

# WESTERN AUSTRALIA.

ANNO SECUNDO

VICTORIÆ REGINÆ.

No. 3.

## An Act for the Regulation of the Customs of Western Australia.

**W**HEREAS it is expedient to make provision for the general Regulation of the Customs and Trade of the Colony of Western Australia;—Be it therefore enacted, by His Excellency the Governor of the said Colony and its Dependencies, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Act, all duties chargeable by virtue of any Act in force in this Colony shall be paid to, and received by, the Collector and Sub-Collectors of Colonial Revenue for the time being, to be appointed from time to time by the proclamation of the Governor for the time being of the said Colony. And that in the meantime, and until some such proclamation to the contrary, the Government Residents at the ports of Fremantle, Augusta, and King George's Sound, shall be Collectors for the said ports respectively; and that the receipts of such Collector, or some one of the said Sub-Collectors (and such receipts only) shall be good and sufficient discharges for the payment of any Duties payable under this Act, and alleged in such receipts to have been received.

Preamble.

It is expedient to regulate the customs and trade of this colony.

Duties to be received by Collector of Colonial Revenue and Sub-Collector, whose receipts alone to be good discharges.

Government Residents at Fremantle and other ports to act as Sub-Collectors.

**II.** AND be it further enacted, that it shall be lawful for the said Collector or Sub-Collector to appoint in writing (with the approbation of the said Governor) all necessary inferior officers for the purposes of this Act.

Inferior Officers of Customs to be appointed by Collector and Sub-Collector, with concurrence of Governor.

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Every person employed in the service of the Customs to be deemed an Officer of Customs.

Proof of such service to be sufficient prima facie evidence of being an Officer of the Customs.

Such Officers to be competent witnesses, notwithstanding their being entitled to any share of any seizure or penalty in a suit for such seizure or penalty.

Collector or Sub-Collectors to require all necessary declarations.

Officers making collusive seizure, or accepting bribes, to forfeit £100.

Persons attempting to bribe or corrupt Officers to forfeit £100.

Governor to appoint hours of attendance at the offices of the Collector and Sub-Collectors.

Masters of vessels not bringing to at proper stations to forfeit £100.

III. AND be it further enacted, that every person employed on any duty or service relating to the Customs of the said Colony by the order or with the concurrence of the Governor, or of the Commissioners of Her Majesty's Customs, (whether previously or subsequently expressed), shall be deemed to be an officer of the customs for that duty or service; and if a question shall arise in the course of any legal proceeding whether any such person be an officer duly authorised, 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 be given to the contrary; and every such officer, or any person acting in his aid or assistance, shall be deemed a competent witness on the trial of any suit or information on account of any penalty sued for, notwithstanding such officer or other person may be entitled to any part of such seizure or penalty.

IV. AND be it further enacted, that it shall be lawful for the said Collector or Sub-Collectors to require and exact all Declarations requisite under this Act, or by any law in force in this Colony for the purposes of this Act.

V. AND be it further enacted, that if any Officer of the Customs, or other person duly authorised to act as such, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize, any vessel or boat or goods liable to forfeiture, or shall take any bribe, gratuity, recompence 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 one hundred pounds.

VI. AND be it further enacted, that every person who shall give, offer or promise to give, any bribe, recompence or reward, or make any collusive agreement with any such officer as aforesaid to induce him in any way to neglect his duty, or to do, conceal or connive at any act whereby any of the provisions of this Act, or of any other 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 one hundred pounds.

VII. AND be it further enacted, that it shall be lawful for the said Governor, from time to time, to appoint the hours of attendance of the said Collector, Sub-Collectors, and other subordinate officers of Customs, at their respective Offices.

VIII. AND be it further enacted, that if the Master of any ship or vessel arriving in any port of the said Colony shall neglect or refuse to bring to at the proper stations in such ports, appointed by the proclamation of the said Governor for the boarding of Officers of the

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Customs, the Master of such ship or vessel shall forfeit the sum of one hundred pounds.

