

No. XI.

An Act to amend the Law relating to Public and Private Sufferance Wharves and the Rates payable thereat. [30th October, 1846.]

SUFFERANCE
WHARVES.

WHEREAS by two several Acts of the Governor and Legislative Council of New South Wales passed in the seventh and eighth years of the reign of Her present Majesty intituled respectively “*An Act to further amend an Act intituled ‘An Act for the better preservation of the Ports Harbours Havens Roadsteads Channels Navigable Creeks and Rivers in New South Wales and the better regulation of Shipping in the same’*” and “*An Act to make further provision for payment of Wharfage Rates and to amend the Laws for the regulation of Shipping in certain cases*” it was amongst other things enacted that it should be lawful to levy certain rates of wharfage on all goods merchandise and packages landed at or laden from any public or private sufferance wharf in any port or harbour within the Government of New South Wales and also to levy a rate of one half-penny per ton per diem on all vessels loading unloading or refitting at any such public wharf after the expiration of certain periods specified in the Schedule to the said last recited Act annexed And whereas it is expedient to amend the said recited Acts in manner hereinafter mentioned Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That from and after the first day of January next the said wharfage and tonnage rates shall be and are hereby abolished except as hereinafter mentioned.

7 Vic. No. 12.

8 Vic. No. 16.

Wharfage and tonnage rates established thereby abolished.

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Governor authorized to let rates by auction for term not exceeding one year.

Notice of letting and conditions.

Highest bidder to enter into bond.

In case of default rates to be put up again.

Lessee to charge wharfage and tonnage rates not exceeding those fixed by 8 Vic. No. 16.

Exceptions.

In case no bidder at auction Governor may authorize the acceptance of a private tender.

After sale or acceptance of tender and the bond being entered into rates to be leased by deed.

As to the nature and form of the bond to be entered into by the lessee.

2. And be it enacted That it shall and may be lawful to and for the Governor of the said Colony for the time being from time to time to authorize and direct the wharfage and tonnage rates payable at any public wharf under the provisions of this Act to be demised and let to farm by public auction for any term not exceeding one year and for that purpose to advertise and give such public notice in the *New South Wales Government Gazette* or otherwise as he shall direct of the time of letting the same and the conditions thereof and the highest bidder at the time of letting the same (if such bidding be accepted and such bidder enter into and give bond with sureties hereinafter in that behalf mentioned) shall be declared to be the lessee of the said rates respectively for the term specified in such notice and conditions of the auction and if the highest bidder at such auction shall neglect or refuse forthwith to enter into such bond with sureties in manner hereinafter mentioned the said rates shall be again immediately put up to auction and shall in like manner be put up again in case of any default until a bidder shall be found who will enter into the bond with the sureties required.

3. And be it enacted That it shall be lawful for the lessee of any such rates to charge and to recover wharfage rates on any goods landed at the same and also a tonnage rate on all vessels loading unloading or refitting at such public wharf after the respective periods mentioned in the Schedule to the last recited Act annexed Provided that the said wharfage rates and tonnage rates respectively and that the wharfage rates and tonnage rates chargeable at any private sufferance wharf in the said Colony shall not exceed the rates authorized to be levied on goods merchandise and packages landed at public wharves by the said last recited Act and that no goods belonging to Her Majesty Her Heirs and Successors shipped or landed for the public service by order of His Excellency the Governor for the time being or any ship or vessel belonging to or in Her Majesty's service shall be subject to any such wharfage or tonnage rate as aforesaid.

4. And be it enacted That in case no bidder shall offer or in case the said rates shall not be let at such auction it shall and may be lawful for the Governor of the said Colony for the time being to authorize the acceptance of a private tender or offer for the same under such terms and conditions and in such manner as he may direct and upon the acceptance of any such private tender as aforesaid and upon the person or persons making the same duly entering into the like bond with sureties as hereinafter is directed it shall and may be lawful for the said Governor to direct the said wharves to be demised and let to farm to the person or persons whose tender in such case shall have been accepted in manner hereinafter directed.

