



ANNO TRICESIMO SECUNDO

VICTORIÆ REGINÆ.

A.D. 1868-9.

No. 10.

An Act to further amend the Licensed Victuallers Act of 1863.

[Assented to, 30th January, 1869.]

WHEREAS it is expedient further to amend "The Licensed Victuallers Act, 1863"—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly in the said Province, in this present Parliament assembled, as follows: Preamble.

1. Sections 12, 14, 15, 17, 18, 20, 23, 29, 33, 40, and 76, and Schedule A of "The Licensed Victuallers Act, 1863," are hereby repealed, except as to anything that may have been legally done under them. Repeal of clauses.

2. If any Special Magistrate, or two Justices shall approve of any person holding a publican's licence selling liquor in any booth or building at any fair, military encampment, races, regatta, rowing match, cricket grounds, or other place of public amusement, for a period, not exceeding seven days, and shall signify his or their approbation thereof in writing, by a certificate in the form contained in the First Schedule to this Act, then and there only shall it be lawful for such licensed person to sell such liquor accordingly, in such booth or building for the number of days specified in such certificate: Provided always that the approbation aforesaid shall not be construed as an authority for retailing to drunken persons, nor for admitting them to the said booth or building for liquor, or allowing them to remain therein. Upon written approval of Special Magistrate, or two Justices, seven days licence may be granted in certain places.

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Premises may be kept open by special permission.

3. Any person holding a publican's licence may keep his licensed premises open on the occasion of any ball or dinner party, or on the occasion of any public amusement or entertainment, or public meeting, or on any other special occasion beyond the hours fixed by this Act, not later than twelve o'clock p.m., having first obtained the permission in writing in that behalf of any two or more Justices or a Special Magistrate: Provided that nothing in this provision shall extend to Saturday night: Provided also that nothing herein shall be construed to restrict the powers conferred upon two Justices or a Special Magistrate by the sixty-fourth section of the said "The Licensed Victuallers Act, 1863."

Certificates to be granted to sell liquors on goldfields.

4. If any Special Magistrate or two Justices shall approve of any person holding a publican's licence selling liquor on any goldfields, in any erection or building to be approved of by such Special Magistrate or Justices, it shall be lawful for the said Special Magistrate or Justices, to grant certificates in the form contained in the Second Schedule to this Act, to sell liquor in a stated place upon such goldfield, for the residue of the term of the licence, subject to a fee of Five Pounds, to be paid into the hands of the officer appointed by the Governor to have charge of such goldfield, and to be by him paid into the Treasury of the Province; such certificates to be renewable for a further like term on like payment, until such time as permanent townships may be declared in the vicinity of such goldfields; and any person having such certificate situate within the area of one mile from such proclaimed township, after thirty days' notice from the Commissioner of Crown Lands, or person duly authorized by him, shall cease to be entitled to sell liquor under such certificate.

Manner of application for licences.

5. Every person desirous of procuring a publican's or storekeeper's licence under this Act, shall on or before the last Monday in February in every year, or if the application be to the Justices at any of their quarterly meetings, then fourteen days before the date of such meeting, post on the outer door of the premises proposed to be licensed a written notice in the form contained in the Third Schedule, as the case may be, and shall deliver to the Clerk of the Bench of Justices written notices in the forms, as the case may be, contained in the Third and Fourth Schedules, accompanied by a certificate of at least three known housekeepers residing in the district wherein the intended premises are situated and in the form described in the same Schedule; and if the application be for a publican's licence, and the applicant shall be desirous of keeping a tap or taproom, or tap and taproom detached from his *bona fide* dwelling-house, or in such house, but having any other outer door thereto than the house itself has (which desire shall be fully expressed in his notice), accompanied by another certificate from at least two known housekeepers, residing in the said Province, in the form lastly described in such Schedule, with notice of the name, residence, trade or calling of the person therein mentioned, who may be proposed to have the personal management and superintendence of the same tap or taproom, or tap and taproom: Provided always that every person applying for a licence for premises which

Separate tap or tap-room.

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which have not been licensed before shall, fourteen days before the meeting immediately previous to the meeting at which such application is to be made, file with the Clerk of the Justices plans of the buildings erected or to be erected on such premises, which plan shall be open to inspection, and shall be produced by the Clerk to the Justices at such first-mentioned meeting; and provided also, that no persons in situations under the Government, nor any constable, sheriff's officer, or other person employed to execute any legal process, nor any licensed auctioneer, shall hold licences, nor shall such persons or any licensed publicans, or other dealers in liquor, be received as sureties in any recognizances to be entered into under this Act.

