

WESTERN AUSTRALIA.

ANNO SECUNDO

VICTORIÆ REGINÆ

No. 4.

An Act to amend an Act intituled "An Act to regulate the Sale of Spirituous and Fermented Liquors by retail," and for the issuing of certain Licenses connected therewith.

WHEREAS it is expedient to restrict and regulate the sale of Spirituous and Fermented Liquors within this colony;—
Be it enacted by His Excellency the Governor of Western Australia and its Dependencies, with the advice of the Legislative Council, that if from and after the passing of this present Act, any person, except as hereinafter mentioned, shall upon any part of his or her house, land or premises, sell, barter, exchange or retail, or permit or suffer to be sold, bartered, exchanged, or retailed, any Rum, Brandy, Arrack, Gin, Whiskey, Cordials, or other Spirituous Liquors, in a less quantity than Forty Gallons, or any Ale, Beer, Wine, Cider, Perry, or other Fermented Liquors, in a less quantity than Fifteen Gallons, without having first obtained a License in manner hereinafter mentioned, he or she shall forfeit and pay for every such offence, any sum not exceeding fifty pounds, nor less than ten pounds.

Persons selling any Spirituous Liquors in a less quantity than forty gallons, or any Fermented Liquors in a less quantity than fifteen gallons, after the passing of this Act, without a License, subjected to a penalty of not less than £10, nor more than £50.

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No License under this Act to authorise the consumption of any of the aforesaid Liquors on the place of sale, unless it be a Licensed Public House, nor to empower any one, not being a licensed Publican, to sell in less quantities than one gallon, under penalty of not less than £5, nor more than £20.

II. Provided always, and be it further enacted, that no License to be obtained under this Act, shall authorise the consumption of any of the aforesaid Liquors on the premises where the same shall be sold, unless such premises be duly licensed as a Public House; nor shall empower any retail dealer, not being also duly licensed to keep a Public House, to retail any of the aforesaid Liquors in a less quantity than one gallon. And that any retail dealer who, not being also a Licensed Publican, shall be convicted of having sold, exchanged, or retailed any of the aforesaid Liquors in a less quantity than one gallon, or of having suffered any such Liquors to be consumed on his premises by the purchasers thereof, shall forfeit and pay, for every such offence, any sum not exceeding twenty pounds, nor less than five pounds.

Exception of Liquors sold for medicinal purposes.

III. Provided always, and be it further enacted, that any physician, apothecary, surgeon, chemist, or druggist, may administer or sell any of the aforesaid Liquors, in any quantities, for medicinal purposes, without license.

Any Justice of the Peace, upon reasonable ground of suspicion by information upon oath, may search unlicensed places for Liquors, &c., and may condemn and sell such liquors, if so found concealed for the apparent purpose of illicit sale.

IV. AND be it further enacted, that upon information on oath being made before any Justice of the Peace by any constable or credible person, that he or she doth surely suspect and believe that any such Liquor as aforesaid, is habitually sold or retailed in any particular unlicensed house or place, and such constable or other person shall in such information set forth or shew reasonable grounds for such belief and suspicion, then, and in such case, it shall be lawful for such Justice to grant his warrant to any constable to enter and search such house or other place, either by day or night; which said constable may break open any doors (if not opened for a reasonable time after demand) and seize all such Spirituous or Fermented Liquors as he shall there find, and the vessel or vessels containing such Liquors, and shall take the same and the person in whose apparent keeping or disposal the same were found, before the said Justice; and if it shall appear to such Justice, after due examination, that such liquors were in the said house or other place for the purpose of being illegally sold or disposed of, then such Justice shall adjudge the said liquor and vessel or vessels to be forfeited and sold, and the proceeds thereof (after payment of incidental expenses to be allowed by such Justice) shall be paid over in equal moieties to the Collector of Colonial Revenue, to Her Majesty's use, and to the party informing; but if it shall appear otherwise to such Justice, such Liquor and vessel or vessels shall be forthwith restored to the proper owner.

Masters may supply their servants with Wine and Beer in certain quantities, but not with spirits.

V. AND be it further enacted, that it shall be lawful for any Master or Employer (residing out of the limits of any township) to supply any Journeyman, Workman, Servant or Labourer, with any

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quantity of fermented Liquors (not being Spirits) not exceeding in any one week the amount of one-third of the wages or earnings of such Journeyman, Workman, Servant or Labourer during such week, and to set off and deduct the value of the Liquors against or from the wages or earnings of the person or persons to whom the same shall have been so supplied: and if any Master or Employer shall supply to any such Journeyman, Workman, Servant or Labourer, any of the Liquors aforesaid in a larger quantity than the proportion above limited, such Master or Employer shall forfeit and pay, for every such offence, any sum not less than five pounds, nor more than twenty pounds.