5. And be it enacted That upon entering into the said bond with sureties as hereinafter directed by any such person or persons being the highest bidder or bidders at any such auction or being the person or persons whose tender shall or may have been accepted in manner hereinbefore mentioned it shall and may be lawful for the Colonial Treasurer or other person or persons appointed by the Governor for the time being to demise and lease to farm to such person or persons the rates bid or tendered for by him or them respectively for the term specified in the notice or tender (as the case may be.)

6. And be it enacted That immediately after such rates shall have been knocked down to the highest bidder at any such auction or immediately after the acceptance of any such tender for the same as hereinbefore mentioned the person or persons who shall be declared the highest bidder or bidders at such auction or the person or persons whose

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whose tender shall have been so accepted shall immediately or so soon after as may be enter into a bond with two sufficient sureties to be approved of by the Colonial Treasurer or other person or persons appointed by the Governor in a penal sum of double the amount of rent which such highest bidder or such tenderer shall have bid or offered for the same conditioned for the payment of the rent as the same shall become due and payable according to the terms and conditions of the sale or tender for the same and for the observance and performance of all laws ordinances rules and regulations which now are or shall or may during the term of such lease or demise be in force respecting the said rates which shall have been so bid or tendered for by him or them and respecting the wharves at which the same shall be payable.

7. And be it enacted That in case the bidding or tender for the said rates as aforesaid by the person or persons bidding or tendering for the same shall be deemed insufficient or in case such bidding or tendering shall not be accepted or completed as aforesaid or in case the Governor for the time being shall deem it more advantageous to the Revenue of the said Colony that the said rates so to be collected under this Act should be collected and received by collectors or other persons to be appointed by the Government it shall and may be lawful for the Governor for the time being to nominate and appoint a collector or collectors or other officer necessary to collect the rates so leviable at any public wharf aforesaid and every such collector or other officer so appointed shall have all the powers and remedies as to the collection of the said rates and shall be under and subject to such rules and regulations as the lessee of the said rates respectively would have or would be under and subject to in case the same had been let or demised so far as the same may be applicable Provided however that every such collector or other officer so appointed shall before he shall enter into the receipt and collection of such rates enter into a bond or bonds with or without sureties as the said Governor may require for the due and faithful discharge of his duties and for the payment of the said rates and the performance of such other terms and conditions as the Governor for the time being may think necessary to require.

Governor may appoint persons to collect rates in certain cases.

Persons so appointed to have the same power and to be subject to the same liabilities and penalties as lessee.

And to execute bonds before they enter into the receipt of the rate.

8. And be it enacted That in case all or any of the rates payable at public wharves shall be demised or let to any person or persons in any manner whatsoever and the lessee or lessees shall neglect or refuse to perform the conditions on which the same shall be so let or in case the rent or rents agreed to be paid by such lessee or lessees shall be in arrear for the space of fourteen days next after the day or days on which the same ought to be paid or the term or terms for which such lessee or lessees held the same shall in any other manner become void it shall and may be lawful for any Justice of the Peace upon complaint made upon oath by or on behalf of the Colonial Treasurer or other person appointed by the Governor as aforesaid by warrant under his hand and seal to order a constable or other peace officer with such assistance as may be necessary to enter upon and take possession of any wharf or wharves and building or buildings and appurtenances thereto belonging and to remove and put out such lessee or lessees and the wharfinger or wharfingers servant or servants who shall be found thereon and every lease contract or agreement for the same shall thenceforth cease and be utterly void to all intents and purposes whatsoever save and except as to the conditions and agreements for payment up to that time of the rent or rents payable for the same and the other conditions or agreements contained therein on the lessee's part and behalf and which shall or may have been broken and the same rates may be again let or demised to any other person or persons as if no former lease contract or agreement had been made relative thereto.

