

CHAPTER 72.

Of Injuries to Submarine Telegraph Cables.

SECTION

- 1.—Confirmation of Convention of 14th March, 1884.
- 2.—Penalty for unlawfully injuring a Submarine Cable.
- 3.—Persons who shall not be deemed to have acted unlawfully.
- 4.—Similar provisions to preceding section.
- 5.—Aiders or abettors guilty of misdemeanor.
- 6.—Respecting lights and signals.
- 7.—Special powers granted to Commanders of Ships of War.

SECTION

- 8.—Tribunal.
- 9.—Merchant Shipping Act to apply.
- 10.—Evidence before Court.
- 11.—Concerning the navigating of offending vessels.
- 12.—Common law rights not subordinated by provisions hereof.
- 13.—Construction clause.
- 14.—Time when Act shall come into force.
- Schedules—Convention and Articles thereof.

1. The Convention of the fourteenth March, one thousand eight hundred and eighty-four, and the declaration respecting the interpretation thereof, mentioned in the schedules to this chapter, as set forth in the said schedules, are hereby confirmed, and subject to the provisions of this chapter, the Articles of such Convention and Declaration referred to in the Act as the Convention and Declaration, shall be of the same force as if they were enacted in the body of this chapter.

2. A person shall not unlawfully and wilfully, or by culpable negligence, break or injure any submarine cable, to which the Convention for the time being applies, in such manner as might interrupt or obstruct in whole or in part telegraphic communication.

(1.) Any person who acts, or attempts to act, in contravention of this section, shall be guilty of a misdemeanor, and on conviction—

(a.) If he acted wilfully, shall be liable to imprisonment for a term not exceeding two years, with or without hard labor, and to a fine, either in addition to such penal servitude or imprisonment; and

(b.) If he acted by culpable negligence, shall be liable to imprisonment for a term not exceeding three months, without hard labor, and to a fine not exceeding five hundred dollars, either in lieu of, or in addition to, such imprisonment.

3. Where a person does any act with the object of preserving the life or limb of himself or of any other person, or of preserving the vessel to which he belongs, or any other vessel, and takes all reasonable precautions to avoid injury to a submarine cable, such person shall not be deemed to have acted unlawfully and wilfully within the meaning of this section.

4. A person shall not be deemed to have unlawfully and wilfully broken or injured any submarine cable where, in the *bona fide* attempt to repair another submarine cable, injury has been done to such first mentioned cable, or the same has been broken, but this shall not apply so as to exempt such person from any liability under this chapter, or otherwise to pay the cost of repairing such breakage or injury.

5. Any person who, within, or (being a subject of Her Majesty) without Her Majesty's dominions, in any manner procures, counsels, aids, abets, or is accessory to the commission of any offence under this section, shall be guilty of a misdemeanor, and shall be liable to be tried and punished for the offence as if he had been guilty as a principal.

6. (1.) It is hereby declared that the enactments of the Merchants' Shipping Act, 1862, and the enactments amending the same, touching regulations as to lights and signals, and for avoiding of collisions, shall extend to authorise regulations for carrying into effect Articles five and six of the schedule to this chapter, within, as well as without, the territorial waters of Her Majesty's dominions, and regulations may be made, applied, altered and revoked, and the contravention thereof punished accordingly under the said enactments; and section six of the Sea Fisheries' Act, 1883, of the Imperial Parliament, shall extend to the enforcement of the said regulations as regards sea fishing boats within the limits of that Act.

(2.) If any vessel engaged in the laying or repairing of a submarine cable, to which the Convention for the time being applies, interferes contrary to the said regulations or Articles, with any vessel engaged in fishing, or if the operations of any vessel in connection with any such submarine cable are wilfully delayed so as to interfere with sea fishing, the master of the

vessel or the owner thereof, if it appear that he was in fault, shall be deemed guilty of a breach of the said regulations, and may be punished accordingly.

7. (1.) For the purpose of carrying into effect the Convention, a person commanding a ship of war of Her Majesty, or of any foreign state, for the time being, bound by the Convention, or a ship specially commissioned for the purpose of the Convention by Her Majesty or by the Government of such foreign state, may exercise and perform the powers and duties vested in and imposed on such officer by any Article in the schedule to this chapter.

