

CUSTOMS ORDINANCE 1921-1941.⁽¹⁾

An Ordinance Relating to the Customs.

BE it ordained by the Governor-General of the Commonwealth of Australia with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *New Guinea Act 1920*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Customs Ordinance 1921-1941*.⁽¹⁾

Short title.
Amended by
No. 3 of 1934,
s. 50.

2. This Ordinance shall commence on a day to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾

Commencement.

3. This Ordinance is divided into Parts as follows:—
Part I.—Preliminary.

Parts.

Section 3
amended by
No. 23 of 1930,
s. 2 and Sched-
ule and s. 3.

(1) The *Customs Ordinance 1921-1941* comprises the *Customs Ordinance 1921*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

PART I.—ORDINANCES MADE BY THE GOVERNOR-GENERAL IN COUNCIL.

Short title, number and year.	Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwlth. Gaz.</i>	Date on which took effect.
<i>Customs Ordinance</i> 1921 (No. 20 of 1921)	28.10.1921	28.10.1921	(a)
<i>Customs Ordinance</i> 1930 (No. 23 of 1930)	16.12.1930	24.12.1930	24.12.1930 (<i>Cwlth. Gaz.</i> of 24.12.1930)
<i>Customs Ordinance</i> 1932 (No. 21 of 1932)	20.10.1932	27.10.1932	The whole except Sec. 4 on 27.10.1932 (<i>Cwlth. Gaz.</i> of 27.10.1932); Sec. 4 on 24.12.1930 (Sec. 4(2); <i>Customs Ordinance 1932</i>)

(a) By notice dated 30.12.1921 and published in *N.G. Gaz.* of 30.12.1921, the Administrator fixed 1.12.1921, as the day on which the *Customs Ordinance 1921* should commence. By further notice dated 29.12.1922, and published in *N.G. Gaz.* of 30.12.1922, the Deputy Administrator purported to fix 28.10.1921, as the day on which that Ordinance should commence.

PART II.—ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Customs Ordinance</i> 1936 (No. 4 of 1936)	25.2.1936	15.6.1936	25.2.1936 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 376)
<i>Customs Ordinance</i> 1938 (No. 36 of 1938)	24.8.1938	15.12.1938	15.9.1938 (<i>N.G. Gaz.</i> of 31.8.1938)
<i>Customs Ordinance</i> 1941 (No. 7 of 1941)	22.4.1941	31.7.1941	1.7.1941 (<i>N.G. Gaz.</i> of 6.5.1941)

CUSTOMS—

- Part II.—Administration of the Customs.
- Part III.—Customs Control, Examination, Entries and Securities Generally.
- Part IV.—The Importation of Goods.
 - Division 1.—Prohibited Imports.
 - Division 2.—The Boarding of Ships and Aircraft.
 - Division 3.—The Report of the Cargo.
 - Division 4.—The Entry, Unshipment, Landing and Examination of Goods.
- Part V.—The Warehousing of Goods.
 - Division 1.—Licensed Warehouses.
 - Division 2.—Administration Warehouses.
- Part VI.—The Exportation of Goods.
- Part VII.—Ships' and Aircraft's Stores.
- Part VIII.—The Duties.
 - Division 1.—The Payment and Computation of Duties Generally.
 - Division 2.—*Ad Valorem* Duties.
 - Division 3.—Deposits, Abatements, Remissions, and Refunds of Duties.
 - Division 4.—Disputes as to Duties.
- Part IX.—Drawbacks.
- Part X.—The Coasting Trade.
- Part XI.—Agents.
- Part XII.—Officers.
 - Division 1.—Powers of Officers.
 - Division 2.—Protection of Officers.
- Part XIII.—Penal Provisions.
 - Division 1.—Forfeitures.
 - Division 2.—Penalties.
- Part XIV.—Customs Prosecutions.
- Part XV.—Settlement of Cases by the Chief Collector.
- Part XVI.—Regulations.
- Part XVII.—Miscellaneous.

Definitions.

Inserted by
No. 23 of 1930,
s. 4.

Inserted by
No. 23 of 1930,
s. 4.

Inserted by
No. 23 of 1930,
s. 4.

4. In this Ordinance, unless the contrary intention appears—
- “Aerodrome” means any landing place for aircraft appointed for the purposes of this Ordinance;
 - “Aerodrome owner” includes the occupier of any aerodrome;
 - “Aircraft” includes aeroplanes, seaplanes, airships, balloons, or any other means of aerial locomotion;

Customs Ordinance 1921-1941.

“Answer questions” means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information and belief, truly answer all questions on the subject mentioned that the Collector asks;

“By authority” means by the authority of the officer of Customs doing duty in the matter in relation to which the expression is used;

“Carriage” includes vehicles and conveyances of all kinds;

“Chief Collector” means the Chief Collector of Customs;

“Collector” includes the Chief Collector and any principal officer of Customs doing duty at the time and place and any officer doing duty in the matter in relation to which the expression is used;

“Documents” includes books;

“Drawback” includes bounty or allowance;

“Dutiable goods” includes all goods in respect of which any duty of Customs is payable;

“Gazette notice” means a notice signed by the Chief Collector and published in the *New Guinea Gazette*;

“Goods” includes all kinds of movable personal property;

“Goods under drawback” includes all goods in respect of which any claim for drawback has been made;

“Justice” means any Justice of the Peace having jurisdiction in the place;

“Master” means the person in charge of a ship, but does not include a pilot or Government officer;

“Officer” includes all persons employed in the service of the Customs and any member of the Public Service of the Territory appointed under section nine A of this Ordinance to be an officer for the purposes of this Ordinance;

Amended by
No. 7 of 1941,
s. 3.

“Owner”, in respect of goods, includes any person (other than an officer of Customs) being or holding himself out to be the owner, importer, exporter, consignee, agent or person possessed of, or beneficially interested in, or having any control of, or power of disposition, over the goods;

“Owner”, in respect of a ship or aircraft, includes every person acting as agent for the owner or to receive freight or other charges payable in respect of the ship or aircraft;

Amended by
No. 23 of 1930,
s. 4.

“Parts beyond the seas” means any country outside the Territory;

“Package” includes every means by which goods are cased, covered, enclosed, contained or packed for carriage;

CUSTOMS—

Inserted by
No. 23 of 1930,
s. 4.

- “Pilot” means the person in charge or command of any aircraft;
- “Port” means any proclaimed port;
- “Produce documents” means that the person on whom the obligation to produce documents is cast shall, to the best of his power, produce to the Collector all documents relating to the subject-matter mentioned;
- “Ship” includes every description of vessel used in navigation not propelled by oars only;
- “Smuggling” means any importation or introduction or attempted importation or introduction of goods with intent to defraud the Revenue;
- “The Customs” means the Department of Trade and Customs;
- “This Ordinance” includes all regulations made thereunder;
- “Warehouse” means a warehouse licensed for the purposes of this Ordinance;
- “Wharf” means a wharf appointed for the purposes of this Ordinance;
- “Wharf owner” includes the owner or occupier of a wharf.

Heading
amended by
No. 23 of 1930,
s. 5.

Chief Collector
and Collector.

5. There shall be a Chief Collector of Customs who shall be the Head of the Customs and shall have the chief control of the Customs throughout the Territory. The principal officer at each port of entry shall be called the Collector.

Delegation by
Chief Collector.

6. In relation to any particular matters or class of matters or to any particular district the Chief Collector may by writing under his hand delegate any of his powers and functions under any Customs Ordinance (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified or the district defined in the instrument of delegation.

Delegation by
Collector.

7. The Collector may with the written approval of the Chief Collector delegate in like manner as the Chief Collector any of his powers under this Ordinance.

Revocation
of delegation.

8. Every delegation whether by the Chief Collector or Collector shall be revocable in writing at will and no delegation shall prevent the exercise of any power by the Chief Collector or Collector.

Continuance of
officers.

9. All persons acting in the service of the Customs at the commencement of this Ordinance shall be deemed to have been duly appointed.

Customs Ordinance 1921-1941.

9A. The Administrator may by notice in the *New Guinea Gazette* appoint any member of the Public Service of the Territory to be an officer for the purposes of this Ordinance.

Officers of the Public Service.
Inserted by No. 23 of 1930, s. 6.

10. The Seal of the Customs shall be the Arms of the Commonwealth having the words "New Guinea Customs" encircling the Arms and the name of the Port added thereto. Such Seal shall be judicially noticed.

Customs seal.
Amended by No. 23 of 1930, s. 7.

11. The vessels, boats and aircraft employed in the service of the Customs shall be distinguished from other vessels, boats and aircraft by such flag or in such other manner as is prescribed.

Customs flag.
Amended by No. 23 of 1930, s. 2 and Schedule.

12. The Administrator may by proclamation⁽²⁾ published in the *New Guinea Gazette*—

Appointment of boarding stations, &c.

(a) appoint boarding stations for the boarding of ships and aircraft by officers;

Paragraph (a) amended by No. 23 of 1930, s. 8.

(b) establish ports and fix their limits;

(c) appoint wharfs within ports and fix their limits; and

(d) appoint aerodromes, whether within the limits of a port or otherwise, and fix their limits.

Paragraph (d) inserted by No. 23 of 1930, s. 8.

13. Ports, wharfs and aerodromes may be established or appointed for specified limited purposes or without limitation.⁽³⁾

Appointment of ports, wharfs and aerodromes.

Amended by No. 23 of 1930, s. 2 and Schedule.

14. The Chief Collector may by *Gazette* notice⁽⁴⁾—

Appointment of sufferance wharfs, &c.

(a) appoint sufferance wharfs in any port; and

(b) appoint places for the examination of goods on landing.

15. All boarding stations, ports, wharfs and examination places in actual use by authority at the commencement of this Ordinance shall continue as if established or appointed under this Ordinance unless otherwise determined by the Chief Collector by *Gazette* notice.⁽⁵⁾

Continuance of boarding stations, &c.

16. Every wharf owner and aerodrome owner shall provide, to the satisfaction of the Collector, suitable office accommodation on his wharf or at his aerodrome for the exclusive use of the officer employed at the wharf or aerodrome, and such shed accommodation for the protection of goods as the Chief Collector in writing declares to be requisite.

Accommodation on wharfs and at aerodromes.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: Twenty pounds.

(2) Proclamations made pursuant to Section 12, and Tables containing particulars thereof, are printed on p. 1907 *et seq.*

(3) See proclamations made pursuant to Section 12, printed on p. 1907.

(4) A Table containing particulars of *Gazette* notices made pursuant to Section 14 is printed on p. 1932 and the *Gazette* notices still in force are printed immediately after the Table.

(5) No *Gazette* notice has been published.

CUSTOMS—

Licences.

17. Carriages, boats and lighters may be licensed for the carriage of goods subject to the control of the Customs upon payment of such fees and subject to such conditions as are prescribed.

Revocation of licence.

18. The licence for any carriage, boat, or lighter may be revoked by the Collector if the licensee is guilty of any fraud or misconduct or fails to comply with this Ordinance.

Unlicensed carriages or lighters.

19. No person shall use any unlicensed carriage, boat or lighter for the conveyance of goods subject to the control of the Customs.

Penalty: Twenty pounds.

Before whom declarations may be made.

20. Declarations under this Ordinance may be made before the Chief Collector or a Collector or a Justice or before any officer authorised in that behalf by the Chief Collector or any Collector.

Declaration by youths.

21. No person shall knowingly receive a declaration under this Ordinance by any person under the age of eighteen years.

Working days and hours.

Amended by No. 23 of 1930, s. 2 and Schedule.

22. The working days and hours of the Customs shall be as prescribed and, except when working overtime is permitted by the Collector, cargo shall only be received, loaded or worked on, or discharged from, any ship or aircraft on working days and during working hours.

Penalty: Fifty pounds.

Overtime charges.

23. When working overtime is permitted, overtime at prescribed rates shall be charged for the services of the officers.

PART III.—CUSTOMS CONTROL, EXAMINATION, ENTRIES AND SECURITIES GENERALLY.

Customs control of goods.

24. Goods shall be subject to the control of the Customs as follows:—

- (a) As to all goods imported—from the time of importation until delivery for home consumption or until exportation to parts beyond the seas whichever first happens.
- (b) As to all goods under drawback—from the time of the claim for drawback until exportation to parts beyond the seas.
- (c) As to all goods subject to any export duty—from the time when the goods are brought to any port or place for exportation until payment of the duty.
- (d) As to all goods for export the exportation of which is subject to compliance with any condition or restriction under any Ordinance or regulation—from the time the goods are made or prepared in, or are brought into, any prescribed place for export until their exportation to parts beyond the seas.

Customs Ordinance 1921-1941.

- 25.** All goods on board any ship, boat or aircraft from parts beyond the seas shall be subject to the control of the Customs whilst the ship, boat or aircraft is within the limits of the Territory.
- Goods on ships &c. subject to Customs control.
Amended by No. 23 of 1930, s. 2 and Schedule.
- 26.** The control of the Customs especially includes the right of the Customs to examine all goods subject to such control.
- Right of examination.
- 27.** No goods subject to the control of the Customs shall be moved, altered or interfered with, except by authority and in accordance with this Ordinance.
- Customs control of goods.
- Penalty: One hundred pounds.
- 28.** The Customs shall not be liable for any loss or damage occasioned to any goods subject to the control of the Customs except by the neglect or wilful act of some officer.
- No claim for compensation for loss.
- 29.** Goods imported through the post-office shall be subject to the control of the Customs in the same manner as goods otherwise imported.
- Goods imported through post.
- 30.** Entries may be made and passed for all goods subject to the control of the Customs.
- Entries.
- 31.** Entries shall be made by the delivery of the entry by the owner to the Collector, and on the delivery of the entry the goods specified therein shall, for the purposes of this Ordinance, be deemed to be entered.
- Owner to make entry.
Amended by No. 7 of 1941, s. 4.
- 32.** Any person making any entry shall, if required by the Collector, answer questions relating to the goods referred to in the entry.
- Person making entries to answer questions.
- 33.** Entries shall be passed by the Collector placing on the entry the word "Passed" and adding his signature thereto and any entry so passed shall be warrant for dealing with the goods in accordance with the entry.
- Collector to pass entries.
Amended by No. 23 of 1930, s. 9, and by No. 7 of 1941, s. 5.
- 34.** All goods in respect of which any entry has been made and passed shall forthwith be dealt with in accordance with the entry.
- Goods to be dealt with in accordance with the entry.
- Penalty: Fifty pounds.
- 35.** Goods being the personal baggage of passengers in any ship or aircraft and not being dutiable goods may, subject to any prescribed conditions, be imported or exported without entry.
- Passengers' baggage.
Amended by No. 23 of 1930, s. 2 and Schedule.
- 36.** The Customs shall have the right to require and take securities for compliance with this Ordinance and generally for the protection of the Revenue of the Customs, and, pending the giving of the required security in relation to any goods subject to the control of the Customs, may refuse to deliver the goods or to pass any entry relating thereto.
- Right to require security.