IX. AND be it further enacted, that it shall be lawful for the Governor, with the advice of the Executive Council, from time to time to appoint any Port, Haven or Creek in Western Australia and its Dependencies, and to set out the limits thereof, and to appoint the proper places within the same to be legal Quays for the lading and unloading of goods, and to define the portions of such legal Quays upon which particular goods may be laden or unladen; and to declare that any legal Quay which had been set out by such authority in any port shall no longer be so, and to appoint any new place within any port to be a legal Quay for the lading and unloading of goods.

Governor and Council to appoint legal quays, and to annul the same.

X. AND be it further enacted, that it shall be lawful for the Collector or any Sub-Collector of Customs to station any officer on board any ship or vessel within the limits of any port in the said Colony; and the Master of every ship or vessel on board of which any such officer shall be so stationed shall provide such officer sufficient room under the deck in some part of the steerage or fore-castle for his bed or hammock; and in case of neglect or refusal so to do, shall forfeit the sum of one hundred pounds.

Officer may be stationed on board of vessels in port

XI. AND be it further enacted, that the Master of every ship or vessel arriving in any of the ports or harbours of this Colony shall, within twenty-four hours after his arrival, and before bulk shall have been broken, deliver into the Collector or Sub-Collector of the port of arrival, a report in writing of the arrival and voyage 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, or whether she be laden or in ballast—and if laden, the marks, numbers, and contents of every package and parcel of goods on board, and where the same was laden, and where and to whom consigned, and when any and what goods (if any) had been unladen during the voyage, and particularly of all goods subject to duty on board of such ship or vessel, whether intended for importation into this Colony or not, and where the same was laden, and where and to whom consigned; and the Master of every ship shall, at the time of making such report, deliver to the Collector or Sub-Collector the manifest of the cargo of such ship, where a manifest is required, and if required by the Collector or Controller, shall produce to him any bill or bills of lading, or a true copy thereof, for any and every part of the cargo laden on board, and shall further answer all such questions concerning the ship and the cargo and the crew and the voyage as shall be demanded of him by such Collector or Sub-Collector.

Masters of vessels to report arrival and cargo.

Particulars of report.

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Penalty for unloading goods and shall sign a solemn declaration of the truth of such reports and before report—not making if any goods be unladen before such report, or if the Master shall fail such report—or making to make such report, or make an untrue report, or do not truly answer untrue report—or not the questions demanded, or refuse to sign such declaration, he shall answering questions truly. forfeit the sum of one hundred pounds,—and if any goods subject to duty be not reported, the same shall be forfeited.

Importer or Consignee of goods subject to duty to enter same inwards.

Particulars of such entry.

Duties to be paid at the time of entry, unless the goods subject to duty may be warehoused. Warrant for landing to be granted on entry and payment of duties.

Goods subject to ad valorem duty.

Value to be declared upon entry.

Form of declaration.

XII. AND be it further enacted, that the Importer or Consignee of any Goods subject to duty shall, within twenty-one days next after the arrival of the ship or vessel importing the same, deliver to the Collector or Sub-Collector of the port of arrival an Entry in writing, in words at length, containing the names of the importer or consignee, of the importing ship, of the master thereof, and of the place from whence such ship has arrived; and setting forth the quantity, in Imperial gallons, of Spirits consigned or imported to or by the person making such entry, the strength of such spirits, and the marks and numbers of the vessels containing the same, and the quantity and description of all other goods subject to duty, and the marks and numbers of the vessels or other packages containing the same; and shall also deliver to such Collector or Sub-Collector two or more duplicates, as may be required, of such Entry, in which all sums and numbers may be expressed in figures; and such Importer or Consignee shall, at the time of delivering in such Entry, pay down all duties on the Goods subject to duty so entered, (unless the same shall be warehoused in manner hereinafter provided), and the Collector or Sub-Collector receiving the same shall thereupon grant a warrant for the unloading or lading of such Goods.

