



WESTERN AUSTRALIA.

ANNO OCTAVO

VICTORIÆ REGINÆ.

No. IV.

An Act to authorise the Keepers of Boarding Houses to sell Spirituous and Fermented Liquors by retail under special regulations.

WHEREAS it is expedient to authorise and empower the Keepers ^{Preamble.} of Boarding Houses to sell Spirituous and Fermented Liquors for consumption therein by only the Boarders or Lodgers therein, and for general consumption elsewhere, without being obliged to keep a common tap-room, or to provide any accommodation for the

Justices at General Annual Licensing Meeting to grant Licenses to keep Lodging houses,

public, except what may be required by such Boarders and Lodgers in the house;—Be it therefore enacted, by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Act, it shall be lawful for the Justices assembled at their General Annual Licensing Meeting to grant to such persons as shall be approved by the majority of such Justices, after taking the required certificates and recognizances, Licenses in the form numbered 1 in the schedule hereunto annexed, and to adjourn the consideration of any applications there submitted to them, to such day or days and to such place or places within the district for which such meeting shall be holden, as they may deem meet and convenient for enabling persons resident within such district to apply for licenses.

License not to authorise consumption of liquors on the premises except by lodgers.

II. AND be it enacted, that no license to be obtained under this Act shall authorise the consumption of any spirituous or fermented liquors in the house, or upon the premises where the same shall be sold, except by the boarders and lodgers of the said house, and that for the purposes of this Act any person taking any meal in the house shall be considered to be a boarder or lodger, and that the extent of accommodation for the public in any house licensed under this Act and the admission thereto of any guests, whether travellers or others, shall be in the discretion of the person licensed to keep the same.

Justices under certain circumstances disqualified from voting at such meetings.

III. AND be it enacted, that no Justice of the Peace, being a Brewer, Malster, or Distiller, or an importer of, or dealer in Wine, or any Malt or Spirituous Liquors, or being the owner or part owner of, or Trustee, Manager, or Agent for any owner or part owner of any house about to be licensed or re-licensed, or being directly or indirectly interested in any such house, shall sit or act in any meeting of Justices during the consideration of any application for a License, or of anything relating thereto.

Questions as to granting or transferring licenses to be decided by the majority of Justices present.

IV. AND be it enacted, that when at any such Annual Licensing Meeting as aforesaid, or at any such Special Session as is herein-after mentioned, any question shall arise touching the granting, withholding, or transferring any License, or the fitness of the person applying for such License, or of the house intended to be kept by such person, such question shall be determined by the majority of Justices not disqualified, who shall be present when such question shall arise.

V. AND be it enacted, that the Justices acting at any such Licensing Meeting or special Session, shall receive all applications for Licenses, with the certificates in support thereof, which shall then be presented to them, but nevertheless it shall still be lawful for such Justices to grant Licenses to such persons only as upon the said certificates and upon other information before them shall appear likely to keep orderly houses.

Justices to exercise their discretion in granting or refusing licenses.

VI. AND be it enacted, that every person desirous of obtaining a License for keeping a Boarding House under the provisions of this Act, or of obtaining the renewal or transfer of a License before granted, shall, before such Annual Licensing Meeting as aforesaid, or such Special Session as is hereinafter mentioned, deliver to the Clerk of the Magistrates for the district in which such house may be situated, a notice in writing of his or her intention to apply for such License; and that in every such notice there shall be contained a full description of the house or premises proposed to be licensed, together with a statement of the applicant's trade or calling and situation in life, and whether married or unmarried, together with the names, residences, and additions of his or her proposed sureties, and every such notice shall be accompanied by a certificate signed by two respectable householders within the district last aforesaid, purporting that the person delivering such notice and certificate, is of good fame and fit to keep a Boarding House as aforesaid, and which notice and certificate shall be in the form numbered 2 in the said Schedule.

Applicants for license to give a written notice of their application, containing certain particulars.

VII. AND be it enacted, that every person applying for a License, shall, before the same be delivered to him, enter into a recognizance in the form numbered 3 in the said Schedule in the sum of Fifty pounds, with two sureties in the sum of Twenty-five pounds each, conditioned that the person licensed shall not fraudulently dilute or adulterate any liquors by him or her sold, or sell the same knowing them to have been fraudulently diluted or adulterated, and shall not use in the selling thereof, any measures that are not of the legal standard, and shall not wilfully or knowingly permit drunkenness or other disorderly conduct in his or her house or premises, and shall not knowingly suffer any unlawful games or any gaming whatsoever therein, and shall not knowingly permit persons of notoriously bad character to meet together therein, and shall not keep open his or her house, or permit any person to remain tippling or drinking therein, after the hour of ten at night, always excepting refresh-

Recognizance to be entered into before any license granted.

