



ANNO PRIMO

Victoriae Reginae,

No. 18.

By His Excellency SIR JOHN FRANKLIN, Knight Commander of the Royal Hanoverian Guelphic Order, Knight of the Greek Order of the Redeemer, and a Captain in Her Majesty's Royal Navy, Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies, with the advice of the Legislative Council.

AN ACT to consolidate and amend the Laws passed for the Prevention of Smuggling.

WHEREAS the Laws at present in force within this Colony for the Prevention of Smuggling require amendment and for that purpose it is expedient to repeal the whole of the existing Provisions on that subject and to consolidate them in one Act in the manner hereinafter effected:—

Preamble.

BE IT THEREFORE ENACTED by His Excellency Sir John Franklin, Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies with the advice of the Legislative Council that

Certain parts of the "Customs Regulation Act" (4. W. 4, No. 2,) repealed.

on and from and after the *First* day of *January* now next ensuing (on and from which day this present Act shall commence and take effect) so much of the Act of this Island passed in the Fourth year of His late Majesty, entitled "*An Act for the Regulation of the Customs of Van Diemen's Land and its Dependencies*" as relates to the prevention of Smuggling (that is to say) the whole of the said Act from the Forty sixth Section to the Seventy second Section inclusively shall be and the said several Sections are hereby repealed *excepting always* as to offences committed and matters or things done before that day which shall be dealt with respectively as if this present Act had not been passed.

Vessels with false bulk-heads &c.

II.—AND BE IT ENACTED that all Vessels and Boats belonging in the whole or in part to subjects of Her Majesty having any false bulk-head or false bow or having double sides or bottoms or any secret or disguised place whatever constructed for the purpose of concealing goods or having any hole pipe or other device adapted for the purpose of running goods shall be forfeited with all her furniture guns and ammunition tackle and apparel *And* all goods liable to the payment of duties or prohibited to be imported which shall be found concealed on board any such Vessel or Boat (whether in any larger package of goods or otherwise) shall be forfeited.

Vessel found light.

III.—AND BE IT ENACTED that if any Vessel or Boat shall be at any time within the limits of any Port with a cargo on board and shall afterwards be found light or in ballast and the Master shall be unable to give or shall not give a satisfactory account of the Port within the Colony where she legally discharged the deficient part of her Cargo such Vessel or Boat with her furniture tackle and apparel shall be forfeited.

Remission of penalties in certain cases.

IV.—AND BE IT ENACTED that if any Vessel shall have become liable to forfeiture or the Master have become liable to any penalty on account of any goods laden or unladen in or from such Vessel and such goods are small in quantity or of trifling value and it shall be made to appear to the satisfaction of the Lieutenant Governor that they were so laden or unladen contrary to the intention of the Owners of such Vessel or without the privity of the Master (as the case may be) it shall be lawful for the said Lieutenant Governor to remit such forfeiture and remit or mitigate such penalty as he shall think fitting or expedient *And* every such remission or mitigation may be pleaded in answer to any suit or action brought on account of such forfeiture or penalty.

Persons assisting in unlawfully unshipping goods.

V.—AND BE IT ENACTED that if any person shall unship or land or cause or procure to be unshipped or landed or shall assist or be otherwise unlawfully concerned in unshipping or landing any goods whatsoever which are prohibited or the duties for which have not been paid or secured or shall knowingly conceal receive or remove or assist in concealing receiving or removing any such goods after being so unshipped or landed (or any goods which shall have been illegally taken without

payment of duty from any Warehouse or place of security in which they were deposited) or shall in or on any part of his premises knowingly suffer any such goods to be so concealed received or removed the person in any such case so offending shall forfeit either three times the value of such goods or twice the amount of the duty payable thereon or the penalty of One hundred pounds at the election of the Officers of Customs.

