

1876-7.

Legislative Council.

CUSTOMS REGULATION BILL.

Schedule of proposed Amendments.

Omit clause 21 and *insert* the following clause :—

21. If any dispute shall arise between any master or owner of a ship importer or exporter of any goods or his agent and any officer of Customs with reference to the seizure or detention of any ship or goods or to any infringement of or non-compliance with the Laws or Regulations relating to the Customs it shall be lawful for the Collector to determine such dispute as he may deem just and to adjudge any penalty or forfeiture authorized by this Act subject to appeal to the Board of Commissioners as hereinafter provided.

What disputes &c.
to be determined by
Collector.

Omit clauses 22 to 29 inclusive and *insert* the following in substitution :—

22. For the purposes of this Act there shall be a Board of Commissioners to be composed of the following four persons :—The Collector shall be *ex officio* a member of such Board and three persons shall be appointed by the Governor. The persons constituting the said Board shall be called "the Commissioners of Customs" of whom any three shall form a quorum.

Board of Commis-
sioners.

23. The Commissioners are hereby empowered to hear and determine any such dispute as is mentioned in the next but one preceding section hereof either on appeal at the instance of the party aggrieved as hereinafter provided or as an original proceeding if the Colonial Treasurer shall think proper to refer the same to such Commissioners or to refer any dispute arising on any matter relating to the Laws and Regulations of the Customs. And in case it shall appear to such Commissioners that any infringement of or non-compliance with the Laws or Regulations relating to the Customs has been caused by accidental omission or has occurred through inadvertence the Commissioners shall have power to mitigate or wholly remit any penalty or forfeiture incurred under this Act.

Powers of Commis-
sioners on appeals
&c.

24. On the hearing and determination of any dispute or matter authorized by this Act the Commissioners shall sit as an open Court and shall have power to administer oaths to and take affirmations from witnesses whose attendance before them they may require by summons under the hand of any Commissioner. And such summons may direct the person to whom it is addressed to produce any documents papers articles or things in his possession or custody. And the said Commissioners shall have the same power and authority for enforcing order during any hearing or inquiry under this Act as is vested in Justices of the Peace in Petty Sessions in summary proceedings before them.

Commissioners to sit
as open Court.

Evidence &c.

25. The Commissioners upon the evidence taken before them shall (by order under the hands of any two of them) either decide any case or direct a prosecution if they see fit. And in the former case any penalty or forfeiture authorized by this Act may be adjudged and such adjudication shall have the same force and effect as a legal conviction for penalties by Justices. And a copy of such order shall be served

Commissioners to
direct prosecution or
decide.

upon the person adjudged to pay such penalty or forfeiture either personally or by post or by leaving the same at his last known place of abode or business and in case of non-payment thereof within one week after such service and upon production of such order to any Justice he shall enforce the same in such manner as Justices are empowered by law to enforce penalties lawfully imposed by them. Provided always that any person thinking himself aggrieved by such order may within the week hereinbefore limited for payment of the penalty or forfeiture give notice by writing under his hand addressed to the Commissioners and also to the Colonial Treasurer that he desires a rehearing of the whole case before the Commissioners and Assessors.

Rehearing by
Commissioners and
Assessors.

26. The Colonial Treasurer shall thereupon direct such rehearing to be holden before any two Commissioners of whom one shall be the Collector and any number of Assessors not exceeding three in number. And such Assessors shall consist of barristers-at-law or solicitors of the Supreme Court or of both of not less than seven years standing to be appointed from time to time by the Colonial Treasurer as occasion may require. But no such rehearing shall be had unless the party requiring the same shall give such sufficient security for payment of the penalty or forfeiture adjudged and of the fees of the Commissioners and Assessors in the event of the decision upon the rehearing being in affirmance of the order made by the Commissioners as the Treasurer may require. And for the purposes of any such rehearing the Commissioners and Assessors shall have all the powers hereinbefore conferred on Commissioners and shall in any case where a penalty or forfeiture has been incurred have power to mitigate or remit the same.

Rehearing in other
cases.

