

No. III.

CUSTOMS.

An Act to repeal an Act relating to the Revenue of Customs in New South Wales and to provide for the general regulation thereof.
[24th July, 1839.]

Preamble. **W**HEREAS a certain Act of the Governor and Council of New South Wales was passed in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act to provide for the general regulation of the Revenue of Customs in New South Wales*" And whereas by a certain Act of Parliament passed in the third and fourth years of the reign of His said Majesty intituled "*An Act to regulate the Trade of the British Possessions abroad*" it was amongst other things enacted That it should be lawful for His Majesty by and with the advice of His Privy Council by any Order or Orders to be issued from time to time to give such directions and make such regulations touching the trade and commerce to and from any British Possession within the limits of the East India Company's charter (excepting the possessions of the said Company) as to His Majesty in Council should appear most expedient and salutary and that if any goods should be imported or exported in any manner contrary thereto the same should be forfeited together with the ship importing or exporting the same And whereas no such Order of His late Majesty or of Her present Majesty Queen Victoria in Council has been received in this Colony and it is expedient to make provision

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provision for regulating the Customs and Trade within the said Colony
 Be it therefore enacted by the Governor of New South Wales with the ^{Repealed.}
 advice of the Legislative Council of the same That after the passing of
 this Act the said recited Act of the Governor and Council shall be and
 the same is hereby repealed and that this Act shall come into and be
 and continue in full force and operation for regulating the Customs and
 Trade within the said Colony and its Dependencies.

2. And be it enacted That every person employed on any duty ^{Persons employed by}
 or service relating to the Customs within the said Colony or its De- ^{Customs deemed}
 pendencies by the orders or with the concurrence of the Governor of ^{officers for such}
 the said Colony or of the Commissioners of Her Majesty's Customs ^{service.}
 (whether previously or subsequently expressed) shall be deemed to be ^{Duties of officers}
 the officer of the Customs for that duty or service and that every act ^{performed by persons}
 matter or thing required by any law at any time in force to be done ^{and at places ap-}
 or performed by to or with any particular officer nominated in such ^{pointed by Governor.}
 law for such purpose being done or performed by to or with any person
 appointed by the Governor of the said Colony or the Commissioners of
 Her Majesty's Customs to act for or in behalf of such particular officer
 the same shall be deemed to be done or performed by to or with such
 particular officer.

3. And be it enacted That if any officer clerk or other person ^{Officers taking any}
 acting in any office or employment in or belonging to the Customs in ^{fee or reward not}
 said Colony shall take or receive any fee perquisite gratuity or reward ^{allowed shall be}
 whether pecuniary or of any other sort or description whatsoever ^{dismissed.}
 directly or indirectly from any person not being a person duly appointed
 to some office in the Customs on account of any thing done or to be
 done by him or in any way relating to his said office or employment
 except such as he shall receive under any order or permission of the
 Governor of the said Colony the Commissioners of Her Majesty's
 Treasury or the Commissioners of Her Majesty's Customs every such
 officer so offending on proof thereof to the Governor of the said Colony
 or to the Commissioners of Her Majesty's Customs shall be dismissed
 from his office and if any person not being a person duly appointed ^{Penalty for offering}
 to some office in the Customs shall give offer or promise to give any ^{fees £100.}
 such fee perquisite gratuity or reward such person shall for every such
 offence forfeit the sum of one hundred pounds.

4. And be it enacted That if any officer of the Customs or other ^{Officers making col-}
 person duly authorized to act as such shall make any collusive seizure ^{lusive seizures to for-}
 or deliver up or make any agreement to deliver up or not to seize any ^{feit £500.}
 vessel boat or goods liable to forfeiture or take any bribe gratuity
 recompense or reward for the neglect or non-performance of his duty
 every such officer or other person shall forfeit for every such offence
 the sum of five hundred pounds.

5. And be it enacted That every person who shall give or offer ^{Persons offering a}
 or promise to give any bribe recompense or reward or shall make any ^{bribe to forfeit £200.}
 collusive agreement with any such officer as aforesaid to induce him
 in any way to neglect his duty or to do or conceal or connive at any
 act whereby any of the provisions of any Act of the Imperial Parlia-
 ment or any law rule order or regulation in force within the said
 Colony may be evaded every such person shall whether the offer be
 accepted or performed or not forfeit the sum of two hundred pounds.

6. And be it enacted That it shall be lawful for the Collector or ^{Hours of attendance.}
 other principal officer of the Customs with the sanction of the
 Governor of the said Colony from time to time to appoint the hours
 of general attendance of the respective officers and other persons under
 their survey at their proper offices and places of employment.

7. And be it enacted That no officer of Customs nor person ^{Officers of Customs}
 employed in the collection or management of or accounting for the ^{not liable to serve}
 Revenue of Customs or any part thereof nor any clerk or other ^{in parochial or other}
 person ^{local offices.}

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person acting under them shall during the time of his acting as such officer or of his being so employed as aforesaid or of his acting as such clerk or other person as aforesaid as the case may be be compelled to serve in any other public office or employment or to serve on any jury or inquest or in the militia any law usage or custom to the contrary thereof notwithstanding.

Holidays.

8. And be it enacted That no day shall be kept as a public holiday by the Customs except Christmas Day and Good Friday in every year and any days appointed by the Governor's Proclamation for the purpose of a General Fast or of a General Thanksgiving and also such days as shall be appointed for the celebration of the Birth Days of Her Majesty and of Her Successors.

Collector &c.
authorized to admin-
ister oaths and
affirmations.

9. And be it enacted That in all cases wherein proof on oath or affirmation shall be required by any law or shall be necessary in any matter relating to the Customs the same may be made before the Collector or other principal officer where such proof or affirmation shall be required to be made or before the persons acting for them respectively and who are hereby authorized and empowered to administer the same.

Collector &c. may
examine witnesses
on oath.

10. And be it enacted That upon examinations and inquiries made by the Collector or other principal officer of Customs or other persons appointed by the Commissioners of Customs to make such examinations and inquiries for ascertaining the truth of facts relative to the Customs or the conduct of officers or persons employed therein any person examined before them or him as a witness shall deliver testimony on oath to be administered by such Collector or other principal officer or such other person as shall examine him and who are hereby authorized to administer such oath and if such person shall be convicted of making a false oath touching any of the facts so testified on oath or of giving false evidence on his examination on oath before such Collector or other principal officer of Customs or such other person in conformity to the directions of this Act every such person so convicted as aforesaid shall be deemed guilty of perjury and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.

General provision.

11. And whereas it is expedient that the officers of Customs should have full cognizance of all ships coming into any port in the said Colony or approaching the coasts thereof and of all goods on board or which may have been on board such ships and also of all goods unladen from any ship in any port or place in the said Colony

No goods to be landed
nor bulk broken
before report and
entry.

Be it therefore enacted That no goods shall be unladen from any ship arriving from parts beyond the seas at any port or place in the said Colony nor shall bulk be broken after the arrival of such ship within four leagues of the coasts thereof respectively before due report of such ship and due entry of such goods shall have been made and

Times and places of
landing and care of
officers.

warrant granted in manner hereinafter directed and that no goods shall be so unladen except at such times and places and in such manner and by such persons and under the care of such officers as is and are hereinafter directed and that all goods not duly reported or which shall be unladen contrary hereto shall be forfeited and if bulk be broken contrary hereto the master of such ship shall forfeit the sum of one hundred pounds.

Goods not reported
or entered forfeited.
If bulk illegally
broken master to
forfeit £100.

Goods &c. declared
forfeited by former
law may be seized.

12. And be it enacted That all goods ships vessels and boats which by any law at any time in force within the said Colony shall be or have been declared to be forfeited may be seized by any officer of the Customs.

Vessels not bringing
to at stations masters
to forfeit £100.

13. And be it enacted That if the master of any ship or vessel arriving at or departing from any port in the said Colony shall neglect or refuse to bring to at the proper stations in such port appointed by the

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the Governor for the boarding or landing of officers of the Customs the master of such ship or vessel shall for every such offence forfeit the sum of one hundred pounds.

14. And be it enacted That it shall be lawful for the Collector or other principal officer of Customs to station an officer on board any ship or vessel while within the limits of any port in the said Colony and the master of every ship or vessel on board of which any officer is so stationed shall provide every such officer sufficient room under the deck in some part of the forecastle or steerage for his bed or hammock and in case of neglect or refusal so to do shall forfeit the sum of twenty pounds.

Officers may be stationed in ships in the limits of any port.

Accommodation of officers.

15. And be it enacted That the master of every ship or vessel arriving in the said Colony whether laden or in ballast shall come within twenty-four hours and before bulk be broken to the Custom House and there make a report in writing to the Collector or other principal officer of the arrival and voyage of such ship or vessel stating the name country and tonnage and if British the port of registry the name and country of master the country of the owners the number of the crew and how many are of the country of such ship or vessel and whether she be laden or in ballast and if laden the marks numbers and contents of every package or parcel of goods on board and where the same was laden and where and to whom consigned and where and what goods if any had been unladen during the voyage and what part of the cargo if any is intended for exportation in such ship or vessel to parts beyond the seas and what surplus of stores or stock remains on board such ship or vessel as far as any of such particulars can be known to him and the master shall further answer all such questions concerning the ship or vessel and the cargo and the crew and the voyage as shall be demanded of him by such officer and if any goods shall be unladen from any ship or vessel before such report be made or if the master shall fail to make such report or shall make an untrue report or not truly answer the questions demanded of him he shall forfeit the sum of one hundred pounds.

