



MONTSERRAT

## CHAPTER 6.11

# RECEIVERS OF WRECK ACT

### Revised Edition

showing the law as at 1 January 2013

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

### RECEIVERS OF WRECK ACT

Act 1 of 1885 .. in force 1 October 1885

Amended by Acts: 13 of 1932

24 of 1956

7 of 1966

8 of 1966

4 of 1982

9 of 2011 .. in force 27 September 2011 (S.R.O. 40/2011)

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## **CHAPTER 6.11**

### **RECEIVERS OF WRECK ACT**

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## **CHAPTER 6.11**

### **RECEIVERS OF WRECK ACT**

*(Acts 1 of 1885, 13 of 1932, 24 of 1956,  
7 of 1966, 8 of 1966, 4 of 1982 and 9 of 2011)*

#### **Commencement**

*[1 October 1885]*

#### **Short title**

1. This Act may be cited as the Receivers of Wreck Act.

#### **Interpretation**

2. In this Act—

“**horses**” includes cattle and other beasts of burden;

“**Receiver**” means any Receiver of Wreck appointed under section 3;

“**wreck**” includes jetsam, flotsam, lagan, and derelict.

*(Amended by Act 4 of 1982)*

#### **Appointment of Receivers**

3. The Port Manager appointed under the Port Authority Act shall be *ex officio* Receiver of Wreck, but it shall be lawful for the Governor to appoint, in place of, or in addition to, the Port Manager any other person as Receiver or Receivers of Wreck to perform such duties as are hereinafter mentioned:

Provided that, no person in receipt of a salary from the Government in remuneration for his whole time shall be entitled to receive any of the fees set out in the Schedule as extra remuneration for his services as Receiver of Wreck.

*(Amended by Act 7 of 1966)*

#### **Duty of Receiver when any ship is stranded or in distress\***

4. 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 Montserrat, the nearest Receiver 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

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\* See also the Receiver’s power under the Port Authority Act, section 155

directions, he shall incur a penalty not exceeding \$240, 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.

### **Powers of Receiver in case of such accident to any ship or boat**

5. 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—

- (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; and
- (c) 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 \$480; 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.

### **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, 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 \$480; 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.

### **Power of Receiver to suppress plunder 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, 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 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**

8. During the absence of the Receiver from the place where any such accident as aforesaid occurs, or in places where no Receiver has been appointed under this Act, 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, and also any Justice of the Peace, Commissioned Officer on full-pay in the Naval service of Her Majesty, or Commissioned Officer on full-pay in the Military service of Her Majesty, may do all matters and things hereby authorised to be done by the Receiver, with this exception, that with respect to any goods or chattels 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**

9. 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 recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage may, in case of dispute, be determined.

**Penalty on owners and occupiers of land refusing to allow carriages, etc., to pass over their lands**

10. 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—

- (a) 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;

- (b) impedes or hinders the deposit of any cargo, or other article, recovered from any such ship or boat as hereinbefore mentioned;
- (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, incur a penalty not exceeding \$480.

### **Power of Receiver to institute examination with respect to ships in distress**

11. Any Receiver or, in his absence, any Justice of the Peace, shall, as 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 coast of Montserrat, or any other person who may be able to give any account thereof, or of the cargo or stores thereof, as to the following matters, that is to say—

- (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 and 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 shall make two copies of the same, of which he shall send one to the Governor, and the other to the Secretary of the Committee for managing the affairs of Lloyd's in London.

*(Amended by Act 8 of 1966)*

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

12. 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, authority to hear, receive, and examine evidence, as *prima facie* proof of all matters contained in such written examination.

### **Rules to be observed by persons finding wreck**

**13. (1)** The following rules shall be observed by any person finding or taking possession of wreck within Montserrat, that is to say—

- (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 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;
- (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.

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

- (a) 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 \$480;
- (b) 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—
  - (i) he shall forfeit all claim to salvage;
  - (ii) he shall pay to the owner of such wreck, if the same is claimed, or, if the same is unclaimed, then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount); and he shall incur a penalty not exceeding \$480.

### **Power for Receiver to seize concealed wreck**

**14.** If any Receiver suspects or receives information that any wreck is secreted or in 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 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 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 \$24, as the Receiver may allow.