Master supplying greater quantity to forfeit not less than £5, nor more than £20

VI. AND be it further enacted, that no License to be obtained under this Act shall authorise the consumption of any of the aforesaid Liquors on Sundays, on the premises where the same shall be sold, except by Travellers or Lodgers; and any person convicted of having furnished any of the aforesaid Liquors on Sundays for consumption on the premises where the same shall be sold, except to Travellers or Lodgers, as aforesaid, shall forfeit and pay any sum not exceeding ten pounds, nor less than five pounds.

Liquors not to be furnished for consumption on the premises on Sundays, under penalty not exceeding £10, nor less than £5.

VII. AND provided also, that no License to be obtained under this Act shall authorise the furnishing of any of the aforesaid Liquors to any Soldier after the hour of Roll-call or Tattoo in the evening,—that is to say, after the hour of nine o'clock from the 11th October to the 14th May, and after the hour of half-past eight from the 14th May to the 11th October: and any person convicted of having furnished any of the aforesaid Liquors to any Soldier after the hours aforesaid, or of harbouring any Soldier after the hours aforesaid, shall forfeit and pay any sum not exceeding ten pounds, nor less than five pounds.

No liquors to be furnished to Soldiers after roll-call, nor Soldier harboured after roll-call, under penalty not exceeding £10, nor less than £5.

VIII. AND, for the more effectual discouragement of Tippling in unlicensed houses, be it further enacted, that any person who shall, after the passing of this Act, purchase any such Liquor as aforesaid from any unlicensed person, shall forfeit a sum not less than five pounds, nor more than twenty pounds, unless he or she shall inform against such unlicensed person, or voluntarily become a witness against him or her in respect of such act of selling or retailing.

Persons purchasing any of the aforesaid Liquors in an unlicensed House subject to a penalty of not less than £5, nor more than £20.

IX. AND be it further enacted, that no License shall be granted for retailing any Spirituous or fermented Liquors within any Gaol or Place of Confinement: and that if any Gaoler, Officer or Keeper of any such Gaol or Place of Confinement shall sell, barter, lend, or give away, or knowingly suffer any Spirituous or fermented Liquors

No Retail License to be granted for any Gaol or House of Confinement.

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to be sold, bartered, lent or given away in or brought into the same, except such as shall be prescribed by the order of a practising Physician, Surgeon, Apothecary, or a Magistrate, such Gaoler, Keeper, or Officer shall forfeit a sum not less than ten pounds, nor more than fifty pounds.

Persons introducing, or endeavouring to introduce Liquors into any Gaol or House of Confinement subject to a penalty of not less than £10, nor more than £50.

X. AND be it further enacted, that if any person shall bring, or endeavour to bring, any Spirituous or fermented, Liquors (except as aforesaid) into any Gaol or Place of Confinement, the Gaoler, Keeper, or other Officer thereof, may immediately apprehend and carry such offender before any Justice of the Peace; who shall or may, without any information for that purpose first exhibited, hear and determine such offence in a summary way; and if by the oath of one witness or otherwise such person shall be convicted of such offence, he or she shall forfeit any sum not less than ten pounds, nor more than fifty pounds.

Exception of Liquors meant for the use of the Gaoler or Keeper and his family.

XI. PROVIDED always, and be it further enacted, that nothing hereinbefore contained shall extend to the case of any Spirituous or fermented Liquors brought into any Gaol or Place of Confinement for the sole use of the said Gaoler, Keeper or Officer, or their respective families.

A copy of the three preceding clauses to be hung up in some conspicuous part of every Gaol or House of Confinement.

Any Justice of the Peace may at any time demand sight of such copy, and if not shown in a legible state, the Gaoler or Keeper subject to a penalty of 40s.

XII. AND be it further enacted, that the Gaoler or Keeper of every Gaol or Place of Confinement within the said Colony shall procure a copy of the three preceding Clauses, to be fairly written out and hung up in one of the most public parts of such Gaol or Place of Confinement, and shall keep the same always legible, under penalty of forty shillings: and any Justice of the Peace may demand an immediate sight of such copy, and if it be not immediately shewn to him, hung up in some conspicuous place, in a fair and legible state, he may forthwith convict such Keeper or Gaoler in the aforesaid penalty, and so from time to time as often as he shall think fit.

No Still or other vessel to be kept or used for the purpose of distillation without a License, under penalty not exceeding £50, nor less than £10.