(2.) If any person obstructs any such officer in such exercise or performance, or refuses or neglects to comply with any demand or direction lawfully made or given by him in pursuance of this chapter, such person shall be liable, on summary conviction, to a fine not exceeding two hundred and fifty dollars, or to be imprisoned for a term not exceeding two months, with or without hard labor.

(3.) Any action, prosecution or proceeding against any officer for any act done in pursuance or execution, or intended execution of this chapter, or in respect of any alleged neglect or default in the execution of this chapter, shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of.

(4.) In any such action, tender of amends before the action was commenced may, in lieu of, or in addition to, any other defence, be pleaded. If the action was commenced after such tender, or is proceeded with after payment into Court of any money in satisfaction of the plaintiff's claim, and the plaintiff does not recover more than the sum tendered or paid, he shall not recover any costs incurred after such tender or payment, and the defendants shall be entitled to costs, to be taxed between solicitor and client as from the time of such tender or payment.

8. Every such action shall be brought in the Supreme Court of Newfoundland.

9. Part X. of the Merchant Shipping Act, 1854 (which relates to legal procedure), and the enactments amending the same, so far as unrepealed, shall have effect as if enacted in this chapter, and offences under this chapter may be tried and fines under this chapter recovered accordingly, save that nothing in the said part shall authorize the award of any punishment not authorized by this chapter, or the summary prosecution of any indictable offence under this chapter.

10. (1) Any document drawn up in pursuance of article seven or article ten of the schedule to this chapter, shall be admissible in any

proceeding, civil or criminal, as *prima facie* evidence of the facts or matters therein stated.

- (2) If evidence taken in any such document was taken on oath in presence of the person charged in such evidence, and such person had an opportunity of cross-examining the person giving such evidence, and of making his reply to such evidence, the officer drawing up such document may certify the said facts or any of them.
- (3) Any document or certificate in this section mentioned, purporting to be signed by an officer authorized to act under the schedule to this chapter, for carrying into effect the Convention, shall be admissible in evidence without proof of such signature; and if purporting to be signed by any other person shall, if certified by any such officer to have been so signed, be deemed until the contrary is proved to have been signed by such other person.
- (4) If any person forges the signature of any such officer to any such document as above mentioned, or makes use of any such document knowing the signature thereto to be forged, such person shall be guilty of a misdemeanor and liable on summary conviction to imprisonment for a term not exceeding three months, with or without hard labour: and on conviction on indictment to imprisonment, with or without hard labor, for a term not exceeding two years.

11. Where any offence against this chapter has been committed by means of a vessel, or of any boat belonging to a vessel, the master of such vessel shall, until some other person is shown to have been in charge of and navigating such vessel or boat, be deemed to have been in charge of and navigating the same, and be liable to be punished accordingly.

12. The provisions of this chapter shall be in addition to and not in derogation of any other provisions existing at common law, or under Act of the Imperial Parliament, or under the law of a British possession, for the protection of submarine cables; and nothing in this chapter shall prevent any person from being liable under any Act of Parliament, law of a British possession, or otherwise, to any indictment, proceeding, punishment or penalty, other than is provided for any offence by this chapter, so that no person shall be punished twice for the same offence; and nothing in this chapter, nor any proceedings with respect to any matter, shall exempt a person from any liability in any action or suit with reference to the same matter, so that no person shall be required to pay compensation twice in respect of the same injury.

13. In this chapter, unless the context otherwise requires, the expression "vessel" means every description of vessel used in navigation, in whatever way it is propelled. Any reference to a vessel shall include a reference to a boat belonging to such vessel.

The expression "master" includes every person having command or charge of a vessel.

The expression "British possession" includes any part of Her Majesty's dominions, exclusive of the United Kingdom.

The expression "person" includes a body of persons corporate or incorporate.

14. This chapter shall come into force on such day as may be fixed by proclamation of his Excellency the Governor, and if the Convention ceases to be binding upon this colony shall cease to be of any effect.

SCHEDULE.

SUBMARINE TELEGRAPHS CONVENTION.

