



ANNO PRIMO

VICTORIÆ REGINÆ.

No. 4.

AN ACT to impose certain Duties upon Wines, Spirits, and Tobacco; to provide for the Warehousing, and to prevent the clandestine removal and importation of the same.

WHEREAS it is expedient that certain rates and duties should be imposed and levied upon wines, spirituous liquors, and tobacco, either imported into or made within this Province: BE IT THEREFORE ENACTED, by His Excellency JOHN HINDMARSH, Knight of the Royal Hanoverian Guelphic Order, Captain in the Royal Navy, Governor and Commander-in-Chief of Her Majesty's Province of South Australia by and with the advice of the Council thereof, as follows:—

THAT throughout this Act every word in the singular number shall mean equally the plural, and every word importing the masculine gender shall extend equally to the feminine; the verb "remove" in its several tenses shall be construed to mean as well the verb "convey" in its several tenses; the word "vehicle" shall include boats or any other means of carriage either by land or water; the word "vessels" shall include every kind of package used to contain liquids; the word "liquors" shall include every kind of wines and spirits; the word "tobacco" shall include cigars and cheroots (excepting when the

Definition o

the duties payable on the same are mentioned); the term "Governor" shall be deemed to mean the officer for the time being lawfully administering the Government; and the terms "Collector of Customs" shall be deemed to mean any officer of Customs properly authorised and appointed; and that all strong waters and cordials of every denomination shall be deemed to be "spirits" within the meaning of this Act.

II. THAT from and after the passing of this Act there shall be levied, collected, and paid upon, and in respect of, the several articles following, the rates and duties hereinafter mentioned:—that is to say,

al Spirits.

First—On spirits made or distilled from grain in this Province, a duty of four shillings for each and every gallon of such spirits.

h Plantation and British

Second—On spirits imported into this Province (the produce and manufacture of the United Kingdom or of any of the British Colonies or possessions), a duty of eight shillings for each and every gallon of such spirits.

ly, Hollands,

Third—On all other spirits imported into this Province, a duty of twelve shillings for each and every gallon of such spirits.

ufactured co.

Fourth—On all manufactured tobacco imported into this Province, a duty of one shilling and sixpence for every pound weight thereof.

r Imported co.

Fifth—On all other imported tobacco (tobacco stalks excepted), a duty of one shilling for every pound weight thereof.

ign Wine.

Sixth—On all wine imported into this Province, not being the produce or manufacture of the United Kingdom, or of any of the British possessions, a duty in the proportion of fifteen pounds upon every one hundred pounds in value of the same.

rs, &c.

Seventh—On all cigars and cheroots imported into this Province, a duty of five shillings for each and every pound weight thereof.

les on Spirits, levied.

III. THAT in charging and levying the duties aforesaid on spirits, all such spirits shall be taken and deemed to be of the strength of which the hydrometer called Sykes's hydrometer upon trial by the Collector of Customs, or other officer who may hereafter be duly appointed for that purpose, shall denote such spirits to be, and that an additional duty in respect of all spirits exceeding hydrometer proof shall be charged and levied in the manner following (that is to say):— One hundred gallons of spirits five per centum over proof, according to Sykes's hydrometer, shall be reckoned as equal to one hundred and five gallons of spirits of hydrometer proof, and charged with duty accordingly;

accordingly; and so in proportion according to the quantity and the degree of strength overproof, adding to each quantity of spirits exceeding hydrometer proof the number of gallons to which the excess of their strength overproof is computed as above to be equal, and charging on the amount the rate of duty corresponding with the description of the spirits.

IV. THAT upon the importation of wines into the said Province the value thereof shall be ascertained by the statement of the importer or proprietor of the same in writing under his hand, and shall be signed in the presence of the Collector of Customs: PROVIDED that if upon examination of such wines by the Collector of Customs it shall appear to him that the same are not valued according to the true price and value thereof, and according to the true intent and meaning of this Act, then, and in such case, the importer or proprietor shall be required to declare before the Collector of Customs what is the invoice price of such wines, and that he truly believes such invoice price is the current value of the wines from whence the same were imported; and such invoice price, with the addition of ten pounds per centum thereon, shall be deemed to be the value of the articles in lieu of the value so stated by the importer or proprietor; and upon which the duties due thereon shall be charged and paid: PROVIDED ALSO, that if it shall appear to the Collector of Customs that such wines have been invoiced below the real and true value thereof at the place from whence the same were imported; or if the invoice price is not known, the wines shall, in such case, be re-examined by two competent persons to be nominated and appointed by the Governor; and such persons shall declare before the Collector what is the true and real value of such wines at the port of importation; and the value so declared by such persons shall be deemed to be the true and real value of such articles, and upon which the duties due thereon shall be charged and paid.

