

"That this is the true construction seems to me to be apparent, when we trace the source from which this 66th section is derived. It and the preceding sections, numbering from 57, are taken from sections 72 to 81 inclusive, which are grouped under precisely the same heading as clauses relating to the 'Keeping of the peace and good order at elections,' in the statutes of Canada, 22 Vict., cap. 6, the 81st sect. of which act, corresponding with the 66th section of the Act of 1868, enacted that 'Every hotel, tavern and shop in which spirituous or fermented liquors or drinks 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 or drinks as aforesaid.'

* 'What was meant by the words in this section, 'in the same manner as it should be on Sunday during divine service,' is not very clear, for there was no law that I can find then in force in Canada prescribing the duty of hotel and tavern keepers to keep their houses closed in any particular manner during divine service on Sunday. [Here the learned Judge referred to the various statutes on this subject, and proceeded]: But none of those statutes which have reference to the period of 'divine service on Sunday' had ever any force in Upper Canada, and it was drinking spirituous liquors at the places which constituted the offence, during the hours of divine service on Sunday. It is difficult, therefore, to understand what the Legislature of Canada meant by the 81st sec. of 22nd Vict., cap. 6, which in plain terms enacted two penalties against the innkeeper—the one for neglecting to 'close his hotel or tavern in the same manner as it should be on Sunday during the hours of divine service,' and the other 'if he should sell or give any spirituous or fermented liquors as aforesaid.'

"How the offence of neglecting to keep the hotel or tavern 'closed in the same manner as it should be on Sunday during the hours of divine service,' could be committed in the absence of the sale or gift of any spirituous or fermented liquors or drinks, and in the absence of all drinking suffered or permitted at the hotel or tavern, I fail to be able to see, and it seems to me that it was most probably this difficulty which induced the draughtsman of the Election

Law of 1868 to strike out these ineffectual words, and so to amend the section as to do away with the double penalties, and to enact a single offence with a single penalty, which in my opinion is what is done by the 66th section, which offence consists in the selling or giving spirituous or fermented liquors or drinks at any hotel, tavern, or shop in which spirituous or fermented liquors or drinks are ordinarily sold. The word drinks used in the Act of 1868, and in 22 Vict., cap. 6, seems to me very plainly to indicate that what the Legislature desired to guard against was that general habit of 'drinking spirituous liquors' so common at elections, and which was so well calculated to tend to breaches of the peace and violation of good order at elections, which it was the object of that section of the act from which this 66th section was taken to maintain. But it is further to be observed that in all the above statutes in which I find any reference to the words 'during the hours of divine service,' and especially in the 22nd Vict., cap. 6, it was upon the proprietor of the hotel, tavern, or shop where the spirituous or fermented liquors or drinks are ordinarily sold, and who as such is able to control what is done on his own premises that is made guilty of the offence, and upon whom the penalty for any violation of the statutes is imposed.

"In my judgment, the 66th section of the Act of 1868 was not intended to have, and has not, any different effect in this respect, and such person is, in my opinion, the only person who can be pronounced to be guilty of a violation of the statute, and liable to the penalties which it imposes, and consequently he is the only person who, in the terms of section 1 of the Act of 1873, can be said to be guilty of the corrupt practice which that statute declares a violation of the 66th section of the Act of 1868, within polling hours to be.

"It was the retailing of drink, and drinking in such a manner as was calculated to affect the purity and freedom of election, which was the evil intended to be guarded against; and the Legislature, in my opinion, have deemed that object sufficiently attained by making the proprietor of the hotel, tavern, or shop where the spirituous liquors are ordinarily sold, answerable for what he permits to be done in violation of the act.

"But assuming in the cases put of the treat at the hotel, and the purchase of the dozen of wine at the shop, that not only the seller is liable, but also the person who pays the price, and assuming the latter to be an agent for promoting