

Wreck and Salvage Act [Cap 198]

LAWS OF FIJI

[Ed. 1978]

CHAPTER 198

WRECK AND SALVAGE ACT

ARRANGEMENT OF SECTIONS

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WRECK AND SALVAGE

Ordinances Nos. 1 of 1887, 21 of 1887, 4 of 1924, 2 of 1945, 37 of 1966.

AN ACT RESPECTING WRECKS AND SALVAGE

[17th January, 1887.]

Short title

1. This Act may be cited as the Wreck and Salvage Act.

Interpretation

2. In this Act, unless the context otherwise requires-

"Comptroller" means the Comptroller of Customs and Excise;

"wreck" includes jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water;

"salvage" includes all expenses properly incurred by the salvor in the performance of the salvage services.

(Inserted by 4 of 1924, s. 16.)

Superintendence

3.-(1) Throughout Fiji the Chief Accountant shall have the general superintendence of all

matters relating to wreck and he or the Comptroller may appoint any person to act for a receiver of wreck for the time being in any Division and to perform such duties for a receiver of wreck as are hereinafter mentioned.

Receivers

(2) The following persons shall be *ex officio* receivers of wreck: - the Comptroller or any principal officer of Customs; in the absence of the foregoing, any commissioned officer on full pay in the naval service of Her Majesty or a district officer of the Division in which the wreck occurs may do anything authorised to be done by a receiver.

(3) An officer acting under this section for a receiver shall, with respect to any goods or articles belonging to a vessel the delivery of which to a receiver is required by this Act, be considered as the agent of the receiver and shall place the same in the custody of the receiver, but he shall not 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.

(Section substituted by 4 of 1924, s. 16.)

Duty of receiver when any ship is stranded or in distress

4. When any ship or boat is wrecked, stranded or in distress at any place on or near the shore of the sea or of any tidal water within the limits of Fiji, the receiver shall, upon being made acquainted with such accident, 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 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 be liable to a fine not exceeding one hundred dollars, but such receiver shall not 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.

(Amended by 2 of 1945, s. 20.)

Powers of receiver in preserving vessel, etc.

5. The receiver may with a view to such preservation of the ship or boat, persons, cargo and apparel-

- (a) summon such number of men as he thinks necessary to assist him;
- (b) 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;
- (c) demand the use of any vehicle 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 be liable to a fine not exceeding two hundred dollars.

(Amended by 2 of 1945, s. 20.)

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

6. 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 must 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 be liable to a fine not exceeding two hundred dollars, 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.

(Amended by 2 of 1945, s. 20.)

Power of receiver to suppress blundering and disorder by force

7. 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, cargo or other articles as aforesaid, the receiver shall cause such person to be apprehended and may use force for the suppression of any such plundering, disorder or obstruction as aforesaid, and may comand [sic] 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 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.

In rendering assistance to ship persons may pass through private lands and deposit thereon cargo saved

8. For the purpose of rendering assistance to such ship or boat or saving the lives of the shipwrecked persons 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 horses over any adjoining lands without being subject to interruption by the owner or occupier, doing 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 recovered 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 the case of dispute directed to be determined.

Penalty on owners and occupiers preventing persons passing over lands adjoining wreck, etc.

9. If the owner or occupier of any land over which any person is hereby authorised to pass or repass for any of the purposes before mentioned-

- (a) impedes or hinders any such person from so passing or repassing with or without vehicles, horses and servants by locking his gates, refusing upon request to open the same or otherwise howsoever; or
- (b) impedes or hinders the deposit on the land of any cargo or other article recovered from any such ship or boat as before mentioned; or
- (c) 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,

he shall for every such offence be liable to a fine not exceeding two hundred dollars.

Receiver or justice of peace shall examine persons belonging to distressed ship

10. Any receiver or in his absence any justice of the peace shall be soon as conveniently may be examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of Fiji or any other person who may be able to give any account thereof or of the cargo or stores thereof as to-

- (a) the name and description of the ship;
- (b) the name of the master and of the owners;
- (c) the names of the owners of the cargo;
- (d) the ports or places from and to which the ship was bound;
- (e) the occasion of the distress of the ship;
- (f) the services rendered;
- (g) such other matters or circumstances relating to such ship 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 he shall send to the Comptroller and the other to Lloyd's agent in Fiji.

