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No. 266.

3rd Session, 6th Parliament, 23 Vic., 1860.

BILL.

**An Act to amend the Act respecting the
Municipal Institutions of Upper Canada,
as to the issue of Shop and Tavern
Licences.**

Received and Read, 1st time, Wednesday,
9th May, 1860.

Second Reading, Thursday, 10th May, 1860.

Mr. MATTICE.

QUEBEC :

PRINTED BY WHOMPSON & CO., ST. URSULE STREET.

An Act to amend the Act respecting the Municipal Institutions of Upper Canada as to the issue of Shop and Tavern Licenses.

WHEREAS the number of places licensed for the sale of intoxicating liquors is larger than the necessities of the community require, and it is necessary for the more effectual suppression of intemperance, pauperism and crime, that further restraints be placed upon the issue of licenses for the sale of intoxicating liquors in taverns or otherwise. Therefore, Her Majesty, &c., enacts as follows:—

Preamble.

1. There shall be appointed on the fourth Tuesday of January or on some day thereafter, in the year of Our Lord one thousand eight hundred and sixty-one and triennially thereafter, in each County or Union of Counties, by the County Council, and in each City by the City Council, throughout Upper Canada, three reputable freeholders residents of their respective Counties or Cities, possessing the same property qualifications as that required for Municipal or City Councillors respectively, who shall constitute and be known as the Board of Inspectors of Tavern and Shop Licenses for their respective Counties and Cities, and shall hold office for three years from date of appointment. If any vacancy by death or otherwise occur in the said Board of Inspectors, such vacancy shall be filled by the Council for the unexpired term of office of such Inspector, and every Inspector before he shall enter upon the duties of his office shall subscribe upon oath a declaration that he will faithfully perform and discharge the duties of his office to the best of his ability, and is not directly or indirectly interested in the sale of intoxicating liquors

Board of Inspectors of Licenses.

2. The Inspectors shall meet in their respective Counties, at the place where the County Courts are required to be held, and in Cities in the City Hall, on the first Monday of February, or some day thereafter in each year, and on such other days as a majority of the Inspectors shall appoint, not exceeding ten days in any one year in Counties, or twenty days in Cities, for the purpose of granting Licenses, as hereinafter provided.

Place of meeting of Board.

3. They shall keep a book of minutes of all their proceedings, in which shall be entered every resolution passed by them granting a license to any person, with the sum required to be paid, which minutes shall be verified by their signatures, and, together with the bonds taken pursuant to the provisions of this Act, shall be fyled with the Clerk of the Municipality for which such license shall be granted, and in the several cities with the City Clerk, within ten days thereafter.

Minutes of proceedings.

4. Each of the said Boards of Inspectors shall have the right to appoint a Clerk for the time they may be actually in session, in accordance with the provisions of this Act; such Clerk shall receive such compensation as the Inspectors shall determine, but not less than two nor more than four

Appointment of Clerk.

	dollars per day for each day the board is in session ; no fee or reward shall be taken by any Board of Inspectors, or by any member thereof, or by any Clerk thereof for any license ; nor shall any compensation be retained by any such Board, or by any member thereof, or by any Clerk thereof, out of the license money, but the whole amount thereof shall	5
Allowance to Inspectors.	this Act: but the persons composing such Board shall be entitled each to receive not less than two, nor more than five dollars per day for each day they shall be actually in session, and such compensation shall be determined by the respective Councils, which, together with the expenses for procuring stationery, and books for minutes, and for printing, shall	15
Annual Report.	be audited and paid in like manner as other county or city charges. The inspectors shall annually report, under oath, to the Councils of their respective Counties and Cities, the amount of all money received and expenses incurred by them under the provisions of this Act. Whoever shall violate this section, shall be deemed guilty of a misdemeanor.	20
County and City Boards to publish this Act yearly, And furnish lists of persons licensed. Duty of Constables under this Act.	5. It shall be the duty of the County Board of Inspectors to procure the publication of this Act, once in the month of January in each year, in some newspaper having the largest circulation in their respective Counties. In Cities, such publication shall be made in like manner by the Mayor exclusively. It shall be the duty of the County Board of Inspectors to furnish a list of all the names, alphabetically arranged, of all persons licensed by such Board, in each Municipality, to the Clerk of such Municipality. And it shall be the duty of all Constables and Public Officers to report all persons who shall violate any of the provisions of this Act within their respective Municipalities, limits or authority, to the County Attorney of the County, or Recorder of the City in which such offense shall have been committed, whose duty it shall be to proceed without delay to have such offender dealt with according to law. It shall be the duty of Constables to report to the Reeve, or any Justice of the Peace, of their respective Municipalities, all violations of this Act which shall come to their knowledge; and it shall be the duty of such Reeve or Justice of the Peace to proceed without delay to have such offender dealt with according to law. And any Police Officer or County Attorney, or any Public Officer, who shall neglect or refuse to perform the duties required of him in this Act, shall be liable to a fine of not less than ten nor more than twenty-five dollars. The publication of this Act, required in this section, shall be audited and paid as other County charges.	25 30 35 40
Penalty.		
Board of Inspectors to grant Licenses for taverns, &c.	6. In each County and City the Board of Inspectors shall have power, and it shall be the duty of the said Board from time to time to grant licenses to keepers of Inns, Taverns, or Hotels, being residents of the Municipality where such Inn, Tavern, or Hotel is proposed to be kept, to sell spirituous, fermented, or other manufactured liquors to be drunk in their houses respectively; and to store-keepers being such residents, a license to sell such liquors in quantities less than five gallons, but not to be drunk in their shops or on their premises; and they shall have power to determine the sum to be paid for a license by each person applying, which sum shall be as follows: In Municipalities having a population not exceeding three thousand (to be determined by the last census), not less than thirty nor more than one hundred dollars; in Cities, Townships, Towns, and incorporated Villages having a population not less	45 50 55
Number of Licenses limited.		