Ships and cargo to be reported on arrival.

Particulars of report.

Penalty for false report.

16. And be it enacted That it shall be lawful for the proper officers of the Customs to board any ships or vessels arriving at any port of the said Colony and freely to stay on board until all the goods laden therein shall have been duly delivered from the same and such officers shall have free access to every part of the ship or vessel with power to fasten down hatchways and to mark any goods before landing and to lock up seal mark or otherwise secure any goods on board such ship or vessel and if any place or any box or chest be locked and the keys be withheld such officers if they be of a degree superior to tidewaiters may open any such place box or chest in the best manner in their power and if they be tidewaiters or only of that degree they shall send for their superior officer who may open or cause to be opened any such place box or chest in the best manner in his power and if any goods be found concealed on board any such ship or vessel they shall be forfeited and if the officer shall place any lock mark or seal upon any goods on board and such lock be wilfully opened altered or broken before due delivery of such goods or if any such goods be secretly conveyed away or if the hatchways after having been fastened down by the officer be opened the master of such ship or vessel shall forfeit the sum of one hundred pounds.

Officers to board ships.

To have free access to all parts.

May seal or secure goods.

May open locks.

Goods concealed forfeited. Mark or seal.

If seal &c. be broken master to forfeit £100.

17. And be it enacted That the person entering any goods shall deliver to the Collector or other proper officer a bill of the entry thereof fairly written in words at length containing the name of the importer and of the ship and of the master and of the place from whence they were brought and of the place within the port where the goods are to be unladen and the particulars of the quantity and quality

Particulars of entry of goods inwards.

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quality of the goods and the packages containing the same and the marks and numbers on the packages and two or more duplicates as the case may require of such bill in which all sums and numbers may be expressed in figures and the particulars contained in such bills shall be written and arranged in such form and manner and the number of such duplicates shall be such as the Collector or other principal officer or other proper person shall require and such person shall at the same time pay down all the duties due upon the goods and the Collector or other proper officer shall thereupon grant his warrant for the unloading of such goods.

Unauthorized persons not permitted to make entries.

Penalty £100.

If goods be not entered in twenty days officers may land and secure them.

If duties not paid within three months goods to be sold &c.

Entry not to be valid if goods are not properly described in it.

Goods imported from the United Kingdom or British Possessions must appear in cocket &c. &c.

Goods to be unshipped &c. at expense of importer.

Bonds to be taken by the Collector.

18. And be it enacted That every person who shall make or cause to be made any such entry inwards of any goods not being duly authorized thereto by the proprietor or consignee of such goods shall for every such offence forfeit the sum of one hundred pounds.

19. And be it enacted That every importer of any goods shall within twenty days after the arrival of the importing ship or vessel make due entry inwards of such goods and land the same and in default of such entry and landing it shall be lawful for the officers of the Customs to convey such goods to the Queen's Warehouse and if the duties due upon such goods be not paid within three months after such twenty days shall have expired together with all charges of removal and warehouse rent the same shall be sold and the produce thereof shall be applied first to the payment of freight and charges next of duties and the overplus if any shall be paid to the proprietor of the goods or other person duly authorized to receive the same.

20. And be it enacted That no entry nor any warrant for the landing of any goods or for the taking of any goods out of any warehouse shall be deemed valid unless the particulars of the goods and packages in such entry shall correspond with the particulars of the goods and packages purporting to be the same in the report of the ship or in the certificate or other document where any is required by which the importation or entry of such goods is authorized nor unless the goods shall have been properly described in such entry by the denominations and with the characters and circumstances according to which such goods are charged with duty or may be imported and any goods taken or delivered out of any ship or out of any warehouse by virtue of any entry or warrant not corresponding or agreeing in all such respects or not properly describing the same shall be deemed to be goods landed or taken without due entry thereof and shall be forfeited.

21. And be it enacted and declared That no goods shall be imported into New South Wales as being imported from the United Kingdom or from any other British Possession (if any advantage attach to such distinction) unless such goods appear upon the cockets or other proper documents for the same to have been duly cleared outwards at the port of exportation in the United Kingdom or in such other British Possession nor unless the ground upon which such advantage be claimed be stated in such cocket or document.

22. And be it enacted That the unshipping carrying and landing of all goods and the bringing of the same to the proper place after landing for examination or for weighing and the putting of the same into the scales and the taking the same out of and from the scales after weighing and the opening and closing of the same shall be performed by or at the expense and risk of the importer.

23. And be it enacted That all bonds relating to the Customs required to be given in respect of goods or ships shall be taken by the Collector or other principal officer of Customs for the use of Her Majesty and after the expiration of three years from the date thereof

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or from the time if any limited therein for the performance of the condition thereof every such bond upon which no prosecution or suit shall have been commenced shall be void and may be cancelled and destroyed.

24. And be it enacted That before any goods shall be shipped for exportation to the United Kingdom as being the produce of the said Colony or of Van Diemen's Land or New Zealand or any island of the Pacific Ocean respectively and upon which any advantage shall be claimed at the port of importation sufficient proof shall be made to the satisfaction of the Collector or other principal officer of Customs of the identity of such goods being the produce of the said Colony or of Van Diemen's Land or New Zealand or of some island of the Pacific Ocean respectively whereupon the Collector or other principal officer is hereby empowered to grant a certificate to that effect.

Certificate of production where advantage is derived at port of importation.

25. And be it enacted That if the importer of any goods or his known agent shall make and subscribe a declaration before the Collector or other proper officer that he cannot for want of full information make perfect entry thereof it shall be lawful for the Collector or other proper officer to receive an entry by bill of sight for the packages or parcels of such goods by the best description which can be given and to grant a warrant thereupon in order that the same may be landed and secured to the satisfaction of the officers of Customs and at the expense of the importer and may be seen and examined by such importer in the presence of the proper officer and within three days after the goods shall have been so landed the importer shall make a perfect entry thereof and shall either pay down all duties thereon or duly warehouse the same and in default of such entry such goods shall be taken to the Queen's Warehouse and if the importer shall not within one month after such landing make perfect entry of such goods and pay the duties due thereon together with charges of removal and warehouse rent such goods shall be sold for the payment thereof and the overplus if any shall be paid to the proprietor of the goods or other person duly authorized to receive the same.

Entry inwards by bill of sight.

Within three days after goods landed entry to be made and duties paid.

26. And be it enacted That in all cases where the duties imposed upon the importation of articles into the said Colony are charged not according to weight tale gauge or measure but according to the value thereof such value shall be ascertained by the declaration of the importer of such articles or his known agent in manner and form following that is to say

Goods subject to *ad valorem* duty.

Value to be declared on entry.

" I A. B. do hereby declare that the articles mentioned in the
 " entry and contained in the packages (here specifying the
 " several packages and describing the several marks and
 " numbers as the case may be) are of the value of

" Witness my hand this day of

" A. B.

" The above declaration signed the day of in
 " the presence of C. D. Collector (or other principal
 " officer) "

which declaration shall be written on the bill of entry of such articles and shall be subscribed with the hand of the importer thereof or his known agent in the presence of the Collector or other principal officer of the Customs at the port of importation Provided that if upon view and examination of such articles by the proper officer of the Customs it shall appear to him that the said articles are not valued according to the true price and value thereof and according to the true intent and meaning of this Act then and in such case the importer or his known agent shall be required to declare on oath before the Collector or other principal officer of Customs what is the

Mode of proceeding if goods be undervalued.

Proof of invoice price.

the

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the invoice price of such articles and that he verily believes such invoice price is the current value of the articles at the place from whence the said articles were imported and such invoice price with the addition of ten pounds per centum thereon shall be deemed to be the value of the articles in lieu of the value so declared by the importer or known agent and upon which the duties due thereon shall be charged and paid. Provided also that if it shall appear to the Collector or other proper officer that such articles have been found invoiced below the real and true value thereof at the place from whence the same were imported or if the invoice price is not known the articles shall in such case be re-examined by two competent persons to be nominated and appointed by the Governor of the said Colony and such persons shall declare on oath before the Collector or other proper officer what is the true and real value of such articles at the port of importation in the said Colony and the value so declared on the oaths of such persons shall be deemed to be the true and real value of such articles and upon which the duties due thereon shall be charged and paid.

If necessary two persons may be nominated to fix the price.

If importer refuse to pay such duty goods to be sold.

27. And be it enacted That if the importer of such articles shall refuse to pay the duties imposed thereon it shall and may be lawful for the Collector or other officer of the Customs and he is hereby required to take and secure the same with the casks or other packages thereof and to cause the same to be publicly sold within the space of twenty days at the most after such refusal made and at such time and place as such officer shall by four or more days public notice appoint for that purpose which articles shall be sold to the best bidder and the money arising from the sale thereof shall be applied in the first place in payment of the said duties together with the charges that shall have been occasioned by the said sale and the overplus if any shall be paid to such importer or proprietor or any other person authorized to receive the same.

