

CHAPTER MXCV.

AN ACT FOR THE FURTHER REGULATION OF THE PORT OF PHILADELPHIA, AND ENLARGING THE POWER OF THE WARDENS THEREOF.

(Section I, P. L.) Whereas from the increase of trade and the number of foreign ships and vessels resorting to the port of Philadelphia; it is become necessary that further regulations should be established for preserving good order in the anchoring, mooring and removing of ships and other vessels within the harbor.

And whereas the wharves extending into the common highway of the river Delaware are, and of right ought to be, subject to such regulations as may best promote the conveniency of the public, and the general interests of commerce, preserving nevertheless as far as may be consistent therewith, the rights of private property:

And whereas it is expedient for these and other salutary purposes, that a new nomination and appointment of wardens and of the collector of the duties of tonnage should be made.

[Section I.] (Section II, P. L.) Be it therefore enacted, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in General Assembly met, and by the authority of the same, That Francis Gurney, John Donaldson, Samuel Caldwell, Thomas Pryer, George Ord, Nathaniel Falconer and John Hazelwood be, and they are hereby severally and respectively nominated and appointed wardens of the port of Philadelphia, and that Jacob S. Howell be, and he is hereby nominated and appointed collector of the duties and sums of money which may be due and payable for all ships and vessels, chargeable therewith, who shall also be the clerk or secretary of the board of wardens and keeper of their records, files and minutes of proceedings, and receiver of fines

and penalties, which wardens and collectors are hereby severally and respectively, inversed with all the powers, rights, privileges, jurisdiction and authority, and subject to all such duties, regulations, restrictions and penalties as the wardens and collector of the duties of tonnage, appointed in and by an act of the general assembly of Pennsylvania, entitled "An act appointing wardens for the port of Philadelphia, and for other purposes therein mentioned¹ made and passed the twenty-sixth day of February, one thousand seven hundred and seventy-three, were invested with and subjected to in and by the said act, such alterations and additions as are herein and hereby made and expressed, always excepted.

[Section II.] (Section III, P. L.) And be it further enacted by the authority aforesaid, That each and every of the said wardens before they take upon themselves the exercise of the said office, shall respectively take an oath or affirmation, "That he will well and faithfully to the best of his skill, understanding and judgment, perform, do, execute and discharge the office and duty of a warden without favor or partiality according to the directions of an act of the general assembly of Pennsylvania, entitled "An act appointing wardens for the port of Philadelphia, and for other purposes therein mentioned and of an act of the legislature of the commonwealth of Pennsylvania, entitled 'An act for the further regulation of the port of Philadelphia, and enlarging the power of the wardens thereof,' " which qualification any justice of the peace of, and for the city and county of Philadelphia is hereby authorized and enjoined to administer and record.

[Section III.] (Section IV, P. L.) And be it further enacted by the authority aforesaid, That it shall and [may] be lawful to and for the wardens aforesaid, to establish and keep a public office at some convenient place within the city of Philadelphia, where also shall be kept the office of the collector of the duties of tonnage, at which office the president of the board of wardens for the time being, or some other one of them as shall be

¹ Passed February 26, 1773, Chapter 671.

agreed upon and ordered from time to time by the said board, shall attend daily and every day, Sundays excepted, at the usual office hours, for the cognizance and dispatch of such business as may belong to the said office of the wardens. And to the end that the navigation of the river Delaware may not be injured by the extension of wharves to an improper distance into the channel thereof within the port of Philadelphia or by obstructions or encroachments of any other kind:

[Section IV.] (Section V, P. L.) Be it enacted by the authority aforesaid, That when and so often as any person shall be desirous to extend any wharf or other building into the tideway of the river Delaware from any part of the city or liberties of Philadelphia, such person shall make application to the said board of wardens, stating in writing the nature, extent and plan of such intended building and if it shall appear to the said board of wardens or a majority of them, that such plan and design may be lawfully executed, and that the same will not improperly encroach upon nor injure the said channel and harbor, the said board of wardens shall thereupon give their assent and license for erecting and extending such wharf or building, and cause the same to be recorded in their office but if the said board of wardens shall deem it improper to give such assent and license, and the party applying shall think himself aggrieved by their refusal, such party may thereupon make such application to the supreme executive council, who after hearing the reasons which induced the wardens to refuse their assent, shall finally determine and award thereon. And if any person or persons, after the publication of this act, shall presume to extend any wharf or building, within the city or liberties of Philadelphia into the river Delaware beyond low water mark, without license first had and obtained from the wardens as aforesaid, or in case of their refusal from the supreme executive council as aforesaid, it shall and may be lawful for the said board of wardens to order and cause the same to be removed at the expense of the party or parties who shall so have erected or extended such wharf or building which expense shall be recovered, with costs of suit, from such offending party or parties by action of debt, at the suit of the collector of the duties of tonnage for

the time being, in any court where debts of equal amount are cognizable.

