

No. XXXVIII.

BEER DUTY.

An Act for the imposition of an Excise Duty on Beer brewed in New South Wales and for other purposes in connection therewith. [3rd June, 1887.]

BE it enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows :—

Preliminary.

Short title &c.

1. This Act may be cited as the "Beer Duty Act of 1887" and it shall be read with the "Customs Regulation Act 1879."

Interpretation.

2. In the construction of this Act and any regulations made thereunder the expression—

"Beer" includes ale porter and every other malt liquor or fermented beverage purporting to be beer or made in imitation of beer or malt liquor and whether brewed wholly or in part from any other substance than malt—

"Brew" or "brewed" applies to every process by which beer can be made—

"Brewer"

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“Brewer” means any person who occupies carries on or conducts any brewery as hereinafter defined and includes any agent superintendent manager foreman or other person acting or apparently acting in the general management control or working of such brewery where the owner is not personally conducting the same and also any company or association of persons whether incorporated or not exclusively or partially engaged in carrying on or conducting any such brewery.

“Brewery” means and includes any place or premises where any beer is brewed—And all offices granaries mash-rooms cooling-rooms vaults cellars warehouses store-rooms and other premises adjacent thereto or in which any material to be used in the brewing of beer is kept or stored or where any process of brewing beer is carried on or where any apparatus connected with such brewing is kept or used and where any of the products of brewing or fermentation are stored or kept shall be held to be included in and to form part of the brewery to or in connection with which the same are attached or used.

“Collector” includes the Collector of Customs and any officer or other person duly appointed for the purposes of this Act.

“Prescribed” means prescribed by this Act or by regulations made thereunder.

“This Act” includes all regulations made under its authority.

3. Nothing contained in this Act shall be deemed to repeal alter or affect any enactment contained in the “Licensing Act of 1882” or any Act amending the same. Saving of Licensing Acts.

4. Every person compelled to pay duty under this Act upon or in respect of any beer which he has contracted to sell or deliver under any contract or agreement entered into prior to the passing of this Act shall be entitled to add so much money to the contract price as he shall have been compelled to pay as such duty and if necessary may sue for and recover the same in any Court of competent jurisdiction. Provided that in every such case it shall be at the option of the purchaser by notice in writing under his hand to be served on the vendor or his agent being a party to such contract or agreement within fourteen days after the passing of this Act to declare such contract or agreement null and void and the same shall be null and void accordingly. Duty paid on beer contracted to be sold before passing of this Act may be recovered by seller.

5. The Collector of Customs subject to the directions of the Colonial Treasurer shall be the authority to carry out this Act and shall have and may exercise the like powers and authorities in relation to the collection and administration of the duty imposed by this Act as he now has in relation to the collection of duties of Customs and Excise under any Acts in force for the collection of such duties in so far as the same are applicable in the carrying out of this Act. Administration of Act.

6. Every Collector and officer of Customs or Excise employed on any duty or service in carrying out this Act shall be deemed to be the collector or officer appointed for that duty or service (as the case may be) and the statement on oath of any collector or officer that he is such collector or officer shall be sufficient proof at any trial hearing or examination in any Court or upon any proceeding under this Act that he was authorized to do the particular act or thing in respect of which his evidence shall be tendered. Evidence of appointment of officers.

Collection of Duty &c.

7. Upon and after the passing of this Act there shall be charged collected and paid for the use of Her Majesty her heirs and successors upon all beer brewed within New South Wales on or after such date and sold or removed for consumption or sale an excise duty of threepence per Grant of duty on beer.

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per gallon which duty shall be paid by the brewer by whom such beer has been or shall be brewed in the manner and at the time hereafter specified.

Brewers to send notice to Collector with certain information.

First Schedule.

8. Every brewer at present carrying on or who shall hereafter desire to carry on the business of a brewer shall before continuing or commencing to carry on such business send to the Collector a notice in writing in the form or to the effect of the First Schedule to this Act setting forth the name or names and place or places of abode of the person or persons carrying on or proposing to carry on such business a description of the brewery premises and the further particulars enumerated in the said Schedule Every such notice shall be verified by the declaration of the person sending or giving the same or if sent by more than one person then by one of such persons and every such declaration shall be in the form or to the effect of the Second Schedule.

Second Schedule.

Brewer to enter into bond.

9. Every brewer within one month after the commencement of this Act and in the first week of the month of January in each succeeding year thereafter shall execute a bond to Her Majesty her heirs and successors with one sufficient surety to be approved by the Collector in a sum equal to twice the estimated amount of the duty such brewer will be liable to pay during any one month and conditioned—

(I) That he shall pay or cause to be paid the prescribed duty payable on all beer made by or for him before the same is sold or removed for consumption or sale

(II) And that he shall in all respects faithfully comply without fraud or evasion with the requirements of this Act and the regulations

Collector to fix amount of bond.

