ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO

VICTORIÆ REGINÆ.

A.D. 1863.

No. 9.

An Act to consolidate and amend the Laws for regulating the retail of Liquor, and for preserving good order in Licensed Public Houses.

[Assented to, 12th November, 1863.]

WHEREAS it is expedient to consolidate and amend the laws for regulating the retail of liquor, and for preserving good order in licensed public houses—Be it therefore Enacted by the Governor-in-Chief of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows:

1. This Act may be cited for all purposes as "The Licensed Victuallers' Act, 1863."

2. An Act passed in the second year of the reign of Her Majesty Queen Victoria, No. 1, intituled "An Act to regulate the retail of Liquors, and to preserve good order in Licensed Public Houses;" an Act passed in the same year, No. 2, intituled "An Act to supply omissions and rectify a clerical error in the Act lately passed for regulating the retail of Liquors and for preserving good order in Licensed Public Houses;" an Act, No. 14 of 1855-6, to amend the first-mentioned Act; and an Act, No. 14 of 1858, to further alter and amend the first-mentioned Act; are hereby repealed, except as to anything done or commenced to be done under the said Acts or any of them; and all offences committed before the passing of this Act shall be punished in the same manner as though this Act had not been passed; and licences issued under the authority of any of the said
said Acts hereby repealed and not expired at the time of the passing of this Act, shall confer the same rights and privileges as if granted under the authority of this Act.

3. In the construction of this Act, the following words shall, unless inconsistent with the context or subject matter, have the meaning hereby assigned to them respectively, that is to say, the word "Liquor" shall mean, brandy, gin, rum, whisky, cordials, wine, ale, porter, beer, or any other spirituous, malt, vinous, or fermented liquors; the word "Town," shall mean the City of Adelaide and all other Corporate Towns within the said Province, and any township or village containing twenty-five houses within a radius of one mile, and any place which may be proclaimed as a township, for the purposes of this Act, by the Governor in Council; the word "Justice" shall mean Justice of the Peace for the said Province; the word "Street" shall mean any public square, place, road, terrace, or thoroughfare, in any town or place subject to the provisions of this Act; the expression "Governor in Council," shall mean the Governor-in-Chief with the advice and consent of the Executive Council; the word "Gazette" shall mean the South Australian Government Gazette; the expression: "Public notice" shall mean notice by advertisement in the South Australian Government Gazette, and in one daily newspaper published in Adelaide; the words "Mead, wine, cider, and perry," whenever used in this Act, in reference to persons holding wine licences, shall mean wine, cider, and perry produced from fruit grown in the said Province, and mead made from honey the produce of the said Province, such mead, wine, cider, and perry not containing a greater proportion than twenty-six per centum of proof spirit.

4. This Act shall be divided into six parts, relating to the following matters, viz.:-

Part I.—Relating to licences, and how the same may be granted, renewed, transferred, transmitted, removed, or forfeited:

Part II.—To the rights, duties, and liabilities of persons holding licences:

Part III.—To offences against the Act by persons not holding licences:

Part IV.—To legal procedure and evidence:

Part V. — To the distribution and application of penalties and moneys received for licences or otherwise.

Part VI.—Protection of officers, and general matters.

5. The licences to be granted by virtue of this Act shall be of the kinds following, viz., one to be denominated a publican's licence, and which shall be in the form in Schedule D to this Act; another
to be denominated a storekeeper’s licence, which shall be in the form in Schedule E; and another to be denominated a wine licence, which shall be in the form in Schedule F.

6. Every publican’s licence shall authorize the person thereby licensed to sell and dispose of any liquor, in any quantity, in the house or on the premises therein specified, in the manner hereinafter mentioned.

7. The annual fee to be paid for a publican’s licence shall be as follows—if the house or premises described in the licence be situate in the City of Adelaide, or in any Town, the fee shall be Twenty-five Pounds, and if the house be situate elsewhere, the fee shall be Fifteen Pounds, unless such house be situated within five miles of the City of Adelaide, or two miles of any other town when the licence fee shall be Twenty-five Pounds.

8. Every storekeeper’s licence shall authorize the person thereby licensed to sell and dispose of liquor in the house or on the premises therein specified in quantities of not less than one gallon of one kind of spirits, or one dozen reputed quart or pint bottles of wine or other fermented liquors at a time: Provided that no part thereof be consumed on the premises.

9. The annual fee to be paid for a storekeeper’s licence shall be Ten Pounds.

10. Every wine licence shall authorize the person thereby licensed to sell by retail in the house or shop, or on the premises therein specified, mead, wine, cider, and perry, in reputed quart or pint bottles only: Provided that no part thereof be consumed on the premises.

11. The annual fee to be paid for a wine licence shall be Four Pounds.

12. 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, deliver to the Clerk of the Bench of Justices, and also post on the outer door of the premises proposed to be licenced, a written notice in one of the forms contained in Schedule A, as the case may be, 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
in other Licence at ob to be grant.~d in year. General licences. Which may be held. Quarterly meetings to be hold for considera- tion of applications for transfers and new licences. may be adjourned as necessary.

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 have not been licensed before shall, fourteen days before 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 plans shall be open to inspection, and shall be produced by the clerk to the Justices at such meeting; and provided also that no persons in situations under the Government, nor any constable, sheriff's officer, or other officer 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.

13. Applications for Justices' certificates of approval of persons receiving publicans' or storekeepers' licences, or of any such licences being transferred throughout the said Province, shall be considered at Adelaide: Provided always, that it shall be lawful for the Governor in Council to appoint such one or more places in addition, as shall from time to time appear requisite for the aforesaid purpose.

14. 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 meetings 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 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 meeting, except when the Justices assembled at such annual 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.
15. No Justice who shall be a brewer, malster, 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; nor shall any such Justice sit or act on the hearing of any information, or of any appeal against any conviction under this Act; 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 said Province.

16. The proceedings on the consideration of any application, or any objection to such application for any licence, and also of every application or objection to any application to renew, transfer, or remove any such licence granted under this Act, shall be public; and it shall be lawful for the Justices assembled at their annual or quarterly meetings, or at any adjournment thereof, to hear, inquire into, and determine all such applications, and also all objections which may be made to any such applications, and summon and examine on oath such witnesses as they may deem necessary, and to grant to such persons as shall be approved of by such Justices, certificates authorizing the granting of such licences as aforesaid, which certificates may be in the form hereinafter mentioned.

17. No person 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.

18. 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 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

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**Licensed Victuallers Act,—1863.**

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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.

19. No licensed person having given such notice and obtained a householders' certificate by this Act prescribed, shall be required to attend any licensing meeting for the purpose of procuring a renewal of his licence, unless notice of opposition to the renewal of such licence, stating the grounds thereof, shall have been given to the Clerk of the Bench of Justices, who shall forthwith forward a copy of such objections, by post, to the person interested.

20. In every case where an application shall be refused, it shall be notified by the Justices to the applicant in open Court if he shall so request, whether the application was refused on account of all the objections specified in such notice or any of them.