Persons disqualified to hold licences or become sureties.

6. General meetings of Justices shall be holden respectively at Adelaide, and in such other places as may from time to time be appointed by the Governor in Council for that purpose, on the second Monday in March in every year for the consideration of applications for certificates authorizing the issuing of publicans' or storekeepers' licences, which may respectively be adjourned for any time that may appear to be necessary; but decisions as to granting certificates shall not be given on any other than original or adjournment days, and when the Justices are assembled for the consideration of applications as aforesaid, at all which meetings any Justice wherever usually resident may attend, vote, and act, except such Justices as are hereinafter mentioned; and meetings of Justices shall also be holden at Adelaide on the second Monday in the months of June, September, and December in every year for the consideration of applications for permission to transfer existing publicans' or storekeepers' licences, and of applications for certificates authorizing the issue of such licences for new premises, which meetings may be adjourned as the Justices find necessary, provided that the Justices so assembled at such quarterly meeting shall not have power or authority to receive or consider any application rejected at the preceding annual meeting or at any preceding quarterly meeting, or to grant any certificate under this Act for the licensing of any person or premises in respect of which a certificate shall have been refused at such annual or preceding quarterly meeting, except when the Justices assembled at such annual or preceding quarterly meeting, shall have given permission to the applicant to renew his application, or to prefer a new application, in respect of new or other premises at such quarterly meeting; and at such quarterly meetings, all Justices entitled to attend, vote, and act at a general meeting, may also attend, vote, and act.

General meeting to be held on the second Monday in March in every year.

Which may be adjourned.

Quarterly meetings to be held for consideration of applications for transfers and new licences.

May be adjourned as necessary.

7. No Justice who shall be a brewer, maltster, distiller, or licensed dealer in liquors, or in partnership with any such person or persons directly interested as owner or manager of any house licensed or to be licensed, shall take part in the discussion or adjudication upon any application for any certificate for a licence, or for the transfer of any licence of any premises in which he may be interested, either directly or by reason of his dealings and business as a brewer, maltster,

On hearing application for certificates for licences, certain Justices not to adjudicate.

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ster, distiller, or licensed dealer in liquors, nor shall any such Justice sit or act on the hearing of any information, or of any appeal against any conviction under this Act, whenever such information or appeal relates to any premises in which he has such interest as aforesaid; and nothing herein shall be construed or taken to prevent any Justice of the Peace, who may be a brewer, maltster, distiller, or licensed dealer in liquors, from taking part in such discussions or adjudications as aforesaid, or in the hearing of any information or appeal as aforesaid, unless he has an interest in the particular application, information, or appeal being discussed, adjudicated upon, or heard; nor shall any Justice, interested as aforesaid, grant any permission to keep open house beyond the ordinary hour for closing; and any Justice, who being hereby disqualified, shall knowingly so offend, shall for every such offence, forfeit and pay the sum of One Hundred Pounds, with full costs of suit, to be sued for and recovered by action of debt in any Local Court of competent jurisdiction, by any one who will sue for the same: Provided that nothing herein contained shall extend to disqualify any Justice by reason of his making or selling any wine of his own manufacture from fruit grown in the Province.

Notice of objection
to be served.

8. No person, except as hereafter mentioned, shall be heard in support of any objection before the said Justices assembled at their annual or quarterly meetings, or at any adjournment thereof, unless notice thereof in writing, signed by the objector, and giving his place of residence, and his occupation or style, stating the nature and grounds of the objections, shall have been delivered to the Clerk of the Bench of Justices at least seven clear days before the day on which such application is to be heard, nor unless the person objecting shall appear in Court personally or by counsel on the day on which such application shall be heard: Provided that any officer, constable, or member of the Police Force, appointed for that purpose by the Commissioner of Police, may be heard in support of any such objection without giving such notice as aforesaid, upon his appearing personally to state such objection at the time when any such application may be heard.

Nature of objections.

