



## S U P P L E M E N T

TO THE

NEW SOUTH WALES

## GOVERNMENT GAZETTE

OF WEDNESDAY, OCTOBER 2, 1839.

Published by Authority.

SATURDAY, OCTOBER 5, 1839.

## PROCLAMATION.

By His Excellency Sir George Gipps, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, &c. &c. &c.

**W**HEREAS, by an Act of the Governor with the Advice of the Legislative Council, passed in the present year of the reign of Her Majesty Queen VICTORIA, intituled, "An Act to establish Courts of Requests at the Towns of Melbourne and Port Macquarie, in the Colony of New South Wales," it is enacted, that Courts of Civil Jurisdiction, to be called Courts of Requests shall be holden at the Towns of Melbourne and Macquarie, in and for the said Towns and neighbourhoods, respectively, at such times as the Governor of the said Colony shall, by proclamation to be issued for that purpose, from time to time direct and appoint;—Now therefore, I, the Governor, in pursuance of the power and authority so vested in me, by the said recited Act, do hereby direct and appoint that the said Courts of Civil Jurisdiction, to be called Courts of Requests, shall be holden at the Town of Melbourne, in the County of Bourke, and at the Town of Macquarie, in the County of Macquarie, on the first Tuesday in every month, respectively.

Given under my Hand and Seal, at Government House, Sydney, this fifth day of October, in the Year of Our Lord One thousand eight hundred and thirty-nine.

"GEORGE GIPPS."

By His Excellency's Command,  
E. DEAS THOMSON.  
GOD SAVE THE QUEEN!

ANNO TERTIO  
VICTORIÆ REGINÆ.

No. 9.

By His Excellency Sir George Gipps, Knight Captain-General and Governor-in-Chief of the Territory of New South Wales, and its De-

pendencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

"An Act to Consolidate and amend the Laws for the Distillation of Spirits in the Colony of New South Wales, and for the Issue of Licenses for Distilling, Rectifying, and Compounding Spirits therein, and for repealing certain Laws relating thereto."

**W**HEREAS, an Act passed in the second year of the Reign of Her present Majesty Queen Victoria, intituled, "An Act to regulate the Distillation of Spirits in the Colony of New South Wales, and for the Issue of Licenses for the Distilling, Rectifying, or Compounding Spirits therein:" And whereas it is expedient to repeal the same, and to make further provision to regulate the distillation of Spirits in the said Colony, and for the Issue of Licenses for Distilling, Rectifying, or Compounding Spirits therein, and to provide for the recovery of fines and penalties incurred respecting the same: Be it therefore enacted, by His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, That from and after the passing of this Act, the said recited Act of the Governor and Council shall be, and the same is hereby repealed, save and except always as to offences committed, and matters done, before the passing of this Act, which said offences, matters, and things, shall be dealt with respectively as if this present Act had not been passed.

(No person shall carry on the business of a Distiller, Rectifier, or Compounder of Spirits, except in the Town of Sydney, or in such other Towns or Places as shall be appointed by the Governor, under penalty of from £100 to £500.

II. And be it enacted, That from and after the passing of this Act, it shall not be lawful for any person, except as hereinafter excepted, to carry on the business of a Distiller, or a Rectifier, or Compounder of Spirits, or to have, keep, or make use of any Still or other Utensil for distilling of

Spirits, or for Rectifying or Compounding of Spirits, save as hereinafter excepted, in any place or part of the said Colony of New South Wales or its Dependencies, save and except in the Town of Sydney, or in such other Towns or Places as His Excellency the Governor of the Colony shall appoint or direct, under a penalty of not less than One Hundred Pounds, nor more than Five Hundred Pounds, to be recovered as hereinafter directed.

*(Distillers to be Licensed.)*

III. And be it further enacted, That it shall not be lawful for any person, except as hereinafter excepted, to have, keep, or make use of, any Still, or other Utensil for Distilling, or Rectifying, or Compounding Spirits in the said Colony of New South Wales or its Dependencies, without first having obtained a License for keeping or using the same, from the Governor for the time being, under a penalty of not less than One Hundred Pounds, nor more than Five Hundred Pounds, together with a forfeiture of such Still and Utensils, to be recovered as hereinafter is directed.

*(How to be obtained.)*

IV. And be it enacted, That any person wishing to obtain a License for the purpose of Distilling, Rectifying, or Compounding Spirits, shall, by Memorial, apply to the Governor to direct such License to be granted; and that such Memorial shall state the Premises upon which such Distilling, Rectifying, or Compounding is to be carried on respectively.

*(Description of Still and situation to be given.)*

V. And be it enacted, That before any License shall be granted for the Distilling, Rectifying, or Compounding of Spirits respectively, a drawing or representation of the Still, setting forth its shape, dimensions, and proportions, as well as the place in which it is intended to erect the same, shall be transmitted to the Colonial Secretary of the Colony for the approval of the Governor: Provided however, that in case the Governor shall disapprove of the said Still, or the situation in which it is proposed to fix the same, the License so applied for shall not be granted.

*(Security to be given.)*

VI. And be it enacted, That before any such License for the Distillation of Spirits shall be granted, the person or persons applying for the same, together with two sufficient Sureties, shall enter into a Recognizance before the Colonial Treasurer, or other person appointed by the Governor for that purpose, payable to Her Majesty, in the sum of Five Hundred Pounds, conditioned for the due and faithful payment of the full duties payable upon all Spirits made and sold by him or them.

*(Sum to be paid for License.)*

VII. And be it enacted, That such Licenses shall be granted for the term of one year and no longer, and that the sum of Fifty Pounds sterling money of Great Britain for every License granted for the Distillation of Spirits, and for every License granted for the Rectifying or Compounding of Spirits, the sum of Twenty-five Pounds, shall be paid by the party obtaining such License, to the Colonial Treasurer of the said Colony, or other person as aforesaid, who, upon receiving the direction of the Governor, and upon the execution of the Recognizance hereinbefore-mentioned, and upon payment of the said sums respectively,

by the said party or parties applying for such Licenses, respectively, is hereby authorised and directed to issue the same for the said term of one year, and no longer: Provided however, that no License shall be granted to any person or party for the purpose of distilling, who has not one Still capable of containing at least Five Hundred Imperial Gallons; nor to any Rectifier or Compounder of Spirits who has not one Still capable of containing at least One Hundred Imperial Gallons.

*(Licenses to be renewed annually.)*

VIII. And be it enacted, That such License as aforesaid, granted under this Act, may be renewed annually, from year to year, upon the person or persons so applying for such renewal, paying or causing to be paid the said sums of Fifty Pounds, or Twenty-five Pounds, respectively: Provided however, that in case the party or parties applying for such renewed License shall have been convicted of any offence against the provisions of this Act or Ordinance, or shall have forfeited the said Recognizance hereinbefore-mentioned, and that the same shall have been estreated for any breach of the Covenants therein contained, it shall not be lawful for the said Colonial Treasurer, or other person appointed as aforesaid, to grant such renewal of said former License, but is hereby authorised and directed to refuse the same, unless specially directed to issue such License by the Governor.

*(Apothecaries, Chemists, and Druggists, may have Stills of eight gallons content, on taking out License.)*

IX. And be it enacted, That it shall and may be lawful for the Colonial Treasurer, or other person appointed as aforesaid, to issue a License, free of all charge, to any Apothecary, Chemist, or Druggist, applying for the same, to keep and use on his premises a Still of not more than eight gallons content, for the purposes of his Trade only: Provided that every person wishing to keep such Still shall notify his intention so to do to the Colonial Treasurer, or other person appointed as aforesaid, who shall thereupon require such person to give bond, with two sufficient sureties, in the sum of Two Hundred Pounds, that he will not make use of such Still, or suffer it to be made use of, except for the preparation of Medicines or other articles required *bona fide* for medical purposes; and every such person found to have in his possession any Still, without having entered into such Bond and obtained such License, shall forfeit and pay not less than One Hundred Pounds, nor more than Five Hundred Pounds.

*(Not to carry on the business of a Brewer and Distiller in the same premises.)*

X. And be it enacted, That it shall not be lawful for any person or persons who shall have obtained any such Licenses as aforesaid for the Distilling, Rectifying, or Compounding of Spirits, or for any other person whatsoever, to practise, follow, or use the trade or business of a Brewer of Ale, Porter, or Beer, within the premises so used for the Distilling, Rectifying, or Compounding of Spirits, or on any part thereof, nor on any place or premises within one hundred yards of the premises so used for the Distilling, Rectifying, or Compounding of Spirits, under a penalty of One Hundred Pounds.

*(Description of Premises to be registered.)*

XI. And be it enacted, That a declaration in writing of the name or names of the party or parties so applying for any such License as aforesaid, and of all other persons interested in the said trade or business, as partners in the same, or otherwise, shall be made out by the party or parties applying for any such License, and delivered to the said Colonial Treasurer, or other person appointed as aforesaid, to be registered by him.

*(Distiller not to retail Spirits.)*

XII. And be it enacted, That it shall not be lawful for any person who shall be the owner, or part owner, or who has any interest or share in a Licensed Distillery, or in any premises or concerns used for Rectifying or Compounding Spirits, to have or to hold a License to Retail Spirituous or Fermented Liquors; and in case any person who shall have obtained a License for the Sale of Fermented or Spirituous Liquors by Retail, shall, after the obtaining of such License, become the owner, or part owner, or have any share or interest in a Licensed Distillery, or in any premises or concerns used for Rectifying or Compounding Spirits, such License so granted for the Sale of Fermented or Spirituous Liquors by Retail, shall thereupon become and be absolutely void, and the party or parties continuing to sell Fermented or Spirituous Liquors by Retail after having become the owner or part owner of, or after obtaining an interest or share in, a Licensed Distillery, or in any premises or concerns used for the Rectifying or Compounding of Spirits, may be prosecuted and convicted as a person selling Fermented or Spirituous Liquors by Retail without a License.

*(Not to Sell less than Fifty Gallons.)*

XIII. And be it enacted, That it shall not be lawful for any Licensed Distiller to sell or dispose of, at any one time, a less quantity of Spirits than fifty gallons, under a penalty of One Hundred Pounds; nor for any Rectifier or Compounder of Spirits to sell or dispose of, at any one time, a less quantity than two gallons, under a like penalty of One Hundred Pounds.

*(Distance at which Stills Licensed after the passing of this Act shall be from other houses, and from Surrounding walls inclosing them, not to affect Stills previously Licensed.)*

XIV. And be it enacted, That all Stills Licensed for the Distillation of Spirits shall be erected and placed in houses distant not less than thirty-two yards from any other house, and that the premises in which the said business shall be carried on, shall be surrounded by a Wall not less than ten feet high, and not less than forty-eight feet from the Still House enclosed thereby; and there shall not be more than one entrance into the said premises: Provided, nevertheless, that such Stills as are Licensed previously to the passing of this Act shall not be affected by the provisions of this clause, as regards the distance from any other house, or from the surrounding Wall.

*(Store for Spirits.)*

XV. And be it enacted, That there shall be erected, within the walls of every Licensed Distillery, a House or Store, in which the Spirits when distilled shall be deposited, the door or doors of which is or are to be secured by three locks to each door, the key of one of which locks is to be kept by the owner of such Distillery, and the key of one other of the said locks is to be kept by the

Inspector of Distilleries, and the key of the third lock by such other Officer as may be appointed by the Governor for the purpose of keeping the same, and that it shall not be lawful for any person to open the said locks, or enter into the said Store or Warehouse, unless in the presence or by the permission of such Inspector of Distilleries and other person so appointed as aforesaid.

*(Store to be registered.)*

XVI. And be it enacted, That a particular description as aforesaid, of the said Stores or Warehouses so built for the purpose of keeping and depositing of the spirits when distilled, shall be made and registered by the Inspector of Distilleries; and that all Spirits found in any store or place on the said premises, except in the said store or warehouse so registered as aforesaid, shall be forfeited; and the owner of such Distillery, on proof of Spirits being found in any other place or part of the said premises, save the store so registered as aforesaid, shall be liable to a penalty of Forty Shillings for every gallon of Spirits so found.

*(Stills, &c., to be set in stone or brick and mortar.)*

XVII. And be it enacted, That all Stills so Licensed are to be set in stone or brick and mortar, and locks and keys to the heads and cocks of the said Stills, and to the furnace door of such Stills, shall be provided at the expense of the owner.

*(Coolers, how to be fixed.)*

XVIII. And be it enacted, That the coolers belonging to each Distillery shall be screwed down and firmly fastened at both ends in the walls of the building, and that the same shall not be altered without giving four days notice thereof to the Inspector of Distilleries, under a penalty of Ten Pounds, to be recovered against the owner or owners, or proprietor or proprietors of such Distillery.

*(Contents of Coolers.)*

XIX. And be it enacted, That the cooler or back used for the worts in each Distillery shall not be of less content than the full charge of the Still used in such Distillery, under a penalty of Ten Pounds; and that every such cooler and back so found of less content than aforesaid, shall be seized and forfeited.

*(Number of Worms to be used.)*

XX. And be it enacted, That it shall not be lawful for any Licensed Distiller to have or keep upon the said premises any worm or worms, except one worm for each Still so Licensed as aforesaid, under a penalty of Twenty Pounds for each and every worm exceeding the said number so found on the same premises: Provided, however, that nothing herein contained shall prevent any number of worms being kept in the store, in which Spirits when Distilled are to be deposited under security of three locks as aforesaid.