### **Notice of wreck to be given by Receiver**

**15.** Every Receiver shall, within forty eight hours after taking possession of any wreck, cause to be posted up in the custom-house of the port nearest to the place where such wreck was found or seized, a description of the

same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds \$96, but not otherwise, transmit a similar description to the Secretary of the Committee of Lloyd's aforesaid.

### **Goods deemed perishable or of small value may be sold immediately**

16. In cases where any wreck in the custody of any Receiver is under the value of \$24, 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.

### **In cases where any person is entitled to unclaimed wreck, Receiver to give notice to him**

17. In cases where any Admiral, Vice-Admiral, or other person is entitled for his own use to unclaimed wreck found on any place situate within Montserrat, such Admiral, Vice-Admiral, or other person shall deliver to such Receiver a statement containing the particulars of his title and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the Receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send, within forty eight hours thereafter, a description of the same, and of any marks by which it is distinguished, directed to such address as aforesaid.

*(Amended by Act 8 of 1966)*

### **Payments to be made to Receiver**

18. 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 Governor; and the 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.

### **Disputes as to sums payable to Receiver**

19. Whenever any dispute arises in any part of Montserrat as to the amount payable to any Receiver in respect of expenses or fees, such dispute shall be determined by the Governor, whose decision shall be final.

### **Receiver may appoint a valuer in salvage cases**

20. Whenever any salvage question arises, the Receiver of Wreck may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties; and any copy of such valuation purporting to be signed by the valuer, and to be attested by the Receiver, shall be received in evidence in any subsequent proceeding; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Governor may direct.

### **Payments for salvage services rendered**

21. Whenever any vessel is in distress or stranded on the shore of any part of Montserrat or within the territorial waters of Montserrat and services are rendered by any person—

- (a) in assisting such vessel;
- (b) in saving the lives of persons on or from such vessel; or
- (c) in saving the cargo or apparel of such vessel, or any part thereof,

and whenever any wreck is saved by any person other than a Receiver, there shall be payable by the owner 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, together with an amount in respect of 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 hereafter in this Act included in the term salvage) to be determined, in case of dispute, in the manner provided in the next succeeding section.

*(Inserted by Act 4 of 1982)*

### **Settlement of disputes as to payments due**

22. Whenever any dispute arises between the ship owner and the salvors as to the amount of any salvage payable under the provisions of section 21, 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 \$2,000, such dispute may be referred to the arbitration of the Magistrate on the application of the salvor, the ship owner or the owner of the property salvaged, or of their respective agents.

*(Inserted by Act 4 of 1982)*

### **Procedure for arbitration by the Magistrate**

23. (1) Whenever any dispute is referred for arbitration under the provisions of section 22 the Magistrate may determine the same, and for the purpose may appoint for his assistance as an assessor any person conversant with maritime affairs; and the Magistrate shall make an award

as to the amount of salvage payable within seven days after such dispute has been referred to him:

Provided that, by writing under his hand, he may extend the time hereby limited for making his award.

(2) For the purposes of an arbitration under this section the Magistrate shall have the same powers to call for the production of any relevant documents in the possession of any party to the proceedings and to examine witnesses on oath as are vested in the Magistrate's court in the exercise of its civil jurisdiction.

*(Inserted by Act 4 of 1982)*

### **Costs of arbitration**

24. (1) Subject to any agreement between the parties to an arbitration under this Act, the costs of any such arbitration shall be in the discretion of the Magistrate.

(2) There shall be paid to an assessor appointed under section 23, in respect of his services, such a sum of money as the Governor acting on the advice of Cabinet may from time to time quantify and direct, and such payments shall be included in the costs of the arbitration and shall be payable by the parties in such manner and in such proportions as the Magistrate may direct.

*(Inserted by Act 4 of 1982 and amended by Act 9 of 2011)*

### **Appeals from arbitration award**

25. (1) Any person who is aggrieved by an award made in an arbitration under section 23 may appeal to the Court of Appeal, upon giving written notice, within twenty eight days of the date of the award, to the Magistrate and to the other party or parties to the arbitration.

(2) Where a notice of appeal is given under subsection (1), the Magistrate shall transmit to the Registrar of the Court of Appeal a copy of the proceedings certified under his hand to be a true copy of the record of the proceedings in the arbitration, and of the award made therein, accompanied (if the case so requires) by his certificate of the gross value of any article in respect of which salvage is claimed; and such copy of the proceedings and certificate shall be admitted in the Court of Appeal as evidence in the matter.