21. It shall be lawful for the Justices assembled at their annual or quarterly meetings as aforesaid, to order that any person having given such notice of objections as hereinbefore mentioned, shall pay to the applicant for a licence a sum not exceeding Five Pounds, for the costs incurred by such applicant in supporting such application, and such costs may be recovered in the same manner as any sum of money ordered to be paid by any order of Justices: Provided always, that no such order shall be made where any Superintendent, Inspector, or other officer of Police, or Constable, shall have given such notice of objection.

22. Every applicant for a publican's or storekeeper's licence to whom the Bench of Justices shall decide to issue such certificate as aforesaid shall, on the day of the said annual or quarterly meeting as the case may be, or on any day to which the same may be adjourned, enter into a recognizance with two approved sureties, and conditioned as in Schedule B, which recognizance shall be taken before, and signed by, at least two of the assembled Justices, any two of which Justices shall afterwards, by a certificate in the form prescribed by Schedule C, authorize the issue of a licence to the applicant, and which certificate shall be dated the day on which the recognizance shall have been taken, and in case any applicant shall be prevented by sickness or other allowed cause from giving personal attendance, two
two at the least of such Justices may take a recognizance from three approved sureties in the sum of Fifty Pounds each for performance of the conditions of the said recognizance, whereupon any two of the said Justices shall authorize by the like certificate as aforesaid, the issue of a licence to such absent applicant, and the same and every other recognizance that may be entered into under this Act shall, when signed by the Justices, be filed and kept by the Clerk to the Bench of Justices under a penalty of not less than Two Pounds, nor more than Twenty Pounds, for every default; and every such recognizance shall be in force so long as the licensed person shall continue to hold a licence for the premises in respect of which he entered into the said recognizance, or procured the same to be entered into:

Provided, that it shall be lawful for any person being a surety under any such recognizance, at any time after the expiration of one year from entering into the same, to give three calendar months' notice in writing to such licensed person, and also to the Clerk to the Justices, that he will, at the expiration of three months from the date of such notice, cease to be a surety under such recognizance; and the Clerk to the Bench of Justices shall thereupon give two calendar months' notice in writing to such licensed person, requiring him to procure another surety or sureties in the place of one or more of the sureties named in such recognizance and so ceasing to be surety as aforesaid; and any licensed person who shall not within the period of two months after service of such notice upon him, procure one or more approved persons or persons to enter into a recognizance in the place of the person or persons giving or named in any such notice, shall, until he shall have procured such recognizance, be deemed and taken to be an unlicensed person.

23. 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, Two Shillings and Sixpence for a copy thereof (if required), and Two Shillings and Sixpence for each certificate of the Justices, shall deliver such certificate and copy of recognizance to, or to the order in writing of, the person in whose favor the certificate may have been signed, and shall immediately send a copy of such certificate, attested as a true copy, to the Treasurer, who shall, on sight of the original certificate, and receipt of the sum payable in that behalf, immediately issue a licence in the forms in Schedules D or E, 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.

24. Every such licence shall, without regard to the date of the Justices' certificate, be dated the day on which the money payable for the same is actually paid, and if not previously forfeited shall be in force until the twenty-fifth day of March thence next following, inclusive, and no longer.

25. Whenever
25. Whenever the Justices shall approve of a tap or taproom, or tap and taproom, being kept as specified in any notice as aforesaid, and of the person proposed as the manager or superintendent thereof, a memorandum in writing of such approval shall be made at the foot of the certificate which may be granted the applicant for a licence, in which case only it shall be lawful for the licensed person to keep the same and sell liquor therein: Provided always, that every such tap or taproom, or tap and taproom, shall during the term of the licence be in fact managed and superintended by such approved manager or superintendent, or by some other manager or superintendent approved of by two or more Justices at a meeting to be convened for that special purpose, by notice, at the request and expense of the applicant, under the hand of the Clerk to the Justices or other authorized person, inserted in two succeeding numbers of the Gazette, stating the specific object of the meeting.

26. Until the sum payable for a licence be paid to the Treasurer, and the licence be actually issued, the person entitled to such licence shall be deemed and considered, and is hereby declared unlicensed, and in case the sum be not so paid within two calendar months after the date of the certificate, such certificate and the authority hereby given shall be wholly void, and the licence shall not be issued.

27. When any such case of non-payment of licence money as is mentioned in the last preceding section shall arise, the Treasurer shall cause a notice thereof, and also full particulars of every licence, to be inserted in the Gazette, on the first, or, at the latest, on the third day of its publication after the expiration of the said period of two calendar months, or the issue of the licence, as the case may be.

28. If any person holding any such licence shall be desirous of transferring his licence to any other person, he shall deliver to the Clerk to the Bench of Justices, and also post on the outer door of the licensed premises, fourteen days before any quarterly meeting, a notice in the form in Schedule G, or as near thereto as circumstances will permit, and also a certificate from three known householders in favor of the nominee, which certificate may be in that one of the forms given in Schedule A required by the circumstances.

29. 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.

30. The objections of which notice may be given shall be one or more of the following:

That the licence of the person proposing to transfer the same is liable to be forfeited for offences against this Act; that the person to whom it is proposed to transfer such licence 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 lease under which the holder of the licence occupies
his house contains a covenant or prohibition against transferring
the licence, assigning, or sub-letting without the consent of the
lessor, and that such consent has not been obtained.

31. The provisions hereinbefore contained as to the proceedings
at the annual meetings of the Justices as to the hearing of applications
for licences, and the ordering of costs to be paid by the person
who shall have given notice of objections, shall apply as nearly as
may be to the proceedings upon an application for the transfer of a
licence from one person to another, or from one house to another.

32. The Justices assembled at any quarterly meeting, upon the
application of any holder of a licence as aforesaid, and upon being
satisfied that the provisions of this Act have been complied with,
may, if they shall think fit, transfer such licence to the nominee of
the person holding such licence by an endorsement on the original
licence in the form of Schedule H, signed by any two of such
Justices, the nominee having previously entered into a recognizance
with two approved sureties for the amount, and in the like manner
as hereinbefore mentioned in reference to the granting of the original
licence, and thereupon such nominee shall have and exercise the
same privileges and be subject to the same liabilities and penalties
as if such licence had been originally granted to him, and the person
so transferring such licence shall cease to be a licensed person under
this Act.

33. If the holder of a publican's licence shall die, become in-
solvent, 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
bona 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

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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 enter into a recognizance in the form in Schedule B to this Act, so far as the same may be applicable; 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.

34. The Treasurer, upon payment of the licence-fee hereinbefore mentioned, and, upon receiving a certificate of two Justices that the person named therein is carrying on business as a storekeeper or shopkeeper on the premises named in such certificate, and is a fit and proper person to receive a wine licence, shall grant to the person named in such certificate a wine licence in the form in Schedule F to this Act annexed, which licence shall authorize the person licensed to sell mead, wine, cider, and perry, under the provisions of this Act, until the twenty-fifth day of March then following.

35. Upon the death or insolvency of any holder of a wine licence under this Act, the Treasurer may, without fee or further duty, by endorsement on the licence or otherwise in writing, authorize the legal personal representative of such holder, or his assignees in case of insolvency, to carry on the business under such licence during the residue of the term for which the same has to run, and the person so authorized shall be deemed for all purposes to be the holder of such licence under this Act, and the person named in such licence shall thereupon cease to be a licensed person.