*(Returns to be made to Inspector of Distilleries, when License obtained.)*

XXI. And be it enacted, That every Licensed Distiller, Rectifier, or Compounder, shall, immediately on obtaining his said License, furnish to the Inspector of Distilleries, a return in writing, signed by him, of the Still or Stills to be used by him on the said premises so Licensed, and of the content or contents thereof respectively, and of the worm or worms, coppers, vats, keeves, backs, and other utensils to be used therein, which said account so delivered in, shall be kept and registered by the Inspector of Distilleries; and that all

Stills, worms, coppers, vats, keeves, backs, and other utensils found on the said premises which shall not be stated and mentioned in the said return, shall be liable to be seized by any Inspector of Distilleries, Officer of Customs, or other person appointed as aforesaid, and forfeited in manner hereinafter mentioned.

*(Vessels, &c., to be marked.)*

XXII. And be it enacted, That all vats, keeves, backs, and other utensils used in the premises of each Distillery, shall be respectively marked and numbered, in distinct, legible, and durable characters, so as to distinguish them the one from the other.

*(Officers to have power to enter premises at all times.)*

XXIII. And be it enacted, That it shall and may be lawful for any Inspector of Distilleries in the said Colony, the Officers of the Customs, and every other person or persons duly authorised by the Governor, to enter every house, Distillery, Still-house, Out-house, or place belonging to or made use of by any Licensed Distiller, or Rectifier or Compounder of Spirits, and to gauge and measure all Stills and utensils, and to gauge and take an account of all Spirits, malt, sugar, molasses, or other ingredients used in the making of Spirits, and of all wash, worts, pot ale, singlings, low wines, and materials whatsoever; and that any person or persons obstructing, refusing, or preventing the admission of such Inspector or other Officer or Officers, shall be liable to a penalty of not less than Fifty nor more than Two Hundred Pounds.

*(License to be produced to Officers.)*

XXIV. And be it enacted, That all and every still, and still-heads, worms, and all utensils, or spirits, cordials or compounds, found in any premises or place, shall be liable to be seized by any Inspector of Distilleries, Officer of Customs, or other person appointed as aforesaid, and forfeited, unless the owner of the same shall, on the requisition of such Inspector of Distilleries, Officer of Customs, or other person as aforesaid, produce his license for using and making the same.

*(Distiller to give notice of intention to distil.)*

XXV. And be it enacted, That it shall not be lawful for any licensed distiller to commence to distil without having previously given twenty-four hours notice of his intention so to commence, to an Inspector of Distilleries, under a penalty of One Hundred Pounds; but that every licensed distiller shall serve a notice in writing upon such Inspector of Distilleries, of his intention to commence distillation, at least twenty-four hours previous to such commencement, and also a like notice of his intention to re-commence such distillation after any discontinuance thereof, under a penalty of One Hundred Pounds.

*(Duty on Spirits distilled in the Colony.)*

XXVI. And be enacted, That from and after the first day of April, in the year One thousand eight hundred and forty, upon all spirits made or distilled in the said Colony of New South Wales or its Dependencies, from grain, whether grown within, or imported into the said Colony or its Dependencies, or from any article the produce of the said Colony or its Dependencies, there shall be levied and collected, a rate or duty of Five Shillings for every gallon Imperial measure of such spirits, not exceeding the strength of hydrometer

proof; and in the same proportion for spirits of greater strength: Provided, however, that until the said first day of April, there shall be levied and collected a rate or duty of Three Shillings only, for every gallon Imperial measure of such spirits as aforesaid, not exceeding the strength of hydrometer proof; and in the same proportion for spirits of greater strength.

*(Distillation from any article except Grain prohibited from 1st April, 1840.)*

XXVII. And whereas it is deemed expedient that distillation from sugar, and all other articles of Foreign growth (grain excepted) should be prohibited as soon as the same can be effected without loss to Individuals who may have a stock of such articles on hand: Be it therefore enacted, that from and after the first day of April, in the year One thousand eight hundred and forty, it shall not be lawful for any distiller to make or distil any spirits from sugar, molasses, or any other materials whatsoever of Foreign growth, or any mixture thereof (grain alone excepted); and if any distiller shall from and after the said first day of April aforesaid, make or distil spirits from sugar, molasses, or any other material whatsoever of Foreign growth, or any mixture thereof, (grain excepted), or if any distiller shall brew any wort or wash, with intent to make or distil spirits from any such Foreign materials, such distiller shall forfeit the sum of Five Hundred Pounds, and all such wort, wash and spirits, shall be forfeited and may be seized by any Inspector of Distilleries or Officer of Customs duly authorised in that behalf: Provided however, that until the said first day of April, upon all spirits made and distilled in said Colony from any article not being the growth or produce of said Colony or its Dependencies (excepting grain), there shall be levied a rate or duty of Four Shillings and Sixpence for every gallon Imperial measure of such spirits not exceeding the strength of Hydrometer proof; and so in proportion for spirits of greater strength.

*(No Licenses shall be granted under this Act, until the 1st April, 1840, except to those who now hold Licenses renewable annually.)*

XXVIII. And whereas it is not expedient that any fresh Licenses for the distilling, rectifying, or compounding of spirits, should be granted under this Act before the said first day of April, One thousand eight hundred and forty: Be it therefore enacted, that until the said first day of April, no license for the purpose of distilling, rectifying, or compounding spirits, shall be granted to any person whatever, except to such persons as now hold licenses, and who shall be entitled to the annual renewal thereof.

*(Licensed Distillers on demand to give an exact account of the quantity of spirits distilled by them from sugar, or other Foreign material, which may be in their possession on the 1st April, 1840.)*

XXIX. And whereas it is expedient and necessary for the prevention of fraud, to ascertain the quantity of spirits made and distilled from sugar or other foreign article up to the said first day of April, and which shall not have paid duty on or before that day; Be it therefore enacted, that every licensed distiller shall on demand made, by any Inspector of Distilleries or Officer of Customs, give and return an exact account of the quantity of spirits distilled from sugar or other foreign material, which he

shall on the said first day of April, One thousand eight hundred and forty, have in his possession, or in any bonded store, without having paid the duty thereon; and if any distiller shall on demand made as aforesaid, refuse or neglect to give such return, or shall give a false return of the same, such distiller shall forfeit the sum of Five Hundred Pounds.

*(Spirits distilled from sugar or other foreign article (grain excepted), on which the duty has not been paid before the 1st April, 1840, shall be liable to the same duty as now payable on imported spirits.)*

XXX. And be it enacted, That all spirits made or distilled from sugar or other foreign article (grain excepted), and upon which the duty aforesaid shall not be actually paid before the said first day of April, One thousand eight hundred and forty; the same shall be liable to the same duty as is now payable, and levied on spirits the produce and manufacture of the United Kingdom or of Her Majesty's plantations in the West Indies, imported directly from the United Kingdom, into the said Colony of New South Wales or its Dependencies.

*(How duties shall be charged.)*

XXXI. And be it enacted, That every licensed distiller within the said Colony and its Dependencies, shall be charged for so many gallons as each and every still which he may have kept or made use of for the distilling of spirits shall be found capable of producing from the greatest number of charges that can be worked off in twenty-eight days; which number of charges shall be ascertained in such manner as the Governor shall direct: Provided, however, that it shall be lawful for the Governor, at any time, and in any case, if he shall see fit, to order and direct that the respective rates of duties as aforesaid, shall be charged at and after the rate of the actual quantity produced; and such duties shall thereupon be levied and collected accordingly.

*(Duties to whom paid.)*

XXXII. And be it enacted, That the said duties so chargeable as aforesaid on spirits distilled within the Colony of New South Wales and its Dependencies, shall be paid to the Colonial Treasurer of the said Colony, or to such other person or persons as the Governor shall appoint to receive the same, who shall grant a certificate of such payment to the party paying the same.

*(Permits for removal of Spirits required.)*

XXXIII. And be it enacted, That it shall not be lawful to send, or take, or remove, any spirits out of the premises of any licensed distiller without having a permit to remove the same, signed by an Inspector of Distilleries, or other Officer to be appointed by the Governor for such purpose, such permit to contain the distiller's name, and place from whence the spirits are to be removed, the vessel or vessels in which the said spirit is contained, and the quantity of spirits contained in each and every such vessel or vessels, and the name and residence of the person or persons to whom such spirits are to be sent and forwarded; and such permit shall also specify the time or duration such permit is to be in force: Provided, that such permit shall not be granted by the Inspector of Distilleries, or other Officer appointed as aforesaid, for the removal of any spirits which shall not have been previously lodged and deposited in the regis-

tered stores hereinbefore mentioned; and provided, that at the time such permit is required, the distiller or other person requiring such permit, shall produce to such Inspector of Distilleries, or other Officer aforesaid, the certificate of the said Colonial Treasurer, or other person appointed as aforesaid, that the duty upon such spirits intended to be removed has been duly paid.

*(Spirits removed without permit to be forfeited.)*

XXXIV. And be it enacted, That all spirits removed without such permit as aforesaid, or after the time limited in such permit shall have expired, shall be seized and forfeited, together with the cask or casks in which the same shall be contained, and the cars, carts, drays, or other conveyances, and the horses or other animals, employed in removing the same.

*(Officers taking bribes, or persons offering the same, to forfeit £200.)*

XXXV. And be it enacted, That every person who shall give, offer, or promise to give, any bribe, recompense or reward, or make any collusive agreement with any such Officer as aforesaid, to induce him in any way to neglect his duty, or to conceal or connive at any act whereby any of the provisions of this Act may be evaded, every such person shall, whether the offer be accepted, or performed, or not, forfeit the sum of Two Hundred Pounds.

*(Illicit Spirits may be seized.)*

XXXVI. And be it enacted, That it shall be lawful for any Officer of Her Majesty's Customs within the said Colony, and for any Inspector of Distilleries, and any other person or persons appointed by the Governor for that purpose, to seize all or any spirits within the said Colony and its Dependencies, on which the full amount of duty chargeable thereon has not been paid; and that such spirits so seized shall be deemed to be condemned, and may be sold, unless the owner thereof shall claim the same, within one month after such spirits shall be so seized, and give satisfactory evidence to the Court, or the Justices of the Peace before whom such claim shall be enquired into, that the duty to which the said spirits so seized was chargeable, had been fully paid and satisfied before the same had been so seized as aforesaid.

*(Officers may enter premises of Distiller.)*

XXXVII. And be it enacted, That it shall be lawful for any Officer of Her Majesty's Customs within the said Colony, or for the Inspector of Distilleries, or person or persons appointed for that purpose by the Governor, to enter into and upon the premises of any licensed distiller, rectifier or compounder of spirits, to search for, and seize, any spirits thereon found, the duty on which has not been paid.

*(And may seize goods.)*

XXXVIII. And be it enacted, That it shall and may be lawful for any such Officer of the Customs, Inspector of Distilleries, or any other person or persons authorised by the Governor as aforesaid, having reasonable grounds to believe that Spirits upon which the duty has not been paid, are kept or concealed in any house, or place, in the said Colony or its Dependencies, to enter into such house or place, in the day time, with writ of assistance, and accompanied by a Peace Officer, and search for, and seize any such Spirits found therein, and to deposit the same until

claimed or sold, in the Queen's Warehouse, at the Custom House, or other place appointed by the Governor for that purpose.

*(Grower of Wine may distil for his own use on giving bond not to sell.)*

XXXIX. And be it enacted, That nothing in this Act contained shall prevent the maker of Wine from Grapes the produce of his own Vineyard, in the Colony aforesaid, or its Dependencies, from keeping and using one Still of not more than fifty nor less than twenty-five gallons content, for the purpose of distilling Brandy from such Wine, or the Lees of such Wine, for his own consumption: Provided he obtain for such Still a License from the Colonial Treasurer, or other person appointed as aforesaid; which License shall be granted only on a certificate, signed by two Magistrates, that the person requiring the Still has in cultivation and bearing a Vineyard of at least two acres in content: And Provided also, that every person wishing to keep such Still shall notify his intention so to do, to the Colonial Treasurer, or other person appointed as aforesaid, who shall thereupon require such person to give bond, with two sufficient sureties, in the sum of Two Hundred Pounds, that he will not sell or dispose of any Spirits so distilled; and every such person found to have in his possession any Still, without having entered into such Bond and obtained such License, shall forfeit and pay not less than One Hundred Pounds, nor more than Five Hundred Pounds.

*(Claims for Spirits, &c., seized under this Act, to be lodged within one month after seizure.)*

XL. And be it enacted, That all claims for Spirits or other Property seized as forfeited under this Act, shall be lodged within one month after the seizure shall be made, with the Colonial Treasurer, or such other Officer as shall be appointed by the Governor for that purpose, and whose appointment shall be notified in the Government Gazette.

*(Spirits seized to be sold in one month.)*

XLI. And be it enacted, That all Spirits and other Property seized under the provisions of this Act, shall be considered as condemned, unless claimed within one month after the same shall be seized, and shall be sold by Public Auction.

