of the Possession a Receiver shall forthwith proceed to such place and upon his arrival there take the command of all persons present and assign such duties to each person and issue such directions as he thinks fit with a view to the preservation of such vessel her cargo and apparel and of the lives of the persons on her and if any person wilfully disobeys such directions he shall be guilty of an offence against this Ordinance. But the Receiver shall not interfere between the master of such vessel 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 vessel in distress.

3. A Receiver may with a view to the preservation of any aforesaid vessel her cargo and apparel and the persons on her do the following things:—

Penalty for disobeying Receiver.

Powers of Receiver when endeavouring to preserve vessel &c.

(a) summon such number of men as he thinks necessary to assist him;

(1) Particulars of this Ordinance are as follows:—

Date of assent by Administrator.	Date on which published in British N.G. Govt. Gaz.	Date on which took effect.
15.12.1902	20.12.1902	20.12.1902 (Supplement to British N.G. Govt. Gaz. of 20.12.1902)

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- (b) require the master or other person having the charge of any vessel near at hand to give such aid with his men vessel or boats as may be in his power;
- (c) demand the use of any vehicle or beast of burden that may be near at hand

Penalty for refusing to comply with demands of Receiver.

and any person refusing without reasonable cause to comply with any summons requisition or demand so made shall be guilty of an offence against this Ordinance.

Articles separated from vessel to be delivered to Receiver.

4. All cargo and other articles belonging to a vessel aforesaid that are washed on shore or otherwise separated from or taken from such vessel must be delivered to a 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 a Receiver or to any person authorized by a Receiver to demand the same shall be guilty of an offence against this Ordinance. 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.

Receiver may suppress plundering or disorder by force.

5. Whenever any vessel is wrecked stranded or in distress as aforesaid and any person plunders or creates disorder or obstructs the preservation of such vessel lives cargo or other articles as aforesaid a Receiver may cause such person to be apprehended and may use force for the suppression of any such plundering disorder or obstruction and may command all His 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 committed to him or any person acting under the Receiver's orders such Receiver or other person shall be free and fully indemnified as well against the King's Majesty his heirs and successors as against all persons so killed maimed or hurt.

Persons assisting vessel may pass over or deposit articles on any lands.

6. For the purpose of rendering assistance to a vessel wrecked stranded or in distress as aforesaid or saving the lives of the persons on board the same or the cargo or apparel thereof any person may unless there is some public road equally convenient pass and repass either with or without vehicles or beasts of burden over any lands without being subject to interruption by the owner or occupier but doing as little damage as possible and may in likewise deposit on such lands any human being or cargo or other article recovered from such vessel and all damages that may be sustained by any owner or occupier of such land through the use of such land as aforesaid shall be a charge against the vessel cargo or articles in respect of or by which such damage was occasioned and shall in default of payment be recovered in the same manner as salvage is hereby made recoverable and the amount payable in respect thereof if disputed

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shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

7. If the owner or occupier of any land does any of the following things:—

- (1) impedes or hinders any such person aforesaid from so passing or repassing with or without vehicles beasts of burden and servants over such land by locking his gates or refusing upon request to open the same or otherwise;
- (2) impedes or hinders the deposit on such land of any person or article recovered from any such vessel aforesaid;
- (3) prevents such articles from remaining so deposited for a reasonable time until the same can be removed to a safe place of public deposit

Penalty on owners and occupiers of land for obstructing the using of such land.

he shall be guilty of an offence against this Ordinance.

8. Any Receiver or in his absence any justice of the peace shall as soon as conveniently may be examine upon oath any person belonging to any vessel which may be or may have been wrecked stranded or in distress on the coasts of the Possession or any other person as to the following matters:—

Receiver or justice to inquire into distressed vessels or boats.

- (1) the name and description of the vessel;
- (2) the name of the master and of the owners;
- (3) the names of the owners of the cargo;
- (4) the ports or places from and to which the vessel was bound;
- (5) the occasion of the distress of the vessel;
- (6) the services rendered;
- (7) such other matters or circumstances relating to such vessel or to the cargo on board the same as the Receiver or justice thinks necessary.

