

New Zealand.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

No. 72.

ANALYSIS.

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AN ACT to allow the Distillation Purifying and Compounding of Spirits in New Zealand. Title. [8th October 1866.]

WHEREAS it is expedient to allow distillation rectifying and compounding of spirits in New Zealand and to restrain illicit distillation and otherwise to amend an Ordinance of the Governor and late Legislative Council of the Colony intituled "An Ordinance for prohibiting the Distillation of Spirits within the Colony of New Zealand" Preamble.

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows:

I. The Short Title of this Act shall be "The Distillation Prohibition Ordinance Amendment Act 1866." Short Title.

II. Until the end of the next session of the General Assembly it shall be lawful for the Governor in Council from time to time to make such regulations as he shall think fit for licensing any person or persons to carry on the business of distillers within the Colony of New Zealand and for regulating the manner in which and conditions under which such business may be carried on and for establishing penalties on the breach or non-observance of any of such regulations. Governor in Council may issue regulations.

III. All such regulations shall be published in the *New Zealand Gazette* and shall express the time from which they shall come into force. Commencement of regulations.

IV. From and after any such regulations coming into force there shall be paid levied and collected towards the ordinary revenue of the Colony a duty of eight shillings upon every gallon of spirits that may be distilled in the Colony from malt grain roots or wine and a duty of eight shillings upon every gallon of spirits that may be or has been Duties leviable.

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distilled in the Colony from sugar treacle or molasses or from wort-wash or spent-wash with which sugar treacle or molasses has been made or mixed or from beer or ale and such duties respectively shall be paid upon the gallon standard measure of spirits of the strength of proof of Sykes' hydrometer and so in proportion for any greater or less strength than proof and also upon any deficiencies to be ascertained in the manner in such regulations to be directed.

Search may be made at any time.

V. The fourth section of the said recited Ordinance shall be read and construed as if the words "in the daytime" were omitted therefrom and the words "at any time in the day or night" inserted in their place.

Persons in the act of committing any offence may be arrested.

VI. If any person shall be found or discovered in the act of committing any offence against the said Ordinance it shall be lawful for any Justice of the Peace Officer of Customs or Police Officer forthwith without warrant to arrest such person and detain him in custody until he can be brought before two or more Justices to answer to any information laid against him for a breach of the provisions of the aforesaid Ordinance.

Persons arrested may be liberated on bail.

VII. Any person so arrested shall be entitled to be liberated on providing two sufficient sureties to the satisfaction of any Justice of the Peace that he will appear and abide the result of any information laid against him for a breach of the provisions of the said Ordinance.

Informations may be heard and determined in a summary way.

VIII. All informations suits or actions for the recovery of any fine forfeiture or penalty imposed by such regulations or by any Act which may hereafter be in force for the regulation of distilleries may be heard and determined in a summary way before any two or more Justices of the Peace or before the Supreme Court or any Judge thereof at the option of the Chief Inspector of Distilleries and any such information suit or action shall and may be filed or instituted in the name of Her Majesty's Attorney-General for New Zealand or of the chief or other Inspector of Distilleries and if any question shall arise as to whether any person is the chief or other Inspector of Distilleries parol evidence may be given of such facts and shall be deemed legal and sufficient evidence.

Penalties to be sued for within one year after the offence.

IX. All informations actions or suits for the recovery of any of the penalties or forfeitures imposed by such regulations shall be commenced and prosecuted at any time within one year after the offence committed by reason whereof such penalty or forfeiture shall be incurred.

Form of information &c.

X. Informations before any Justice of the Peace for any offences committed against such regulations or any Act now or hereafter in force relating to the distillation or rectifying of spirits and all convictions for such offences and all warrants of Justices of the Peace founded upon such convictions shall be drawn respectively in the forms set forth in the first second and third Schedules of this Act or in words to the like effect.

Offence to be set forth in the words of the Act.