*(Foreign and Colonial Spirits to be kept in separate cellars.)*

XLII. And be it enacted, That all persons dealing in the sale or purchase of Colonial and Foreign Spirits, shall and do keep the same, respectively, in separate and distinct cellars or stores; and shall mark in white paint on each cask or vessel containing each, respectively, the kind or quality of Spirits therein contained; and that they shall not mix the said Spirits one with the other, under a penalty of One Hundred Pounds; and all such Spirits mixed or sold contrary to the intent and meaning of this Act, together with the casks and packages containing the same, shall also be forfeited and lost, and shall and may be seized by the Inspector of Distilleries or other Officer as aforesaid.

*(Seller and purchaser of illicit Spirits subject to penalty.)*

XLIII. And be it enacted, That every person who shall sell or dispose of, or who shall offer to sell or dispose of, any quantity of illicit Spirits, or Spirits part of which is illicit, shall be liable to a

penalty of One Hundred Pounds; and that every person who shall knowingly purchase any such Spirits, shall be liable to a similar penalty of One Hundred Pounds, together with the forfeiture of the said Spirits so purchased.

*(Fines, forfeitures, and penalties, how to be recovered.)*

XLIV. And be it enacted, That all fines, forfeitures, and penalties imposed by this Act, may be recovered before any two or more Justices of the Peace, or the Judges of the Supreme Court, or in the Court of Vice-Admiralty of the said Colony, at the instance of any Inspector of Distilleries, or any Superior Officer of Customs, and that Actions for recovery of the same shall and may be instituted in the name of some Superior Officer of the Customs of the said Colony, or of Her Majesty's Attorney-General for the said Colony, or Inspector of Distilleries; and that if a question should arise whether any person is an Officer of the Customs, or Inspector of Distilleries, as aforesaid, *viva voce* evidence may be given of such fact, and shall be deemed legal and sufficient evidence.

*(Onus probandi to lie on the parties.)*

XLV. And be it enacted, That if any Spirits or other Property shall be seized for non-payment of the duties of such Spirits, or any other cause of forfeiture, and any dispute shall arise whether the duties have been paid for the same, the proof thereof shall be on the owner or claimer, and not on the Officer who shall seize and stop the same.

*(How claim to seized Spirits, &c., shall be made.)*

XLVI. And be it enacted, That no claim to any Spirits or other Property seized under this Act, and returned into any of Her Majesty's Courts for adjudication, shall be admitted, and that 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 this Act, unless such claim or appearance is entered in the name of the owner or owners, proprietor or proprietors, of such Spirits or other Property so seized, describing the place of residence and the business or profession of such person or persons; and if such person or persons shall reside in Sydney, or within twenty miles thereof, oath shall be made before one of the Judges of the Court in which such information is filed, or before one of the Justices of the Bench of Magistrates before whom any cause of forfeiture shall be tried for Spirits or other Property seized as forfeited under this Act, that the Spirits or other Property so seized, was or were really and truly the property of him, her, or them, at the time of such seizure; but if such person or persons shall not be resident in the said Town of Sydney, or within twenty miles thereof, then and in such case, such oath shall be made in like manner 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 or proprietor to enter such appearance, and to the best of his knowledge and belief such Spirits or other Property were, at the time of the seizure thereof, *bond 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 proceedings 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 perjury, and shall be liable to the pains and penalties to which persons are liable for wilful and corrupt perjury.  
(Claimant to enter into recognizance to answer costs.)

XLVII. And be it enacted, That 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 or persons 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 enquired 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 or proprietor 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.

(What shall be proof of the appointment of Officer in proceedings under this Act.)

XLVIII. And be it enacted, That in case of any information or proceeding under this Act, or any Act relating to the Excise, the Averment that the person or persons prosecuting such information or proceeding is an Inspector of Distilleries, or a superior Officer of the Customs, shall be sufficient proof of the appointment of such Inspector of Distilleries, or a superior Officer of the Customs, without proof of the appointment of such Inspector of Distilleries or Officer of the Customs, unless the defendant shall in such case prove to the contrary.

(Who shall be deemed to be duly appointed for the prevention of Smuggling.)

XLIX. And be it enacted, That all persons employed for the prevention of smuggling, by the direction of the Governor of the Colony, or by any Officer of the Customs, shall be deemed and taken to be duly employed for the prevention of smuggling; and the averment in any information or proceeding that such person was so duly employed shall be sufficient proof thereof, unless the defendant in such case shall prove to the contrary.

(Officers deemed competent Witnesses.)

L. And be it enacted, That any Inspector of Distilleries, and every Officer of the Customs, and every person acting in his or their aid or assistance, shall be deemed a competent witness upon the trial of any suit or information, on account of any seizure or penalty as aforesaid, notwithstanding such Inspector of Distilleries, Officer of Customs, or other person, may be entitled to the whole or any part of such seizure or penalty, or to any reward upon conviction of the party charged in such suit or information.

(Persons employed to carry the Act into effect exempt from serving on Juries, &c.)

LI. And be it enacted, That no Inspector of Distilleries, nor any other person duly employed to carry into effect the provisions of this Act, shall be liable to serve on any Jury, or inquest,

or in any parochial, or other office, whilst he is so employed, any law usage or custom to the contrary notwithstanding.

(Informations, Convictions, and Warrants of commitment to be valid and sufficient, if offence or cause of forfeiture be set forth in words of Act.)

LII. And be it enacted, That every information for any penalty or forfeiture under this Act, and every 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 this Act.

(Punishments if fine not paid.)

LIII. And be it enacted, That if, in any suit or action brought before the Judges of the said Supreme Court, or any two or more Justices of the Peace, as aforesaid, for the recovery of any fines or penalties imposed by this Act, the party or parties shall be convicted, and sentenced to pay such fine, it shall be lawful for the said Court or Justices to award and sentence the said party or parties to be imprisoned for a period of not less than three months, nor exceeding twelve months, in case the said fine or penalties shall not be paid within a time to be limited by the said Court or Justices.

(Governor may make rules for carrying regulations into effect.)

LIV. And be it enacted, That it shall and may be lawful for the said Governor to make such rules and regulations as he may think necessary to carry the provisions of this Act into effect, and to appoint such Officers and other persons for that purpose as he may deem fit and proper.

(Notice of action to be given to Officer.)

LV. And be it enacted, That no writ shall be sued out, nor a copy of any process served upon any Officer of the Customs, or any Inspector of Distilleries, or other person or persons so appointed by the Governor as aforesaid, for any thing 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 to 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 receive in such action a verdict and costs.

(Actions to be brought against Officers within three calendar months.)

LVI. And be it enacted, That 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 or 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.



*(Judges may certify probable cause of seizure.)*

LVII. And be it enacted, That in case any information or suit shall be brought to trial on account of any seizure made under 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 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, indictment, or other suit or prosecution, on account of such seizure; and if any action, indictment, 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 two-pence damages, nor to any cost of suit, nor shall the defendant in such prosecution be fined more than one shilling.

*(Officer may tender amends.)*

LVIII. And be it enacted, That it shall be lawful for such officer, or other person or persons as aforesaid, within one Calendar month after such notice, 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 always, 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.

*(Limitation of damages when Judge certifies probable cause of seizure.)*

LIX. And be it enacted, That in any such action, if the Judge or Court before whom such action shall be tried, shall certify upon the record, that the defendant or defendants in such action acted upon probable cause, then the plaintiff in such action shall not be entitled to more than two-pence damages, nor to any costs of suit.

*(Distribution of forfeitures and penalties.)*

LX. And be it enacted, That all fines and penalties and forfeitures recovered under this Act, shall be paid to the said Colonial Treasurer, and shall be divided, paid, and applied, as follows, (that is to say,) after deducting the charges of prosecution from the proceeds thereof, one-third part of the nett produce thereof shall be set apart or allotted for the use of Her Majesty, Her Heirs and Successors, to be applied to the public uses of the said Colony; one third part thereof shall be paid to the informer; and one third part thereof to the person who shall sue for the same, 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 paid as follows, (that is to say,) the one moiety or half of the nett produce thereof, as aforesaid, to be paid to the said Colonial Treasurer, for the use of Her Majesty, Her Heirs and Successors, to be applied to the public use of the

Colony, and the other moiety or half to be paid to the seizing officer or person suing for the said penalty.

*(Actions to be commenced within one year.)*

LXI. And be it enacted, That actions or suits for the recovery of any of the penalties or forfeitures imposed by this Act, may be commenced and prosecuted at any time within one year after the offence committed by reason whereof such penalty or forfeiture shall be incurred.

*(Touching suspension of decrees.)*

LXII. And be it enacted, That no decree or sentence of any of the said Courts, touching any forfeiture or penalty imposed by this Act, shall be suspended or stayed, unless an inhibition in due course of law shall be obtained and served upon the party or parties intended to be restrained thereby, within eighteen months from the time when such decree or sentence was pronounced.

*(Commencement of Act.)*

LXIII. And be it enacted, That this Act shall commence and take effect from and after the passing thereof.

*(Application of duties.)*

LXIV. And be it enacted, That the produce of all rates and duties imposed and made payable in virtue of this Act, shall be paid to the use of Her Majesty, Her Heirs and Successors, for the public uses of the said Colony, and in support of the Government thereof, and shall be applied in such manner, and to such purposes, as the said Governor, with the advice and consent of the said Legislative Council, shall by any law or ordinance appoint. (So much of 11 Geo. IV., No. 9, as relates to the duties on spirits, repealed.)

LXV. And whereas by an Act of the Governor and Council, passed in the eleventh year of the reign of His late Majesty King George the Fourth, intituled, "An Act for confirming certain Rates and Duties heretofore levied and collected in the Colony, and for continuing the like Rates and Duties until further provision shall be made," certain Rates and Duties were authorised to be levied and collected, be it hereby enacted, that so much of the said last recited Act as relates to the duties on spirits distilled in the said Colony be, and the same is hereby repealed.

"GEORGE GIPPS."

Passed the Legislative Council  
this eighteenth day of September,  
One thousand eight hundred and  
thirty-nine.

GOVERNOR.

WM. MACPHERSON,  
Clerk of Council.

ANNO TERTIO  
VICTORIÆ REGINÆ.  
No. 10.

By His Excellency Sir George Gipps, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

"An Act to alter and improve the mode of  
"Electing a Chairman for Courts of Ge-  
"neral and Quarter Sessions in New  
"South Wales."

WHEREAS, by an Act of the Governor and Council, passed in the tenth year



of the reign of His late Majesty King George 10 Geo. IV., the Fourth, intituled, "An Act for No. 1. instituting and regulating Courts

"of General Quarter Sessions in New South Wales," provision is made for the election, nomination, and appointment of a Justice of the Peace, qualified as therein-mentioned, to act as a Chairman of the several Courts of Quarter Sessions in the said Colony; and whereas, it is expedient to alter and amend the said Act so far as the same relates to such provision; and whereas, by another Act passed in the fourth year of the reign of His late Ma- 4 Wm. IV., jesty King William the Fourth, No. 16. intituled, "An Act to amend an

"Act of the Governor and Council, intituled, "Act for instituting Courts of General and "Quarter Sessions in New South Wales," provision is made for the nomination and appointment of a Chairman of Quarter Sessions for the district of Bathurst, and it is expedient that so much thereof as relates to the nomination and appointment of a Chairman for said

district should be altered: Be it therefore enacted, by His Excellency the Governor, with the advice of the Legislative Council, That from and after the passing of this Act, so much of the said

recited Acts as relates to the election, nomination, and appointment of a Chairman of the several Courts of Quarter Sessions in the Colony aforesaid, or any of them, and the qualifications required for such office, shall be, and the same is hereby repealed.

(Justices to meet for the purposes of election at some place where Petty Sessions are holden, on the first Monday in September in every year.)

II. And be it enacted, That the said Chairman shall be chosen, nominated, and appointed, in manner following; that is to say, the Justices of the Peace for the said Colony shall, and they are hereby required to attend, at some place within the said Colony where Petty Sessions have been duly appointed to be holden, and between the hours of twelve and four o'clock in the day, on the third Tuesday in the month of October in the present year, and on the first Monday in the month of September in every following year, the said Justices so attending at such time and at such place or places, shall then and there declare, in writing, in the form or to the effect set forth in the Schedule to this Act annexed, which of the several Justices of Peace for said Colony, they severally and respectively desire to have appointed as such Chairman as aforesaid; and the Police Magistrate of the district, if present at the meeting, or if not, then the senior Magistrate present, shall forthwith transmit the voting paper or papers, or any declaration in writing as aforesaid, to the Colonial Secretary, for the purpose of being laid before His Excellency the Governor; and the Justice of Peace, in whose favour the greatest number of Justices throughout the Colony shall have so recorded their votes or declarations in writing as aforesaid, shall be declared and appointed by the

No. 455. October 5, 1839.

said Governor to be Chairman of the several Courts of Quarter Sessions within the said Colony for the year then next following, commencing from the first day of January of such year: Provided always, that if there should be an equality of votes for two or more Justices, it shall be lawful for the said Governor, and he is hereby required to appoint either of the said Justices to be such Chairman as he shall see fit: Provided always, that nothing herein contained shall be construed to extend to any place where Petty Sessions are or shall be held within the district of Port Phillip, or any other district within the said Colony for which a Chairman of the Quarter Sessions is now, or shall be hereafter actually nominated and appointed, under the provision of the said hereinbefore last recited Act of Council for the appointment of Chairmen to distant places.

(Certain provisions in IV. William IV., No. 16, not to be repealed.)