XIII. AND be it further enacted, that in all cases where the duties imposed upon the importation of Articles into the said Colony are charged not according to the weight, tale, gauge or measure, but according to the value thereof, such value shall be ascertained by the declaration of the Importer or Proprietor of such Articles, or his known agent, in manner and form following,—that is to say:—

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 or Proprietor thereof, or his known agent, in the presence of the Collector or other principal officer of the Revenue at the port of importation; which value shall be the

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fair market price of the goods at the place of shipment. Provided that if upon view and examination of such Articles by the proper officer of the Revenue, 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 before the Collector or other proper officer what is the invoice price of such Articles, and that he verily believes such invoice price is the current value of the Articles at the place 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 Proprietor, or his known agent, and upon which the duties due thereon shall be charged and paid, unless upon examination of such invoice, it shall appear that the original declaration of the Importer or Proprietor was true, in which case the duties are to be charged on the original declared value. Provided, also, that if it shall appear to the Collector or other proper officer that such Articles have been invoiced below the real and true value thereof at the place 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 by the Governor of the colony, and such persons shall declare before the Collector or other proper officer, what is the true and real value of such Articles at the port of importation, and the value so declared by 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.

XIV. AND be it further enacted, that if the Importer or Proprietor of such Articles shall refuse to pay the Duties imposed thereon, it shall and may be lawful for the Collector or other proper officer of the Revenue, and he is hereby required to take and secure the same, with the casks and other packages thereof, and to cause the same to be publicly sold within the space of twenty days at 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 the payment of the said Duties, together with the charges that shall have been occasioned by the said sale, and the surplus, if any, shall be paid to such Importer or Proprietor, or any other person authorised to receive the same.

XV. AND be it further 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 Col-

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lector or other principal officer of the Revenue at the port to charge, demand and receive warehouse rent for such goods for all such time as the same shall remain in such warehouse, at the same rate as may be payable for the like goods when warehoused in any warehouse in which such goods may be warehoused without payment of duty.

Goods subject to duty unladen or landed before entry, or at unauthorised places, or without the presence of an Officer, to be forfeited.

XVI. AND be it further enacted, that if any Goods shall be landed or unladen from any ship or vessel in any part of the said colony before due entry shall be made thereof and warrant granted for the unloading and landing thereof, or if any goods subject to duty shall be landed at any place not duly authorised and appointed for that purpose, or shall be landed without the presence of some officer of the Customs, all such goods shall be forfeited.

All Goods subject to duty not duly entered and paid for (unless warehoused) within 21 days after arrival of importing ship, may be landed and convey to the Queen's Warehouse, and if duties thereon be not paid within three calendar months further, the same may be sold.

XVII. AND be it further enacted, that if the Importer or Consignee of any goods subject to duty shall refuse or neglect to make due entry of such goods and to pay all duties for the same (unless the same shall be warehoused in manner hereinafter provided) within twenty-one days next after the arrival of the importing ship or vessel, it shall be lawful for the Collector or Sub-Collector of the port of arrival to cause such goods to be conveyed to the Queen's warehouse; and if the duties due upon such goods be not paid within three calendar months after such twenty-one days shall have expired, together with all charges of removal and warehouse rent, the same shall be sold, and the produce of such sale shall be applied, in the first place, to the payment of freight and charges, and, in the next place, to the payment of duties due on the goods so sold, and the overplus, if any, shall be paid to such Importer or other person duly authorised to receive the same.

Goods subject to duty may be warehoused without immediate payment of duties.

XVIII. AND be it further enacted, that it shall be lawful for the Importer or Consignee of any goods subject to duty to warehouse the same in warehouses to be appointed as hereinafter provided, without payment of any duty on the first entrance thereof, subject, nevertheless, to rules and conditions hereinafter contained.

Warehouses to be licensed by Collector of Colonial Revenue.

XIX. AND be it further enacted, that it shall be lawful for the said Collector or Sub-Collector of Colonial Revenue to license by writing under his hand, with the approbation of the said Governor, such private warehouses as shall by him be approved of for the warehousing and securing of goods subject to duty, for the purposes of this Act.

Owners of licensed Warehouse to charge Rent after rates to be fixed by Collector with approbation of Government.

XX. AND be it further enacted, that it shall be lawful for the owner of every such licensed warehouse to charge and receive rent for all goods therein warehoused, after such rate as the said Collector

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shall from time to time notify and appoint, with the concurrence of the said Governor.