VI.—AND BE IT ENACTED that the Master of every Vessel belonging wholly or partially to any subject of Her Majesty shall have painted and shall keep at all times painted so as to be easily legible on the outside of the stern of every Boat belonging to such Vessel the name of such Vessel and of the Port to which she belongs and the Master's name within side the transom in white or yellow Roman letters not less than two inches in length on a black ground under a penalty not exceeding ten pounds.

Boats to have the Vessels name to which they belong painted on them.

VII.—AND BE IT ENACTED that the Owner of every Boat not belonging to any Vessel shall cause to be painted and kept legibly painted upon the stern or within the transom thereof in white or yellow Roman letters not less than two inches in length on a black ground the name of every owner of such Boat and of the particular place to which she belongs under a penalty not exceeding ten pounds.

Boats not belonging to Vessels to have owners names on them.

VIII.—AND BE IT ENACTED that no unregistered Vessel or Boat whatsoever shall be employed in any Port or on any Navigable River of this Colony in the removal of goods or the conveyance of passengers or for any other purpose unless licensed by the Collector and Controller of the Customs *And* every such Vessel or Boat not being duly licensed shall be forfeited and in case of the loss or breaking up or disposal of any such Vessel or Boat her license shall be delivered up to such Collector and Controller within three months next afterwards under the penalty upon the owner thereof of not less than One Pound nor more than Twenty pounds.

Unregistered Vessels and Boats to be licensed.

IX.—AND BE IT ENACTED that every license to any such Vessel or Boat shall set forth the name of every owner thereof with his place of abode and shall state the manner in which and the limits within which such Vessel or Boat is to be used together with any other particulars which the Collector and Controller may require. *And* the Owner or one of the Owners of every such Vessel or Boat shall previously to the issue of such license enter into a Bond to Her Majesty in three times the value of such Vessel or Boat together with two sufficient Sureties to a like amount in the whole conditioned as set forth in the Schedule to this Act.

Particulars of such license.

X.—AND BE IT ENACTED that it shall be lawful for any Officer of the Customs to go on board of any Vessel hovering within one league of any of the coasts of this Island or its Dependencies and

Vessels hovering near the Coasts.

freely to stay on board her so long as she remains within that distance and if any such Vessel being bound elsewhere shall nevertheless continue so hovering for the space of twelve hours after the Master has been required by him to depart it shall be lawful for such Officer to bring her into Port and to examine and search her Cargo and examine the said Master touching such Cargo and her voyage and if there be any goods found on board which are prohibited to be imported such Vessel and her Cargo shall be forfeited. *And* if such Master shall not truly answer all questions put to him on such examination he shall forfeit and pay a penalty or sum of not less than Fifty Pounds nor more than One Hundred Pounds.

Goods, Vessels, &c. liable to forfeiture.

XI.—AND BE IT ENACTED that all goods unshipped landed removed or illegally taken as in the fifth Section of this Act mentioned shall be forfeited wherever found together with all Vessels Boats Carriages and Cattle made use of in such unshipping landing or removal *And* all Goods Vessels Boats Carriages and other things and Cattle liable to forfeiture under this Act or under any other Act relating to the Customs may be seized and secured by any Officer of the Customs or of Her Majesty's Navy or Army or Marines on full pay or by any person employed for that purpose with the concurrence of the Commissioners of Customs or by authority of the Lieutenant Governor.

Facilitating Prosecutions.

XII.—AND BE IT ENACTED that in all Prosecutions and Proceedings for penalties or forfeitures under this or any other Act relating to the Customs the Averment in the Information or Declaration that the Officer proceeding has elected to seek or sue for the sum or forfeiture mentioned shall be taken as sufficient proof of election in that behalf by the proper Officers of Customs within the meaning of such Act without further evidence thereof—*And* in every such Prosecution or Proceeding where any question shall arise as to the contents of any Cask Case or Package (by whatsoever name called) it shall be unnecessary to prove such contents by actual taste or inspection thereof but such reasonable evidence only of the fact shall be required (although not according to the strict rules of evidence) as the nature of the case shall admit of.