CUSTOMS—

Security.

37. Where any security is required to be given the security may be by bond or guarantee or cash deposit or all or any of those methods, as the Collector approves in each case.

General bonds may be given.

38. When security is required for any particular purpose, security may, by the authority of the Chief Collector, be accepted to cover all transactions for such time and for such amount as the Chief Collector approves.

Cancellation of bonds.

39. All Customs securities may, after the expiration of three years from the date of the securities or from the time specified for the performance of the conditions of the securities, be cancelled by the Chief Collector.

New securities.

40. If the Chief Collector is at any time unsatisfied with the sufficiency of any security he may require a fresh security and a fresh security shall be given accordingly.

Forms of Customs security.

41. The form of Customs security in Schedule I. to this Ordinance shall be sufficient for all the purposes of a bond or guarantee under this Ordinance, and, without sealing, shall bind its subscribers as if sealed, and unless otherwise provided therein jointly and severally and for the full amount.

Effect of Customs security.

42.—(1.) Whenever any Customs security is put in suit by the Collector the production thereof without further proof shall entitle the Collector to judgment, for their stated liability, against the persons appearing to have executed the security unless the defendants prove compliance with the condition or that the security was not executed by them or release or satisfaction.

Sub-section (2) added by No. 23 of 1930, s. 10.

(2.) If it appears to the District Court that a non-compliance with a Customs security has occurred, the security shall not be deemed to have been discharged or invalidated, and the subscribers shall not be deemed to have been released or discharged from liability by reason of—

- (a) any extension of time or other concession;
- (b) the Customs having consented to, or acquiesced in, a previous non-compliance with the condition; or
- (c) the Collector having failed to bring suit against the subscribers upon the occurrence of a previous non-compliance with the condition.

PART IV.—THE IMPORTATION OF GOODS.

Importation.

43. For the purpose of securing the due importation of goods—

Paragraph (a) amended by No. 23 of 1930, s. 2 and Schedule.

- (a) The ship or aircraft may be boarded;
- (b) The cargo shall be reported;
- (c) The goods shall be entered, unshipped and may be examined.

Division 1.—Prohibited Imports.

44. No prohibited imports shall be imported.

Importations.

Penalty: One hundred pounds.

45. No goods shall be imported in any ship or aircraft which has not been lawfully registered in the country to which she belongs, or which has not her certificate of registry on board, unless the absence of the certificate is accounted for to the satisfaction of the Collector.

Unregistered ships and aircraft.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: One hundred pounds.

46. The following are prohibited imports:—

Prohibited imports.

- (a) Copies made out of the Territory of any work in which copyright subsists which, if made in the Territory, would infringe copyright, and as to which the owner of the copyright has, by himself or his agent, given to the Chief Collector evidence of the existence of the copyright and of his ownership thereof and a notice in writing stating that he is desirous that the copies should not be imported into the Territory.
- (b) False money and counterfeit sterling and any coin or money of the King's dominions not being of the established standard in weight or fineness.
- (c) Blasphemous, indecent or obscene works or articles.
- (d) Goods manufactured or produced wholly or in part by prison labour or which have been made within or in connexion with any prison, gaol or penitentiary.
- (e) Exhausted tea and tea adulterated with spurious leaf or with exhausted leaves or being unfit for human use or unwholesome.
- (f) Oleomargarine, butterine or any similar substitute for butter unless coloured and branded as prescribed.

Paragraph (a) substituted by No. 7 of 1941, s. 6.

* * * * *

Paragraph (g) omitted by No. 23 of 1930, s. 11.

- (h) All goods having thereon or therewith any false suggestion of any warranty, guarantee or concern in the production or quality thereof by any persons, public officials, Government or country.
- (i) Mineral oil and mineral spirits unless imported under and subject to such restrictions as are declared by proclamation by the Administrator.
- (j) Opium suitable for smoking.
- (k) All goods the importation of which is prohibited by proclamation⁽⁶⁾ by the Administrator.

Paragraph (k) added by No. 23 of 1930, s. 11.

(6) A Table containing particulars of proclamations made pursuant to Section 46 is printed on p. 1937, and the proclamations still in force are printed immediately after the Table.

CUSTOMS—

Restrictions of spirits, &c.

47. No spirits, tobacco, snuff, cigars or cigarettes shall be imported except in packages as prescribed.

Penalty: One hundred pounds.

Tea subject to examination on importation.

48. As to all tea imported—

- (a) Samples shall be taken without payment and examined by the Collector.
- (b) Unless the Collector is, as a result of the examination, satisfied that the tea is not a prohibited import he shall submit the samples for analysis to an official analyst appointed by the Administrator for the purpose of this Ordinance.
- (c) If as the result of the analysis, it appears that the tea is a prohibited import it shall after compliance with the next succeeding paragraph be dealt with accordingly.
- (d) If the tea is shown to be a prohibited import, notice shall be given to the owner of the report of the analyst and the owner shall be allowed fourteen days after the receipt of the notice to satisfy the Collector that the tea is not a prohibited import, and if the Collector is not so satisfied the tea shall be a prohibited import.
- (e) Any tea not complying with the prescribed standard of strength and purity shall be deemed unfit for human use.

Prohibition subject to restriction.

49. The power of prohibiting importation of goods shall authorise prohibition subject to any specified condition or restriction and goods imported contrary to any such condition or restriction shall be prohibited imports.⁽⁷⁾

List of copyright works to be exposed at principal ports.

Amended by No. 23 of 1930, s. 12, and by No. 7 of 1941, s. 7.

50. There shall be open to public inspection at the Customs House at the principal ports of the Territory lists of all works wherein the copyright is subsisting and as to the importation of copies of which the owner of the copyright or his agent has given notice in writing pursuant to section forty-six of this Ordinance.

Heading amended by No. 23 of 1930, s. 13.

Division 2.—The Boarding of Ships and Aircraft.

Ships or aircraft to enter ports or aerodromes.

Amended by No. 23 of 1930, s. 2 and Schedule.

51. The master of a ship or the pilot of an aircraft shall not, unless from stress of weather or other reasonable cause, suffer his ship or aircraft to enter any place other than a port or aerodrome.

Penalty: One hundred pounds.

(7) See proclamations made pursuant to Section 46, printed on p. 1937.

52.—(1.) The master of every ship arriving within three nautical miles of the coast shall bring his ship to for boarding on being approached by, or hailed or signalled from, any vessel or aircraft in the service of the Customs, having hoisted the Customs flag, or any vessel or aircraft in the service of the Commonwealth or of the Territory, having hoisted the proper ensign and pendant or displayed the proper signal.

Ship to bring to and aircraft to land on being signalled.

Section 52 substituted by No. 23 of 1930, s. 14.

Penalty: One hundred pounds.

(2.) The pilot of every aircraft arriving within three nautical miles of the coast shall bring his aircraft to the nearest aerodrome for boarding on being approached by, or hailed or signalled from, any vessel or aircraft in the service of the Customs, having hoisted the Customs flag, or any vessel or aircraft in the service of the Commonwealth or the Territory, having hoisted the proper ensign and pendant or displayed the proper signal.

Penalty: One hundred pounds.

53.—(1.) The master of every ship from parts beyond the seas bound to or calling at any port, shall bring his ship to for boarding at the boarding station appointed for that port.

Ship to bring to at boarding station and aircraft to land at aerodrome.

Penalty: Fifty pounds.

(2.) The pilot of every aircraft from parts beyond the seas bound to or calling at any place within the Territory shall bring his aircraft for boarding to the aerodrome nearest to the place at which he enters the Territory.

Sub-section (2) added by No. 23 of 1930, s. 15.

Penalty: Fifty pounds.

54. The master of every ship bringing to, or the pilot of every aircraft landing at an aerodrome, for boarding shall, by all reasonable means, facilitate boarding by the officer.

Facility for boarding.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: Twenty pounds.

55. The master of every ship, or the pilot of every aircraft, after his ship or aircraft has been brought to at the boarding station or landed at the aerodrome and boarded by the officer, shall come up to the proper place of mooring or unloading as quickly as practicable without touching at any other place.

Ships and aircraft to come quickly to place of unloading.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: Twenty pounds.

56. No ship or aircraft, after arrival at the proper place of mooring or unloading, shall, except by authority or by direction of the harbour or aerial authority, be removed therefrom before the discharge of the cargo intended to be discharged at the port or aerodrome.

Ship or aircraft not to be moved without authority.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: Twenty pounds.

CUSTOMS—

Division 3.—The Report of the Cargo.

Report of cargo.
Section 57
substituted by
No. 23 of 1930,
s. 16.

57. As to every ship or aircraft arriving from parts beyond the seas—

- (a) the master, owner or pilot shall, within one day after the arrival at any port or aerodrome, make report of the ship or aircraft and her cargo by delivering to the Collector an Inward Manifest in duplicate of goods for that port or aerodrome;
- (b) the master or owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

Penalty: One hundred pounds.

Master or pilot
of wrecked ship
or aircraft to
report.

Sub-section (1)
amended by
No. 23 of 1930,
s. 17.

58.—(1.) When any ship arriving from parts beyond the seas is lost or wrecked upon the coast the master or owner shall, as soon as practicable, make report of the ship and cargo by delivering to the Collector a Manifest, so far as it is possible for him to do so, at the Customs House nearest to the place where the ship was lost or wrecked or at the Chief Customs House of the Territory.

Penalty: Twenty pounds.

Sub-section (2)
added by
No. 23 of 1930,
s. 17.

(2.) When any aircraft arriving from parts beyond the seas is lost or wrecked at any place within the Territory, the pilot or owner shall, without any unnecessary delay, make report of the aircraft and cargo by delivering to the Collector a Manifest, as far as it is possible for him to do so, at the Customs House nearest to the place where the aircraft was lost or wrecked or at the Chief Customs House of the Territory.

Penalty: Twenty pounds.

Goods derelict
to be delivered
to officer.

59. Whoever has any dutiable goods, derelict, flotsam, jetsam, lagan or wreck in his possession shall, as soon as practicable, deliver them or it to an officer.

Penalty: Twenty pounds.

Interference
with derelict
goods.

60. No person shall except by authority unnecessarily move, alter or interfere with any goods, derelict, flotsam, jetsam, lagan or wreck.

Penalty: Twenty pounds.

Division 4.—The Entry, Unshipment, Landing and Examination of Goods.

61. All imported goods shall be entered either—

- (a) for home consumption; or
- (b) for warehousing; or
- (c) for transshipment.

Entries.

62. If the owner cannot immediately supply the full particulars for making an entry and makes a declaration to that effect before the Collector, he may make a sight entry.

Sight entry.

63. A sight entry on being passed by the Collector shall be warrant for the landing and examination of the goods.

Passing of sight entry.

64.—(1.) The owner of the goods included in a sight entry shall, within seven days after the passing of the entry or within such further period as the Collector allows, make complete entry thereof.

Completion of sight entry.
Sub-section (1) amended by No. 7 of 1941, s. 8.

(2.) A complete entry of the goods included in a sight entry shall be made in the same manner as if the sight entry had not been made.

65.—(1.) Entries shall be made of the whole of any cargo unshipped or to be unshipped within such respective times after the report of the ship or aircraft as may be prescribed or within such further time if any as the Collector allows; and, if the goods are placed in quarantine, seven days at the least shall be allowed for entry after their release from quarantine.

Entry within seven days.
Sub-section (1) amended by No. 23 of 1930, s. 2 and Schedule and s. 18.

(2.) If default is made in the entry of any goods pursuant to this section, the Collector may cause the goods to be removed to a warehouse; and if the goods are not claimed and entries passed therefor within six months after such removal, the goods may be sold by the Collector.

(3.) If the goods are of a perishable nature they may be sold at any time, either before or after warehousing, the Collector thinks fit.

66. The bulk cargo of a ship or aircraft arriving within three nautical miles of the coast shall not be broken except with the permission of the Collector or as regards goods for which entry has been passed.

Breaking bulk.
Amended by No. 23 of 1930, s. 2 and Schedule and s. 19.

Penalty: One hundred pounds.

67. Except as prescribed goods may be unshipped only pursuant to—

Authority for unshipment.

- (a) a Collector's permit; or
- (b) an entry passed.

Penalty: One hundred pounds.

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Unshipment of goods.

Paragraph (a) amended by No. 23 of 1930, s. 2 and Schedule.

Paragraph (b) amended by No. 23 of 1930, s. 2 and Schedule.

Goods landed on permit at ship's or aircraft's risk.

Amended by No. 23 of 1930, s. 2 and Schedule.

Repacking on wharf or at aerodrome.

Amended by No. 23 of 1930, s. 2 and Schedule.

Dutiable goods may be warehoused.

Classes of warehouses.

Annual fee.

Cancellation of licences.

Amended by No. 23 of 1930, s. 20.

68. All goods unshipped shall be either—

(a) landed at a wharf or aerodrome, either directly or after conveyance to the wharf or aerodrome in a licensed carriage, boat or lighter from the ship or aircraft; or

(b) transhipped to the ship or aircraft into which they are to be transhipped either directly or after conveyance to that ship or aircraft in a licensed carriage, boat or lighter direct from the ship or aircraft from which they were unshipped.