36. If any person holding a publican's or storekeeper's licence shall be desirous of removing his business to any other suitable and convenient premises in the same district, he shall, fourteen days before any quarterly meeting of Justices, deliver to the Clerk to the Bench of Justices, and also post on the outer door of the licensed premises and of the premises to which it is proposed to remove the licence, a notice in writing in the form in Schedule I.

37. No objection to a removal of a licence from one house to another shall be entertained unless notice thereof, in writing, shall have been delivered to the Clerk to the Bench of Justices at least seven days before the day on which such application is to be heard.
38. The objections of which notice may be so given shall be one or more of the following:—That the house to which it is proposed to remove the licence 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 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 removal of such licence to such house shall be presented to the Bench of Justices, signed by at least two-fifths of the occupiers of houses in the immediate neighborhood of such house, nor if a licence has been already granted for the sale of liquor in any other house in such locality), or that the house to which it is proposed to remove the licence is not in the same city, or town, or district (as the case may be) as that from which it is proposed to remove it, or that the lease under which the holder of the licence occupies his house contains a covenant or prohibition against removing the licence to any other house without the consent of the lessor, and that such consent has not been obtained.

39. It shall be lawful for the majority of the Justices assembled at such quarterly meeting to transfer the licence from one house to another (if such house shall be approved of by them) by an endorsement upon the licence in the form in the Schedule J, and thereupon the holder of such licence shall be authorized to sell and dispose of liquor in the house to which such licence shall have been transferred instead of in his former house, in the same manner as if such licence had been originally granted, authorizing him to sell and dispose of liquor in the house to which such licence shall be so transferred, according to the tenor and effect of such licence, and the house to which such licence was originally granted shall thereupon cease to be licensed.

40. If any Special Magistrate or two Justices shall approve of any person holding a publican's licence selling liquor in an open booth on any race or fair ground, or at any other place where any unusual concourse of people may reasonably be expected, and shall signify his or their approbation thereof in writing, then and there only shall it be lawful for such licensed person, to sell in the same open booth such liquor accordingly: 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 for liquor, or allowing them to remain therein.

41. If any person holding a licence under this Act shall be convicted of any offence against this Act three several times within a period of three consecutive months, or shall be convicted of any of the offences hereinafter mentioned as offences for which on conviction the licence may be declared forfeited, it shall be lawful for the Special Magistrate, or the Justices by whom such persons shall be so convicted,
Licensed Victuallers Act.—1863.

PART I.

Licensed person convicted of felony, &c.

42. If any person holding a licence under this Act shall be convicted of any felony, such licence shall be void; or if any person holding a publican's licence shall permit any person whomsoever to manage, superintend, or conduct the business of such house during his absence for a longer period than one month without the previous consent in writing of two Justices, or shall, whether residing in such house or not, permit any unlicensed person to become virtually or in effect the keeper thereof, or shall suffer such house to become ruinous and delapidated, then upon complaint thereof, and proof of the facts to the satisfaction of any Special Magistrate or any two Justices, such Special Magistrate or Justices shall, by an order under their hands as aforesaid, declare such licence to be forfeited, and the same shall thereupon cease to be of force and effect: Provided nevertheless, that if such house shall have become ruinous or delapidated by reason of fire, tempest, or other cause beyond the control of the holder of such licence, then such licence shall not be declared forfeited until a reasonable time has elapsed for such holder to reinstate such house.

Special Magistrate or Justices may order person whose licence is forfeited to pay costs

43. Whenever any Special Magistrate or Justices shall declare any licence under this Act to be forfeited, it shall be lawful for him or them, if he or they shall think fit, to order the person whose licence shall be forfeited to pay costs to the person on whose complaint such forfeiture shall have been ordered.

Clerk of Court in which forfeiture ordered, to forward particulars to Clerk of Bench of Justices.

44. The Clerk of the Court in which any such forfeiture shall be declared by any such Special Magistrate or Justices as aforesaid, or if there be no Clerk, then the Special Magistrate or Justices declaring such conviction shall, within seven days after such forfeiture, duly report the same to the Clerk of the Bench of Justices, under a penalty not exceeding Five Pounds for every default: Provided, that in case the person whose licence may be so declared forfeited shall appeal against such conviction as hereinafter mentioned, such Clerk shall not report such forfeiture till after the appeal shall be disposed of.

Transfers, removals, and forfeitures, to be advertised, under a penalty.

45. The Clerk to the Bench of Justices shall cause full particulars of every transfer or removal of a licence as aforesaid, except such transfers as may be made between the quarter-days, under the powers hereinbefore contained in clause 33, and also of every forfeiture of a licence to be inserted in the Gazette, on the first, or at the latest, on the third day of its publication, next after the occurrence of any of such events, or of receiving such report as aforesaid, or forfeit and pay a penalty of not less than Two Pounds nor more than Twenty Pounds for every default.

Licence lost or destroyed.

46. Whenever any licence granted pursuant to this Act shall be lost
lost or destroyed, it shall be lawful for the licensee to apply to the
Justices at any quarterly meeting for a certificate under their hands,
that such first-mentioned certificate had been granted to such
licensee, and such Justices, if satisfied of the loss of such licence, and
that the same has not been forfeited or transferred, shall grant a
certificate in the form in Schedule L, and upon production of such
certificate, and upon payment of a fee of One Pound, the Treasurer
shall make out and deliver to such licensee a duplicate of the
original licence, which shall for all purposes be deemed to have the
same force as the original licence.

PART II.—And as to the rights, duties, and liabilities of, and
offences against this Act by persons holding licences—Be it
enacted:

47. If any person holding a licence under this Act shall suffer
any person to exercise any unlawful game or sport within the said
licensed house, premises, or appurtenances, or if any such licensed
person shall permit or suffer any one to play at billiards or any
other game in his house or premises on Sunday, or knowingly suffer
prostitutes, thieves, drunken, or disorderly persons to assemble
at, or continue in or upon his premises, he shall, upon being con-
victed, forfeit and pay for every such offence any sum not exceeding
Twenty Pounds.

48. All liquor sold and retailed under the authority of this Act
from and including half a pint, shall be measured and delivered
according to the English imperial measures, and shall, upon demand
of the party receiving the same, be remeasured for his satisfaction in
the same house and in the measures, or any other imperial measures
he may procure, but not if the liquors have been taken to any other
room of or wholly from the licensed house, or shall have been partly
consumed before a remeasurement has been demanded, and on
failure to measure or remeasure as aforesaid, the licensed person
shall for every offence forfeit and pay a penalty of not less than Five
Shillings nor more than Five Pounds.

49. Every person holding a publican’s licence shall keep his
name at length, and the words “Licensed Dealer in Wines and
Spirits,” and every licensed holder of a wine licence his name and
the words “Licensed Dealer in Colonial Wines” legibly painted in
letters not less than three inches in length, on some conspicuous
part of the front of his licensed house, and every person holding a
publican’s licence shall have a lamp containing at least two burners
fixed in front of such house, and either opposite to or over the
principal or entrance door thereof, and at a distance of not less than
seven feet from the ground, and keep the same well cleaned, and
trimmed, and alight from sunset to sunrise throughout the year, under
a penalty of not less than Ten Shillings, nor more than Ten Pounds
for every offence: Provided that the person holding such pub-
lican’s licence shall not be liable to penalty or fine by reason of
his lamp having ceased to be lighted after eleven o’clock post meri-
dian,
If kept without approbation.