Rules to be observed by persons finding wreck

11. The following rules shall be observed by any person finding or taking possession of wreck within Fiji:-

(a) if the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the Division 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 recognised;

(b) if any person not being the owner finds or takes possession of any wreck he shall as soon as possible deliver the same to such receiver as aforesaid;

and any person making default in obeying the provisions of this section shall be liable to the following penalties:-

(i) if he is the owner and makes default in performing the several things the performance of which is hereby imposed on the owner, he shall be liable to a fine not exceeding two hundred dollars;

(ii) if he is not the owner and makes default in performing the performance of which is hereby imposed on any person not being an owner, he shall forfeit all claim to salvage and shall pay to the owner of such wreck if the same is claimed but if the same is unclaimed then to the person entitled to such unclaimed wreck double the value of such wreck (to be recovered in the same way as fine of like amount) and shall be liable to a fine not exceeding two hundred dollars.

House, boat, etc., may be searched under warrant

12. If any receiver suspects or receives information that any wreck 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 magistrate for a warrant and such magistrate has 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 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 ten dollars as the Comptroller may allow.

Receiver to post in customhouse description of wreck and to send copy to Lloyd's agent

13. 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 Comptroller and to Lloyd's agent in Fiji.

Wreck under value of \$10 or of perishable nature, etc., may be sold immediately

14. In cases where any wreck in the custody of any receiver is under the value of ten dollars 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 at any time, 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.

(Amended by 4 of 1924, s. 16.)

Remuneration to receivers

15. There shall be paid to all receivers appointed under this Act the expenses properly incurred by them in the performance of their duties and also in respect of the several matters specified in the Schedule such fees not exceeding the amounts therein mentioned as may from time to time be directed by the Minister, 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 appointed under this Act shall as such be entitled to any remuneration whatsoever.

Chief Accountant to determine disputes

16. Whenever any dispute arises in any part of Fiji as to the amount payable to any receiver in respect of expenses or fees such dispute shall be determined by the Chief Accountant whose decision shall be final.

Fees paid to Consolidated Fund

17. All fees received by any receiver in respect of any services performed by him as receiver shall be paid into the Consolidated Fund.

(Substituted by 4 of 1924, s. 16.)

Payments to salvors for services rendered

18. When-

(a) any ship or boat is stranded or wrecked or otherwise in distress on or near the shore of any sea or tidal water within the limits of Fiji and services are rendered by any person-

(i) in assisting such ship or boat; or

(ii) in saving the lives of the persons belonging to such ship or boat; or

(iii) saving the cargo or apparel of such ship or boat or any portion thereof; and

(b) when any wreck is saved by any person other than a receiver within Fiji, 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 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.

Salvage of life to have priority of payment

19. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage, and in cases where such ship or boat 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 life or lives the Minister may award to the salvors of such life or lives out of the Consolidated Fund such sum or sums as he deems fit in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

Settlement of disputes between owners and salvors

20. 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, then, if the sum claimed does not exceed one hundred dollars such dispute shall, in case of wreck, be referred to the arbitration of the magistrate resident nearest to the place where such wreck is found and, in case of services rendered to any ship or boat or to the persons, cargo or apparel belonging thereto, to the magistrate resident nearest to the place where such ship or boat is lying or at the first port in Fiji into which such ship or boat is brought after the occurrence by reason whereof the claim to salvage arises; but if the sum claimed exceeds one hundred dollars such dispute shall be decided by the Supreme Court in its admiralty jurisdiction subject to this proviso that if the claimants in such dispute do not recover in such court a greater sum than one hundred dollars they shall not, unless the court certifies that the case is a fit one to be tried in a superior court, recover any costs, charges or expenses incurred by them in the prosecution of their claim. 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.

(Amended by 2 of 1945, s. 20.)

Magistrate may determine dispute as to salvage referred to his arbitration

21. Whenever in pursuance of this Act any dispute as to salvage is referred to the arbitration of a magistrate he may determine the same with power to call to his assistance any person conversant with maritime affairs as assessor.

(Amended by 2 of 1945, s. 20.)

Payment to assessor

22. There shall be paid to every assessor who may be so appointed as aforesaid in respect of his services any sum not exceeding four dollars per diem as the magistrate may allow, and all the costs of such hearing including any such payments as aforesaid shall be fixed by the magistrate and be paid by the parties to the dispute in such manner and in such shares and proportion as the said magistrate shall direct by his award.

