



WESTERN AUSTRALIA.

ANNO TRICESIMO TERTIO

VICTORIÆ REGINÆ.

NO. X.

AN ORDINANCE to modify "The Customs Ordinance, 1860."

[12th July, 1869.]

WHEREAS it is expedient to modify "The Customs Ordinance, 1860," and to make provisions for the delivery of Goods from Ships, and with reference to the Lien for Freight: Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, by and with the advice and consent of the Legislative Council thereof, as follows:—

Preamble.

1 THE 21st Section of the said Ordinance shall be, and the same is hereby, repealed. 24 Vic. 5, s. 21, repealed.

2 THE following terms used in the Sections of this Ordinance hereinafter contained shall have the respective meanings hereby assigned to them, if not inconsistent with the context or subject-matter; that is to say:—

Interpretation Clause.

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The word "Report" shall mean the report required by the Customs Laws to be made by the Master of any importing Ship.

The word "Entry" shall mean the entry required by the Customs Laws to be made for the landing or discharge of Goods from an importing Ship or from a warehouse.

The word "Wharf" shall include all wharves, quays, docks, jetties, landing places and premises, in or upon which any Goods when landed from Ships may be lawfully placed.

The word "Warehouse" shall include all warehouses, buildings, and premises in which Goods when landed from any Ships may be lawfully placed; including the Queen's Warehouse.

The expression "Warehouse Owner" shall mean the occupier of any warehouse as hereinbefore defined, and also the "Collector or other principal officer."

The word "Shipowner" shall include the Master of the Ship and every other person authorized to act as agent for the owner, or entitled to receive the Freight, demurrage, or other charges payable in respect of such Ship.

The expression "Owner of Goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the Goods, subject in the case of a lien (if any) to such lien.

Power to Shipowner to enter and land goods in default of entry and landing by owner of goods.

3 WHERE the owner of any Goods imported in any Ship from foreign parts into Western Australia fails to make entry thereof, or, having made entry thereof, to land the same, or take delivery thereof and to proceed therewith with all convenient speed, by the times severally hereinafter mentioned, the Shipowner may make entry and land or unship the said Goods at the times, in the manner, and subject to the conditions following; that is to say:—

(1.) If a time for the delivery of the Goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed.

- (II.) If no time for the delivery of the Goods is expressed in the charter party, bill of lading, or agreement, then at any time after the expiration of seventy two hours (exclusive of a Sunday or holiday) after the report of the Ship.
- (III.) If any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the Goods are to be placed, and if they can be conveniently there received, the Shipowner, in landing them by virtue of this enactment, shall cause them to be placed on such wharf or in such warehouse.
- (IV.) In other cases the Shipowner, in landing Goods by virtue of this enactment, shall place them in or on some wharf or warehouse on or in which Goods of a like nature are usually placed; such wharf or warehouse being, if the Goods are dutiable, a wharf or warehouse duly approved by the Governor of the Colony, or appointed for the landing of dutiable Goods.
- (V.) If at any time before the Goods are landed or unshipped the owner of the Goods is ready and offers to land or take delivery of the same, he shall be allowed so to do; and his entry shall in such case be preferred to any entry which may have been made by the Shipowner.
- (VI.) If any Goods are, for the purpose of convenience in assorting or examining the same, landed at the wharf where the Ship is discharged, and the owner of the Goods at the time of such landing has made entry, and is ready and offers to take delivery thereof and to convey the same to some other wharf or warehouse, such Goods shall be assorted or examined at landing, and shall (if demanded) be delivered to the owner thereof within twenty-four hours after assortment or examination; and the expenses of and consequent on such landing, assortment and examination, shall be borne by the Shipowner.
- (VII.) If at any time before the Goods are landed or unshipped, the owner thereof has made entry for the landing and warehousing thereof at any particular

wharf or warehouse other than that at which the Ship is discharging, and has offered and been ready to take delivery thereof, and the Shipowner has failed to make such delivery, and has also failed at the time of such offer to give the owner of the Goods correct information of the time at which such Goods can be delivered, then the Shipowner shall, before landing or unshipping such Goods under the powers hereby given to him, give to the owner of the Goods, or of such wharf or warehouse as last aforesaid, twenty-four hours' notice in writing of his readiness to deliver the Goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

If when goods are landed the Shipowner gives notice for that purpose the lien for freight is to continue.