50. If any licensed person shall, without such approbation as hereinbefore provided, keep or have any 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 hath, or if any such tap or taproom, or tap and taproom, shall be in fact at any time not wholly managed and superintended by the approved person, then and in either of such cases, such licensed person shall forfeit and pay for every such offence a penalty of not less than Five Pounds nor more than Fifty Pounds, or upon a third or subsequent conviction shall, at the discretion of the convicting Justices, be deprived of his licence.

Or not so managed.

Penalty of the licensed person.

Third, or other offence, loss of licence.

Travellers and corpses not to be refused, under a penalty.

51. If any person, holding a publican's licence shall, without lawful excuse refuse to receive and provide for a traveller and his horse, or a traveller without a horse, or the horse of a traveller not becoming a guest at the house, or shall refuse to receive any corpse which may be brought to his public house for the purpose of a Coroner's Inquest being held thereon, such licensed person shall for every such offence forfeit and pay a penalty of not less than One Pound nor more than Twenty Pounds.

Strangers' goods not to be liable to the rent of licensed houses.

52. No bona fide property of any traveller, or inmate of any inn, or of any person who may have entrusted such traveller or inmate therewith, and being in or on such inn or any part thereof, or in or on any place used or occupied therewith shall be distrained or seized for or in respect of the rent of such inn or place, and if such property shall be so distrained or seized, it shall be lawful for any Special Magistrate or two Justices to inquire into any complaint made in respect of such seizure or distress in a summary manner, and to order such property to be restored, and to award reasonable costs, and such costs to levy by distress and sale of the goods or effects of the person or persons so distraining or seizing as aforesaid, but nothing herein contained shall extend to deprive licensed persons of their lien on any such property for their own lawful demands, provided they have previously delivered to the person indebted to them an account in writing of such demands, specifying by items the plain particulars thereof, as to dates, articles, quantities and sums, and such demand shall have arisen at the licensed premises, and in the ordinary course of the business thereof.

Justices may order restoration of goods.

And award costs.

Publicans' lien on the property for demands of the houses saved.

Debts for wine or spirit not recoverable, unless for 50s. at one time.

53. No person holding a publican's licence shall maintain an action for, or recover any debt or demand for or on account of liquor, unless such debt shall have been bona fide contracted at one time to the amount of Twenty Shillings or upwards, nor shall any item in any account for liquor be allowed where the quantity bona fide delivered at one time shall not amount to Twenty Shillings, notwithstanding such debt or demand or any item, may have been secured or agreed to be paid except a written order for the same shall be produced.

Although agreed to be paid, except under previous written orders.
produced and satisfactorily proved to have been freely given by the maker thereof before the liquor was delivered, or it be clearly shown that the debtor was then resident in the licensed house, or in the immediate neighborhood thereof, and one of his regular customers for malt liquors, or was a person then on a journey and calling at such house for the purpose of taking refreshment.

54. If any person holding a publican’s licence shall take or receive in payment, or as a pledge in barter or exchange, for any liquor or entertainment supplied in or from the licensed house, anything except coin commonly current, or the note or notes of some known bank or banker, or a cheque or order on some known bank or banker, or a money order or orders, the same being taken at the full nominal value thereof, he shall forfeit and pay for every such offence a penalty of not less than Ten Pounds nor more than Fifty Pounds; and in case of a third or subsequent conviction for a like offence such licensed person shall, by the convicting Special Magistrate or Justices be deprived of his licence: Provided always, that nothing herein contained shall prevent any publican from receiving in payment from known householders any live stock, wool, grain, or other farm produce, or garden produce.

55. No person whatever shall, after the passing of this Act, under any pretence, directly or indirectly, sell, barter, exchange, retail, or give or permit to be sold, bartered, exchanged, retailed, or given, any liquor to an aboriginal native of the said Province, under a penalty of not less than One Pound nor more than Ten Pounds for each and every such offence: Provided always, that nothing herein contained shall be taken to extend to any liquor administered as medicine by or under the directions of any duly qualified medical practitioner.

56. Every person licensed to deal in wines or spirits under this Act, who shall knowingly supply any sort of distilled liquor to any boy or girl under the age of twelve years to be drunk upon the premises, shall be liable to a penalty of not less than Twenty Shillings nor more than Five Pounds.

57. Any person holding a publican’s licence under the authority of this Act, or any other person responsible to him, who knowingly and wilfully shall supply or permit or suffer to be supplied, spirits or other intoxicating drink to any person already in a state of intoxication, shall be guilty of a misdemeanor, and shall, on conviction thereof, for the first offence, forfeit the sum of Ten Pounds; and for the second offence, the sum of Twenty Pounds; and any licensed person guilty of such offence, shall, upon the third conviction, forfeit his licence, and thereafter be incapable of holding a licence.

58. Every person holding a publican’s licence shall cause clauses Nos. 55, 56, and 57 to be printed in large, legible, permanent, and conspicuous characters, or fairly written, and affixed in one of the most public parts of his bar room, and also of every taproom belonging
Licensed Victuallers Act.—1863.

59. No person holding a publican’s licence, whose licensed house may be in Adelaide, or any other town within the said Province, shall directly or indirectly have or keep any retail store or shop on account of himself, or of any other person, which shall by door, window, or in any other manner internally communicate, or admit of a communication with the licensed house or any allowed tap or taproom detached therefrom, or which shall communicate or admit of communication with such licensed house, or tap, or tap room externally, save by a separate public outer door or entrance thereto, under a penalty of not more than Five Pounds for every day during which such store or shop shall be kept as aforesaid.

60. If any person holding a publican’s licence shall employ or permit any person who may have forfeited or been deprived of a licence under this or any of the Ordinances or Act hereby repealed, or who from misconduct or bad character may have been refused a certificate to entitle him to receive a licence, to be employed as an overseer, or as a manager or superintendent of the house, or tap, or taproom of such licensed person, or however called or designated to appear or act in that capacity, or in any way that may induce regular customers and the public generally to believe that he is an overseer or a manager, or a superintendent of the same, then and in such case the said licensed person shall forfeit and pay a penalty of not less than Two Pounds nor more than Twenty Pounds, and if subsequently convicted of retaining the same person in the like capacity, shall be deprived by the convicting Special Magistrate or Justices of his own licence.

61. If any person holding a publican’s licence shall admit any unlicensed person as or to be his partner, or directly or indirectly permit an unlicensed person to participate in the profits of his licensed house or tap or taproom, or directly or indirectly agree with any such unlicensed person to let him have any interest whatever in such house or tap or taproom, or the profits thereof, or shall remunerate or suffer him to be remunerated for, or shall in any manner agree that he shall be remunerated for any services, or on any account, in proportion to the profits of such house or tap and taproom, or of the quantity of liquors sold or retailed on or from the house or tap or taproom, or shall abandon the occupation of such licensed house as his place of residence, and permit any unauthorized person whatever to manage, superintendent, or conduct the business of such house, or whether residing in such house or not, shall permit any unlicensed or unauthorized person to appear to the public as, or to become virtually or in effect the keeper of the house, then, and in any or either of the said cases, upon proof of the
the fact to the satisfaction of any Special Magistrate or two Justices, the licence of the same house for the then current year shall become and be absolutely void, or at the discretion of the convicting Special Magistrate or Justices, such licensed person shall forfeit and pay for such offence a penalty of not less than Five Pounds nor more than One Hundred Pounds.