than three thousand nor more than ten thousand, not less than fifty nor more than two hundred dollars; in Cities, Towns, and Townships having a population exceeding ten thousand, not less than seventy-five nor more than three hundred dollars. No license shall be granted to any person or firm to sell in more than one place.

7. All licenses shall be signed by the Inspectors granting the same. They shall not be issued until the requirements fixed by the Board shall have been complied with; and when issued shall remain in force, unless revoked, until the third Monday in February next succeeding the granting of such license.

Licenses to be signed by Inspector.

8. License shall not be granted to any person to sell liquors to be drunk on the premises of the person licensed, unless such person proposes and binds himself or herself to keep an Inn, Tavern or Hotel, which shall contain, in addition to what may be needed for the use of the family of the Inn-keeper, six bed rooms with the suitable complement of bedding and furniture for his guests, together with good and sufficient stabling attached, and provender of hay in winter, and hay or pasturage in summer, and grain for six horses or other cattle more than his own stock, for the accommodation of travellers; nor unless the Inspectors are satisfied that the applicant is of good moral character, that he or she has sufficient ability to keep an Inn, Tavern or Hotel, and the necessary accommodation to entertain travellers, and that an Inn, Tavern or hotel is required for the actual accommodation of travellers at the place where such applicant resides or proposes to keep the same, all of which shall be expressly stated in such license; and no such license shall be granted except on the petition of fifty respectable freeholders of this Province, residing in the Municipality or City where such Inn, Tavern or Hotel is proposed to be kept, by them duly signed and verified by the oath of a subscribing witness, and not more than one license shall be granted on the Memorial of the same Petitioners, or any one of them; and all Petitions upon which such licenses shall be granted, shall be filed with the City or County Clerks respectively within eight days of the granting the same; nor until such applicant shall have executed and delivered to the Board of Inspectors a bond to Her Majesty the Queen, in the penal sum of five hundred dollars, with sufficient sureties, who shall justify in the sum of one thousand dollars to be approved by the Inspectors, conditioned that during the time for which his or her license shall be granted, he or she will not suffer any disorderly conduct, or gambling of any description, within the Inn, Tavern or Hotel so kept by him or her, or in any outhouse, yard or garden belonging thereto; and that he or she will not violate any of the provisions of this Act.

Issuing of Tavern Licenses restricted.

Petition of 50 freeholders required.

Applicant to give security.

9. In all licenses that may be granted (excepting to Inn, Tavern or Hotel-keepers) to sell liquors in quantities less than five gallons, the Inspectors shall first obtain from the applicant receiving a license, a bond in the penal sum last above mentioned, with an express declaration that such license shall not be deemed to authorize the sale of any liquors to be drunk in the house or shop, or on the premises of the person receiving such license; and when any person is seen to drink in such shop or house, or on premises belonging thereto, any liquors, it shall be *prima facie* evidence that such liquors were sold by the occupant of such premises, or his agent, with the intent that the same should be drunk therein. On any trial for the offence last aforesaid, such occupant or agent may be allowed to testify respecting such sale.

Licenses for retailing liquors.

No licenses to be granted when prohibitory By-law exists.

10. It shall not be lawful for any Board of Inspectors to grant licenses for the sale of liquors in any City or Municipality in which a prohibitory By-law has been enacted and approved of, under the sixth sub-section of the two hundred and forty-sixth section of the fifty-fourth chapter of the Consolidated Statutes for Upper Canada.

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No new saloons to be licensed.

11. It shall not be lawful to issue shop or tavern licenses to any person for the purpose of keeping any saloon, recess, victualling or other house of entertainment not furnished with the tavern accommodation required by this Act, excepting to the keepers of such saloons, recesses, victualling or other houses of entertainment as are already licensed, and when such keepers as aforesaid, shall for any cause discontinue their said business, it shall not be lawful to license any other person to carry on such business in the same building.

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In case saloon keeper, etc., discontinue their business.