III. And be it declared and enacted, That nothing hereinbefore contained shall be construed to repeal or alter the provisions contained in the Act hereinbefore last recited for the appointment of a Chairman at distant places, and also for supplying the place of the Chairman in case of death, resignation, removal, or illness, but the same shall remain and be in full force and effect, and shall be held to apply, as far as the same may be necessary, to the Chairman so to be elected, nominated, and appointed, under and by virtue of the provisions of this Act.

"GEORGE GIPPS."

GOVERNOR.

Passed the Legislative Council, this twentieth day of September, One thousand eight hundred and thirty-nine.

WM. MACPHERSON,  
Clerk of Councils.

#### SCHEDULE REFERRED TO

New South Wales, } At the Petty Sessions, to wit. } holden at for the district of for the election of a Chairman of the Quarter Sessions for the Colony of New South Wales, in pursuance of an Act, intituled, "An Act to alter and improve the mode of electing a Chairman for Courts of General and Quarter Sessions in New South Wales." I (or we) hereby certify and declare my (or our) vote, (or votes) to be in favour of , Esq., proposed at the said Petty Sessions as Chairman of the Quarter Sessions for the said Colony for the year

A. B., J. P.

And Address.

Witness, }  
Esq. }  
Presiding Justice. }

ANNO TERTIO

VICTORIÆ REGINÆ.

No. 11.

By His Excellency Sir George Gipps, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales and its

Dependencies, and Vice-Admiral of the same, with the advice of the Legislative Council.

*"An Act to make further Regulation with respect to Trial by Jury in Criminal Issues in the Colony of New South Wales, and to amend the Form of Proceeding in Criminal Prosecutions in said Colony."*

WHEREAS, by an Act of Parliament, passed in the ninth year of the reign of His late Majesty, King George the Fourth, intituled, "An Act to provide for the administration of Justice in New South Wales and Van Diemen's Land, and for the more effectual Government thereof, and for other purposes relating thereto," it was among other things provided, That until further provision should be made, as hereinafter directed, for proceeding by Juries, all issues of fact joined on any information prosecuted for any crime, misdemeanor, and offence cognizable in the Supreme Court of said Colony, in the name of the Attorney-General or other Officer duly appointed for such purpose by the Governor of said Colony, should be tried by one or more of the Judges of said Court, and seven Commissioned Officers of His Majesty's Sea or Land Forces, whether on full or half-pay, to be nominated from time to time, for such purpose by the said Governor, subject to such regulation as is therein specified: And whereas, it was by said Act also enacted, "That it should be lawful for His said Majesty, His Heirs, and Successors, by any order to be by him or them issued with the advice of His or Their Privy Council, at any time or times thereafter, to authorise the said Governor of New South Wales, with the advice of the Legislative Council thereof, to extend and apply the form and manner of proceeding by Grand and Petit Juries, or either of them, in the trial of all crimes, misdemeanors, issues, matters, and things properly cognizable by Juries in such parts of the said Colony and its Dependencies, at such times, and with, and under, and subject to such limitations, modifications, and rules in respect thereof, as to the said Governor and Council should seem meet, and as should be specified in any law or ordinance to be by Them made in that behalf, and that whenever and so far as such manner of proceeding by Juries, should from time to time be extended and applied as aforesaid, then the form and manner of proceeding thereinbefore directed as to the prosecution of offences should cease and determine." And whereas, by an order in Council bearing date June, 1830, the twenty-eighth day of June, One thousand eight hundred and thirty, His said late Majesty was pleased by and with the advice of His Privy Council to give to the Governor of New South Wales with the advice of the Legislative Council thereof, such authority as aforesaid; and whereas in pursuance of such order in Council, the said Governor and Legislative Council hath from time to time passed various Acts for the extending, applying, and regulating of Petit Juries for the trial of criminal issues in said Colony: And whereas the said Colony hath of late years greatly increased in population, and a sufficient number of respectable persons qualified to act as Jurors is to be found in all parts of the said Colony where Juries are required, it is deemed expedient that the trial of offences by a

Jury of seven Commissioned Officers as aforesaid should in future be dispensed with in said Colony, and that all crimes, misdemeanors, and offences cognizable in the Supreme Court of said Colony, and prosecuted by information in the name of Her Majesty's Attorney-General or other Officer duly appointed for such purpose by the Governor of said Colony, and all issues of fact joined on every such information, shall be tried by a Jury of twelve of the inhabitants of said Colony only: Offences prosecuted in Supreme Court, to be tried by twelve Inhabitants only.

Be it therefore enacted, That from and after the thirty-first day of October next ensuing, all crimes, misdemeanors and offences cognizable in the said Supreme Court, and prosecuted by information in the name of Her Majesty's Attorney-General or other Officer duly appointed for such purpose by the Governor of said Colony, and all issues of fact joined on every such information shall be tried by a Jury of twelve inhabitants of said Colony; and every such Jury shall be subject to such, and the like rules, regulations, and provisions, as to their qualifications and exemptions as are made and provided in and by an Act passed in the second year 2 William IV., of His late Majesty King William the No. 3.

Fourth, intituled, "An Act for regulating the Constitution of Juries, and for the Trial of Issues in certain cases in the Supreme Court of New South Wales," which Act has been continued from time to time by various other Acts; and also to such rules and regulations as are made and provided in and by another Act passed in the fourth year of the reign of his said late Majesty King William the Fourth, intituled, 4 William IV., "An Act to continue for a limited time No. 12. an Act of the Governor and Council of New South Wales, intituled 'An Act for regulating the constitution of Juries, and for the Trial of Issues in certain cases in the Supreme Court of New South Wales, and to make further provision for Trial by Jury in Criminal Cases in said Colony,'" subject however to such alteration as may hereafter by the Governor and Council be deemed expedient; and that from and after the thirty-first day of October next ensuing, the trial of offences by seven Commissioned Officers of Her Majesty's Sea or Land Forces shall cease and determine.

*(Offences prosecuted in Courts of Quarter Sessions to be tried by twelve Inhabitants only.)*

II. And whereas, by the said recited Act of Parliament, it was further enacted, That it be lawful for the said Governor and Council to institute Courts of General and Quarter Sessions within the said Colony by Ordinances to be from time to time for that purpose made and enacted as therein-after mentioned, and to give and grant to such Courts power and authority to take cognizance in a summary way of all crimes, misdemeanors, and other offences or misconduct, not punishable by death, which had been or should be committed by any Felons, or other offenders who had been or should be transported to the said Colony, and whose sentences had not expired or had not been remitted; and also to give and grant to such Courts power and authority to take cognizance of all matters and things cognizable in Courts of General and Quarter Sessions in England, so far

as the circumstances and condition of the said Colony should require and admit: Provided always, that all crimes, misdemeanors, and offences not committed by such Felons, and other offenders as aforesaid, shall be prosecuted and tried before the said Courts of General and Quarter Sessions, in such and the same manner and subject to all such and the same Rules and Regulations in every respect as are thereinbefore made and prescribed with respect to Trials before the said Supreme Court; and Whereas, in pursuance of the said Act of Parliament, Courts of General and Quarter Sessions have been instituted in and for certain Districts and places in said Colony, and it is expedient and necessary to regulate and to provide for the trial of crimes, misdemeanors, and offences cognizable in the said Courts of General and Quarter Sessions respectively, by Petit Juries of twelve inhabitants of the said Colony, in like manner as is hereinbefore directed with respect to the trial of issues joined on Criminal Informations in the Supreme Court: Be it therefore enacted, That from and after the thirty-first day of October next ensuing, all crimes, misdemeanors, and offences which shall be prosecuted in the said Courts of General and Quarter Sessions respectively, shall be tried only by a Jury of twelve inhabitants of the said Colony who shall be subject to such and the like Rules, Regulations, and Provisions as to their qualifications, exemptions, and disqualifications as are hereinbefore made and provided with respect to Petit Juries for the trial of issues joined on informations in the Supreme Court; and that the trial of offences by a Jury of seven Commissioned Officers of Her Majesty's Sea or Land Forces shall cease and determine: Provided always, That nothing herein contained shall restrain or in any manner interfere with the power and authority by law vested in the said Courts of General and Quarter Sessions to take cognizance in a summary way of crimes, misdemeanors, and other offences not punishable with death, which have been or shall be committed by transported Felons or other offenders whose sentences have not expired or been remitted.

"GEORGE GIPPS,"  
GOVERNOR.

*Passed the Legislative Council  
this Twentieth day of Sep-  
tember, One thousand eight  
hundred and thirty-nine.*

WM. MACPHERSON.  
Clerk of Councils.

ANNO TERTIO  
VICTORIÆ REGINÆ.  
No. 12.

By His Excellency Sir George Gipps, Knight, Captain General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the same, with the advice of the Legislative Council.

"An Act to Consolidate and amend the Laws relating to the Savings' Bank of New South Wales."

WHEREAS, an Act of His Excellency the Governor of New South Wales, with the advice of the Legislative Council thereof, was passed in the fifth year of the Reign of His late Majesty, King William the

Fourth, intituled, "An Act to repeal in part, and to amend, 5 Gul. IV., and extend the provisions of an Act, intituled, 'An Act to establish a Savings' Bank in New South Wales, and to provide for the management thereof, and for the security of Deposits therein;'"

and whereas it is expedient to repeal the said recited Act, except as is hereinafter excepted, and to substitute another Act in its stead: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice of the said Legislative Council, that the said Act be, and the same is, from and after the first day of November next repealed, except as to the institution and establishment of the said Savings' Bank, which shall be continued in New South Wales, for the receipt, management, and security of such deposits, and shall be regulated according to the provisions hereinafter established; and except also, in so far as any other Act of the said Governor and Council is thereby repealed: Provided nevertheless, that nothing herein contained shall invalidate, or annul, any appointments of Trustees, District Trustees, Accountants, or District Accountants, made under the said recited Act, or shall invalidate or annul any payments, receipts, or proceedings had, or bonds or securities taken, or entered into, or drafts, powers of attorney, certificates, orders, or other instruments whatsoever, executed under the authority of the said recited Act; but the same respectively shall continue in force, as if made, had, entered into, or executed, under, and by virtue of the provisions of this Act.

(Governor to be President, and management of affairs vested in eighteen Trustees.)

II. And be it enacted, That the Governor of New South Wales for the time-being, shall be the President of the said Savings' Bank, and that the management of the affairs of the same shall be vested in eighteen Trustees, to be nominated by the said Governor, of whom, one shall be styled Vice-President; and that all or any of such Trustees shall and may, from time to time, be removed from office, and be re-appointed; or others, or another, may be appointed in their or his place or stead in case of any such removal, or any vacancy happening, as the said Governor shall, from time to time, think fit; and every such nomination, re-appointment, or fresh nomination of any such Trustees or Trustee as aforesaid, shall be signified by the publication of an order to that effect in *The New South Wales Government Gazette*.

(Any five Trustees empowered to do all matters and things which the Trustees are required to do.)

III. And be it enacted, that all Acts, matters, and things (save as hereinafter excepted,) which the said Trustees are by any of the provisions of this Act authorised or required to do and perform, shall and may be done and performed by any five of such Trustees: Provided always, that such five Trustees be for such

purpose assembled, at a meeting, whereof due notice shall have been given to all the said Trustees.

*(Senior Trustee to be Chairman at any meeting.)*

IV. And be it enacted, That at all meetings of the said Trustees, the senior Trustee in the order of appointment present, shall preside as Chairman; and shall not only vote as a Trustee, but shall also, in case of the equality of votes, having a casting, or decisive vote.

*(No Trustee to derive benefit from, nor to deposit in, the Bank.)*

V. And be it enacted, That no person being a Trustee, or District Trustee, or Treasurer, of such Savings' Bank, or being any ways concerned in the management thereof, shall be allowed to deposit any sum or sums of money therein, nor to borrow any money therefrom, nor to derive any benefit from any deposit made in such Savings' Bank; nor shall act in the capacity of Accountant or Clerk of such Savings' Bank; nor receive, directly or indirectly, any salary, allowance, profit, or benefit, whatsoever, from the Funds of the said Savings' Bank.

*(Trustees may appoint Accountant, subject to approval of the Governor.)*

VI. And be it enacted, That it shall and may be lawful for the said Vice-President, and any four of the said other Trustees, subject to the approval of the said Governor, to appoint fit and proper persons to be the Accountant in Sydney of the said Savings' Bank, and also District Accountants of the Branches thereof established in the Country Districts, and from time to time to remove from office any such Accountant, and to re-appoint him, or to appoint another, or others in his place or stead, in case of any such removal, or any vacancy happening, as the said Vice-President and Trustees shall from time to time think fit; and every such appointment, re-appointment, or fresh appointment, of any such Accountant as aforesaid, shall be signified by the publication of a notice to that effect in *The New South Wales Government Gazette*; and it shall and may be lawful for the said Vice-President and other Trustees, to appoint (subject to the approval of the said Governor) such salaries as they shall deem fit, to be paid to such Accountants, regard being had to the nature and extent of the duties to be performed, and to the responsibility which may respectively attach to them.

