



Western Australia.

ANNO SEXAGESIMO PRIMO

VICTORIÆ REGINÆ.

No. XXV.

AN ACT to amend the Wines, Beer, and Spirit Sale Amendment Act, 1884.

[Assented to, 23rd December, 1897.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. THIS Act may be cited as the Sale of Liquors Amendment Act, 1897, and shall be read as part of the Wines, Beer, and Spirit Sale Act, 1880, hereinafter called the Principal Act.

Short title.
Incorporation with
44 Vict., No. 9.

PART I.—ADULTERATION OF LIQUORS.

2. SECTIONS twelve to nineteen (inclusive) of the Wines, Beer, and Spirit Sale Amendment Act, 1884, hereinafter called the Amendment Act, are hereby repealed; but such repeal shall not affect any act done, right acquired, liability (civil or criminal) incurred, or proceeding instituted under the said repealed sections.

Repeal of Sections
12-19 of 48 Vict., No.
14.

3. IN this part of this Act spirits are regarded as being at proof when the alcohol is mixed with water in such proportions that,

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at a temperature of 60° Fahrenheit, the specific gravity of the admixture is 916·6 (water being 1,000), and the indication on Sykes' hydrometer is 58·8.

The term "under proof" applied to spirits means spirits of less specific gravity than above mentioned.

Specific gravity how ascertained.

4. THE specific gravity of spirits shall, for the purposes of this Act, be ascertained by Sykes' hydrometer.

Governor may appoint public analyst.
48 Vict., 14, s. 13.

5. THE Governor may from time to time appoint, on such terms as he may think fit, and may, in his discretion, remove or dismiss one or more public analysts. Such persons may be required, among other duties, to act as analysts under this Act. Every such appointment shall be notified in the *Government Gazette*. Every person appointed by the Governor as a public analyst, and exercising that office at the commencement of this Act, shall act as analyst under this Act.

Power to purchaser of liquor to have it analysed.
38 & 39 Vict., c. 63, s. 12.

6. ANY purchaser of liquor shall be entitled, on payment to a public analyst of a sum not exceeding Twenty shillings, to have such liquor analysed by such analyst, and to receive from him a certificate of the result of the analysis.

Sale or possession of adulterated liquor.
48 Vict., 14, pt. s. 12.

7. ANY licensed person who, by himself, his agent or servant, sells or disposes of, or offers or attempts to sell or dispose of, or shall have upon his licensed house or premises any liquor which is adulterated with water or any other substance, or which is mixed with or contains any tobacco, vitriol, opium, cocculus indicus, grains of paradise, quassia, alum, salt of tartar, creosote, or any extract or preparation of any of the aforesaid substances, or any matter or ingredient which is injurious to health, he or she shall, on conviction thereof before any two or more Justices of the Peace in Petty Sessions, be liable to pay a fine not less than Ten nor more than Fifty pounds for the first offence, together with a fine of Two pounds in respect of the analysis of such liquor; and every offence, after a conviction for a first offence, shall be a misdemeanour, punishable by imprisonment for a period not exceeding six months with hard labour, and render the person convicted liable, at the discretion of the magistrates, to be declared disqualified from applying for or obtaining a license, or a renewal or a transfer of a license, under the Wines, Beer, and Spirits Sale Act for any term not exceeding three years: Provided that, where the offence is charged in respect of any spirit not adulterated otherwise than with water, it shall be a good defence to prove that such admixture has not reduced the spirit more than twenty-five degrees under proof for brandy, whisky, or rum, or thirty-five degrees under proof for gin.

"Sale of food and Drugs Act, 1875" (Imp.), pt. s. 3.
42 & 43 Vict., 30, s. 6.

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8. ANY Justice of the Peace and any member of the police force may demand and take for analysis a sample or samples, not being more than he reasonably requires, of any liquor found by him or being upon any licensed premises, wholesale or retail, upon payment or tender of a reasonable sum for the same.

Justice or police officer may demand samples for analysis. 48 Vict., 14, part s. 14.

9. ANY person who shall purchase any liquor at a licensed house or premises, wholesale or retail, or from any person licensed to sell liquors, or his agent or servant, and who shall intend to have such liquor analysed by a public analyst, shall, after the purchase is completed, forthwith notify such intention to the seller, or his agent or servant selling the liquor, and shall offer to divide the liquor into three parts, to be then and there separated, and each part to be sealed up and marked, and shall, if such offer is accepted, proceed accordingly, and shall deliver one of the parts to the seller, his agent or servant.