Conditions of the recognizance.

ment to travellers and lodgers, and shall not allow any spirituous or fermented liquors to be drunk in, or conveyed out of his or her premises during the usual hours of morning and afternoon Divine service in the nearest Church or Chapel on Sunday, Christmas Day or Good Friday, and shall not refuse to admit any Magistrate or Constable to any part of his or her house or premises, by night or day, and shall maintain good order and rule therein.

If applicant be hindered by sickness, &c., his attendance may be dispensed with.

VIII. AND be it enacted, that if any person desirous of applying at any such Annual Licensing Meeting as aforesaid, or at any such Special Session as is hereinafter mentioned, for a License under this Act, or for the transfer of any such License, shall be hindered by sickness, infirmity, or any other reasonable cause, from attending in person at any such meeting or Session, it shall be lawful for the Justices there assembled to grant or transfer such license to such person so hindered, proof being adduced to the satisfaction of such Justices, who are hereby empowered to examine upon oath into the matter of such allegation that such person is hindered from attending by good and sufficient cause.

Mode of issuing and duration of license.

IX. AND be it enacted, that any License to be granted under the provisions of this Act shall be signed by the majority of the Justices present, and not disqualified, at the Licensing Meeting or Session at which the same shall be granted; and shall be in force until the next General Annual Licensing Meeting and no longer, and every such License shall forthwith, after the granting thereof, be deposited by the Clerk of the Magistrates granting the same with the Collector or Sub-Collector of Colonial Revenue, who shall forthwith, after the receipt of the proper amount chargeable for a Publican's Retail License, issue the same to the person licensed thereby, together with a Boarding House Retail License, in the form numbered 4 in the said schedule.

Special Sessions for transferring licenses, &c., when to be holden.

X. AND be it enacted, that if any person shall be desirous after any such General Annual Licensing Meeting as aforesaid, of obtaining a License under this Act for the residue of the then current year until the next Annual Licensing day, or of transferring his or her License, and of such his or her desire shall give notice to the Clerk to the Magistrates of the district in which such License or Transfer of License is desired to be given or made, such Clerk shall forthwith give notice of such application to the Magistrates of the District, who shall with all convenient despatch hold a special

Session for the purpose of considering such application, and it shall be lawful for the majority of the Justices assembled at such Special Session (three at least being present) to grant licenses under this Act until the General Annual Licensing Meeting next following such Special Session, and to transfer the License of any house previously licensed to the Appointee or Appointees of the original holder of such License;—Provided that such Appointee or Appointees and the person so newly licensed at such Special Session produce the like certificate and enter into the like recognizances as are hereinbefore required from persons obtaining Licenses at any such General Annual Licensing Meeting as aforesaid, and every such License so granted or transferred at any such Special Session as aforesaid, shall be lodged by the said Clerk with the Collector or Sub-Collector of Colonial Revenue, who shall thereupon issue to the person or persons entitled to receive the same, a corresponding retail License, or transfer of retail License, as the case may require.

XI. AND be it enacted, that it shall be lawful for the Clerk of the Justices at any such Licensing Meeting, or Special Session as aforesaid, to demand and receive from every person obtaining a License or transfer of License such fee or sums as the Justices of the said Colony in Quarter Sessions assembled, shall from time to time limit and appoint, but so as the same shall not in any case exceed the following fees or sums;—that is to say, for every original License the sum of Ten shillings and sixpence; for every transfer of a License the sum of Two shillings and sixpence; for every Notice served on a District Magistrate for the purpose of assembling a Special Session the sum of Two shillings and sixpence; such Notices not to exceed three in number unless absolutely necessary; and for preparing and taking every recognizance, and lodging the same with the Collector or Sub-Collector of Colonial Revenue, the sum of Ten shillings and sixpence.

Fees to be received by Clerk to the licensing Justices.

XII. AND be it enacted, that the Executor or Administrator of any person holding a License under this Act shall be entitled to carry on the business of the house thereby licensed without renewing such License until the next General Annual Licensing Meeting following the decease of the person so holding such License;—Provided always, that the License of such house shall be subject to the same regulations as if it had continued to be holden by the person or persons to whom the same was originally granted, and that

Executors or administrators may hold the license till next licensing day, subject to the same regulations and under like recognizances as the deceased.

new recognizances be entered into according to the provisions of this Act.