Drawback on goods exported having paid duty on importation.

28. And be it enacted That there shall be allowed upon the exportation of goods wares or merchandise imported into any port in the said Colony a drawback of the duty paid thereon provided always that proof be made to the satisfaction of the Collector or other principal officer that the full duties on importation had been paid and that such goods had been duly landed at the port for which the same were cleared and that no drawback shall be allowed unless the goods on which the same is claimed shall be shipped within three years from the day of importation thereof nor unless the value of the goods upon which the duty is to be returned shall amount to fifty pounds and that such drawback is duly claimed within one year from the day of such shipment. Provided always that no drawback shall be allowed upon any goods which by reason of damages or decay shall become of less value for home use than the amount of such drawback and all goods so damaged which shall be cleared for any drawback shall be forfeited and the person who caused such goods to be so cleared shall forfeit the sum of two hundred pounds or treble the amount of the drawback in such case at the election of the Governor of the said Colony.

Returned goods entered by bill of store.

29. And be it enacted That it shall be lawful to re-import into the said Colony any goods which shall have been legally exported from the same and to enter such goods by bill of store referring to the entry outward and exportation thereof. Provided the property in such goods continue in the same person by whom or on whose account the same have been exported and if the goods so returned be foreign goods which had before been legally imported into the said Colony the same duties shall be payable thereon as would at the time of such re-importation be payable on the like goods under the same circumstances of importation as those under which such goods had been

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been originally imported or such goods may be warehoused as the like goods may be warehoused upon a first importation thereof.

30. And be it enacted That whenever any goods shall be taken to and secured in any of the Queen's Warehouses in the said Colony for security of the duties thereon or to prevent the same from coming into home use it shall and may be lawful for the Collector or other principal officer to charge demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse at the rates specified in the Schedule E annexed to this Act.

Rent on goods secured for duty.

31. And be it enacted That in case goods shall not be duly cleared from the Queen's Warehouse within three calendar months (or sooner if they be of a perishable nature) it shall be lawful for the Collector or other principal officer of Her Majesty's Customs to cause such goods to be publicly sold by auction for home use or for exportation as the case may be and the produce of such sale shall be applied towards the payment of the duties if sold for home use and of the warehouse rent and all other lawful charges and the overplus (if any) shall be paid to the person duly authorized to receive the same Provided always that it shall be lawful for the said Collector or other principal officer to cause any of such goods to be destroyed as cannot be sold for a sum sufficient to pay such duties and charges if sold for home use or sufficient to pay such charges if sold for exportation Provided also that if such goods shall have been landed by the officers of the Customs and the freight of the same shall not have been paid the produce of such sale shall be first applied to the payment of such freight.

Power to sell goods not cleared from Queen's Warehouse within limits of a port.

32. And whereas it is expedient to make regulations for the warehousing of spirits tobacco and other goods which may be legally imported and it is therefore necessary to provide for the appointing of proper warehouses and for the lodging and securing such goods therein Be it therefore enacted That it shall be lawful for the Collector or other principal officer by notice in writing under his hand to appoint such warehouses respectively as shall be approved of by him for the free warehousing and securing of goods therein for the purposes of this Act and also by like notice to revoke any such appointment Provided that every such notice shall be transmitted to the Governor and shall be published in such manner as he shall direct.

Collector or other principal officer to appoint warehouses for bonding goods.

33. And be it enacted That it shall be lawful for the importer of any spirits tobacco or other goods to warehouse the same in the warehouses so appointed without payment of any duty on the first entry thereof subject nevertheless to the rules regulations restrictions and conditions hereinafter contained.

Goods may be warehoused without payment of duty.

34. And be it enacted That upon the entry and landing of any goods to be warehoused the proper officer of the Customs shall take a particular account of the same and shall mark the contents on each package and shall enter the same in a book to be kept for that purpose and no goods which have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under the care of the proper officer for exportation or upon due entry and payment of the duty for home use.

Account of goods to be taken on landing.

35. And be it enacted That upon entry of any goods to be warehoused the importer of such goods instead of paying down the duties due thereon shall give bond with two sufficient sureties to be approved of by the Collector or other principal officer in treble the amount of duties payable on such goods with condition for the safe depositing of such goods in the warehouse mentioned in such entry and for the payment of all duties due upon such goods or for the exportation thereof according to the first account taken of such goods

Bond upon entry of goods to be warehoused.

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upon the landing of the same and without any abatement on account of deficiency except as by this Act is otherwise provided and with further condition that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty or upon due entry for exportation and if after such bond shall have been given the goods or any part thereof shall be sold or disposed of so that the original bonder shall be no longer interested in or have control over the same it shall be lawful for the Collector or other principal officer to admit fresh security to be given by the bond of the new proprietor or other person having control over such goods with two sufficient sureties and to cancel the bond given by the original bonder of such goods or to exonerate him to the extent of the fresh security so given.

Bonds given previous
to Act to continue in
force.

36. And be it enacted That all appointments of warehouses for the warehousing of goods made under the authority of any other Act in force at the time of the commencement of this Act shall continue in force as if the same had been made under the authority of this Act and all bonds given in respect of any goods warehoused or entered to be warehoused under any Act in force at the time of the commencement of this Act shall continue in force for the purposes of this Act.

Samples may be
taken.

37. And be it enacted That it shall be lawful for the officers of the Customs to take such samples of any goods as shall be necessary for ascertaining the amount of any duties payable on the same and all such samples shall be disposed of and accounted for in such manner as directed by the Collector or other principal officer of Her Majesty's Customs.

Bond on entry for
exportation.

38. And be it enacted That upon the entry outwards of any goods to be exported from the warehouse the person entering the same shall give security by bond in treble the duties of importation on the quantity of such goods with two sufficient sureties to be approved by the Collector or other proper officer that the same shall be landed at the place for which they shall be entered outwards or be otherwise accounted for to the satisfaction of the Collector or other proper officer.

Spirits and tobacco
may be re-gauged
or re-weighed.

39. And whereas spirits and tobacco and certain other goods are liable in time to fluctuation of quantity by the effect of the atmosphere or other natural causes Be it therefore enacted That it shall be lawful for the Collector or other principal officer or for the proprietor or importer of any such goods as aforesaid to require the same to be re-gauged or re-weighed at the time when the same shall be respectively delivered from the said warehouse and the duties respectively payable thereon shall be paid according to the quantities ascertained upon such re-gauging or re-weighing unless it shall be mutually agreed by and between the said parties that the said duties shall be paid on the quantities originally entered.

Goods may be re-
sorted and re-packed.

40. And be it enacted That it shall be lawful for the Collector or other principal officer under such regulations as he shall see fit to permit the proprietor or other person having control over any goods so warehoused to sort separate pack and re-pack any such goods and to make such alterations therein or arrangements and assortments thereof as may be necessary for the preservation of such goods or in order to the sale shipment or legal disposal of the same and also to permit any part of such goods so separated to be destroyed but without prejudice to the claim for duty upon the whole original quantity of such goods Provided always that it shall be lawful for any person to abandon any whole packages to the officers of the Customs for the duties without being liable to any duty upon the same.

Whole packages may
be abandoned.

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41. And be it enacted That goods warehoused at any warehousing port in the said Colony being first duly entered may be delivered under the authority of the proper officer of the Customs without payment of duty except for any deficiency thereof for the purpose of removal to another warehousing port in the same Colony under bond to the satisfaction of such officer for the due arrival and re-warehousing of such goods at such other port.

Goods warehoused
may be delivered for
removal without
payment of duty.

42. And be it enacted That if any goods entered or warehoused or entered to be delivered from the warehouse shall be lost or destroyed by any unavoidable accident either on ship-board or in the landing or shipping of the same or in the receiving into or delivering from the warehouse it shall be lawful for the Governor of the said Colony for the time being to remit or return the duties payable or paid on the quantity of such goods so lost or destroyed.

Goods lost or de-
stroyed Governor
may remit duties.

43. And be it enacted That in case it shall at any time happen that any embezzlement waste spoil or destruction shall be made of or in any goods or merchandise which shall be warehoused in warehouses under the authority of this or any other Act by or through any wilful misconduct of any officer or officers of Customs such officer or officers shall be deemed guilty of a misdemeanor and shall upon conviction suffer such punishment as may be inflicted by law in cases of misdemeanor and if such officer shall be so prosecuted to conviction by the importer consignee or proprietor of the goods or merchandise so embezzled wasted spoiled or destroyed then and in such case no duty shall be payable for or in respect of such goods or merchandise so embezzled wasted spoiled or destroyed and no forfeiture nor seizure shall take place of any goods or merchandise so warehoused in respect of any deficiency caused by such embezzlement waste spoil or destruction and the damage occasioned by such embezzlement waste spoil or destruction of such goods or merchandise shall be repaid and made good to such importer consignee or proprietor by the Collector or other principal officer of Customs under such orders regulations and directions as shall be for that purpose made and given by the Governor of the said Colony for the time being.

