

"duty, payable by him, shall be liable for such neglect or refusal, to a fine equal to the amount of such duty and one half of such amount added thereto." Now this provision, although in a statute passed since the prosecution in the present case was instituted, still, as the statute was passed for the purpose of declaring the intent of the Act of 1878, and its amendments, throws much light, if such were necessary, upon the construction to be put upon the 71st clause of the Act of 1878 under which the prosecution in the present case was instituted, for the persons who are subjected to penalties for infringing an Act passed for the purpose of raising a revenue for the use of the Province, by the imposition of a tax upon certain licenses, are by legislative declaration, shewn to be those only who neglect or refuse to pay the license duty, payable by them respectively. Now these must be persons who assume to do some or one of the acts for the doing of which the Statute has required a license to be taken out upon which a specific duty has been imposed. The doing anything for the doing of which there is no license specified in the Act, nor any duty imposed, can never be held to be an infringement of the Act.

The 71st section of the Act of 1878, as amended by the Act of 1880 enacts that :—

"Any one who keeps, *without a license to that effect still in force as hereinafter prescribed*, an inn, restaurant, steamboat bar, railway buffet, or liquor shop, for the sale by wholesale or retail of intoxicating liquors, or sells in any quantity whatsoever intoxicating liquors, in any part whatsoever of this province municipally organized, is liable for each contravention, to a fine of ninety-five dollars, if such contravention takes place in the City of Montreal, and seventy-five dollars if it has been committed in any other part of the organized territory; and if the contravention takes place in the non-organized territory, the penalty is thirty-five dollars. Any one who keeps, without a license to that effect still in force as by law prescribed, a temperance hotel, is liable for each contravention to a fine of twenty dollars."

Now in view of the object of the Act being to raise a revenue for the purposes of the

Province, by a tax upon certain licenses, particularly specified in the Act, required to be taken out for the doing certain things mentioned in such licenses respectively, the plain construction of the above section is, that any person who, in any part of the Province of Quebec, which is municipally organized, shall, in contravention of the Act, do any of those things enumerated in the section as only authorized to be done under a license as in the Act prescribed, without the license as prescribed by the Act, appropriate to the thing done, shall be liable &c., &c. And if the contravention takes place in non-organized territory the penalty is.....

There can be no contravention of the Act unless the thing done is a thing for the doing which one of the licenses particularly specified in the Act upon which a duty is imposed, is required to be taken out. If there be no license specified in the Act for authorising to be done the thing complained of, the doing such thing is no contravention of the Act, and there being no license specified in the Act, for the doing what Ryan has been prosecuted for doing, neither he nor the Messrs. Molson & Brothers, whose servant only Ryan was, and in doing what is complained of, is, or are liable to any prosecution as for an infringement of the Act. The Act, in fact, imposes no obligation upon brewers to take out any license to enable them to dispose of the beer manufactured by them, which is the simple character of the act complained of; in this respect it differs in its frame and as it appears to me, designedly, from the Ontario Act, which was under consideration in *Severn v. The Queen*; but as it imposes no tax upon brewers disposing of the beer manufactured in the manner complained of, the inferior Court had no jurisdiction in the matter of the prosecution instituted against the Messrs. Molson & Brothers' drayman. The prohibition should be ordered to be issued from the Superior Court absolutely as prayed for, with costs to the petitioners in all the courts.

TASCHEREAU, J. :—

Upon the question of prohibition I dissent from the majority of the Court, and I think with the Court below that the writ of prohibition lies in such a case as the present. It