

CHAPTER 140

MALICIOUS INJURY TO PROPERTY

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CHAPTER 140

MALICIOUS INJURY TO PROPERTY

An Act to consolidate and amend the law of Barbados relating to malicious injuries to property.

1868-2.
1956-57.
L.N.168/
1967.
1975-26.
1979-33.
1992-16.
1992-17.

[17th February, 1868] Commence-
ment.

1. This Act may be cited as the *Malicious Injury to Property Act*. Short title.

PART I

Sections 2 to 15 repealed by 1992-16.

PART II

Sections 16 to 22 repealed by 1992-16.

PART III

Injuries to fences, sea defences and bridges

23. (1) Any person who unlawfully and maliciously cuts, breaks, throws down or in anywise destroys any fence of any description whatsoever or any wall, stile or gate or any part thereof respectively shall on conviction thereof before a magistrate for the first offence forfeit, over and above the amount of the injury done, \$24. Destroying any fence, stile or gate.

(2) Any person, having been convicted of any such offence against this Act, who afterwards commits an offence under subsection (1) and is convicted thereof before a magistrate, is liable to imprisonment for 1 year.

Removing sea defences or doing any damage to obstruct the navigation of a river or Careenage.

24. Any person who unlawfully and maliciously

- (a) cuts off, draws up or removes any piles, stones or other materials fixed in the ground and used for securing any sea bank or sea wall or pier or the bank, dam or wall of any river, drain, aqueduct, marsh, reservoir or port, harbour, dock, quay, wharf or jetty; or
- (b) does any injury or mischief whatsoever to any river or to the Careenage or molehead of Barbados, with intent and so as thereby to obstruct or prevent the carrying on, completing or maintaining the navigation thereof,

shall be guilty of an offence and being convicted thereof is liable to imprisonment for 7 years and, if a male under the age of 16 years, to whipping.

Breaking down the dam of a fishery or poisoning fish.

25. Any person who unlawfully and maliciously

- (a) cuts through, breaks down or otherwise destroys the dam, flood-gate or sluice of any fish pond or of any water, which is private property, with intent thereby to take or destroy any of the fish in such pond or water or so as thereby to cause the loss or destruction of any of the fish; or
- (b) puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish that may then be or that may thereafter be put therein,

1979-33. shall be guilty of a misdemeanour and being convicted thereof is liable to imprisonment for a term of 5 years.

Injury to a public bridge.

26. Any person who unlawfully and maliciously pulls or throws down or in anywise destroys any public bridge, whether over any stream of water or not, or does any injury with intent and so as thereby to render such bridge or any part thereof dangerous or impassable shall be guilty of an offence and being convicted thereof is liable to imprisonment for life and, if a male under the age of 16 years, to whipping.

PART IV

Section 27 repealed by 1992-16.

PART V

Sections 28 to 29 repealed by 1992-16.

PART VI

Injuries to ships

- 30.** Any person who unlawfully and maliciously sets fire to or casts away or in anywise destroys any ship or vessel, whether the same is complete or in an unfinished state, shall be guilty of an offence and being convicted thereof is liable to imprisonment for life and, if a male under the age of 16 years, to whipping. Setting fire to a ship.
1992-17.
- 31.** Any person who unlawfully and maliciously sets fire to or casts away or in anywise destroys any ship or vessel, with intent thereby to prejudice any owner or part-owner of such ship or vessel or of any goods on board the same or any person who underwrites any policy of insurance upon such ship or vessel or on the freight thereof or upon any goods on board the same shall be guilty of an offence and being convicted thereof is liable to imprisonment for life and, if a male under the age of 16 years, to whipping. Setting fire to ships to prejudice the owner or underwriters.
1992-17.
- 32.** Any person who unlawfully and maliciously by any overt act attempts to set fire to, cast away or destroy any ship or vessel, under such circumstances that if the ship or vessel were thereby set fire to, cast away or destroyed the offender would be guilty of an offence, shall be guilty of an offence and being convicted thereof is liable to imprisonment for 14 years and, if a male under the age of 16 years, to whipping. Attempting to set fire to a ship.
1992-17.
- 33.** Any person who unlawfully and maliciously places or throws in, into, upon, against or near any ship or vessel any gunpowder or other explosive substance, with intent to destroy or damage any ship or vessel or any machinery, working tools, goods or chattels shall, whether or not any explosion takes place or whether or not any injury is effected, be guilty of an offence and being convicted thereof is liable to imprisonment for 14 years and, if a male under the age of 16 years, to whipping. Placing explosives near a ship with intent to damage it.
1992-17.