Obstruction of Officers.

XIII.—AND BE IT ENACTED that any person who shall resist molest or obstruct any such Officer or Person as aforesaid or any one acting in his aid in the execution of his duty under this or any other Act relating to the Customs or in the lawful exercise of any authority by this or any such Act conferred upon him shall forfeit and pay a penalty or sum of not less than Twenty Pounds nor more than One Hundred Pounds. *And* if any person shall be guilty of any such resistance molestation or obstruction with force or by violence he shall be deemed guilty of a misdemeanor and shall be liable either to such punishments as by law may be inflicted in cases of misdemeanor or at the discretion of the Court to imprisonment with hard labour for any period not exceeding Three Years.

XIV.—AND BE IT ENACTED that all Goods Vessels Chattels and things which may be seized as liable to forfeiture under this or any other Act relating to the Customs shall be forthwith delivered into the custody of the Collector and Controller at the Custom House nearest to the place where the same were seized and when condemned as forfeited shall under the direction of such Collector and Controller be sold by public auction to the best bidder.

Goods seized to be secured and when condemned to be sold by Auction.

XV.—AND BE IT ENACTED that all Vessels and Boats Goods Chattels and things now or hereafter seized as forfeited under this or any other Act relating to the Customs shall be deemed and taken to be condemned unless the person from whom they were taken or their Owner or some person authorised by him shall within one calendar month from the day of seizure give notice in writing to the person who seized the same or to the Collector or Controller of Customs at the Port nearest to the place of such seizure that he claims or intends to claim them. *Provided always* that in all such cases no person shall be admitted to enter a claim to any thing so seized until sufficient security shall have been given in the Court where such seizure is prosecuted in a penalty not exceeding Sixty Pounds to answer and pay the costs occasioned by such claim and in default of giving such security all Vessels and Boats Goods Chattels and things so seized shall be adjudged to be forfeited.

Seized Goods if unclaimed for a month to be deemed condemned.

XVI.—AND BE IT ENACTED that if any Officer of Customs or person employed as aforesaid shall make any collusive seizure or shall without the consent of the Collector and Controller at the nearest Custom House deliver up or agree to deliver up or not to seize any Vessel Boat or Goods liable to forfeiture under this or any other Act relating to the Customs or shall take any bribe or reward for the neglect or non-performance of his duty every such Officer or person shall forfeit the penalty or sum of Five Hundred Pounds and be for ever afterwards incapable of serving Her Majesty in any office Civil or Military within this Island and its Dependencies *And* every person who shall give or offer or promise to give or shall procure to be given any such bribe or reward or shall in any manner induce or endeavour to induce any such Officer or person so employed in any way to neglect his duty or to do conceal or connive at any thing whereby any provision of any such Act may be evaded shall forfeit the penalty or sum of not less than One Hundred Pounds nor more than Two Hundred Pounds.

Officers making collusive seizures and persons offering bribes.

XVII.—AND BE IT ENACTED that upon Information being made on oath before any Justice of the Peace by any Officer of Customs or person so employed as aforesaid that he doth verily suspect and believe (on certain reasonable grounds to be set forth therein) that any goods liable to forfeiture under this or any other Act relating to the Customs are in or on any particular house building or place it shall be lawful for such Justice to grant his Warrant to such Officer or person to enter and search such house building or place under which Warrant it

Search for smuggled goods.

shall be lawful for such Officer or person taking with him a Constable to enter such house building or place in the day time and to search for and seize and secure any goods so liable to forfeiture and in case of necessity to break open any doors chests or packages for that purpose.

Security may be given for Goods or Vessels seized.