(Amended by 2 of 1945, s. 20.)

Magistrate may call for documents and examine witnesses on oath

23. The said magistrate may call for the production of any documents in the possession or power of either party which 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.

(Amended by 2 of 1945, s.20.)

Appeal against decision of magistrate

24. If any person is aggrieved by the award made by such magistrate as aforesaid he may appeal to the Supreme Court in its admiralty jurisdiction but no such appeal shall be allowed unless the sum in dispute exceeds forty dollars nor unless within ten days after the date of the award the appellant gives notice to the magistrate to whom the matter was referred of his intention to appeal nor unless the appellant proceeds to take out a monition or to take such other proceeding as according to the practice of the Supreme Court in its admiralty jurisdiction is necessary for the institution of an appeal within twenty days from the date of the award.

(Amended by 2 of 1945, s. 20.)

In case of appeal magistrate to transmit copy of proceedings and certificate of value

25. When an appeal is made in manner before provided the magistrate shall transmit to the proper officer of the Supreme Court a copy certified under his hand to be a true copy of the proceedings had before him and of the award so made by him accompanied with his certificate in writing of the gross value of the article respecting which salvage is claimed, and such copy and certificate shall be admitted as evidence in the case.

(Amended by 2 of 1945, s. 20.)

*In case of disputes as to apportionment of salvage under \$100 sum may be paid to
magistrate*

26. When the aggregate amount of salvage payable in respect of salvage services rendered in Fiji has been finally ascertained either by agreement or by the award of such magistrate, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed one hundred dollars, it shall be lawful for the party liable to pay the amount so ascertained to him and, if the magistrate for liberty to pay the amount so ascertained to him and, if the magistrate thinks fit, he may receive the same accordingly and grant a certificate under his hand stating the fact of such payment and the services in respect of which it is made, and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given and to their ship, boats, cargo, apparel and effects against the claims of all persons whomsoever in respect of the services therein mentioned, but if the amount exceeds one hundred dollars it shall be apportioned in manner hereinafter mentioned.

(Amended by 2 of 1945, s.20.)

Magistrate finally to apportion salvage in dispute

27. Upon the receipt of any such amount the magistrate shall with all convenient speed proceed to distribute the same among the several persons entitled thereto upon such evidence and in such shares and proportions as he thinks fit with power to retain any moneys that may appear to him to be payable to any absent parties but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the moneys so distributed.

(Amended by 2 of 1945, s. 20.)

Manner of enforcing payment of salvage

28. When any salvage is due to any person under this Act, the receiver shall act as follows:-

(a) if the same is due in respect of services rendered in assisting any ship or boat or in saving the lives of persons belonging to the same or the cargo or apparel thereof, he shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made or process has been issued by some competent court for the detention of such ship, boat, cargo or apparel;

(b) if the same is due in respect of the savings of any wreck and such wreck is not sold as unclaimed in pursuance of the provisions hereinafter contained, he shall detain such wreck until payment is made or process has been issued in manner aforesaid.

But it shall be lawful for the receiver if, at any time previously to the issue of such process, security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel or wreck so detained by him as aforesaid and, in cases where the claim for salvage exceeds one hundred dollars, it shall be lawful for the Supreme Court in its admiralty jurisdiction to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties, and in all cases where bond or other security is given to the receiver for an amount exceeding one hundred dollars it shall be lawful for the salvor or for the owner of the property salvaged or their representative agents to institute proceedings in such last-mentioned court for the purpose of having the questions arising between them adjudicated upon, and the said court may enforce payment of the said bond or other security in the same manner as if the bail had been given in the said court.

Power of receiver to sell property salvaged in cases of non-payment

29. Whenever any ship, boat, cargo, apparel or wreck is detained by any receiver for non-payment of any sums so due as aforesaid and the parties liable to pay the same are aware of such detention, then in cases-

(a) where the amount is not disputed and payment thereof is not made within twenty days after the same has become due;

(b) where the amount is disputed but no appeal lies from the first tribunal to which the dispute is referred and payment thereof is not made within twenty days after the decision of such first tribunal;

(c) where the amount is disputed and an appeal lies from the decision of the first tribunal to some other tribunal and payment thereof is not made within such twenty days as last aforesaid or such motion as before mentioned is not taken out within such twenty days or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days,

the receiver may forthwith sell such ship, boat, 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, paying the surplus, if any, to the owners of the property sold or the other parties entitled to receive the same.