In case of non-payment of rent or breach of condition or the lease becoming void and the lessee refuse to give up possession how the same to be recovered.

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In case the lessee refuse to give up possession how the same to be recovered.

9. And be it enacted That in case the lessee or lessees of the rates payable at any public wharf for any term or times shall on the expiration of the term or times for which the same shall have been so let or demised to him or them respectively neglect or refuse to deliver up possession to any new lessee or lessees or to any person or persons who shall be duly authorized and empowered by the Governor of the said Colony for the time being to receive the same of all wharves buildings and appurtenances belonging thereto it shall and may be lawful for any Justice of the Peace upon complaint made upon oath by or on behalf of the Colonial Treasurer or other person appointed by the Governor as aforesaid by warrant under his hand and seal to order any constable or police officer with all such assistance as shall be necessary to enter upon and take possession of the same and to remove and put out such lessee or lessees and wharfingers or servants as shall be found thereon and such lessee or lessees shall be liable to all and every the penalties in that behalf mentioned in the bond which he or they shall have entered into previous to the demise made to him her or them thereof as aforesaid and also to make such compensation to any new lessee or lessees for any loss which shall or may be occasioned or which he or they shall or may sustain by reason of his or their withholding possession thereof to be ascertained by any two or more Justices of the Peace and levied by distress in like manner as any damages occasioned by persons making default in entering into the bond required by this Act as hereinbefore mentioned.

Lessees of rates authorized to appoint collectors and other necessary servants

who may exercise all such means for recovery of rates as the lessees may

but lessees to be answerable for their conduct.

10. And be it enacted That during such term or times as the said rates or any part or parts thereof shall be so leased as aforesaid to any person or persons whomsoever it shall and may be lawful for the lessee or lessees thereof to nominate and appoint such other person or persons as he she or they may think necessary in writing or writings under his her or their hands to collect demand and take such rates so demised leased and farmed and such person or persons so appointed as aforesaid shall and may use all means and methods for the recovery thereof in case of non-payment or evasion as such lessee or lessees might or could do under and by virtue of this Act and also to appoint such person or persons as he she or they may think necessary by writing under his her or their hand or hands as aforesaid as wharfingers or other servants Provided however that such lessee or lessees shall be answerable for the conduct of such other person or persons as he she or they shall or may authorize or appoint to collect demand receive and take such rates or to be such wharfinger or other servant as aforesaid and shall be subject and liable to the like actions and penalties for neglect or misconduct or for the breach of any law ordinance rule or regulation respecting the rates committed by any collector or collectors of such rates as if the same had been done committed or wilfully neglected by such lessee or lessees.

Not to prevent the use of public wharves as thoroughfares.

11. Provided always and be it enacted That nothing in this Act contained shall be deemed or construed to prevent the use of any such public wharf as a public thoroughfare or the landing or embarkation of passengers and other persons at the same free of any charge whatsoever.

Not to repeal 5th Wm. IV. No. 13.

12. Provided also and be it enacted That nothing in this Act contained shall be deemed to repeal or alter an Act of the said Governor and Legislative Council passed in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act for protecting public Wharves Piers Quays and Jetties*" or any regulations which have been or shall be established under the authority thereof.

Not to prevent abolition of all rates and charges when expedient.

13. Provided always and be it declared and enacted That nothing in this Act or the said recited Acts contained shall be deemed or

Appropriation (1847).

or construed to prevent the total abolition of all rates and charges whatever leviable at any such public wharf as aforesaid whenever the public interest may render necessary or expedient any such measure.

14. And be it enacted That all sums levied and collected under the provisions of this Act shall be granted to Her Majesty Her ^{Appropriation of} ^{rents &c.} Heirs and Successors for the public uses of this Territory and in support of the Government thereof and shall be applied in such manner as may from time to time be directed by any Acts to be passed by the said Governor and Legislative Council.

The Bill.

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