*(Accountant to grant security for the faithful discharge of his duties.)*

VII. And be it enacted, That all the persons now holding the office of Accountant of the said Savings' Bank, and every person who may hereafter be appointed as aforesaid to the office of Accountant of the said Savings' Bank, shall grant security for the due and faithful discharge of the duties of his office, by a bond with two or more sufficient sureties, to be approved by the said Vice-President and other Trustees, who shall join with the said Accountant in such bond, and they, and he, shall bind themselves jointly and severally to "The Vice-President and Trustees of the said

"Savings' Bank of New South Wales," in such penal sum as shall be named by the said Trustees, and be approved by the said Governor.

*(Trustees may appoint Clerks and other subordinate officers, subject to approval of the Governor.)*

VIII. And be it enacted, That it shall and may be lawful for the said Vice-President and any four of the said other Trustees, subject to the approval of the said Governor, to appoint clerks, and such other subordinate officers of the said Savings' Bank, as they in their discretion shall think necessary for the execution of the several duties and trusts hereby reposed in them; and they may, and shall, out of the interest received by them on monies lent out as hereinafter directed, pay such salary as shall, pursuant to the provision herein before contained, be appointed to be paid to the Accountant of the said Savings' Bank, and also such other salaries to the said clerks and other subordinate officers, as the said Vice-President and any four of the said other Trustees, by and with the approbation and consent of the said Governor, shall from time to time think fit, and allow; and the said Vice-President and other four Trustees shall also, out of the said interest, defray all such incidental charges and expenses as shall be necessarily incurred in conducting the business and keeping the accounts of the said Savings' Bank, which shall be allowed, and approved by the said Governor.

*(Vice-President and Trustees may adopt rules and regulations heretofore made, or make new ones, with approval of the Governor.)*

IX. And be it enacted, That the said Vice-President, and any four of the said other Trustees attending any such meeting as aforesaid, shall and may adopt and confirm such rules and regulations as have heretofore been made in pursuance of the hereinbefore recited Act, which shall have been approved by the said Governor, or shall and may proceed to frame such other and new rules and regulations for the conduct and management of the said Savings' Bank, as to them shall seem meet, and may from time to time revoke, alter, and modify, any such rules and regulations respectively: Provided always, that no such new rules or regulations shall be deemed valid or be acted upon, until the same shall have been submitted to the Governor for his approval, and shall have been adopted, confirmed, and allowed by him, under his hand.

*(Rules and Regulations to be fairly transcribed on parchment, and deposited with the Chief Clerk of the Supreme Court; and to be received as evidence of the same.)*

X. And be it enacted, That all such rules and regulations as may from time to time be made as aforesaid by the Trustees for the management of the said Savings' Bank, after the same shall have been confirmed and allowed by the said Governor, as hereinbefore is directed, or such as are already in force and adopted and confirmed as aforesaid, shall be fairly transcribed on parchment, and deposited with the

Chief Clerk of the Supreme Court of New South Wales; which transcript shall be filed by such Chief Clerk, and preserved amongst the records and muniments of the said Supreme Court without any fee or reward in respect thereof; and such rules or regulations so deposited, shall be binding upon the several members and officers of the said Savings' Bank, and upon all Depositors therein, and their representatives, all of whom shall be taken and deemed to have full notice thereof; and the transcript of the said rules and regulations deposited with the Chief Clerk of the Supreme Court as aforesaid, or a true copy thereof, examined with the original, and proved to be a true copy, shall be received as evidence of such rules and regulations respectively as aforesaid; and every copy of any such transcript deposited with the said Chief Clerk of the Supreme Court as aforesaid, shall be made without fee or reward, except the actual expense of such copy.

*(One Trustee with Accountant, or two Trustees, in his absence, may receive deposits.)*

XI. And be it enacted, That it shall and may be lawful for any one or more of such Trustees, together with the Accountant, or in the event of his absence, for any two or more of such Trustees, at such time and place as shall be fixed by such rules and regulations confirmed and allowed as aforesaid, and at no other time or place whatsoever, to receive from any person or persons, in the way of deposit, any sum or sums of money not being of value less than One Shilling, nor by one or by successive deposits exceeding the sum of Two Hundred Pounds in the whole, to the credit of any one account, excepting as hereinafter provided; and shall then, and there, cause the money so received to be entered in a book (to be provided for that purpose) to the credit of the party making such deposit, or to the credit of such other person as he or she may appoint; and the amount of such deposits, and all other sum and sums of money received into the said Savings' Bank, shall, with all convenient speed, be paid into such one of the Colonial Banks in Sydney, as shall be approved of by the Vice-President, and any four of the said other Trustees, at any meeting for such purpose to be convened, and the same shall be there placed to the credit of the said Savings' Bank, in an account to be intitled "The account of the Vice-President and Trustees of the Savings' Bank of New South Wales," which said account shall be opened and kept in such Bank, for that purpose; and no money so paid into such account in such Bank, shall be withdrawn therefrom without the written order of two or more Trustees, countersigned by the Accountant for the time being, first had and obtained.

*(General meeting of Trustees for investing deposits.)*

XII. And be it enacted, That on any day or days, at any meeting or meetings to be for that purpose appointed by the said Trustees, it shall be lawful for the Trustees then attending, not being less than four, to discount, at a rate of interest not less than eight pounds

per centum per annum, any bill of exchange or promissory note for any amount not exceeding One Thousand Pounds; provided the same shall bear the names of not less than two persons to be approved by such Trustees so attending as aforesaid, or the major part of them, and be payable at a period not exceeding six Calendar months from the time when the same shall be discounted; and it shall and may be lawful for any number of the said Trustees so attending as aforesaid, not being less than four, to lend any sum or sums of money, upon security by mortgage of any lands and hereditaments of an estate of inheritance in fee-simple in the said Colony of New South Wales, provided such lands and hereditaments be free from all incumbrances (except quit rents), and provided also that no such loan shall exceed the amount of Two Thousand Pounds to any one person; and it shall and may be lawful for such Trustees as aforesaid, to direct a valuation to be made of the said hereditaments, the expense of which valuation shall be borne and paid by the person or persons applying for such loan; and all such lands and hereditaments so mortgaged as aforesaid, shall be conveyed to the Vice-President for the time-being of the said Savings' Bank in fee-simple, subject to a proviso for redemption of the same, on payment of all principal money and interest; and there shall be inserted in such mortgage, a power of sale in default of payment of principal money and interest on the days and at the times appointed for payment of the same, but such power of sale shall not prejudice or affect the right of the said Savings' Bank to foreclose the equity of redemption of the said hereditaments; and all bonds, mortgages, warrants of attorney, and other securities, which have been, or which shall or may at any time hereafter be, taken in the name of any person as Vice-President of the said Savings' Bank, for and on account of the same, shall and may be put in suit and be sued and prosecuted at law or in equity, in the name of the Vice-President for the time-being, in whose name the same may have been taken, or in the name of any person who shall or may have succeeded to that office at the time such proceedings shall be instituted, notwithstanding that the name of any such succeeding Vice-President be not inserted in such bond, mortgage, warrant of attorney, or other such security, as an obligee, mortgagee, assignee, or payee, of the sum or sums of money therein mentioned; and the death, resignation, removal, or other act of any such Vice-President of the said Savings' Bank for the time-being, in whose name any such bond, mortgage, warrant of attorney, or other security as aforesaid, shall be so put in suit, shall not abate any action, suit, or other proceeding had thereon, but the same may be continued where it left off, and be prosecuted and carried on in the name of any person who may have succeeded to that office, or may be, or become the Vice-President of the said Savings' Bank, for the time-being; and the legal estate in all lands and tenements belonging or mortgaged to the said Savings' Bank, and all legal rights and capacities in

respect of the said Savings' Bank, shall become vested in such new Vice-President as aforesaid, to all intents and purposes, immediately upon the recording of the memorial of the name of such new Vice-President in the Supreme Court, as hereinafter directed, and so on *toties quoties*, whensoever any new appointment of Vice-President for the time-being of the said Savings' Bank shall take place, and such new memorial shall be enrolled and recorded in the Supreme Court, as hereinafter directed: Provided always, that whenever any such lands and hereditaments are or shall become liable to the dower of the wife of the mortgagor thereof, she shall join in such mortgage for the purpose of releasing the same.

*(Trustees to prepare a balance sheet and to lay the same before the Governor.)*

XIII. And be it enacted, That the said Trustees, or any five of them, shall, within one Calendar month after the close of every year, cause a balance sheet to be prepared, containing a true statement of the receipts and payments on account of the said Savings' Bank during the past year, and of the balance of money remaining in such Colonial Bank as aforesaid, to the credit of the said Savings' Bank, and of all sums of money which may in any manner be due to the said Trustees of such Savings' Bank, as such Trustees as aforesaid; and they shall certify to the best of their belief the correctness of the said account or balance sheet, by subscribing the same with their names; and shall, within three days after such subscription, lay the same before the Governor for the time-being for his approval, and shall cause the same, after being by him approved, to be published in the *Government Gazette*.

*(Rate of Interest on deposits.)*

XIV. And be it enacted, that every person depositing with the said Trustees by one or more payments, any sum not less than Twenty Shillings, or the person on whose account the said deposits may have been paid, and to whose credit they are placed in the books of the said Savings' Bank, shall be entitled to receive interest upon the same at the rate of five pounds by the year for every hundred pounds, and in the same proportion for any shorter time: Provided that no interest shall be allowed on any sums less than one pound, or on odd shillings or pence, and that the interest shall be calculated by months, omitting odd days; but that any sums deposited within the first seven days of a month, shall be entitled to bear interest for the whole of that month; and the said Trustees may, and shall pay such interest as is herein directed, upon all deposits of not less than twenty shillings, out of the interest received by them on sums lent out, as hereinbefore appointed; and if at the close of any year a surplus over and above Four Hundred Pounds shall remain, after such interest, and also such salaries, charges, and expenses, as hereinbefore directed, shall have been paid, the said Trustees may and shall cause such surplus to be divided among, and placed to the credit of, the several persons having deposits in

the said Savings' Bank, in proportions corresponding with the amount of the respective sums standing to their credit at the close of the preceding year, and with the number of months in such year, during which such sums may have remained inscribed in the names of the several depositors.

*(Rate of interest may be reduced.)*

XV. And be it enacted, that it shall and may be lawful for the said Trustees, or a major part of them, at a General Meeting to be held in the month of January in every year, by and with the consent and approbation of the Governor of the said Colony, to reduce the rate or rates of interest hereinbefore prescribed, as well on any sum of money which may be so lent at interest by the said Savings' Bank as aforesaid, as on any sums standing in the Books of the said Savings' Bank as received by way of deposit as aforesaid, or either of them; Provided always, that three Calendar months' notice be previously given by advertisement, to be published in *The Government Gazette* of the said Colony.

*(Payment of interest and disposal of such as is not applied for.)*

XVI. And be it enacted, That the said interest at the rate of five pounds by the year on every one hundred pounds deposited in the said Savings' Bank, and the proportionate interest on any smaller sum subject to the rules and regulations aforesaid, shall be added to and incorporated with the sum, which may be then standing in the books of the said Savings' Bank, to the credit of such party, and shall bear interest subject to the rules aforesaid from the first day of the said month of January, and interest at the rate above fixed, shall be allowed to him or her upon the total sum, so long as the same shall remain deposited in the said Savings' Bank: Provided always, that nothing in this Act contained shall entitle any free person by one, or by successive deposits, to place in charge of such Trustees, any sum exceeding Two Hundred Pounds in the whole: Provided further, that nothing in this Act contained shall limit the amount of monies belonging to the estates of Intestate persons which shall or may be paid into the said Savings' Bank, under, or by virtue of, an Act of the Governor and Council of New South Wales, passed in the first year of the reign of Her present Majesty, Queen Victoria, intitled, "*An Act for the investment of monies belonging to Intestate estates by the Supreme Court in the New South Wales Savings' Bank at Sydney*," or shall limit the amount of monies which shall or may be directed to be invested in the said Savings' Bank, under any order which shall be made by the said Supreme Court of New South Wales: Provided also, that no person or persons, who may ultimately be entitled to any such sum or sums of money which shall or may be so invested as aforesaid, shall claim or derive any benefit by virtue of this Act other than interest at and after the rate of five pounds per centum per annum, upon the principal monies so invested as aforesaid, or at and after such other rate or rates of

interest as the Trustees for the time-being, with the approbation of the said Governor, shall appoint, as hereinbefore provided.

*(Conditions on which deposits may be withdrawn.)*

XVII. And be it enacted, That it shall and may be lawful for any free person being the owner of any sum or sums of money deposited in the said Savings' Bank, or the interest thereof, or for any person duly authorised by such depositor, or for his or her executors or other lawful representative, to claim and receive back such sum or sums of money, or any part thereof, in the manner and upon the conditions following, that is to say, if the sum or sums so required to be repaid, shall not exceed five pounds, the claimant thereof shall on some day appointed for the meeting of the Trustees, deliver or cause to be delivered to them, or to their Accountant, a notice signed with his or her name, declaring his or her intention to withdraw such sum from the Bank at the expiration of seven days from the date of the said notice; and if the sum to be withdrawn shall exceed five pounds, but be not more than twenty pounds, then fourteen days' notice shall in like manner be given; and a notice of twenty days when the sum to be withdrawn shall exceed twenty pounds, but be not more than five hundred pounds; and a notice of two months when the sum to be withdrawn shall exceed five hundred pounds.

