

shall be closed during the day appointed for polling in the wards and municipalities in which the polls are held; and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period, under a penalty of \$100 in every such case."

The law previously in force in the Province of Canada on the same subject was: "Every hotel, tavern and shop in which spirituous liquors are ordinarily sold, shall be closed during the two days appointed for polling in the wards or municipalities in which the polls are held, in the same manner as it should be on Sunday during divine service, and no spirituous or fermented liquors or drinks shall be sold or given during the said period, under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors as aforesaid."

It is, as I understand, contended that the change of language in the latter act, omitting the special limitation of the penalty to "the keeper thereof," makes no difference in the construction, and that the offence which subjects to the penalty can only be committed by the hotel, tavern or shop keeper, under the present statute, which I shall not contend would not be the true construction of the statute of Canada.

It is also, as I learn, further contended that section 66 creates only one offence, consisting of two parts, viz.: (1) not keeping the tavern, &c., closed; (2) selling or giving spirituous or fermented liquors to any person. If the latter proposition be correct, it may be that no one but the keeper can incur the penalty; but, confining attention strictly to the language of the section, I think the proposition untenable.

I will first endeavour to meet a suggestion that, unless the section is read as indivisible, the non-observance of the first part will incur no penalty. This appears to me to make the question depend upon punctuation. Put a full stop after the word "closed" and it may be so; but read the whole together, without pause, or even with a comma after "closed," and give legitimate effect to the closing words, "under a penalty of \$100 in every such case," and the objection disappears. In every case in which the preceding enactments are violated a penalty is inflicted, as well when the house is not kept closed as when a glass of wine or of spirits or of beer is sold or given.

There is a further reason for construing this section distributively, though the amount of the penalty is the same in all cases. The authority

of *Crepps v. Durden*, Cowp. 640, has never been questioned; it has been frequently recognised, and was the unanimous judgment of the Court of King's Bench, delivered by Lord Mansfield. The point decided was that where a statute imposed a penalty upon a man for exercising his ordinary calling on the Lord's day, he could commit but one offence on the same day. As regards the form, it can make no difference that our statute is mandatory, ordering that the house, &c., be kept closed, while in the English act it is prohibitory—"No tradesman or other person shall do or exercise any worldly labour, business or work of their ordinary calling on the Lord's day." In Lord Mansfield's language, "The offence is exercising his ordinary calling on the Lord's day, and that, without any fraction of a day, hours or minutes, it is one entire offence, whether longer or shorter in point of duration, and so whether it consist of one or a number of particular acts." In that case the act complained of was exercising his ordinary calling by selling hot rolls of bread. That was the mode in which the ordinary calling was exercised. The selling hot rolls was not prohibited, the exercise of the ordinary calling was. In our case the Legislature have not stopped short at commanding that the tavern should be kept closed, they have also prohibited two other distinct matters—selling and giving liquor, &c. The first is of a character which falls directly within the principle of *Crepps v. Durden*—only one such offence can be committed on the same day; the second, forbidding acts which may be repeated again and again with or to different individuals all day long—and they have imposed the penalty in every such case.

It appears to me to follow that the keeper of the hotel, tavern or shop is the only person who can incur a penalty for not keeping the same closed during the day appointed for polling.

The violation of this 66th section is made a corrupt practice by 36 Vict., cap. 2, s. 1, provided such violation occurs "during the hours appointed for polling." The reason for a difference between the 66th section and the 1st section of 36 Vict., cap. 2, is not very obvious; but for some cause penalties are imposed by the one for any violation of its provisions during the day appointed for polling; but to constitute the same violations corrupt practices, they must take place "during the hours appointed for polling." With that exception, the offences remain as defined in the 66th section, and for the purpose of imposing the penalty there is no change. The Legislature, however, appear to have taken a more serious view of these offences