The Collector shall fix the sum for which such bond shall be given and shall be guided therein by reference to the number of barrels of beer which the brewery of such brewer produces or is capable of producing in each month.

Beer to be sold in certain vessels.

10. All such beer shall be sold or removed for consumption or sale in hogsheads or barrels only or in casks vessels or packages of such smaller sizes as may be approved by the Collector Any beer contained in casks other than hogsheads or barrels or in casks or vessels of sizes other than those approved by the Collector shall be forfeited and may be seized by any duly appointed officer or constable.

Books to be kept by brewer and to be open for inspection.

11. Every brewer shall from day to day enter or cause to be entered in books to be kept by him for that purpose the kind and estimated quantity in barrels of beer made by him and the actual quantity sold or removed for consumption or sale specifying whether in hogsheads barrels or casks or in vessels or packages of smaller size And such books shall be open at all reasonable hours in the daytime to the inspection of any duly appointed officer who may take extracts therefrom or transcripts thereof.

Entries to be verified by declaration.

12. The entries made in such books shall at the end of each month be verified by the declaration of the person by whom they were made Such declaration shall be written in the book at the end of such entries and be signed by the person making such declaration and the same shall be in the following form or to the effect thereof—

“I declare that the foregoing entries were made by me and that they state truly according to the best of my knowledge and belief the estimated quantity of the whole amount of beer brewed the actual quantity sold and the actual quantity removed from the brewery occupied by
at _____ from the first day of the month
of _____ to the last day of such month and further
that I have no knowledge of any matter or thing required by law to be stated in such entries which has been omitted therefrom.”
And

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And every brewer shall also in case the original entries in his books were not made by himself subjoin thereto and sign the following declaration—

“I declare that to the best of my knowledge and belief the foregoing entries fully set forth all the matters required by law and that the same are true in the several particulars thereof.”

13. Every brewer within seven days after the commencement of this Act shall render to the Collector of Customs a true statement in the prescribed form of the quantity of beer brewed by him and remaining in his brewery or on his premises on the day of the passing of this Act and shall after the passing of this Act render to the said Collector on or before the tenth day of each month a true statement in writing in duplicate taken from the books required to be kept as aforesaid showing the estimated quantity in barrels of beer brewed and the actual quantity sold or removed for consumption or sale during the preceding month.

Statements to be rendered to Collector of quantity brewed.

14. Suitable stamps shall be provided by the Collector denoting the amount of duty required to be paid on the hogsheads barrels casks vessels or packages of beer respectively liable to duty under this Act and such stamps shall be sold only to brewers. It shall not be lawful for any person to use for the purposes of this Act any stamps other than the stamps so provided.

Stamps.

15. Every brewer shall obtain from the Collector the proper stamps and shall do or cause to be done the following things—

Brewer to affix stamp upon spigot or tap-hole of cask.

(I) Affix upon the spigot or tap-hole of every hogshead barrel cask vessel or other receptacle in which any beer is contained when sold or removed from such brewery (except in case of removal under permit or bond as hereinafter provided) a stamp denoting the amount of duty payable upon such beer in such a way that the said stamp will be destroyed upon the withdrawal of the liquor from such hogshead barrel cask vessel or other receptacle or upon the introduction of a faucet or other instrument for that purpose.

(II) At the time of affixing such stamp cancel the same by writing or imprinting thereon the name of the brewer by whom such beer was made or the initial letters thereof and the date when cancelled.

16. Any brewer upon obtaining the prescribed permit may remove or cause to be removed from his brewery to a dépôt warehouse or other place occupied by him and used exclusively for storage or sale of beer in bulk any quantity of beer of his own manufacture but not being less than five barrels at any one time without affixing the proper stamps on the vessels containing such beer at the brewery. The brewer of such beer shall stamp every cask or vessel containing the same when it leaves such dépôt or warehouse in the same manner and under the same penalties as he would be liable to if no such permit had been granted.

Beer may in certain cases be removed upon permits issued by Collector.

To be stamped when leaving dépôt.

17. The prescribed permit shall be affixed in the prescribed manner to every vessel or cask removed as aforesaid and shall be cancelled or destroyed under the same penalties and liabilities as provided herein in respect to stamps.

How permit to be affixed to cask.

18. Any brewer whose beer has become sour or damaged so as to be incapable of use as such may sell the same for manufacturing purposes in casks or other vessels containing respectively not less than twenty-five gallons each and having the nature of their contents plainly and legibly marked upon such casks or vessels and in such cases it shall not be necessary for such brewer to affix thereon the permit or stamps hereinbefore prescribed.

