

ANNO QUARTO

GULIELMI IV. REGIS.

****

CAP. XIII.

An Act to repeal so much of an Act of the last Session of Parliament, for the Prevention of Smuggling, as authorizes Magistrates to sentence Persons convicted of certain Offences to serve His Majesty in His Naval Service, and to alter and amend the said Act. [22d *May* 1834.]

WHEREAS an Act was passed in the last Session of Parliament, intituled *An Act for the Prevention of Smuggling*: And whereas it is expedient to repeal so much of the said Act as authorizes and requires Justices of the Peace to order Persons convicted of certain Offences therein mentioned to be carried and conveyed on board any of His Majesty's Ships, in order to serve His Majesty in His Naval Service for the Term of Five Years; and to substitute other Provisions in lieu thereof: And whereas it is also expedient to amend certain other Parts of the said Act: Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act so much of the said Act as authorizes and requires Justices of the Peace to order Persons convicted of certain Offences therein mentioned to be carried or conveyed on board any of His Majesty's Ships, in order to serve His Majesty in His Naval Service for the Term

3 & 4 W. 4. c. 53.

Power of ordering certain Offenders to be sent into the Naval Service for Five Years,

and of imposing certain Penalties, repealed.

Term of Five Years, and so much of the said Act as imposes certain pecuniary Penalties for any of the Offences herein-after next mentioned, shall be and the same is hereby repealed.

Persons found on board Vessels within prohibited Distances, and having prohibited Lading;

II. And be it further enacted, That every Person, being a Subject of His Majesty, who shall be found or discovered to have been on board any Vessel or Boat liable to Forfeiture under the said or any other Act relating to the Customs for being found or discovered to have been within any of the Distances in the said Act mentioned from the United Kingdom or from the *Isle of Man*, having on board or in any Manner attached thereto, or having had on board or in any Manner attached thereto, or conveying or having conveyed in any Manner, such Goods or Things as subject such Vessel or Boat to Forfeiture, or who shall be found or discovered to have been within any such Distances as aforesaid on board any Vessel or Boat from which any Part of the Cargo or Lading of such Vessel or Boat shall have been thrown overboard, or staved or destroyed, to prevent Seizure; and every Person, not being a Subject of His Majesty, who shall be found or discovered to have been on board any Vessel or Boat liable to Forfeiture for any of the Causes aforesaid, within One League of the United Kingdom or of the *Isle of Man;* and that all Persons who are assembled to the Number of Three or more for the Purpose of unshipping, carrying, conveying, or concealing any Spirits or Tobacco, or any Tea or Silk, (such Tea or Silk being of the Value of Twenty Pounds or more,) liable to Forfeiture under any Act relating to the Customs or Excise; and that every Person who shall by any Means procure or hire, or shall depute or authorize any other to procure or hire, any Person or Persons to assemble for the Purpose of being concerned in the landing or unshipping or carrying or conveying any Goods which are prohibited to be imported, or the Duties for which have not been paid or secured; and that every Person who shall obstruct any Officer or Officers of the Army, Navy, or Marines, being duly employed for the Prevention of Smuggling, and on full Pay, or any Officer or Officers of Customs or Excise, or any Person acting in his or their Aid or Assistance, or duly employed for the Prevention of Smuggling, in the Execution of his or their Duty, or in the due seizing of any Goods liable to Forfeiture by the said Act or any other Act relating to the Customs, or who shall rescue or cause to be rescued any Goods which have been duly seized, or who shall attempt or endeavour to do so, or shall before or at or after any Seizure stave, break, or otherwise destroy any Goods to prevent the Seizure thereof or the securing the same; shall, upon being duly convicted of any of the said Offences before any Two Justices of the Peace, be adjudged by such Justices for the First Offence to be imprisoned in any House of Correction, and there kept to hard Labour, for any Term not less than Six nor greater than Nine Calendar Months; and for the Second Offence, for any Term not less than Nine nor greater than Twelve Calendar Months; and for the Third Offence, or any subsequent Offence, for Twelve Calendar Months.

or assembled to the Number of Three or more to run Spirits, Tea, Tobacco, or Silk;

or procuring others to assemble to run Goods;

or obstructing Officers in the Execution of their Duty;

to be sent to House of Correction to hard Labour, for not less than Six Months for the First Offence, Nine for Second, and Twelve for Third.

Justices of limited Jurisdictions not

III. And be it enacted, That where any Person shall have been convicted of any Offence against this or any other Act relating to

the Customs, for which Offence such Person shall be liable to be committed to hard Labour, and such Conviction shall take place before any Justices of the Peace for any City, Borough, Liberty, Division, Franchise, or Town Corporate not having any House of Correction situate within the same, it shall be lawful for such Justices and they are hereby required, by Warrant under their Hands and Seals, to commit such Offender to any House of Correction near to the Place where such Offender is convicted, there to be kept to hard Labour for such Time as is herein-before provided for a First, Second, and Third Offence respectively; and the Governor or Keeper of such House of Correction is hereby required to receive such Offenders, and to obey the said Warrant in all respects.

having Houses of Correction to commit to some neighbouring House of Correction.