XI. Every information for any penalty or forfeiture under such regulations or any other Act now or hereinafter in force relating to the distillation or rectifying of spirits and any conviction or warrant of commitment for any penalty shall be deemed valid and sufficient in which the offence for which such penalty shall be inflicted or the cause of forfeiture is set forth in the words of such regulations or of this or any other such Act as aforesaid or in words to the like effect and no such information shall be quashed for want of form or for any mere literal or clerical errors or omissions not affecting the substantial merits or justice of the case.

Proof of the officer's appointment unnecessary.

XII. In case of any information or proceeding under such regulations and this Act or any Act now or hereafter in force relating to the distillation of spirits the averment that the person prosecuting such information or proceeding is an Inspector of Distilleries shall be

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sufficient proof of the appointment of such Inspector of Distilleries without proof of the appointment of such Inspector of Distilleries unless the defendant shall in such case prove the contrary.

XIII. No writ shall be sued out nor a copy of any process served upon any Inspector of Distilleries or other person acting under the authority of this Act or regulations to be made under the authority of any Act which may hereafter be in force for the regulation of distilleries for anything done in the exercise of his office until one calendar month after notice in writing shall have been delivered to him or left at his usual place of abode by the attorney or agent for the party who intends to sue out such writ or process in which notice shall be clearly and explicitly contained the cause of action the name and place of abode of the person who is to bring such action and the name and place of abode of the attorney or agent and no evidence of the cause of such action shall be produced except of such as shall be contained in such notice and no verdict shall be given for the plaintiff unless he shall prove on the trial that such notice was given and in default of such proof the defendant shall obtain in such action a verdict and costs.

Officer to have notice of action.

XIV. Every such action shall be brought within three calendar months after the cause thereof and the defendant may plead the general issue and give the special matter in evidence and if the plaintiff shall become nonsuited or shall discontinue the action or if upon a verdict of demurrer judgment shall be given against the plaintiff the defendant shall receive treble costs and have remedy of the plaintiff as any defendant can have in other cases where costs are given by law.

Actions to be brought within three months &c.

XV. In case any information or suit shall be brought to trial on account of any seizure made under the regulations to be made pursuant to this Act and a verdict shall be found for the claimant thereof and the Judges or Court before whom the cause shall have been tried shall certify upon the record that there was reasonable and probable cause of seizure the claimant shall not be entitled to any costs of suit nor shall the person who made such seizure be liable to any action or other suit or prosecution on account of such seizure and if any action or other suit or prosecution shall be brought to trial against any person on account of such seizure wherein a verdict shall be given against such defendant the plaintiff besides the things seized or the value thereof shall not be entitled to more than one shilling damages nor to any cost of suit nor shall the defendant in such prosecution be fined more than one shilling.

Judge may certify probable cause of seizure.

XVI. It shall be lawful for any Inspector of Distilleries or other person as aforesaid within one calendar month after service of such notice of action as aforesaid to tender amends to the party complaining or his agent and to plead such tender in bar to any action together with other pleas and if the jury shall find the amends sufficient they shall give a verdict for the defendant and in such case or in case the plaintiff shall become nonsuited or discontinue his action or judgment shall be given for the defendant upon demurrer then such defendant shall be entitled to like costs as he would have been entitled to in case he had pleaded the general issue only Provided that it shall be lawful for such defendant by leave of the Court where such action shall be brought at any time before issue joined to pay money into Court as in other cases.

Officer may tender amends.

XVII. All spirits and other property seized under the regulations to be made pursuant to this Act shall be considered as forfeited and condemned unless claimed within ten days after the same shall be so seized and shall be sold by public auction and all such claims for spirits or other property so seized as forfeited shall be lodged within the time hereinbefore mentioned with the Commissioner of Customs.

Property seized to be claimed within ten days.

Claims to be lodged with Commissioner of Customs.

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Admission of claims
to property seized.