69. Goods unshipped and landed under a Collector's permit shall be placed by, and at the expense of, the master or owner of the ship or the pilot or owner of the aircraft from which they were unshipped, in a place of security approved by the Collector and shall, until lawfully removed from that place, be at the risk of the master or owner of the ship or the pilot or owner of the aircraft as if they had not been unshipped.

70. Any goods may by authority be repacked or skipped on the wharf or at the aerodrome.

PART V.—THE WAREHOUSING OF GOODS.

Division 1.—Licensed Warehouses.

71. Dutiable goods may be warehoused in warehouses licensed by the Chief Collector.

72. There may be two classes of licensed warehouses as follows:—

Class I.—General warehouses to be used for warehousing goods generally.

Class II.—Private warehouses to be used only for warehousing goods the property of the licensee.

73. Fees for warehouses shall be according to the scale in Schedule II. and shall be paid by the licensee—as to the annual fees, by equal quarterly payments in advance on the first days of January, April, July, and October in each year and, as to the fees for locker's attendance, by monthly payments.

74. In default of payment of any part of any licence-fee for thirty days after the prescribed time for payment the Chief Collector may by *Gazette* notice, cancel the licence and thereupon the warehouse shall be closed and the goods therein shall be removed by the Collector to some other warehouse.

Customs Ordinance 1921-1941.

75.—(1.) Upon the landing of any goods to be warehoused, or so soon as practicable after landing, the officer shall take a particular account of the goods and shall enter the account in a book.

Officer to take account of goods landed to be warehoused.

(2.) Subject to this Ordinance, the account shall be that upon which the duties shall be ascertained and paid :

Provided that, where the Collector is satisfied that the account is incorrect, by reason of the existence of error or other cause, he may direct the amendment of the account, and in that event the account as so amended shall be that upon which the duties shall be ascertained and paid.

Proviso added by No. 23 of 1930, s. 21.

76. When any goods entered for warehousing have been duly deposited in a warehouse the officer shall certify that the warehousing is complete by signing a receipt for the goods.

Completion of warehousing.

77.—(1.) If any goods entered to be warehoused are not warehoused accordingly by the owner, the Collector may remove them to the warehouse named in the entry or to an Administration warehouse.

Removal of goods to warehouse.

Section 77 substituted by No. 23 of 1930, s. 22.

(2.) Where the goods have been so removed, the licensee of the warehouse, or, in the case of removal to an Administration warehouse, the Collector, shall pay all charges for the removal of the goods and shall have a lien on the goods for those charges.

78. Goods entered for warehousing shall be warehoused in the packages in which they were imported, except goods repacked or skipped on the wharf, which shall be warehoused in the packages in which they were when the account was taken.

Packages in which goods to be deposited.

79. The Collector may, as prescribed, permit the owner to sort, bottle, pack or repack goods in any warehouse.

Repacking in warehouse.

80. Whenever goods are sorted, bottled, packed or repacked in a warehouse, a fresh account of the goods shall be taken by the officer and shall be substituted for the original account.

Fresh account to be taken.

81. No person shall treat, refine or distil any methylated spirit for the purpose of rendering it fit for human use as a beverage or shall sell or offer for sale any methylated spirit so treated, refined or distilled or sell or offer for sale for human use as a food or beverage any goods containing methylated spirits.

Refining methylated spirits.

Penalty: One hundred pounds.

82. The licensee of every warehouse shall—

Duty of licensee.

- (a) stack and arrange the goods in the warehouse so that reasonable access to, and examination of, every package may be had at all times;
- (b) provide sufficient lights and just scales and weights for the use of the officer;

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- (c) find all labour and materials requisite for the storing, examining, packing, marking, coopering, weighing and taking stock of the warehoused goods whenever the Collector desires;
- (d) pay the duty on all warehoused goods removed from his warehouse except by authority, and on all warehoused goods not produced to the officer on demand, unless such goods are accounted for to the satisfaction of the Collector.

Penalty: Twenty pounds.

Opening warehouse.

83. No person shall, except by authority, open any warehouse or gain access to the goods in the warehouse.

Penalty: Twenty pounds.

Collector may order removal of goods from private to public warehouse.

84. The Collector may require the owner of any goods in any private warehouse, within a time specified by the Collector, to remove them to some general warehouse or to pay the duty thereon, and if the order is not complied with the goods may be sold by the Collector.

Period of warehousing.

85. Goods warehoused in any warehouse for one year shall, if not removed therefrom or re-warehoused, be sold by the Collector.

Re-warehousing.

86. Re-warehousing shall be effected as follows:—

- (a) An application for re-warehousing shall be made by the owner to the Collector.
- (b) The goods shall be examined by the officer at the expense of the owner.
- (c) Duty shall be paid on any disallowed deficiency.
- (d) A re-warehousing entry shall be made by the owner for the goods according to the result of the examination.
- (e) On the passing of the entry a fresh account shall be substituted for the last account, and this shall complete the re-warehousing.

Collector to have access to warehouse.

87. The Collector shall, at all hours of the day and night, have access to every part of any warehouse and power to examine the goods therein, and for that purpose may break open the warehouse or any premises necessary to be passed through to secure access.

Re-gauging or re-weighing of goods.

88. Warehoused goods may be re-gauged, re-measured, re-weighed or examined by the officer, either by direction of the Collector or at the request and expense of the owner, and duty shall be payable according to the result, unless the Collector is of the opinion that any loss shown is excessive, in which case the duty shall be paid on the original entry with any reduction which the Collector sees fit to allow.

89. Warehoused goods which are subject to an *ad valorem* duty and which have deteriorated in value may, on the application of the owner, be re-valued, and, if the Collector is satisfied that the deterioration has been accidentally caused, duty shall be paid according to the result.

Re-valuation.

90. If the warehouse dues on any warehoused goods are in arrear for nine months the goods may be sold by the Collector.

If warehouse fees in arrear goods to be sold.

91.—(1.) The Chief Collector may cause any warehoused goods which, in the opinion of the Collector, are not worth the duty payable thereon to be destroyed and may remit the duty.

Goods not worth duty may be destroyed.

(2.) The owner of any goods destroyed shall pay to the licensee of the warehouse, or to the Collector in case the goods were in an Administration warehouse, the rent and charges payable in respect of the destroyed goods.

Sub-section (2) amended by No. 23 of 1930, s. 23.

92. No goods of a combustible or inflammable nature shall be warehoused except by permission of the Collector, and if any such goods are landed they may be deposited in any safe available place that the Collector approves, and while so deposited the goods shall be deemed to be in an Administration warehouse, and shall be liable to be sold by the Collector at the expiration of fourteen days in the same manner as goods of a perishable nature deposited in an Administration warehouse, unless duly cleared or warehoused in some warehouse with the approval of the Collector, and the goods shall be charged with the expenses of removing, securing, watching and guarding until sold.

Combustible or inflammable goods.

Amended by No. 23 of 1930, s. 24.

Penalty: One hundred pounds.

93. Warehoused goods may be entered—

- (a) for home consumption;
- (b) for export to parts beyond the seas;
- (c) for removal for warehousing elsewhere.

Entry of warehoused goods.

94. If after goods have been entered for warehousing, either on importation or removal, and before they have been actually warehoused, they are entered for home consumption, exportation or removal, the goods so entered shall be considered as constructively warehoused and may be delivered for home consumption, exportation or removal as if actually warehoused.

Constructive warehousing.

Division 2.—Administration Warehouses.

Heading substituted by No. 23 of 1930, s. 25.

95. Administration warehouses may be appointed by the Chief Collector by *Gazette* notice.⁽⁸⁾

Administration warehouses. Amended by No. 23 of 1930, s. 26.

(8) A Table containing particulars of *Gazette* notices made pursuant to Section 95 is printed on p. 1955, and the *Gazette* notices still in force are printed immediately after the Table.

CUSTOMS—

Rent.

Amended by
No. 23 of 1930,
s. 27.

96. Rent and charges shall be paid in respect of any goods warehoused in any Administration warehouse according to such scale as is prescribed.

Continuation
of existing
warehouses.

Substituted by
No. 23 of 1930,
s. 28.

97. Warehouses in use as King's warehouses⁽⁹⁾ at the commencement of this section shall, until otherwise appointed by the Chief Collector by notice⁽¹⁰⁾ in the *Gazette*, continue as if appointed under this Ordinance as Administration warehouses.

Power to sell.

Amended by
No. 23 of 1930,
s. 29.

98. If any goods warehoused in an Administration warehouse are not lawfully removed within six months after warehousing, the goods may be sold by the Collector.

Purposes of
Administration
warehouses.

Amended by
No. 23 of 1930,
s. 30.

99. Administration warehouses shall be wholly under the control of the Customs, and shall be specially available for the examination of goods and the storage of seized and unclaimed goods, but otherwise all the provisions of this Ordinance relating to warehouses shall, so far as practicable, apply to Administration warehouses.

PART VI.—THE EXPORTATION OF GOODS.

Exportation.

100. No prohibited exports shall be exported.

Penalty: One hundred pounds.

Prohibited
exports.

101.—(1.) The Administrator may by proclamation⁽¹¹⁾ prohibit the exportation of any goods—

- (a) being arms, explosives, military stores or naval stores or being goods which, in his opinion, are capable of being used as, or in the manufacture of, arms, explosives, military stores or naval stores or for any purpose of war; or
- (b) the exportation of which would in his opinion be harmful to the Territory; or
- (c) the prohibition of the exportation of which is in his opinion necessary for the preservation of the flora or fauna of the Territory; or
- (d) which have not been prepared or manufactured for export under the prescribed conditions as to purity, soundness or freedom from disease or which do not conform to the prescribed conditions as to purity, soundness or freedom from disease; or

(9) The original Section 97 provided that "King's warehouses in actual use by authority at the commencement of this Ordinance shall continue as if appointed under this Ordinance" unless determined by *Gazette* notice. No *Gazette* notice pursuant to this Section was published. In addition, by *Gazette* notices published pursuant to Section 95 (prior to the amendment of that Section by the *Customs Ordinance* 1930) several King's warehouses were appointed. These *Gazette* notices are included in the Table referred to in footnote (8) above.

(10) No notice has been published in *N.G. Gaz.* or *Cwllth. Gaz.*

(11) A Table containing particulars of proclamations made pursuant to Section 101 is printed on p. 1961, and the proclamations still in force are printed immediately after the Table.

(e) the prohibition of the exportation of which is in his opinion necessary for the protection of the revenue or the prevention of fraud or deception.

(1A.) In time of war the Administrator may by proclamation⁽¹¹⁾ prohibit the exportation of any goods.

Sub-section (1A) inserted by No. 7 of 1941, s. 9.

(2.) The power contained in sub-section (1.) or (1A.) of this section shall extend to authorise the prohibition of the exportation of goods generally or to any specified place, and either absolutely or so as to allow of the exportation of the goods subject to any condition or restriction.

Sub-section (2) amended by No. 7 of 1941, s. 9.

(3.) All goods the exportation of which is prohibited shall be prohibited exports to the extent to which the prohibition extends.

102. Except by the permission of the Collector, no goods subject to the control of the Customs shall be exported in any ship of less than fifty tons gross register.

Size of exporting vessel.

Penalty: One hundred pounds.

103.—(1.) Subject to this section a ship or aircraft shall be entered outwards and the goods proposed to be exported on the ship or aircraft shall be entered for export before any of those goods are taken on board the ship or aircraft.

Conditions of export.

Sub-section (1) amended by No. 23 of 1930, s. 2 and Schedule.

(2.) Free goods may be entered not later than three days after shipment.

(3.) A ship or aircraft may, by permission of the Collector, be stiffened before entry outwards or export entry.

Sub-section (3) amended by No. 23 of 1930, s. 2 and Schedule.

104. Goods subject to the control of the Customs for exportation or removal coastwise shall be shipped, either directly at a wharf or aerodrome, or after conveyance to the ship or aircraft in a licensed carriage, boat or lighter direct from a wharf or aerodrome.

Goods to be shipped at wharf or aerodrome.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: One hundred pounds.

105. If any goods entered for export are not shipped according to the entry—

Short shipped goods.

(a) the owner shall immediately report the fact to the officer and amend his entry for the goods not later than three days after the clearance of the ship or aircraft; and

Paragraph (a) amended by No. 23 of 1930, s. 2 and Schedule.

(b) the goods, if dutiable, shall forthwith be warehoused.

Penalty: Twenty pounds.

(11) A Table containing particulars of proclamations made pursuant to Section 101 is printed on p. 1961, and the proclamations still in force are printed immediately after the Table.

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Documents and security.

106. The Collector may require the owner to produce documents for any goods entered for export and, in the case of goods subject to the control of the Customs, to give security that they will be landed at the place for which they are entered or otherwise accounted for to the satisfaction of the Collector.

Certificate of Clearance.

Amended by No. 23 of 1930, s. 2 and Schedule.

107. The master of any ship or the pilot of any aircraft shall not depart with his ship or aircraft from any port or aerodrome without receiving from the Collector a Certificate of Clearance.

Penalty: One hundred pounds.

Requisites for obtaining clearance.

Section 108 substituted by No. 23 of 1930, s. 31.

108.—(1.) Before any Certificate of Clearance is granted to a ship or aircraft—

- (a) the master, owner or pilot shall deliver to the Collector an Outward Manifest in duplicate;
- (b) the master and owner of the ship or the pilot and owner of the aircraft shall severally answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage; and
- (c) the master and owner or the pilot and owner shall severally produce documents relating to the ship or aircraft and her cargo.

(2.) If, within a period of twenty-four hours after the provisions of sub-section (1.) of this section have been complied with, the master or pilot has not received from the Collector an Outward Manifest and Certificate of Clearance, he may, at any time within fourteen days after the expiration of that period, apply to the Administrator for a Certificate of Clearance, and the Administrator may grant or refuse any such application.

(3.) The decision of the Administrator upon the application shall be final and conclusive.

Sub-section (4) amended by No. 7 of 1941, s. 10.