9. The objections, of which notice may be so given, shall be one of the following:—That the applicant is of bad fame and character, or is of drunken habits, or has within six months previously been deprived of a licence under this Act; or that the house mentioned in the application has not sufficient accommodation for the public, or if the house be situated more than ten miles from Adelaide, that the same does not contain a sitting-room and two sleeping-rooms for the accommodation of travellers, separated from the tap by a space of at least twelve feet, with a separate entrance; or that there is not a stable on the premises capable of containing at least six horses, with a sufficient quantity of hay and corn; or that there is inclosed within the same fence as the house mentioned in the application, any store, shop, or dwelling-house, having means of communication open within the yard belonging to such premises, and not separated

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separated therefrom by any division, wall, or fence; or if the application is for a licence for new premises, that the applicant has not filed plans as hereinbefore mentioned, or that the general management of such house has not been satisfactory; or in the case of new licences, that such house shall not be required for the accommodation of the public, or that the house mentioned in the application is in the immediate vicinity of a church or other place of public worship, hospital, or school, and would, if licensed, be the cause of inconvenience or annoyance to the persons using or frequenting such church, place of worship, hospital, or school; or that the quiet of the locality in which such house is situated will be disturbed if a licence be granted for the sale of liquor in such house; but, such last-mentioned objection shall not be entertained, unless a petition against the granting of a certificate authorizing the granting of such licence for such house shall be presented to the said Bench of Justices, signed by at least two-fifths of the occupiers of houses in the immediate neighborhood of such house; or if a licence has been already granted for the sale of liquor in any other house in such locality: Provided always that any of the said Justices before whom any application may be heard as aforesaid, may, without notice, and upon any ground publicly stated, oppose the granting of any such application, and may state in evidence any facts known to them in support of such opposition.

10. In every case where an application shall be refused, it shall be notified by the Justices to the applicant, or to his counsel in open Court, whenever so requested, whether the application was refused on account of the objections specified in such notice, which have reference to the applicant's personal fitness to hold a licence, or on account of the objections in reference to the sufficiency, convenience, and desirableness of the house and premises mentioned in such notice; and shall also, whenever so requested, specify the particular objection or objections, on account of which such application has been refused.

Grounds of refusal to be openly declared.

11. The Clerk to the Justices shall attend the Justices' yearly and quarterly meetings, and minute the result of the proceedings, and on receipt of Ten Shillings and Sixpence for each recognizance, and Two Shillings and Sixpence for each certificate of the Justices, to be immediately paid to the said Clerk to the Justices upon the granting of such licence, and shall deliver such certificate to, or to the order in writing of the person in whose favor the certificate may have been signed; and the Treasurer shall, on sight of the original certificate and receipt of the sum payable in that behalf, immediately issue a licence in the forms in Schedule D or E to Act, No. 9 of 1863, as the case may be, and deliver it to the person paying for the same, and every such certificate shall be filed and kept by the Treasurer, he first registering the same in a book to be kept for that purpose.

Clerk to the Justices or other persons to attend meetings.

Treasurer on sight of Justices' certificate and receipt of licence-money, to issue the licence as in Schedules D or E as the case may be. And to file and keep the certificate.

12. No objection to a transfer shall be entertained, unless notice thereof in writing shall have been delivered to the Clerk of the Bench of Justices at least seven clear days before the day on which the application for a transfer is to be made: Provided that any

Transfer of licences. Notice of objection to transfer of licence.

Proviso.

officer,

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officer, constable, or member of the police force, appointed for that purpose by the Commissioner of Police, may be heard in support of any objection to a transfer without giving such notice as aforesaid, upon his appearing personally to state such objection, at the time when any application for such transfer may be made.

Transfer of licence in certain cases provided for.

13. If the holder of a publican's licence shall die, become insolvent, or suffer his person or property to be taken in execution, or shall become incapable of keeping an inn by reason of sickness or other infirmity, or if he, his executors, administrators, or assigns, or any person claiming under him or them shall yield up possession of the licensed premises before the expiration of the licence, or allow such premises to become vacant, or if the occupier of licensed premises, about to quit, shall have wilfully neglected to apply at the annual meeting for a new licence, then, and in any such cases, any member of the family, or the executors or administrators of any person dying, or the assignee or assignees of any insolvent, or any person appointed by him or them, or the Sheriff, or some person or persons authorized by him, or the creditor at whose suit the execution shall have issued; or in case of sickness or other infirmity, the wife or some one or more of the family of the licensed person, or his appointee or appointees, or the landlord or his agent, or other person *bonâ fide* entitled to the premises by sale, mortgage, or otherwise, may enter upon the said licensed premises and continue and carry on the business thereof until the then next quarterly meeting of Justices when an application may be made by any such person in possession for a transfer of the licence, and the proceedings to obtain such transfer shall be the same as in ordinary cases: Provided that in case any of the persons aforesaid shall enter upon any licensed premises, and continue the business thereof under the provisions hereinbefore contained, such person shall, within seven days after such entry, give notice thereof in writing to the clerk to the Justices, with the names of two householders proposed as sureties in lieu of the sureties of the said licensed person, and shall on receiving notice from the said clerk attend before a Special Magistrate with his sureties; and if such Special Magistrate shall, in his discretion deem such person to be a proper person to hold a certificate, and if such person shall not have been previously refused a licence by the Bench of Justices, and if such person shall enter into a recognizance in the form in Schedule B to the Act No. 9 of 1863, so far as the same may be applicable, such Special Magistrate may grant a certificate in the form of the Fifth Schedule to this Act; and any person so entering and carrying on the business as aforesaid, shall pay to the Treasurer any sum of money that may be due in respect of the licence to such premises: Provided always, that for the purposes referred to in this and the last preceding clause, a recognizance may be taken in the form prescribed with three approved sureties in the penalty of Fifty Pounds each for any applicant or transferee who may be prevented from attending from sickness or other allowed causes.