62. If any person holding a publican's licence shall not keep the outer doors of his licensed house, or of his separate tap or taproom, closed on the Lord's Day, except a side or private door, from one to three o'clock, and from eight to ten o'clock in the afternoon thereof, unless for the purpose of receiving travellers (not being persons residing in the town or places where such licensed premises are situate, or within one mile thereof), calling for refreshment on their journey, or remaining at the house during the day or the night thereof, he shall for every such offence forfeit and pay a fine of not less than Five Pounds nor more than Fifty Pounds.

63. If any person holding a publican's licence shall not clear his taproom, and close the outer door thereof, and every other outer door of his licensed premises at eleven o'clock of the evening of all working days, and keep the same closed until five o'clock in the morning, he shall for such offence forfeit and pay a penalty of not less than Two Pounds or more than Ten Pounds: Provided nevertheless, that it shall be lawful for any such licensed person to admit bona fide travellers or lodgers living or staying in his licensed house after such hour, by means of a side or private door; And provided also, that it shall be lawful for every licensed person to clear his taproom and close the door thereof, and every other outer door of his said premises at ten o'clock in the evening.

64. Any person holding a publican's licence may receive and entertain visitors at any ball or dinner party, or other special occasion, beyond the hours fixed by this Act, having first obtained the permission in writing in that behalf of any two or more Justices, or a Special Magistrate.

65. No holder of a storekeeper's licence or wine licence under this Act shall sell in his store, shop, or premises, or have the same open for the sale of liquor, as authorized by his licence, except between the hours of six in the morning and eleven at night on the six business days of the week, and not at any hour on Sunday; and if any such holder shall sell any such liquor at any other time than as aforesaid, or shall otherwise act contrary to this enactment, he shall be liable to a penalty not exceeding Two Pounds for every offence, and every separate sale or opening for sale shall be deemed a separate offence.

66. If any licensed person shall knowingly sell or dispose of, or offer for sale any liquor which shall be adulterated or mixed with any deleterious ingredients whatever, he shall forfeit and pay for every such offence, any sum not less than Ten Pounds nor more than
than Fifty Pounds; and in order to analyze such liquor, it shall be lawful for any Justice, on information on oath made to him, that any such liquor is adulterated as aforesaid, and on the deposit by the complainant of the sum of Two Pounds to defray the expenses of such analysis, to authorize the seizure of such suspected liquor and cause the same to be analyzed by some chemist or other competent person, and the expenses of such analysis shall be a portion of the costs which such Justice shall have power to order to be paid by any person convicted.

67. If any person holding a storekeeper's licence or wine licence shall, with intent to evade the provisions of this Act, take, or carry, or authorize, or employ, or permit, or suffer any person to take or carry any liquor out of, or from the house, shop, store, or premises of such licensed person for the purpose of being sold on his account or for his benefit, drunk or consumed in any other house, or in any tent, shed, or other premises of any kind whatever belonging to such licensed person, or hired, used, or occupied by him, such liquor shall be deemed and taken to have been drunk or consumed upon the premises of such licensed person, and he shall, for every such offence, forfeit a sum not exceeding Five Pounds.

68. Any two Justices, if any riot or tumult shall happen or be expected to take place, may order or direct that every person licensed under this Act and keeping any house situate within their respective jurisdictions where such riot or tumult shall happen or be expected to take place, shall close his house at any time which the said Justices shall order or direct, and any such person who shall keep open his house at or after any hour at which such Justices shall have so ordered or directed such house to be closed, shall forfeit and pay any sum of money not exceeding Ten Pounds.

69. It shall be lawful for any Justice, or Commissioner, Inspector, or Sub-Inspector of Police to demand entrance, from time to time, into any licensed house, or for any constable specially authorized in writing signed by any Commissioner, Inspector, or Sub-Inspector of Police, or by any Justice, in any particular instance, to demand entrance into any licensed house, or the appurtenances thereof, at any time by day or night, and if admittance be delayed for such time as shall make it appear that wilful delay was intended, the person so offending shall forfeit and pay any sum not exceeding Ten Pounds: Provided, that if such admittance be refused or wilfully delayed, it shall be lawful for such Justice, Inspector, Sub-Inspector, or constable as aforesaid, to break into and employ force to enter such licensed house as aforesaid.

70. Every person holding a licence under this Act shall, on demand at his licensed house or place wherein or thereat the privileges conferred by such licence shall be exercised, produce his licence to any Justice, or in default thereof shall be liable to a penalty not exceeding Ten Pounds.

71. If
71. If any person holding a publican’s licence shall in any respect commit a breach of or any offence against the condition of his recognizance to which no penalty is herein specifically attached, he shall for every such offence forfeit and pay the penalties hereinafter mentioned, that is to say, for the first offence not less than Five Shillings nor more than Five Pounds, for the second offence not less than Ten Shillings nor more than Ten Pounds, and for the third or subsequent offence not less than One Pound nor more than Twenty Pounds.

Part III.—And with regard to offences against this Act by persons not holding licences—Be it enacted:

72. If, after the passing of this Act, any unlicensed person shall directly or indirectly sell, barter, exchange, or retail, or permit to be sold, bartered, exchanged, or retailed within the said Province, less than five imperial gallons of liquor, he shall forfeit and pay for every such offence a sum of not less than Ten Pounds nor more than Fifty Pounds.

73. Nothing in this Act contained shall be construed to apply to the sale of ginger beer, or spruce beer, nor to the sale by any person—the occupier of a vineyard of not less than two acres—of wine of his own manufacture, from fruit grown in the Colony, in quantities of not less than one imperial gallon, upon the premises where such wine was manufactured, to be delivered at one and the same time, nor to any person selling any spirituous or distilled perfume bonâ fide as perfumery and not for the purpose of drinking, nor to any known and practising apothecaries, physicians, surgeons, chemists, or druggists prescribing or administering any liquor simply as medicine or for medicinal purposes.

74. If any person who shall have purchased any liquor from any person holding a storekeeper’s licence, or a wine licence, shall be found drinking such liquor, or opening any bottle containing such liquor, in or about the house, or on the premises described in the licence granted to such holder, he shall forfeit and pay a sum of not less than Twenty Shillings nor more than Five Pounds, and every person so offending may be apprehended without warrant by any constable or other peace officer.