(4.) Where, in pursuance of sub-section (2.) of this section, the Administrator has refused to grant a Certificate of Clearance, the owner of the ship or aircraft shall be entitled, in the Supreme Court, to recover damages against the Administration in respect of the refusal to grant, or delay in the granting of, the Certificate, if the Court is satisfied that the refusal or delay in granting was without reasonable and probable cause.

(5.) Except as provided in the last preceding sub-section, an action or other proceeding shall not lie against the Administration, or any officer of the Administration, by reason of the refusal to grant any Certificate of Clearance, or of any delay in the granting of a Certificate of Clearance.

109. The master of a ship or the pilot of an aircraft shall not suffer any goods, other than passengers' baggage, not specified or referred to in the Outward Manifest to be taken on board his ship or aircraft except as provided in section one hundred and three.

Shipment of unspecified goods.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: Fifty pounds.

110. A copy of the Outward Manifest shall be attached to the Certificate of Clearance and shall be sealed with the Customs seal.

Manifest to be attached to clearance.

111. No Certificate of Clearance shall be granted for any ship or aircraft unless all her inward cargo and stores shall have been duly accounted for to the satisfaction of the Collector, nor unless all the other requirements of the law in regard to the ship or aircraft and her inward and outward cargo have been duly complied with.

Time of clearance.

Amended by No. 23 of 1930, s. 2 and Schedule.

112.—(1.) The master of every ship departing from any port shall bring his ship to at the boarding station appointed for the port, and, by all reasonable means, facilitate boarding by the officer, and shall not depart with his ship from any port with any officer on board the ship in the discharge of his duty without the consent of the officer.

Ship to bring to and aircraft to land at proper station.

Penalty: One hundred pounds.

(2.) The pilot of every aircraft departing from any aerodrome shall bring his aircraft to the boarding station appointed for the port or aerodrome, and by all reasonable means facilitate boarding by the officer, and shall not depart with his aircraft from any port or aerodrome with any officer on board such aircraft without the consent of such officer.

Sub-section (2) added by No. 23 of 1930, s. 32.

Penalty: One hundred pounds.

113. The master of every ship and the pilot of every aircraft shall after the clearance of the ship or aircraft—

Master and pilot to account for missing goods.

(a) on demand by an officer, produce the Certificate of Clearance;

Section 113 amended by No. 23 of 1930, s. 2 and Schedule.

(b) account to the satisfaction of the Collector for any goods specified or referred to in the Outward Manifest and not on board his ship or aircraft.

Penalty: Fifty pounds.

114. No goods shipped for export shall be unshipped or landed without the permission of the Collector except in parts beyond the seas.

Goods exported to be landed at proper destination.

Penalty: Fifty pounds.

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Certificate of landing.

115. If required by the Chief Collector a certificate in such form, and to be given by such person, as is prescribed, shall be produced in proof of the due landing, according to the export entry, of any goods subject to the control of the Customs and the Collector may refuse to allow any other goods subject to the control of the Customs to be exported by any person who fails within a reasonable time to produce the certificate of the landing of any of the goods previously exported by him or to account for the goods to the satisfaction of the Collector.

Heading amended by No. 23 of 1930, s. 33.

PART VII.—SHIPS' AND AIRCRAFT'S STORES.

Use of ships' or aircraft's stores.

Amended by No. 23 of 1930, s. 2 and Schedule.

116. Ships' or aircraft's stores, whether shipped in parts beyond the seas or in the Territory shall, unless entered for home consumption or except as prescribed, only be used by the passengers and crew and for the service of the ship or aircraft and after the departure of the ship or aircraft from her last port or aerodrome of departure in the Territory.

Re-landing ships' or aircraft's stores.

Amended by No. 23 of 1930, s. 2 and Schedule.

117. No ships' or aircraft's stores shall be used contrary to the last preceding section, or unshipped, except by permission of the Collector.

Penalty: Fifty pounds.

Ships' and aircraft's stores.

118.—(1.) The prescribed allowance of ships' stores for the use of the passengers and crew and for the service of the ship may be shipped free of duty on board any ship of not less than fifty tons gross registered tonnage entered outwards for parts beyond the seas.

Sub-section (2) added by No. 23 of 1930, s. 34.

(2.) The prescribed allowance of aircraft's stores for the use of the passengers and crew and for the service of the aircraft may be shipped free of duty on board any aircraft entered outwards for parts beyond the seas.

PART VIII.—THE DUTIES.

Division 1.—The Payment and Computation of Duties Generally.

Exemption.

119. No goods the property of the Commonwealth of Australia or of the Territory shall be liable to any duty of Customs.

Import duties. Amended by No. 23 of 1930, s. 35.

120. All import duties shall be paid at the rate in force when entry is made of the goods for home consumption.

Customs Ordinance 1921-1941.

121. All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.

Export duties.

122. Where duties are imposed according to weight or measure, the weight or measurement of the goods shall be ascertained according to the standard weights and measures by law established.

Weights and measures.

123. Where duties are imposed according to a specified quantity, weight, size or value, the duties shall apply in proportion to any greater or lesser quantity, size, weight or value.

Proportion.

124. Whenever goods are sold or prepared for sale as, or are reputed to be, of a size or quantity greater than their actual size or quantity, duties shall be charged according to such first-mentioned size or quantity.

Duty, how fixed.

125. All duties shall be paid in Australian currency.

Australian currency.

Amended by No. 21 of 1932, s. 2 and Schedule.

126. If any goods enumerated in the Tariff are, or can be, classed under two or more names, headings or descriptions with a resulting difference as to duty, duty shall be charged when it is a difference between liability to, or freedom from, duty, and the higher or highest of the duties applicable shall be charged when it is a difference as to two or more duties.

Highest duties to be charged.

127. Whenever any goods are imported which, in the opinion of the Chief Collector, are a substitute for any dutiable goods, or are intended to be, or can be, used as such substitute or for any purpose for which the dutiable goods can be used, or for any similar purpose, the Chief Collector may, by *Gazette* notice,⁽¹²⁾ direct that the first-mentioned goods shall be charged with the duty chargeable upon the dutiable goods, and the duty shall be so charged accordingly.

Substitutes for dutiable goods.

128.—(1.) Whenever any dutiable goods are composed of two or more separate parts, any part, though imported by itself, shall if so directed by the Chief Collector be chargeable with duty at the rate applicable to the complete goods.

Duty on parts.

(2.) When the duty on the complete goods is specific only, or either specific or *ad valorem* according to whichever returns the higher duty, or both specific and *ad valorem*, the Chief Collector may fix the proportion of the specific rate that shall be applied in determining the amount of duty payable on any part of the goods.

Sub-section (2) substituted by No. 7 of 1941, s. 11.

(12) No *Gazette* notice has been published.

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Duty on condensed articles.

129. Duty shall be charged on all essences, condensations, concentrations or preparations of goods liable to duty according to the quantity or equivalent of dutiable goods into which such essences, condensations, concentrations or preparations can be converted, according to a standard to be prescribed.

Measurement for duty.

130. Goods charged with duty by measurement shall, at the expense of the owner, be heaped, piled, sorted, framed or otherwise placed in such manner as the Collector requires to enable measurement and account of the goods to be taken; and in all cases where the goods are measured in bulk, the measurement shall be taken to the full extent of the heap or pile.

Goods in transit.

131. Goods exported to the Territory from any country, but passing through another country, shall be valued for duty as if they were imported directly from the first-mentioned country.

Value of goods sold.

132. When the duty on any goods sold at any Collector's sale is *ad valorem*, the value of the goods shall, if approved by the Collector, be taken to be the value as shown by the sale.

Strength of spirits.

133. The strength of spirits may be ascertained for the purposes of duty by the means of a hydrometer approved by the Chief Collector.

Obscuration.

134. If, in the opinion of the Collector, the strength of any spirits cannot immediately be accurately ascertained by hydrometer, the strength may be ascertained after distillation or in any prescribed manner.

Derelict goods dutiable.

135. All goods, derelict, flotsam, jetsam or lagan, or landed, saved or coming ashore from any wreck or sold as droits of Admiralty shall be charged with duty as if imported in the ordinary course.

As to payment of duty on goods in manifest but not produced or landed.

Amended by No. 23 of 1930, s. 2 and Schedule.

136. If any dutiable goods which are included in the report of any ship or aircraft are not produced to the officer, the master or owner of the ship or the pilot or owner of the aircraft shall, on demand by the Collector, pay the duty on the goods as estimated by the Collector, unless the goods are accounted for to the satisfaction of the Collector.

Samples.

137. Small samples of the bulk of any goods subject to the control of the Customs may, subject to the prescribed conditions, be delivered free of duty.

Samples.

138. Goods the produce of the Territory or samples of duty-paid goods sent out of the Territory may, subject to any prescribed conditions, be re-imported or brought back to the Territory without payment of duty.

139. If, after any agreement is made for the sale or delivery of goods duty paid, any alteration takes place in the duty collected affecting the goods before they are entered for home consumption, then, in the absence of express written provision to the contrary, the agreement shall be altered as follows:—

Alteration of agreements where duty altered.

- (a) in the event of an alteration being a new or increased duty, the seller, after payment of the new or increased duty, may add the difference caused by the alteration to the agreed price;
- (b) in the event of the alteration being the abolition or reduction of duty, the purchaser may deduct the difference caused by the alteration from the agreed price;
- (c) any refund or payment of increased duty resulting from the alteration not being finally adopted shall be allowed between the parties as the case requires.

140. All duties shall constitute Administration debts, charged upon the goods in respect of which the duties are payable, and payable by the owner of the goods, and recoverable at any time in any court of competent jurisdiction by proceedings in the name of the Collector.

Recovery of duties.
Amended by No. 23 of 1930, s. 36.

Division 2.—“Ad Valorem” Duties.

141.—(1.) When any duty is imposed according to value, the value for duty shall be the sum of the following:—

Value for duty, how ascertained.
Section 141 substituted by No. 7 of 1941, s. 12.

- (a) (i) The actual money price paid or to be paid for the goods by the importer in the Territory plus any special deduction; or
- (ii) the current domestic value of the goods, whichever is the higher;
- (b) All charges payable or ordinarily payable for placing the goods free on board at the port of export; and
- (c) Ten per centum of the amounts specified under paragraphs (a) and (b) of this sub-section.

(2.) In the case of goods consigned for sale in the Territory the value for duty shall be the amount which would be the value for duty if the goods were at the date of exportation sold to an importer in the Territory instead of being consigned for sale in the Territory.

(3.) In this section—

“current domestic value” means the amount for which the seller of the goods to the purchaser in the Territory is selling or would be prepared to sell for cash, at the date

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of exportation of those goods, the same quantity of identically similar goods to any and every purchaser in the country of export for consumption in that country less any duty, tax, or charge which is not payable or which would be remitted in the country of export in relation to such goods if exported; and

“special deduction” means any discount or other deduction allowed to the importer in the Territory which would not ordinarily have been allowed to any and every purchaser at the date of exportation of an equal quantity of identically similar goods.

Production of genuine invoice.
Section 142 substituted by No. 7 of 1941, s. 12.

142.—(1.) When entry is made of goods upon which duty is imposed according to value, the owner shall deliver to the Collector with the entry the genuine invoice for the goods and shall make, in the presence of the Collector, a declaration in the prescribed form.

(2.) The invoice produced shall be stamped by the Collector with the Customs stamp, and shall be again produced when required prior to the delivery of the goods for home consumption or for warehousing.

(3.) The absence from an invoice of the Customs stamp shall be *prima facie* evidence that the invoice was not so delivered or produced.

(4.) If the Collector is satisfied—

(a) that no genuine invoice has been issued for the goods; or

(b) that the genuine invoice for the goods cannot be produced,

he may, upon receipt of evidence to his satisfaction of the value for duty of the goods, dispense with the production of the genuine invoice.

Meaning of genuine invoice.
Section 143 substituted by No. 7 of 1941, s. 12.

143.—(1.) The “genuine invoice” means the original invoice prepared and issued by the seller in the country whence the goods were exported, showing *inter alia* the true description of the goods, the country of their origin, the actual money price paid or to be paid for the goods by the importer in the Territory, and the current domestic value as defined in section one hundred and forty-one of this Ordinance, and complying with the provisions of the next succeeding sub-section.

(2.) If in arriving at the actual money price paid or to be paid allowance has been made in respect of any special deduction, as defined in section one hundred and forty-one of this Ordinance, there shall be indicated on the genuine invoice the nature and amount of that deduction.

(3.) In the case of goods consigned for sale in the Territory the "genuine invoice" means a document in all respects complying with the requirements of sub-sections (1) and (2) of this section and the particulars to be shown in that invoice are those which would be required, if the goods were sold to an importer in the Territory instead of being consigned for sale in the Territory.

144. Where the genuine invoice shows the value of the goods in any currency other than Australian currency, the equivalent value of the goods in Australian currency shall be ascertained according to a fair rate of exchange to be declared in case of doubt by the Chief Collector.

Foreign invoices.
Amended by No. 21 of 1932, s. 3.

145.—(1.) Whenever the Collector has a doubt as to the accuracy of the declared value of dutiable goods, he may detain the goods and assess the value thereof.

Value may be assessed.

(2.) Should the owner object to the value so assessed he may request that the value may be ascertained by experts in manner prescribed.

(3.) Should the owner refuse to pay the duty as assessed by the Collector or ascertained by experts the Collector may sell the goods.

(4.) The provisions of this section shall not apply in cases where the Chief Collector is of opinion that any evasion of this Ordinance has been committed or attempted.

146. No person shall send or bring into the Territory or have in his possession, without reasonable excuse, any blank, or partly blank, invoice form capable of being filled up and used as a genuine invoice.

Blank invoices.

Penalty: One hundred pounds.

147. Whenever it is difficult to determine the value of goods for duty, either because the goods are not sold for use or consumption in the country of production, or because a lease of the goods or the right of using them is sold or given but not the right of property therein, or because the goods have a royalty imposed upon them and the royalty is uncertain or is not a reliable means of estimating the value of the goods, or because the goods are usually or exclusively sold by or to agents, or by subscription, or are sold or imported in, or under, any other unusual or peculiar manner or conditions (of all which matters the Chief Collector shall be judge) the Chief Collector may determine the value for duty of the goods.