27. The authority of the Colonial Treasurer to direct a rehearing before Commissioners and Assessors shall extend to all cases in which he shall be of opinion that any decision of the Commissioners upon any matter determined by them under this Act ought to be reviewed subject however where practicable to the provisions in the next preceding section as to security for payment of any penalty or forfeiture adjudged and of the fees hereinbefore mentioned.

Penalty on witnesses
making default.

28. Any person who being summoned to give evidence or to produce any document papers article matter or thing before the Commissioners or before the Commissioners and Assessors and having the reasonable expenses of attendance if required tendered to him at the time of service of such summons who shall neglect to appear in pursuance thereof or who having so appeared shall refuse to be sworn affirm give evidence answer to the best of his knowledge any questions put to him or produce anything within his power directed by such summons shall forfeit the sum of *five* pounds and in default of payment any Justice shall on production to him of a certificate under the hand of any Commissioner that such penalty has been incurred by the person named in such certificate commit the offender to any gaol for a period not exceeding one month or until payment of such penalty. And any witness who shall give false evidence before such Commissioners or Commissioners and Assessors shall be guilty of perjury and on conviction be liable to be punished as for wilful and corrupt perjury.

Regulations for
conduct of inquiries
&c.

29. It shall be lawful for the Governor to frame regulations for the conduct of inquiries and of all matters authorized by this Act to be heard and determined before Commissioners and before Commissioners and Assessors and such regulations may also prescribe the procedure to be followed in all such inquiries and matters as aforesaid—the times and places where meetings of the Commissioners and Assessors shall or may be holden for the apportionment of fees—and generally on all matters of detail necessary to give effect to the provisions of this Act relating to Commissioners and Assessors. And all such regulations shall be dealt with have the effect and be given in evidence in the same manner and with the same effect as hereinafter enacted with respect to regulations.

30. Every Commissioner except the Collector shall for every ^{Fees of Commis-} sitting whether of Commissioners or of Commissioners with Assessors ^{sioners and Assessors.} throughout which he shall be present be entitled to a fee of guineas and every Assessor for a like sitting shall be entitled to a fee of guineas But no Commissioner shall receive more than guineas nor any Assessor more than guineas in respect of any number of sittings upon any one subject of inquiry Such fees shall be paid by the Colonial Treasurer out of the Consolidated Revenue Fund the said fund to be recouped by any fees which shall have been obtained in certain cases on rehearings as hereinbefore provided.

1876-7.

Legislative Council.

CUSTOMS REGULATION BILL.

(Amendments to be proposed in Committee of the Whole by
SIR ALFRED STEPHEN.)

Board of Commissioners and their Functions.

21. The Governor shall appoint three persons to constitute a Board to be called the "Commissioners of Customs" of whom the Chairman shall be either a District Court Judge or Police Magistrate or a barrister of five years standing (any two of whom the Chairman being one shall form a quorum) who shall with open doors hear and determine disputes between any officer of Customs and any other person respecting any matter whatever relating to the Customs which shall be submitted to their judgment by the Collector on behalf of any such officer or by the person preferring any complaint against such officer or by any person dissatisfied with the determination of the Collector or any question which shall be submitted by the Colonial Treasurer in respect of any matter relating to the Customs.

Governor may
appoint a Board of
Commissioners &c.

22. If any dispute shall arise between the master or owner of any ship or the importer or exporter of goods or their agents respectively and any officer of Customs with reference to the seizure or detention of any ship or goods or to any alleged breach of or non-compliance with the laws or regulations relating to the Customs it shall be lawful for the Commissioners to hear and determine such dispute and if they shall be of opinion that no such breach or non-compliance has occurred or that if it occurred it was not wilful but was through inadvertence or ignorance only they shall so adjudge and declare And the Governor may thereupon wholly remit or mitigate any penalty or forfeiture which may have been incurred.

Certain disputes to
be referred to
Commissioners.

23. The Commissioners shall take the evidence tendered to them relating to the matter of inquiry on oath and may thereupon either decide the case and make an order accordingly or if they see fit may direct a prosecution under this Act And the Commissioners shall possess all the authority conferred upon Justices by any Act now or hereafter in force in cases of summary jurisdiction And the course of proceeding of the Commissioners upon the hearing of any such matter of dispute or other inquiry submitted to them shall be as nearly as possible in conformity with the practice adopted before Justices in the exercise of their summary jurisdiction.

