

WESTERN AUSTRALIA

ANNO TERTIO

GUL. IV. REGIS

No. 2

An Act for the Regulation of Weights and Measures.
[Assented to 19th March, 1833.]

Preamble

WHEREAS there is reason to believe that deficient weights and measures have been frequently and fraudulently used throughout the Colony of Western Australia to the great injury of the public; in order therefore to prevent such pernicious and fraudulent practices: Be it enacted by His Honour the Lieutenant-Governor of Western Australia and its Dependencies, with the advice of the Legislative Council, that it shall be lawful for the Governor or other officer for the time being administering the Government of the said Colony by any order or orders to be by him from time to time made and published in the 'Government Gazette,' to appoint certain places and persons, in which and with whom respectively, shall be deposited complete sets of standard weights and measures, to be procured and authenticated in such manner as by any such order shall be directed.

Governor may order standing weights and measures to be kept

Keepers of standard weights, &c. to produce the same for inspection; and to demand a fee of sixpence for every weight or measure compared

2. And be it further enacted that the persons so appointed as aforesaid to be keepers of standard weights and measures, shall produce the same at the place in which the same shall be directed to be deposited as aforesaid, to any person or persons demanding an inspection thereof at any reasonable hour or time for the purpose of comparing the same with any other weights or measures; and that it shall be lawful for such keepers to demand and receive a fee of sixpence for each and every weight or measure so compared.

Keepers of standard weights, &c., refusing or neglecting to deliver

3. And be it further enacted that if any such keeper of standard weights and measures as aforesaid shall refuse or neglect to deliver, with all reasonable despatch, the weights and measures in his custody or any of them, to any person to whom such keeper shall be directed to deliver the same by the written order of any Justice of the Peace

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for the said Colony, or shall refuse or neglect to exhibit such weights or measures to any person demanding a comparison thereof at any reasonable hour, and tendering therefor the lawful fee hereinbefore made payable for such comparison, or shall neglect or refuse to exhibit such weights and measures without fee to any such Justice demanding an inspection thereof; then, and in any of the said cases, every such keeper for every such offence shall upon conviction forfeit and pay a sum not exceeding forty shillings.

4. And be it further enacted that if any person entrusted either with the temporary or permanent custody of any standard weights or measures, provided in pursuance of this Act, shall lose, destroy or injure the same or any of the same, and shall refuse or neglect to repair or replace the same within ten days next after being required so to do, by the written order of any Justice of the Peace for the said Colony, it shall be lawful for the Justice making such order, to levy and raise by distress and sale of the goods and chattels of the person so neglecting or refusing as last aforesaid, a sum sufficient to replace or repair the weights or measures so destroyed or injured, together with the costs and charges of making such distress and sale; and such Justice shall cause the said sum to be forthwith paid over to the Colonial Treasurer to the use of His Majesty, his heirs and successors.

5. And be it further enacted that it shall be lawful for the said Governor or other officer administering the Government of the said Colony to appoint at any time after the first day of May next by warrant under his hand and seal any number of fit and proper persons who shall have power individually to examine all weights, balances and measures within the said Colony, in manner hereinafter provided; and that it shall be lawful for such examiners, and they are hereby required (having been first sworn by some Justice of the Peace for the said Colony, duly and faithfully to execute the office in them reposed by such appointment and by this Act), *as often as any such Justice shall direct in writing*, to enter in the day time into any mill or any shop, store-house or out-house, where any kind of goods or wares, dry or liquid, are or shall be usually sold; and then and there to search for, view and examine all weights, balances and measures, and to seize any weights or measures there found, not being according to such standard, or any false balance there found, and to detain the same; and such examiners shall forthwith lay information of any such finding before some Justice of the Peace; and the person or persons in whose shop, store-house or out-house or apparent ownership any deficient weight or measure or false balance shall be so found, shall upon conviction thereof forfeit all such deficient weights or measures or false balances; and shall also forfeit and pay for every such deficient weight or measure or false balance, any sum not exceeding five pounds, and also all costs and charges of such conviction.

6. And be it further enacted that if any person shall wilfully obstruct, hinder, resist, or in any wise oppose any such examiner as aforesaid in the execution of his office, or if any person selling or retailing by weight or measure shall refuse to produce his or her weights, measures or balances when required so to do by any such examiner as aforesaid, every such person being thereof convicted, shall forfeit and pay for every such offence any sum not exceeding twenty pounds.

Keepers or others losing or injuring weights or measures to replace or repair the same

Governor to appoint examiners of weights and measures

Such examiners to search for deficient weights and measures

See 18 Vic., No. 18, s. 3

May seize and detain all deficient weights, &c., and must lay information

Persons having deficient weights, &c.

Persons guilty of obstructing examiners

See 18 Vic., No. 18, s. 2

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Persons selling
by deficient
weights and
measures

7. And be it further enacted that if from and after the first day of May next any person shall wilfully and knowingly sell or attempt to sell any kind of goods or wares, dry or liquid, by a weight or measure not in accordance with such standard weights or measures as aforesaid or by a false balance and with intent to defraud any other person, every person so selling or attempting to sell, being thereof convicted, shall for every such offence, forfeit the deficient weight or measure or false balance so fraudulently used, and any sum not exceeding ten pounds; and also all costs and charges of conviction.