Damaging
ships
otherwise
than by fire
or
explosives.
1992-17.

34. Any person who unlawfully and maliciously damages, otherwise than by fire, gunpowder or other explosive substance, any ship or vessel whether complete or in an unfinished state with intent to destroy the same or render the same useless, shall be guilty of an offence and being convicted thereof is liable to imprisonment for 7 years and, if a male under the age of 16 years, to whipping.

Exhibiting
false
signals to
ships.
1992-17.

35. Any person who unlawfully masks, alters or removes any light or signal or unlawfully exhibits any false light or signal, with intent to bring any ship, vessel or boat into danger or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel or boat, and for which no punishment is hereinbefore provided, shall be guilty of an offence and being convicted thereof is liable to imprisonment for life and, if a male under the age of 16 years, to whipping.

Removing
or
concealing
buoys and
other sea-
marks.

36. Any person who unlawfully and maliciously

- (a) cuts away, cast adrift, removes, alters, defaces, sinks or destroys;
or
- (b) does any act with intent to cut away, cast adrift, remove, alter, deface, sink or destroy; or
- (c) in any other manner injures or conceals any boat, buoy, buoy-rope, perch or mark, used or intended for the guidance of seamen or for the purpose of navigation,

shall be guilty of an offence and being convicted thereof is liable to imprisonment for 7 years and, if a male under the age of 16 years, to whipping.

Destroying
wrecks or
any articles
belonging
thereto.
1992-17.

37. Any person who unlawfully and maliciously destroys any part of any ship or vessel which is in distress or wrecked, stranded or cast on shore or any goods, merchandise or articles of any kind belonging to such ship or vessel shall be guilty of an offence and being convicted thereof is liable to imprisonment for 14 years.

PART VII

Sections 38 to 42 repealed by 1992-16.

PART VIII

General

- 43.** Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether punishable upon indictment or upon summary conviction, shall equally apply and be enforced whether the offence is committed from malice conceived against the owner of the property in respect of which it is committed or otherwise.
- 44.** Every provision of this Act not hereinbefore so applied shall apply to every person who, with intent to injure or defraud any other person, does any of the acts by this Act made penal, although the offender is in possession of the property against or in respect of which such act shall be done.
- 45.** On the trial of any offence against this Act, it shall not be necessary to prove an intent to injure or defraud any particular person but it shall be sufficient to prove that the party accused did the act charged with an intent to injure or defraud, as the case may be.
- 46.** Any constable or police officer may take into custody without warrant any person whom he finds lying or loitering in any highway, yard or other place, during the night and whom he has good cause to suspect of having committed or being about to commit an offence against this Act and he shall take such person as soon as reasonably may be before a magistrate to be dealt with according to law.
- 47.** Any person found committing any offence against this Act, whether punishable upon indictment or upon summary conviction, may be immediately apprehended without a warrant by any peace officer or the owner of the property injured or his servant, or any person authorised by him, and forthwith taken before some magistrate to be dealt with according to law.

Malice against owner of property not necessary.

Act to apply to persons in possession of the property injured.

Intent to injure or defraud particular persons need not be proved.

Arrest of persons loitering at night and suspected of any felony. 1992-17.

Arrest of persons in the act of committing any offence.

PART IX

Legal proceedings

Abettors in
indictable
offences.
1992-17.

48. Any person who aids, abets, counsels or procures the commission of any indictable offence punishable under this Act may be indicted, tried and punished as a principal offender.

Abettors in
offences
punishable
on
summary
conviction.

