

No. IX.

GAMES AND WAGERS. An Act to amend the Law concerning Games
and Wagers. [10th September, 1850.]

Preamble. **W**HEREAS the laws heretofore made in restraint of unlawful gaming have been found of no avail to prevent the mischiefs which may happen therefrom Be it therefore enacted by His Excellency the Governor of New South Wales by and with the advice and consent of the Legislative Council thereof That from and after the passing of this Act it shall be lawful for any Justice of the Peace upon complaint made before him on oath that there is reason to suspect any house room premises or place to be kept or used as a common gaming house and

Power of Justice
may be exercised
under warrant.

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and that it is commonly reported and believed by the deponent so to be to give authority by special warrant A.1 under his hand and seal when in his discretion he shall think fit to any constable or peace officer to enter with such assistance as may be found necessary into such house room premises or place and if necessary to use force for making such entry whether by breaking open doors or otherwise and to arrest search and bring before any two Justices of the Peace all such persons found therein and to seize all tables and instruments of gaming found in such house room premises or place and also to seize all moneys and securities for money found therein and it shall be lawful for the constable or peace officer making such entry as aforesaid in obedience to any such warrant to search all parts of the house room premises or place which he shall have so entered where he shall suspect that tables or instruments of gaming are concealed and all persons whom he shall find therein and to seize all tables and instruments of gaming found in such house room premises or place and also to seize all moneys found therein and the owner or keeper of the said gaming house or other person having the care or management thereof and also every banker croupier and other person who shall act in any manner in conducting the said gaming house room premises or place shall be liable on conviction to a penalty of not more than one hundred pounds to be recovered in a summary way before any two or more Justices of the Peace as is hereinafter directed or in the discretion of the Justices before whom he shall be convicted of the offence may be committed to the nearest gaol or house of correction with or without hard labor for any term not exceeding six calendar months and upon conviction of any such offender all the moneys and securities for moneys which shall have been seized as aforesaid shall be forfeited to 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 as may from time to time be directed by any Acts of the said Governor and Legislative Council and every person found in such house room premises or place without lawful excuse shall be liable to a penalty of not more than five pounds Provided always that nothing herein contained shall prevent any proceeding by indictment against the owner or keeper or other person having the care or management of any gaming house or any room premises or place for gaming but no person shall be proceeded against by indictment and also under this Act for the same offence.

Constable or peace officer may search for instruments of gaming and seize the same and all persons found in such house rooms &c.

Owner or keeper of a gaming house liable to a penalty not exceeding one hundred pounds.

All moneys seized in gaming houses to be forfeited to Her Majesty.

Persons found in gaming houses liable to a penalty not exceeding £5.

2. And whereas doubts have arisen whether certain houses alleged or reputed to be open for the use of subscribers only or not open to all persons desirous of using the same are to be deemed common gaming houses Be it declared and enacted That in default of other evidence proving any house room premises or place to be a common gaming house or place for gaming it shall be sufficient in support of the allegation in any indictment or information that any house room premises or place is a common gaming house or place for gaming to prove that such house room premises or place is kept or used for playing therein at any unlawful game and that a bank is kept there by one or more of the players exclusively of the others or that the chances of any game played therein are not alike favorable to all the players including among the players the banker or other person by whom the game is managed or against whom the other players stake play or bet and every such house room premises or place shall be deemed a common gaming house or place for gaming such as is contrary to law and forbidden to be kept by all Acts containing any provision against unlawful games or gaming houses.

What shall be sufficient evidence that a house is a common gaming house.

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Proof of gaming for money not necessary in support of informations for gaming.

3. And be it enacted That it shall not be necessary in support of any information or indictment for gaming in or suffering any games or gaming in or for keeping or using or being concerned in the management or conduct of a common gaming house or place for gaming to prove that any person found playing at any game was playing for any money wager or stake.

What shall be deemed evidence of gaming.

4. And be it enacted That where any cards dice balls counters tables or other instruments of gaming used in playing any unlawful game shall be found in any house room premises or place suspected to be used as a common gaming house or place for gaming and entered under a warrant under the provisions of this Act or about the person of any of those who shall be found therein it shall be evidence until the contrary be made to appear that such house room premises or place is used as a common gaming house and that the person found in the room or place where such tables or instruments of gaming shall have been found were playing therein although no play was actually going on in the presence of the constable or peace officer entering the same under a warrant issued under the provisions of this Act or in the presence of those persons by whom he shall be accompanied as aforesaid and it shall be lawful for the Justices before whom any person shall be taken by virtue of the warrant to direct all such tables and instruments of gaming to be forthwith destroyed.