Embezzlement &c.
of goods warehoused
through wilful mis-
conduct of officers.

44. And be it enacted That all goods so warehoused shall be stowed in such parts or divisions of the warehouse as the Collector or other proper officer may direct and in such manner as that easy access may be had to every package and if the occupier of the warehouse shall omit so to stow the same he shall for every such omission forfeit the sum of five pounds and that the warehouse shall be locked and secured in such manner and shall be opened and visited only at such times and in the presence of such officers and under such rules and regulations as the Collector or other proper officer shall direct.

Stowage of goods
in warehouse.

Locking and
opening.

45. And be it enacted That if any importer or proprietor of any goods warehoused or any other person shall by any contrivance fraudulently open the warehouse or gain access to the goods except in the presence of the proper officer acting in the execution of his duty such importer proprietor or other person shall forfeit and pay for every such offence the sum of five hundred pounds.

Warehouse fraudu-
lently opened pen-
alty £500.

46. And be it enacted That all goods which shall have been so warehoused or re-warehoused shall be duly cleared either for exportation or for home consumption within three years from the day of the entry thereof and if such goods be not so cleared it shall be lawful for the Collector or other proper officer to cause the same to be sold and the produce shall be applied first to the payment of the duties next to the warehouse rent and other charges and the overplus if any shall be paid to the proprietor or other person duly authorized to receive the same Provided always that it shall be lawful for the Collector or other

All goods to be
cleared within three
years or sold.

Further time may be
granted.

proper

Customs.

Goods not duly
warehoused &c. to
be forfeited.

proper officer to grant further time for any such goods to remain warehoused if they shall see fit so to do.

47. And be it enacted That if any goods which have been entered to be warehoused shall not be duly carried and deposited in the warehouse or shall afterwards be taken out of the warehouse without due entry and clearance or having been entered and cleared for exportation from the warehouse shall not be duly carried and shipped or shall afterwards be re-landed except with the permission of the proper officer of the Customs such goods shall be forfeited.

Entry outwards of
ship or cargo.

Particulars of entry.

48. And be it enacted That the master of any ship or vessel bound from the said Colony shall before any goods be laden therein deliver to the Collector or other proper officer an entry outwards under his hand of the destination of such ship stating her name country and tonnage and if British the port of registry the name and country of the master the country of the owners the number of the crew and how many are of the country of such ship and if any goods be laden on board any ship or vessel before such entry be made the master of such ship or vessel shall forfeit and pay the sum of fifty pounds and before such ship or vessel depart the master shall bring and deliver to the Collector or other proper officer a content in writing under his hand of the goods laden and the names of the respective shippers and consigners of the goods with the marks and numbers of the packages or parcels of the same and shall make and subscribe a declaration to the truth of such content as far as any of such particulars can be known to him and the master of every ship or vessel bound from the said Colony whether in ballast or laden shall before departure come before the Collector or other proper officer and answer upon oath all such questions concerning the ship or vessel and the cargo if any and the crew and passengers and the voyage as shall be demanded of him by such officer and thereupon the Collector or other proper officer if such ship or vessel be laden shall make out and give to the master a certificate of the clearance of such ship or vessel for her intended voyage containing an account of the total quantities of the several sorts of goods laden therein or a certificate of her clearance in ballast as the case may be and if the ship shall depart without such clearance or if the master shall deliver a false content or shall not truly answer the questions demanded of him he shall forfeit and pay the sum of one hundred pounds.

Penalty £50.

Content of cargo to
be delivered before
departure.

Clearance of ship for
the voyage.

Goods not stated in
certificate to be pro-
duce of this Colony
to be deemed of
Foreign production.

49. And be it enacted That no goods shall be stated in such certificate of clearance of any ship or vessel from the said Colony to be the produce thereof unless such goods shall have been expressly stated so to be in the entry outwards of the same.

Coasting trade.

50. And be it enacted That all vessels the property of Her Majesty's subjects trading from one part of the said Colony to another part thereof between Cape Capricorn in or about the latitude of twenty-three degrees and a half south and the eastern limits of the Province of South Australia shall be considered as engaged in the coasting trade.

Goods carried coast-
wise under what
regulations.

51. And be it enacted That no goods shall be laden on board any vessel in any port of the said Colony as aforesaid where any officer of the Customs shall or may hereafter be stationed to be carried coastwise nor having been brought coastwise shall be unladen until due notice in writing signed by the master shall be given to the Collector or other proper officer by the master owner or agent of such vessel of the intention to lade goods on board the same to be so carried or of the arrival of such vessel with goods so brought as the case may be nor until proper documents shall have been granted for the lading or unlading of such goods and such goods shall not be so laden or unladen except at such times and places and in such manner and by such persons and under the care of such officers as shall be appointed

by

Customs.

by the Collector or other proper officer for that duty Provided always that it shall be lawful for the Commissioners of Her Majesty's Customs to make and appoint such other regulations for the carrying coastwise of any goods or for the removing of any goods for shipment as shall to them appear expedient and that all goods laden water-borne or unladen contrary to this Act or contrary to any regulation so made and appointed shall be forfeited and the master of any vessel so lading or unlading goods contrary to the true intent and meaning of this Act shall forfeit and pay the sum of ten pounds.

52. And whereas notwithstanding the separation of Van Diemen's Land from the Colony of New South Wales as a Dependency thereof it was considered advisable to allow the produce of that Island to be imported into the said Colony of New South Wales free of duty and whereas much benefit has been found to arise from such measure to both Colonies Be it enacted That the produce and manufactures of Van Diemen's Land excepting spirituous liquors shall continue as heretofore to be admitted to entry on importation into the said Colony of New South Wales without any duty being charged thereon.

Produce and manufactures of Van Diemen's Land excepting spirituous liquors to be admitted duty free.

53. And in order to avoid the frequent use of numerous terms and expressions in this Act or any other Act relating to the Customs and to prevent any misconstruction of the terms and expressions used therein Be it enacted That whenever the several terms or expressions following shall occur in this Act or in any other Act relating to the Customs or to Trade and Navigation the same shall be construed respectively in manner hereinafter directed (that is to say) that the term "ship" shall be construed to mean ship or vessel generally unless such term shall be used to distinguish a ship from sloops brigantines and other classes of vessels that the term "master" of any ship shall be construed to mean the person having or taking the charge or command of such ship that the term "owners" and the term "owner" of any ship shall be construed alike to mean one owner if there be only one and any or all the owners if there be more than one that the term "mate" of any ship shall be construed to mean the person next in command of such ship to the master thereof that the term "seaman" shall be construed to mean alike seaman mariner sailor or landsman being one of the crew of any ship that the term "British Possessions" shall be construed to mean Colony Plantation Island Territory or Settlement belonging to Her Majesty that the term "Her Majesty" shall be construed to mean Her Majesty Her Heirs and Successors that the term "East India Company" shall be construed to mean the United Company of Merchants of England trading to the East Indies that the terms "Limits of the East India Company's Charter" shall be construed to mean all places and seas eastward of the Cape of Good Hope to the Straits of Magellan that the terms "Collector or other officer" shall be construed to mean the Collector or other officer of the Customs of the port intended in the sentence that whenever mention is made of any public officer the officer mentioned shall be deemed to be such officer for the time being that the term "warehouse" shall be construed to mean any place whether house shed yard timber pond or other place in which goods entered to be warehoused upon importation may be lodged kept and secured without payment of duty that the term "Queen's Warehouse" shall be construed to mean any place provided by the Crown for lodging goods therein for security of the Customs.

Construction in general.

Terms used in Acts.

Ship.

Master.

Owner or owners.

Mate.

Seaman.

British Possessions.

Her Majesty.

East India Company.

Charter.

Collector.

Officer.

Warehouse.

Queen's Warehouse.

54. And be it enacted That the master or owner of any ship or vessel being of the burthen of seventy tons at least bound on a voyage to foreign parts the probable duration of which out and home

Vessels not under seventy tons proceeding on voyage exceeding

Customs.

forty days permitted to ship limited quantities of spirits and tobacco free of duty.

home will not be less than forty days shall be permitted to ship such quantities of spirits and tobacco free of duty from the warehouse as stores for the use of the crew and passengers in a proportion not exceeding one gallon of spirits and one pound of tobacco for each man on board for every month the ship or vessel may be reasonably expected to be absent Provided that such stores shall be duly borne upon the ship or vessel's victualling bill and shall be shipped in such manner and subject to such directions and regulations as the Collector or other principal officer of Customs shall appoint Provided also that the master or owner of such ship or vessel shall previously enter into a bond with two sufficient sureties in treble the amount of duties payable on the spirits and tobacco so shipped that no part thereof shall be re-landed in the said Colony without due entry at the Custom House.

Vessels &c. found light forfeited.

55. And be it enacted That if any ship vessel or boat whatsoever shall be found within the limits of any port in the said Colony with a cargo on board and such ship vessel or boat shall afterwards be found light or in ballast and the master is unable to give a due account of the port or place within the said Colony where such ship vessel or boat shall have legally discharged her cargo or the deficient part thereof such ship vessel or boat with her guns furniture ammunition tackle and apparel shall be forfeited.