Existing weights
and measures
may be used, if
properly marked

8. And be it further enacted that it shall be lawful for any person or persons to sell any goods, wares or merchandise by any weights and measures in his, her or their possession at the time of the passing of this Act, although such weights and measures may not be in conformity with the standard weights and measures aforesaid: Provided that such weights and measures shall bear upon them, either painted or marked, the ratio or proportion which they bear to the said standard weights and measures respectively.

All dealings
have reference to
standard weights
and measures

9. And be it further enacted that all contracts, bargains, sales and dealings, which shall be made or had, from and after the first day of May next, in any part of the said Colony for any work to be done or for any goods, wares or merchandise or other thing to be sold, delivered, done or agreed for by weight or measure—where no special agreement shall be made to the contrary—shall be deemed to be made and had according to the standard weights and measures to be provided under this Act.

Disposal of
weights and
measures
condemned

10. And be it further enacted that all deficient weights and measures and false balances, seized and forfeited under this Act, shall be broken, destroyed or disposed of as shall be directed by the Justice, before whom any conviction in respect of such weights, measures or balances shall take place.

Bakers' loaves of
certain specific
weights

11. And whereas it is especially necessary to protect the poor from any such frauds as aforesaid in the sale of bread, and the detection of such frauds will be best secured by requiring retailers of bread to make and sell their loaves of some specific weight: Be it therefore further enacted that from and after the first day of May next no baker or dealer or retailer of bread in this Colony shall sell or exhibit for sale any loaf of wheaten or other flour, not being of one of the weights following, that is to say, one pound, two pounds or four pounds avoirdupois weight, under pain of forfeiting any sum not exceeding five pounds: Provided always that no baker or retailer of bread shall be liable for any deficiency in the weight of any loaf, unless the same shall be weighed in the presence of some Justice of the Peace, within forty-eight hours next after the same shall be baked; and unless evidence be given at the hearing of any information in respect of such deficiency by one disinterested witness, that such loaf was in the same state when produced to be weighed before such Justice as when the same was taken from such baker or retailer, reasonable allowance being made for the drying of the bread: Provided also that it shall be lawful for the Justice who shall hear any information for selling loaves contrary to the provisions of this Act, to make reasonable allowance for any small deficiency of weight which shall appear to him fairly attributable to accident, negligence of servants or any other cause than

Loaves to be
weighed within
forty-eight hours
after baked

Magistrate may
make reasonable
allowance for
small deficiencies
of weight

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the wilful act or culpable neglect of the party accused: Provided further that nothing herein contained shall be construed to extend to such bread as is usually sold under the denomination of rolls, cakes or pastry.

Exceptions of rolls, cakes and pastry

12. 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 one Justice of the Peace, who shall summon before him the party accused and all necessary witnesses; 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 Justice shall hear the matter of such information, and examine all necessary witnesses upon oath, and make such order thereon as to him shall seem meet; and in case the party accused shall be by him 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 such convicting Justice 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 Justice to commit the party so convicted to any gaol or house of correction for any term not exceeding six calendar months.

All convictions before one Justice of the Peace

Who may enforce the conviction by distress and sale, or imprisonment not exceeding six calendar months

13. And be it further enacted that on the hearing of every information under this Act for the offence of using or having in possession any deficient weight or measure, the weight or measure alleged by such information to be false or deficient shall be compared with the said standard weights or measures in the presence of the Justice who shall hear such information.

Weights, &c., deficient shall be compared with standards in presence of Magistrate hearing information

14. And be it further enacted that on the hearing of any such information as last aforesaid or of any information for using or possessing a false balance, any such examiner as aforesaid shall be admitted as a competent witness to prove the fact that the weight, measure or balance alleged to be false or deficient was found in the shop, store-house or out-house or otherwise in the possession or apparent ownership of the party accused, notwithstanding that such examiner may by conviction of the party accused become entitled as informer to part of the penalty incurred by such conviction.

Examiners to be competent witnesses

15. And be it further enacted that if any person who shall have been twice summarily convicted of any offence against the provisions of this Act, shall afterwards be guilty of any such offence, every such person being thereof convicted by indictment at the Quarter Sessions of the Peace for the said Colony shall be subject to such fine, not exceeding the sum of fifty pounds, and to such imprisonment not exceeding the term of six calendar months, as the said Court shall in its discretion award; and that it shall be lawful for the Justice who shall hear the information charging such third offence to require the accused party to enter into recognizance with one sufficient surety at the discretion of such Justice for the appearance of the accused party at the next Sessions of the said Court to take his trial for such third

Persons guilty of third offence may be indicted at Quarter Sessions

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offence; and in default of such surety, it shall be lawful for such Justice to commit the accused party for trial.

Informations,
when to be laid

16. And be it further enacted that all informations and proceedings in respect of offences against this Act shall be commenced within one calendar month next after the offences thereby respectively charged shall have been committed.

Right of Appeal

17. 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 of the Peace for the said Colony; 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 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 notice of such appeal be given by the appellant to the Justice 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 such last-mentioned Justice or enter into a recognizance with two sureties for the purpose of securing payment of the costs of such appeal.

Appropriation of
penalties

18. And be it further enacted that all fines, forfeitures and penalties recovered under or by virtue of this Act shall be payable in equal moieties to the use of His Majesty, his heirs and successors, and to the party or parties informing.

FREDERICK CHIDLEY IRWIN,
LIEUTENANT-GOVERNOR AND COMMANDER-IN-CHIEF.