Chief Collector to determine value in some cases.

148.—(1.) For the protection of the revenue against the undervaluation of goods subject to *ad valorem* duties, any goods entered as of specified value may, at any time before sale and delivery to a person who proves to the satisfaction of the Collector that he

Customs may take goods on paying declared value plus ten per cent.

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purchased and took delivery in good faith and without any knowledge of the entry, and subject as so prescribed, be purchased by the Customs at their declared value with an addition of Ten pounds per centum on the amount of that value.

(2.) The purchase shall be effected by the seizure of the goods by an officer and written notice of the seizure given to the owner.

(3.) The officer shall remove the goods to a warehouse or some place of security and the owner shall thereupon be entitled to the purchase money.

Sub-section (4)
amended by
No. 23 of 1930,
s. 37.

(4.) The goods shall become the property of the Administration immediately on seizure and shall afterwards be disposed of as is prescribed or as the Collector directs.

(5.) A refund, in whole or in part, of any duty paid on the goods may be made by the Collector.

(6.) This section shall not limit or restrict any other power possessed by the Customs relating to the goods.

Division 3.—Deposits, Abatements, Remissions and Refunds of Duties.

Deposits.

Amended by
No. 7 of 1941,
s. 13.

149. In prescribed cases the duty paid on any goods may be retained by the Customs on deposit for a period not exceeding twelve months, and the deposit may be returned to the owner if the goods are exported within the prescribed time.

Refund of duty.

150.—(1.) (a) Whenever goods—

(i) have received damage or have been pillaged during the voyage;

(ii) have, whilst under Customs control, been damaged, pillaged, lost, or destroyed; or

Paragraph (ii)
amended by
No. 7 of 1941,
s. 14.

(b) Whenever duty has been paid through manifest error of fact or patent misconception of the law—

a refund, rebate or remission of the duty as the case requires shall be made in the manner prescribed:

Proviso
added by
No. 7 of 1941,
s. 14.

Provided that no refund, rebate, or remission of duty under this sub-section shall be made unless application therefor is made within such time as is prescribed.

Sub-section (2)
added by
No. 7 of 1941,
s. 14.

(2.) This section shall not debar the Customs from enforcing the terms of securities given for the protection or custody of goods which are subject to the control of the Customs.

151. The Collector may remit any duty on any goods that have been wasted or lost in sorting, bottling, packing or repacking in a warehouse. Duty on waste.

152. When any duty has been short levied or erroneously refunded the person who should have paid the amount short levied or to whom the refund has erroneously been made, shall pay the amount short levied or repay the amount erroneously refunded on demand being made by the Collector within twelve months from the date of the short levy or refund. Short-paid duty may be recovered.

153. If any practice of the Customs relating to classifying or enumerating any article for duty is altered so that less duty is charged upon that article, no person shall thereby become entitled to any refund on account of any duty paid before the alteration. No refund if duty altered.

Division 4.—Disputes as to Duty.

154.⁽¹³⁾—(1.) If any dispute arises as to the amount or rate of duty payable in respect to any goods, or as to the liability of any goods to duty under any Customs Tariff, the owner of the goods may pay under protest the sum demanded by the Collector as the duty payable in respect of the goods, and thereupon the sum so paid shall, as against the owner of the goods, be deemed to be the proper duty payable in respect of the goods, unless the contrary is determined in an action brought in pursuance of this section. Duty paid to be deemed proper duty unless paid under protest.
Cf. Owlth. 36 of 1910, s. 5.

(2.) The owner may within the time limited in this section bring an action against the Collector in any court of competent jurisdiction in the Territory for the recovery of the whole or any part of the sum so paid.

(3.) A protest in pursuance of this section shall be made by writing on the entry of the goods the words "Paid under protest" and adding a statement of the grounds upon which the protest is made and, if the entry relates to more than one description of goods, the goods to which the protest applies, followed by the signature of the owner of the goods or his agent. Sub-section (3) amended by No. 23 of 1930, s. 38.

(4.) No action shall lie for the recovery of any sum paid to the Customs, as the duty payable in respect of any goods, unless the payment is made under protest in pursuance of this section and the action is commenced, in case the sum is paid as the duty payable under any Customs Tariff, within six months after the date of payment.

(5.) Nothing in this section shall affect any rights or powers under section one hundred and fifty of this Ordinance.

(13) The following additional marginal note appeared to Section 154 of the *Customs Ordinance* 1921 as published in the *Commonwealth of Australia Gazette* of 28.10.1921:—"Substituted by XVI of 1916, s. 5." *Semble*, this was an erroneous transcription from the *Papuan Customs Ordinance* 1909-1916.

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PART IX.—DRAWBACKS.

Drawbacks allowed.
Amended by No. 36 of 1938, s. 3.

155. Drawbacks of import duty may be allowed on exportation in respect of such goods to such amount and in such manner as is prescribed.

Limit of value.
Repealed by No. 4 of 1936, s. 2; new section inserted by No. 7 of 1941, s. 15.

156. No drawback shall be allowed on any goods of a less value for home consumption than the amount of the drawback.

Examination of goods under drawback.

157. All goods in respect of which any claim for drawback is made shall, before exportation, be produced for examination by the Customs and shall be examined accordingly.

Debenture to be passed.

158. For the purpose of claiming drawback, a drawback debenture shall be presented to the Collector who shall, as soon as the goods have been exported, cause the debenture to be passed for payment.

Declaration on debenture.

159. The person claiming drawback on any goods shall make a declaration upon the debenture that the goods have been exported and have not been re-landed and are not intended to be re-landed, and that he, at the time of shipping, was entitled to the drawback and the name of that person shall be stated in the debenture, and the receipt of that person on the debenture, countersigned by the holder of such debenture if the same has been transferred in the meantime, shall be a sufficient discharge for the drawback.

Payment of drawback debentures.

160.—(1.) No drawback debenture shall be paid except with the consent of the Chief Collector, or unless presented for payment within one year from the date of the shipment of the goods for export.

(2.) The Chief Collector may prohibit the payment, in whole or in part, of any drawback debenture, but so as not to deprive the person entitled thereto of any remedy he may have for the drawback.

PART X.—THE COASTING TRADE.

What are coasting ships or aircraft.
Amended by No. 23 of 1930, s. 2 and Schedule.

161. All ships or aircraft trading, plying or going from one port, aerodrome or place in the Territory to another port, aerodrome or place therein, and not trading, plying or going to any other port, aerodrome or place, shall be deemed to be engaged in the coasting trade and those ships or aircraft shall be deemed to be coasting ships or aircraft for the purposes of any Customs Ordinance.

Customs Ordinance 1921-1941.

162. The master of a coasting ship or the pilot of a coasting aircraft shall not suffer any goods to be taken into, or put out of, his ship or aircraft from, or into, any other ship at sea, or from, or into, any other aircraft, except with the sanction of the Collector, nor suffer his ship or aircraft to deviate from her voyage, unless forced to do so by unavoidable circumstances, or under circumstances explained to the satisfaction of the Collector.

Coasters not to take in cargo at sea or deviate.
Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: One hundred pounds.

163.—(1.) The owner of any ship or aircraft employed in the coasting trade may, with the consent of the Collector, report the ship or aircraft inwards or outwards in lieu of the master of the ship or the pilot of the aircraft.

Owner may report ship or aircraft.

Sub-section (1) amended by No. 23 of 1930, s. 2 and Schedule.

(2.) Every owner so reporting shall be subject to the same provisions, and liable to the same penalties, under this Ordinance as the master of the ship or the pilot of the aircraft.

Sub-section (2) amended by No. 23 of 1930, s. 2 and Schedule and s. 39.

164. The master or owner of every coasting ship shall, at prescribed ports, deliver to the Collector, as prescribed, particulars of all cargo consisting of produce or manufactures of the Territory then on board his ship.

Account of goods of Territory.

165. The coasting trade generally, as regards the Customs, shall be regulated in manner prescribed and books shall be kept, documents produced, and entries made accordingly.

Regulation.

PART XI.—AGENTS.

166. The owner of any goods may comply with the provisions of this Ordinance by an agent lawfully authorised, and, in all places to which this limitation is declared by proclamation⁽¹⁴⁾ to extend, the agent shall be either a person exclusively in the employment of the owner, or shall be a Customs agent duly licensed in manner prescribed.

Authorised agents.

167. Any officer may require from any agent the production of his written authority from the principal for whom he claims to act, and, in default of the production of the authority, may refuse to recognize the agency.

Authority to be produced.

168. When any person is expressly or impliedly authorised by the owner to act as his agent in relation to any goods for all or any purposes of any Customs Ordinance, or represents or passes himself or acts or assumes to act as such agent the person shall, for those purposes, be also deemed to be the owner of the goods, and shall be

Agents personally liable.

(14) Pursuant to Section 166, the Administrator, by Proclamation dated 12.12.1934 and published in *N.G. Gaz.* of 17.12.1934, declared that the limitation should extend to the towns of Rabaul and Salamaua.

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personally liable for any penalties recoverable under this Ordinance in the same manner and to the same extent as if he were principal, but nothing herein contained shall be taken to relieve any principal from liability.

Principal
liable for
agents acting.

169. Any declaration authorised by this Ordinance, made by the agent of any person, shall be held to have been made with the knowledge and consent of that person, so that in any prosecution in respect of any declaration made by the agent the person shall be liable only to the pecuniary punishment provided by any Customs Ordinance as if the declaration had been made by himself.

PART XII.—OFFICERS.

Division 1.—Powers of Officers.

Ships &c. to
bring to or land.
Amended by
No. 23 of 1930,
s. 2 and
Schedule and
s. 40.

170. The commander or officer in charge of any ship, boat or aircraft in the service of the Commonwealth or the Territory or Customs may when that ship, boat or aircraft has hoisted and is carrying the proper ensign and pendant or Customs flag, chase any ship or aircraft which does not bring to or land at the aerodrome when lawfully signalled or required to do so and may (after having fired a gun as a signal) fire at or into such ship or aircraft to compel her to bring to or land at the aerodrome.

Officers may
board ships or
aircraft
hovering on
coast.

Sub-section (1)
amended by
No. 23 of 1930,
s. 2 and
Schedule and
s. 41.

171.—(1.) Any officer may require the master of any ship or the pilot of any aircraft, hovering within three nautical miles of the coast or of land, to depart, and if that ship or aircraft fails to depart accordingly within twelve hours thereafter, any officer may board and bring the ship or aircraft into port or aerodrome and search her.

Sub-section (2)
amended by
No. 23 of 1930,
s. 2 and
Schedule.

(2.) The Collector may examine all persons on board of the ship or aircraft and those persons shall thereupon answer questions relating to the ship or aircraft and her cargo, crew, passengers, stores and voyage, and produce documents relating to the ship or aircraft and her cargo.

Penalty: One hundred pounds.

Examine all
goods.

172. Any officer may open packages and examine, weigh, mark and seal any goods subject to the control of the Customs, and the expense of the examination shall be borne by the owner.

Power to board
and search ship
&c.

Section 173
amended by
No. 23 of 1930,
s. 42.

173. Any officer may—

- (a) board any ship, boat or aircraft;
- (b) search any ship, boat or aircraft;
- (c) secure any goods on any ship, boat or aircraft.

Customs Ordinance 1921-1941.

174. The power of an officer to board shall extend to staying on board any ship or aircraft, and the Collector may station an officer on board any ship or aircraft and the master or pilot shall provide sleeping accommodation in the cabin and suitable and sufficient food for the officer.

Boarding.
Amended by
No. 23 of 1930,
s. 2 and
Schedule.

Penalty: Fifty pounds.

175. The power of an officer to search shall extend to every part of any ship, boat or aircraft and shall authorise the opening of any package, locker or place and the examination of all goods.

Searching.
Amended by
No. 23 of 1930,
s. 43.

176. The power of an officer to secure any goods shall extend to fastening down hatchways and other openings into the hold and locking up, sealing, marking or otherwise securing, any goods or the removal of any goods to an Administration warehouse.

Securing goods.
Amended by
No. 23 of 1930,
s. 44.

177. No fastening, lock, mark or seal placed by an officer upon any goods, or upon any door, hatchway, opening or place upon any ship or aircraft, shall be opened, altered, broken or erased, except by authority, whilst the goods upon which the fastening, lock, mark or seal is placed, or which are intended to be secured thereby, remain subject to the control of the Customs.

Seals, &c., not
to be broken.
Amended by
No. 23 of 1930,
s. 2 and
Schedule.

Penalty: Fifty pounds.

178. No fastening, lock, mark or seal, placed by an officer upon any goods, or upon any door, hatchway, opening or place for the purpose of securing any stores upon any ship or aircraft which has arrived in any port or aerodrome from parts beyond the seas, and which is bound to any other port or aerodrome within the Territory, shall be opened, altered, broken or erased, except by authority, and if any ship or aircraft enters any port or aerodrome with any such fastening, lock, mark or seal opened, altered, broken or erased, contrary to this section, the master or pilot shall be guilty of an offence against this Ordinance.

Or on vessels in
port bound to
another port
within the
Territory.
Amended by
No. 23 of 1930,
s. 2 and
Schedule.

Penalty: One hundred pounds.

179. Any officer, and any person acting in his aid, when on duty, may patrol upon, and pass freely along and over, any part of the coast, or the shores, banks or beaches of any port, bay, harbour, lake or river.

Officers may
patrol coasts,
&c.

180. The officer in charge for the time being of any vessel or boat employed in the service of the Customs, may haul the vessel or boat upon any part of the coast, or the shores, banks or beaches of any port, bay, harbour, lake or river, and may moor the vessel or boat thereon, and continue the vessel or boat so moored for such time as he deems necessary.

Boats on service
may be moored
in any place.

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Power to question passengers.

Amended by No. 23 of 1930, s. 2 and Schedule.