Justices to transmit lists of licenses granted by them to Colonial Secretary

XIII. AND be it enacted, that the Justices by whom any Licenses shall be granted under the provisions of this Act shall transmit to the Colonial Secretary within two days after the granting of such Licenses aforesaid, or by the earliest opportunity, a list signed by the said Justices of all the persons to whom they shall have so granted licenses, specifying the situation and designation of each house, and if not in a town, its distance from the nearest licensed house in each line of road, the name of the owner or proprietor, whether before licensed or not, and the names and residences of the sureties.

Persons disqualified from keeping licensed lodging houses.

XIV. AND be it enacted, that no person holding Office or employment under the Government, no Sheriff's Officer or Constable, shall hold any License under the provisions of this Act, nor shall any publican be taken or received as surety in any such recognizance as aforesaid.

Name, &c., to be painted on some conspicuous part of the premises.

XV. AND be it enacted, that every person licensed to keep a Boarding House under this Act shall have his or her name at length painted in legible letters, with the words "Licensed Boarding House Keeper" in like letters in some conspicuous part of the exterior of his or her premises, and any such licensed person who shall neglect to have his or her name with the said words so painted, shall for every such offence forfeit a sum not exceeding Forty shillings.

Unlicensed person keeping up a sign implying a license, subject to a penalty.

XVI. AND be it enacted, that if any person not actually holding a License shall keep up any sign, writing, painting, or other mark on or near to his or her house or premises which may give reasonable cause to believe that such house is licensed as a Boarding House, every person so offending shall for every such offence forfeit a sum not exceeding Twenty pounds.

Licensed person abandoning the licensed premises to the keeping of an unlicensed person subject to loss of license or to a penalty.

XVII. AND be it enacted, that if any licensed person shall abandon the occupation of his or her usual place of residence, and permit any unlicensed person or persons to become virtually or in effect the keeper or keepers thereof, then upon proof of such facts to the satisfaction of any two or more Justices of the Peace, it shall be lawful for such Justices to declare the License of such house to be

1844.

8th Vict. No. 4.

absolutely void, or at the discretion of such Justices, such licensed person shall forfeit a sum not exceeding Fifty pounds.

XVIII. AND be it enacted, that if a Coroner's Jury, or any three Justices who shall inquire by examination of witnesses into the cause of the death of any person dying suddenly, or under other extraordinary circumstances, shall find that the death of such person was caused by intoxication in a licensed Boarding House, the keeper of the house shall from the date of such finding be deemed to be unlicensed, and no new License shall be granted him.

Death by intoxication found by Coroner's Jury or Magistrates' inquiry.

XIX. AND be it enacted, that it shall be lawful for any Justice of the Peace, or any Constable generally authorised by a Justice of the Peace in that behalf, to demand entrance into any licensed Boarding House at any time by day or by night; and if admittance be not granted within such reasonable time as shall make it appear that no wilful delay was intended, the license shall be forfeited upon conviction before any two Justices of the Peace; and no License shall again be granted to any person who shall be so convicted of refusing or wilfully delaying admittance for the space of one year from the date of such conviction;—Provided that if such admittance be refused or wilfully delayed, it shall be lawful for such Justice or Constable to break into such public house, with his assistants, to serve process or for any other lawful purpose.

Justices and Constables empowered to enter Boarding House at all hours.

XX. AND be it enacted, that every house licensed as herein provided shall be considered as a common Inn, and no goods or chattels whatsoever bona fide the property of any lodger or lodgers, and being in such licensed house, or any of the premises belonging thereto, or any place used and occupied therewith in the ordinary course of resort at such licensed house, shall be subject to be distrained or seized for or in respect of any claim of rent for such licensed house or premises, or in respect of any other claim whatsoever against the said house or premises, or the owner thereof; and if any such goods or chattels shall be distrained or seized for rent or in any other manner contrary to the provisions of this Act, it shall be lawful for any two Justices of the Peace to inquire into any complaint made in respect of such distress or seizure in a summary manner, and to order such goods and chattels to be restored to the owner or proprietor thereof, and further to award such reasonable costs as shall be incurred by such summary proceeding, and such costs to

The goods of lodgers in licensed houses not liable for rent or any other claim against such houses.

levy by distress and sale of the goods or effects of the person or persons distraining or seizing such goods or chattels, as aforesaid

Penalties and disability
incurred by breaches of
recognizance.