Governor may remit
penalties.

Course of
proceedings.
Ib. s. 34.

Section 24. *Omit* altogether this section. And make the following section end at "circumstances," in line 47.

The remaining portion of that section to form a separate clause thus retaining the numbers of the subsequent sections.

Section 29. In line 31. *After* "shall" *insert* "appear to." *Omit* "the person offending" and *substitute* "any person." In lines 32 and 33 *omit* "or the Colonial Treasurer" and *substitute* "subject to approval or disallowance by the Governor"

1876-7.

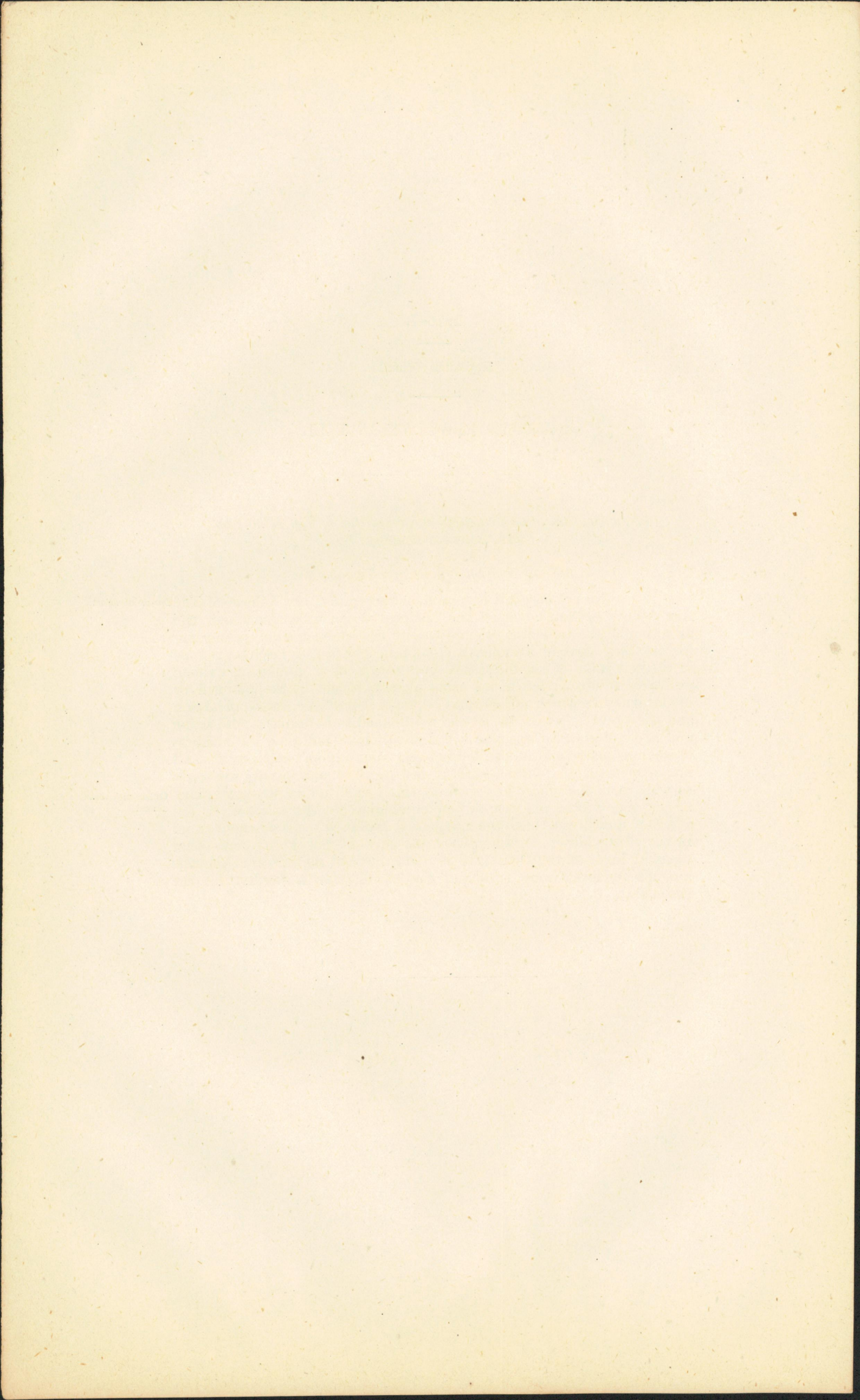
Legislative Council.