(Section VI, P. L.) And whereas it sometimes happens that vessels are injuriously impeded in the lading or discharging of their cargoes, by being refused admittance to a wharf, although divers wharves or parts thereof may be unoccupied by any other vessel, or occupied by such only as might without material injury be removed to some other situation:

(Section VII, P. L.) And whereas it is just and proper that the owner or possessor of a wharf, though extended into the river beyond low water mark should enjoy a reasonable right of preoccupancy thereof:

[Section V.] (Section VIII, P. L.) Be it enacted by the authority aforesaid, That no ship or vessel subject to the duties of tonnage shall be permitted to moor at or otherwise to occupy any wharf within the city or liberties of Philadelphia, without leave first had and obtained from the owner or possessor thereof: Provided always, That if such leave be duly applied for by the owner, agent, master or other person having charge of such ship or vessel, and refused by the owner or possessor of any wharf within the limits aforesaid, being vacant in the whole, or in such parts as may reasonably accommodate the ship or vessel so applied for, and such vacancy shall remain unoccupied by some ship or vessel in which the owner or possessor of the wharf hath an immediate interest, for twenty-four hours after such application and refusal, it shall then and in such case be lawful for the ship or vessel first applied for to be moored at and occupy such wharf for so long time as shall be requisite for the dispatch of her business, subject nevertheless to the control and direction of the wardens as hereinafter mentioned.

(Section IX, P. L.) And whereas it is proper that the owners and possessors of wharves should be entitled to demand and receive a due compensation for the use and occupancy thereof:

[Section VI.] (Section X, P. L.) Be it enacted by the authority aforesaid, That when any ships or vessel subject to the duties of tonnage shall be moored at and occupy any wharf, or end or side thereof within the city of Philadelphia, affording proper convenience for such vessel to discharge and receive goods either

with or without the leave and consent of the owner or possessor of such wharf, and without any agreement being made for the rate or price of such wharfage, it shall and may be lawful for the owner or possessor of such wharf to demand and receive for such wharfage, any sum not exceeding [the rate of] six shillings per day, for so long time as such vessel shall so occupy such wharf or part thereof, and for an outside berth the second vessel from a wharf shall pay not exceeding [the rate of] two shillings and six [pence] per day and the third vessel from a wharf shall pay not exceeding the rate of one shilling and six pence per day.

(Section XI, P. L.) And whereas vessels being out [of] repair, or for some other reason remaining unemployed or nearly so, frequently occupy for an unreasonable length of time the wharves and situations best adapted for the dispatch of business to the great hindrance and obstruction of others:

[Section VII.] (Section XII, P. L.) Be it enacted by the authority aforesaid, That the said wardens or the president or member attending for the time being as aforesaid be, and they are hereby severally authorized and required on application to them or him made for the removal of any such ship or vessel, to inquire into the nature and circumstances of the case, and to order such [ship] or vessel to be removed, to such other place or situation as the owner, master or other person having charge thereof shall choose, and the said wardens or warden shall approve, and in case such owner or other person shall refuse or neglect to choose such other place or situation as shall be so approved, or to make such removal of the vessel as the said wardens or warden shall direct within twenty-four hours after due notice given for that purpose, such owner, master or other person having charge of such ship or vessel, shall forfeit and pay to the collector of the duties of tonnage, the sum of five pounds per day, for every day such ship or vessel shall afterwards remain unremoved as aforesaid unless prevented by stress of weather or other reasonable cause, of which the said wardens or warden shall be the judges or judge, which forfeiture shall be recovered with costs by action of debt or by attachment of the said ship or vessel and her appurtenances, at the suit of the said

collector, as captain's or seamen's wages are recoverable, and applied as hereinafter is directed.

(Section XIII, P. L.) And whereas inconveniences and mischiefs frequently happen for want of order and regularity in the placing, anchoring and mooring of vessels in the stream as well as at the wharves and docks.

[Section VIII.] (Section XIV, P. L.) Be it enacted by the authority aforesaid, That it shall and may be lawful to, and for the said wardens, [or a majority of them], and they are hereby authorized and required to form and establish such rules and orders as they, on due deliberation and advisement, shall from time to time think requisite and proper for guarding against such inconveniences and mischiefs, which rules and orders shall be recorded in the office of the said wardens, and shall be printed and published for the information of all whom it may concern; and if any owner, master or other person having the charge or command of any ship or vessel within the harbor of Philadelphia, shall wilfully or negligently disobey or refuse, or neglect to comply with such rules and orders, after due notice thereof, or neglect or refuse to comply with any reasonable order or direction of the said wardens or the president or attending member thereof as aforesaid, respecting the placing, mooring, or remooring of such ship or vessel within the said harbor, such owner, master or other person, shall forfeit and pay the sum of five pounds for every such offense for the first time and ten pounds for each and every time the same, or a similar offense shall be repeated for which fines such vessel and her appurtenances shall be liable, as well as the person and effects of the offender or offenders; and the owner and all others concerned in any such vessel, shall moreover be barred from recovering any compensation for any damages she may sustain in the meantime, by any other vessel running foul of or injuring the same, or the tackle and apparel thereof; which fines and forfeitures shall be, and they are hereby made recoverable as herein before is directed for the recovery of fines and forfeitures for refusing or neglecting to remove a vessel from a wharf, by order of the said wardens or warden.

