

Anno Octavo GEORGII IV. REGIS. No. 1.

By his Excellency Colonel *George Arthur*, Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies, with the Advice of the Legislative Council.

AN ACT to explain and amend an Act of his Excellency the said Lieutenant Governor, with the Advice of the Legislative Council, passed on the Seventh Day of September One thousand eight hundred and twenty-six, entitled, "An Act for regulating the future Sale of Ale, Beer, Wine, Spirits, and other Liquors by Retail, in the Island of Van Diemen's Land and its Dependencies, and promoting good Order in Public-houses; and also for indemnifying the Justices of the Peace in respect of the Licenses granted on and since the last Licensing Day."

WHEREAS, by the said Act of the Seventh day of September One thousand eight hundred and twenty-six, it is enacted, that if any person shall sell, barter, exchange or retail certain liquors in a less quantity than Five gallons, without having first obtained a license in manner and form in the said Act mentioned, he or she shall forfeit and pay for every such offence the sum of Fifty pounds sterling:

And whereas doubts have arisen respecting the true construction of certain parts of the said Act, and difficulties have been experienced in the carrying of the provisions of the said Act into execution; for remedy wherein—

I. Be it Enacted, by his Excellency the said Lieutenant Governor, with the advice of the Legislative Council, That from and after the publication of this Act, upon information on oath being made before any Justice of the Peace by any constable or credible person, that he or she doth verily suspect and believe that ale, beer or other malt liquors, or wine, cider, ginger-beer, brandy, rum, gin, whiskey or other strong fermented or spirituous liquors is or are habitually sold or retailed in any particular unlicensed house or other unlicensed place, and such constable or other person shall in such information set forth and show reasonable grounds for such belief and suspicion, then and in such case it shall be lawful for such Justice in his discretion to grant his warrant to any chief or other constable to enter and search such particular house or other place, either by day or by night, which said constable shall and may break open the doors, if not opened within a reasonable time after demand, and seize all such malt or strong fermented or spirituous liquors as he shall there find, and the vessel or vessels in which such liquors shall be contained, and shall and may detain the same until the owner thereof shall appear before the said Justice to claim such liquors, and shall satisfy the said Justice how and for what purpose he became possessed of the same; and if it shall appear to the said Justice, after due inquiry and examination, that such liquors were in the said house or other place for the purpose of being illegally sold or disposed of by retail, then such justice shall cause the said liquors and the vessel or vessels containing the same to be forthwith staved and destroyed; but if otherwise, then such liquors and vessel or vessels shall be forthwith restored to the proper owner.

II. And be it further Enacted, That if any person shall from and after the publication of this Act permit or suffer to be sold, bartered, exchanged or retailed in or on his or her house, outhouse, yard, garden or other place, any ale, beer or other malt liquors, or wine, cider, ginger-beer, brandy, rum, gin, whiskey or other strong fermented or spirituous liquors, in a less quantity than Five gallons, without having first obtained a license in manner and form in and by the said Act prescribed, he or she shall for every such offence forfeit and pay the penalty or sum of Fifty pounds, such penalty to go and be distributed and be subject to the like remedies for recovering of the same, and the party charged with such offence to be proceeded against and to be entitled to such appeal, and the convicting magistrates to have the like power of mitigation of the penalty in such and the like manner and form as in and by the said Act, and also as hereinafter respectively provided, with respect to all other penalties in the said Act mentioned.

III. And be it further Enacted, That in all proceedings whatsoever against any person for illegally retailing or illegally permitting or suffering to be retailed without a license, such person shall, for all purposes connected with those proceedings,

ceedings, be deemed and taken to be unlicensed, unless he or she shall at the hearing of the case produce his or her license before and exhibit the same to the sitting magistrates, or shall then and there produce other satisfactory proof of his or her being a licensed person.

IV. And whereas cases may arise in which, from the character of the offender or the circumstances attending the offence, every proper object might be attained by the infliction of a mitigated penalty: Be it further Enacted, That in all cases of convictions for offences under this or the said Act, whether against publicans or other persons, it shall be lawful for the convicting Justices, and they are hereby empowered to mitigate the amount of the penalty by this or the said Act annexed to the particular offence, to any sum not less than Ten pounds: Provided, That in case of the conviction of any publican for an offence against the condition of his or her recognizance, the penalty by the said Act in that behalf prescribed may be by such Justices mitigated to a sum not less than Five shillings and costs, if they shall deem it expedient: And provided also, That in all cases of prosecutions under this or the said Act, the party informing or suing for the penalty shall be invariably entitled to one moiety of the amount of such penalty, whether mitigated or not.

V. And whereas it is by the Nineteenth clause or section of the said Act enacted, that no Justice of the Peace who shall be the trustee, manager or agent, of any owner or part owner of any house licensed, or about to be licensed under the said Act, shall convict or join in any conviction, or otherwise act under the same: Be it therefore Enacted, That from and after the publication of this Act the words "trustee, manager or agent," in the said clause or section, shall not extend to or affect any such trustee, manager or agent, unless he shall in some manner be directly or indirectly beneficially interested in such house, or in the rents, issues or profits thereof, or the profits of the business to be carried on therein; any thing in the said Act to the contrary in anywise notwithstanding.

