



WESTERN AUSTRALIA.

ANNO QUINTO

GULIELMI IV. REGIS,

No. 4.

An Act to regulate the Sale of Spirituous and Fermented Liquors by Retail.

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 it from and after the last day of this present Year, 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, or any Ale, Beer, Wine, Cider, Perry, or other fermented Liquors, in a less quantity than Forty Gallons, without having first obtained a License in

Persons selling any Spirituous or fermented liquors after the last day of this year in less quantity than 40 gallons without a license, subjected to a penalty of not less than £10 nor more than £50.

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.

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.

Exception of liquors sold for medicinal purposes,

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.

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.

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.

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 within 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 His Majesty's use, and to the party informing; but if it shall appear otherwise to

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such Justice, such liquor and vessel or vessels shall [be forthwith restored to the proper owner.

V. AND be it further enacted, that it shall be lawful for any master or employer (residing out of the town boundaries of Perth, Fremantle, Guildford, Albany, and Augusta) to supply any journeyman, workman, servant or laborer, with any quantity of spirituous or fermented liquors not exceeding in any one week the amount of one-third of the wages or earnings of such journeyman, workman, servant or laborer, 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.

Masters may supply their servants with any quantity of the aforesaid liquors not exceeding in any one week one-third of the servants' wages or earnings for such week.

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

VI. AND, for the more effectual discouragement of Tippling in unlicensed houses, be it further enacted, that any person who shall, after the last day of this present year, 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.

VII. 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 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, or Apothecary, such Gaoler, Keeper, or Officer, shall forfeit a sum not less than Ten Pounds, nor more than Fifty Pounds.

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

VIII. AND be it further enacted, that if any person shall bring, or endeavour to bring, any spirituous or fermented liquors (except for medicinal purposes as aforesaid) into any such 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 sum-

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.

mary 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.

IX. 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 other respective Families.

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

X. 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.

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

Mode of issuing Retail Licenses, and price thereof.

XI. 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 or Fremantle, the sum of twenty-five pounds; at Guildford, the sum of twenty pounds; at King George's Sound, the sum of fifteen pounds; at Augusta, the sum of ten pounds; at any other place in the said colony, the sum of five 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.

Licenses to be countersigned by Auditor of Civil Accounts.

XII. 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.

Licenses to bear date on the 1st of January, and to be in force for one year.

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

Power to Collector of Colonial Revenue to transfer licenses.

XIV. PROVIDED always, and be it further enacted, that if any person licensed under this Act, shall die before the expiration of the

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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.

XV. AND be it further enacted, that it shall be lawful for His Excellency the 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.

Power to the Governor to remit any portion of the price of a license granted for a broken period of a year.

XVI. 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 for any one Justice of the Peace to receive the original information or 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 upon 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 convictions under this Act to be made in a summary way by any two Justices of the Peace.

Power to convicting Justices to enforce their orders and convictions by distress and sale, or imprisonment not exceeding six calendar months.

XVII. 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.

All informations under this Act to be laid within six calendar months after commission of offence.

XVIII. AND be it further enacted, that it shall be lawful for the Justices who shall hear any information under this Act for the offence

Justices sitting at the hearing of any information, to decide what is under the

circumstances of each case 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.

Burthen of proof of license to lie upon defendant. XIX. 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, without a license, to produce a satisfactory proof to the sitting magistrates, that he is duly licensed to retail.

Power of Appeal to Quarter Sessions. XX. 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 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 recognisance, with two sureties, for the purpose of securing payment of the costs of such appeal.

Security for costs of Appeal to be given by Appellant.

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.

XXI. 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 His Majesty, his 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 His Majesty, his Heirs and Successors, and to the party or parties informing.

JAMES STIRLING,
GOVERNOR AND COMMANDER-IN-CHIEF.

*Passed the Legislative Council }
this 31st day of September, 1834. }*

PETER BROWN,
Clerk to the Council,

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SCHEDULE REFERRED TO BY THE ANNEXED ACT.

FORM OF LICENSE FOR THE RETAIL OF SPIRITUOUS LIQUORS.

THESE are to certify (in pursuance of an Act of Council passed on the Thirty-first day of December, 1834, 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 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

(Signed) C. D.,
Collector of Colonial Revenue.

(Countersigned)
E. F.,
Auditor of Civil Accounts.