[Section IX.] (Section XV, P. L.) And be it further enacted

by the authority aforesaid, That if any person or persons shall think himself or themselves aggrieved by any order or sentence made and given by the president or attending member of the wardens for the time being as aforesaid it shall and may be lawful for such person or persons to appeal therefrom to the board of wardens, on giving bond to the president of the wardens, with sufficient surety to abide and perform the final determination of the board thereon, of the sufficiency of which surety the president of the wardens for the time being shall judge and determine which bond shall be executed and tendered within twenty-four hours after notice of such order or sentence and the party appelliant shall prosecute such appeal to effect before the board at their next meeting, or otherwise the appeal shall be dismissed, unless satisfactory cause for a farther continuance be shown to the board; and if either of the parties shall require it, and the president or attending [member] of the wardens aforesaid shall think it proper, a special meeting of the board shall be called for the hearing of such appeal as early as may be; and if upon such hearing either at an ordinary or special meeting, the original order or sentence shall be affirmed, the board shall award such reasonable costs to be paid by the appelliant as they shall adjudge to be adequate to the expenses occasioned by the appeal, including the established pay of the wardens and their clerk for so long time as they shall have attended on the said business.

[Section X.] (Section XVI, P. L.) And be it enacted by the authority aforesaid, That all fines, forfeitures and penalties made recoverable by this act, and not herein before appropriated, shall be paid into the hands of the collector of the duties of tonnage and by him accounted for in like manner as he is made accountable for the said duties of tonnage, and appropriated accordingly as an addition to the funds thence arising.

(Section XVII, P. L.) And whereas injuries frequently happen by vessels accidently or negligently running foul one on another and it is expedient that a summary and expeditious mode should be established for ascertaining such damages, and awarding payment thereof by the party or parties who ought of right to pay the same:

[Section XI.] (Section XVIII, P. L.) Be it enacted by the authority aforesaid, That the party injured by such accident or negligence, and claiming redress, shall and may apply to the president, or attending member of the board of wardens, stating his claim of redress, and pointing out the person or persons from whom the same is demanded, which president or attending member is authorized and required to appoint a time and place for the hearing and determination of such claim, of which notice shall be given in writing by the party claiming to the adverse party, at least twenty-four hours before the time so appointed; and the said president or attending member, calling to his assistance any two of the wardens, shall form a competent board for the business, and after due information by examination of witnesses, inspection, survey, or such other proper means as the case may require, shall adjudge and award such recompense for the damages sustained, as they, or the majority of them shall think just and reasonable, to be paid by one party to the other for the same, together with such reasonable expenses as may have been incurred in obtaining such information; and such award certified under the hands of the wardens who shall have made the same, shall be final and conclusive to the parties, and shall be taken and deemed to be sufficient evidence of a debt incurred to maintain and support an action in any court where the same may be cognizable, and the party injured may prosecute thereon accordingly by summons or capias as the case may require, or by attachment of the vessel which occasioned such damages, at his option.

(Section XIX, P. L.) Provided always, that nothing herein contained shall be deemed or construed to prevent the parties from settling and determining such matter by compromise, or in such other mode as they shall by mutual consent agree upon.

(Section XX, P. L.) And whereas it is just and reasonable that the said wardens should receive a competent allowance for their time, trouble and services in the performance of the duties required of them:

[Section XII.] (Section XXI, P. L.) Be it enacted by the authority aforesaid, That in lieu of the fees and allowance mentioned in the third section of the act herein before recited and

referred to, the president or other warden who shall be the attending member for the time being as aforesaid, shall have and receive for every day he shall so attend, the sum of seven shillings and six pence and each and every of the said wardens shall have and receive the sum of five shillings for every day he shall be employed in any other of the duties and services of a warden to be paid by the collector of the duties of tonnage out of the fund arising from the said duties on warrants granted by order of the said board of wardens and signed by the president at any of their quarterly meetings, and to the clerk of the said board shall be allowed and paid out of the said fund on warrants to be issued in like manner such reasonable sum as the said board of wardens shall certify is justly due, as an allowance for office rent, fire, candles, stationery and other proper accommodations for the office of the said wardens, of all which warrants, orders and proceedings of the board of wardens, fair entries and minutes shall be kept by the said clerk, under the direction of the said board, and such warrants with receipts thereon, shall be respectively sufficient vouchers to the said collector in discharge of the sums therein expressed.