VI. And whereas, by the Twenty-ninth section of the said Act, certain powers and authorities with respect to admittance into licensed houses are conferred upon Justices of the Peace: Be it further Enacted, That from and after the publication of this Act, all and singular the same powers and authorities shall and may be likewise exercised by the chief constable, and by any chief constable of the district in which any such licensed house may be situated, and that if admittance into such house be refused or wilfully delayed, the license thereof shall upon conviction before any Two Justices be forfeited.

VII. And be it further Enacted, That in all cases of convictions for any offence against this or the said Act, either by publicans or others, which shall from and after the publication of this Act be committed, the penalty awarded, together with the assessed costs and expenses, shall always be payable immediately, and that no demand thereof shall be at any time necessary; and that if the full amount of such penalty, costs and charges be not paid into the hands of one of the convicting magistrates within One week after the conviction, the same may either be levied by distress and sale of the party's goods, or he or she may by any Justice of the Peace be committed by warrant to one of his Majesty's gaols, there to remain until payment of the full amount of such penalty, costs and expenses be made, or by both distress and sale and committal, at the discretion of the magistrate, until the whole penalty, costs and expenses be satisfied.

VIII. And in order effectually to prevent frivolous and vexatious appeals, and appeals for delay only: Be it further Enacted, that in all cases of convictions for any offence against this or the said Act, which shall from and after the publication of this Act be committed, no appeal whatsoever from any such conviction shall be received until the party or parties convicted shall pay down into the hands of one of the convicting magistrates the full amount of the penalty awarded against him, together with the assessed costs and expenses to be by him retained, one moiety for the use of his Majesty, and the other moiety for the use of the prosecutor or informer, in case such conviction should be affirmed; but the whole to be returned to the party if such conviction should on appeal be quashed; and if such amount be so paid within Twenty-four hours next after the conviction, then such appeal as in the said Act is in that behalf mentioned shall be received, but not otherwise; and, on the contrary, such conviction shall then become and be final and conclusive, and no appeal or certiorari shall be afterwards allowed.

IX. And

IX. And be it further Enacted, That the form of conviction prescribed in and by Schedule (E.) of the said Act shall in all cases under this or the said Act be good, valid and effectual to all intents and purposes whatsoever, without setting forth or stating therein the name of the informer, or that an information was exhibited, or stating the name of any witness, or the particular place where the offence was committed, or whether the party accused appeared, or was or was not summoned, and without stating the evidence, or stating the case or the facts any further or otherwise than shall be necessary to show that the offence was one within the terms of the Act, or the intent and meaning thereof; and no conviction shall be quashed for any error or mistake in any name or date, or matter of description only, or for any other mere error or mistake whatsoever; but that in all cases regard shall be had to the substantial merits and justice of the case only.

X. And be it further Enacted, That from and after the publication of this Act, in all cases whatsoever of proceeding for offences against this or the said Act, whether against publicans or other persons, any one Justice of the Peace shall be competent to receive the original information or complaint, and to issue all necessary or usual summonses and warrants thereupon, requiring the party or parties, or any witness or witnesses to appear before any two Justices of the Peace, and that the matter or merits of every such information or complaint may be examined into, heard and determined, and the party or parties be convicted by any two Justices of the Peace accordingly, neither of whom need be the Justice before whom such information or complaint was exhibited, and that upon or after such conviction or other adjudication, all warrants and other proceedings to enforce obedience thereto, or otherwise, may be issued by and had or taken before any one Justice, whether he were or were not one of the magistrates so adjudicating; and that in proceedings against publicans under this or the said Act, it shall in no case be necessary or requisite that either of the Justices shall be a Justice acting in or for the division of the Island within which the offence was committed; any thing in the Twenty-sixth clause or section or any other clause or section of the said Act in anywise notwithstanding.

GEORGE ARTHUR.

Passed the Council, this 15th
day of September 1827.

John Montagu, Clerk of the Council.

Anno Octavo GEORGII IV. REGIS. No. 2.

By his Excellency Colonel *George Arthur*, Lieutenant Governor of the Island of Van Diemen's Land and its Dependencies, with the Advice of the Legislative Council.

AN ACT to regulate the Printing and Publishing of Newspapers, and for the Prevention of blasphemous and seditious Libels.

WHEREAS the original settlement of and in this Island was made and formed for the reception of transported offenders, and the Government then established and since continued therein was so established and has been so continued for the efficient employment and due discipline and control of such offenders:

And whereas the number of such offenders now within the Island under sentence or order of transportation exceeds in a very large proportion that of the inhabitants who have voluntarily emigrated hither; and the due management and discipline of all those offenders demand the utmost care and vigilance:

And whereas several newspapers have been printed and published within this Island, at different times, and from time to time since the said original or first settlement therein:

And whereas previously to the Eighth day of October in the year One thousand eight hundred and twenty-four, no matter was printed and published in any such newspaper, without the consent of the Lieutenant Governors (or other officers for the time being administering the government) first had and obtained, to whom it was the practice to submit for their approbation or rejection all matters intended to