XIII. AND be it further enacted, that from and after the passing of this Act, any person who shall keep any Still or other vessel used in the manufacture of distilled Spirits, or use, for the purpose of distillation, any such Still or vessel, without having first obtained a License in manner hereinafter mentioned, shall forfeit and pay, for every such offence, any sum not exceeding fifty pounds, nor less than ten pounds.

Upon information on oath, Justice may grant a warrant to search suspected places, and may condemn and sell such Still or other vessel so employed.

XIV. AND be it further enacted, that upon information on oath being made before any Justice of the Peace by any Constable or creditable person that he or she doth surely suspect and believe that any Spirit is or has been distilled in any particular unlicensed

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house or place, and such Constable or other person shall in such information set forth or shew reasonable grounds for such belief and suspicion, then, and in such case, it shall be lawful for such Justice to grant his warrant to any Constable to enter and search such house or other place, either by day or night; which said Constable may break open doors (if not opened within a reasonable time after demand) and seize any still or other vessel used or employed in the manufacture of distilled Spirits, and shall take the same before the said Justice; and if it shall appear to such Justice, after due examination, that such vessels had been used in the manufacture of distilled Spirits, then such Justice shall adjudge the said Still or other vessel, and the contents thereof to be forfeited and sold, and the proceeds thereof (after payment of incidental expenses to be allowed by such Justice) shall be paid over in equal moieties to the Collector of Colonial Revenue, to Her Majesty's use, and to the party informing; but if it shall appear otherwise to such Justice, such Still or vessel shall forthwith be restored to the proper owner.

XV. AND be it further enacted, that every License to be issued under or by virtue of this Act shall be issued by the Collector of Colonial Revenue for the time being in the form set forth in the Schedule hereunto annexed, and that for every such License there shall be paid to the said Collector the respective fees next hereinafter mentioned,—that is to say, for every License to be granted to a Publican to retail at Perth, Fremantle, or Albany, or within the distance of three miles from the limits of such towns respectively, the sum of twenty-five pounds; at Guildford, or within the distance of two miles from the limits of the town of Guildford, the sum of twenty pounds; at any other place in the said Colony, the sum of ten pounds; and for every such License to be granted to a person, not being a Publican, to retail in any part of the said Colony, the sum of ten pounds; and for every License to manufacture distilled Spirits, the sum of ten pounds. Provided always, that this shall not affect any License which shall have been granted for the current year, before the passing of this Act.

XVI. PROVIDED always, that no License to be granted under this Act shall be valid for any purpose until the same shall have been produced to, and countersigned by, the Auditor of Civil Accounts for the time being.

XVII. AND be it further enacted, that every such License shall bear date on the first day of January, and shall be in force until the first day of January next ensuing.

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Power to Collector of Colonial Revenue to transfer Licenses. XVIII. PROVIDED always, and be it further enacted, that if any person licensed under this Act shall die before the expiration of the term of his License, or shall be desirous of transferring his License to any other person or persons, it shall be competent to the said Collector to transfer such License by endorsement, to the Executor or Administrator of the party so dying, or to the Appointee of the person so desirous of transferring as aforesaid; for which transfer a fee of ten shillings shall be demanded.

Power to the Governor to remit any portion of the price of a License granted for a broken period of a year. XIX. AND be it further enacted, that it shall be lawful for His Excellency the said Governor to direct the said Collector to remit any portion of the price or sum payable, according to the scale hereinbefore contained, for any License granted or transferred under this Act, for any fraction or broken period of a year.

All convictions under this Act to be made in a summary way by any two Justices of the Peace. XX. AND be it further enacted, that all Informations and Proceedings on account of any offence under this Act shall be heard and determined, and all forfeitures and penalties in respect of the same shall be awarded and imposed in a summary way, by any two Justices of the Peace; and that it shall be competent to any one Justice of the Peace to receive the original information and complaint, and thereupon summon the party accused and all necessary witnesses before any two Justices of the Peace, of whom such summoning Justice need not be one; and upon appearance of the party accused (or in his absence, upon proof by oath of his having been served with the said summons either personally or by the same being left at his usual place of abode), such two Justices shall hear the matter of such Information, and examine all necessary witnesses on oath, and make such order thereon as to them shall seem meet; and in case the party accused shall be by them convicted, and shall fail to pay any fine or penalty, costs or expenses awarded by such order within three days next after such order shall have been personally served on him or left at his usual place of abode, it shall be lawful for the said convicting Justices to levy and raise such fine or penalty, costs or expenses, by distress and sale of the goods and chattels of the party so convicted; and in case such goods and chattels shall be insufficient for that purpose, it shall be lawful for the convicting Justices to commit the party so convicted, to any Gaol or House of Correction for any term not exceeding six calendar months.