49. Any person who aids, abets, counsels or procures the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission or for the first and second time only or for the first time only, shall on conviction before a magistrate be liable, for every first, second or subsequent offence of aiding, abetting, counselling or procuring, to the same forfeiture and punishment to which a person guilty of a first, second or subsequent offence as a principal offender is by this Act made liable.

Applica-
tion of
forfeitures
upon
summary
conviction.

50. (1) Every sum of money which is forfeited for the amount of any injury done shall be assessed in each case by the convicting magistrate and shall, subject to subsection (2), be paid to the party aggrieved, except where he is unknown and in that case such sum shall be applied in the same manner as a penalty.

(2) Where several persons join in the commission of the same offence and, upon conviction thereof, each is adjudged to forfeit a sum equivalent to the amount of the injury done, in every case no further sum shall be paid to the party aggrieved than such value or amount and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a magistrate.

Magistrate
may
discharge
offender in
certain
cases.

51. Where any person is summarily convicted before a magistrate of any offence against this Act and it is a first conviction, the magistrate may, if he so thinks fit, discharge the offender from his conviction upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as are ascertained by the magistrate.

52. Any person convicted of any offence punishable upon summary conviction by virtue of this Act who has

- (a) paid the sum adjudged to be paid, together with costs under such conviction; or
- (b) received a remission thereof from the Governor-General; or
- (c) suffered the imprisonment awarded for non-payment thereof or the imprisonment awarded in the first instance; or
- (d) been so discharged from his conviction by any magistrate under section 51,

shall be released from all further proceedings for the same cause.

Summary conviction a bar to any other proceeding for the same cause.

53. No summary conviction under this Act shall be quashed for want of form, or be removed by *certiorari* into the High Court and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that the party has been convicted and there is a good and valid conviction to sustain the same.

No summary conviction to be quashed for want of form.

54. (1) All actions and prosecutions to be commenced against any person for any thing done in pursuance of this Act shall be commenced within 6 months after the fact committed and not otherwise.¹

Limitation of prosecutions and actions.

(2) Notice in writing of such action and of the cause thereof shall be given to the defendant 1 month at least before the commencement of the action.

(3) In any such action the defendant may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereupon.

(4) No plaintiff shall recover in any such action if tender of sufficient amends has been made before such action brought or if a sufficient sum of money has been paid into court after such action brought by or on behalf of the defendant.

¹ The provisions of this section are subject to the Limitation (Public Authorities) Act Cap. 206, which makes other provision relating to proceedings involving public authorities.

(5) Where a verdict passes for the defendant or the plaintiff becomes nonsuit or discontinues any such action after issue joined or where, upon demurrer or otherwise, judgment is given against the plaintiff, the defendant shall recover his full costs as between attorney-at-law and client and have the like remedy for the same as any defendant has by law in other cases.

(6) Where a verdict is given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the Judge before whom the trial is held certifies his approbation of the action.

Offences committed within the jurisdiction of the Admiralty. L.N. 168/1967.

55. (1) All indictable offences mentioned in this Act committed on or after the 30th November, 1966, which if committed before that date would have been within the jurisdiction of the Admiralty of England and cognisable by the courts of Barbados shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed in Barbados and may be dealt with, enquired of, tried and determined in the same manner in all respects as if they had been actually committed in Barbados.

(2) In any indictment for any such offence or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in Barbados and the offence shall be averred to have been committed on the high seas.

Fines and sureties for keeping the peace. 1992-17.

56. (1) Where any person is convicted of any indictable offence punishable under this Act, the court may, if it thinks fit, in addition to or in lieu of any of the punishments by this Act authorised, fine the offender and require him to enter into his own recognisances and to find sureties, both or either, for keeping the peace and being of good behaviour.

(2) No person shall be imprisoned under this section for not finding sureties for any period exceeding 1 year.

Whipping.

57. Whenever whipping may be awarded for any indictable offence under this Act, the court may sentence the offender to be once privately whipped and the number of strokes shall not exceed 12, and the instrument with which they shall be inflicted shall be specified by the court in the sentence.