IV. And be it further enacted, That where any Person shall have been convicted before any Two Justices of the Peace of any Offence not being one of those herein-before mentioned, and for which any Penalty shall have been inflicted by the said Act or any other Act relating to the Customs, it shall and may be lawful for the said Justices, if they shall think fit, to order and adjudge that such Person shall, in default of paying the said Penalty, be imprisoned for the First of such Offences in any of His Majesty's Gaols within their Jurisdiction for a Period of not less than Six or more than Nine Calendar Months, and if such Party shall have been before convicted of any Offence against this or any other Act relating to the Customs, to be imprisoned in any House of Correction, and there kept to hard Labour, for any Period not less than Six or more than Twelve Calendar Months.

Justices may order Imprisonment in lieu of Penalty; for First Offence for Six or Nine Months, and for a Second Offence Six or Twelve Months, with hard Labour.

V. And be it further enacted, That where any Person shall have been convicted of any Offence against the said Act or any Act relating to the Customs, for which such Person would be liable to be committed to hard Labour, it shall and may be lawful for the Justices before whom such Person is so convicted, provided such Person is a Female, or provided it appears to such Justices that such Person is from Age or Sickness incapable of hard Labour, to order and adjudge that such Person shall, in lieu of being committed to hard Labour, be imprisoned in any of His Majesty's Gaols within their Jurisdiction for the Length of Time to which such Person would have been liable to be kept to hard Labour: Provided always, that in all such Cases the Cause of Mitigation shall be stated in the Warrant of Commitment.

Justices may commute the Sentence of hard Labour for Imprisonment where the Offender is a Female or is incapable of hard Labour from Age or Sickness.

VI. And be it further enacted, That where any Person shall have been convicted before any Two Justices of the Peace of any Offence against this or any other Act relating to the Customs, for which such Person is liable to be committed to hard Labour, and it shall, at any Time during such Imprisonment, be made appear to the said or any other Two Justices in the Presence of such Person that such Person had been before convicted of any such Offence, it shall be lawful for such Justices and they are hereby required to commit such Offender to some House of Correction, to be kept to hard Labour, for any Period not less than Nine and not greater than Twelve Calendar

Where a Person is liable to be committed to hard Labour, and it appears that he has before been convicted of a similar Offence, the Justices may extend the

Period of Imprisonment.

Calendar Months in the whole from the Date of the first Commitment, and to amend the Warrant of Commitment accordingly.

As to the amended Warrant.

VII. And be it further enacted, That it shall not be necessary in such amended Warrant of Commitment to state or refer to the former Conviction.

Limitation of Power to mitigate Penalties.

VIII. And whereas by the said Act Power is given to Justices of the Peace to mitigate Penalties in certain Cases; be it further enacted, That such Power shall be exercised by such Justices only where the Offender is convicted of a First Offence against the said Act or any other Act relating to the Customs, and not where such Offender is convicted of a Second or other subsequent Offence of that Description.

The Treasury or Commissioners of Customs may release Persons committed under this Act.

IX. And be it further enacted, That it shall and may be lawful for the Commissioners of His Majesty's Treasury, or any Three or more of them, for the Time being, or for the Commissioners of His Majesty's Customs, by any Order made for that Purpose under their Hands, to release from Confinement any Person or Persons committed under this Act, on such Terms and Conditions as to them respectively shall appear to be proper.

As to the Form of Informations and Convictions.

X. And be it further enacted, That all Informations before Justices of the Peace for any Offences committed against this Act, and all Convictions for such Offences, and Warrants of Justices of the Peace founded upon such Convictions, shall be drawn respectively in the Form or to the Effect in the Schedule to this Act annexed.

None of His Majesty's Subjects to hoist in their Vessels the Union Jack or any Pendants, &c. usually worn in His Majesty's Ships and prohibited to be worn by Proclamation of 1st Jan. 1801, under a Penalty of 50*l.*

XI. And whereas His late Majesty King *George* the Third, by His Royal Proclamation bearing Date the First Day of *January* One thousand eight hundred and one, was pleased, with the Advice of His Privy Council, to order and appoint what Ensign or Colours should be borne at Sea by Merchant Ships or Vessels belonging to any of His Majesty's Subjects of the United Kingdom of *Great Britain* and *Ireland*, and of the Dominions thereunto belonging, thereby charging and commanding all His Majesty's Subjects whatsoever that they should not presume to wear in any of their Ships or Vessels His Majesty's Jack, commonly called the Union Jack, nor any Pendants nor any such Colours as are usually worn by His Majesty's Ships, without particular Warrant for their so doing from His Majesty, or His High Admiral of *Great Britain*, or the Commissioners for executing the Office of Lord High Admiral, for the Time being; and also commanding His Majesty's Subjects that without such Warrant as aforesaid they should not presume to wear on board their Ships or Vessels any Flags, Jacks, Pendants, or Colours made in imitation of or resembling those of His Majesty, or any Kind of Pendant whatsoever, or any other Ensign than the Ensign described in the Margin of the said Proclamation: And whereas by an Act of the last Session of Parliament, intituled *An Act for the Prevention of Smuggling*, a Penalty of Fifty Pounds is imposed on every Person who shall wear, carry, or hoist in or on board any Vessel or Boat whatever belonging to any of His Majesty's Subjects, without