75. Any Justice, Inspector, or Sub-Inspector of Police, constable, or other peace officer may seize and take away, or cause to be seized and taken away, all such liquor as he or they shall have reasonable cause to suspect to be carried about or exposed for sale in any street, road, or footpath, or in any booth, tent, store, or shed, or in any other place whatsoever, by any person not licensed or authorized to sell the same, and the vessels containing the same, and all the vessels and utensils used for drinking or measuring the same, and any cart, dray, or other carriage, and any horse or other animal employed in drawing or carrying the same, or used in the conveyance of such liquor as aforesaid; and any one or more Justice or Justices, on
on his or their own view, or on proof of such offence by oath, may convict any person so offending of carrying about for or exposing to sale such liquor without a licence, and on conviction such person shall forfeit and pay any sum not exceeding Fifty Pounds, or be imprisoned for any period not exceeding four months, and it shall be lawful for such Justice or Justices to adjudge such liquor, vessels, and utensils containing the same, and any cart, dray, or other carriage, horse, or other animal used in conveying the same to be forfeited, and to order and direct the same to be sold, and the proceeds thereof, after deducting the expenses of sale, shall be appropriated in the same manner as fines and penalties are hereinafter directed to be appropriated.

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

77. If the keeper or any other officer of or belonging to any building used as a gaol, house of correction, penitentiary, or watchhouse, shall sell, lend, or give away, or knowingly suffer any wine or spirituous liquors to be sold, used, lent, or given away, or to be brought into any such building, except the same shall have been prescribed in writing by the medical officer attending such gaol, house of correction, penitentiary, or watchhouse, as aforesaid, such keeper or officer shall forfeit and pay a penalty of not less than Five Pounds nor more than One Hundred Pounds.

78. If any person shall take, or endeavor to take or pass liquors into any such buildings as mentioned in the last preceding section, except the same shall have been prescribed as aforesaid, the keeper or any of his officers, or any constable, either alone, or with the assistance
assistance of any other person, is and are hereby authorized and
empowered immediately to apprehend and carry every such
offender before any Special Magistrate or two Justices, who
shall and may without any written information exhibited for that
purpose, hear and determine such offence in a summary way, and if
by the oath of one credible witness, or otherwise, such person or per-
sons shall be convicted of such offence, he shall forfeit and pay for
every such offence a penalty of not less than Ten Pounds nor more
than Fifty Pounds: Provided always, that nothing hereinbefore
contained shall extend to or affect any keeper or deputy keeper in
respect of liquors brought into any such building, and kept there
for the use and consumption of, and which shall in fact be used and
consumed by such keeper or deputy keeper at his own residence
within the said building, nor shall it be taken to extend to the in-
troduction of the ration of spirits issued for the use of the guard
stationed within such gaol, house of correction, penitentiary, or
watchhouse as aforesaid.

79. On information upon oath by any credible person, that he
knows, or suspects and believes that liquors are illegally kept or
disposed of in any such building, and shall set forth reasonable
grounds for such belief and suspicion, any Justice may personally
search for, and seize and detain, or by warrant authorize the
Commissioner or other officer of police to search for, and seize
and detain, all such liquors as shall be found therein, and to bring
the same before any Special Magistrate or two Justices, and if it shall
appear to him or them after due examination, that such liquors were
illegally taken or kept there for the purpose of being sold or disposed
of, then such Magistrate or Justices shall adjudicate the said liquors 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 such liquors shall be
restored to the owners thereof.

80. The keeper of every such building shall cause the last four
preceding sections to be printed or fairly written and affixed to one
of the most public parts of the inside of the said building, and keep
the same fair and legible under a penalty of Forty Shillings.

Part IV.—And with regard to legal procedure and evidence—Be it
enacted:

81. Every proceeding under this Act against licensed or unlicensed
persons for omissions, defaults, neglects, acts, or offences, to which
forfeitures or other penalties attach, shall be heard and determined
in a summary way by any Special Magistrate or two Justices, under
the provisions of an Ordinance of the Governor and Legislative
Council No. 6 of 1850, “To facilitate the performance of the duties
of Justices of the Peace out of Session with respect to summary
convictions and orders,” or of any Act hereafter to be in force
relating to the duties of Justices of the Peace with respect to
summary
PART III.

Unless legally rebutted, notices appearing in Gazette to be conclusive evidence.

Production only of original recognizance or certified copy of it evidence of the same having been entered in it.

Unless rebutted.

In proceedings for retailing illegally, the defendant to be deemed unlicensed, unless satisfactory proof to the contrary.

Unlicensed person exhibiting sign, &c., prima facie evidence of sale of liquor;

liquor seized for being carried about, burden of proof on defendant.

Evidence of sale.

summary convictions and orders; and all convictions and orders may be enforced as in the said Ordinance is mentioned.

82. For the purposes of this Act every public notice appearing in the Government Gazette, and having the signature of any public officer thereto affixed, shall be deemed and taken to be in all judicial proceedings whatever, without other proof on production only of such Gazette, conclusive evidence (unless rebutted by a legally proved negative) of recognizances having been entered into by, and of licences having been issued to, the persons named in any official notification inserted in such Gazette as having had licences issued to him or them, and that the said recognizances and licences were in the forms prescribed by this Act.

83. If any original recognizance entered into under this Act, and filed by the Clerk to the Justices, shall, at any time be called for, or be deemed necessary by any Court, the production only of such recognizance by such clerk, or a copy thereof certified by him as a true copy, and transmitted to the Clerk of such Court, and the production thereof accordingly by the person in possession thereof shall, without proof as to where the original or certified copy came from, or any other proof whatever, be deemed conclusive evidence, unless rebutted as aforesaid, of the recognizance having been duly entered into by the several persons named therein.

84. In all proceedings against any person for retailing or permitting liquors to be retailed without a licence, such person shall for all purposes connected with those proceedings be deemed unlicensed, unless he shall at the hearing of the case produce his licence to the Special Magistrate or Justices, or furnish other satisfactory proof of his being licensed.

85. The fact of any person who does not hold a licence under this Act, keeping up any sign, writing, or other mark on or near to his house or premises, or having such house fitted up with a bar or other place, containing bottles or casks openly displayed so as to imply or give reasonable cause to believe that such house or premises is or are licensed for the sale of any liquor, or that such liquor is sold or served therein, or for there being found in such house or premises a quantity of liquor more than is reasonably required for the use of the persons residing therein, shall be deemed prima facie evidence of the unlawful sale of liquor by such person; and in all cases where liquor shall be carried about from one place to another as mentioned in clause 76, the burden of proving that such liquor was not so carried or exposed for sale, shall be cast on the party or parties carrying or exposing the same.

86. The delivery of any liquor either by the owner or occupier, or his or her servant, or other person in the house or place, shall be deemed and taken to be good prima facie evidence of money or other consideration being given for the same, so as to support a conviction, unless
un]les proof shall be made to the contrary to the satisfaction of the
Special Magistrate or Justices hearing the case.

87. If any unlicensed person, being a dealer in other things by retail, shall give away or deliver any liquor to any person coming or sending to his house for other things, under the pretence of such person being a customer, or under any pretence whatever, or shall sell or deliver any such liquor in a quantity equal to or more than five gallons, with an understanding that part thereof shall be returned, and the quantity so sold or delivered, after deducting the part returned or to be returned, shall then be under five gallons, such unlicensed person shall be deemed a retailer of the liquor so given away or sold, or delivered, and shall be liable as for selling the same by retail without a licence.