And such Receiver or justice shall take the examination down in writing and make two copies thereof one of which he shall send to the Treasurer and the other to Lloyd's agent in the Possession.

Examination to be taken down in writing.

9. Any examination so taken in writing as aforesaid or a copy thereof purporting to be certified under the hand of the Receiver or justice before whom such examination was taken shall be admitted in evidence in any court of justice or before any person having by law or by consent of parties power to hear receive and examine evidence as *prima facie* proof of all matters contained in such written examination.

Original or certified copy of examination to be *prima facie* evidence.

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Rules to be observed by persons finding wreck.

10. The following rules shall be observed by any person finding or taking possession of wreck within the limits of the Possession :—

- (1) if the person so finding or taking possession of the same is the owner he shall as soon as possible give notice to a Receiver 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 he shall as soon as possible deliver the same to a Receiver.

Penalties for default.

Any person making default in obeying the provisions of this section shall be guilty of an offence against this Ordinance and shall in addition if he is not the owner forfeit all claim to salvage in respect of such wreck and pay to the owner of such wreck if the wreck is claimed but if the wreck is unclaimed then to whoever may be entitled to such unclaimed wreck double the value of such wreck which double value may be recovered in a summary manner in the same way as a penalty may be.

Houses &c. may be searched for concealed wreck.

11. If any Receiver suspects or receives information that any wreck is secreted or is in the possession of some person who is not the owner thereof or is otherwise being improperly dealt with he may enter into any house or other place wherever situate and also into any vessel and search for and 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.

Receiver to post up description of wreck &c.

12. Every Receiver shall as soon as possible after taking possession of any wreck cause to be posted up in the Custom House of the port nearest to where such wreck was found or seized a description of the same and of any marks by which it is distinguished and shall forward a copy thereof to the Treasurer and to Lloyd's agent in the Possession.

Certain wreck may be sold at any time.

13. In cases where any wreck in the custody of any Receiver is under the value of Five pounds or is of such a nature or in such a state that it will in his opinion be disadvantageous to keep the same the Receiver may sell the same at any time and the money raised by such sale shall after defraying thereout the expenses of such sale be held by the Receiver for the same purposes and subject to the same claim for and to which the article sold would have been held and liable if it had remained unsold.

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14. There shall be paid to all Receivers the expenses properly incurred by them in the performance of their duties and also in respect of the several matters specified in the schedule hereto such fees not exceeding the amounts therein mentioned as may from time to time be directed by the Administrator and every Receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him but save as aforesaid no Receiver shall as such be entitled to any remuneration whatsoever.

Fees and expenses of Receivers and the recovery thereof.

15. Whenever any dispute arises as to the amount payable to any Receiver in respect of expenses or fees such disputes shall be determined by the Treasurer whose decision shall be final.

Treasurer to determine disputes about fees or expenses of Receiver.

16. All fees received by any Receiver in respect of any services performed by him as Receiver shall be paid into the Treasury to a separate account and the moneys arising therefrom shall be applied in defraying any expenses duly incurred in carrying into effect the purposes of this Ordinance in such manner as the Administrator in Council shall direct.

Fees of Receiver to be paid to separate account in Treasury.

17. When any vessel is wrecked stranded or in distress on the shore of any sea or tidal waters within the limits of the Possession and services are rendered by any person—

Payments to salvors for services rendered.

- (1) in assisting such vessel;
- (2) in saving the lives of the persons belonging to such vessel;
- (3) in saving the cargo or apparel of such vessel or any portion thereof;

and also when any wreck is saved within the limits of the Possession by any person other than a Receiver—

there shall be payable by the owners of such vessel 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 to be determined in case of dispute in manner hereinafter mentioned.

18. Salvage in respect of the preservation of the lives of any persons belonging to any such vessel as aforesaid shall be payable by the owners of the vessel in priority to all other claims for salvage and in cases where such vessel is destroyed or where the value thereof is insufficient after payment of the actual expenses incurred to pay the amount of salvage due in respect of any lives the Administrator in Council may award to the salvors of such lives

Salvage of life to take priority.

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out of the Treasury such sums as he deems fit in whole or in part satisfaction of any salvage so left unpaid in respect of such lives.