XXI. AND be it further enacted, that the times and manner of stowing goods subject to duty, and all other matters and things connected with the management of every such licensed warehouse (so far as the management thereof may have relation to the purposes of this Act), shall be subject to the control and regulation of the said Collector or Sub-Collector of each port.

Management of licensed Warehouses to be under control of Collector or Sub-Collector of each port.

XXII. AND be it further enacted, that upon the entry of any goods to be warehoused under the provisions of this Act, the Importer of such goods, instead of paying down the duties due thereon, shall give bond, with one sufficient surety, to be approved of by the Collector or Sub-Collector of the port of importation, in treble the amount of duties payable on such goods, and conditioned for the safe depositing of such goods in the warehouse mentioned in such entry, and for the payment of all duties due on such goods, or for the exportation thereof, without any abatement on account of deficiency, except as by this Act is provided, and that no part thereof shall be taken out of such warehouse until cleared from thence upon due 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 have no longer any interest or control in or over the same, it shall be lawful for the Collector or Sub-Collector to admit fresh security to be given by the bond of the new proprietor or other person having control over such goods, with one sufficient surety, and to exonerate the original bonder to the extent of the fresh security.

Bond to be taken upon warehousing of Goods subject to duty.

Fresh Bond to be taken upon a transfer of property in warehoused goods.

XXIII. AND be it further enacted, that if any goods which have been entered to be bonded or warehoused shall not be deposited in the proper 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 shipped, such goods shall be forfeited.

If the conditions of such Bond be violated, Goods to be forfeited.

XXIV. AND be it further enacted, that if any Importer or Proprietor of Goods warehoused under this Act, or any other person, shall, by any contrivance, fraudulently open the warehouse or gain access to such 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 one hundred pounds.

Fraudulently gaining access to warehouse to incur a penalty not exceeding £100.

XXV. AND be it further enacted, that it shall be lawful for the

Samples may be taken of warehoused goods without immediate payment of duty.

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Collector or any Sub-Collector, at discretion, to allow moderate Samples to be taken of any goods so warehoused as aforesaid without payment of duty, except as the same shall ultimately become chargeable with such duty.

Goods to be re-gauged or re-weighed when delivered from the warehouse.

XXVI. AND be it further enacted, that it shall be lawful for the Collector or any Sub-Collector to allow any goods so warehoused as aforesaid to be regauged or re-weighed when the same shall be cleared and delivered from the warehouse, and the duties for the same shall be paid according to the quantity ascertained upon such regauging or re-weighing.

Warehoused goods to be cleared out within three years from first entry, or may be sold.

XXVII. AND be it further enacted, that all goods so warehoused as aforesaid shall be duly cleared, either for exportation or for consumption within the said colony, within three years from the date of the first entry thereof; and if any such goods be not so cleared, it shall be lawful for the said Collector of Colonial Revenue to cause the same to be sold, and the produce shall be applied, first, to the payment of duties, next to warehouse rent and other charges, and the surplus, if any, shall be paid to the Proprietor: Provided, always, that it shall be lawful for the said Governor, at his discretion, to allow further time for such goods to remain warehoused.

Governor may grant further time.

Governor may remit or return duties on goods lost or destroyed in certain cases.

XXVIII. AND be it further enacted, that if any goods entered or warehoused, or entered or to be delivered from the warehouse, shall be lost or destroyed by any unavoidable accident, either on shipboard or in the landing or shipping the same for exportation, or in the receiving into or delivering from the warehouse, it shall be lawful for the said Governor to remit or return the duties payable or paid on the goods so lost or destroyed.

Officers embezzling or wilfully wasting warehoused goods guilty of a misdemeanor.

XXIX. AND be it further enacted, that if any embezzlement waste, spoil or destruction shall be made of any goods warehoused under the provisions of this Act by or through any wilful misconduct of any officer or officers of revenue, 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 prosecuted to conviction by the Importer, Consignee, or Proprietor of the goods so embezzled, wasted, spoiled or destroyed, then, and in such case, no duty shall be payable for or in respect of such last mentioned goods,—and no forfeiture or seizure shall take place of any goods so warehoused in respect of any deficiency caused by such embezzlement, waste, spoil or destruction, and such deficiency, and all damage consequent thereon, shall be repaid and made good to such Importer, Consignee or Proprietor, by the said Collector, under such orders and regulations as shall be made by the said Governor for that purpose.