88. It shall be lawful for the Special Magistrate or Justices sitting at or on the hearing of any information or complaint under this Act for retailing without a licence, to determine the fact of retailing according to the circumstances of or attending each and every particular case, without direct evidence of money or value having been given for the liquor alleged to have been sold or retailed, or of any particular person having himself so sold or retailed.

89. No conviction shall be had under this Act for any act happening more than three calendar months before the time of filing the information or complaint.

90. There shall be an appeal from any conviction by any Special Magistrate or Justices for any offence against this Act, or from any order declaring the forfeit of any licence as hereinbefore mentioned, or from any order dismissing any information or complaint, or from any order for payment of costs or otherwise, which appeal shall be to the Local Court of Adelaide of Full Jurisdiction only, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance, No. 6 of 1850, for appeals to Local Courts; but the Local Court of Adelaide aforesaid may make such order as to payment of the costs of appeal as it shall think fit, although such costs may exceed Ten Pounds: Provided always, that in all cases of appeal against any order or conviction of any Special Magistrate or Justices declaring any licence granted under this Act to be forfeited, the appellant shall, within four days of the date of such order or conviction, give to the Clerk of the Court in which the case was heard, or if there should be no Clerk, then to the Special Magistrate or Justices adjudicating, notice in writing stating his intention so to appeal, which notice shall be in addition to the notices required to be given by the said Act No. 6 of 1850.

91. The Local Court of Adelaide, upon the hearing of any appeal, may state one or more special case or cases for the opinion of the Supreme Court, and the Supreme Court shall hear and decide such special case or cases according to the practice of the Supreme Court.
on special cases, and the Supreme Court shall make order as to costs of any special case as to the said Court shall appear just; and any two or more Justices, or the Local Court of Adelaide, shall make an order in respect to the matters referred to the Supreme Court, in conformity with the certificate of the said Supreme Court, or of any Judge thereof; which order of the Justices or Local Court shall be expressed in manner provided for the enforcement of orders of Justices under the said Ordinance No. 6 of 1850; and, save as herein provided, no order or proceeding of any Special Magistrate or Justices, or of any Local Court, made under the authority of this Act, shall be appealed against, or removed by certiorari, or otherwise, into the Supreme Court of the said Province.

Part V.—And with regard to the distribution and application of penalties and moneys received for licences—Be it enacted:

92. One half of every pecuniary penalty imposed by this Act shall (except where otherwise directed) be paid to the use of Her Majesty, and the other moiety to the use of the complainant or informant, over and above any costs or charges to which he may be entitled: Provided always, that all such fines, penalties, and forfeitures whatever may be remitted wholly or in part, and either with or without conditions, by the Governor.

93. All moneys that may be received for licences or for penalties, excepting moieties of the same assigned to informers by this Act, or as fees under and by virtue of this Act, shall be, and are hereby reserved to Her Majesty, Her heirs and successors, for the public uses of the said Province, and the support of the Government hereof.

Part VI.—And with regard to protection to officers and general matters—Be it enacted:

94. It shall and may be lawful for the Governor to nominate and appoint one or more person or persons, at any distant place or places within the said Province, to issue licences for selling and retailing liquors under the provisions of this Act, and such licences so issued by such person or persons shall be valid and effectual, to all intents and purposes, as if the same were issued in the manner hereinafore specified for that purpose: Provided always, that every person to whom such licences shall be so granted as aforesaid, shall, in all respects whatsoever, comply with and be subject and liable to the rules, regulations, penalties, and disabilities, and shall do and perform all things whatsoever, which persons licensed under the provisions of this Act are required to do, or to which such persons are made subject.

95. It shall be lawful for the Governor, upon the recommendation of the Marine Board (such recommendation to be signed by the President and Secretary of the said Board), to make such regulations, respecting the lamp required to be kept by any licensed publican residing near to the sea coast, as the said Marine Board may recommend;
Licensed Victuallers Act.—1863.

recommend; and such regulations shall be published in the Gazette, and being so published, shall free and discharge any licensed person acting under the authority thereof, from any penalties to which he might otherwise be liable in respect of such lamp.

96. All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be commenced within three calendar months after the Act was committed, and not otherwise; and notice in writing of such action, and the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action; and the defendant in any such action may plead the general issue and give this Act and the special matter in evidence at any trial; and the plaintiff shall not recover in such action if tender of sufficient amends shall be made before action brought, or if after action brought the defendant shall pay into Court sufficient amends, but in such last-named case the plaintiff shall recover his costs of suit up to the time of payment into Court, and if a verdict shall pass for the defendant, or the plaintiff become nonsuit or discontinue, the defendant shall recover full costs as between attorney and client, and have his remedy for the same in the usual way.

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

D. DALY, Governor.

SCHEDULE
SCHEDULE A.

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 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 in and for the District of 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 and which I intend to keep as an inn or public house.

I beg to propose 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.

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.

A.B.

Form of Housekeepers' 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
M.N., of

[Here insert place of residence, and add to 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
S.T., of

[Here insert place of residence, and add to it trade or calling.]

Form
Licensed Victuallers Act.—1863.

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

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

Form of Housekeepers’ Certificate, to be added to the above.

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 name and reputation.

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

SCHEDULE B.

Form of Recognizance to be entered into by Persons holding Publicans’ or Storekeepers’ Licences and Sureties.

Be it remembered, that on this day of 18 A.B. [here insert residence, and trade or calling], C.D. [here insert residence and trade or calling] and E.F. [here insert residence, and trade or calling], came personally before us, G.H. and I.J., Esquires, two of Her Majesty’s Justices of the Peace in and for the Province of South Australia, and acknowledged themselves to owe to our Sovereign Lady the Queen as follows, that is to say—the said A.B. the sum of One Hundred Pounds, and the said C.D. and E.F., the sum of Fifty Pounds each, of lawful money of Great Britain, to be levied on their goods and chattels, lands and tenements, to the use of our said Lady the Queen, Her heirs and successors, by way of recognizance, in case default shall be made in any or either of the conditions of such recognizance, the conditions of which recognizance are, that if the said A.B., who shall receive a licence to keep [an inn or public house or store] in street, at by the name or sign of and to sell and retail liquor therein to the 25th day of March, in the year next ensuing inclusive, and do and shall obey, and keep every law, regulation, and provision contained in the Licensed Victuallers’ Act, 1863, and sell none other than good and wholesome liquors, without fraudulently diluting or adulterating the same, and not introduce or permit bull baiting, dog or cock fighting, gambling, or any other disorder or disturbance in or on any part of his house or premises, or get drunk in his said house, or knowingly permit any other person to get drunk therein, or to remain when drunk in or on the same, nor suffer any drunken or disorderly person to enter the same without immediately removing him therefrom, nor suffer any riot, fighting, affray, tumult, nuisance, annoyance, or disturbance to take place, or continue in or on the said house or premises, but on the contrary do and shall manage and conduct such house and premises and the business thereof peaceably and quietly, and maintain and preserve good order and rule therein on all occasions, then such recognizance shall be void, otherwise the same shall continue in full force.

Taken and acknowledged before us,

G.H.
I.J.

SCHEDULE C.

Form of Justices’ Certificate authorizing Licence to be issued (to be modified according to the nature of the Licence).