XXI. AND be it enacted, that if any person licensed under this Act shall offend against the tenor of his or her License, or shall in any respect commit a breach of, or otherwise be guilty of any offence against any provision of the recognizance by him or her entered into, he or she shall on conviction thereof, forfeit and pay or become liable to the several penalties and to the disability hereinafter mentioned;—that is to say, for the first offence a sum not exceeding Five pounds and costs; for the second offence, a sum not exceeding Ten pounds and costs; and for the third or any subsequent offence it shall be lawful for any one Justice on complaint or information of such third or subsequent offence to issue a summons requiring the person so complained of or informed against, to appear at the next Court of Quarter Sessions for the said Colony, then and there to answer the matter of such complaint or information, and also to bind the complainant or informant and any other person or persons to appear at such Sessions and give evidence against such licensed person; and the Justices of the Peace at such Sessions shall inquire into and decide in a summary manner the matter of such complaint or information; and if they find that such licensed person has committed the offence against the tenor of his or her license or recognizance in the said complaint or information specified, and that such licensed person has been twice or oftener convicted of offences against the tenor of his or her license or recognizance, it shall be lawful for the Justices at such Sessions to adjudge the party so complained against, guilty of such third or subsequent offence; which adjudication shall be final, and thereupon the said Justices shall have authority to punish the party so convicted, by a fine or penalty not exceeding Fifty pounds, or (at the discretion of the said Justices) by declaring his or her recognizances to be forfeited, and his or her License to be void; and such recognizances shall be forfeited, and such License shall thenceforth be void accordingly; and the person whose License shall be so declared void shall be thenceforth incapable of receiving or holding any License to keep a Boarding House for the space of three years, to be computed from the date of such adjudication; and if the person complained against for such third or subsequent offence shall not appear at such next Quarter Sessions pursuant to the said summons, it shall be lawful for the Justices in such Session assembled, on proof of the service of such summons, to inquire

into and determine the matter of the said complaint and information, and in all respects to proceed against the person so summoned and not appearing in the same manner as if he or she had appeared.

XXII. AND be it enacted, that all Informations and Proceedings in respect of any offence under this Act shall be heard and determined and the forfeitures and penalties in respect of the same shall be awarded and imposed in a summary way by any one Justice of the Peace (or by any two such Justices in cases herinbefore appointed to be heard and determined by two Justices) according to the provisions of an Act passed in the seventh year of the reign of Her present Majesty, intituled "An Act to regulate summary proceedings before Justices of the Peace." Mode of recovering penalties.

XXIII. AND be it enacted, that in all proceedings against any person for the offence of selling any spirituous or fermented liquors in a Boarding House without due Licence, such person shall, for all purposes connected with such proceedings, be deemed and taken to be unlicensed, unless he or she shall at the hearing of the case produce and exhibit his or her Licence to the sitting Justice or Justices, or shall then and there produce other satisfactory proof of his or her being a licensed person. Burden of proof of licence to lie upon accused.

XXIV. AND be it enacted, that all Informations and Proceedings in respect of offences against this Act shall be commenced within three calendar months after the offences thereby respectively charged shall have been committed. Limitation of prosecutions.

XXV. AND be it 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. Appeal.

XXVI. AND be it enacted, that no action at law shall lie against any Justice of the Peace, Constable, or other Peace Officer, for or on account of any matter or thing whatsoever done or to be done, or commanded by him in the execution of his duty or office under this Act against any party or parties offending, or suspected to be offending against the provisions of this Act, unless there be direct proof of corruption or malice, and unless such action be commenced within three calendar months after the cause of action or complaint shall have arisen; and if any person shall be sued for any matter or thing which he has done in the execution of this Act, he may plead the general issue, and give the special matter in evidence. No action to lie against any Justice or Constable without proof of malice. and unless it be commenced within three calendar months.

Appropriation of penalties.

XXVII. AND be it 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 Her Majesty, Her Heirs and Successors, for the public uses of this Colony and the support of the Government thereof, and to the party or parties informing.

Act may be amended.

XXVIII. AND be it enacted, that this Act may be altered, amended, or repealed by any Act to be passed during the present Session.

"JOHN HUTT,"
GOVERNOR.