Any person may purchase liquor for analysis. What he is to do after the purchase. 48 Vict., 14, part s. 15.

See 38 & 39 Vict., c. 63 (Imp.), s. 14.

The purchaser shall afterwards retain one of the said parts for future comparison, and submit the third part, if he deems it right to have the liquor analysed, to the analyst.

10. IF the seller, his agent or servant, do not accept the offer of the purchaser to divide the liquor purchased in his presence, the analyst receiving the article for analysis shall divide the same into two parts, and shall seal up one of these parts, and shall cause it to be delivered, either upon receipt, or when he supplies his certificate, to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Where offer to divide in three is not accepted.

11. ANY licensed person, or the agent or servant of any licensed person, who shall refuse to sell to any Justice of the Peace or member of the police force any sample of liquor duly demanded as aforesaid, or shall obstruct any Justice of the Peace or member of the police force on the occasion of his duly demanding or buying, or any other person on the occasion of his lawfully buying any liquor for analysis, shall, on conviction thereof before two Justices (whereof the Justice, if any, making the demand or buying shall not be one), be liable to a fine not exceeding Fifty pounds.

Obstruction of Justices and other persons taking samples of liquor.

See 48 Vict., 14, s. 16.

See 38 & 39 Vict., c. 63, s. 17.

12. ANY sample of liquor taken or purchased as aforesaid may be delivered to a public analyst, together with the name and address of the licensed person from whom such liquor was taken or purchased.

Delivery and analysis of samples of liquor. 48 Vict., 14, part s. 17.

13. EVERY analyst acting under this Act shall set forth the result of his analysis, in a certificate in the form in the Schedule hereto, or to the like effect, and he shall deliver, without fee, a copy

Certificate of result of analysis. Schedule. *Ibid.*, s. 18.

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thereof signed by him to the Justice, officer, purchaser, licensed person, or his agent as aforesaid requiring the same, and he shall retain and keep one signed copy of his certificate.

Quarterly report of the analyst.

38 & 39 Vict., c. 63, part s. 19.

14. EVERY analyst appointed under any Act hereby repealed, or this Act, shall report quarterly to the Colonial Treasurer the number of samples analysed by him under this Act during the foregoing quarter, specifying the result of each analysis.

Time for commencement of prosecution.

48 Vict., 14, parts. 19.
42 & 43 Vict., c. 30, part s. 10.

15. A PROSECUTION of a licensed person, his servant or agent, for an offence against this part of this Act may be commenced at any time within three months from the taking or purchase of the liquor as aforesaid; but the summons shall not be made returnable in a less time than seven days from the day on which it was served on the person summoned.

Evidence at the hearing of the information.

38 & 39 Vict., c. 63, s. 21.

16. AT the hearing of the information in such proceeding the production of the certificate of the analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the analyst shall be called as a witness, and the part of the sample retained by the person who purchased it shall be produced.

Punishment for forging certificate.

17. EVERY person who shall forge, or shall utter, knowing it to be forged, any certificate referred to in this Act shall be guilty of a misdemeanour, and be punishable on conviction by imprisonment for a term not exceeding two years with hard labour.

Proceedings by indictment and on contracts not to be affected.

18. NOTHING in this Act contained shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this part of this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

Ibid., s. 28.

Provided that, on any action brought by any licensed person for a breach of contract on the sale to him of any liquor, such person may recover, alone or in addition to any other damages recoverable by him, the amount of any pecuniary penalty in which he may have been convicted under this part of this Act, together with the costs paid by him upon such conviction, and those incurred by him in and about his defence thereto, if he prove that the liquor, the subject of such conviction, was sold to him as and for a liquor of the same sort as was demanded of him or purchased from him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

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PART II.—COMPULSORY TRANSFER OF LICENSES.

19. (1.) THE holder of a license shall be deemed to have “ceased to occupy” within the meaning of section two of the Amendment Act, if the premises for which the license was granted or to which it is attached have been lawfully entered and possession thereof taken under or by virtue of any power for such purpose granted by the holder of the license, and the expression “the person occupying or being about lawfully to occupy the licensed premises” used in the same section, shall be deemed to include a person or company entering and taking possession as aforesaid, and in a case of a company, the application for a transfer of the license shall be made by some person nominated by the company for that purpose.