181. Any person on board any ship, boat or aircraft, or who has landed from or got out of any ship, boat or aircraft, may be questioned by any officer as to whether he has any dutiable goods or prohibited imports or prohibited exports upon his person or in his possession or in his baggage.

Suspected persons, detention and search.

182.—(1.) If any officer of Customs or of Police has reasonable cause to suspect that any person is unlawfully carrying or has any goods subject to the control of the Customs or any prohibited imports or prohibited exports secreted about him, the following consequences shall ensue:—

- (a) the officer may detain and search the suspected person;
- (b) before the suspected person is searched, he may require to be taken before a Justice or the Collector;
- (c) the Justice or Collector may order the suspected person to be searched or may discharge him without search.

(2.) Females shall be searched only by a female searcher appointed by the Justice or Collector.

Power to stop vehicles.

183. Any officer of Customs or Police, upon reasonable suspicion, may stop and search any carriage for the purpose of ascertaining whether any dutiable goods are contained therein, and the driver of any carriage shall stop and permit such search whenever required by any such officer.

Penalty: Twenty pounds.

Writs of assistance.

Amended by No. 23 of 1930, s. 45.

184. The Chief Judge of the Territory or any Judge of the Central Court⁽¹⁵⁾ of the Territory may grant a Writ of Assistance in the form of Schedule III. to this Ordinance upon application made to him for that purpose by the Chief Collector or by the Collector, and the writ shall unless superseded be in force so long as any person named therein remains an officer of Customs whether in the same capacity or not.

Customs warrants.

Amended by No. 23 of 1930, s. 46.

185. The Chief Collector or the Collector may grant a Customs Warrant in the form of Schedule IV. to this Ordinance under the Customs Seal to any officer or to any officer of Police and the warrant shall remain in force for three months from the date thereof.

Power to search.

Amended by No. 23 of 1930, s. 47.

186. Any officer having with him a Writ of Assistance or a Customs Warrant in the form of Schedule IV. to this Ordinance, or any officer of Police having with him such Warrant, may, at any time in the day or night, enter into and search any house, premises or place, and may break open the same and search any chests, trunks or packages in which goods may be or are supposed to be.

(15) See Section 7A of the *Judiciary Ordinance* 1921-1938.

Customs Ordinance 1921-1941.

187. Any officer or officer of police acting under a Writ of Assistance or Customs Warrant in the form of Schedule IV. to this Ordinance may take with him, and have the assistance of, any other officer or police officer and such assistants as he thinks necessary.

Power to take assistants.
Amended by No. 23 of 1930, s. 48; substituted by No. 21 of 1932, s. 4.

188. Any person lawfully making any seizure under any Customs Ordinance may call upon any person present in the name of the Administration to assist him and such assistance shall be rendered accordingly.

Power to call for aid.
Amended by No. 23 of 1930, s. 49.

Penalty: Twenty pounds.

189. Any officer of Customs or Police may seize any forfeited ship, aircraft or goods upon land or water or any ship, aircraft or goods which he has reasonable cause to believe are forfeited.

Power to seize goods.
Amended by No. 23 of 1930, s. 2 and Schedule and s. 50.

190. All seized goods shall be taken to the nearest Administration warehouse or to such other place of security as the Collector directs.

Seized goods to be secured.
Amended by No. 23 of 1930, s. 51.

191. When any ship, boat, aircraft or goods have been seized as forfeited, the seizing officer shall give notice in writing of the seizure, and the cause thereof to the master, pilot or owner of the ship, boat, aircraft or goods (unless the master, pilot or owner be present at the seizure in which case no notice shall be necessary) either by delivering the notice to him personally or by letter addressed to him and transmitted by post to or delivered at his last known place of abode or business, and any ship, boat, aircraft or goods seized shall be deemed to be condemned, and may be sold by the Collector, unless the person from whom the ship, boat, aircraft or goods are seized or the owner, within one month from the date of seizure, gives notice in writing to the Collector at the nearest port, that he claims the ship, boat, aircraft or goods, but if any goods so seized are of a perishable nature or are live animals they may be forthwith sold by the Collector.

Notice to be given of goods &c. seized.
Amended by No. 23 of 1930, s. 2 and Schedule.

192. The Chief Collector or the Collector may authorise any ship, boat, aircraft or goods seized to be delivered to the claimant on his giving security to pay their value in case of their condemnation.

Seized goods &c. may be returned on security.
Amended by No. 23 of 1930, s. 2 and Schedule.

193. Whenever any goods have been seized by any officer and claim to the goods has been served on the Collector by the owner of the goods, the Collector may retain possession of the goods without taking any proceedings for their condemnation, and may, by notice under his hand, require the claimant to enter an action

Collector may retain goods and require owner to proceed for restoration.

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against him for the recovery of the goods, and if the claimant does not, within four months after the date of the notice, enter the action, the goods shall be deemed to be condemned without any further proceedings.

Disposal of
forfeited ships,
aircraft and
goods.

Amended by
No. 23 of 1930,
s. 2 and
Schedule.

194. All forfeited ships, aircraft and goods shall be disposed of or destroyed in such manner as is prescribed or as the Chief Collector may direct.

Delivery of
seized goods.

195. All goods seized by any person not being a Customs Officer shall forthwith be conveyed to the nearest Customs house and there delivered to an officer.

Arrest of persons
suspected of
smuggling, &c.

196.—(1.) Any officer of Customs or Police may, without warrant arrest any person who, he has reasonable ground to believe, is guilty of committing or attempting to commit, or of being concerned in the commission of any of the following offences:—

- (a) smuggling;
- (b) importing any prohibited imports;
- (c) exporting any prohibited exports; or
- (d) unlawfully conveying or having in his possession any smuggled goods, prohibited imports or prohibited exports.

(2.) No person shall resist, obstruct or prevent the arrest of any person in pursuance of this section.

Penalty: Twenty pounds.

Reasons for
arrests.

197. Any officer arresting any person shall, as soon as practicable after arrest, give him a statement in writing of the reason for his arrest.

Arrested persons
to go before
Justices.

198. Every person arrested may be detained until such time as he can, without undue delay, be taken before a Justice.

Powers of
Justices with
offenders.

Section 199
amended by
No. 23 of 1930,
s. 52.

199. Any Justice before whom any person is brought under this Ordinance may—

- (a) commit the person to gaol until he can be brought before a District Court to be dealt with according to law; or
- (b) admit him to bail upon his giving sufficient security for his appearance before a District Court at the time and place appointed for the hearing of the charge.

200.—(1.) Whenever information in writing has been given on oath to the Collector that goods have been unlawfully imported, undervalued, or entered or illegally dealt with, or that it is intended to unlawfully import, undervalue, enter or illegally deal with any goods, or whenever any goods have been seized or detained, the owner shall, immediately upon being required so to do by the Collector, produce and hand over to him all books and documents relating to the goods so imported, entered, seized or detained, undervalued or illegally dealt with or intended to be unlawfully imported, undervalued, entered or illegally dealt with, and of all other goods imported by him at any time within the period of five years immediately preceding the request, seizure or detention and shall also produce for the inspection of the Collector or such other officer as is authorised by the Collector for that purpose and allow the Collector or officer to make copies of or extracts from all books or documents of any kind whatsoever, wherein any entry or memorandum appears in any way relating to the goods.

Production of documents, &c., in cases of seizure.

Penalty: One hundred pounds.

(2.) For the purposes of this section, the Collector may issue to any officer a Customs Warrant in the form of Schedule V. to this Ordinance under the Customs Seal, and such warrant shall remain in force for one month from the date thereof.

Sub-section (2) added by No. 23 of 1930, s. 53.

(3.) If any person fails to comply with any requirement by the Collector under this section, an officer, having with him a Customs Warrant in the form of Schedule V. to this Ordinance, may, at any time of the day or night, break open and enter into any house, premises or place in which any books or documents relating to the goods are or are supposed to be, and search—

Sub-section (3) added by No. 23 of 1930, s. 53.

- (a) the house, premises or place;
- (b) any person therein or thereon; and
- (c) any chests, trunks or packages therein or thereon,

and take possession of, remove, and impound any of those books and documents which are found.

201. The Collector may impound or retain any document presented in connexion with any entry or required to be produced under this Ordinance and the person otherwise entitled to the document shall, in lieu thereof, be entitled to a copy certified as correct by the Collector and the certified copy shall be received in all courts as evidence and of equal validity with the original.

Collector may impound documents.

202. The Collector may require from the owner of any goods proof, by declaration or the production of documents, that the goods are owned as claimed and are properly described, valued or rated for duty, and the Collector may refuse to deliver the goods or to pass any entry relating thereto pending the receipt of the proof.

Collector may require further proof of proper entry.

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Translations of foreign invoices.

203. If any document in a foreign language be presented to any officer for any purpose connected with Customs business, the Collector may require to be supplied with an English translation to be made at the expense of the owner by such person as the Collector approves or to be verified as he requires.

Customs samples.

204. Samples of any goods under the control of the Customs may, for any purpose deemed necessary by the Collector, be taken, utilized and disposed of by any officer in manner prescribed.

General power to Collector.

205. In all cases not herein otherwise provided for, the Collector may exercise any power exercisable by the Customs.

Division 2.—Protection to Officers.

Reasonable cause for seizure & bar to action.

Amended by No. 23 of 1930, s. 2 and Schedule.

206. No person shall be liable for any seizure under this Ordinance for which there has been reasonable cause, and when any claimant recovers any ship, aircraft or goods seized or any proceeds thereof, and at the same time reasonable cause for the seizure is found, the finding shall bar all proceedings against all persons concerned in the seizing.

Notice of action to be given.

Amended by No. 23 of 1930, s. 54.

207. No proceeding shall be commenced against any officer for anything done in execution of or by reason of his office until one month after notice in writing has been delivered to him or left at his usual place of abode by the plaintiff, his attorney or agent, in which notice shall be clearly stated the cause and nature of the proceeding and the court in which the proceeding is intended to be instituted, the name and place of abode of the plaintiff, and the name and place of business of the attorney or agent, unless the Chief Judge of the Territory or a Judge of the Central Court⁽¹⁵⁾ of the Territory has granted leave to the plaintiff to proceed without notice, which leave the Judge may grant on such terms as he thinks fit.

Defect in notice not to invalidate.

208. No notice under the last preceding section shall be deemed invalid by reason of any defect or inaccuracy therein unless the Court is of opinion that the defect or inaccuracy would prejudice the defendant in his defence, and the Court may give leave to amend the notice as it thinks just.

No evidence to be produced but that contained in notice.

209. Upon any proceeding instituted in pursuance of notice under section two hundred and seven the plaintiff shall not be at liberty to advance any evidence of any cause of action except such as has been distinctly stated in the notice, nor shall the plaintiff be entitled to a verdict without proving on the trial that the notice has been duly served.

Officer may tender amends.

210. It shall be lawful for any officer to whom notice of proceeding has been given, at any time within one month after the notice, to tender amends to the plaintiff, his attorney or agent,

(15) See Section 7A of the *Judiciary Ordinance* 1921-1938.

and in case the amends be not accepted, to plead the tender in defence, either alone or with other defences, and if the amends tendered be found to be sufficient no costs shall be recovered against the officer and he shall be entitled to costs, if he has brought the amount into Court when entering his defence.

211. Every proceeding against any officer shall be commenced within six months after its cause has arisen and not afterwards, and the defendant may plead the general issue and give any special matter in evidence.

Commencement of proceedings against officers.

212. The Central Court⁽¹⁵⁾ of the Territory, on the application of any person who desires to commence any proceeding mentioned in the last preceding section against an officer, may require the officer to give security to the satisfaction of the Court to abide the result of the proceeding and in default of the giving of the security may sanction the immediate commencement of the proceeding.

Security may be required.

PART XIII.—PENAL PROVISIONS.

Division 1.—Forfeitures.

213.—(1.) The following ships or boats not exceeding two hundred and fifty tons registered tonnage and the following aircraft shall be forfeited to the Administration:—

Forfeited ships and aircraft. Section 213 substituted by No. 23 of 1930, s. 55.

- (a) any ship, boat or aircraft used in smuggling, or knowingly used in the unlawful importation, exportation or conveyance of any prohibited imports or prohibited exports;
- (b) any ship, boat or aircraft found within three nautical miles of the coast or of land failing to bring to, or failing to land at an aerodrome, for boarding upon being lawfully required to do so;
- (c) any ship, boat or aircraft hovering within three nautical miles of the coast or of land and not departing within twelve hours after being required to depart by an officer;
- (d) any ship, boat or aircraft from which goods are thrown overboard, staved or destroyed to prevent seizure by the Customs;
- (e) any ship, boat or aircraft found within any port or aerodrome with cargo on board and afterwards found light or in ballast or with the cargo deficient and the master or pilot of which is unable to lawfully account for the difference;

(15) See Section 7A of the *Judiciary Ordinance 1921-1938.*

CUSTOMS—

- (f) any ship, boat or aircraft within three nautical miles of the coast or of land having false bulk heads, false bows, sides or bottoms, or any secret or disguised place adapted for the purpose of concealing goods or having any hole, pipe or other device adapted for the purpose of running goods.

(2.) The owner of a ship exceeding two hundred and fifty tons registered tonnage, which would be forfeited if the ship did not exceed two hundred and fifty tons registered tonnage, shall be liable to a penalty not exceeding One thousand pounds, and the ship may be detained until the penalty is paid or until security is given for its payment.

Forfeited goods.

Amended by No. 23 of 1930, s. 56.

214. The following goods shall be forfeited to the Administration:—

Paragraph (b) amended by No. 23 of 1930, s. 2 and Schedule.

- (a) all goods which are smuggled or unlawfully imported, exported or conveyed;
- (b) all goods imported which are prohibited imports, excepting only goods, the importation of which is prohibited by proclamation and which shall have been shipped to be imported without knowledge of the proclamation by the shipper and before the expiration of a reasonable time for the acquisition of knowledge thereof at the port or aerodrome of shipment;

Paragraph (c) amended by No. 23 of 1930, s. 2 and Schedule.