Duties on
how levied

V. THAT if the importer or proprietor of such wines shall refuse to pay the duties imposed thereon, it shall and may be lawful for the Collector of Customs, and he is hereby required to take and secure the same with their vessels, and to cause the same to be publicly sold within the space of twenty days at the most after such refusal made, and at such time and place as such Collector shall, by four or more days' public notice, appoint for that purpose, which wines shall be sold to the best bidder; and the money arising from the sale thereof shall be applied, in the first place, in the payment of the said duties, together with the charges that shall have been occasioned by the said sale, and the overplus, if any, shall be paid to such importer or proprietor, or any other person authorised to receive the same.

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duties not

VI. AND WHEREAS it is expedient to make regulations for the warehousing of wines, spirits, and tobacco, which may be legally imported

s, &c., may be used.

ported into and for spirits made within the Province, and to provide for the appointing of proper warehouses, and for the lodging and securing the same therein: BE IT THEREFORE ENACTED, that it shall be lawful for the Governor by public notice to appoint such warehouses as shall be approved of by him for the purposes aforesaid, and by like notice to revoke any such appointment: And that it shall be lawful for the importer or proprietor of any liquors or tobacco to warehouse the same in the warehouses so appointed without payment of any duty on the first entrance thereof subject to the conditions hereinafter contained, and to any other rules, regulations, and conditions which may hereafter be provided by any Act of this Province, or made and approved by any public notice issued in such behalf by the Governor for the time being.

to be given on issuing.

VII. THAT upon the entry of any liquors or tobacco to be warehoused, the importer or proprietor of the same instead of paying down the duties thereon shall give bond with two sufficient sureties, to be approved of by the Collector of Customs, in treble the amount of duties payable on such liquors or tobacco, with condition for the safe depositing of the same in the warehouse mentioned in such entry, and for the payment of all duties and warehouse rent due upon the same, or for the exportation thereof, according to the first account taken of such liquors or tobacco upon the landing or (in case of spirits distilled within the Province) warehousing of the same, and without any abatement on account of deficiency, except as by this Act is otherwise provided; and with further condition that no part thereof shall be taken out of such warehouse until cleared from thence upon due entry and payment of duty and warehouse rent, or upon due entry for exportation: And if after such bond shall have been given, the liquors or tobacco or any part thereof shall be sold or disposed of, so that the original bonder shall be no longer interested in, or have control over, the same, it shall be lawful for the Collector of Customs to admit fresh security to be given by the bond of the new proprietor or other persons having control over such liquors or tobacco, with his sufficient sureties, and to cancel the bond given by the original bonder of such liquors or tobacco, or to exonerate him to the extent of the fresh security so given.

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VIII. AND WHEREAS there are at present no buildings within this Province adapted for the warehousing of spirits and tobacco, and there is reason to apprehend that, in addition to their liability to fluctuation of quantity by the effect of the atmosphere or other natural causes, the same may be wasted, spoiled, or embezzled without any wilful or other misconduct of the person having the custody of any warehouse that may be appointed as hereinbefore is provided for: BE IT THEREFORE ENACTED, that, until the Governor shall by public notice declare any warehouse to be a warehouse of security, it shall be

ts, &c., may be aged upon issue Warehouse.

be lawful for the Collector of Customs or for the importer or proprietor of any such liquors to require the same to be regauged, revalued, or reweighed, at the time when the same shall be respectively delivered from the said warehouse, and the duties respectively payable thereon shall be paid according to the quantity ascertained upon such re-measurement; unless it shall be mutually agreed by and between the said parties that the said duties shall be paid on the quantities originally warehoused: And in case it shall be made to appear to the satisfaction of the Collector of Customs that any such liquors or tobacco have been spoiled by means of the insecurity of any warehouse, it shall be lawful for the Governor to remit either wholly or in part the duties that would have been payable on the same; or, in case the same were embezzled, to remit such duties altogether: And if any such waste, spoil, destruction, or embezzlement, in any such warehouse shall happen through the wilful misconduct of any officer or other person having charge of any such warehouse, he shall, upon conviction, be deemed guilty of a misdemeanor.

Officers guilty
of
misconduct
guilty of a
misdemeanor.