*(Infants may make deposits.)*

XVIII. And be it enacted, That in case the Trustees of the said Savings' Bank of New South Wales shall receive any deposit of money from, or for the use and benefit of, any person under the age of twenty-one years, it shall be lawful for the said Trustees to pay such person his or her share and interest in the Funds of the said Savings' Bank, in the manner, and upon the conditions, hereinbefore appointed in the case of other depositors, and the receipt of such person shall be a sufficient discharge for any money paid to him or her as aforesaid, notwithstanding his or her incapacity or inability in law to act for himself or herself.

*(As to deposits of Prisoners.)*

XIX. And be it enacted, That it shall and may be lawful for the said Trustees, by order of the Governor of the said Colony, to receive from, or on behalf of, any transported offender, under any sentence of transportation within the said Colony or its Dependencies, any sum or sums of money whatever, and to allow interest thereon, in like manner as on other deposits aforesaid, and to pay over to any such offender the principal sum, and interest thereon, in such sums, and at such times, as the Principal Superintendent of Convicts, by any writing under his hand, with the approbation of the Governor, shall direct.

*(Funds of any other Savings' Bank, &c. may be received.)*

XX. And be it enacted, that it shall and may be lawful for the said Trustees, by order of the Governor of the said Colony, to receive any sum or sums of money that may have been or may hereafter be received and deposited in any Savings' Bank, or Friendly or other Society

established within the said Colony, from the Treasurer or Trustees of such Savings' Bank, or Friendly or other Society, or other person competent to pay the same, and to place the same in the said Savings' Bank of New South Wales, in the name or names of the person or persons to whom the said sum or sums of money so to be transferred shall respectively belong, and to give credit in the Books and Accounts of the said Savings' Bank of New South Wales to such person or persons for the several and respective sums to which they may be entitled at the time of such transfer, and to pay interest for the same in the same manner, and at and after the same rate or rates as if the said several sums had been originally respectively deposited in the said Savings' Bank of New South Wales by the several individuals to whom the same shall respectively belong.

*(As to deposits of persons deceased, being under £20. ; 9 George IV., c. 92, s. 41.)*

XXI. And be it enacted, that in case any Depositor in the funds of the said Savings' Bank, shall die, leaving a sum of money in the said Savings' Bank, which, with the interest thereon, shall not exceed in the whole twenty pounds, it shall be lawful for the said Trustees, and they are hereby authorised and permitted, in case such Trustee shall be satisfied that no Will was made and left by such deceased depositor, and that no letters of administration will be taken out of the goods and chattels of such depositor, to pay the same at any time after the decease of such depositor according to the rules and regulations of the said Savings' Bank, and in the event of there being no rules and regulations made in that behalf, then the said Trustees are hereby authorised and permitted to pay out of such sum of money all just debts due or owing by such deceased depositor, and to defray the expense of his or her funeral so far as the said sum of money shall extend, and to pay and divide the surplus, if any there be, after paying such debts and defraying such expenses as aforesaid, to and amongst the person or persons entitled to the effects of the deceased intestate, according to the statute of distributions.

*(As to deposits of persons deceased, exceeding £20 ; not to interfere with legal title.)*

XXII. And be it enacted, that in case any depositor of any money in the funds of the said Savings' Bank shall die, leaving any sum or sums of money in the said funds, or there shall be any dividends or interest due thereon, belonging to him or her at the time of his or her death, which said several sums shall exceed in the whole the sum of twenty pounds, the same shall not be paid to any person or persons claiming to be the representative or representatives, or next of kin, or creditor or creditors of such depositor, unless such person or persons shall deliver or cause to be delivered to the said Trustees or to the Accountant of the said Savings' Bank, a notice in writing signed with his, her, or their names, in the presence of two credible witnesses, setting forth the grounds upon which he, she, or they, claim to be entitled to receive the said sum or sums of money belonging to the said



depositor at the time of his or her death, or any part or parts thereof: Provided always, that the said notice shall have been previously published thrice or oftener in *The Government Gazette*, and in some one or more of the newspapers of the Colony, at the discretion of the Trustees; and three Calendar months at least shall have elapsed subsequently to such last publication, before payment be made in satisfaction of any such claim or demand: and provided also, that if any creditor of the deceased whose debt shall not exceed the sum of ten Pounds, shall put in his or her claim to be paid, it shall be lawful for the said Trustees to pay the same without such public notice as aforesaid: and provided further, that the above regulation shall not be taken to interfere with the legal title and claim of any representative or representatives of such depositor deceased, who shall produce probate of the Will of the same, or letters of administration of his or her effects: Provided also that if any payment shall be made from the funds of the said Savings' Bank by the Trustees thereof as hereinbefore directed, and the party or parties claiming and receiving the same shall afterwards be proved not to be the lawful representative or representatives of the depositor so deceased as aforesaid, or otherwise not entitled to the same, such payment shall be valid against any demand of any other person or persons as representative or representatives of the said deceased depositor, or any other person or persons whomsoever; nevertheless, such lawful representative or representatives, or other person or persons shall have remedy for such money so paid as aforesaid, against the person or persons who shall have so wrongfully received the same.

*(All monies, &c., to be vested in Vice-President for time-being)*

XXIII. And be it enacted, That all monies, goods, chattels, and effects whatsoever, and all securities for money and obligatory instruments, and evidences or muniments, and other effects whatever, and all rights and claims now, heretofore, or hereafter belonging to, or had, by the said Savings' Bank of New South Wales, shall be vested in the Vice-President thereof for the time-being, for the use and benefit of the respective depositors therein, according to the provisions of this Act, and after the death, resignation, or removal of any such Vice-President, shall vest in the succeeding Vice-President for the same estate and interest as the former Vice-President had therein, and subject to the same trusts without any assignment or conveyance whatever: Provided always, that all sum or sums of money paid on the redemption of any lands and hereditaments may be received by any one Trustee together with the Accountant for the time-being of the said Savings' Bank, and all receipts and other acquittances for the same may be signed by one Trustee together with the said Accountant, in the name of and for and on behalf of the said Vice-President of the said Savings' Bank, and such receipts and acquittances so signed as aforesaid, shall be deemed and taken to be as valid and effectual at law and in equity, as if

the same had been signed by the Vice-President of the said Savings' Bank; and the said Vice-President may institute any action, suit, prosecution, and other proceedings at law, and in equity and on behalf of the said Savings' Bank, or wherein the said Savings' Bank is, or shall, or may be concerned, against any person or persons, body or bodies, politic or corporate, and whether such person or persons shall be a Trustee or officer of the said Savings' Bank or otherwise; and such action, suit, prosecution, and proceedings shall be commenced or instituted, and carried on in the name of the Accountant of the said Savings' Bank for the time-being, as the nominal plaintiff, complainant, or petitioner, for and on behalf of the said Savings' Bank, and all actions, suits, or proceedings as aforesaid, to be commenced, instituted, or prosecuted, against the said Savings' Bank, shall be defended by the Vice-President, but the same shall be commenced, instituted, and prosecuted against the said Accountant for the time-being of the said Savings' Bank, as the nominal defendant, for and on behalf of the said Savings' Bank, and all prosecutions for fraud upon, or against the said Bank, or for embezzlement, robbery, or stealing the bills, notes, bonds, monies, goods, chattels, effects, or property, of the said Bank, or for any other offence against the said Bank, shall or may be so commenced or instituted and carried on in the name of the said Accountant for the time-being of the said Bank; and in all indictments and informations it shall be lawful to state the property of the said Bank to be the property of the said Accountant for the time-being, and any offence committed with intent to injure or defraud the said Bank, shall, and lawfully may, in any prosecution on account of the same, be stated or laid to have been committed with intent to injure and defraud such Accountant for the time-being of the said Bank, and any offender or offenders may thereupon be lawfully convicted of any such offence; and in all other allegations and indictments, informations, and other proceedings, it shall and may be lawful and sufficient, from and after the passing of this Act, to state the name of such Accountant, and no such suit, action, or prosecution, shall be discontinued or abated by the death of such Accountant, or by his resignation or removal from office which he held at the time when such action, suit, or prosecution was commenced, but the same shall and may be proceeded with in the name of any person who may be or become Accountant of the said Savings' Bank for the time being, and such person shall pay or receive like costs, as if such action or suit had been commenced in his name, for the benefit of, or to be reimbursed from, the funds of the said Savings' Bank.

*(Memorials of names of Vice-President and of Accountant to be respectively recorded, on oath, in the Supreme Court.)*

XXIV. And be it enacted, That a memorial of the name of the Vice-President, and a memorial of the name of the Accountant for the time-being of the said Savings' Bank, in the form or to the

effect for that purpose set forth in the schedule hereunto annexed, signed by at least four of the said Trustees of the said Savings' Bank, shall respectively be recorded upon oath in the Supreme Court of New South Wales within thirty days after the passing of this Act; and when and as often as any Vice-President shall be appointed by the said Governor as hereinbefore directed, or any Accountant of the said Savings' Bank shall be newly elected Accountant thereof, a memorial of the name of such newly appointed Vice-President, or of such newly elected Accountant, in the same form or to the same effect as the above-mentioned memorial, signed by such newly appointed Vice-President, or such newly elected Accountant, as the case may be, and by four of the said Trustees of the said Savings' Bank at the time of the appointment of such Vice-President or of the election of such Accountant, shall in like manner be recorded upon oath in the said Supreme Court within thirty days next after such Vice-President shall be appointed, or such Accountant shall be so elected, as the case may be.

*(Until such record made, no action to be brought.)*

XXV. And be it enacted, That until a memorial of the name of the Vice-President, or of the Accountant for the time-being be recorded in the manner herein directed, no action, suit, or other proceeding shall be brought by the said Bank in the name of the Vice-President or of the Accountant of the said Bank as aforesaid, under the authority of this Act.

*(Vice-President and Accountant competent witnesses.)*

XXVI. Provided always, and be it enacted, That the said Vice-President or Accountant being the plaintiff, complainant, petitioner, or defendant, in any action, suit, petition, or other proceedings as aforesaid, on behalf of the said Bank, shall not prevent or effect the competency of any such Vice-President or Accountant so as to prevent him from being a witness in such action, suit, petition or other proceeding, in the same manner as he might have been if his name had not been made use of as such plaintiff, complainant, petitioner, or defendant, in any such action, suit, petition, or other proceeding.

*(Want of proof of record of memorial shall not nonsuit Plaintiff.)*

XXVII. And be it enacted, That in any action, to be brought in the name of the said Vice-President or Accountant of the said Bank, by virtue of this Act, the plaintiff therein shall not be nonsuit, nor shall a verdict be given against him for want of proof of the record of such memorial or memorials as hereinbefore mentioned; but in case the defendant in any such action shall make it appear on such trial that no such memorial or memorials as hereinbefore mentioned, has, or have been recorded, then a nonsuit shall be entered in such action.

*(No Trustee personally liable except for wilful neglect.)*

XXVIII. And be it enacted, That any one or more of the said Trustees or of the District Trustees hereinafter mentioned, shall not be answerable or accountable for the other or others of them, but each and every of them only for his and their own acts, receipts, neglects, or defaults respectively; and that they, or any of them, shall not be answerable or accountable for

any Banker, Broker, or other person; with whom, or in whose hands or custody any part of the said trust monies, shall or may be deposited or lodged for safe custody or otherwise in the execution of the trusts hereby in them reposed; and that they, or any of them, shall not be answerable or accountable for the insufficiency or deficiency of any security or securities in or upon which any monies shall be placed out or invested, or for the defect of title or value of any lands, nor for any other misfortune, loss, or damage, which may happen in the execution of the aforesaid trusts, or in relation thereunto, except the same shall happen by or through their own wilful default respectively.

*(Appointment of District Trustees.)*

XXIX. And whereas it is expedient, as far as practicable, to extend to Country Districts the beneficial operation of this Act: Be it therefore enacted, That it shall be lawful for the said Governor, from time to time, as occasion may require, to appoint proper persons to act as Trustees for the Districts of Parramatta, Liverpool, Campbelltown, Berrima, Goulburn, Bathurst, Penrith, Windsor, Richmond, Maitland, Port Stephens, Port Macquarie, Wollongong, and for such other Districts as to the said Governor shall seem meet, to be signified by the publication of an order to that effect, in *The New South Wales Government Gazette*, which said Trustees shall be appointed for the receipt respectively of deposits in the said Savings' Bank, in order that the same may be transmitted to, and be invested by, the Vice-President and Trustees of the Savings' Bank of New South Wales, in Sydney, for the benefit of Country depositors, in like manner, and subject to the same regulations as hereinbefore provided, touching and concerning other depositors: Provided that the appointment of the said District Trustees respectively, shall take effect so soon as the same shall be notified in *The Government Gazette*.

*(Appointment of District Accountant.)*

XXX. And for the more effectual protection of depositors in such Country Districts, and in order that they may as speedily as possible derive benefit from their deposits in the said Savings' Bank of New South Wales, in Sydney: Be it enacted, that a Clerk or Accountant shall be appointed by the Vice-President and Trustees of the said Savings' Bank at Sydney, for each District respectively, who shall give reasonable security to the satisfaction of the said Vice-President and Trustees, for the duly accounting for such monies of depositors as shall come to his hand; and shall in the presence, and not otherwise, of one or more of the District Trustees so appointed as aforesaid, receive deposits from persons residing within his District, at such times and places as the District Trustees shall appoint, and give proper vouchers to the parties depositing the same, signed by him, and by any one of the Trustees, if more than one be present at the receipt thereof; and it shall be the duty of such District Accountant, and he is hereby required on the first post day in every month, or oftener if directed so to do by the Trustees in Sydney, and in such manner as they shall appoint, to remit all sums of money so deposited, to the Accountant of the said Savings' Bank in Sydney, together with an account verified by one or more of the District Trustees respectively, of the names, residences, and descriptions

of the depositors, and of the sums received by him as aforesaid, in order that such depositors may be entitled to the benefit of this Act.