Action for salvage may be brought in courts of petty sessions.

19. An action for salvage when the claim does not exceed Fifty pounds may be brought by any person or any persons jointly claiming such salvage against any persons liable to pay the same in the court of petty sessions in its small debts jurisdiction. Such action may be brought in any court aforesaid in which it would be competent to bring it if the claim were a debt contracted at the spot where the services for which the salvage is claimed were rendered or it may be brought in the court aforesaid for the Customs port of entry that is nearest to such spot.

Where the claim exceeds Fifty pounds the action must be brought in the Central Court.⁽²⁾

Action to fix and award salvage may be brought by salvors or by owners of property saved.

20. An action to fix and award salvage may be brought by all or any persons claiming salvage in connection with any vessel in distress against all or any persons liable to pay any portion of such salvage or such action may be brought by all or any persons liable to pay any portion of such salvage against all or any persons claiming any such salvage. The court may at any stage order that any person shall be made a party to such action.

The judgment in any such action shall fix and award the exact sum (if any) due to each claimant of salvage being a party to such action and shall determine what person or persons parties to such action are liable to pay such sum and shall determine what costs are to be paid by or to any party to such action. In determining who shall pay any costs the court shall not be bound by any rule and may exercise full discretion.

Any person who has by such judgment been awarded any sum as salvage or as costs may issue execution on such judgment for the amount due to him against any person liable under such judgment to pay such amount to him.

Any two or more persons who have by such judgment been awarded any sum or sums as salvage or as costs may join in issuing an execution against any person liable to pay the total amount of such sums or a portion of such total amount for such amount or for such portion thereof as the case may be.

Action may be brought in court of petty sessions if claims do not exceed £100.

An action under this section may be brought in any court of petty sessions in its small debts jurisdiction that could adjudicate in any action mentioned in the last preceding section provided the

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

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total claims for salvage included in an action under this section do not exceed One hundred pounds.

Where the total claims aforesaid exceed One hundred pounds the action must be brought in the Central Court.⁽²⁾

21. In an action under Sections 19 or 20 hereof a court of petty sessions may call in a person conversant with maritime affairs to assist the court with his advice. Such assistant shall be paid a fee to be fixed by the court but not to exceed Two pounds a day. Such fees shall in the first instance be paid by the plaintiff and shall for the purposes of costs be deemed court fees.

Courts of petty sessions may call in a maritime assessor.

22. When any salvage is due to any person under this Ordinance the Receiver shall act as follows:—

Receiver may detain property to satisfy salvage due in respect thereof.

- (1) if the same is due in respect of services rendered in assisting any vessel or in saving the life of any person belonging to the same or the cargo or apparel thereof he shall detain such vessel and the cargo and apparel belonging thereto until payment is made or until such vessel her cargo and apparel have been seized under process issued by some competent court;
- (2) if the same is due in respect of the saving of any wreck and such wreck is not sold under any of the provisions herein contained he shall detain such wreck until payment is made or until the same has been seized under process as aforesaid.

But it shall be lawful for the Receiver at any time before seizure under process as last aforesaid to release from his custody any vessel cargo apparel or wreck so detained by him as aforesaid upon security being given to his satisfaction for the amount of all salvage fees duties and expenses claimed in respect thereof.

23. Whenever any vessel cargo apparel or wreck is detained by any Receiver for non-payment of any salvage so due as aforesaid and the amount of such salvage is not disputed and the parties liable to pay the same are aware of such detention and payment of such salvage is not made within twenty days after the same has become due then the Receiver may forthwith sell such vessel cargo apparel or wreck or a sufficient part thereof and out of the proceeds of the sale after payment of all expenses thereof defray all sums of money due in respect of expenses fees and salvage and Customs duties and pay the surplus (if any) to the owners of the property sold or other the parties entitled to receive the same.

Receiver may sell property in case of non-payment of salvage.

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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Subject to payment of moneys due owner entitled to wreck if he claims within a year.

24. Subject to the payment of such expenses fees salvage and Customs duties as aforesaid the owner of any wreck who establishes his claim thereto to the satisfaction of the Receiver within one year from the date at which such wreck has come into the possession of the Receiver shall be entitled to have the same delivered up to him.