If owner of goods embezzled or wasted, prosecute officer to conviction, his loss shall be made good to him by the Customs.



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XXX. AND be it further enacted, that there shall be allowed upon the exportation of goods imported into the said colony a drawback of the duties payable thereon at the time of importation: Provided, always, that proof by a solemn written declaration be made to the satisfaction of the Collector or Sub-Collector at the port of export, 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, or should be otherwise satisfactorily accounted for, and no drawback shall be allowed unless the goods upon which the same is claimed shall be shipped within three years from the day of importation thereof, and unless the value of the goods upon which the same is claimed shall amount to fifty pounds, and shall be claimed within one year from the day of such shipment.

Drawback upon exportation.

Proviso that value of goods on which drawback is claimed amounts to £50.

XXXI. AND be it further 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 amount of the duties of importation payable on such goods, with one sufficient surety, that the same shall be landed at the place for which they are entered outwards, or shall be otherwise satisfactorily accounted for.

Bond upon entry for exportation.

XXXII. AND be it further enacted, that it shall be lawful for any officer duly authorised by the Collector or Sub-Collector of Revenue at the several ports to board any ship or vessel arriving at any port of this colony, or of any of the dependencies thereof, 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 any goods liable to the payment of duties shall be found concealed without due entry thereof on board of any ship, vessel or boat, such ship, vessel, or boat, and such goods so concealed, shall be forfeited. And if the officer shall place any lock, mark or seal upon any goods on board, and such lock, mark or seal be wilfully broken, opened or altered 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 may board ships, and have free access to all parts; may open locks, and if any goods on which duty has not been paid are found, ship, vessel or boat and goods so concealed to be forfeited.

XXXIII. AND be it further enacted, that if any ship or vessel shall have become forfeited on account of any goods subject to duty

Power to Governor to remit Forfeitures and mitigate Penalties in certain cases.

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unladen therefrom or concealed therein, or if the master of any ship or vessel shall have become liable to any penalty on account of any goods subject to duty unladen from or concealed in such ship or vessel, and such goods shall be small in quantity, and it shall be made to appear to the satisfaction of the said Governor that such goods had been unladen or concealed contrary to the intention of the owners of such ship or vessel, or without the privity of the master thereof, as the case may be, it shall be lawful for the said Governor to remit such forfeiture, and also to remit or mitigate such penalty at his discretion; and every forfeiture and penalty so remitted, or part of such penalty so remitted, shall be null and void, and no suit or action shall be brought or maintainable thereon.

Persons aiding in unlawful landing of Goods subject to duty, or harbouring or concealing the same, to forfeit £100.

XXXIV. AND be it further enacted, that every person who shall assist or be otherwise concerned in the landing or unshipping, for the purpose of landing, of any goods subject to duty upon which the duties shall not have been paid or secured by entry, or who shall knowingly harbour, keep or conceal any such goods, shall forfeit the sum of one hundred pounds.

Ship's entry outwards.

Particulars of Statement.

Clearance.

Penalty.

XXXV. AND be it further enacted, that the master or commander of every ship or vessel about to sail from this colony shall deliver into the office of the Collector or Sub-collector of Revenue of the port of departure, a content or statement in writing of all goods, wares or merchandize exported in such ship or vessel from this colony, with the marks of the respective shippers and consignees thereof, and shall, if required so to do, verify such content or statement by his solemn oath, and deliver also a list of the cargo, crew and passengers, together with a statement of the port to which he is bound, and shall also obtain from the said Collector or Sub-Collector of Customs a clearance of such ship or vessel for her outward voyage; and any such master or commander who shall deliver in a false content or statement, or shall sail or attempt to sail from any port or harbour of this colony without such clearance, shall forfeit and pay a sum not exceeding fifty pounds.

Masters of vessels of 200 tons burthen in the Coasting Trade may ship free of duty from Bond sufficient Spirits for their Crew.