Convention for the preservation of telegraphic communications by means of submarine telegraphs, made on the fourteenth of March, 1884, between Her Majesty the Queen of Great Britain and Ireland, Empress of India; His Majesty the German Emperor, King of Prussia; His Excellency the President of the Argentine Confederation; His Majesty the Emperor of Austria, King of Bohemia, &c., and Apostolic King of Hungary; His Majesty the King of the Belgians; His Majesty the Emperor of Brazil; His Excellency the President of the Republic of Costa Rica; His Majesty the King of Denmark; His Excellency the President of the Dominican Republic; His Majesty the King of Spain; His Excellency the President of the United States of America; His Excellency the President of the United States of Columbia; His Excellency the President of the French Republic; His Excellency the President of the Republic of Guatemala; His Majesty the King of the Hellenes; His Majesty the King of Italy; His Majesty the Emperor of the Ottomans; His Majesty the King of the Netherlands, Grand Duke of Luxemburg; His Majesty the Shah of Persia; His Majesty the King of Portugal and the Algarves; His Majesty the King of Roumania; His Majesty the Emperor of All the Russias; His Excellency the President of the Republic of Salvador; His Majesty the King of Servia; His Majesty the King of Sweden and Norway; and His Excellency the President of the Oriental Republic of the Uruguay.

The following is an English translation of the Convention, with the omission of the formal beginning and end:

ARTICLE I

The present Convention applies outside territorial water to all legally established submarine cables landed on the territories, colonies or possessions of one or more of the High Contracting Parties.

ARTICLE II.

It is a punishable offence to break or injure a submarine cable wilfully or by culpable negligence in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially, such punishment being without prejudice to any civil action for damages.

This provision does not apply to cases where those who break or injure a cable do so with the lawful object of saving their lives or their ship, after they have taken every necessary precaution to avoid so breaking or injuring the cable.

ARTICLE III.

The High Contracting Parties undertake that, on granting a concession for landing a submarine cable, they will insist so far as possible upon measures of safety being taken, both as regards the track of the cable and its dimensions.

ARTICLE IV.

The owner of a cable who, on laying or repairing his own cable, breaks or injures another cable, must bear the cost of repairing the breakage or injury without prejudice to the application, if need be, of Article II of the present Convention.

ARTICLE V.

Vessels engaged in laying or repairing submarine cables shall conform to the regulations as to signals which have been or may be adopted by mutual agreement among the High Contracting Parties, with the view of preventing collisions at sea.

When a ship engaged in repairing a cable exhibits the said signals, other vessels which see them, or are able to see them, shall withdraw to or keep beyond a distance of one nautical mile at least from the ship in question, so as not to interfere with her operations.

Fishing gear and nets shall be kept at the same distance.

Nevertheless, fishing vessels which see, or are able to see, a telegraph ship exhibiting the said signals, shall be allowed a period of twenty-four hours at most within which to obey the notice so given, during which time they shall not be interfered with in any way. The operations of the telegraph ship shall be completed as quickly as possible.

ARTICLE VI.

Vessels which see, or are able to see, the buoys shewing the position of a cable when the latter is being laid, is out of order, or is broken, shall keep beyond a distance of one quarter of a nautical mile at least from the said buoys.

Fishing gear and nets shall be kept at the same distance,

ARTICLE VII.

Owners of ships or vessels who can prove that they have sacrificed an anchor, a net, or other fishing gear, in order to avoid injuring a submarine cable, shall receive compensation from the owner of the cable.

In order to establish a claim to such compensation, a statement, supported by the evidence of the crew, should whenever possible, be drawn up immediately after the occurrence; and the master must, within twenty-four hours after his return to, or next putting into port, make a declaration to the proper authorities.

The latter shall communicate the information to the consular authorities of the country to which the owner of the cable belongs.

ARTICLE VIII.

The tribunals competent to take cognizance of the infractions of the present Convention are those of the country to which the vessel on board of which the offence was committed belongs.

It is moreover understood that, in cases where the provisions in the previous paragraph cannot apply, offences against the present Convention will be dealt with in each of the Contracting States, in accordance, so far as the subjects and citizens of those States respectively are concerned, with the general rules of criminal jurisdiction prescribed by the laws of that particular State or by international treaties.

ARTICLE IX.