Vessels to bring to on being chased by vessels or boats of the Navy or in Preventive Service and not bringing to may be fired into.

56. And be it enacted That in case any ship vessel or boat liable to seizure or examination under any Act or Law relating to the Customs or for the prevention of smuggling shall not bring to on being required so to do on being chased by any ship vessel or boat in Her Majesty's Navy having the proper pendant and ensign of Her Majesty's ships hoisted or by any ship vessel or boat duly employed for the prevention of smuggling having a proper pendant and ensign hoisted it shall be lawful for the captain master or other person having the charge or command of such ship vessel or boat in Her Majesty's Navy or employed as aforesaid (first causing a gun to be fired as a signal) to fire at or into any such ship vessel or boat and such captain master or other person acting in his aid or assistance or by his direction shall be and he is hereby indemnified and discharged from any indictment penalty action or other proceeding for so doing.

Vessels belonging to Her Majesty's subjects not to hoist any pendant ensign or colours usually worn by Her Majesty's ships.

57. And be it enacted That if any person or persons shall from and after the passing of this Act wear carry or hoist in or on board any ship vessel or boat whatever belonging to any of Her Majesty's subjects whether the same be merchant or otherwise without particular warrant for so doing from Her Majesty or Her High Admiral of Great Britain or the Commissioners for executing the office of High Admiral of Great Britain Her Majesty's jack commonly called the union jack or any pendant ensign or colours usually worn by Her Majesty's ships or any flag jack pendant ensign or colours resembling those of Her Majesty or those used on board Her Majesty's ships or any other ensign or colours than the ensign or colours by any proclamation of Her Majesty now in force or hereafter to be issued prescribed to be worn then and in every such case the master or other person having the charge or command thereof or the owner or owners being on board the same and every other person so offending shall forfeit and pay the sum of fifty pounds and it shall be lawful for any officer or officers of Her Majesty's Navy on full pay or for any officer or officers of Customs to enter on board any such ship vessel or boat and to seize any such flag jack pendant ensign or colours and the same shall thereupon be forfeited.

Vessels and boats used in removal of run goods to be forfeited.

58. And be it enacted That all ships vessels and boats made use of in the removal carriage or conveyance of any goods liable to forfeiture

Customs.

forfeiture under this or any other Act relating to the Revenue of Customs shall be forfeited.

59. And be it enacted That the owner of every ship or vessel belonging in the whole or in part to any of Her Majesty's subjects shall within twenty-four hours after her report paint or cause to be painted on the outside of the stern of every boat belonging to such ship or vessel the name of such ship or vessel and the port or place to which she belongs and the master's name within the transom in white or yellow Roman letters not less than two inches in length on a black ground on pain of the forfeiture of such boat not so marked wherever the same shall be found.

Boats belonging to vessels to have names of vessels painted upon the outside of stern and master's name within the transom.

60. And be it enacted That the owner of every boat not belonging to any ship or vessel shall paint or cause to be painted upon the stern of such boat in white or yellow Roman letters of two inches in length on a black ground the name of the owner or owners of the boat and the port or place to which she belongs on pain of the forfeiture of such boat not so marked wherever the same shall be found.

Boats not belonging to vessels to have names of owners painted upon the stern.

61. And be it enacted That all ships vessels and boats belonging in the whole or in part to Her Majesty's subjects having false bulk-heads false bows double sides or bottom or any secret or disguised place whatsoever in the construction of the said ship vessel or boat for the purpose of concealing goods or having any hole pipe or other device in or about the ship vessel or boat adapted for the purpose of running goods shall be forfeited with all the guns furniture ammunition tackle and apparel belonging to such ship vessel or boat and all goods liable to the payment of the duties or prohibited to be imported into the said Colony found concealed on board any ship vessel or boat or in any of the packages of goods on board or in or underneath the ballast or in any other place on board such ship vessel or boat shall be forfeited.

Vessels &c. with false bulk-heads &c. forfeited.

62. And be it enacted That no ship vessel or boat under the tonnage allowed by law to be registered shall be employed either in the removal of goods or passengers or for any purpose whatever unless duly licensed according to the form hereinafter stated and every such ship vessel or boat so employed without being duly licensed as aforesaid shall be forfeited together with the tackle furniture and apparel thereof and shall and may be seized by any officer of Customs.

Boats not registered to be licensed.

63. And be it enacted That the license for every vessel or boat requiring a license under this Act shall be granted by the Collector or other proper officer of the Customs and such license shall set forth the name or names of the owner or owners thereof and his or their place or places of abode and the manner and limits in which such vessel or boat is to be used together with any other particulars which the said Collector or other proper officer may require and direct and that the owner or owners thereof shall give his or their own security by bond with two sufficient sureties (being housekeepers) in treble the value of such vessel or boat with conditions as follows That is to say that the vessel or boat shall not be employed in the importation landing or removing of any prohibited or uncustomed goods contrary to the true intent and meaning of this Act or any other Act relating to the Revenue of Customs nor in the exporting of goods or removal of transported offenders nor in the re-landing of goods contrary to law nor shall receive or take on board or be found at sea with any goods subject to forfeiture nor shall do any thing contrary to this Act or any other Act hereafter to be made relating to the Revenue of Customs or the protection of the trade or commerce or the custody of transported offenders in the said Colony nor shall be employed otherwise than mentioned in the said license and within the limits therein mentioned

Particulars of license.

Customs.

mentioned and in case of loss breaking-up or disposal of such vessel or boat that the license shall be delivered up within six months from the date of such loss breaking-up or disposal of such vessel or boat to the Collector or other proper officer of the Customs.

Goods unshipped without payment of duty and prohibited goods liable to forfeiture with the boats &c. used in removal.

64. And be it enacted That if any goods liable to the payment of duties shall be unshipped from any ship vessel or boat in the said Colony Customs or other duties not being first paid or secured or if any prohibited goods whatsoever shall be imported into any part of the said Colony or if any goods whatsoever shall have been warehoused or otherwise secured in the said Colony either for home consumption or exportation shall be clandestinely or illegally removed from or out of any warehouse or place of security that then and in such case all such goods as aforesaid shall be forfeited together with all horses and other animals and all carriages and other things made use of in the removal of such goods.

Vessels boats and goods may be seized by officers and persons herein mentioned and must be delivered to the proper officer.

65. And be it enacted That all ships vessels and boats and all goods whatsoever liable to forfeiture under this or any other Act relating to the Revenue of Customs shall and may be seized in any place either upon land or water by any officer or officers of Her Majesty's Navy on full pay or by any officer or officers of Customs or by any person having authority to seize from the Commissioners of Her Majesty's Customs or the Governor of the said Colony and all ships vessels boats and goods so seized shall as soon as conveniently may be be delivered into the care of the proper officer appointed to receive the same.

Officers authorized by writ of assistance and having a peace officer may search houses for prohibited goods and break open doors and packages to seize such goods.

66. And be it enacted That it shall and may be lawful for any officer or officers of Customs or person acting under the direction of the Governor of the said Colony or of the Commissioners of Her Majesty's Customs having a writ of assistance under the hand of the Chief Justice of Her Majesty's Supreme Court of the said Colony to take a constable or other public officer inhabiting near the place and in the day-time to enter into and search any house shop cellar warehouse room or other place and in case of resistance to break open doors chests trunks and other packages there to seize and from thence to bring any uncustomed or prohibited goods and to put and secure the same in the Queen's Warehouse in the port next to the place from whence such goods shall be so taken as aforesaid.

Duration of writs of assistance.

67. And be it enacted That all writs of assistance so issued as aforesaid shall continue and be in force during the whole of the reign in which such writs shall have been granted and for six months from the conclusion of such reign.

Officers of Customs &c. may on probable cause stop carts &c. and search for goods.

68. And be it enacted That it shall be lawful for any officer or officers of Customs or other person acting in his or their aid or assistance or duly employed for the prevention of smuggling upon reasonable suspicion to stop and examine any cart waggon or other means of conveyance for the purpose of ascertaining whether any smuggled goods are contained therein and if no such goods shall be found then and in such case the officer or other person so stopping and examining such cart waggon or other conveyance having had probable cause to suspect that such cart waggon or other conveyance had smuggled goods contained therein shall not on account of such stoppage and search be liable to any prosecution or action at law on account thereof and all persons driving or conducting such cart waggon or other conveyance refusing to stop when required so to do in the Queen's name shall forfeit the sum of one hundred pounds.

Persons unshipping harbouring or having custody of any prohibited or uncustomed goods to forfeit treble the value or £100.

69. And be it enacted That every person who shall unship or be aiding assisting or be otherwise concerned in the unshipping of any goods the duties for which have not been paid or secured or who shall knowingly harbour keep or conceal or shall knowingly permit

or

Customs.

or suffer to be harboured kept or concealed any goods which shall have been illegally unshipped without payment of duties or which shall have been illegally removed without payment of the same from any warehouse or place of security in which they may have been deposited and every person to whose hands and possession any such uncustomed or prohibited goods shall knowingly come or who shall assist or be in anywise concerned in the illegal removal of any goods from any warehouse or place of security in which they shall have been deposited as aforesaid shall forfeit either the treble value thereof or the penalty of one hundred pounds at the election of the officer or officers of Her Majesty's Customs.