*(Inserted by Act 4 of 1982)*

### **Salvage. To whom payable in case of dispute as to apportionment**

26. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in Montserrat has been finally ascertained, either by agreement or by an award made by the Magistrate in arbitration proceedings under section 23; but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed \$2,000, it shall be lawful for the party liable to pay the amount so due to

apply to the Receiver for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, 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 \$2,000, it shall be apportioned in the manner hereinafter mentioned.

*(Amended by Act 4 of 1982)*

### **Apportionment of salvage**

27. Upon the receipt of any such amount as aforesaid, the Receiver 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 money 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 money so distributed.

### **Manner of enforcing payment of salvage**

28. Whenever any salvage is due to any person, the Receiver shall act as follows, that is to say—

- (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 saving 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 \$240, it shall be lawful for the High Court, as a Colonial Court of Admiralty, 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 \$240, it shall be lawful for the salvor or the owner of the property salvaged, or their respective 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 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 the following cases, that is to say—

- (a) in cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due;
- (b) in cases 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) in cases 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 a monition 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 the possession of the Receiver, shall be entitled to have the same delivered up to him.

### **Receiver to deliver up possession of unclaimed wreck to person entitled**

31. In the event of no owner establishing a claim to wreck found in any place in Montserrat before the expiration of a year from the date at which the same has come into the possession of the Receiver, then if any Admiral, Vice-Admiral, or other person as aforesaid has given notice to, and has proved to the satisfaction of, the Receiver that he is entitled to wreck found

at such place, the Receiver shall, upon payment of all expenses, fees, and salvage due in respect of such wreck, deliver up possession thereof to such Admiral, Vice-Admiral, or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment may be determined and enforced in cases where any owner establishes his claim to wreck.

### **Delivery of wreck by Receiver not to prejudice title**

32. Upon delivery of wreck, or of the proceeds of wreck, by any Receiver to any person in pursuance of the provisions of this Act, such Receiver shall be discharged from all liability in respect thereof; but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

### **Unclaimed wreck to be sold**

33. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no Admiral, Vice-Admiral, or person other than Her Majesty, Her Heirs and Successors, is proved to be entitled to such wreck, 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 Governor may, in each case or by any general rule, determine, pay the same into the Treasury in such manner as the Governor acting on the advice of Cabinet shall direct, to be further dealt with according to law as the Governor shall by his warrant direct.  
(Amended by Act 9 of 2011)

### **Disputed title to wreck**

34. If any dispute arises between the Receiver and any other person as to the validity of the Receiver's title to any wreck, or if divers persons claim to be entitled to wreck found in the same place, the matter in dispute, with the consent of the parties, may be referred to the Magistrate for decision under section 23 and the provisions of sections 23, 24 and 25 shall apply *mutatis mutandis* to the determination of such dispute as to title to wreck as they apply to disputes relating to salvage payable.

(Inserted by Act 4 of 1982)

### **Application of fees**

35. All fees received by any Receiver appointed under this Act, in respect of any services performed by him as Receiver, shall be paid to him for his own use.

**Receiver of Wreck to give security**

**36.** Every Receiver of Wreck appointed under this Act shall give such sufficient security to Her Majesty for the due and faithful performance of his duties as the Governor acting on the advice of Cabinet shall decide.

*(Amended by Act 9 of 2011)*

**Recovery of penalties**

**37.** All penalties under this Act may be recovered in a summary manner before the Magistrate of Montserrat.

*(Amended by Act 8 of 1966)*

**Act not to affect jurisdiction of Colonial Court of Admiralty**

**38.** Nothing in this Act shall extend or be construed to extend to affect or abridge in any degree the jurisdiction or authority of the High Court as a Colonial Court of Admiralty.

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**SCHEDULE**

*(Sections 3 and 18)*

**FEES AND REMUNERATION OF RECEIVERS**

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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 ..... 4.80

But so that in no case shall a larger fee than \$9.60 be charged for examinations taken in respect of the same ship and the same occurrence, whatever may be the number of the deponents.

For every report required to be sent by the Receiver to the Secretary of the Committee for managing the affairs of Lloyd's in London, the sum of .... 2.40

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 exceed \$96.

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 \$2,880, the sum of \$9.60 for the first, and the sum of \$4.80 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 \$2,880, one moiety of the above-mentioned sum.

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