Indemnity of witnesses.

5. And for the more effectual prosecution of the keepers of common gaming houses or places for gaming Be it enacted That every person who shall have been concerned in any unlawful gaming and who shall be examined as a witness by or before any Justices of the Peace or on the trial of any indictment or information against the owner or keeper or other person having the care or management of any common gaming house or place for gaming touching such unlawful gaming and who upon such examination shall make true and faithful discovery to the best of his or her knowledge of all things as to which he or she shall be so examined and shall thereupon receive from the Justices of the Peace or Judge of the Court by or before whom he or she shall be so examined a certificate in writing to that effect shall be freed from all criminal prosecutions and from all forfeitures punishments and disabilities to which he or she may have become liable for anything done before that time in respect of such unlawful gaming.

Empowering constables to visit houses where certain games are publicly played.

6. And be it enacted That it shall be lawful for all constables and officers of police to enter into any house room premises or place where any public table or board is kept for playing at billiards bagatelle bowls fives racket quoits skittles or nine-pins or any game of the like kind when and so often as such constable and officers shall think proper.

Cheating at play to be punished as obtaining money by false pretences.

7. And be it enacted That every person who shall by any fraud or unlawful device or ill practice in playing at or with cards dice tables or other game or in bearing a part in the stakes wagers or adventures or in betting on the sides or hands of them that do play or in wagering on the event of any game sport pastime or exercise win from any other person to himself or any other or others any sum of money or valuable thing shall be deemed guilty of obtaining such money or valuable thing from such other person by a false pretence with intent to cheat or defraud such person of the same and being convicted thereof shall be punished accordingly.

Wagers not recoverable at law.

8. And be it enacted That all contracts or agreements whether by parole or in writing by way of gaming or wagering shall be null and void and that no suit shall be brought or maintained in any Court of Law or Equity for recovering any sum of money or valuable thing alleged to be won upon any wager or which shall have been deposited

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deposited in the hands of any person to abide the event on which any wager shall have been made. Provided always that this enactment shall not be deemed to apply to any subscription or contribution or agreement to subscribe or contribute for or toward any plate prize or sum of money to be awarded to the winner or winners of any lawful game sport pastime or exercise.

9. And whereas many important questions are now tried in the form of feigned issues by stating that a wager was laid between two parties interested in respectively maintaining the affirmative and the negative of certain propositions but such questions may be as satisfactorily tried without such form. Be it therefore enacted That in every case where any Court of Law or Equity may desire to have any question of fact decided by a jury it shall be lawful for such Court to direct a writ of summons to be sued out by such person or persons as such Court shall think ought to be plaintiff or plaintiffs against such person or persons as such Court shall think ought to be defendant or defendants therein in the form set forth in the second Schedule to this Act annexed marked B 1 with such alterations or additions as such Court may think proper and thereupon all the proceedings shall go and be brought to a close in the same manner as is now practised in proceedings under a feigned issue.

Proceeding under feigned issues abolished.

10. And be it enacted That in every case in which any person shall in any respect offend against this Act or any provision therein (where no other penalty in that behalf is by this Act specifically imposed) such person shall for every such offence forfeit and pay on conviction a penalty or sum not exceeding twenty pounds and all offences against this Act not otherwise provided for may be heard and determined and every forfeiture or penalty in respect thereof be awarded and imposed by or before two Justices or (where this Act so directs) by or before any one Justice in a summary way in the manner prescribed by an Act of the said Governor and Legislative Council passed in the fifth year of the reign of His late Majesty King William the Fourth intituled "*An Act to regulate summary proceedings before Justices of the Peace*" or according to the law in force for the time being regulating summary proceedings before Justices of the Peace and any person feeling aggrieved by any summary judgment or conviction under this Act may appeal therefrom in the manner provided by the said Act or any other law in force for the time being in that behalf. Provided always that in all cases in which any penalty or forfeiture hereby imposed is made recoverable before any Justice or Justices of the Peace it shall and may be lawful for any Justice to whom complaint shall be made of any offence against this Act to summon the party complained against before him or any other Justice or Justices and on such summons such Justice or Justices are hereby empowered to hear and determine the matter of such complaint in a summary way and on proof of the offence to convict the offender and to adjudge him to pay the penalty or forfeiture incurred and to proceed to recover the same although no information in writing shall have been exhibited or taken by or before such Justice or Justices and all such proceedings by summons without information shall be as good valid and effectual to all intents and purposes as if an information in writing had been exhibited and in all proceedings under this Act the informer or party prosecuting shall be deemed and taken to be a competent witness.