XVIII.—AND BE IT ENACTED that it shall be lawful for either of The Judges of the Supreme Court after notice in that behalf to the Collector and Controller of Customs to order the delivery of any Goods or Vessels seized as forfeited under any such Act as aforesaid first causing security to be taken by bond with two sufficient sureties to be approved by such Judge to answer double the value in case of condemnation. *And* such bond shall be taken to the use of Her Majesty in the name of the Collector of Customs in whose custody such Goods or Vessel may be lodged and shall be kept in the joint custody of such Collector and Controller and in case the Goods or Vessel be condemned the value thereof shall immediately upon demand be paid into the hands of such Collector.

Recovery of Forfeitures and Penalties in the Supreme Court.

XIX.—AND BE IT ENACTED that all Penalties and Forfeitures now or hereafter imposed or incurred by this or any other Act relating to the Customs may be sued for and prosecuted by Action of Debt or Information in the Supreme Court of Van Diemen's Land in the name of Her Majesty's Attorney General or of some Superior Officer of the Customs but of no other person. *And* in all such prosecutions instituted for the condemnation of any Vessel Goods or other Thing or Things seized as forfeited under any such Act the proceeding shall be by Summons as in any ordinary Action requiring the Party or Parties having claimed or given notice of his or their intention to claim the property so seized to appear to and defend the Information to be in that behalf exhibited and upon the appearance or default of such Party or Parties the like proceedings may be had by the signing of Judgment the exhibition of an Information the Demand of Plea and otherwise to Final Judgment or Adjudication thereon (as nearly as may be) as in the case of any Action at Law by a private person.

Particular mode of such Proceeding.

XX.—PROVIDED ALWAYS that every such Summons and Information as aforesaid shall specify truly therein respectively the particular ground or grounds of the seizure and that (where the defence shall not rest solely on any matter or matters of Law) the Defendant or Defendants may plead generally to any such Information denying the several facts or matters alleged therein and that upon due proof thereafter of the truth of those facts and matters or of such of them as show the liability of the property so seized as aforesaid to forfeiture Judgment may forthwith be entered that such property be condemned or (if a Verdict shall have passed for any such Defendant or Judgment have been given for him upon Demurrer) then that such property be restored. *And* the property seized shall be immediately given up to such Defendant or be deemed and taken to be duly condemned (as the case may be) accordingly.

XXI.—AND BE IT ENACTED that if in any such Suit or Proceeding a question shall arise whether any Person is an Officer of the Customs or Navy or Army or Marines or a Person so employed as as aforesaid vivà voce testimony may be given of the fact and the same shall be deemed legal and sufficient evidence.

Proof of being an Officer of the Customs.

XXII.—AND BE IT ENACTED that where any Goods shall have been seized for non-payment of duties or any other cause of forfeiture and any question shall be made whether such duties have been paid or the goods have been lawfully imported laden or exported the proof thereof shall lie on the owner or claimant of such goods and not on the Officer or Person seizing.

Proof of payment of Duties,

XXIII.—AND BE IT ENACTED, that no Action or proceeding for the recovery of any Penalty or Forfeiture imposed by this or any other Act relating to the Customs shall be commenced at any time after three years from the time of the offence committed.

Limitation of Suits,

XXIV.—AND BE IT ENACTED that no claim to any Goods or Things seized under any such Act as aforesaid shall be admitted unless entered in the name of the Owner with his residence and occupation nor unless oath to the property therein be made by such Owner or by his Agent to the best of the knowledge and belief of such Agent. *And* every person making a false oath therein shall be guilty of a misdemeanor and be liable to the penalties to which persons are in that behalf liable.

Claim to things seized how to be entered.

XXV.—AND BE IT ENACTED that no Action or Proceeding shall be commenced against any Officer of the Customs or Navy or Army or Marines or Person so employed as aforesaid for any thing done under this or any other such Act as aforesaid nor against any person having acted in aid of any such Officer or Person until one Calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the party who intends to commence such Action or Proceeding or by his Attorney in which notice shall be clearly and explicitly set forth the cause of Action and the name and residence of such party and his Attorney. *And* no evidence of any cause of Action shall be adduced excepting only of such as shall have been contained in such notice and unless the Plaintiff shall prove on the trial that such notice was given the Defendant shall be entitled to a Verdict and Costs.