70. And be it enacted and declared That in all cases where any penalty the amount of which is at any time to be determined by the value of any goods is directed to be sued for under any law now in force or hereafter to be made for the prevention of smuggling or relating to the Revenue of Customs such value shall be deemed and taken to be according to the rate and price which goods of the like sort or denomination and of the best quality bear at such time and upon which the duties due upon importation have been paid.

How value is to be ascertained.

71. And be it enacted That if any person or persons shall offer for sale any goods under pretence that the same are prohibited or have been unshipped and run on shore without payment of duties then and in such case all such goods (although not liable to any duties or prohibited) shall be forfeited and the person or persons and every of them offering the same for sale shall forfeit the treble value of such goods or the penalty of one hundred pounds at the election of the officer or officers of Her Majesty's Customs.

Penalty on persons offering goods for sale under pretence of being run or prohibited.

72. And be it enacted That every person whatsoever who shall unship or be aiding assisting or concerned in the unshipping of any spirits or tobacco or other goods liable to forfeiture under this or any other Act relating to the Customs in the said Colony or who shall carry convey or conceal or be aiding assisting or concerned in the carrying conveying or concealing of any such spirits tobacco or other goods liable to forfeiture shall pay and forfeit for such offence the sum of one hundred pounds sterling or treble the value of such goods at the election of the officers of the Customs and every such person may be detained by any officer of the Customs duly employed for the protection of the Revenue and for the prevention of smuggling in the said Colony and taken before any Justice of the Peace to be dealt with as hereinafter directed and it shall and may be lawful for the officers of Customs to proceed against any person so offending either as above directed or by information and summons before two or more Justices as to the officer of Customs may seem most expedient.

Persons unshipping or concerned in the carrying conveying or concealing spirits or tobacco to forfeit £100 and may be detained or proceeded against by information and summons.

73. And whereas it is expedient that time should be allowed to prepare informations convictions and warrants of commitment Be it declared and enacted That where any person or persons shall have been detained by any officer or officers of the Navy on full pay or by any officer of Customs or any person or persons acting in his or their aid or assistance or duly employed for the prevention of smuggling for any offence under this or any other Act relating to the Customs and shall have been taken and carried before any Justice of the Peace if it shall appear to such Justice that there is reasonable cause to detain such person or persons such Justice may and he is hereby authorized and required to order such person or persons to be detained a reasonable time and at the expiration of such time to be brought before any two Justices of the Peace who are hereby required finally to hear and determine the matter.

Where persons are taken before a Justice for any offence under any Act relating to the Customs such Justice may order them to be detained a reasonable time.

74. And be it enacted That if any person or persons liable to be detained under the provisions of this or any other Act relating to the

Any person liable to be arrested making his escape may after-

Customs.

wards be detained by any officer of the Customs.

the Customs shall not be detained at the time of so committing the offence for which he or they is or are liable or after detention shall make his or their escape it shall and may be lawful for any officer or officers of the Navy on full pay or for any officer of Customs or any other person acting in his or their aid or assistance or duly employed for the prevention of smuggling to detain such person so liable to detention as aforesaid at any time afterwards and to take him before any Justice of the Peace to be dealt with as if detained at the time of committing the said offence.

Persons resisting officers or rescuing or destroying goods to prevent seizure to forfeit £100.

75. And be it enacted That if any person whatsoever shall obstruct any officer or officers of the Navy on full pay or any officer or officers of Customs or any person acting in his or their aid or assistance or duly employed for the prevention of smuggling in the execution of his or their duty or in the due seizing of any goods liable to forfeiture by this or any other Act relating to the Customs or shall rescue or cause to be rescued any goods which have been seized or shall attempt or endeavour to do so or shall before or at or after any seizure stave break or otherwise destroy any goods to prevent the seizure thereof or the securing the same then and in such case the party or parties so offending shall forfeit for every such offence the sum of one hundred pounds.

Persons shooting at any boat belonging to the Navy or in the service of the Revenue &c. deemed guilty of felony.

76. And be it enacted That if any person shall maliciously shoot at any ship vessel or boat belonging to Her Majesty's Navy or in the service of the Revenue within one hundred leagues of any part of the coast of the said Colony or shall maliciously shoot at maim or dangerously wound any officer of the Navy on full pay or any officer of Customs or any person acting in his aid or assistance or duly employed for the prevention of smuggling in the due execution of his office or duty every person so offending and every person aiding abetting or assisting therein shall being lawfully convicted be adjudged guilty of a felony and suffer death as a felon.

Any person in company with four others having prohibited goods or with one other armed or disguised guilty of felony.

77. And be it enacted That if any person being in company with more than four other persons be found with any goods liable to forfeiture under this or any other Act relating to the Revenue of Customs or in company with one other person within five miles of the sea coast or of any navigable river leading therefrom with such goods and carrying offensive arms or weapons or disguised in any way every such person shall be adjudged guilty of felony and shall on conviction of such offence be transported as a felon for the space of seven years.

Persons assaulting officers by force or violence may be transported.

78. And be it enacted That if any person shall by force or violence assault resist oppose molest hinder or obstruct any officer of the Navy on full pay or any officer of Customs or other person acting in his or their aid or assistance or duly employed for the prevention of smuggling in due execution of his or their office or duty such person being convicted thereof shall be transported for seven years or sentenced to be imprisoned in any house of correction or common gaol and kept to hard labor for any term not exceeding three years at the discretion of the Court before whom the offender shall be tried and convicted as aforesaid.

Vessels and goods seized may be disposed of as the Collector &c. shall direct.

79. And be it enacted That all ships vessels and boats and all goods whatsoever which shall have been seized and condemned for a breach of any law relating to the Customs shall be disposed of as soon as conveniently may be after the condemnation thereof in such manner as the Collector or other proper officer of Her Majesty's Customs shall direct.

Allowance to poor persons confined for offences against Customs Laws.

80. And be it enacted That for the necessary subsistence of any poor person confined in the said Colony under and by virtue of any process for the recovery of any duties or penalties either upon bond or otherwise under this or any other law relating to the Revenue of

Customs.

of Customs in force in the said Colony it shall and may be lawful for the said Governor at his discretion to cause an allowance not exceeding sixpence and not less than fourpence per day to be made to any such poor person out of any money arising from the duties of Customs as the case may require.

81. And be it enacted That all forfeitures and penalties recovered under this or any other Act relating to the Customs shall be divided paid and applied (after deducting the charges of prosecution and other contingent expenses) as follows That is to say one moiety to Her Majesty for the public uses of the said Colony and the other moiety to the seizing officer or to the person or persons who shall sue or shall have sued for such penalty.

Application of penalties.

82. And be it enacted That all penalties and forfeitures incurred or imposed by this or any other Act relating to the Customs or to trade or navigation shall and may be sued for prosecuted and recovered by action of debt bill plaint or information in any of Her Majesty's Courts of Record in the said Colony or in the Courts of Vice Admiralty in the name of Her Majesty's Attorney General or in the name or names of some officer or officers of Her Majesty's Customs or by information before any two or more Justices of the Peace for the said Colony.

Penalties and forfeitures how to be sued for.

83. And be it enacted That all ships vessels boats and goods which shall have been or shall be hereafter seized as forfeited under any law relating to the Customs and which shall have been or shall hereafter be ordered to be prosecuted by the Collector or other proper officer of Customs shall be deemed and be taken to be condemned and may be sold in the manner directed by law in respect to ships vessels boats and goods seized and condemned for breach of any law relating to the Customs unless the person from whom such ships vessels boats and goods shall have been seized or the owner of them or some person authorized by him shall within one calendar month from the day of seizing the same give notice in writing to the Collector or other chief officer of the Customs at the nearest port that he claims the ship vessel boat or goods or intends to claim them.

All vessels boats and goods seized under any law of the Customs and ordered to be prosecuted shall be deemed to be condemned unless the owner give notice that he intends to claim.

84. And be it enacted That upon the exhibiting any information before any Justice of the Peace for any offence against this or any other Act relating to the Customs or to trade or navigation for which offence the party charged is not liable to be detained in manner hereinbefore mentioned such Justice is hereby required to issue a summons for the appearance of the party against whom such information is exhibited before two Justices of the Peace and such summons directed to such party being left at his or her last known place of residence or on board any ship or vessel to which such party may belong shall be deemed to have been sufficiently served.

Justices may summon offenders and the summons may be left at his last place of residence or on board any ship to which he belongs.

85. And be it enacted That upon the appearance or default of any party so summoned it shall be lawful for any two Justices of the Peace to proceed to the examination of the matter contained in such information and upon due proof thereof either upon the confession of such party or upon the oath of one or more credible witness or witnesses to convict such party in the penalty or penalties sued for by such information and in case of non-payment thereof the same shall be levied by distress and sale of the goods and chattels of such party wherever the same may be found and if it should appear to the Justice or Justices who shall have so convicted any such party that the goods and chattels of such party are not sufficient whereon to levy the distress awarded together with the costs of such distress and sale it shall be lawful for such Justice or Justices of the Peace and they are hereby authorized and required by warrant under hand and seal to commit such party to any of Her

Two Justices may upon appearance or default of the party proceed to the hearing.