IX. THAT upon the entry outwards of any liquors or tobacco, to be exported from the warehouse, the persons entering the same shall give security, by bond, in treble the amount of duties of importation on the quantity of such liquors or tobacco, with two sufficient sureties, to be approved as aforesaid, that the same shall be landed at the place for which they are entered outwards, or to be otherwise accounted for to the satisfaction of the Collector of Customs.

Bond to be
duly export

X. THAT if any liquors or tobacco which have been entered to be warehoused shall not be duly deposited in the warehouse, or shall afterwards be taken out of the warehouse without due entry and clearance, or if after having been entered and cleared for exportation the same shall not be duly carried and shipped, or shall afterwards be relanded except with the permission of the Collector of Customs, such liquors or tobacco shall be forfeited.

Spirits, &c.,
warehoused
forfeited.

XI. THAT upon the entry and landing of any liquors or tobacco to be warehoused the Collector of Customs shall take a particular account of the same, and shall mark the contents on each vessel or package, and shall enter the same in a book to be kept for that purpose; and no liquors or tobacco which have been so warehoused shall be taken or delivered from the warehouse except upon due entry and under care of the Collector of Customs for exportation, or upon due entry and payment of the duty for home use: And if any importer or proprietor of any such liquors or tobacco or any other person shall, by any contrivance, fraudulently open the warehouse, or gain access to the said liquors or tobacco, except in the presence of the Collector of Customs, such importer, proprietor, or other person, shall be deemed guilty of a misdemeanor.

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XII. THAT

may be

XII. THAT it shall be lawful for the Collector of Customs to permit moderate samples to be taken of any liquors or tobacco so warehoused without payment of duty. .

&c., may be
used in mer-
stores.

XIII. THAT until the Governor shall, by public notice, declare any warehouse to be a warehouse of security it shall be lawful for the Governor, upon the request of any importer or proprietor of any liquors or tobacco, to authorise, under such regulations and restrictions as he shall think fit, such importer or proprietor (not being a retail dealer in the same) to warehouse such liquors or tobacco in the private store or warehouse of such importer or proprietor; and, in that case, such private store or warehouse shall be deemed to be a public warehouse as herein before is provided for; and such importer or proprietor shall, upon entry for warehousing therein any such liquors or tobacco, give a like bond as in the case of warehousing in a public warehouse, and be subject to the conditions and regulations as are in such case herein before provided (excepting those relating to the opening and access before mentioned): PROVIDED ALWAYS, that no abatement in the amount of duties payable on such liquors or tobacco shall be allowed on account of deficiency owing to either waste, spoil, or embezzlement, but that the same shall be paid according to the account taken upon the entry of such liquors or tobacco.

to be removed
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XIV. THAT upon the Governor by public notice declaring any warehouse to be a warehouse of security, no liquors or tobacco shall remain thereafter warehoused in any private store or warehouse (unless such warehouse of security shall be insufficient for the warehousing of all liquors or tobacco required to be warehoused, and in such case special permission to the contrary must be given); but all such liquors or tobacco shall, by the several importers or proprietors, be deposited in such warehouse of security within one month after the publication of such notice, under a penalty of Fifty pounds; And upon such last-mentioned warehouse being approved no greater abatement in the amount of duties payable upon any liquors or tobacco warehoused therein shall be allowed on account of any deficiency in quantity, either from waste or destruction, than shall be stated in a scale or schedule to be in that behalf framed and publicly notified by the Governor at the time of appointing such warehouse of security.

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XV. AND WHEREAS it is expedient that it should be known where any considerable quantities of any liquors or tobacco are, at the time of the passing of this Act, deposited within this Province, in order that any clandestine importation of liquors or tobacco hereafter may be the more readily discovered: BE IT THEREFORE ENACTED, that on or before the tenth day of May next ensuing, every person within this

this Province having a greater quantity of spirits than ten gallons, or of wine than twenty gallons, or of tobacco than one hundred pounds weight, or of cigars or cheroots than five pounds weight, shall deliver to the Colonial Secretary a true and particular account, in writing under his hand, of all and singular the quantities of the same liquors or tobacco, with a particular description of the same, and of the vessels or packages containing the same, which he shall then have in his possession or custody, and the place or places where the same are deposited, under a penalty of Fifty pounds; and that it shall be lawful for the Collector of Customs, or, in his absence, any Justice of the Peace in such behalf authorised by the Governor to inspect the liquors or tobacco set forth in such account and for such purpose to enter the place or places where the same are deposited; and if any person having the possession or custody of such liquors or tobacco shall hinder or prevent such Collector or Justice from inspecting the same, or if it shall appear upon such inspection that a manifestly false account of such liquors or tobacco has been delivered to the Colonial Secretary, every person so hindering or preventing or delivering such false account shall forfeit a penalty of Fifty pounds.