Penalty in any case not specifically provided for and manner of proceeding for recovery of penalties.

5 Wm. IV. No. 22.

Appeal given.

11. And be it enacted That any Justice or Justices of the Peace before whom any information shall be laid in writing against any person or before whom any person shall be convicted in respect of any offence against this Act may cause the information and conviction to be drawn up according to the forms respectively given in Schedule C 1 to this Act annexed or any other forms to the same effect as the case may

Form of information and conviction.

may

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may require Provided always that this enactment shall not invalidate any information or conviction laid or drawn in any other form which may be specially suited to the case or may be provided by law and in every information in writing and in every conviction for any offence contrary to this Act it shall be sufficient if the offence shall be stated in the words thereof declaring the offence or attaching any penalty thereto.

Appropriation of
fines and penalties.

12. And be it enacted That all fines forfeitures and penalties imposed by this Act the appropriation of which is not hereinbefore provided for shall be paid one moiety to 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 as may from time to time be directed by any Acts of the said Governor and Legislative Council and the other moiety to the use of the informer or party prosecuting who shall be entitled to his or her costs and charges over and above such fines forfeitures and penalties to be ascertained and assessed by the Justice or Justices before whom the case is heard.

Distress not unlawful
for want of form.

13. And be it enacted That when any distress shall be made for any money to be levied by virtue of the warrant of any Justice or Justices under this Act the distress shall not be deemed unlawful nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the information summons warrant of apprehension conviction warrant of distress or other proceeding relating thereto nor shall such party be deemed a trespasser from the beginning on account of any irregularity which shall be afterwards committed by him but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage by an action on the case in any of Her Majesty's Courts of Record.

Plaintiff not to
recover after tender
of amends.

14. And be it enacted That no plaintiff shall recover in any action for any irregularity trespass or other wrongful proceeding made or committed in the execution of this Act or in under or by virtue of any authority hereby given if tender of sufficient amends shall have been made by or on behalf of the party who shall have committed such irregularity trespass or other wrongful proceeding before such action brought and in case no tender shall have been made it shall be lawful for the defendant in any such action by leave of the Court where such action shall depend at any time before issue joined to pay into Court such sum of money as he shall think fit whereupon such proceeding order and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

Limitation of
actions.

15. And be it enacted That no action suit or information or any other proceeding of what nature soever shall be brought against any person for anything done or omitted to be done in pursuance of this Act or in the execution of the authorities under this Act unless notice in writing shall be given by the party intending to prosecute such suit information or other proceeding to the intended defendant one calendar month at least before prosecuting the same nor unless such action suit information or other proceeding shall be brought or commenced within three calendar months next after the act or omission complained of or in case there shall be a continuation of damage then within three calendar months next after the doing such damage shall have ceased.

No *certiorari* allowed.

16. And be it enacted That no information conviction warrant order or other proceeding before or by any Justice or Justices of the Peace or on appeal therefrom for any offence under this Act shall be quashed or set aside or adjudged void or insufficient for want of form or be removed by *certiorari* or otherwise into Her Majesty's Supreme Court for the said Colony.