Majesty's

Customs.

Majesty's gaols within their or his jurisdiction there to remain until the penalty or penalties shall be paid or for any period not exceeding six calendar months unless the said penalty with costs shall be sooner paid.

Warrants.

86. And be it enacted That such warrants shall and may be executed in any part of the said Colony.

Mode of proceeding before Justices for the condemnation of seized goods.

87. And be it enacted That when any information shall have been exhibited before any Justice of the Peace for the forfeiture of any goods whatsoever seized under this or any other Act relating to the Customs it shall be lawful for the said Justice and he is hereby authorized and required to summon the party to whom such goods belonged or from whom they were seized to appear before any two Justices of the Peace and such summons directed to such party being left either at his or her last known place of residence or on board any ship to which such party may belong shall be deemed to have been sufficiently served and upon his her or their appearance or default any two Justices may proceed to the examination of the matter and upon due proof that the said goods are liable to forfeiture under this or any other Act relating to the Customs may condemn the said goods.

Informations and convictions to be in the form or to the effect in the Schedule.

88. And be it enacted That all informations before Justices of the Peace for any offences committed against this or any other Act relating to the Customs and all convictions for such offences and warrant of Justices of the Peace founded upon such convictions shall be drawn respectively in the form or to the effect in the Schedules A B C and D to this Act annexed.

Information &c. to be deemed valid if the offence is set forth in the words of the Act.

89. Provided always and be it declared and enacted That every information for any penalty or forfeiture and every conviction or warrant of commitment for any penalty shall be deemed valid and sufficient in which the offence for which such penalty shall have been inflicted or the cause of such forfeiture is set forth in the words of this Act.

No claim or appearance to be entered to any information for the forfeiture of seized goods unless in the name of the owner and oath made to the property.

90. And be it enacted That no claim shall be permitted to be entered to and no appearance shall be permitted to be entered to any information filed for the forfeiture of any ship vessel boat or goods seized for any cause of forfeiture and returned into any of Her Majesty's Courts of Record or in the Court of Vice Admiralty in the said Colony unless such claim or appearance is entered in the true and real name or names of the owner or owners of such ship vessel boat or goods describing the place of residence and the business or profession of such person or persons and if such person or persons shall reside in Sydney or within the district thereof oath shall be made by him her or them before one of the Judges of the Court into which the said ship vessel boat or goods are returned or in which such information is filed that the said ship vessel boat or goods was or were really and truly the property of him her or them at the time of such seizure but if such person or persons shall not be resident in Sydney or the district thereof then and in such case oath shall be made in like manner by the agent or attorney or solicitor by whom such claim or appearance shall be entered that he has full power and legal authority and directions from such owner or owners to enter such claim or appearance and that to the best of his knowledge and belief such ship vessel boat or goods were at the time of the seizure thereof *bonâ fide* and truly the real property of the person or persons in whose name or names such claim or appearance is entered and on failure thereof the ship vessel boat or goods shall be absolutely condemned and judgment shall be entered thereon by default according to the usual method of proceedings of the Court in the same manner as if no claim or appearance had been entered thereto and every person who shall

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shall be convicted of making or taking a false oath to any of the facts hereinbefore directed or required to be sworn shall be deemed guilty of perjury and shall be liable to the penalties and pains to which persons are liable for wilful and corrupt perjury.

91. And be it enacted That upon the entry of any claim to any ship boat or vessel or to any goods seized for any cause of forfeiture or of any appearance to any information filed for such forfeiture the person or persons who shall enter the claim or appearance as the owner or owners thereof (in case such claimant or claimants shall reside in the said Colony) shall be bound with two other sufficient sureties in the penalty of one hundred pounds to answer and pay the costs occasioned by such claim or appearance and if such owner or owners shall not reside in the said Colony then and in such case the attorney or solicitor by whose direction such claim or appearance shall be entered shall in like manner be bound with two other sufficient sureties in the like penalty to answer and pay the costs occasioned by such claim or appearance.

Owners to give security for costs occasioned by the claim or appearance.

92. And be it enacted That in case any information or suit shall be commenced or brought to trial on account of the seizure of any ship vessel boat or goods merchandise or commodities whatsoever or any horses or other animals or any carriage seized as forfeited by this or any Act relating to the Customs wherein a verdict shall be found for the claimant thereof and it shall appear to the Judge or Court before whom the same shall have been tried that there was a probable cause of seizure such Judge or Court shall certify in the record that there was such probable cause and in such case the person who made such seizure shall not be liable to any action indictment or other suit or prosecution on account of such seizure and in case any action indictment or other suit or prosecution shall be commenced and brought to trial against any person or persons whatsoever on account of any such seizure as aforesaid wherein a verdict shall be given against the defendant or defendants if the Court or Judge before whom such information or suit shall have been tried shall have certified in the said record that there was a probable cause for such seizure then the plaintiff besides the things seized or the value thereof shall not be entitled to above two-pence damages nor to any costs of suit nor shall the defendant in such prosecution be fined above one shilling.

If suit brought on account of seizure and the Judge shall certify that there was probable cause plaintiff to have two-pence damages and defendant fined not more than one shilling.

93. And be it enacted That no writ shall be sued out against nor a copy of any process served upon any officer of the Navy or Customs or against any person acting under the direction of the Commissioners of Her Majesty's Customs for any thing done in the execution of or by reason of his office until one calendar month next after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ or process as aforesaid in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person who is to bring such action and the name and place of abode of the attorney or agent and that a fee of twenty shillings shall be paid for preparing or serving of every such notice and no more.

No process to be sued out against any officer making seizure until one calendar month next after notice given.

94. Provided always and be it enacted That no plaintiff in any case where an action shall be grounded on any such act done by the defendant shall be permitted to produce any evidence of the cause of such action except such as shall be contained in the notice to be given as aforesaid or shall receive any verdict against such officer or person unless he shall prove on the trial of such action that such notice was given and in default of such proof the defendant in such action shall receive a verdict and costs as aforesaid.

No evidence to be adduced but what is contained in the notice.

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Officer may tender
amends.

95. And be it enacted That it shall and may be lawful to and for every such officer or other person to whom such notice shall have been given as aforesaid at any time within one calendar month after such notice shall have been given to tender amends to the party complaining or to his her or their agent or attorney and in case the same is not accepted to plead such tender in bar to any action to be brought against him grounded on such writ or process together with the plea of not guilty and other pleas with leave of the Court and if upon issue joined thereon the jury shall find the amends so tendered to have been sufficient that then they shall give a verdict for the defendant and in such case or in case the plaintiff shall become nonsuited or discontinue his her or their action or in case judgment shall be given for such defendant upon demurrer then such defendant shall be entitled to the like costs as he would have been entitled to in case he had pleaded the general issue only but if upon issue joined the jury shall find that no amends were tendered or that the same were not sufficient or shall find against the defendant in such other plea or pleas then they shall give a verdict for the plaintiff and such damages as they shall think proper together with his her or their costs of suit.

Neglecting to tender
amends may pay
money into Court.

96. And be it enacted That in case such officer or other person as aforesaid shall neglect to tender any amends or shall have tendered insufficient amends before the action brought it shall and may be lawful for him by leave of the Court where such action shall be brought at any time before the trial of the said action to pay into Court such sum of money as he shall see fit whereupon such proceedings orders and judgments shall be had made and given in and by such Court as in other actions where the defendant is allowed to pay money into Court.

Action to be com-
menced within six
months next after
cause of action has
arisen.

97. And be it enacted That if any action or suit be brought or commenced as aforesaid such action or suit shall be brought or commenced within six calendar months next after the cause of action shall have arisen and not afterwards and the defendant or defendants shall and may plead the general issue and give the special matter in evidence at any trial had thereupon and if the plaintiff or plaintiffs shall become nonsuited or discontinue his her or their action or suit or if upon a verdict or demurrer judgment shall be given against the plaintiff or plaintiffs the defendant or defendants shall or may receive treble costs and have such remedy for the same as any defendant or defendants can or may have in other cases where costs are given by law.

Judges may issue
warrants for appre-
hending offenders
prosecuted by indict-
ment or information.

98. And be it enacted That whenever any person shall be charged with any offence against this or any Act relating to the Customs or for which he or she may be prosecuted by indictment or information in Her Majesty's Supreme Court of New South Wales and the same shall be made appear to any Judge of the same Court by affidavit or by certificate of an information or indictment being filed against such person in the said Court for such offence it shall and may be lawful for such Judge to issue his warrant under his hand and seal and thereby to cause such person to be apprehended and brought before him or some other Judge of the same Court or before some one of Her Majesty's Justices of the Peace in order to his or her being bound to the Queen's Majesty with two sufficient sureties in such sum as in the said warrant shall be expressed with condition to appear in the said Court at the time mentioned in such warrant and to answer to all and singular indictments or informations for any such offence and in case any such person shall neglect or refuse to become bound as aforesaid it shall be lawful for such Judge or Justice respectively to commit such person to the common gaol there to remain until he or she shall become bound as aforesaid

Neglecting to give
bail may be com-
mitted to gaol.