XXXVI. AND be it further enacted, that the master of any vessel of not less than 200 tons burthen bonâ fide engaged in the coasting trade between the different ports of the said colony shall be allowed a sufficient quantity of spirits from bond free of duty for the use of his crew, in the proportion of one gallon for each man for every month the vessel may reasonably be expected to be absent. The master or owner to enter into a bond, if required, with one sufficient surety in three times the amount of duties otherwise payable, that no part thereof shall be re-landed in the said colony without due entry.

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XXXVII. AND be it further enacted, that if any person shall counterfeit or falsify, or wilfully use when counterfeited or falsified, any entry, warrant, or other document requisite under this Act, or shall procure any such document to be made by any false statement, every person so offending shall be deemed guilty of a misdemeanor, and, being thereof convicted, shall suffer such punishment as can by law be inflicted for a misdemeanor.

Persons counterfeiting or falsifying any Document used in the Customs guilty of a misdemeanor.

XXXVIII. AND be it further enacted, that all goods, ships, vessels, and boats, and all carriages and cattle liable to forfeiture under this Act, shall and may be seized and secured by any officer of the Customs or Royal Navy; and any person who shall hinder, molest or obstruct any Officer of the Customs or Navy in the exercise of his office, or any person acting in his aid or assistance, shall, for every such offence, forfeit the sum of fifty pounds.

Goods, Vessels, Boats and Carriages liable to forfeiture may be seized by any Officer of the Customs.

XXXIX. AND be it further enacted, that if any Officer of the Revenue shall state upon oath to any Justice of the Peace for the said colony any reasonable grounds for suspecting that any goods liable to forfeiture are concealed in any particular building or place, it shall be lawful for such Justice to grant his warrant to any constable to enter and search such house or place either by day or night for such goods, and, in case of necessity, to break open any doors and to open any vessel capable of containing such goods.

Justices of the Peace may grant warrants to search for forfeited Goods.

XL. AND be it further enacted, that if any person shall by force or violence assault, resist, oppose, molest, hinder, or obstruct any Officer of the Customs or Navy in the exercise of his office, or any person acting in his aid or assistance, such person being thereof convicted, shall be adjudged a felon, and shall be punished as such at the discretion of the Court before whom such person shall be tried.

Obstructing Officers by force to be Felony.

XLI. AND be it further enacted, that all things which shall be seized as liable to forfeiture under this Act shall be forthwith delivered into the custody of the Collector or nearest Sub-Collector.

Forfeited Goods seized to be delivered into custody of Collector or Sub-Collector.

XLII. AND be it further enacted, that all things which shall have been condemned as forfeited under this Act shall, under the directions of the Collector or of the Sub-Collector of the port where such seizures shall have been secured, be sold by public auction to the best bidder: Provided, always, that it shall be lawful for the said Collector to direct from time to time in what manner the produce of such sale shall be applied,—or, in lieu of such sale, to direct that any of such things shall be destroyed, or shall be reserved for the public service.

Sale of goods forfeited and condemned.

XLIII. AND be it further enacted, that all fines and penalties

Application of forfeitures and penalties.

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recovered under this or any other law in force in the said Colony and relating to the Customs, shall be divided, paid, and applied as follows :—that is to say, after deducting the expense of prosecution and sale, one moiety thereof shall be paid to the Colonial Treasurer, (to the use of Her Majesty, her heirs and successors), and the other moiety to the person who shall seize, inform and sue for the same.

Mode of recovering forfeitures and penalties.

XLIV. AND be it further enacted, that all Penalties and Forfeitures which may hereafter be incurred shall and may be prosecuted and sued for and recovered in any Court of Record in the said Colony.

Goods seized may be bailed.

XLV. AND be it further enacted, that if any Goods, or any Ship or Vessel, shall be seized as forfeited under this Act or by any other law in force in the said Colony relative to the Customs, it shall be lawful for the Judge of any Court having jurisdiction to try and determine such seizure, with the consent of the said Collector of Colonial Revenue, to order the delivery thereof on security by bond with two sufficient sureties, to be approved of by such Collector, to answer double the value of the same in case of condemnation, and such bond shall be taken to the use of Her Majesty in the name of the said Collector, and shall be kept in the custody of such Collector. And in case the Goods, Ship or Vessel shall be condemned and the value thereof shall be paid into the hands of the said Collector, such bond shall be cancelled.