- (c) all goods imported in any ship, boat or aircraft in which goods are prohibited to be imported;

Paragraph (d) amended by No. 23 of 1930, s. 2 and Schedule.

- (d) all dutiable goods found on any ship, boat or aircraft being unlawfully in any place;

Paragraph (e) amended by No. 23 of 1930, s. 2 and Schedule.

- (e) all goods found on any ship or aircraft after arrival in any port or at any aerodrome and not being specified or referred to in the Inward Manifest and not being baggage belonging to the crew or passengers and not being satisfactorily accounted for;
- (f) all goods in respect of which bulk is unlawfully broken;
- (g) all goods which being subject to the control of the Customs are moved, altered or interfered with, except by authority, and in accordance with this Ordinance;
- (h) all goods which, by this Ordinance, are required to be moved or dealt with in any way and which are not moved or dealt with accordingly;

Customs Ordinance 1921-1941.

- (i) all goods in respect of which any entry, invoice, declaration, answer, statement or representation which is false or wilfully misleading in any particular, has been delivered, made or produced;
- (j) any carriage or animal used in smuggling or in the unlawful importation, exportation or conveyance of any goods;
- (k) the cargo of any ship, boat or aircraft which ship, boat or aircraft hovers about the coast or land and does not depart within twelve hours after being required by an officer to depart; Paragraph (k) amended by No. 23 of 1930, s. 2 and Schedule.
- (l) all spirits, tobacco, snuff, cigars or cigarettes in packages of less than the prescribed size or weight, not being ships' or aircraft's stores, found on or attached to any ship, boat or aircraft; Paragraph (l) amended by No. 23 of 1930, s. 2 and Schedule.
- (m) all goods, not being passengers' luggage, found on any ship or aircraft after clearance, and not specified or referred to in the Outward Manifest and not accounted for to the satisfaction of the Collector; Paragraph (m) amended by No. 23 of 1930, s. 2 and Schedule.
- (n) all prohibited exports put on any ship, boat or aircraft for export or brought to any wharf or place for the purpose of export; Paragraph (n) amended by No. 23 of 1930, s. 2 and Schedule.
- (o) all dutiable goods concealed in any manner;
- (p) any package having concealed therein goods not enumerated in the entry or being so packed as to deceive the officer;
- (q) all dutiable goods found in the possession or in the baggage of any person who has got out of or landed from any ship, boat or aircraft, and who has denied that he has any dutiable goods in his possession or who, when questioned by an officer, has not fully disclosed that the goods are in his possession or baggage; Paragraph (q) amended by No. 23 of 1930, s. 2 and Schedule.
- (r) all goods offered for sale on the pretence that the same are prohibited or smuggled goods;
- (s) all spirits which, having been methylated, are afterwards treated, filtered, refined, distilled or otherwise dealt with in any manner so that any substance may be extracted therefrom.

215. The forfeiture of any goods shall extend to the forfeiture of the packages in which the goods are contained and the forfeiture of any package under the last preceding section shall extend to all goods packed or contained in the package. Forfeited packages and goods.

CUSTOMS—

Division 2.—Penalties.

Assembly for
smuggling.

216. All persons to the number of two or more, assembled for the purpose of smuggling or for preventing the seizure of, or for rescuing after seizure, any smuggled goods shall be guilty of an indictable offence and shall be liable to imprisonment, with or without hard labour, for any term not exceeding five years.

Collusive
seizures.
Penalty.

Paragraph (a)
amended by
No. 23 of 1930,
s. 2 and
Schedule.

217. Whoever—

(a) being an officer of the Customs or Police, makes any collusive seizure or delivers up, or makes any agreement to deliver up, or not to seize any ship, boat, carriage, aircraft or goods liable to forfeiture, or conspires or connives with any person to import or export, or is in any way concerned in the importation or exportation, of any goods for the purpose of seizing any ship, boat, carriage, aircraft or goods and obtaining any reward for such seizure;

Bribe offered
to officer.
Penalty.

(b) gives or procures to be given, or offers or promises to give or procure to be given, any bribe, recompense or reward to or makes any collusive agreement with any officer to induce him in any way to neglect his duty, or who, by threats, demands or promises, attempts to influence any officer in the discharge of his duty;

Rescuing
goods.

(c) rescues any goods which have been seized or before, or at or after any seizure, staves, breaks or destroys any goods or documents relating thereto to prevent the seizure thereof, or the securing of the goods or the proof of any offence;

Persons
assaulting or
obstructing
officers.

(d) assaults or by force resists, molests or obstructs or endeavours to intimidate any officer or any person acting in his aid or assistance in the execution of his duties,

shall be guilty of an indictable offence and shall be liable to imprisonment with or without hard labour for any term not exceeding five years.

Smuggling and
unlawful im-
portation and
exportation.

218.—(1.) No person shall—

- (a) smuggle any goods;
- (b) import any prohibited imports;
- (c) export any prohibited exports; or
- (d) unlawfully convey or have in his possession any smuggled goods or prohibited imports or prohibited exports.

Penalty: One hundred pounds.

(2.) It shall not be lawful for any person to convey or have in his possession without reasonable excuse (proof whereof shall lie upon him) any smuggled goods or prohibited imports.

(3.) It shall not be lawful for any person to convey or have in his possession any prohibited exports with intent to export them or knowing that they are intended to be unlawfully exported.

(4.) Merchandise on board a ship or aircraft calling at any port or aerodrome in the Territory but intended for, and consigned to, some port, aerodrome or place outside the Territory shall not be deemed to be unlawfully imported into the Territory if the goods are specified on the ship's or aircraft's manifest and are not transhipped or landed in the Territory or are transhipped or landed by authority.

Sub-section (4) amended by No. 23 of 1930, s. 2 and Schedule.

219. The master of a ship or boat or the pilot of an aircraft shall not use his ship, boat or aircraft or knowingly suffer her to be used in smuggling or in the importation of any goods in contravention of this Ordinance or in the exportation or conveyance of any goods in contravention of this Ordinance.

Master or pilot not to use or allow use of ship, boat or aircraft for smuggling, &c.

Amended by No. 23 of 1930, s. 2 and Schedule.

Penalty: One hundred pounds.

220.—(1.) Any person who—

Special provision in relation to prohibited imports.

(a) without any reasonable excuse (proof whereof shall lie upon him) has in his possession on board any ship or aircraft any prohibited imports to which this section applies; or

Paragraph (a) amended by No. 23 of 1930, s. 2 and Schedule.

(b) imports or attempts to import into the Territory any prohibited imports to which this section applies; or

(c) without reasonable excuse (proof whereof shall lie upon him) has in his possession any prohibited imports, to which this section applies, which have been imported into the Territory in contravention of this Ordinance; or

(d) aids, abets, counsels or procures or is in any way knowingly concerned in the importation into the Territory of any prohibited imports to which this section applies; or

(e) fails to disclose to an officer on demand any knowledge in his possession or power concerning the importation, or intending importation, into the Territory of any prohibited imports to which this section applies,

shall be guilty of an offence against this Ordinance.

Penalty: Imprisonment for not less than three months and not more than two years.

CUSTOMS—

(2.) This section shall apply to all prohibited imports to which the Administrator by proclamation⁽¹⁶⁾ declares that it shall apply.

(3.) An offence against this section shall be punishable on summary conviction.

(4.) This section shall not prevent any person from being proceeded against for an offence against any other section of this Ordinance but he shall not be liable to be punished twice in respect of any one offence.

Customs offences.

221. No person shall—

- (a) evade payment of any duty which is payable;
- (b) obtain any drawback, refund, rebate or remission which is not payable;
- (c) prepare, pass or present any document purporting to be a genuine invoice which is not in fact a genuine invoice;
- (d) make any entry which is false in any particular;
- (e) make in any declaration or document produced to any officer any statement which is untrue in any particular or produce or deliver to any officer any declaration or document containing any such statement;
- (f) mislead any officer in any particular likely to affect the discharge of his duty;
- (g) refuse or fail to answer questions or to produce documents;
- (h) sell or offer for sale any goods upon the pretence that the goods are prohibited imports or smuggled goods.

Paragraph (b) amended by No. 23 of 1930, s. 57.

Penalty: One hundred pounds.

False oath or affirmation.

222. Whoever wilfully makes any false statement on oath under this Ordinance shall be guilty of an indictable offence and shall be liable to imprisonment with hard labour for any period not exceeding four years.

Aiders and abettors.

223. Whoever aids, abets, counsels or procures or by act or omission is in any way directly or indirectly concerned in the commission of any offence against this Ordinance shall be deemed to have committed such offence and shall be punishable accordingly.

Attempts.

224. Any attempt to commit an offence against this Ordinance shall be an offence against this Ordinance punishable as if the offence had been committed.

Offences not specifically provided for.

225. Any person who is guilty by act or omission of any contravention or evasion of this Ordinance for which no other penalty is provided shall be liable to a penalty of not more than Ten pounds.

(16) No proclamation has been published in *N.G. Gaz.*

Customs Ordinance 1921-1941.

226. All penalties shall be in addition to any forfeiture.

Penalties in addition to forfeitures.

227. If any penalty hereby provided shall be less than three times the value of any goods in respect of which the offence has been committed the maximum penalty shall be thrice the value of the goods.

Maximum penalty in certain cases.

228. Any person may at the same time be charged with an offence against this Ordinance and with an intent to defraud the revenue and if, in addition to the offence, he is convicted of the intent the maximum penalty shall be double that otherwise provided.

Maximum penalty in cases of intent to defraud.

229. When any person is convicted of any offence against this Ordinance for which a pecuniary penalty is provided and it appears that the person has been previously convicted of a similar offence, the Court may, in lieu of or in addition to imposing any penalty order that the person be imprisoned with hard labour for a period not less than six months nor more than two years and with or without the right of release on payment of a penalty.

If previous conviction defendant may be imprisoned.

230. The minimum pecuniary penalty for any offence against this Ordinance shall be one-twentieth of the maximum which is prescribed in pounds.

Minimum penalty.

PART XIV.—CUSTOMS PROSECUTIONS.

231. Proceedings by the Customs for the recovery of penalties under this Ordinance or for the condemnation of ships, aircraft or goods seized as forfeited are herein referred to as Customs prosecutions.

Interpretation. Amended by No. 23 of 1930, s. 2 and Schedule.

232.—(1.) Customs prosecutions may be instituted in the name of the Chief Collector by action, information or other appropriate proceeding in the Central Court⁽¹⁵⁾ of the Territory, and when the prosecution is for a pecuniary penalty not exceeding One hundred pounds or the excess is abandoned the Customs prosecutions may be instituted in the name of the Collector in a District Court.

How prosecutions instituted. Sub-section (1) amended by No. 23 of 1930, s. 58.

* * * * *

Sub-section (2) omitted by No. 23 of 1930, s. 58.

233.—(1.) Where any Customs prosecution has been instituted by an officer in the name of the Chief Collector the prosecution shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Chief Collector.

Evidence of authority to institute proceedings. Cf. Cwith. 36 of 1910, s. 12.

(2.) The production of a telegram purporting to be signed by the Chief Collector and purporting to authorise an officer to institute any Customs prosecution or proceedings, shall be admissible

(15) See Section 7A of the Judiciary Ordinance 1921-1938.

CUSTOMS—

in evidence in the prosecution or proceedings, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceedings in the name of the Chief Collector.

Prosecution in accordance with practice rules.

Amended by No. 23 of 1930, s. 59.

234. Every Customs prosecution in the Central Court⁽¹⁵⁾ of the Territory may be commenced, prosecuted and proceeded with in accordance with any rules of practice established by the Court for Administration suits in revenue matters or in accordance with the usual practice and procedure of the Court in civil cases or in accordance with the directions of the Court or a Judge.

Commencement of prosecutions.

235. Customs prosecutions may be instituted at any time within five years after the cause thereof.

Information, &c., to be valid if in words of Ordinance.

236. All informations, summonses, convictions, condemnations and warrants shall suffice if the offence or forfeiture is set forth as nearly as may be in the words of this Ordinance.

Property in goods subject to control of Customs.

Cf. Cwith. 36 of 1910, s. 13.

237. Where in any proceedings on behalf of the Customs in relation to any goods subject to the control of the Customs it is necessary to allege any property in the goods the goods may be alleged to be the property of the Collector without mentioning his name.

No objection for informality.

238. No objection shall be taken or allowed to any information or summons for any alleged defect therein in substance or in form, or for any variance between the information or summons, and the evidence adduced at the hearing in support thereof, and the Court shall, at all times, make any amendment necessary to determine the real question in dispute or which appears desirable, and if any such defect or variance appears to the Court to be such that the defendant has been thereby deceived or misled, it shall be lawful for the Court, upon such terms as it thinks just, to adjourn the hearing of the case to some future day.

Conviction not to be quashed.

239. No conviction, warrant of commitment or condemnation order or other proceeding matter or thing done or transacted in relation to the execution or carrying out of any Customs Ordinance, shall be held void, quashed or set aside by reason of any defect therein or want of form and no party shall be entitled to be discharged out of custody on account of that defect.

Protection to witnesses.

240. No witness on behalf of the Chief Collector or Collector in any Customs prosecution shall be compelled to disclose the fact that he received any information, or the nature thereof or the name of the person who gave the information, and no officer appearing as a witness shall be compelled to produce any reports made or received by him confidentially in his official capacity or containing confidential information.

(15) See Section 7A of the *Judiciary Ordinance 1921-1938*.

241.—(1.) In every Customs prosecution the defendant shall be competent to give evidence. Defendant a competent witness.

(2.) In every Customs prosecution, except for an indictable offence or for an offence directly punishable by imprisonment, the defendant shall be compellable to give evidence.

242.—(1.) In any Customs prosecution, the averment of the prosecutor or plaintiff contained in the information, complaint, declaration or claim shall be *prima facie* evidence of the matter or matters averred. Averment of prosecutor sufficient.
Section 242 substituted by No. 23 of 1930, s. 60.

(2.) This section shall apply to any matter so averred although—

- (a) evidence in support or rebuttal of the matter averred or of any other matter is given by witnesses; or
- (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be *prima facie* evidence of the fact only.