Receiver may sell wreck not claimed within a year.

25. If no owner establishes his claim to wreck before the expiration of a year from the date at which the same has come into the possession of a Receiver such Receiver shall thereupon sell the same and after payment of all expenses attending such sale and deducting therefrom his fees and all expenses incurred by him and Customs duties and paying to all salvors of such wreck the amounts due to them for salvage pay the balance into the Treasury which moneys shall be carried to and form part of the General Revenue of the Possession.

Manner of sale of wreck.

26. A Receiver may sell wreck by public auction or by calling for tenders for the same or subject to the approval of the Treasurer by private bargain.

Offences in respect of vessels or boats in distress.

27. Every person who does any of the following acts:—

- (1) wrongfully carries away or removes any part of any vessel wrecked stranded or in distress on or near the shore of any sea or tidal water within the jurisdiction of the Possession or any part of the cargo or apparel thereof or any part of any wreck; or
- (2) endeavours in any way to impede or hinder the saving of such vessel cargo apparel or wreck; or
- (3) secretes any wreck or obliterates or defaces any marks thereon; or
- (4) who not being a Receiver or not acting under the orders of a Receiver endeavours against the will of the master of any such vessel to board any such vessel

shall in addition to any other penalty or punishment he may be liable to under this or any other Ordinance or law be guilty of an offence against this Ordinance.

Wrecked imported goods to be liable to duty.

28. All wreck being goods from abroad brought or coming into the Possession shall be subject to the same duties as if they were imported into the Possession and if any question arises as to whence such goods have come they shall be deemed to have come from such country as the Collector or Sub-Collector of Customs may determine.

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29. The Collector or Sub-Collector of Customs may permit any goods wares or merchandise saved from any inward-bound vessel wrecked or stranded as aforesaid to be forwarded to the port of its original destination and any goods wares or merchandise saved from any vessel wrecked stranded⁽³⁾ on its outward voyage to be returned to the port at which the same were shipped but such officer of Customs shall take such steps as he may deem expedient for the due protection of the revenue in respect of such goods wares or merchandise.

Goods saved from ships in distress may be forwarded or returned to port of destination or of shipment.

30. Any person who is guilty of an offence against this Ordinance shall be liable on conviction to a fine not exceeding One hundred pounds and in default of payment shall be liable to be imprisoned with or without hard labour for a period not exceeding six months.

Penalty for an offence against this Ordinance.

31. In this Ordinance unless the text otherwise requires—

Meaning of certain terms.

- (1) the expression "wreck" includes jetsam flotsam lagan and derelict found on the shores of the sea or of any tidal water;
- (2) the expression "salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services;
- (3) the expression "vessel" includes any ship or boat or any other description of vessel used in navigation.

32. This Ordinance may be cited for all purposes as *The Wreck and Salvage Ordinance of 1902.*⁽¹⁾

Short title.

SCHEDULE.

FEES AND REMUNERATION OF RECEIVERS.

£ s. d.

For every examination instituted by a Receiver with respect to any vessel or boat which may be or may have been in distress a fee not exceeding	1 0 0
But so that in no case shall a larger fee than Two pounds be charged for examinations taken in respect of the same vessel and the same occurrence whatever may be the number of deponents.	
For every report required to be sent and actually sent by the Receiver to Lloyd's agent in the Possession	0 10 0

(1) See footnote (1) printed on p. 4161.

(3) The words "wrecked stranded" appeared in the original Ordinance. *Semble*, "wrecked or stranded" was intended.

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For wreck taken by the Receiver into his custody a percentage of five per cent. upon the value thereof.

But so that in no case shall the whole amount of percentage so payable exceed Twenty pounds.

In cases where any services are rendered by a Receiver in respect of any vessel or boat in distress not being wreck or in respect of the cargo or other articles belonging thereto the following fees instead of the above percentage that is to say—

If such vessel with her cargo exceeds in value Six hundred pounds the sum of Two pounds for the first and the sum of One pound for every subsequent day during which the Receiver is employed on such service but if such vessel with her cargo does not exceed Six hundred pounds in value one moiety of the above sums.