



ANNO SEPTIMO ET OCTAVO

VICTORIÆ REGINÆ.

No. 9.---1844.

By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice Admiral of the same by and with the advice and consent of the Legislative Council.

AN ORDINANCE further to amend the Laws for the Regulation of the Customs and Trade in South Australia.

WHEREAS by an Act or Ordinance of the Governor, with the advice and consent of the Legislative Council of South Australia, passed on the Twelfth day of August, One thousand eight hundred and forty-two, intituled "An Act to amend the Laws for the Regulation of the Customs and Trade in South Australia," it is amongst other things enacted, and provided (section 11th) "that nothing in the said Act shall prevent the master of any ship amending his report on satisfying the Collector that no fraud was intended, and any goods contained in such amended report shall not be liable to forfeiture in respect of their having been omitted in the first Report": And whereas it is also enacted (section 61st) "that in case any ship or boat liable to seizure or examination under any Act or law relating to the Customs trade or navigation or for the prevention of smuggling shall not bring to on being required so to do on being chased by any ship or boat in her Majesty's navy having the proper pendant and ensign of her Majesty's ships hoisted or by any ship or boat duly employed for the prevention of smuggling having a proper pendant and

6. Vict., No. 2.

sec. 11.

sec. 61.

"ensign

sec. 62

“ ensign hoisted it shall be lawful for the Captain Master or other person
 “ having the charge or command of such ship 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 such ship 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.” And whereas it is also enacted (section
 “ 62nd) “ that if any person shall from and after the passing of this Act wear
 “ carry or hoist in or on board any ship 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
 “ worn by 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 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 of her Majesty’s Navy on full pay or for
 “ any officer of the Customs to enter on board any such ship or boat and
 “ to seize any such flag jack pendant ensign or colours and the same shall
 “ thereupon be forfeited.” And whereas it is also enacted (section 83rd)

sec. 83.

“ that whosoever shall maliciously shoot at any ship vessel or boat belong-
 “ ing to or in the service of the revenue within three leagues of any part of
 “ the coast of the said Province or shall maliciously shoot at or dangerously
 “ wound any officer of the 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 or be aiding abetting or assisting therein
 “ shall being lawfully convicted be adjudged guilty of felony.” And whereas

sec. 84.

it is also enacted (section 84th) “ that if any person being in company with
 “ more than four other persons be found with any goods liable to forfeiture
 “ under this Act or any other such law as aforesaid or in company with one
 “ other person within five miles of the sea coast or of any navigable river
 “ loading 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.” And whereas it is also enacted (section 85th)

sec. 85.

“ that if any person shall by force or violence assault resist oppose molest
 “ hinder or obstruct any officer of Customs or other person acting in his
 “ aid or assistance or duly employed for the prevention of smuggling in due
 “ execution of his office or duty such person being convicted thereof shall be
 “ transported for seven years or sentenced to be imprisoned in the common
 “ gaol and kept to hard labour for any term not exceeding three years at the
 “ discretion of the Court before whom the offender shall be tried and
 “ convicted as aforesaid.” AND WHEREAS it is expedient that the aforesaid
 proviso and enactments should be repealed, and that the said recited
 Ordinance should be in other respects amended: BE IT THEREFORE ENACTED
 by his Excellency the Governor of South Australia, by and with the advice
 and consent of the Legislative Council thereof

I. That

I. That from and after the passing hereof the before recited proviso and enactments shall be and the same are hereby repealed: Provided always that the said Act or Ordinance shall remain and be of full force and virtue in all respects, save in so far as hereby repealed and amended.

Repeal of recited enactments.

II. And whereas, by section 24th of the said recited Ordinance, a drawback of duty is allowed under certain conditions, on the exportation of goods shipped within three years from the day of importation thereof, and it is expedient to limit such time of shipment, be it Enacted, That no drawback of duty shall be allowed upon or in respect of any goods which shall not be shipped for exportation within one year from and after the day when duty was paid thereon.

Regulation.
No drawback unless goods shipped within a year after duty paid.

III. And whereas, by section 35th of the said recited Ordinance, persons acting as Custom House Agents are required to be licensed and give bond, be it Enacted, That it shall be lawful for the Collector or other principal officer of Customs to demand and receive for and in respect of every license issued by him under the provisions aforesaid, from the person obtaining the same, the sum of Ten Pounds sterling.

Custom house agents to pay £10 for licences.

IV. And whereas, by section 55th of the said recited Ordinance, ships' stores are allowed duty free under certain limitations, and it is expedient to extend this privilege, be it Enacted, That the Master or owner of any ship being of the burthen of thirty tons at least, bound on a voyage to foreign parts the probable duration of which out and home will not be less than twenty-eight days, or which shall be engaged in whaling or sealing, shall be permitted to ship free of duty from the warehouse for the use of the crew all warehoused goods required for ships' stores in such proportions for each man on board for every month the ship may be reasonably expected to be absent, or in such quantities as the Governor, or the Commissioners of Her Majesty's Customs, shall by any regulation in that behalf appoint: Provided that the Master or Owner of such ship shall previously enter into bond with two sufficient sureties in treble the amount of duties payable thereon, that no part thereof shall be relanded in the Province without due entry at the Custom House.

Warehousing.
Ships' stores allowed free of duty to ships not under 30 tons on a voyage exceeding 28 days.

V. And be it Enacted, That if any ship or boat shall be found within the waters of the Province with a cargo on board, and such ship or boat shall afterwards be found light, or in ballast, or with any part of such cargo deficient, and the Master is unable to give a due account of the port or place where such ship or boat shall have legally discharged her cargo, or the deficient part thereof, such ship or boat, with her guns, furniture, ammunition, tackle and apparel shall be forfeited.