XVI. AND WHEREAS it is expedient to restrain illicit dealing in and clandestine importation of such wines and spirituous liquors: BE IT THEREFORE ENACTED, that if any person shall, after the first day of May next, remove or cause to be removed, or knowingly assist in the removal of any wine in any quantity exceeding three gallons, or any spirits in any quantity exceeding one gallon, without having first obtained a permit for such removal, such wines or spirits and vessels containing the same may be seized, together with the vehicle containing the same, by any Constable, Officer of Customs, or Justice of the Peace, and such person shall forfeit a penalty of not less than One pound nor more than Fifty pounds: PROVIDED that a removal, authorised by the Collector of Customs, in writing, of such wine or spirits from any ship or vessel to any lawful landing-place, between the hours of nine and four in the day time, or from one part of the same premises to another, shall not be within the meaning of this section.

Permits for removal of to be obtained same may

XVII. THAT any person having such permit and neglecting to produce the same after demand thereof to any such Constable, Officer, or Justice, shall forfeit a penalty of not less than Five pounds nor more than Fifty pounds; and such wines or spirits, with their vessels, together with the vehicle conveying the same, may be seized by such Constable, Officer, or Justice.

Refusal to permit seizures to a p

XVIII. THAT upon information on oath being made before any Justice of the Peace by any Constable or credible person that he verily believes that any wines or spirits have been removed contrary to

Premises searched &c., illegally removed.

to the provisions of this Act to any particular house or other place, it shall be lawful for such Justice, in his discretion, to grant his warrant to any Constable to enter into and upon such house or other place, and proceed to search the same; and such Constable may break open the door of such house or other place, if not opened within a reasonable time after demand made, and seize all such wines or spirits as he shall there find, together with the vessels containing the same; and if it shall appear upon the hearing before a Magistrate or Justices as hereinafter is provided for that any wines or spirits seized under this Act have not been removed contrary to the provisions of this Act, the same shall be forthwith restored to the person from whom the same were seized.

XIX. THAT every Constable or other Officer making any such seizure as aforesaid, shall, within twenty-four hours after such seizure, take out a summons against the party in whose possession or custody the wines or spirits were at the time of such seizure, to appear before any Resident Magistrate or two Justices, and such Magistrate or Justices, upon proof of the facts, may adjudge such wines or spirits and vessels containing the same, and also (in his or their discretion) the vehicles used in removing the same, to be condemned; and thereupon the articles so condemned shall be sold by public auction, and of the proceeds of such sale (after deducting incidental expenses to be approved of by such Magistrate or Justices), one moiety shall be distributed to the use of Her Majesty and the other moiety to the informer and other persons seizing the same, at the discretion of such Magistrate or Justices, and in such proportions as he or they shall think fit; And that in all proceedings under this Act, before such Magistrate or Justices, the fact of the omission to produce a permit as aforesaid shall be received as evidence of no permit having been issued, unless proof to the contrary shall be adduced by the defendant at the hearing of the case before such Magistrate or Justices, and such seizure (subject to the proviso last mentioned) shall, in every action for such seizure, be held justifiable; and the plaintiff, in any such action, shall not recover either costs or damages.

XX. THAT the sum of sixpence shall be paid for every such permit as aforesaid, and that the same shall be in the form contained in the Schedule annexed to this Act, and shall be granted by the Collector of Customs, or Colonial Treasurer, or other Officer duly appointed for such purpose by the Governor; and in such permit shall be set forth truly in words at length the name of the party applying for the same, the particular places from and to which respectively the liquors therein referred to are to be removed, and the particular kind and quantity of such liquors, and the kind and number of packages or vessels in which the same are contained (provided that no quantity of liquors exceeding one hundred and fifty gallons shall be included in any

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any one permit); and such permit shall only be in force and valid between the hours of nine and four of the same day it is dated.

XXI. THAT if any of such liquors shall not be delivered within the time limited by any such permit (except in case of unavoidable cause or accident to be proved by the party removing the same), or shall not be removed from and delivered at or to the place or places respectively specified in such permit, such liquors shall be deemed and taken to have been removed without a permit and be forfeited accordingly, and the party removing or knowingly assisting in removing the same be subject to a penalty of not less than Five pounds nor more than Fifty pounds: And if any deceit shall be practised in the obtaining of any permit, or if any unauthorised alteration shall be made in any part thereof, such permit shall be absolutely void.