3 & 4 W. 4. c. 53.

without particular Warrant for that Purpose, His Majesty's Jack, or any Pendant, Ensign, or Colours as therein mentioned: And whereas it is expedient that all Doubts that may have been entertained as to the Law on this Subject should be removed, and that further Provision should be made for carrying the said Proclamation into effect; be it therefore enacted and declared, That from and after the passing of this Act it shall not be lawful for any of His Majesty's Subjects whomsoever to hoist, carry, or wear in or on board any Ship, Vessel, or Fishing Boat, or any other Vessel or Boat whatever, whether Merchant or otherwise, belonging to any of His Majesty's Subjects, His Majesty's Jack commonly called the Union Jack, or any Pendant or any such Colours as are usually worn by His Majesty's Ships, or any Flag, Jack, Pendant, or Colours whatever made in imitation of or resembling those of His Majesty, or any Kind of Pendant whatsoever, or any Ensign or Colours whatever other than those prescribed by the said Proclamation; and that if any Person or Persons shall nevertheless presume to hoist, carry, or wear in or on board any Ship or Vessel, Fishing Boat, or other Vessel or Boat whatever, belonging to any of His Majesty's Subjects, whether the same be Merchant or otherwise, His Majesty's Jack commonly called the Union Jack, or any Pendant or Colours such as are commonly worn by His Majesty's Ships, or any Jack, Flag, Pendant, or Colours whatever made in imitation of or resembling those of His Majesty, or any Kind of Pendant whatever, without such Warrant as aforesaid, or any other Ensign or Colours than the Ensign or Colours prescribed by the said Proclamation to be worn, then and in every such Case the Master or other Person having Charge of such Ship, Vessel, or Boat, or the Owner or Owners thereof being on board the same, and every other Person so offending, shall for every such Offence forfeit and pay a Sum not exceeding Five hundred Pounds, to be recovered, with Costs of Suit, either in the High Court of Admiralty of *England*, or in any Vice Admiralty Court in His Majesty's Colonies, or in any of His Majesty's Courts of King's Bench or Exchequer at *Westminster* or *Dublin*, at the Suit of His Majesty's Attorney General, or in the Courts of Session or Exchequer in *Scotland* respectively; and that it shall be lawful for any Officer of His Majesty's Navy or Marines belonging to any of His Majesty's Ships, or any Officer of the Customs or Excise, to enter on board any Ship, Vessel, or Boat so hoisting, wearing, or carrying any Jack, Flag, Ensign, Pendant, or Colours prohibited by the said Proclamation and by this Act to be hoisted, worn, or carried, and to seize and take away the same, and the same shall thereupon become forfeited.

XII. And be it further enacted, That this Act may be altered, amended, or repealed by any Act or Acts to be passed in the present Session of Parliament. Act may be altered.

SCHEDULE to which this Act refers.

Form of Information.

County of } Be it remembered, That on the
to wit. } Day of in the Year of our Lord One thousand eight hundred and *A. B.*, Officer of Customs, gives us and Two of His Majesty's Justices of the Peace in and for to understand and be informed, that *C. D.*, on the Day of in the Year of our Lord One thousand eight hundred and [*here state the Offence, as in the Act of Parliament,*] contrary to the Form of the Statute in that Case made and provided.

Form of Conviction.

County of } Be it remembered, That on the Day
to wit. } of in the Year of our Lord One thousand eight hundred and an Information was exhibited by *A. B.*, Officer of Customs, before us and Two of His Majesty's Justices of the Peace in and for against *C. D.*, which said Information charged that the said *C. D.*, on the Day of in the Year of our Lord One thousand eight hundred and [*here state the Offence, as in the Information,*] contrary to the Form of the Statute; which Offence ["has been duly proved before us the said Justices," *or* "the Party has confessed himself to be guilty of," *as the Case may be*]: We do therefore convict the said *C. D.* of the said Offence, and do adjudge that the said *C. D.* [*here insert the Adjudication of the Justices.*]

Given under our Hands and Seals the Day of

Form

Form of Warrant of Commitment.

County of to wit. } To *A.B.*, Officer of Customs, and to *E.F.*, the Gaoler or Keeper of the at in the

WHEREAS *C.D.* has been duly convicted before us and Two of His Majesty's Justices of the Peace in and for of having [*state the Offence, as in the Information*]: And whereas we the said Justices did adjudge that the said *C.D.* should for his said Offence These are therefore to require you the said *A.B.* forthwith to take, carry, and convey the said *C.D.* to the at in the and deliver him into the Custody of the Gaoler or Keeper of the said : And we the said Justices do hereby authorize and require you the said *E.F.*, the Gaoler or Keeper of the said to receive and take the said *C.D.* into your Custody, and to [*insert the Punishment, according to the Conviction*].

Given under our Hands and Seals at the Day of .

LONDON: Printed by GEORGE EYRE and ANDREW SPOTTISWOODE, Printers to the King's most Excellent Majesty. 1834.