*Passed the Council }
25th July, 1844. }*

EDWARD C. SOUPER,
Acting Clerk of the Council.

8th Vict. No. 4.

No. 1.

At the next General Annual Licensing Meeting (or at a Special Licensing Session) of Her Majesty's Justices of the Peace for the Colony of Western Australia, holden in and for the District of

in the said Colony, on the day of

in the year of our Lord one thousand, &c., for the purpose of granting Licences, We, being the Majority of the said Justices assembled at the said Meeting (or Session) do hereby authorise and empower A. B. to keep a Boarding House at and in the house now occupied by him or her at , and to permit all such spirituous and fermented liquors as the said A. B. shall be licensed and empowered to sell under the authority of any Retail Licence issued by the Collector or Sub-Collector of Colonial Revenue to be drunk or consumed in his or her said house or the premises thereunto belonging by the Boarders or Lodgers therein—Provided that he or she do not fraudulently dilute or adulterate any liquors by him or her sold; or sell the same knowing them to have been fraudulently diluted or adulterated; and shall not use in the selling thereof any measures that are not of the legal standard; and shall not wilfully or knowingly permit drunkenness or other disorderly conduct in his or her house and premises; and shall not knowingly suffer any unlawful games or any gaming whatsoever therein; and shall not knowingly permit persons of notoriously bad character to meet together therein; and shall not keep open his or her house or permit any person to remain tippling or drinking therein after the hour of ten at night, always excepting refreshment to boarders and lodgers; and shall not allow any spirituous or fermented liquors to be drunk in or conveyed out of his or her premises during the usual hours of morning and afternoon Divine Service in the nearest Church or Chapel on Sunday, Christmas Day, or Good Friday; and shall not refuse to admit any

1844.

Given under our hands and seals the day above written.

~~~~~

*character.*

*Witness our hands.*

8th Vict. No. 4.

---

Colony of Western } *Be it remembered that on the* day of  
Australia to wit. } , *A. B.* of , *C. D.* of and

*The conditions of this recognizance are such that whereas the said A. B. is to be licensed to keep a Boarding House at and in the house now occupied by him or her at \_\_\_\_\_, and to permit all such spirituous and fermented liquors as he or she may be licensed and empowered to sell under the authority of any Retail License issued by the Collector or Sub-Collector of Colonial Revenue, to be drunk or consumed in his or her said house or premises thereunto belonging, by his or her Boarders or Lodgers, until the next General Annual Licensing Meeting of Justices of the Peace for the said District; and if the said A. B. do not fraudulently dilute or adulterate any liquors by him or*

*her sold; or sell the same knowing them to have been fraudulently diluted or adulterated; and shall not use in the selling thereof, any measures that are not of the legal standard; and do not wilfully or knowingly permit drunkenness or other disorderly conduct in his or her house or premises; and do not knowingly suffer any unlawful games or gaming whatsoever; and do not knowingly permit persons of notoriously bad character to meet together therein; and do not keep open his or her house or permit any person to remain tippling or drinking therein after the hour of ten at night; always excepting refreshment to boarders and lodgers; and do not allow any spirituous or fermented liquors to be drunk in or conveyed out of his or her premises during the usual hours of morning and afternoon Divine service in the nearest Church or Chapel on Sunday, Christmas day, or Good Friday; and do not refuse to admit any Magistrate or Constable to any part of his or her house or premises by night or day; but do maintain good order and rule therein; then the said Recognisance to be void, otherwise to remain in full force.*

*Taken and acknowledged the day and year first above written, before us.*

---

## No. 4,

---

### FORM OF BOARDING HOUSE KEEPER'S RETAIL LICENSE.

*These are to certify (in pursuance of an Act of Council, intituled "An Act to authorise the Keepers of Boarding Houses to sell spirituous and fermented liquors*

1844

8th Vict. No. 4.

*by retail under special regulations),” that A. B., of \_\_\_\_\_, in the Colony of Western Australia, is duly licensed from the date hereof until the next General Annual Licensing Meeting for the District of \_\_\_\_\_, in the said Colony, to sell, exchange, or otherwise dispose of by retail, in any quantity, any spirituous or fermented liquors in the house and premises thereunto belonging, now occupied by him or her at \_\_\_\_\_ aforesaid, but not elsewhere. And these are further to certify that the said A. B. hath paid into my hands the sum of \_\_\_\_\_ Pounds on account of such License.*

*Given under my hand the*

*day of*

*Collector of Colonial Revenue.*