Application of Section 2 of 48 Vict., 14 extended.

(2.) In the case of a mortgagee being “the person occupying or being about lawfully to occupy the licensed premises”—

(a.) The said section shall be read as if the words “on being “tendered by such person the proportion of the annual “fee paid on such license estimated with reference to “the time during which such license has to run” were omitted therefrom.

(b.) Section five of the Amendment Act shall not apply.

(c.) Section six of the Amendment Act shall be read as if the words “upon payment or deposit of the proportional “part of the annual fee as aforesaid” were omitted therefrom.

PART III.—MISCELLANEOUS.

20. SECTION thirty-two of the Principal Act is hereby repealed, and the following substituted in lieu thereof:—“If such Licensing Magistrates shall, at any quarterly licensing meeting, have refused any application for a publican’s general license, or for a provisional certificate, such application shall not be renewed in respect of the same premises, or any part thereof, until six months after such refusal, and if the Licensing Magistrates so order at the time of such refusal, until twelve months thereafter.”

Amendment of 44 Vict., No. 9, Sec. 32.

21. SECTION sixty-one of the Principal Act is hereby amended by striking out, in the eighth line, the words “the sum of Fifty pounds,” and inserting in lieu thereof the words “a sum not exceeding Fifty pounds;” and is further amended by striking out, in the ninth line, the words “the sum of One hundred pounds,” and inserting in lieu thereof the words “a sum not exceeding One hundred

Amendment of 44 Vict., No. 9, Sec. 61.

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pounds ;” and is further amended by striking out all the words after One hundred pounds, and inserting in lieu thereof “and if such subsequent conviction shall be within a period of twelve months from any former conviction, the Justices may order that the license be forfeited.”

22. THE Licensing Magistrates may, before granting a provisional certificate, require the applicant to enter into a bond, with one or more sureties approved by them, in favour of Her Majesty, Her heirs and successors, in a sum to be fixed by the Licensing Magistrates at the hearing, conditioned to be void in case the premises are duly completed within the time specified by and to the satisfaction of the Licensing Magistrates, otherwise to be of full force and virtue.

23. SECTION twelve of 50 Victoria, No. 26, is hereby amended by striking out the words “fourteen years” and inserting “sixteen years.”

24. (1.) THE Governor may from time to time appoint, and at his discretion, remove one or more Inspectors of licensed premises for every licensing district under the Act.

Governor may appoint Inspectors.

Their duties.

(2.) It shall be the duty of every such Inspector to ascertain, by personal inspection, the mode in which the licensed premises situated within the licensing district to which he shall be appointed are conducted and managed, and the state, condition, nature, and extent of accommodation of such premises, and also to see that the provisions of this Act and the Principal Act are duly observed, and also to attend the annual or quarterly meetings of the Licensing Magistrates of such district, and to report upon all or any of the licensed premises situated therein, if he shall be required by the Licensing Magistrates to do so ; and such Inspector shall have power, after notice, to object to any application for the granting of new licenses, or the renewal or transfer of existing licenses, upon any of the grounds specified in the Act as objections applicable to such applications.

Penalties to apply to wholesale or retail dealers.

25. THE provisions and penalties herein expressed shall apply in equal manner to all dealers in wines, beer, and spirits, whether wholesale or retail.

In the name and on behalf of the Queen I hereby assent to this Act.

GERARD SMITH, Governor.

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SCHEDULE.

Form of Certificate of the Result of Analysis of Liquor.

Section 13.

THE SALE OF LIQUORS AMENDMENT ACT, 1897.

I, the undersigned, Public Analyst for the Colony of Western Australia, do hereby certify that I received on the day of from [*name and address of person delivering the sample*], a sample of [*description of liquor*] for analysis, and that I have analysed the same, and I declare the result of my analysis to be as follows:—

The said sample of liquor was not adulterated ;

or, The said sample of liquor was adulterated by the admixture of water to the extent of:—

or, The said sample of liquor was adulterated by the following foreign ingredients, that is to say:—

or, The said sample was mixed with or contained tobacco, &c. ;

or, The said sample was mixed with or contained a certain matter or ingredient injurious to health, that is to say:—

As witness my hand, this day of at

A. B., Public Analyst.