(Section XXII, P. L.) And whereas the mode heretofore used in obtaining and executing warrants of survey on vessels and goods damaged or supposed to be damaged by stress of weather, accidents at sea, bad storage or other cause, has been found to be unduly expensive and burdensome:

[Section XIII.] (Section XXIII, P. L.) Be it enacted by the authority aforesaid, That when and so often as any such warrant of survey shall be applied for to the court of admiralty or other competent jurisdiction, the warrant granted thereon, shall be directed to the wardens of the port of Philadelphia for the time being, directing or requiring them or any two of them in the usual form to execute the same, and such warrant shall be so framed as to comprehend all the surveys which may be requisite to be made respecting any one vessel and the various parts or portions of her cargo; under which warrant the said surveyors may nevertheless make and return such and so many separate and distinct reports to the judges of the admiralty as the nature and circumstances of the case may require. And

in case the said surveyors shall think the aid and assistance of a ship carpenter or other tradesman necessary to the forming of a proper judgment and report on any such survey, they are hereby authorized to call to their aid any such tradesman as they shall choose, and who shall be willing to join them in the said business, which tradesman so choosen and called, shall be taken and deemed to be a surveyor for that occasion as fully and amply to all intents and purposes as if he had been named in the warrant. And as a compensation to the said surveyors for performing the said duties, they shall be allowed and paid by the parties respectively demanding or requiring any such survey, as follows to-wit: To the two wardens who shall perform the service ten shillings each for every survey and return on a ship or other vessel, and five shillings each for every separate shipment or invoice of goods they shall so survey and report upon, and to the carpenter or other tradesman so called to their assistance a like sum for every survey and return he shall so join in making.

(Section XXIV, P. L.) And whereas it is just and reasonable that foreigners enjoying the benefits of trade in our ports in common with citizens of the United States and being at the same time exempted from many of the duties and burdens of citizenship should pay some consideration, therefore:

[Section XIV.] (Section XXV, P. L.) Be it enacted by the authority aforesaid, That from and after the publication of this act, an additional duty of seven pence per ton be charged upon, and levied and collected from every ship or vessel coming into or going out of any port in this state, the property whereof in whole or in part shall be owned by or belonging to any person or persons not being a citizen or citizens of the United States, or the territories thereunto belonging, over and besides the duties of tonnage heretofore charged upon all ships and vessels coming into or going out of the said ports, which said additional duties shall be accounted, taken and paid in the like manner in all respects and under the like penalties for refusal or neglect as in and by the before recited act, entitled "An act for appointing wardens for the port of Philadelphia and for other purposes therein mentioned,"¹ are directed and expressed.

¹ Passed February 26, 1773, Chapter 671.

[Section XV.] (Section XXVI, P. L.) And be it further enacted by the authority aforesaid, That if any of the said wardens shall refuse to act, remove from the port of Philadelphia, be rendered incapable of acting or die, that then and in such case, the president or vice-president in council for the time being shall appoint a warden or wardens in the room, stead and place of such warden or wardens, who shall so refuse to act, remove be incapacitated or die, and in case of the refusal, removal, incapacity or death of the collector of tonnage by this act appointed, then the wardens aforesaid or a majority of them shall in the recess of the assembly nominate and appoint a collector in the room, stead and place of the said collector who shall refuse to act, remove from the port of Philadelphia, be incapacitated or die, and as often as a refusal to act removal, incapacity or death of any collector under this act shall take place, which collector shall, during the recess aforesaid exercise all the authorities and jurisdiction under this act appointed to be by him exercised or done in the appointment aforesaid.

Passed April 1, 1784. Recorded L. B. No. 2, page 321. See the Acts of Assembly passed April 1, 1784, Chapter 1101; September 23, 1784, Chapter 1115; April 4, 1785, Chapter 1158; April 5, 1785, Chapter 1161. The act in the text was repealed by the Act of Assembly passed October 4, 1788, Chapter 1365.

CHAPTER MXCVI.

AN ACT FOR THE RELIEF OF JOHN LONG, JOHN McFADDEN, DANIEL DRAIS, MARY CURRIE AND ELIZABETH CARNAGHAN, INSOLVENT DEBTORS CONFINED IN THE GAOL OF THE CITY AND COUNTY OF PHILADELPHIA.

(Section I, P. L.) Whereas John Long, John McFadden, Daniel Drais, Mary Currie and Elizabeth Carnaghan, prisoners confined in the gaol of the city and county of Philadelphia for debt, by their petitions to this house have severally set forth that by reason of misfortunes they are wholly unable to satisfy their creditors, and have prayed that they may be discharged from