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said or shall be discharged by order of the Court in term time or of one of the Judges of the said Court in vacation and the recognizance to be thereupon taken shall be returned and filed in the said Court and shall continue in force until such person shall have been acquitted of such offence or in case of conviction shall have received judgment for the same unless sooner ordered by the Court to be discharged and that where any person either by virtue of such warrant of commitment aforesaid or by virtue of any writ of *capias ad respondendum* issued out of the said Court is now detained or shall hereafter be committed to and detained in any gaol for want of bail it shall be lawful for the prosecutor of such indictment or information to cause a copy thereof to be delivered to such person or to the gaoler keeper or turnkey of the gaol wherein such person is or shall be so detained with a notice thereon endorsed that unless such person shall within eight days from the time of such delivery of a copy of the indictment or information as aforesaid cause an appearance and also a plea or demurrer to be entered in the said Court to such indictment or information an appearance and the plea of not guilty will be entered thereto in the name of such person and in case he or she shall thereupon for the space of eight days after the delivery of a copy of such indictment or information as aforesaid neglect to cause an appearance and also a plea or demurrer to be entered in the said Court to such indictment or information it shall be lawful for the prosecutor of such indictment or information upon affidavit being made and filed in the Court of the delivery of a copy of such indictment or information with such notice endorsed thereon as aforesaid to such person or to such gaoler keeper or turnkey as the case may be which affidavit may be made before any Judge or Commissioner of the said Court authorized to take affidavits in the said Court to cause an appearance and the plea of not guilty to be entered in the said Court to such indictment or information for such person and such proceedings shall be had thereupon as if the defendant in such indictment or information appeared and pleaded not guilty according to the usual course of the said Court and that if upon trial of such indictment or information any defendant so committed and detained as aforesaid shall be acquitted of all the offences therein charged upon him or her it shall be lawful for the Judge before whom such trial shall be had to order that such defendant shall be forthwith discharged out of custody as to his or her commitment as aforesaid and such defendant shall be thereupon discharged accordingly.

Indictments or informations may be served by the gaoler and if offender neglect to appear &c. the prosecutor may enter plea of not guilty.

If upon trial the party is acquitted any Judge may discharge him out of custody.

99. And be it enacted That where any person shall be arrested by virtue of a warrant issued as aforesaid and shall enter into a recognizance and appear in the said Court at the return of the said recognizance but shall not afterwards plead to the information or indictment it shall and may be lawful for the prosecutor of such information or indictment to cause a copy thereof to be delivered to such person or to his or her attorney or agent or to be left at his or her last place of abode with a notice thereon endorsed that unless such person shall within eight days from the time of such delivery of a copy of the information or indictment as aforesaid cause a plea to be entered in the said Court to such information or indictment that the prosecutor of such information or indictment will enter a plea of not guilty on his or her behalf and that upon affidavit being made and filed in the Court of the delivery of a copy of such information or indictment with such notice endorsed thereon as aforesaid to such person or to his or her attorney or agent or at his or her last place of abode as the case may be it shall be lawful for the prosecutor of such information or indictment to cause the plea of not guilty to be entered in the said Court to such information or indictment for such person and

When recognizance is given and the party shall not plead a copy of the information or indictment may be delivered to his attorney or agent.

If the party does not appear a plea of not guilty may be entered.

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and such proceedings shall be had thereupon as if the defendant in such information or indictment had pleaded according to the usual course of the said Court.

Proof of payment of duties or of the lawful importation of goods to be on the owner.

100. And be it enacted That if any goods shall be seized for non-payment of duties or any other cause of forfeiture and any dispute shall arise whether the Custom duties have been paid for the the same or the same have been lawfully imported or concerning the place from whence such goods were brought then and in such case the proof thereof shall be on the owner or claimer of such goods and not on the officer who shall seize and stop the same.

Averment of certain matters to be sufficient unless the contrary is proved.

101. And be it enacted That in case of any information or proceedings had under this or any other Act relating to the Customs the averment that the Collector or other principal officer of Her Majesty's Customs has directed or elected such information or proceedings to be instituted or that any ship or vessel is foreign or belonging wholly or in part to Her Majesty's subjects or that any person detained or found on board any ship vessel or boat liable to seizure is or is not a subject of Her Majesty or that any person is an officer of the Customs and where the offence is committed in any port in the said Colony the naming of such port in any information or proceedings shall be sufficient without proof as to such fact or facts unless the defendant in such case shall prove to the contrary.

Persons employed for prevention of smuggling to be deemed to be duly employed.

102. And be it enacted That all persons employed for the prevention of smuggling under the direction of the Commissioners of Her Majesty's Customs or the Governor of the said Colony or of any officer or officers in the service of the Customs shall be deemed and taken to be duly employed for the prevention of smuggling and the averment in any information or suit that such party was so duly employed shall be sufficient proof thereof unless the defendant in such information or suit shall prove to the contrary.

Viva voce evidence may be given that a party is an officer and deemed a competent witness although entitled to the whole or a share of the seizure or penalty or reward on conviction.

103. And be it enacted That if upon any trial a question shall arise whether any person is an officer of the Navy on full pay or an officer of Customs or is duly employed for the prevention of smuggling evidence of his having acted as such shall be deemed sufficient and such person shall not be required to produce his commission or deputation unless sufficient proof shall be given to the contrary and every such officer and any person acting in his aid or assistance shall be deemed a competent witness upon the trial of any suit or information on account of any seizure or penalty as aforesaid notwithstanding such officer or other person may be entitled to the whole or any part of such seizure or penalty or to any reward upon the conviction of the party charged in such suit or information.

Within what time suits indictments or informations are to be exhibited.

104. And be it enacted That all suits indictments or informations exhibited for any offence against this or any other Act relating to the Customs in any of Her Majesty's Courts of Record or Court of Vice Admiralty in the said Colony shall and may be had brought sued or exhibited within three years next after the date of the offence committed and shall and may be exhibited before any one or more Justice or Justices of the Peace within six calendar months next after the date of the offence committed.

Persons entering or clearing ships &c. as agents to be licensed and give bond.

105. And be it enacted That it shall not be lawful for any person to act as agent for transacting any business at the Custom House which shall relate to the entry or clearance of any ship or of any goods or of any baggage unless authorized so to do by license of the Collector or other principal officer of Her Majesty's Customs who is hereby empowered to require bond to be given by every person to whom such license shall be granted with one sufficient surety in the sum of two hundred pounds for the faithful and honest conduct of such person and of his clerks acting for him and if any person shall act

as

Customs.

as such agent not being so licensed or if any person shall be in partnership in such agency with any person not so licensed such person shall in either case for every such offence forfeit the sum of one hundred pounds Provided always that nothing herein contained shall extend to prevent the clerk or servant of any person or persons in co-partnership from transacting any business at the Custom House on account of such person or persons without such license provided such clerk or servant shall not transact any such business as clerk servant or agent to any other person.

106. And be it enacted That it shall be lawful for the Collector ^{Agents' licenses may be revoked.} or other principal officer of the Customs with the concurrence of the Governor of the said Colony by any order under his hand to revoke any such license and that after a copy of such order shall have been delivered to any such licensed person or to his clerk or left at his usual place of abode or business such license shall be void.

107. And be it enacted That if any person shall counterfeit or falsify or wilfully use when counterfeited or falsified any entry warrant cocket transire or other document for the unlading lading entering reporting or clearing of any ship or vessel or for the landing shipping or clearing of any ship or vessel or for the landing shipping or removing of any goods stores baggage or articles whatever or shall by any false statement procure any writing or document to be made for any of such purposes or shall falsely make any oath or affirmation required by this or any other Act for regulating the trade of the said Colony or shall forge or counterfeit a certificate of the said oath or affirmation or shall publish such certificate knowing the same to be so forged or counterfeited every person so offending shall for every such offence forfeit the sum of two hundred pounds and such penalty shall and may be prosecuted sued for and recovered in like manner and by such ways and means as any penalty may be prosecuted sued for and recovered under the provisions and directions of this Act. ^{Falsifying documents &c. penalty £200.}

SCHEDULES REFERRED TO.

A.

Form of Information before Justices of the Peace where a Pecuniary Penalty is inflicted.

NEW SOUTH WALES } BE it remembered That on the
TO WIT. } day of in the year of our Lord
A. B. officer of Customs who is directed by the Collector (or other principal officer) of Her Majesty's Customs (as the case may be) to prefer this information gives us

Esquires two of Her Majesty's Justices of the Peace for the said Colony to understand and be informed that C. D. on the day of in the year of our Lord
(here state the offence)
contrary to the form of the Act in that case made and provided whereby the said C. D. hath forfeited the sum of

B.

Form of Conviction to be used for an offence against this Act where a Pecuniary Penalty is inflicted.

NEW SOUTH WALES } BE it remembered That on the
TO WIT. } day of in the year of our Lord
an information was exhibited by A. B. officer of Customs before us

Esquires
two of Her Majesty's Justices of the Peace of the said Colony against C. D. which said information charged that the said C. D. on the day of
in the year of our Lord (here state the offence as in the information)
contrary