Smuggling.
Vessels found with cargo deficient forfeited.

VI. And be it Enacted, That all ships and boats, from which any goods shall have been conveyed or removed contrary to the provisions of any law of the Province relating to the customs or trade, shall be forfeited.

Ships, &c., smuggling forfeited.

VII. And whereas by section 98th, of the said recited Ordinance, a moiety of the net proceeds of all forfeitures and penalties recovered under the said Ordinance or any other law of the Province relating to the Customs or Trade is to be divided paid and applied in part to the seizing officer, and in part to the informer, suing for the same, in such proportion as the Court or Justice may adjudge: Be it Enacted, That such adjudication being made, the same may

Jurisdiction and procedure
Where magistrates have a discretion in appropriation of forfeitures.

may be inserted in the form of conviction contained in Schedule C to the said Ordinance annexed after the adjudication of the forfeiture, in the words set forth in the Schedule H, hereto annexed; and that in all cases when there is no seizure or seizing officer, or where the seizing officer and informer shall be one and the same person, such moiety shall be applied and paid to the informer suing for the penalty or forfeiture.

Informations before magistrates.

VIII. And be it Enacted, That every information for the recovery of any such penalty or forfeiture, before any Resident Magistrate or two or more Justices of the Peace, shall be sued in the name, or by the direction of Her Majesty's Advocate General, or of the Collector or other principal officer of Customs.

Condemnation of forfeited goods before magistrates

IX. And whereas by section 103rd. of the said recited Ordinance it is Enacted, That on informations, for the forfeiture of any goods seized under the said Ordinance, or any other such Law as aforesaid, the Resident Magistrate or any two Justices of the Peace may proceed in manner therein provided, and may condemn the said goods, be it Enacted, That such informations, and condemnations may be in the forms or to the effect of the schedules I and K hereto annexed.

Averment and proof of certain matters dispensed with.

X. And be it Enacted, That in all proceedings under any Law of the Province relating to the Customs or Trade, it shall not be necessary to aver or prove that the Governor, or Commissioners or any Officer of Customs has elected or directed such proceedings, unless the contrary be averred; and that the averment of any Officer that he believes certain goods to be uncustomed or unlawfully imported shall be sufficient, unless the owner or claimer of such goods shall prove that the Customs duties have been paid for the same, and that they have been lawfully imported.

Recovery and application of penalties.

XI. And be it Enacted, That all penalties, forfeitures and sums of money, incurred under this Ordinance, may be proceeded for and recovered, and shall be applied and appropriated in manner provided by the said recited Ordinance, as hereby amended.

G. GREY,
Governor of South Australia.

*Passed in the Legislative Council, this
Fifteenth day of August, 1844.*

W. L. O'HALLORAN,
Clerk of Council.

SCHEDULES REFERRED TO.

SCHEDULE H.

In cases where the Magistrates exercise discretion in the appropriation of forfeitures, the following words may be inserted next after the adjudication of the forfeiture in the form of conviction set forth in Schedule C annexed to the recited Ordinance that is to say "And we do adjudge that the said sum 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 Province and the other moiety, in the following proportions, to wit," [here state the proportions to the seizing officer and informer or the entire moiety to the informer alone as the case may be].

SCHEDULE I.

Information for Condemnation of Forfeited Goods.

SOUTH AUSTRALIA }
to Wit. }

BE it remembered that on the _____ day of _____ in the year of our Lord One Thousand Eight Hundred and Forty _____ at _____ in the Province (and district as the case may be) aforesaid A. B. Officer of Customs who is directed by Her Majesty's Advocate-General (or Collector of Customs as the case may be) of the Province of South Australia aforesaid to prefer this Information gives us _____ and _____ Esquires two of Her Majesty's Justices of the Peace for the Province of South Australia aforesaid (or as the case may be) to understand and be informed that [here state the offence] contrary to the form of the Ordinance (or Ordinances if both relate to the offence) of the Governor with the advice and consent of the Legislative Council of the said Province in that case made and provided whereby the said [goods as described] have (or hath as the case may be) become forfeited.

SCHEDULE K.

Condemnation thereon.

SOUTH AUSTRALIA }
To Wit. }

BE it remembered that on the _____ day of _____ in the year of our Lord One Thousand Eight Hundred and Forty _____ an Information was exhibited by A. B. Officer of Customs who was directed by Her Majesty's Advocate-General (or Collector of Customs as the case may be) of the Province of South Australia aforesaid to prefer the said Information before us _____ and _____ Esquires two of Her Majesty's Justices of the Peace for the Province of South Australia aforesaid which said Information charged [here state the offence or ground of forfeiture

as laid in the Information] contrary to the form of the Ordinance (or Acts or Ordinances if both Acts apply to the offence) of the Governor with the advice and consent of the Legislative Council of the Province in such case made and provided which offence hath been duly proved before us the said Justices: We do therefore adjudge that the said C. D. hath forfeited for the said offence the said [goods as described] and condemn the said [goods as described] to be forfeited accordingly; and we do adjudge that after deducting the charges of prosecution and other contingent expences, the proceeds of sale of the said forfeited [goods as described] shall be divided, paid and applied as follows viz. one moiety to Her Majesty for the public uses of the said Province and the other moiety [here state the proportions to the seizing officer and informer, or the entire moiety to the informer alone as the case may be]. Given under our hands and seals the day of _____ in the year of our Lord One Thousand Eight Hundred and Forty

*Passed in the Legislative Council, this
Fifteenth day of August, 1844.*

W. L. O'HALLORAN,
Clerk of Council.