(*Withdrawing deposits in country districts.*)

XXXI. And be it enacted, That it shall and may be lawful for any free person, being the owner of any sum or sums of money deposited with the District Accountant for transmission for his or her benefit to the New South Wales Savings' Bank in Sydney, or for any person duly authorised by such depositor, or for his or her executor, administrator, or other lawful representative, to claim and receive back such sum or sums of money, or any part thereof, in the manner following (that is to say), if the sum or sums so required to be repaid, shall not exceed five pounds, the claimant thereof shall, on some day to be appointed by the District Trustee or Trustees respectively, deliver, or cause to be delivered, to the District Clerk or Accountant, a notice signed with his or her name, declaring his or her intention to withdraw such sum from the Bank at the expiration of fourteen days' from the date of the said notice; and if the sum to be withdrawn shall exceed five pounds, but be not more than twenty pounds, then twenty-one days' notice shall in like manner be given; and thirty days' notice when the sum to be withdrawn shall exceed twenty pounds; and upon receipt of such notice, the District Clerk or Accountant shall forthwith transmit the same, verified under the hand or hands of one or more of the said District Trustees respectively to the Accountant of the Savings' Bank in Sydney, in order that proper steps may be taken for remitting the money to the District Accountant, for payment to the party or parties lawfully claiming the same, who shall take from him or them respectively, proper receipts in writing, for the money so paid, which receipts are hereby required to be forwarded to the Accountant of the Savings' Bank in Sydney.

(*Depositors in country districts dying possessed of money in the Bank.*)

XXXII. And be it enacted, That in case any District depositor in the funds of the Savings' Bank of New South Wales shall die, leaving any sum or sums of money in the said funds, or any dividend, or interest due thereon, belonging to him or her at the time of his or her death, the same shall be paid only on the conditions hereinbefore provided, touching and concerning like cases.

(*District Trustees to have no interest in the funds of the Bank.*)

XXXIII. And be it enacted, That no District Trustee, being in any way concerned in the management of the funds of the Savings' Bank of New South Wales, or the branches thereof, shall be allowed to deposit any sum or sums of money therein, or to borrow any money from, or to derive any benefit from any deposit made therein: Provided nevertheless, That nothing herein contained shall render it unlawful for the Trustees of the Savings' Bank of New South Wales in Sydney, with the sanction of the Governor, to defray any necessary charges of management in the Districts aforesaid, and to remunerate the persons who shall be appointed District Clerks or Accountants respectively of the said Bank; and also provided that no District Trustee shall act in such capacity of District Clerk or Accountant, or receive directly or

indirectly, any salary, allowance, profit, or benefit whatsoever, from the funds of the said Bank.

(*Act to be a Public Act.*)

XXXIV. And be it enacted, That this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such, by the Judges of the Supreme Court of New South Wales, and by all other Judges, Justices, and others, within the said Colony of New South Wales and its Dependencies, without being specially pleaded.

(*Commencement of this Act.*)

XXXV. And be it enacted, That this Act shall be in force and take effect from and after the first day of November, One thousand eight hundred and thirty-nine.

"GEORGE GIPPS,"

GOVERNOR.

*Passed the Legislative Council  
this twentieth day of Sep-  
tember, One thousand eight  
hundred and thirty-nine.*

WM. MACPHERSON,

Clerk of Councils.

#### SCHEDULE REFERRED TO.

MEMORIAL of the name of the Vice-President (*or the Accountant, as the case may be*), of "The Savings' Bank of New South Wales" pursuant to an Act of the Governor and Council passed in the third Year of the Reign of Her Majesty Queen Victoria, intituled "An Act to consolidate and amend the laws relating to the Savings' Bank of New South Wales."

A. B. Vice-President (*or Accountant as the case may be.*)

E. F.

G. H.

I. K.

L. M.

} Trustees.

of Sydney, Gentleman of the above-named Bank, maketh oath, and saith that he was present and did see the foregoing memorial signed by the above-named Vice-President (*or Accountant as the case may be*), and Trustees, respectively, whose names appear thereto.

Sworn this

day of

One thousand eight hundred

and

ANNO TERTIO

VICTORIÆ REGINÆ.

No. 13.

By His Excellency Sir George Gipps, Knight, Captain-General and Governor-in-Chief of the Territory of New South Wales, and its Dependencies, and Vice-Admiral of the same, with the Advice of the Legislative Council.

"An Act to amend an Act, intituled, 'An Act for consolidating and amending the Laws relating to the Licensing of Public-houses, and for further regulating the Sale and Consumption of Fermented and Spirituous Liquors in New South Wales.'"

WHEREAS by an Act or Ordinance of the Governor and Council of New South Wales, passed in the second year of the Reign of Her present Majesty, intituled, "An 2 Victoria, No. 18, recited. "the Laws relating to the Licensing of Public-

"houses, and for further regulating the Sale and Consumption of Fermented and Spirituous Liquors in New South Wales," it is enacted, that if any person shall sell, or dispose of, in any house or place within the said Colony, any fermented or spirituous liquors, or any mixed liquors, part of which is fermented or spirituous, without having first obtained a license, such person shall be liable to certain penalties, therein mentioned: And whereas, there are certain exceptions in the said recited Act, among others, that the aforesaid enactment shall not apply to any person who, within certain towns therein specified, and such other towns in the said Colony or its Dependencies, as shall by the Governor, or Acting Governor, for the time-being, by a notice, to be published in the *New South Wales Government Gazette*, be from time to time declared to come under the operation of said exceptions, shall dispose of any quantity not less than two gallons, of any fermented liquors, no part of which is spirituous; nor to any person or persons who may give wine or beer, made from grapes or grain, of his, her, or their own growth, in part payment of wages to labourers on lands owned or rented by him, her, or them: And whereas, it is deemed expedient to authorise the Governor to extend the operation of said first recited case of exception, to such other places (not being towns) as the Governor shall from time to time declare by notice in the *Government Gazette*: And whereas, it is deemed expedient to extend the last recited case of exception, to beer made from sugar, by any proprietor or occupier of any lands, for the use of his her or their own establishment: Such places as Be it therefore enacted, that from and after the passing of this Act, notified, to nothing in the said recited Act contained shall be construed to apply to the exceptions of 2 any person or persons who, within Victoria, No. 18, sect. 2. such other places (not being towns) in the said Colony, as the Governor, or Acting Governor, for the time-being, by a notice, to be published in the *New South Wales Government Gazette*, shall from time to time declare to come under the operation of the second section of the said recited Act, shall dispose of any quantity not less than two gallons of any fermented liquors, no part of which is spirituous; nor to any person or persons who shall make or brew beer from sugar, for the use of his, her, or their own establishment, and who may give the same in part payment of wages to labourers on lands owned or rented by him, her, or them, any law to the contrary, in anywise notwithstanding.

(Clerks of Petty Sessions to cause Lists of the names, &c., of applicants for Licenses, to be posted up on or before the second Tuesday in the month of April in every year, under penalty of not more than Ten Pounds.)

II. And whereas, it is required by the said recited Act that every person desirous of obtaining any license under the said Act shall, on or before the first Tuesday in the month of April in every year, deliver to the Clerk or person officiating as Clerk of the Petty Sessions for the district, a notice in writing of his or her intention to apply for the same; And whereas, it is deemed expedient that the names of the said applicants should be publicly known in sufficient time before the

Annual Licensing Meeting, in order to allow the character of each applicant to be better ascertained: Be it enacted, that the Clerk of every such Petty Sessions as aforesaid, shall be, and is hereby required to cause a list of the names of all such applicants, together with their places of abode respectively, and the description of license for which each such person has applied, to be posted up, on or before the second Tuesday in the said month of April, in some conspicuous place inside, and also outside every Police Office at which such Petty Sessions shall be held, and the same to be kept so posted up until after the day of the said Annual Licensing Meeting; and if such list shall be neglected to be so posted and kept up until after the day for the holding the said Annual Licensing Meeting as aforesaid, every such Clerk of Petty Sessions, shall, for such neglect or default, be liable at the discretion of any one or more Justice or Justices of the Peace, to a penalty not exceeding Ten Pounds.

(Lamps being extinguished through accident it shall not be obligatory on Magistrates to convict on bare proof of lamp being extinguished.)

III. And whereas, it is also required under a certain penalty that every holder of a Publican's General License, or Wine and Beer License, shall keep a lamp over his or her door to be kept burning the whole of every night; And whereas, it may frequently happen that such lamp may be extinguished by boisterous weather or some unforeseen accident, and it is expedient in any such case to give the Justice or Justices before whom any such complaint shall be heard, a discretionary power of conviction: Be it therefore enacted, that in any such case as aforesaid, it shall and may be lawful for the Justice or Justices before whom any such complaint shall be heard, to exercise his or their discretion in the case; and that it shall not from and after the passing of this Act, be obligatory on such Justice or Justices to convict on bare proof of any such lamp being extinguished: Provided, however, the onus of proof to relieve himself or herself from such penalty, shall be thrown upon the person so complained against.

(No conviction to be had on any case happening more than three months before complaint made.)

IV. And be it enacted, That no conviction shall be had under the said recited Act, on any case happening more than three months before the time of laying the complaint.

"GEORGE GIPPS."

GOVERNOR.

Passed the Legislative Council  
this twenty fifth day of Sep-  
tember, One thousand eight hun-  
dred and thirty-nine.

WILLIAM MACPHERSON,  
Clerk of Councils.

ANNO TERTIO

VICTORIA REGINE.

By His Excellency Sir George Gipps, Knight Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice Admiral of the same, with the Advice of the Legislative Council.

"An Act to amend an Act intituled 'An Act for Lighting with Gas the Town of Sydney, in the Colony of New South Wales; and &c."

"enable certain persons associated under the name, style, and firm of The Australian Gas-Light Company, to sue and be sued in the name of the Secretary for the time being of the said Company, and for other purposes therein mentioned."

**W**HEREAS, by an Act of the Governor of New South Wales, with the advice of the Legislative Council thereof, passed in the eighth year of the Reign of his late Majesty King William the Fourth, intituled "*An Act for Lighting with Gas the Town of Sydney, in the Colony of New South Wales, and to enable certain persons associated under the name, style, and firm of the Australian Gas-Light Company, to sue and be sued in the name of the Secretary for the time being of the said Company, and for other purposes therein mentioned,*" it was enacted, That the several persons therein particularly mentioned or referred to, and their respective successors, executors, administrators and assigns, should be and were thereby united into a Company of Proprietors, by the name of "*The Australian Gas-Light Company,*" for certain purposes in the said Act mentioned; and that the affairs of such Company should be under the care, management, and superintendence of Twelve Directors, one of whom should be the Chairman of the said Company, which Chairman and Directors were to be elected in the manner hereinafter mentioned: And whereas by the said Act it was further enacted, That at every meeting under the said Act, as well of Proprietors as Directors, one of the said Proprietors or Directors, as the case might be, to be appointed by the majority of the Proprietors or Directors should be Chairman: And whereas it hath been found expedient that such last mentioned enactment should be repealed, and that a further provision should be made for the election of a Chairman and a Deputy Chairman, from amongst the Twelve Directors of the said Company, in manner hereinafter mentioned, Be it therefore enacted, by His Excellency the Governor, with the advice of the Legislative Council, That so much of the said recited Act as relates to the appointment of Chairman, by the said Proprietors or Directors, at every meeting under the said Act, shall from and immediately after the passing of this Act be and the same is hereby repealed.

*(Power to appoint Chairman and Deputy Chairman.)*

**II.** And be it enacted, That at the first meeting of Directors which shall be held after the first General Meeting, and at every other General Annual Meeting, the Directors present shall choose from amongst their numbers a Chairman and a Deputy Chairman, who shall continue in office till the following General Annual Meeting; but it shall be lawful for the said Directors to re-elect such Chairman or Deputy Chairman for the time being, or either of them, if they the said Directors shall think proper. Provided always, that when and so often as the Chairman or Deputy Chairman, to be chosen by virtue of this Act, shall die, or resign, or become disqualified, or otherwise cease to be a Director, it shall be lawful for the Directors in like manner, at the meeting to be held next after such vacancy shall occur, to choose some other of the said Directors to be Chairman or De-

puty Chairman; and every such Chairman or Deputy Chairman so to be chosen as last aforesaid to fill such vacancy, shall continue in his office so long only as the person in whose place or stead he may be so elected would have been entitled, under the provisions of this Act, to continue, if such death, resignation, disqualification, or cessation had not happened; and at every meeting, as well of the Proprietors as of the Directors, the Chairman, or in his absence the Deputy Chairman, or in the absence of both of them a Director to be chosen by the Members present, shall preside; and in case there shall be no Director present at any meeting of Proprietors, then some other Proprietor shall and may be chosen to preside at such meeting; Provided always, that the said Chairman or Deputy Chairman, or in the absence of both of them, the Director or other Proprietor to be chosen for the time being as aforesaid, shall act in the place or stead of the person who, if this Act had not been passed, would have been appointed Chairman, in pursuance of the said recited Act; and such Chairman, Deputy Chairman, or other Director, is hereby empowered to do and perform all acts, deeds, matters and things which such Chairman appointed, or who might have been appointed by virtue of the said Act, is thereby authorised to do and perform in pursuance of the said Act.

