

section of the particular words I am now discussing, otherwise extending its effect.

The third change is in the penal part. It formerly read, "under penalty of \$100 against the keeper thereof if he neglect to close it, and under a like penalty if he sells or gives any spirituous or fermented liquors or drinks aforesaid." It now reads, "under a penalty of \$100 in every such case." The words themselves appear to be only a statement in a general and comprehensive form of what was before expressed in more detail. The argument, however, is because "the keeper thereof" is not now mentioned, an intention is shown not to confine the prohibition as it was before. Let us see where this argument leads to. We have to take the section either by itself, or we have to look at it in connection with and as re-enacting the other. Reading it by itself, and taking two provisions separately, we have *first* this enactment: "Every hotel, &c., shall be closed during the day appointed for polling, in the wards or municipalities in which the polls are held . . . under a penalty of \$100." Whose duty does this make it to close the house? I apprehend there would be a serious difficulty in enforcing the penalty for neglecting a statutory duty unless the statute made it the duty of some particular person. As far as the clause expresses it, the duty may be intended to be cast upon the owner of the house, or the holder of the license, or the actual manager of the business, or the reeve or constable of the township. The answer, of course, will be that there must be a reasonable construction adopted, and that when it is said that an establishment is to be closed, that is equivalent to saying it shall not be opened, and that the person who could otherwise open it is the person intended. It is not my present object to analyse this contention minutely. It might appear on close reasoning that an enactment that a house shall "be closed" is not equivalent to one that it shall "not be opened" or shall be "kept closed," and it might not be found so clear that if a servant opened the house in the absence of his master the master would be liable to the penalty. My object is, in combating the contention that by the omission of the words "against the keeper thereof," the Legislature have relied on a strict construction of the language instead of using an express declaration, to extend to other words an effect which they had not before, to point out that by strictly construing the section, the first part of it would be inoperative, and that if it could be made operative at all, it would be by applying to it a rule of construc-

tion depending partly on presumption, and liable to lead to a wrong conclusion.

We get rid of all the difficulty by looking first at the law as it was, where we find there was no room for doubt. We then enquire, has the law been changed?—and we find that the Province of Ontario having become separated from Quebec, and its Legislature having found it necessary or desirable to re-enact the law relating to elections, did re-enact it, making such changes as the changed constitution required; but indicating no intention to change the law except where that is done in express terms, as, *e. g.*, in adopting the law then in force in England. The passage of the Act in itself does not, under the circumstances, imply an intention to change the law, or to do more than to adapt it to the changed political circumstances of the country. No obstacle exists to prevent the section in question being regarded as meant to be and as being a re-enactment, with only such modifications as I have noticed. When we refer for explanation to the law as it was, we find no difficulty in reading the words, "under a penalty in every such case," as the same in effect as "under a penalty against the keeper thereof, if he neglects to close it, and under a like penalty if he sells or gives."

We have either to take the new section by itself, when we find that one half of it is inoperative, or if operative at all, is only so by some nicety of construction which can never be other than doubtful, or we have to take it as a re-enactment of the old law, when the whole is operative.

I do not think the word "given" as it occurs in the phrase "sold or given" adds much weight to the contention for the more extended construction, as to have prohibited selling only would have been to invite evasion by almost suggesting that the tavern-keeper should distribute the liquor on the pretence of giving it.

I have already said that while satisfied that the section cannot be read as forbidding the giving of the liquor by *any one*, without restriction as to place or purpose, I am not able to perceive any ground, satisfactory to myself, for holding that the restriction may extend to persons, other than the keeper of the house or person acting in that capacity, who give liquor in the house itself when it would not touch them if they gave it elsewhere in the municipality, as in the charges now before us, which are ordinary cases of treating, the person charged as giving did so merely by buying from the bar-keeper, and then by his own hand or the hand of the bar-keeper giving it to others.