XVIII. No claim to any spirits or other property seized under such regulations and returned into any of Her Majesty's Courts for adjudication shall be admitted and no appearance shall be permitted to be entered to any information filed for the forfeiture of any spirits or other property seized for any cause of forfeiture under such regulations or under any Act which may hereafter be in force for regulating distillation unless such claim or appearance be entered in the name of the owner of such spirits or other property so seized describing the place of residence and the business or profession of such owner and oath shall be made before one of the Judges of the Court in which such information is filed or before the Resident Magistrate or one of the Justices before whom any cause of forfeiture shall be tried for spirits or other property seized as forfeited under such regulations or under any such other Acts as aforesaid that the spirits or other property so seized was or were really and truly the property of him at the time of such seizure and such oath shall be made either by such owner or if not by such owner then by the agent attorney or solicitor by whom such appearance shall be entered that he has full power and legal authority and directions from such owner to enter such appearance and to the best of his knowledge and belief such spirits and other property were at the time of the seizure thereof *bona fide* the real property of the party in whose name such appearance is entered and on failure thereof the spirits and other property shall be absolutely condemned and judgment be entered thereon by default according to the usual method of proceeding of the Court in the same manner as if no appearance had been entered thereto and every person who shall be convicted of making or taking a false oath to any of the facts hereinbefore directed or required to be sworn to shall be deemed to be guilty of wilful and corrupt perjury.

Claimant to enter
into a recognizance.

XIX. Upon the entry of any claim to any spirits or other property seized for any cause of forfeiture or of any appearance to any information filed for such forfeiture the person who shall enter such claim or appearance if such claimant shall reside within the Colony shall be bound by a recognizance (to be entered into before one of the Judges of the Supreme Court or Justices of the Peace before whom the said cause or matter is to be inquired into) with two sufficient sureties in the penalty of one hundred pounds to answer and pay the costs occasioned by such claim or appearance and if the owner shall not reside within the said Colony then and in such case the agent attorney or solicitor by whose directions such claim or appearance shall be entered shall in like manner be bound with two sufficient sureties in like penalty to pay the costs occasioned by such claim or appearance.

Payment and
distribution of
penalties &c.

XX. All fines penalties and forfeitures recovered under such regulations or under this or any other Act for the time being in force relating to the distillation of spirits shall be paid to the Colonial Treasurer and shall be divided and applied as follows (that is to say) after deducting the charges of prosecution from the proceeds thereof one-third part of the net produce thereof shall be paid to the account of the general revenue of the Colony and applied to the public uses of the Colony and in support of the Government thereof one-third part thereof to the person who shall sue for the same and one-third to the informer where such fines penalties and forfeitures are recovered in consequence of information being given to the seizing officer and when the said fines penalties and forfeitures are otherwise recovered the same are to be divided and applied as follows (that is to say) after deducting the said charges the one moiety or half of the net proceeds thereof to the public uses of the said Colony and in support of the Government thereof and the other moiety or half to be paid to the seizing officer

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or person suing for the said penalty Provided always that nothing herein contained shall be deemed or construed to affect or in any way to interfere with the right of Her Majesty Her heirs and successors to pardon the offender and to remit the whole or any part of any such fine penalty or forfeiture as to Her Majesty shall seem meet.

XXI. If in or upon any information suit or action brought before any Judges of the said Supreme Court or any two or more Justices of the Peace as aforesaid for the recovery of any fines forfeitures or penalties imposed by such regulations the party shall be convicted and sentenced to pay such fine or penalty and in case any such fine or penalty shall not be immediately paid or security given to the satisfaction of the Court or Justices before whom the case shall have been heard and determined for the due payment of such fine or penalty the party or parties who shall have been convicted and sentenced to pay such fine or penalty shall forthwith be committed to gaol there to remain for a period of not less than three months nor exceeding twelve calendar months unless such fine or penalty shall be sooner paid and such imprisonment shall in no case operate as a discharge of any such fine forfeiture or penalty.

Imprisonment of convicted parties.