CUSTOMS REGULATION BILL.

(*New Section to be proposed in Committee of the Whole by*
SIR ALFRED STEPHEN.)

Actions against Officers of Customs &c.

No action shall be commenced against any officer of the Notice of action.
Army Navy or Marines or of the Customs or person acting under the
direction of the Collector or employed in the prevention of smuggling
for anything done or intended and supposed by him to have been done
in the execution of his duty until one month after notice in writing
delivered to him or left at his usual place of abode by the plaintiff or
his attorney in which notice shall be truly stated the cause of action
and the Court in which the action is intended to be brought the name
and place of abode of the plaintiff and the name and place of business
of such attorney and on the trial of any such action the plaintiff shall
not be entitled to a verdict without proving that such notice was duly
served And the officer or person to whom such notice was given may Officer may tender
amends.
at any time within one month tender amends to the plaintiff or his
attorney and in case such amends be not accepted to plead such tender
in bar of the action together with the plea of not guilty and other
pleas by leave of the Court and if upon the trial the jury find that the
amends tendered were sufficient they shall give a verdict for the
defendant.



1876-7.

Legislative Council.

CUSTOMS REGULATION BILL.

(*Amendments to be proposed in Committee of the Whole by*
SIR ALFRED STEPHEN.)

22. Such Commissioners shall with open doors hear and determine all disputes which may arise between any officer of Customs and any other person respecting any matter relating to the Customs which shall be submitted to their judgment by the Collector on behalf of any such officer or by the person preferring any complaint against such officer or by any person dissatisfied with any proceeding or determination of the Collector. And where such dispute has reference to the seizure or detention of any ship or goods or to any alleged non-compliance with the laws or regulations relating to the Customs if the Commissioners shall be of opinion that no breach of the law or non-compliance has occurred or that if it occurred it was through inadvertence or ignorance only they shall so declare. And the Governor may thereupon wholly remit or may mitigate any penalty or forfeiture which may have been incurred. Disputes may be referred to Commissioners. Governor may remit penalties.

23. The Commissioners shall take the evidence tendered to them relating to any such matter of inquiry on oath and if they shall see fit may either absolutely or subject to any condition direct a prosecution under this Act. The Commissioners shall for the purposes of this Act possess all the authority conferred upon Justices by any Act now or hereafter in force in cases of summary jurisdiction. And the course of proceeding upon the hearing of any such matter shall be as nearly as possible in conformity with the practice adopted before Justices in the exercise of such jurisdiction. Course of proceeding.

Section 24. *Omit* altogether this section. And make the following section end at "circumstances" in line 47.

(The remaining portion of that section to form a separate clause; thus retaining the numbers of the subsequent sections.)

Section 28. Make this section end at "present thereat." (The remaining portion of that section to form a separate clause; beginning at "If any" in line 25.)

Section 29. *Omit* altogether this section.

(*New Section to be inserted at end of the Bill.*)

Actions against Officers.

No action shall be commenced against any officer of the Army Navy or Marines or of the Customs or person acting under the direction of the Collector or employed in the prevention of smuggling for anything done (or intended and supposed by him to have been done) in the execution of his duty until one month after notice in writing delivered to him or left at his usual place of abode by the plaintiff or his attorney in which notice shall be stated the cause of action and the Court in which the action is intended to be brought the name and place of abode of the plaintiff and the name and place of business of such attorney and on the trial of such action the plaintiff shall not obtain a verdict without proving that such notice was duly served. And the officer or person to whom such notice was given may at any time within one month thereafter tender amends to the plaintiff or his attorney and in case such amends be not accepted may plead such tender in bar of the action together with the plea of not guilty and other pleas by leave of the Court and if the jury find that the amends tendered were sufficient they shall give their verdict for the defendant. Notice of action. Officer may tender amends.