Provision for disposal of damaged beer.

19. Every brewer shall before any beer brewed by him is sold or removed from the brewery where the same was brewed by branding

All casks &c. to be branded with name of brewer.

mark

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mark or cause to be marked upon every hogshead barrel cask vessel or other receptacle containing such beer the name of the brewer by whom such beer was brewed and the place where it was brewed Every brewer who neglects to comply with the requirements of this section shall be liable to a penalty not exceeding ten pounds for each cask or other vessel not branded by him as aforesaid Every person (other than the owner of such cask or some person lawfully authorized by him so to do) who knowingly and wilfully removes or defaces any such mark therefrom shall be liable to a penalty not exceeding ten pounds for each cask or other vessel from which such mark has been so removed or defaced.

Brewer may purchase beer from another brewer.

20. When for the purpose of supplying his customers a brewer purchases beer finished and ready for sale from another brewer the purchaser may upon written notice to the Collector of his intention so to do furnish in the prescribed manner his own vessels branded with his name and the place where his brewery is situated to be filled with beer so purchased and to be so removed but the prescribed stamps shall be affixed and cancelled by the vendor before removal.

Certain kinds of liquor not liable to duty.

21. When malt liquor or tun liquor of any kind in the first stages of fermentation (known as unfermented worts) is sold by one brewer to another for the purpose of producing fermentation or enlivening old or stale beer or other fermented liquor it shall not be liable to the duty imposed by this Act upon the seller thereof but such sale or transfer shall be subject to such conditions and restrictions as may be prescribed.

Absence of stamps notice that duty not paid.

22. The absence of the prescribed stamps from any hogshead barrel cask vessel or other receptacle containing beer after its sale or removal from the brewery where it was brewed shall be notice to all persons that the duty has not been paid thereon and shall be *prima facie* evidence of the non-payment thereof And if any hogshead barrel cask vessel or receptacle containing beer is found after sale or removal from the brewery where it was brewed not having the prescribed stamps thereon every such hogshead barrel cask vessel or receptacle shall be liable to seizure and forfeiture but this enactment shall not apply to any hogshead barrel cask vessel or receptacle containing beer removed or sold under the prescribed permit.

Allowance to be made for beer spoiled after sale.

23. If in any case the Collector is satisfied that beer upon which duty has been paid has been spoiled or rendered unfit for use after its removal from the brewery in which it was brewed and has been returned to such brewery he may at any time within thirty days after the return of such beer allow to the brewer who has paid duty on such beer a refund equal in value to the duty which has been paid upon the beer so returned.

Power of entry on breweries public-houses and warehouses where beer kept or sold.

24. Every brewery and every warehouse store or premises whether connected with a brewery or not where the Collector shall have reason to believe any beer liable to duty under this Act is stored kept or sold and every public-house and every store or cellar adjacent thereto shall be open at all times to inspection by the Collector or other duly appointed officer who shall have power at any time in the daytime and with or without assistants to enter into and search every such brewery warehouse store public-house cellar or other place herein mentioned and to examine and take an account of all vessels or packages in which beer is contained or is supposed to be contained.

Drawback.

25. There shall be allowed upon the exportation of beer brewed in New South Wales a drawback of the duty paid thereon under this Act and such drawback shall be claimed and paid in the same manner in all respects as drawback is claimed and paid upon goods imported into the said Colony under any law in force relating to the Customs.

Penalties—

*Beer Duty.**Penalties—Miscellaneous Provisions.*

26. Every brewer who evades or attempts to evade the payment of any duty or amount of duty payable under this Act or who fraudulently neglects or refuses to make a true and exact entry or report of any matter or thing in the prescribed manner or to do or cause to be done any of the things by law required by this Act to be done by him or who knowingly makes procures or allows to be made any false entry in any book or statement required by this Act to be kept or made shall forfeit for every such offence all the beer made by him or for him and then in his custody or possession and all the vessels utensils and apparatus used in making the same and in addition be liable to a penalty of not less than one hundred nor more than two hundred pounds.

Penalty for evasion of duty.

27. Every brewer who neglects to keep any book or refuses to furnish the statement and duplicate thereof required by this Act or refuses to permit the duly appointed officer to examine any such book and take extracts therefrom or transcripts thereof in the manner herein provided shall for every such refusal or neglect be liable to a penalty not exceeding fifty pounds.

Penalty for not keeping books.

28. Every brewer who refuses or neglects to affix and cancel the stamp required by this Act in the prescribed manner or who affixes a false or fraudulent stamp to any hogshead barrel cask vessel or other receptacle containing beer or knowingly permits the same to be done shall be liable to a penalty not exceeding twenty pounds for each hogshead barrel cask vessel or other receptacle in respect of which any such refusal neglect or fraudulent practice has taken place or been committed.