XXII. Any person who shall think himself aggrieved by any fine or penalty imposed by any Justice or Justices under the authority of such regulations above the sum of ten pounds may appeal against the conviction to the next general or quarter sessions of the peace according to the provisions of any Act now or which may hereafter be in force for the regulation of appeals of the like nature and no conviction shall be quashed for mere want of form or for any literal or clerical errors or omissions not affecting the substantial merits or justice of the case.

Appeal.

XXIII. No writ of *certiorari* shall issue from Her Majesty's Supreme Court to remove any proceedings before any Justice or Justices of the Peace under this or any Ordinance or other Act now or hereafter in force relating to the distillation of spirits nor shall any writ of *habeas corpus* issue to bring up the body of any person who shall have been convicted before any Justice or Justices of the Peace under this or any such Ordinance or other Act unless the party against whom such proceedings shall have been directed or who shall have been so convicted or his attorney or agent shall state in an affidavit in writing to be duly sworn the grounds of objection to such proceedings or conviction and that upon the return of such writ of *certiorari* or *habeas corpus* no objection shall be taken or considered other than such as shall have been stated in such affidavit and it shall be lawful for any Justice or Justices of the Peace and they are hereby required to amend any information conviction or warrant of commitment for any offence under any such Act at any time whether before or after conviction.

No writ of *certiorari* to issue.

XXIV. As regards any person or persons licensed pursuant to the regulations so made under this Act and any act matter or thing done by him under or by virtue of any license granted hereunder or an Ordinance for prohibiting the distillation of spirits within the Colony of New Zealand passed in the first Session of the Governor and late Legislative Council of the Colony shall have no application force or effect but shall otherwise remain in full force and effect.

Distillation Ordinance repealed in certain cases.

FIRST SCHEDULE.

FORM OF INFORMATION BEFORE JUSTICES OF THE PEACE.

New Zealand }
to wit. }

BE it remembered that on the day of in the year of our Lord
A. B. Chief Inspector of Distilleries [*or Inspector of Distilleries as the*

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case may be] who is directed by the Chief Inspector of Distilleries to prefer this information gives me Esquire one of Her Majesty's Justices of the Peace to understand and be informed that C. D. on the day of in the year of our Lord [*here state the offence*] contrary to the form of the Act in that case made and provided whereby the said C. D. hath forfeited the sum of

SECOND SCHEDULE.

FORM OF CONVICTION TO BE USED FOR AN OFFENCE AGAINST THIS ACT.

New Zealand }
to wit. }

BE it remembered that on the day of in the year of our Lord an information was exhibited by A. B. Chief Inspector of Distilleries [*or Inspector of Distilleries as the case may be*] before us Esquires two of Her Majesty's Justices of the Peace for the said Colony against C. D. which said information charged that the said C. D. on the day of in the year of our Lord [*here state the offence as in the information*] contrary to the form of the Act in such case made and provided which offence has been duly proved before us the said Justices We do therefore convict the said C. D. of the said offence and do adjudge that the said C. D. hath forfeited for his said offence the sum of

Given under our hands and seals this day of in the year of our Lord

THIRD SCHEDULE.

FORM OF WARRANT OF COMMITMENT TO GAOL FOR A PENALTY.

New Zealand }
to wit. }

To A. B. constable and to E. F. the gaoler or keeper of the in the WHEREAS C. D. has been duly convicted before us Esquires two of Her Majesty's Justices of the Peace for the said Colony of having [*here state the offence as in the information*] And whereas we the said Justices did adjudge that the said C. D. hath forfeited for his said offence the sum of And whereas the said sum was not paid nor security given to our satisfaction for the due payment thereof These are therefore to require you the said A. B. forthwith to take carry and convey the said C. D. to the at in the and to deliver him into the custody of the gaoler or keeper of the said and we the said Justices do hereby authorize and require the said E. F. the gaoler or keeper of the said to receive the said C. D. into his custody and him safely to keep for the period of unless he shall sooner pay the sum of or otherwise be delivered by due course of law.

Given under our hands and seals at in the this day of in the year of our Lord

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