Subject to payment of expenses, fees and salvage, owner entitled to wreck

30. Subject to the payment of such expenses, fees and salvage 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 possession of the receiver shall be entitled to have the same delivered up to him.

Penalty for removing wreck, etc., from custody of receiver

31. If any ship, boat, cargo, apparel or wreck is detained under this Act by any receiver for any sums due as aforesaid and any person removes or attempts to remove any such ship, boat, cargo, apparel or wreck from the place where such receiver, such person shall, in addition to any liability incurred under any other written law, be guilty of an offence against this Act and shall be liable for every such offence to a fine not exceeding two hundred dollars.

(Inserted by 4 of 1924, s. 16.)

Receiver to sell unclaimed wreck

32. If no owner establishes his claim to wreck found at any place before the expiration of a year from the date at which the same has come into possession of the receiver the receiver shall forthwith sell the same and, after payment of all expenses attending such sale and deducting therefrom his fees and all expenses, if any, incurred by him and paying to the salvors such amount of salvage as the Minister may in each case or by any general rule determine, pay the same into the Consolidated Fund.

(Substituted by 21 of 1887, s.2, and amended by 4 of 1924, s.16.)

Penalty for plundering, for obstructing the saving of ship-wrecked property and for secreting wreck

33. Every person who-

- (a) wrongfully carries away or removes any part of any ship or boat stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water or any part of the cargo or apparel thereof or any wreck; or
- (b) endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel or wreck; or
- (c) secretes any wreck or obliterates or defaces any marks thereon,

shall, in addition to any other penalty or punishment he may be subject to under this or any other written law, for each such offence be liable to a fine not exceeding one hundred dollars, and every person not being a receiver or not acting under the orders of such receiver who, without the leave of the master, boards or endeavours to board any such ship or boat as aforesaid shall for each offence be liable to a fine not exceeding one hundred dollars, and it shall be lawful for the master of such ship or boat to repel by force any such person so boarding or attempting to board the same.

(Amended by 2 of 1945, s. 20.)

Penalty for taking wreck and selling it in foreign port

34. If any person takes into any foreign port or place any ship or boat found stranded, derelict or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of Fiji or any part of the cargo or apparel thereof or anything belonging thereto or any wreck found within such limits as aforesaid and there sells the same, he shall be guilty of felony and be liable to imprisonment for a term not exceeding four years.

(Amended by 37 of 1996, s.77.)

Customs duty on wreck

35. All wreck being foreign goods brought or coming into Fiji shall be subject to the same duties as if the same were imported into Fiji and if any question arises as to the origin of such goods they shall be deemed to be the produce of such country as the Comptroller may upon investigation determine.

Goods saved from inward-bound ship may be forwarded to original destination; from out-ward-bound ship to port shipment

36. The Comptroller may permit all goods, wares and merchandise saved from any inward-bound ship stranded or wrecked to be forwarded to the port of its original destination, and all goods, wares and merchandise saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which the same were shipped,

but the Comptroller shall take security for the due protection of the revenue in respect of such goods, wares and merchandise.

Limitation of time in summary proceedings

37. No conviction for an offence shall be made under this Act other than for an offence under section **34**, unless such proceeding is commenced within one year after the commission of the offence.

(Amended by 2 of 1945, s.20.)

SCHEDULE

(Section 15)

FEES AND REMUNERATION OF RECEIVERS

For every examination on oath instituted by a receiver with respect to any ship or boat which may be or may have been in distress a fee not exceeding two dollars. But so that in no case shall a larger fee than four dollars be charged for examinations taken in respect of the same ship and the same occurrence whatever may be the number of the deponents.

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 forty dollars.

In cases where any services are rendered by a receiver in respect of any ship or boat in distress not being wreck or in respect of the cargo or other articles belonging thereto, the following fees instead of a percentage, that is to say, if such ship or boat with her cargo equals or exceeds in value one thousand two hundred dollars the sum of four dollars for the first, and the sum of two dollars for every subsequent day during which the receiver is employed on such service, but if such ship or boat with her cargo is less in value than one thousand two hundred dollars, one moiety of the abovementioned sum.

Controlled by the Ministry of Finance