Notice of Action to be given to Officers.

XXVI.—AND BE IT ENACTED that it shall be lawful for any Person to whom any such Notice shall be given to tender Amends to the party complaining or his Agent at any time before Action brought and to plead such tender with or without any other plea or pleas in bar to such Action. *And* if the Jury find the Amends sufficient they shall give a Verdict for the Defendant.

Officer may tender amends.

XXVII.—AND BE IT ENACTED that every such Action shall be brought within three Calendar Months next after the cause thereof

Actions to be brought within three months &c.

and the Defendant may plead the General Issue in every such Action and give the Special matter in evidence thereupon. *And* if the Plaintiff in any such Action become nonsuited or discontinue such Action or if upon a Verdict or Demurrer Judgment be given against him the Defendant shall recover double costs and have such remedy for the same as any Defendant has for costs in other cases.

Judge may certify probable cause.

XXVIII.—AND BE IT ENACTED that if in any such Action the Judge before whom it was tried shall certify under his hand that the Defendant acted upon probable cause then the Plaintiff shall not be entitled to any costs. Nor shall a Defendant or Claimant have any costs if a similar Certificate be given in the case of any Information or Action which shall be tried on account of any seizure.

Forfeitures and Penalties under Fifty Pounds.

XXIX.—AND BE IT ENACTED that where any Boat Goods or other thing seized under this or any such Act as aforesaid shall be of a less amount in value than Fifty Pounds it shall be lawful for the seizing Officer with the consent of the Collector and Contrroller to prosecute for the forfeiture and condemnation thereof in a summary way before any two or more Justices of the Peace whose award or adjudication therein shall be final and all offences against this or any other such Act not otherwise provided for in respect of which any pecuniary penalty not exceeding Fifty Pounds is imposed may be in like manner heard and determined and every such penalty be imposed in a like summary way before and by any two Justices and every Defendant or other person aggrieved by the adjudication or conviction of any such Justices may appeal therefrom in the manner provided by the Act intituled "*An Act to regulate summary proceedings before Justices of the Peace.*"

Application of Penalties.

XXX.—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 the Colonial Treasurer to be appropriated towards the support of the Government of the Colony for the maintenance and reparation of the Ports or in such other manner as shall by any law or laws passed for this purpose be from time to time directed and the other moiety shall be paid to the seizing Officer or to the person or persons suing for such penalty.

Term Lieutenant Governor.

XXXI.—AND BE IT ENACTED that as often as the term "Lieutenant Governor" shall occur in this or any other such Act as aforesaid it shall be construed equally to mean the Governor or any other Officer for the time being lawfully administering the Government.

Passed the Legislative Council this
twenty-ninth day of November One
thousand eight hundred and thirty-
seven.

JOHN FRANKLIN,

ADAM TURNBULL.

Clerk of the Councils.

SCHEDULE.

*Bond from A. B. in £ and from C. D. and E. F. as his Sureties
in a like sum in the whole.*

WHEREAS the above bounden A. B. is Owner of a Vessel [or *Boat*] about to be licensed under the Act of this Island passed to consolidate and amend the Laws relative to the prevention of Smuggling. Now the condition of this obligation is that if the said Vessel [or *Boat*] shall at no time be employed in the landing or removal of any prohibited goods or goods liable to duty but upon which no duty shall have been paid contrary to the true intent and meaning of the said Act nor in the exporting or re-landing of goods or the escape or removal of Convicts contrary to law nor shall take on board at any time any goods liable to forfeiture or be employed in the doing of any other thing contrary to this or any other Act now or hereafter made relating to the Customs or the protection of Commerce or the due custody of Convicts nor shall be employed otherwise than as shall be mentioned in her license or within the limits therein prescribed. Then this obligation shall be void but otherwise it is to remain in full force.