All informations under this Act to be laid within six calendar months after commission of offence. XXI. AND be it further enacted, that all informations and proceedings in respect of offences against this Act shall be commenced within six calendar months next after the offences thereby respectively charged shall have been committed.

Justices sitting at the hearing of any Information to decide what is XXII. AND be it further enacted, that it shall be lawful for the

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Justices who shall hear any information under this Act, for the offence under the circumstances of each case a retailing without a License. of retailing without a license, to determine the fact of what is selling or retailing without a license, according to the circumstances, without any direct evidence of money or other value having been given for the liquor alleged to have been sold.

XXIII. AND be it further enacted, that upon the hearing of any information under this Act, it shall be incumbent upon the person accused of having retailed, or permitted to be retailed, any of the aforesaid liquors, or of having manufactured any distilled Spirits without a license, to produce a satisfactory proof to the sitting magistrates that he is duly licensed to retail or to manufacture distilled Spirits. Burthen of proof of License to lie upon Defendant.

XXIV. AND be it further enacted, that if any person shall think himself aggrieved by any Judgment or Conviction made under this Act, such person may appeal therefrom to the next Court of Quarter Sessions; which Court shall hear and determine the matter of such Appeal, and shall summon all necessary parties and witnesses, and shall make such order in affirmance or reversal of the Judgment or Conviction appealed from, and for the payment of the Costs of the Appeal, as to such Court shall seem meet; and shall enforce such order (if necessary) by distress and sale of the goods and chattels of any person refusing or neglecting to obey such order, or by imprisonment of any such person for any time not exceeding six calendar months; provided that such notice of Appeal be given by the Appellant to the Justices from whose Judgment or Conviction such Appeal shall be made within three days next after such Judgment or Conviction, and that such Appellant deposit the sum of five pounds with the last-mentioned Justices, or enter into a recognizance with two sureties, for the purpose of securing payment of the Costs of such Appeal. Power of Appeal to quarter sessions. Security for costs of Appeal to be given by Appellant.

XXV. AND be it further enacted, that the fees or sums of money payable for Licenses or transfer of Licenses under this Act shall be reserved to the use of Her Majesty, her Heirs and Successors; and all forfeitures and penalties hereby imposed, and not hereinbefore otherwise appropriated, shall be payable in equal moieties to the use of Her Majesty, Her Heirs and Successors, and to the party or parties informing. Reservation of the sums paid for Licenses to the use of the Crown, and of all penalties in equal moieties to the Crown and the Informer.

XXVI. AND be it further enacted, that this Act shall be and continue in force until the eighteenth day of March, eighteen hundred and forty-one.

JOHN HUTT.

GOVERNOR AND COMMANDER-IN-CHIEF.

Passed the Legislative Council }
the 22nd day of April, 1839. }

WALKINSHAW COWAN,

Clerk to the Council.

SCHEDULE REFERRED TO BY THE ANNEXED ACT.

**FORM OF LICENSE FOR THE RETAIL OF SPIRITUOUS
AND FERMENTED LIQUORS.**

THESE ARE TO CERTIFY (in pursuance of an Act of Council passed on the twenty-second day of April, 1839, and intituled "An Act to regulate the Sale of Spirituous and Fermented Liquors by Retail"), that A. B, of _____, is duly licensed from the date hereof until the first day of January next to sell, exchange, or otherwise dispose of by retail _____ any Rum, Brandy, Arrack, Whiskey, Gin, or other Spirituous Liquors, and any Ale, Beer, Wine, Cider, Perry, or other Fermented Liquors, in his House [Store, House or Shop], situate at _____, but not elsewhere. AND these are further to satisfy, that the said A B has paid into my hands the sum of _____ pounds on account of such License.

Given under my hand the _____ day of _____
(Signed) C. D. Collector of Colonial Revenue
(Countersigned) E F, Auditor of Civil Accounts.

**FORM OF LICENSE FOR THE MANUFACTURE OF DIS-
TILLED SPIRITS.**

THESE ARE TO CERTIFY (in pursuance of an Act of Council passed on the twenty-second day of April, 1839, and intituled "An Act to amend an Act to regulate the Sale of Spirituous and Fermented Liquors, and for the issuing of Licenses connected therewith," that A B, of _____ is duly licensed from the date hereof until the first day of January next to manufactnre Distilled Spirits in his [House] situate at _____, but not elsewhere. And these are further to certify, that the said A B has paid into my hands the sum of _____ pounds on account of such License.

Given under my hand the _____ day of _____
C D, Collector of Revenue.
(Countersigned) E F, Auditor of Civil Accounts.