*(How Notices to Proprietors are to be given.)*

**III.** And be it enacted, That all Notices which the said Directors for the time-being shall think necessary to be given to any of the Proprietors in pursuance of this Act, or of the said recited Act, shall be in writing, and be signed by the Secretary or by the Chairman for the time-being, and an advertisement thereof shall be inserted in the *New South Wales Government Gazette*, and in one or more of the newspapers published in the said Town of Sydney, or a copy of such Notice shall be sent, by letter, to each of the said Proprietors, through the Sydney Post, and such Notices when so published or sent as aforesaid shall, notwithstanding anything in the said recited Act contained to the contrary thereof, be deemed and considered as good and effectual Notices as if the same had been personally or otherwise served upon such Proprietors.

*(How Notices shall be given to any Corporation, &c.)*

**IV.** And be it enacted, That in all cases in which it may be necessary for the said Company to give any Notice to any Corporation, or to any person whomsoever, under the provisions or directions contained in the said recited Act, such Notice shall be in writing, and be signed by the Secretary or by the Chairman for the time-being; and such Notice shall be delivered to such person or to some inmate of the last or usual place of abode of such person, or to some Clerk or other Officer of such Corporation, or be left at the Office of such Clerk or Officer, or be delivered to some inmate of the last or usual place of abode of such Clerk or Officer, except in cases in which any other mode of giving such respective Notices is by the said recited Act particularly directed.

*(No advantage to be taken of forfeiture until fourteen days' notice of default.)*

**V.** And whereas in the said recited Act it is provided, That if any Proprietor or Subscriber of or to the said undertaking, his, her, or their

executors, administrators, successors, or assigns should neglect or refuse to pay his, her, or their portion of the money to be called for by any General or Special Meeting, as therein mentioned, by the time appointed for payment thereof, or within twenty-one days next after, then and in such case, such Proprietor or Subscriber so neglecting or refusing, should, whether the same should have been then sued for in any Court of Law or Equity or not, absolutely forfeit his, her, or their share and interest in the said undertaking, and all money, theretofore, advanced by him, her, or them on account thereof, to and for the use and benefit of the said Company: And in the said Act is contained a power of selling such forfeited Shares, in manner therein mentioned: And whereas it is further enacted, That no advantage should be taken of such forfeiture until after fourteen days notice in writing should have been given, in manner therein particularly mentioned: And whereas it hath been found necessary and expedient to alter the manner of giving such notice; Be it therefore enacted, That from and after the passing of this Act, no advantage shall be taken of such forfeiture until after fourteen days notice of any default as aforesaid, shall have been given by the Directors for the time-being, in the manner hereinbefore prescribed for giving notices to Proprietors, any thing contained in the said recited Act to the contrary thereof notwithstanding.

*(Interest payable on arrear of call.)*

VI. And whereas in the said recited Act it is provided, That in case the money produced by the sale of any forfeited share or shares should be more than sufficient to pay all arrears of call as therein mentioned, and lawful interest thereon, with the expenses attending such sale, the surplus of such money should be paid on demand to the person or persons to whom such share or shares should have belonged: And whereas it hath been found expedient to alter the rate of interest payable on the said arrears of call; and it hath also been found just and expedient to provide for cases in which it may happen that the money produced by such sale, shall be insufficient for the purpose of paying such arrears, interest, and expenses as aforesaid: Be it therefore enacted, That the interest payable on all arrears of call as aforesaid, shall be paid and payable at and after the rate of interest established by Law; and that in case, at any time or times hereafter, the money to be produced by the sale or sales of any share or shares which shall or may become forfeited by virtue of the said Act, shall be insufficient to pay all arrears which may become due by any Proprietor or Subscriber of or to the said undertaking, his, her, or their executors, administrators, successors, or assigns, and interest thereon as aforesaid, with the expenses attending such sale or sales, it shall be lawful for the Secretary of the said Company to sue for and recover from him, her, or them, all sum and sums of money necessary to make up any such deficiency as aforesaid, by action of debt or otherwise in Her Majesty's Supreme Court of New South Wales, or in any other Court of competent Jurisdiction, together with interest for the same after the rate aforesaid, from such required or appointed time of payment, and all costs of suit attending the same.

*(Notices to be given to the Town Surveyor, may be*  
No. 455. October 5, 1839.

*given to other competent persons, in case there shall be no Surveyor.)*

VII. Provided also, and be it enacted, That all notices which, in and by the said recited Act, are directed to be given to the Surveyor of the Town of Sydney, shall and lawfully may (in case there shall be no such Surveyor) be given to any other person or persons who, for the time-being, shall or may be invested with such or the like powers or authority, which are or is vested in the said Town Surveyor; or in case there shall be no such person or persons, then such notices shall be given to such other person or persons who, for the time-being, shall or may have the control, direction, or superintendence of the roads, streets, ways, lanes, and other public ways and places of the said Town of Sydney, or of such part or parts thereof as shall be affected by any act of the said Company, in respect of which any notice is required to be given by the said Act: And further, That it shall and may be lawful for such last mentioned person or persons who, for the time-being, shall be invested with such powers or be possessed of such control, direction, or superintendence as aforesaid, in case there shall be no Surveyor of the said Town of Sydney to do and perform all acts, deeds, matters, and things, which in and by the said Act are authorised or directed to be done and performed by the Surveyor of the Town of Sydney aforesaid, as fully and effectually to all intents and purposes as such Surveyor of the Town of Sydney himself might or could do by virtue of the said Act.

*(Power to the Secretary to sign releases, &c., in order to enable persons interested in the affairs of the Company, to give evidence in any action, &c.)*

VIII. And be it enacted, That in all actions or suits at law or in equity, and in all proceedings under this Act, or otherwise against or for, or on behalf of the said Company, and also in all proceedings commenced or instituted by or on behalf of the said Company, and in all arbitrations, references, or other proceedings in or consequent upon or arising out of any such actions, suits, or proceedings, it shall be lawful for the Secretary, for the time-being, of the said Company, for and on behalf of the said Company to make, sign, seal, execute, and deliver such general or other release or releases, as may or may be deemed necessary for the purpose of exonerating and discharging any person who shall or may be produced as a witness in any such action, suit, prosecution, arbitration, or other proceeding as aforesaid, from any claim or demand which may be necessary to be released by the said Company, so as to qualify such person to give evidence as a witness in any such action, suit, prosecution, arbitration, reference, or other proceeding aforesaid; and also to do any other act, matter, or thing, in any such action suit, prosecution, arbitration, reference, or other proceeding, which any Plaintiff or Defendant may do in any action, suit, prosecution, arbitration, reference, or other proceeding; and every such release, act, matter and thing, shall be valid and effectual in all respects and to all intents and purposes whatsoever.

*(No person on account of his being a Proprietor to be deemed an incompetent witness.)*

IX. And be it enacted, That no person shall in any suit, action, prosecution, or other proceeding whatsoever, relating to or concerning the



execution of this Act, be deemed an incompetent witness on account of his or her being a Proprietor of the said Company, or a Chairman, Deputy Chairman, Director, Secretary, Auditor, Treasurer, Clerk, or other Officer thereof.

*(The Company not to be bound to see to the execution of any trust which any share in the Company shall be liable to.)*

X. And be it enacted, That the said Company shall not be bound to see to the execution, or be in any other manner concerned in any trust, whether expressed or implied, to which any share in the said Company shall be subject or liable, nor shall it be lawful to make the said Company parties to any suit in Equity by reason thereof.

*(How and in what form the Declaration in any Action, for the recovery of the amount of arrears, shall be framed.)*

XI. And be it enacted, That in any action to be brought by the said Company against any Proprietor of any share or shares in the said undertaking, to recover any money due and payable to the said Company, for or by reason of any call or the arrears thereof, made by virtue of the said recited Act, it shall be sufficient for the said Secretary, on behalf of the said Company, to declare and allege that the Defendant, being a Proprietor of a share or so many shares in the said undertaking, is indebted to the said Company in such sums of money as the calls in arrear shall amount to for so many calls of such sums of money upon such share or so many shares belonging to the said Defendant, whereby an Action hath accrued to the said Company by virtue of the said recited Act, or of this Act, without setting forth the special matter; and on the trial of such Action it shall only be necessary to prove that the Defendant, at the time of making such calls, was a Proprietor of some share or shares in the said undertaking, and that such calls were in fact made, and that notice of default of payment thereof was given as is directed by the said recited Act, or by this Act, without proving the appointment of the Directors who made such call or calls, or any other matter whatsoever; and the said Secretary, on behalf of the said Company, shall thereupon be entitled to recover what shall appear due (with interest computed as in the said recited Act, or in this Act, is mentioned), in respect of such calls; and in order to prove that such Defendant was a Proprietor of some share or shares in the said undertaking as alleged, the production of the Book in which the Secretary of the said Company shall enter and keep the names and additions of the several Proprietors of the shares in the said undertaking, with the number of shares they are respectively entitled to hold, and of the locality or places of abode of the several Proprietors of shares in the said undertaking, and of the several persons who shall from time to time become Proprietors thereof, or be entitled to any share therein, shall be *prima facie* evidence that such Defendant is a Proprietor, and of the number and amount of his shares therein.

*(How notices are to be given to persons possessing shares by any other means than by the transfer thereof.)*

XII. And be it enacted, That in case any share or shares shall become vested in any person or persons claiming through the original Subscriber or Subscribers thereof, and such share or shares shall have passed by any other legal means than by

a transfer thereof in pursuance of the said recited Act, and the name or names of such person or persons shall have been entered and registered by the Clerk of the said Company in the book to be kept for that purpose in pursuance of the said recited Act; then, after ten days notice in writing shall have been given by the said Secretary on behalf of the said Company to the person or persons, or corporation whose names shall be so registered as aforesaid, such notice to be given in the manner herein pointed out in respect of such notices by Directors to Proprietors, and such notice or notices containing a demand of payment of his, her, or their proportion of money to be called for; and in case the said call or calls shall not be paid, it shall be lawful for the said Company, at any General or Special Meeting after the expiration of such notice, to declare such share or shares to be forfeited; and in such case the same shall become forfeited, and shall and may be disposed of in such manner as in other cases of sales of forfeited share or shares; or such share or shares shall become consolidated in the general fund of the said Company; and in case there shall be no affidavit of the manner by which any share or shares shall have passed, then such notice as hereinbefore directed to be given shall and may be served or sent in manner aforesaid, upon or to the executors or administrators of a Proprietor or Proprietors dying, or upon or to the assignees or trustees of a Proprietor or Proprietors becoming Bankrupt or Insolvent, or upon or to the husband of any Proprietor or Proprietors marrying, or in the event of the share or shares being disposed of, upon or to the last Proprietor appearing in the books of the said Company to have been in possession of the same; and after such notice and default being made, the said share or shares shall be forfeited, and shall and may be sold, or otherwise become consolidated in the general fund of the said Company in manner aforesaid: Provided, that in cases of Proprietors being out of the Colony, the share or shares shall not be forfeited until the expiration of two years after the day on which notice shall have been left or given as aforesaid.

*(Repeal of so much of the 8 Wm. 4., as enacts that nothing in the Act shall authorise Gasometers, &c., to be erected within the limits of Sydney.)*

XIII. And be it enacted, That so much of the said recited Act, which provides that nothing therein contained should authorise and empower the said Company to make, erect, sink, place, or fix any Gasometer or other Apparatus used for the purpose of producing any such inflammable air or Gas as therein mentioned, within the limits of the town of Sydney, shall, from and immediately after the passing of this be, and the same is hereby repealed: Provided always, that nothing herein contained shall be deemed to relieve the said Company, or any Proprietor of, or Subscriber to the same, or person acting on their behalf, from any action, information, or indictment which may be brought or filed against them or any of them, for any nuisance which may ensue from the erection of any such Gasometer or other Apparatus within the limits of the town of Sydney, or elsewhere.

*(Commencement of Act.)*

XIV. And be it enacted, That this Act shall not commence or take effect until the same shall have received the Royal approbation, and the notification of such approbation shall have been made



by His Excellency the Governor, in the *New South Wales Government Gazette*.

(*This Act to be deemed a Public Act.*)

XV. And be it enacted, That as soon as this Act shall have received the Royal approbation, and the notification of such approbation shall have been made as aforesaid by his Excellency the Governor in manner aforesaid, this Act shall be deemed and taken to be a Public Act, and shall be judicially taken notice of as such by the Judges of the Supreme Court of New South Wales, and

by all other Judges, Justices, and others within the Colony of New South Wales and its dependencies, without being specially pleaded.

"GEORGE GIPPS,"

GOVERNOR.

*Passed the Legislative Council  
this eighteenth day of Sep-  
tember, One thousand eight  
hundred and thirty-nine.*

WILLIAM MACPHERSON,

*Clerk of Councils.*