Prosecutions for infractions provided against by Articles II, V, and VI, of the present Convention, shall be instituted by the State or in its name.

ARTICLE X.

Offences against the present Convention may be verified by all means of proof allowed by the legislation of the country of the Court. When the officers commanding the ships of war, or ships specially commissioned for the purpose by one of the High Contracting Parties, have reason to believe that an infraction of the measures provided for in the present Convention has been committed by a vessel other than a vessel of war, they may demand from the captain or master the production of the official documents proving the nationality of the said vessel. The fact of such document having been exhibited shall then be endorsed upon it immediately. Further, formal statements of the facts may be prepared by the said officers, whatever may be the nationality of the vessel incriminated. These formal statements shall be drawn up in the form and in the language used in the country to which the officer making them belongs; they may be considered in the country where they are adduced as evidence in accordance with the laws of that country. The accused and the witnesses shall have the right to add, or to have added, thereto, in their own lan-

guage any explanations they may consider useful. These declarations shall be duly signed.

ARTICLE XI.

The proceedings and trial in cases of infraction of the provisions of the present Convention, shall always take place as summarily as the laws and regulations in force will permit.

ARTICLE X.

The High Contracting Parties engage to take, or to propose to their respective Legislatures, the necessary measures for insuring the execution of the present Convention, and especially for punishing by either fine or imprisonment, or both, those who contravene the provisions of Articles II, V, and VI.

ARTICLE XIII.

The High Contracting Parties will communicate to each other laws already made, or which may hereafter be made in their respective countries, relating to the object of the present Convention.

ARTICLE XIV.

States which have not signed the present Convention may adhere to it on making a request to that effect. This adhesion shall be notified through the diplomatic channel to the Government of the French Republic, and by the latter to the other signatory Powers.

ARTICLE XV.

It is understood that the stipulations of the present Convention do not in any way restrict the freedom of action of belligerents.

ARTICLE XVI.

The present Convention shall be brought into force on a day to be agreed upon by the High Contracting Parties. It shall remain in force for five years from that day, and unless any of the High Contracting Parties have announced, twelve months before the expiration of the said period of five years, its intention to terminate its operation, it shall continue in force for a period of one year, and so on from year to year. If one of the signatory Powers denounce the Convention, such denunciation shall have effect only as regards that Power.

ARTICLE XVII.

The present Convention shall be ratified, and the ratifications exchanged at Paris with as little a delay as possible, and, at the latest, at the expiration of a year.

ADDITIONAL ARTICLE.

The stipulations of the Convention concluded under to-day's date, for the protection of Submarine Cables, shall be applicable in conformity with

Article I. to the Colonies and Possessions of Her Britannic Majesty, with the exception of those hereinafter mentioned, namely :—

Canada,
Newfoundland,
The Cape,
Natal,
New South Wales,
Victoria,
Queensland,
Tasmania,
South Australia,
Western Australia,
New Zealand.

Provided always, that the stipulations of the said Convention shall be applicable to any of the above-named Colonies or Possessions, on whose behalf notice to that effect shall have been given by Her Britannic Majesty's representative at Paris, to the French Minister for Foreign Affairs.

Each of the above-named Colonies or Possessions, which may have acceded to the said Convention, shall be at liberty to withdraw from it in the same manner as the Powers parties to it. In the event of any of the said Colonies or Possessions desiring to withdraw from the Convention, a notification to that effect shall be made by Her Britannic Majesty's representative at Paris, to the French Minister for Foreign Affairs.

SUBMARINE TELEGRAPH DECLARATION.

Certain doubts having been raised as to the word "wilfully" used in Article II. of the Convention of the fourteenth March, One thousand eight hundred and eighty-four, it is understood that the provision in respect of penal responsibility contained in the said Article does not apply to cases of breakage or injury caused accidentally or of necessity in the repair of a cable, when all precautions have been taken to avoid such breakage or injury.

It is equally understood that Article IV. of the Convention had no other object, and is to have no other effect, than to empower the competent tribunals of each country to decide in conformity with their laws and according to the circumstances, the question of the civil responsibility of the owner of a cable who, in laying or repairing his own cable, breaks or injures another cable, as well as the consequences of such responsibility if it is recognised as existing.