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17. And whereas a certain Act of Parliament was made and passed in the eighth and ninth years of the reign of Her present Majesty Queen Victoria intituled "*An Act to amend the Law concerning Games and Wagers*" And whereas it is desirable to adopt so much of the provisions of the said Act of Parliament as is hereinafter specially set forth Be it therefore declared and enacted That so much of the said recited Act of Parliament as is hereinafter specially set forth shall be and is hereby declared to be in force in the Colony of New South Wales and shall be applied so far as the same can be applied in the administration of justice therein that is to say so much of the said recited Act as enacts that an Act passed in the sixteenth year of the reign of King Charles the Second such Act being intituled "*An Act against deceitful disorderly and excessive Gaming*" and so much of an Act passed in the ninth year of the reign of Queen Anne such Act being intituled "*An Act for the better preventing of excessive and deceitful Gaming*" as was not altered by an Act passed in the sixth year of the reign of His late Majesty intituled "*An Act to amend the Law relating to securities given for considerations arising out of Gaming usurious and certain other illegal transactions*" and so much of an Act passed in the eighteenth year of the reign of King George the Second intituled "*An Act to explain amend and make more effectual the Laws in being to prevent excessive and deceitful Gaming and to restrain and prevent the excessive increase of Horse Races*" as relates to the first recited Act of Queen Anne or as renders any person liable to be indicted and punished for winning or losing at play or by betting at any one time the sum or value of ten pounds or within the space of twenty-four hours the sum or value of twenty pounds shall be repealed.

Sec. 15 of 8 & 9 Vic. cap. 109 adopted.

Acts of Parliament repealed by 8 and 9 Vic. cap. 109 viz. 16 Car. 2 cap. 7.

9 Anne cap. 14.

5 and 6 Wil. IV. cap. 41.

And part of 18 Geo. 11. cap. 24.

18. And be it enacted That this Act may be amended or repealed by any Act to be passed in this present Session of the Legislative Council of New South Wales.

Act may be amended or repealed.

A 1.

THE FIRST SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

Form of Warrant.

To wit. } To the Constable.

WHEREAS it appears to me J. P. one of the Justices of our Lady the Queen assigned to keep the peace in and for the (here describe the local jurisdiction of the Justice as the case may be) by the information on oath of A. B. of in the of yeoman that the house (room premises or place) known as (here insert a description of the house room premises or place by which it may be readily known and found) is kept and used as a common gaming house or place for gaming within the meaning of an Act passed in the fourteenth year of the reign of Her Majesty Queen Victoria intituled "*An Act to amend the Law concerning Games and Wagers*" this is therefore in the name of our Lady the Queen to require you with such assistants as you may find necessary to enter into the said house (room premises or place) and if necessary to use force for making such entry whether by breaking open doors or otherwise and there diligently to search for all instruments of unlawful gaming which may be therein and to arrest search and bring before me or some other of the Justices of our Lady the Queen assigned to keep the peace as well the keepers of the same as also the persons there haunting resorting and playing to be dealt with according to law and for so doing this shall be your warrant.

J. P. (I. S.)

Given under my hand and seal at Sydney this in the of the reign of

Deeds Registration.

B 1.

THE SECOND SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

In the Supreme Court }
of New South Wales. } Or in any inferior Court.

NEW SOUTH WALES TO WIT (or such other venue as may be directed.)

WHEREAS A. B. affirms and C. D. denies (here state fully the fact or facts in issue) and the Judges of the Supreme Court of New South Wales (or such other Court &c.) are desirous of ascertaining the truth by the verdict of a jury and both parties pray that the same may be inquired of by the Country.

C 1.

SCHEDULE TO WHICH THE FOREGOING ACT REFERS.

Form of Information.

New South Wales }
to wit. }

BE it remembered that _____ of _____ in the Colony of New South
Wales cometh on the _____ day of _____ in the year of our Lord
_____ before me (or us) J.P. one (or more) of Her Majesty's Justices of the
Peace assigned to keep the peace in and for the (here describe the local jurisdiction of the
Justice as the case may be) in the Colony of New South Wales and giveth me (or us) to
understand and be informed that _____ hath been guilty of (here describe the
offence).

Form of Conviction.

BE it remembered that on the _____ day of _____ in the year of our Lord
_____ is brought before me (or us) J.P. one (or more) of Her Majesty's
Justices assigned to keep the peace in and for the (here describe the local jurisdiction of the
Justice as the case may be) in the Colony of New South Wales and is charged before me
(or us) with having (here describe the offence) and it appearing to me (or us) that the said
_____ is guilty of the said offence I (or we) do therefore adjudge the said
(here insert the adjudication).

Given under my (or our) hand (or hands) the day and year first above written