

Export of Arms

WESTERN AUSTRALIA

ANNO TRIGESIMO QUINTO

VICTORIÆ REGINÆ

No. 9

An Act to prohibit the Export of Arms and Munitions of War.
[Assented to 8th August, 1871.]

WHEREAS it is expedient to empower the Governor, or Officer Administering the Government for the time being, in cases of emergency to prohibit, by proclamation, the export of Arms and Munitions of War: Be it therefore enacted, by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof:—

Preamble

1. The Governor, or Officer Administering the Government for the time being, is hereby empowered and authorised to prohibit by proclamation, the following goods to be exported or carried coastwise: Arms, ammunition, and gunpowder, military and naval stores, and any articles which the Governor, or Officer Administering the Government for the time being, shall judge capable of being converted into or made useful in increasing the quantity of military or naval stores, provisions, or any sort of victuals which may be used as food by man; and if any goods so prohibited shall be exported from this Colony or carried coastwise, or be water-borne to be so exported or carried, they shall be forfeited.

Goods prohibited by Proclamation

2. All goods and other things which shall be seized as forfeited under this Act shall be deemed and taken to be condemned, and may be sold, unless the person from whom such goods and other things shall have been seized, or the owner of them or some other person authorised by him, shall within one month from the day of seizing the same give notice in writing to the person whosoever seizing the same, or to the Chief Officer of Customs at the nearest port, that he claims the goods or other things, or intends to claim them.

Seized goods, if unclaimed for a month, to be condemned and dealt with accordingly

3. Whenever any forfeiture shall have been incurred under this Act, such forfeiture shall and may be sued for, prosecuted, recovered and disposed of in the Court of Vice-Admiralty.

Penalties and forfeitures, how to be recovered

4. All forfeitures recovered under this Act shall be paid into the hands of the Colonial Treasurer, and shall be divided, paid and applied as follows (that is to say): after deducting the charges of prosecution from the produce thereof, two-thirds to Her Majesty her heirs and successors for the public use of the Colony, and one-third part to the seizer, informer, and prosecutor.

Application of penalties

5. If any goods shall be seized as forfeited under this Act, the Judge of the Court of Vice-Admiralty may, with the consent of the Chief Officer of Customs, order the delivery thereof on security by bond, with two sufficient sureties to be first approved by such officer, to answer double the value of the same in case of condemnation; and such

Bail may be given for seizures

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bond shall be taken to the use of Her Majesty in the name of the Officer of Customs where the goods may be lodged, and such bond shall be delivered and kept in the custody of the officer; and in case the goods shall be condemned the value thereof shall be paid into the hands of such collector or officer, who shall thereupon cancel such bond.

Suits to be commenced in name of officers

6. No suit shall be commenced for the recovery of any forfeiture under this Act except in the name of the Chief Officer of the Customs or of Her Majesty's Attorney-General.

Limitation of appeals

7. No appeal shall be prosecuted from any decree or sentence of the Court of Vice-Admiralty touching any forfeiture imposed by this Act, unless the inhibition shall be applied for and decreed within twelve months from the time such decree or sentence was pronounced.

Security to abide an appeal from Vice-Admiralty

8. If any proceedings shall be instituted in the Court of Vice-Admiralty against any goods for the recovery of any forfeiture under this Act, the execution of any sentence or decree restoring such goods to the claimant thereof which shall be pronounced by the said Vice-Admiralty Court shall not be suspended by reason of any appeal which shall be prayed and allowed from such sentence: Provided that the party or parties appellate shall give security to be approved of by the Court to render and deliver such goods concerning which such sentence or decree shall be pronounced, or the full value thereof—to be ascertained either by agreement between the parties or in case the said parties cannot agree then by appraisement under the authority of the said Court—to the appellant or appellants in case the sentence or decree so appealed from shall be reversed and such goods be ultimately condemned.

AS TO THE ENTRY OF APPEARANCES AND CLAIMS BY THE OWNERS OF GOODS SEIZED

Claim to be in name of *bonâ fide* owners

9. No claim nor appearance shall be permitted to be entered to any information filed for the forfeiture of any goods seized under this Act and returned into the Court of Vice-Admiralty, unless such claim or appearance be made by or in the true and real name or names of the owner or proprietor of such goods, describing the place of residence and the business or profession of such owner or proprietor, and if such person shall reside in this Colony oath shall be made by him before the Judge of the Vice-Admiralty Court that the goods were his property at the time of seizure, but if such person shall reside elsewhere then oath shall be made by the attorney by whom such claim or appearance shall be entered that he has full authority from such owner to enter the same, and that to the best of his knowledge and belief such goods were at the time of the seizure thereof the *bonâ fide* property of the person in whose name such claim or appearance is entered, and in failure of making such proof of ownership the goods shall be condemned, and judgment shall be entered thereon by default, according to the usual practice of the Court, as if no claim or appearance had been made.

Verified by oath of ownership

If goods owned by more than five co-proprietors, two may make the oath

10. When any such goods shall at the time of the seizure thereof be the *bonâ fide* property of any number of proprietors exceeding five, it shall not be necessary for more than two of such proprietors resident

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as aforesaid to enter such claim or appearance on the part of themselves and their co-proprietors or to make such oath as aforesaid.