Permit to be
during the time
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XXII. THAT all offences against this Act shall, upon information in that behalf exhibited, be in a summary way heard and determined, and all penalties and forfeitures in respect of the same be awarded and imposed, by any Resident Magistrate or two Justices: PROVIDED that every such information shall be exhibited, or other prosecution under this Act be commenced, within three calendar months next after the time of the offence committed; AND ALSO, that no adjudication by any such Magistrate or Justices shall be enforced or carried into effect until after the expiration of one week next after the time of such adjudication.

Proceedings to
a summary way

XXIII. THAT in all cases of seizures of liquors and vessels or vehicles if no person shall appear to claim the same, it shall be lawful for such Magistrate or two Justices after notice for that purpose given in two successive numbers of the Official Gazette, and after the expiration of one week next following the second publication of such Gazette to proceed in respect of such seizure, in the same manner as if the owner or party from whom the same was made, had been duly summoned and appeared: And that any Constable or other person laying any such information, or making any such seizure, shall be deemed a competent witness upon every proceeding before such Magistrate or Justices or elsewhere, notwithstanding such Constable or other person may be entitled to any part of such seizure or penalty.

Where no claim
of Liquors, &
seized.

Informers may
witnesses.

XXIV. THAT if any person shall feel aggrieved by any conviction under this Act, he shall be entitled to appeal therefrom in the manner in such behalf provided in and by the Port Regulation Act, No. 3, passed in the first year of Her present Majesty: And that no conviction under this Act, or any adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by writ of *certiorari* or otherwise into the Supreme Court; and no warrant or conviction shall be held void by reason of any defect therein: PROVIDED it be therein

Appeal allowed

therein alleged that the party has been convicted, and that there be good and valid conviction to sustain the same.

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XXV. THAT if any action or suit shall be commenced against any person for anything done in pursuance of this Act the same shall be prosecuted within three months after the fact committed, and not afterwards: And the defendant and the plaintiff in every such action or suit shall have the benefit of, and be subject to, the provisions in a similar behalf made by the same Port Regulation Act.

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XXVI. THAT all sums paid for permits or other sums collected under this Act, and all fines, penalties, and forfeitures under this Act, and not otherwise specially appropriated, shall be paid to the Colonial Treasurer for the public uses of the said Province and the support of the Government thereof: PROVIDED ALWAYS, that all such fines, penalties, and forfeitures whatever, may be remitted either wholly or in part by the Governor if he shall see reason to extend such clemency to the person offending; and in case of the seizure of any vehicle the Governor may cause the same to be restored to the owner thereof either with or without conditions.

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XXVII. THAT whenever it shall appear necessary to the Collector of Customs to require proof of the value or description of wines, spirits, or tobacco, or other matter relating to the duties payable upon the same, he is hereby authorised and empowered to require and to take the declaration of the owner thereof or other person having the custody of the same, in the form contained in the Schedule to this Act, pursuant to the provisions of the Act of Parliament passed in the fifth and sixth years of His late Majesty's reign, chapter 62, for the substitution of declarations in lieu of oaths in certain cases: And any person who shall wilfully and corruptly make or subscribe any such declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanor.

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XXVIII. THAT this Act shall commence and take effect from and after the day of its passing.

J. HINDMARSH,
Governor.

Passed the Council this 25th day
of April, in the year 1838.

GEO. STEVENSON,
Clerk of Council.

SCHEDULE A.

FORM OF PERMIT.

SOUTH AUSTRALIA.

WHEREAS A. B. of (*residence and addition*) has, on behalf of Mr. C. D. of (*residence*) in the said Province (*addition*), applied to me for permission to remove (*kind and number of packages and vessels*) containing (*quantity*) of (*liquors*) from (*state particularly the place*) to (*state particularly the place*);

THIS is to permit and authorise the removal of the said (*quantity*) of (*liquors*) in the said (*packages or vessels*) accordingly.

N. B. This permit is only in force between the hours of nine A.M., and four P.M., during this day.

Given under my hand at
(*place*) this day
of 183

SCHEDULE B.

FORM OF DECLARATION.

SOUTH AUSTRALIA.

I, A. B. (*residence and addition*) do solemnly and sincerely declare that (*insert the matter declared to*). And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Act of this Province for imposing duties on wines and spirits, No. 4, and passed in the First year of the reign of Her present Majesty.

Declared before me
at (*place*) this day of 183 A. B.

GEO. STEVENSON,
Clerk of Council.