4. IF at the time when any Goods are landed from any Ship, and placed in the custody of any person as a wharf or warehouse owner, the Shipowner gives to the wharf or warehouse owner notice in writing that the Goods are to remain subject to a lien for freight or other charges payable to the Shipowner, to an amount to be mentioned in such notice, the Goods so landed shall in the hands of the wharf or warehouse owner continue liable to the same lien (if any) for such charges as they were subject to before the landing thereof; and the wharf or warehouse owner receiving such Goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the Shipowner any loss thereby occasioned to him.

Lien to be discharged on proof of payment.

5. UPON production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the Shipowner, the said lien shall be discharged.

Lien to be discharged on deposit with the warehouse owner.

6. THE owner of the Goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the Shipowner, and thereupon the lien shall be discharged, but without prejudice to any other remedy which the Shipowner may have for the recovery of the freight.

Warehouse owner may at the end of 15 days, if no notice be given, pay the deposit to Shipowner.

7. IF such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not, within fifteen days after making it, give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum (if any) which he admits to be payable to the Shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or ware-

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house owner may, at the expiration of such fifteen days, pay the sum so deposited over to the Shipowner, and shall by such payment be discharged from all liability in respect thereof.

8 IF such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does, within fifteen days after making it, give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the Shipowner of such notice, and shall pay or tender to him, out of the sum deposited, the sum (if any) admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the Shipowner against the owner of the Goods to recover the said balance or sum, or otherwise for the settlement of any dispute which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceeding has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the Goods, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if notice to retain is given.

9 IF the lien be not discharged and no deposit made as hereinbefore mentioned, the wharf or warehouse owner may, and if required by the Shipowner shall, at the expiration of ninety days from the time when the Goods were placed in his custody, or, if the Goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said Goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

After ninety days warehouse owner may sell the goods by public auction.

10 BEFORE making such sale the wharf or warehouse owner shall give notice thereof by advertisement in a newspaper circulating in the neighbourhood, or in one daily or weekly newspaper published in Western Australia, and in the *Government Gazette*, and also by placards to be posted in the neighbourhood, and also, if the address of the owner of the Goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give a notice of the sale to the owner of the Goods by letter sent by the post; but the title of a *bonâ fide* purchaser of such Goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

Notices of sale to be given

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Moneys arising from sale,
how to be applied.

11 IN every case of any such sale as aforesaid, the wharf or warehouse owner shall apply the moneys received from the sale as follows, and in the following order:—

- (i.) If the Goods are sold for home use, in payment of any Customs or excise duties owing in respect thereof.
- (ii.) In payment of the expenses of the sale.
- (iii.) In the absence of any agreement between the wharf or warehouse owner and the Shipowner concerning the priority of their respective charges, in payment of the rents, taxes and other charges due to the wharf or warehouse owner in respect of the said Goods.
- (iv.) In payment of the amount claimed by the Shipowner as due for freight or other charges in respect of the said Goods.
- (v.) But in case of any agreement between the wharf or warehouse owner and the Shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement; and the surplus (if any) shall be paid to the owner of the Goods.

Warehouse owner's rent and
expenses.

12 WHENEVER any Goods are placed in the custody of a wharf or warehouse owner under the authority of this Ordinance, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the Goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said Goods, and shall have a lien on the said Goods for the said rent and expenses.

Warehouse owner's protec-
tion.

13 NOTHING in this Ordinance contained shall compel any wharf or warehouse owner to take charge of any Goods which he would not be liable to take charge of if this Ordinance had not passed; nor shall he be bound to see to the validity of any lien claimed by any Shipowner under this Ordinance.

Saving powers under local
Acts.

14 NOTHING in this Ordinance contained shall take away or abridge any power given or to be given by any local Ordinance to any Harbour Trust, body corporate, or persons, whereby they are or
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may be enabled to expedite the discharge of Ships, or the landing or delivery of Goods.

15 THIS Ordinance shall form part of and be incorporated with "The Customs Ordinance, 1860." Incorporated with Customs Ordinance, 1860.

J. BRUCE,

GOVERNOR.



*Passed the Legislative Council, }
this 12th day of July, 1869. }*

E. H. LAURENCE,

Clerk of the Council.