Suits to be commenced in the name of a superior officer.

XLVI. AND be it further enacted, that no Suit shall be commenced for the recovery of any Penalty or Forfeiture under this Act except in the name of some superior Officer of the Customs.

Claims to things seized to be made in owner's name.

XLVII. AND be it further enacted, that no person shall be admitted to enter a claim to anything seized in pursuance of this Act until sufficient security shall have been given in the Court where such Seizure shall be prosecuted, in a penalty not exceeding fifty pounds, to answer and pay the costs occasioned by such claim ; and in default of giving such security, such things shall be adjudged to be forfeited, and shall be condemned.

Burthen of proof to be upon claimant.

XLVIII. AND be it further 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 duties have been paid for the same, or whether the same have been lawfully imported, the proof thereof shall lie upon the Owner or Claimer of such Goods, and not on to the Officer who shall seize and stop the same.

Claimant or agent to make oath of property.

XLIX. AND be it further enacted, that no claim to any thing

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seized under this Act and returned into any Court of Record of the said Colony for adjudication, shall be admitted, unless such claim be entered in the name of the owner, with his residence and occupation, —nor unless oath to the property in such thing be made by the owner or by his attorney or agent by whom such claim shall be entered to the best of his knowledge and belief.

L. PROVIDED, always, and be it further enacted, that as often as anything seized in pursuance of this or any other law in force in the said Colony relative to the Customs shall be of a value less than twenty pounds, and shall be so sworn by affidavit duly made before any Justice of the Peace, it shall be lawful for the Officer seizing the same to prosecute for the forfeiture and recovery thereof in a summary manner before any two or more Justices of the Peace for the said colony, whose award or decision shall be final; and such Justices of the Peace shall have all and every the like powers and authorities touching such last-mentioned penalties and forfeitures as are hereby vested in any Court of Record of the said Colony.

Justices of the Peace may decide forfeitures of goods under £20 value.

LI. AND be it further enacted, that all Actions or Suits for the recovery of any of the Forfeitures or Penalties imposed by this or any other law in force in the said Colony relative to the Customs, must be commenced within six months after the offence committed for which such penalty or forfeiture shall be incurred.

Limitation of actions or suits.

LII. AND be it further enacted, that no Writ shall be sued out against, nor a copy of any process served upon, any Officer of the Customs or Navy for any thing done in the exercise of his office until one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode; in which notice shall be clearly set forth the cause of the action, the name and place of abode of the person about to bring such action; and no evidence of any other cause of action, except such cause as shall be stated in such notice, shall be admitted on the trial.

Notice of action to be given to officers of customs.

Limitation of such actions.

LIII. AND be it further enacted, that every such last-mentioned action shall be brought within one month after the cause thereof.

LIV. AND be it further enacted, that in case any Information or Suit shall be brought to trial on account of any seizure made under this Act, and a verdict shall be found for the Claimant of the things seized, and the Judge or Court before whom the cause shall be tried shall certify that there was probable cause of seizure, the Claimant shall not be entitled to any costs of suit, nor shall the person who made such seizure be liable to any Action, Indictment, or other suit or prosecution on account of such seizure.

Judge may certify probable ground of seizure.

LV. AND be it further enacted, that it shall be lawful for such

Officer may tender amends.

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Officer, at any time within one calendar month after receipt of such notice of Action as aforesaid, to tender amends to the party complaining, or his agent, and to plead such tender in bar to such action, together with any other pleas ; and if the Jury (or Court, in case such action shall be tried without a Jury) shall think the amends sufficient, a verdict shall be given for the Defendant.

*Appropriation of fines, &c.*

LVI. AND be it further enacted, that all Fines and Forfeitures and all Sums collected under this Act and not otherwise especially appropriated, shall go to Her Majesty, her heirs and successors, for the public uses of this colony and the support of the Government thereof.

LVII. AND be it further enacted, that this Act shall be and continue in force until the eighteenth day of March, one thousand eight hundred and forty-one.

JOHN HUTT.

GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council }  
the 4th day of April, 1839. }

WALKINSHAW COWAN,  
Clerk to the Council.