14. Upon information in writing and on oath being made before any Justice by any constable, or creditable person, that he suspects and

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and believes that any liquor is habitually sold or retailed in any unlicensed house, or place to be described in such information (such constable or other person in such information setting forth and showing reasonable grounds for such belief and suspicion), it shall be lawful for such or any other Justice, in his discretion, to grant his warrant to any constable or constables to enter and search such house or place by day or by night, which said constable or constables may break open the doors if not opened within a reasonable time after demand, and seize all such liquors as he or they shall find there, and also the vessel or vessels containing the same, and detain what may have been so seized until the owner thereof shall appear before a Special Magistrate or two Justices to claim such liquor, and shall satisfy such Magistrate or Justices how or for what purpose he came possessed of the same; and if the owner does not appear before such Magistrate or Justices within seven days, or if he does so appear, and it is shown to the said Magistrate or Justices, after due examination, that such liquor was in the said house or place for the purpose of being illegally disposed of by retail, then such Magistrate or Justices shall adjudge the same to be condemned, and the same shall be forthwith sold, and one half of the net proceeds thereof paid to the use of Her Majesty, and the other half to the party informing; otherwise the property so seized shall be restored to the owner thereof.

Unlicensed houses, wherein liquors are suspected to be retailed, may be searched.

Liquor found may be condemned and sold.

15. Every person holding a publican's licence who shall use and keep open, or permit to be used or kept open any communication by door, window, passage, or in any other manner, save by a separate public outer door, or entrance between his licensed house, or any allowed tap or taproom detached therefrom, and any retail store, shop, eating-house, or refreshment rooms, shall forfeit and pay a fine of not more than Five Pounds for every day during or upon which such communication shall be, or shall be permitted to be, used or kept open as aforesaid.

No communication to be kept open between public houses and stores, or eating-houses, for supply of liquors.

16. If any person holding a publican's licence shall sell or supply to any person not being a traveller or lodger, living or staying in his licensed house, in the tap or taproom, or upon, or from out of any part of his licensed premises, any liquor or refreshment whatsoever during the hours when every outer door of his licensed house is required to be closed under the provisions contained in the 63rd clause of the Act No. 9 of 1863, he shall forfeit and pay a fine of not less than Two nor more than Ten Pounds for every such offence.

Liquor not to be sold out of any part of licensed premises when outer doors closed by law.

17. The Licensed Victuallers Act of 1863, and the Licensed Victuallers Amendment Act of 1865-6, shall (save and in so far as the same are repealed) be deemed to be incorporated with this Act, and shall be read together as one Act.

Incorporation with Act of 1863.

18. This Act may be cited for all purposes as "The Licensed Victuallers Amendment Act, 1868-9."

Short title.

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

F. G. HAMLEY, Governor.

SCHEDULES

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SCHEDULES REFERRED TO.

FIRST SCHEDULE.

Certificate to Sell Liquors in a Booth, at Races, Fairs, &c.

I, A.B., Esquire, a Special Magistrate, [*or we, C.D., and E.F., two of Her Majesty's Justices of the Peace*] in and for the Province of South Australia, hereby approve of _____, now holding a publican's licence, selling liquor in an open booth, or tent, or building, at _____, on the occasion of a _____ for the space of _____ days, subject to the provisions of "The Licensed Victuallers Act of 1863," or of any Act amending the same.

A.B., S.M.
or { C.D., J.P.
E.F., J.P.

SECOND SCHEDULE.

Certificate to Sell Liquors in a certain place upon Goldfields.