(3.) Any evidence given by witnesses in support or rebuttal of a matter so averred shall be considered on its merits and the credibility and probative value of such evidence shall be neither increased nor diminished by reason of this section.

(4.) The foregoing provisions of this section shall not apply to—

- (a) an averment of the intent of the defendant; or
- (b) proceedings for an indictable offence or an offence directly punishable by imprisonment.

(5.) This section shall not lessen or affect any onus of proof otherwise falling on the defendant.

243. The production of the *New Guinea Gazette* containing any proclamation, *Gazette* notice or regulation appearing to have been issued or made under this Ordinance, or the production of any document certified by the Chief Collector or the Collector to be a true copy of or extract from any such proclamation, *Gazette* notice or regulation, issued or made under this Ordinance, shall be *prima facie* evidence of the issue or making of such proclamation, *Gazette* notice or regulation and that it is in force. Proof of proclamation, &c.

244. No minimum penalty imposed by this Ordinance shall be liable to reduction under any power of mitigation which would, but for this section, be possessed by the Court. Minimum penalties.

245. Where any pecuniary penalty is adjudged to be paid by any convicted person the Court— Treatment of convicted offenders.

- (a) may commit the offender to gaol until the penalty is paid; or

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- (b) may release the offender upon his giving a security for the payment of the penalty; or
- (c) may exercise, for the enforcement and recovery of the penalty, any power of distress or execution possessed by the Court for the enforcement and recovery of penalties in any other case.

Offender may be committed to gaol if security not enforced.

Section 245A
Inserted by
No. 7 of 1941,
s. 16.

245A.—(1.) Where any convicted person has, whether before or after the commencement of this section, been released in pursuance of the last preceding section upon his giving security for the payment of the pecuniary penalty adjudged to be paid by him, and the penalty has not been paid, or part only thereof has been paid, the prosecutor or plaintiff may apply to the Court for an order committing the offender to gaol until the penalty, or the balance thereof, as the case may be, has been paid, and the Court shall, if it is satisfied that enforcement of the security is impracticable or would occasion hardship to the surety, make an order accordingly.

(2.) The provisions of section two hundred and forty-seven of this Ordinance shall apply to the imprisonment of an offender for whose committal to gaol an order has been made under this section:

Provided that, in the calculation of the period at the expiration of which the defendant is to be discharged, there shall be taken into account any period of imprisonment served by the defendant prior to his release upon his giving security for the payment of the penalty:

Provided further that, where the penalty has been paid in part, the amount of penalty, for the purposes of the table contained in section two hundred and forty-seven of this Ordinance, shall be the unpaid balance of the penalty.

(3.) Notice of an application under this section shall be served upon the convicted person.

Collector may levy on goods in his possession.

246. When any pecuniary penalty adjudged against any person is unpaid, the Collector may levy the penalty by sale of any goods belonging to that person which are then or thereafter subject to the control of the Customs.

Release of offenders.

247. The gaoler of any gaol to which any person has been committed for non-payment of any penalty shall discharge the person—

- (a) on payment to him of the penalty adjudged,
- (b) on a certificate by the Collector that the penalty has been paid or realized,
- (c) if the penalty adjudged to be paid is not paid or realized, according to the following table:—

Customs Ordinance 1921-1941.

Amount of Penalty.	Period after commencement of imprisonment at the expiration of which defendant is to be discharged.
£2 or under	Seven days
Over £2 and not more than £5	Fourteen days
Over £5 and not more than £20	One month
Over £20 and not more than £50	Two months
Over £50 and not more than £100	Three months
Over £100 and not more than £200	Six months
Over £200	One year

248. No person shall be twice imprisoned upon the same conviction, but the suffering of imprisonment for non-payment of a penalty shall not release the penalty or affect the right of the Customs to collect the amount in any manner provided by this Ordinance other than by imprisonment of the person convicted.

Imprisonment not to release penalty.

249. Where the committal of any offence causes a forfeiture of goods, the conviction of any person for the offence shall have effect as a condemnation of the goods in respect of which the offence is committed.

Conviction to operate as a condemnation.

250. In all Customs prosecutions the Court may award costs against any party or claimant and all provisions of this Ordinance relating to the recovery of penalties except commitment to gaol shall extend to the recovery of any costs adjudged to be paid.

Parties may recover costs.

251. All penalties and forfeitures recovered under this Ordinance shall be applied to such purpose and in such proportions as the Chief Collector directs.

Application of penalties.

PART XV.—SETTLEMENT OF CASES BY THE CHIEF COLLECTOR.

252. If any dispute arises between any officer and any person with reference to any contravention of this Ordinance the Chief Collector may, in manner prescribed, with the written consent of that person, inquire into and determine the dispute, and shall have power by order, a notification of which shall be published in the *New Guinea Gazette*, to impose, enforce, mitigate or remit any penalty or forfeiture which he determines has been incurred.

Settlement of disputes by Chief Collector.

253. Every order made under the last preceding section shall be final and without appeal and shall not be liable to be quashed on any account and the copy thereof shall be delivered to such person and may be enforced in the same manner as an order of the District Court.

Chief Collector's order to be final.

Amended by No. 23 of 1930, s. 61.

254. The Chief Collector in holding any inquiry under this Part of this Ordinance shall hold the inquiry in public and may—

Powers of Chief Collector at inquiries.

(a) summon the parties and any witness before him;

(b) take evidence on oath;

CUSTOMS—

- (c) require the production of documents; and
- (d) allow reasonable expenses to witnesses and costs to successful parties.

Obligations on witnesses.

255. No person, being summoned as a witness at any inquiry under this Ordinance, shall—

- (a) disobey the summons;
- (b) refuse to be sworn as such witness;
- (c) refuse or fail to produce any document he is required to produce;
- (d) being sworn as a witness, refuse or fail to answer any question lawfully put to him.

Penalty: Twenty pounds.

Chief Collector may determine difference.

256. Any matter of difference arising under this Ordinance, or in relation to the Customs and not involving a contravention of this Ordinance, may, at the request of the parties interested, be referred to the Chief Collector for decision, and thereupon the Chief Collector may, in such manner as he thinks fit, inform his mind of the circumstances and finally decide the difference.

PART XVI.—REGULATIONS.

Regulations to have force of law.

Sub-section (1) amended by No. 36 of 1938, s. 4.

257.—(1.) The Administrator in Council may make regulations⁽¹⁷⁾ not inconsistent with this Ordinance, prescribing all matters which by this Ordinance are required or permitted to be prescribed or which are necessary or convenient to be prescribed, for giving effect to this Ordinance or for the conduct of any business relating to the Customs and in particular for prescribing—

- (a) the nature, size and material of the packages in which imported goods or goods for export are to be packed or the coverings in which they are to be wrapped;
- (b) the maximum or minimum weight or quantity of imported goods or goods for export which may be contained in one package;
- (c) the conditions of preparation or manufacture for export of any articles used for food or drink by man, or used in the manufacture of articles used for food or drink by man;
- (d) the conditions as to purity, soundness and freedom from disease to be conformed to by goods for export; and
- (e) the conditions of carriage of goods subject to the control of the Customs, and the obligations of persons accepting such goods for carriage.

Paragraph (c) amended by No. 23 of 1930, s. 62.

Paragraph (e) added by No. 23 of 1930, s. 62.

(17) See the *Customs Regulations*, printed on p. 1817.

(2.) The regulations may prescribe penalties not exceeding Fifty pounds in respect of any contravention of any of the regulations.

* * * * *

Section 258
repealed by
No. 36 of 1938,
s. 5.

PART XVII.—MISCELLANEOUS.

259. The person in command of any ship or aircraft holding commission from His Majesty or from any foreign State, having on board any goods other than ships' or aircraft's stores laden in parts beyond the seas, shall, when called upon by the Chief Collector or by the Collector or an officer specially authorised by the Chief Collector or the Collector so to do—

Commissioned
ships or aircraft
to be reported.
Amended by
No. 23 of 1930,
s. 2 and
Schedule.

- (a) deliver an account in writing of the quantity of the goods, the marks and numbers thereof, and the names of the shippers and consignees and declare to the truth thereof;
- (b) answer questions relating to the goods.

260. Ships or aircraft under commission from His Majesty or any foreign State, having on board any goods other than ships' or aircraft's stores laden in parts beyond the seas, may be boarded and searched by an officer especially authorised as mentioned in the last section, in the same manner as other ships or aircraft, and the officer may bring any such goods ashore and place them in an Administration warehouse.

Commissioned
ships or aircraft
may be
searched.
Amended by
No. 23 of 1930,
s. 2 and
Schedule and
s. 63.

261. As to sales by the Collector—

Collector's
sales.

- (a) the goods shall be sold by auction or by tender and after such public notice as is prescribed, and, where not prescribed, after reasonable public notice;
- (b) the goods may be sold either free or subject to duty and charges, and the price shall be paid in cash on the acceptance of the bidding or tender;
- (c) no bidding or tender shall be necessarily accepted and the goods may be re-offered until sold at a price satisfactory to the Collector.

262. The proceeds of any goods sold by the Collector shall be applied as follows:—

Proceeds of
sale.
Amended by
No. 23 of 1930,
s. 64.

- Firstly, in the payment of the expenses of the sale.
- Secondly, in payment of the duty.
- Thirdly, in payment of the warehouse rent and charges.

CUSTOMS—

Fourthly, in payment of the harbour and wharfage dues, and freight, if any, due upon the goods if written notice of the harbour and wharfage dues, and freight has been given to the Collector.

And the balance, if any, shall be paid to the Chief Collector on account of the person entitled thereto.

SCHEDULES.

SCHEDULE I.

The Territory of New Guinea.

SECURITY TO THE CUSTOMS.

By this Security the subscribers are pursuant to the *Customs Ordinance of 1921* bound to the Customs of the Territory of New Guinea in the sum of [*here insert amount or mode of ascertaining amount intended to be paid in default of compliance with condition*] subject only to this condition that if [*here insert the condition of the security*] then the security shall be thereby discharged.*

Dated this

day of

19 .

Names and Descriptions of Subscribers.	Signature of Subscribers.	Signature of Witnesses.

* NOTE.—If liability is not intended to be joint and several, and for the full amount, here state what is intended, as for example thus:—"The liability of the subscribers is joint only", or "The liability of [*mentioning subscribers*] is limited to [*here state amount of limit of liability or mode of ascertaining limit*]."

SCHEDULE II.

Amended by
No. 23 of 1930,
s. 65.

The Territory of New Guinea.

SCALE OF FEES FOR WAREHOUSES TO BE PAID BY LICENSEES.

When the whole services of a locker are required	£200 p.a.
When the whole services of more than one locker are required for each additional locker after the first	£150 p.a.
When only half the services of a locker are required	£100 p.a.
When the whole services of a locker are not required a charge of two shillings per hour for each hour or part of an hour necessary for the locker to be in attendance and a sum to be fixed by the Chief Collector not exceeding	£50 p.a.

All questions as to the number of lockers required and the time necessary for the attendance shall be determined by the Chief Collector.

The above scale shall apply to the following places only:—

Rabaul,
Kavieng,
Madang,
Kieta.

At any other places such fees not exceeding the above scale shall be charged as may be prescribed.

SCHEDULE III.

Substituted by
No. 23 of 1930,
s. 66.

The Territory of New Guinea.

Customs Ordinance 1921.

WRIT OF ASSISTANCE.

To All Peace Officers and To All Whom It May Concern:

Greeting.

You are commanded to permit A.B., of an Officer of the Customs of the Territory of New Guinea and his assistants and each and every of them at any time in the day or night to enter into and search any house, premises or place and to break open and search the same and any chests, trunks or packages in which goods may be or are supposed to be and to seize any goods forfeited to the Administration and any goods that he, the said A.B., has reasonable cause to believe are forfeited to the Administration and to take such goods to the nearest Administration warehouse or to such other place of security as the Collector of Customs shall direct.

And all powers which are capable of being granted under a Writ of Assistance are hereby granted to the said A.B.

And all Peace Officers and other persons in the said Territory are hereby commanded, on sight of this Writ and upon being so required by the said A.B. to aid and assist the said A.B. in the matters aforesaid.

Witness [*name and description of the Judge testing the Writ*] at
the day of

One thousand nine hundred and

[SEAL]

By the Court.

CUSTOMS—

SCHEDULE IV.

Amended by
No. 23 of 1930,
s. 67.

The Territory of New Guinea.

CUSTOMS WARRANT.

To

You are hereby authorised to enter into at any time in the day or night if necessary and search any house premises or place; and to break open the same and any chests trunks or packages in which goods may be or are supposed to be and to seize and take away any forfeited goods or goods which you have reasonable grounds to believe are forfeited you may find therein and forthwith to put and secure the same in the Administration warehouse or such other place of security as the Collector may direct. And for so doing this shall be your sufficient Warrant.

This Warrant shall remain in force for three months from the date thereof.

Dated this _____ day of _____ in the year
One thousand nine hundred and _____

[SEAL]

[Signature]

Inserted by
No. 23 of 1930,
s. 68.

SCHEDULE V.

Section 200.

The Territory of New Guinea.

CUSTOMS WARRANT.

To

Whereas information in writing has been given on oath to me that goods have been unlawfully imported, undervalued, or entered or illegally dealt with or that it is intended to unlawfully import, undervalue or enter, or illegally deal with goods; [*or*

Whereas goods have been seized or detained:]

You are hereby authorised, in the event of _____ failing to comply immediately with any requirement made in pursuance of section two hundred of the *Customs Ordinance* 1921, to enter into, at any time of the day or night, and search any house, premises or place in which any books or documents relating to the goods are or are supposed to be; and to break open any such house, premises or place and search any person therein or thereon and any chests, trunks or packages therein or thereon; and to take possession of, remove and impound any of those books and documents which are found: And for so doing this shall be your sufficient warrant.

This warrant shall remain in force for one month from the date thereof.

Dated this _____ day of _____, 19 _____

[SEAL]

[Signature]