11. When any such goods shall at the time of the seizure thereof be the property of any joint stock company or of partners in any co-partnership actually carrying on trade in this Colony, such claim and appearance may be entered and oath made by the public officer of such joint stock company or by any agent for or any one of the partners in any such co-partnership; and every person who shall be convicted of taking a false oath as to any or either of the facts hereinbefore required to be sworn to shall be deemed guilty of perjury and liable to the pains and penalties thereof.

If goods owned by a company or co-partnership, the oath may be made by public officer or agent

12. In case any information or suit shall be tried for any cause of forfeiture under this Act and a verdict shall be found for the claimant, and it shall appear to the Judge before whom such trial was had that there was a probable cause of seizure, such Judge shall certify on the record that there was such probable cause, and such certificate shall be a bar and may be pleaded as such to any action, indictment or other proceeding against the party making such seizure, and in case any action, indictment or other proceeding shall be brought to trial against any person whatsoever on account of any seizure (whether any information shall have been or shall be brought to trial for the condemnation of the same or not), and a verdict shall be given for the plaintiff, if the Court or Judge before whom such action, indictment or other proceeding shall be tried shall certify on the record or other written proceedings that there was probable cause for such seizure, then the plaintiff shall not be entitled to more than twopence damages nor to any costs, nor shall the defendant or defendants in any such prosecution be fined more than one shilling, and the production of such certificate or copy thereof verified by the signature of the officer of the Court having charge thereof shall be sufficient evidence of such certificate.

In suits on seizure Judge may certify probable cause in bar

AS TO ACTION AGAINST OFFICERS OF THE CUSTOMS

13. No action or suit shall be commenced against any Officer of the Customs or against any person acting under the direction of any Officer of the Customs for any seizure made under this Act until one 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 of the plaintiff, in which notice shall be clearly stated the cause of action, the name and place of abode of the plaintiff and the name and place of abode or business of such attorney or agent, and the attorney or agent mentioned in such notice shall be entitled to a fee of ten shillings for preparing and serving such notice; and if any action or suit shall be commenced against any such officer or other person and no such notice shall have been given, such officer or other person may call upon the plaintiff to establish, to the satisfaction of the Court, on affidavits on both sides, that such action or suit is brought for some act, matter or thing not done in the execution of or by reason of his office; and if the plaintiff shall fail so to satisfy the Court such action or suit shall discontinue: Provided always that if the plaintiff shall so satisfy the Court he shall not be allowed on the trial of such action to give

One month's notice of action to officer before process

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evidence of any cause of action other than such as shall have been disclosed in his said affidavit.

Evidence limited
to subject in
notice

14. Upon the trial of any action brought in pursuance of such notice, the plaintiff shall not be entitled to a verdict without proving on the trial that such notice had been duly served; and in default of such proof the defendant in such action shall receive a verdict, with costs; nor shall any such plaintiff be at liberty to produce any evidence of any cause of action, except such as has been distinctly stated in such notice.

Officer may
tender amends

15. It shall be lawful for any officer or other person to whom such notice shall be given, at any time within one month after service of such notice as aforesaid, to tender amends to the plaintiff or his agent or attorney, and in case such amends be not accepted to plead such tender in bar of the action, together with the plea of 'Not Guilty,' and other pleas, with leave of the Court where such leave must be obtained pursuant to 'The Common Law Procedure Act, 1852,' and if upon the trial of such action the jury shall find the amends so tendered sufficient they shall give a verdict for the defendant, and in such case, or in case the plaintiff shall be nonsuited or discontinue his action, or in case judgment be given for such defendant on demurrer, then such defendant shall be entitled to the like costs as he would have been entitled to if 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 insufficient, or shall find against the defendant on such plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, together with costs of suit.

Officer omitting
to tender amends
may pay money
into Court

16. In case any such officer or other person as aforesaid shall neglect to tender amends, or shall not have tendered sufficient amends, before the action brought, it shall be lawful for him, by leave of the Court in which such action shall be brought, at any time before the trial of the said action to pay into Court a sum of money by way of amends, and such proceedings shall be had and taken thereupon and in relation to the money so paid into Court as are prescribed by the seventieth, seventy-first, seventy-second and seventy-third sections of an Act of the fifteenth and sixteenth years of the reign of Her Majesty Queen Victoria, chapter seventy-six.

Actions against
officers to be
brought within
two months after
cause arises

17. Every such action against any Officer of Customs or other such person as aforesaid shall be commenced within two months after the cause of action shall have arisen, and such cause of action shall not be deemed to have arisen until the day after the trial of the information with respect to any seizure; and the defendant may plead the general issue, and give the special matter in evidence on the trial thereof; and if the plaintiff shall be nonsuited or discontinue, or if upon a verdict or demurrer judgment shall be given against him, the defendant shall be entitled to costs, and have such remedy for recovering the same as any other defendant now has in other cases where costs are legally recoverable.

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18. This Act may be cited as 'The Export of Arms and Munitions Short title
of War Prohibition Act, 1871.'

FRED. A. WELD,
GOVERNOR.