We, A.B. and C.D., Esquires, two of Her Majesty’s Justices of the Peace, in and for the Province of South Australia, do hereby certify that, at a general meeting of such Justices held at in the said Province, on the day of for the consideration of applications for certificates of approval of
Licensed Victuallers Act.—1863.

of persons receiving licences under the Licensed Victuallers' Act, 1863, E.F. [here insert residence, trade or calling] applied for a certificate in his favor, and that the Justices assembled at such meeting were satisfied that the said E.F. had complied with the requisites in that behalf, as in such Act mentioned: And we, the said A.B. and C.D. do therefore hereby authorize the Treasurer to issue a [Publican's, Storekeeper's, or Wine Licence, as the case may be], to him for [here describe the premises for which the licence is to be granted, if the licence is a Publican's, giving also the name of the house—if a Storekeeper's Licence, describing the premises, and stating whether shop, store, rooms, or otherwise], from the day on which the licence money shall be paid to the said Treasurer to the 25th day of March, in the year 18... inclusive.

Given under our hands at this day of one thousand eight hundred and

A.B. C.D.

To be added when necessary as to premises in at the foot of the foregoing certificate, adapting the language to the circumstances:

Memorandum—That the Justices assembled as above, approved of a tap or tap-room [or, &c., as the case may be] being kept by the said [applicant for licence] and of G.H. having the personal management and superintendence thereof.

A.B. C.D.

SCHEDULE D.

Form of a Publican's Licence.

Whereas A.B., of... hath deposited at my office a certificate from two of the Justices assembled at their meeting, held at... on the day of one thousand eight hundred and authorizing the issue to the said A.B. of a publican's licence, for the house called or known as situate at... in the Province of South Australia: And whereas the said A.B. hath paid into my office the sum of... sterling as the fee on such licence, now I, the undersigned, being the Treasurer of South Australia, do hereby license the said A.B. to sell liquor in any quantity in such house and the appurtenances thereunto belonging, but not elsewhere, and this licence shall commence upon the day of the date hereof, and continue in force until the twenty-fifth day of March in the year now next ensuing inclusive, provided it be not forfeited in the meantime.

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

C.D., Treasurer.

SCHEDULE E.

Form of a Storekeeper's Licence.

Whereas A.B., of... hath deposited in my office a certificate from two of the Justices assembled at their meeting, held at... on the day of one thousand eight hundred and authorizing the issue to the said A.B., of a storekeeper's licence for the shop [store, or rooms] of the said A.B., situate at...: And whereas the said A.B. hath paid into my office the sum of Ten Pounds sterling as fee on such licence, now I the undersigned, being the Treasurer of South Australia, do hereby license the said A.B. to sell and dispose of liquor in quantities of not less than one gallon of spirits or one dozen bottles of wine or other fermented liquor on the said premises, so that such liquor shall not be drunk in or about the house or on the premises above described; but no liquor shall be sold or disposed of earlier than six o'clock in the morning or later than eleven o'clock at night; and this licence shall commence on the day of the date hereof, and continue in force until the twenty-fifth day of March in the year now next ensuing inclusive, provided it be not forfeited in the meantime.

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

C.D., Treasurer.

SCHEDULE
SCHEDULE F.

Form of Wine Licence.

Whereas A.B., of , hath paid into my office the sum of Four Pounds sterling for a wine licence, now I, the undersigned, being the Treasurer of South Australia, do hereby licence the said A.B. to sell on [describe the premises] mead, wine, cider, and perry, produced in the Colony, by retail and in reputed quart or pint bottles only, and not to be drunk or consumed on the said premises; but no such mead, wine, cider, or perry shall be sold or disposed of earlier than six o'clock in the morning nor later than eleven o'clock at night; and this licence shall commence from the day of the date hereof, and continue in force until the twenty-fifth day of March, in the year now next ensuing inclusive, provided it be not forfeited in the mean time.

Given under my hand this eight hundred and sixty-three.

C.D., Treasurer.

SCHEDULE G.

Form of Notice of intention to apply for transfer of Licence from one Person to another.

I, A.B., the holder of [state the nature of licence] licence for the house and premises known as [or the shop, store, or rooms, as the case may be] situated at , do hereby give notice that it is my intention to apply to the Justices sitting at their quarterly meeting, to be held at Adelaide on the day of [next or instant] to transfer the said licence to C.D., of [state present occupation if any of proposed transferee].

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

SCHEDULE H.

Form of Endorsement of a transfer from one Person to another.

We, the undersigned, two of the Justices sitting at the quarterly meeting held at Adelaide, on the day of one thousand eight hundred and , for the purpose of transferring licences, do hereby, upon the application of the within named A.B., the requisite notices for such transfer having been proved before us to have been duly given, transfer the rights and privileges of the within licence to C.D. for the residue of the term for which the same has now to run.

Given under our hands at Adelaide the day of , one thousand eight hundred and A.B. C.D.

SCHEDULE I.

Form of Notice of application to remove Licence to other Premises.

I, A.B., the holder of a [state the nature of the licence] licence for the house and premises known as [or the shop, store, or rooms, as the case may be] situated , do hereby give notice that it is my intention to apply to the Justices sitting at the quarterly meeting to be held at on , to remove the licence to [describe the premises to which it is proposed to remove the business].

Dated this day of , one thousand eight hundred and A.B.
SCHEDULE J.

Form of Endorsement of a removal from one House to another.

We, the undersigned, being two of the Justices present at the quarterly meeting held at Adelaide on the day of , one thousand eight hundred and , and the requisite notice of application for removal having been served before us to have been duly given, do hereby declare that the within licence shall henceforth cease to apply to the house and premises therein described, and shall henceforth apply to the house and premises known as the and situate at [describe in the same manner as in the original licence].

C.D.
E.F.

SCHEDULE K.

South Australia } Be it remembered that A.B. of , being the holder to wit } of a licence, is this day convicted before us, the undersigned, two of Her Majesty's Justices of the Peace for the said Province (or me, the undersigned, a Special Magistrate of the said Province), for that the said A.B. [here set out the offence of which he has been convicted, and if the offence is one to which forfeiture is not specially attached, add]; and it having been proved before us (or me) that the said A.B. has been twice before convicted within a period of three calendar months of offences against the Licensed Victuallers Act, 1863: Now we (or I) do therefore order and adjudge that the said licence of the said A.B. shall be, and the same is hereby forfeited [if costs are given, add the proviso with regard to costs contained in Schedule 12 of the Ordinance No. 6 of 1850]. Given under hand this day of , one thousand eight hundred and

C.D.
E.F.

SCHEDULE L.

Form of Certificate that Licence has been destroyed.

Whereas A.B., of , has proved to our satisfaction that he was the holder of a licence, and that such licence has been lost [or destroyed, as the case may be]; now we, two of the Justices sitting at the quarterly meeting held at Adelaide on the day of instant, do hereby certify that the Justices sitting at the annual [or quarterly, as the case may be] meeting on the day of , one thousand eight hundred and , did grant unto the said A.B. the certificate required by law prior to his obtaining such licence.

Given under our hands this day of , one thousand eight hundred and

C.D.
E.F.