I, A.B., Esquire, a Special Magistrate, [*or we, C.D. and E.F., Esquires, two of Her Majesty's Justices of the Peace*], in and for the Province of South Australia, hereby certify and allow that the holder of this certificate, _____, now holding a publican's licence at _____, may sell liquors in a certain place or building known as _____ or called _____ situate upon the Goldfield known as _____ for residue of the term of the general publican's licence held by him, subject to the provisions of the Licensed Victuallers Act of 1863, or any other Act amending the same.

A.B., S.M.
or { C.D., J.P.
E.F., J.P.

N.B.—The place or building to which the above certificate is to apply must be specified as accurately as circumstances will allow.

THIRD SCHEDULE.

Form of Notice of Application for a Publican's Licence.

NOTE.—*If the applicant be a licensed person seeking for a renewal of the same licence for the same premises, and without alteration as to tap or manager, the notice is to be confined to those points, and no house-keeper's certificate will be necessary.*

To the Worshipful the Justices of the Peace acting in and for the Province of South Australia :

I, A.B., of [*here state the residence and trade or calling*], do hereby give notice, that it is my intention to apply at the next meeting of Justices to be holden at _____ in this behalf, for a certificate approving of my receiving a licence to sell and retail liquor in the house and premises situate in _____ street at _____ and which I intend to keep as an inn or public house.

[*If the applicant desires to keep a tap or taproom separate from the house or having a separate outer door, add as follows:—*

And I am desirous of receiving the Justices' approval of my keeping a tap [*or "tap and taproom, or a "taproom," as the case may be*] about _____ from the house and detached therefrom [*or, if the case requires it, "of my keeping a tap," or "tap and taproom," or a "taproom," in the house, but with a separate outer door thereto*] and of G.H. [*residence, trade, or calling*] being permitted to have the personal management and superintendence thereof.

Form of Notice of Application for a Storekeeper's Licence.

I, A.B., of [*here state residence, trade, or calling*], do hereby give notice that it is my

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my intention to apply at the next meeting of Justices, to be holden at in this behalf, for a certificate approving of my receiving a storekeeper's licence to sell and retail liquor in the house and premises situate in _____ street, and which I intend to keep as a store.

Dated this _____ day of _____ one thousand eight hundred and _____ A.B.

FOURTH SCHEDULE.

Form of proposal of Sureties.

I beg to propose my present sureties or C.D., of [*residence, trade or calling*], and E.F. of [*residence, trade or calling*], as my sureties.

Dated this _____ day of _____ one thousand eight hundred and _____ A.B.

Form of Housekeeper's Certificate as to the Applicant.

We, the undersigned housekeepers, do hereby certify that the applicant, A.B., is well known to us, and that he is of sober life and habits, and of good fame and reputation, fit to be entrusted with a licence to keep an inn or public house, and able to manage the same.

Dated this _____ day of _____ one thousand eight hundred and _____
 I.J., of }
 K.L., of } [*Here insert place of residence, and add to*
 M.N., of } [*it trade or calling.*]

If a separate tap or taproom is required, add as follows:—

We, &c., [*as in the foregoing*] do hereby certify that G.H. [*here insert place of residence, trade or calling*], is well known to us, &c., [*as in the preceding*], and fit and able to manage either a tap or taproom, and both.

Dated this _____ day of _____ one thousand eight hundred and _____
 O.P., of }
 Q.R., of } [*Here insert place of residence, and add to*
 S.T., of } [*it trade or calling.*]

Form of Housekeepers' Certificate.

We, the undersigned householders, do hereby certify that the applicant, A.B., is well known to us, and that he is of sober life and habits, and of good fame and reputation.

C.D.
 E.F.
 G.H.

FIFTH SCHEDULE.

Form of Certificate of Special Magistrate, authorizing person to enter and carry on business in licensed house until next quarterly meeting.

I, A. B., Esquire, Special Magistrate, and Justice of the Peace in and for the Province of South Australia, do hereby certify that I have considered the application made to me by _____ and am satisfied that he has complied with the requirements of the "Licensed Victuallers Amendment Act, 1869," and that he is a proper person to enter into and carry on the business of a publican in the premises licensed under a publican's licence, of date of the _____ day of _____ and I therefore hereby authorize him to enter and carry on business therein until the next meeting of the Bench of Magistrates, to be holden on the _____ day of _____ next.

Given under my hand this _____ day of _____ one thousand eight hundred and _____

A.B.
 C.D.