Penalty for refusal or neglect to affix and cancel stamp.

29. Every person who shall withdraw beer from any hogshead barrel cask vessel or other receptacle to which any stamp is affixed pursuant to this Act shall destroy such stamp at the time of such withdrawal and if any person refuses or neglects so to do he shall upon conviction pay a penalty not exceeding fifty pounds for each hogshead barrel cask vessel or other receptacle in respect of which such refusal or neglect has taken place or been committed.

Penalty for refusal or neglect to destroy stamp.

30. Whenever any brewer carrier or other person knowingly sells removes receives or purchases or in any way aids in the sale removal receipt or purchase of any beer contained in any hogshead barrel cask vessel or other receptacle from any brewery upon which the prescribed stamp or permit in case of removal has not been affixed or on which a false or fraudulent stamp or permit is affixed or on which a stamp or permit once cancelled is again used he shall be liable to a penalty not exceeding fifty pounds.

Penalty for certain offences.

31. If any beer the duty on which has not been paid shall be delivered carried or conveyed from any brewery or place of storage contrary to this Act such beer together with the packages containing the same and the boat cart carriage or other conveyance in which the same may be found together with all horses or other animals made use of in such removal or conveyance and any chattels articles or things made use of for the purposes of such removal carriage or conveyance shall be forfeited and may be seized by any duly appointed officer or constable.

Beer removed without notice to be forfeited.

32. Every person who withdraws any beer liable to duty from any hogshead barrel cask vessel or other receptacle upon which the prescribed stamp has not been affixed for the purpose of bottling the same or who carries on or attempts to carry on the business of bottling beer in any brewery or upon any premises having communication with such brewery except as may be prescribed shall be liable to a penalty of one hundred pounds and all chattels and utensils used in such bottling or business shall be liable to forfeiture.

Persons withdrawing beer from unstamped vessels liable to penalty.

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Penalty on person
causing obstruction.

33. Every person who shall obstruct resist or molest the Collector or any duly appointed officer in making any search authorized by this Act or prevent the same being made or the taking of any account so authorized shall be liable to a penalty not exceeding one hundred pounds.

Before whom declaration to be made.

34. Every declaration required to be made by or under this Act may be taken before a Justice of the Peace and every person making a false declaration knowing the same to be false shall be deemed to be guilty of perjury and on conviction shall be liable to be punished accordingly.

Burden of proof.

35. In all legal proceedings taken against any person for any breach of or non-compliance with the provisions of this Act the burden of proving that such person was exempt from the operation of any clause of this Act shall rest upon the defendant.

Penalties how recoverable &c.

36. All sums of money penalties forfeitures and seizures recoverable or enforceable under this Act shall be recovered proceeded for enforced and applied in manner respectively provided by the "Customs Regulation Act 1879."

Power to Governor to mitigate penalties and restore property.

37. The Governor with the advice of the Executive Council may mitigate or remit any penalty forfeiture or punishment incurred or awarded under this Act upon such terms and conditions as he may think fit and may direct the restoration of any utensils machinery articles goods or chattels seized under the provisions of this Act.

Regulations.

38. The Governor with the like advice may make regulations for carrying out the purposes of this Act and any such regulation may prescribe penalties not exceeding fifty pounds for the breach thereof. All such regulations shall be published in the *Gazette* and shall take effect from a date to be named therein and after such date shall have the force of law as if the same had been embodied in this Act and copies thereof shall be laid before both Houses of Parliament forthwith if sitting and if not sitting then within fourteen days after the commencement of the then next Session.

SCHEDULES.

FIRST SCHEDULE.

Notice by Brewers.

To the Collector of Customs at Sydney.

(Date) 188 .

Notice is hereby given that [state the full christian and surname of the person giving the notice or all the names of such if a co-partnership or the corporate name if a corporate body] of in New South Wales intend under the name or style of to carry on or engage in the business of brewing in the building owned by situate in street in [] in New South Wales aforesaid.

Name of every person carrying on the }
business with place of residence ... }
Description of all buildings on the }
brewery premises and description of }
wall fence or other outside boundary }
of premises ... }
Number of wort boilers and other per- }
manent vessels and capacity of each }
Manner of boiling worts whether by }
direct action of fire or by steam ... }
Average number of brewings per month }
statement of the total quantity of }
beer made and sold or removed from }
the brewery during the year imme- }
diately preceding the date of this }
notice ... }
... }
... }
... }

(Signed)

Crown Lands [Auction Sales Balances].

SECOND SCHEDULE.

Declaration verifying Notice.

I of in declare that the several statements set forth in the foregoing notice are true and correct in the several particulars thereof.

(Signature)

Declared before me this day of 188 .

a Justice of the Peace.