12. As the Inn, Tavern, or Hotel-keepers now licensed may for any cause discontinue their business in any City or Municipality, it shall not be lawful to grant licenses to any one for carrying on business in the same premises, until the numbers of Inns, Taverns or Hotels in such City or municipality shall be reduced to the following proportion to the number of names on the assessment roll of such City or Municipality, that is to say, for two hundred names or less two tavern licenses, and for every hundred names beyond two hundred an additional tavern license; provided always, that this section shall not apply to cases where more than the sum of one thousand pounds has been invested for the purpose of furnishing tavern accommodation.

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Proviso.

Liquor in original packages.

13. No Tavern or Shop license shall be necessary for selling any liquors in the original packages in which the same have been received from the importer or manufacturer. Provided such packages contain respectively not less than five gallons, or one dozen bottles.

Penalty for selling liquor for consumption on premises of vendor without license.

14. Whoever shall sell any strong or spirituous liquors or wines to be drank in his house or shop, or any out-house, yard or garden appertaining thereto, or shall suffer or permit any such liquors or wines sold by him or under his direction or authority to be drank in his house or shop or in any out-house, yard or garden thereto belonging, without having obtained a license therefor as an Inn, Tavern or Hotel-keeper, shall forfeit fifty dollars for each offence.

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Penalty for retailing without license.

15. Whoever shall sell or suffer to be sold by any one under his or her control, any liquors in quantities less than five gallons at a time, without having obtained a license therefor, shall forfeit fifty dollars for each offence, and shall be guilty of a misdemeanor.

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Penalty for giving or selling liquor to drunkards.

16. Whoever shall sell or give away any strong or spirituous liquors or wines, or shall suffer any such liquors or wines to be sold or given away under his direction or authority, to any intoxicated person, or to any person guilty of habitual drunkenness, shall forfeit not less than ten nor more than twenty five dollars for each offence.

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Penalty for taking pledges for liquor sold.

17. No person licensed under this act, nor any person in his employment or under his control, shall take in pledge or payment for any intoxicating liquors sold in quantities less than five gallons at a time, any wearing apparel, household furniture, mechanic's tools or laborer's implements of any kind, nor shall such persons purchase or cause to be purchased, such articles with a view to evade the prohibition in this section.

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Whoever shall violate any of the provisions in this section shall be liable to a fine of not less than ten nor more than twenty dollars.

18. Every assignment, sale or pledge of articles, which are now exempt by law from execution, and of property exempted by this act, and every levy or sale of such articles or property by virtue of an execution, by consent of the defendant therein, shall be void when the consideration or any part thereof, for which such assignment, sale or pledge was made, or for the debt on which judgement was rendered in any court, and on which such execution was issued, was for the sale of intoxicating liquors; and in any action commenced for the recovery of the value of the property sold as aforesaid, the person for whose benefit such sale or transfer was made, may be called and examined as a witness, as to the fact of the sale of intoxicating liquors so made, in the same manner and subject to the same penalties as if called in another case.
19. Every person who keeps a Tavern or other house or place of public entertainment, and has a Tavern license, shall exhibit over the door of such Tavern, house or place, in large letters, the words "Licensed to sell wine, beer, and other spirituous or fermented liquors," under a penalty in default of so doing of five dollars, recoverable with costs before any Justice of the Peace, upon the oath of one credible witness.
20. No person licensed to sell liquors shall sell or give away any such liquors to any Indian, or to any apprentice, knowing or having reason to believe him to be such, without the consent of his master or mistress, nor to any minor under the age of eighteen years, without the consent of his father or mother, or guardian. Whoever shall offend against either of these provisions shall forfeit ten dollars, to be recovered by the master of such apprentice or servant, or by the parent or guardian of such minor; and any person who shall sell or give away any liquor to any Indian shall be guilty of a misdemeanor, and on conviction shall be liable to a fine of twenty dollars for each and every offence.
21. Any person who shall sell any strong or spirituous liquors to any of the individuals to whom it is declared by this Act to be unlawful to make such sale, shall be liable for all damages which may be sustained in consequence of such sale; and the parties so offending may be sued in any of the Courts in this Province by any individual sustaining such injuries, or by the County Attorney of the County or Recorder of the City where the injured party may reside, and the sum recovered shall be for the benefit of the party injured.
22. No person, whether holding a license or not, shall sell or give away any liquors upon any day or days on which a general, special, or municipal election shall be held, and within one-half of a mile from the place where such general, special, or municipal election shall be held in any of the Cities or Municipalities of this Province, to any person whatever as a beverage. Whoever shall offend against the provisions of this section, shall be guilty of a misdemeanor, and on conviction shall be imprisoned in the County Jail, not more than twenty days, or pay a fine of fifty dollars for each offence, with costs of action.
23. In all places where, by the laws of Upper Canada, intoxicating liquors are, or may be allowed to be sold by wholesale or retail, no sale or other disposal of the said liquors shall take place therein, or on the premises thereof, or out of or from the same, to any person or persons whomsoever, from and after the hour of seven of the clock on Saturday

Assignments, etc., for liquor debts invalid as to certain articles.

Tavern-keepers to exhibit a sign board.

Selling or giving liquor to Indians, minors, etc.

Penalty.

Persons selling in contravention of this act to be liable for consequences of such sale.

No liquors to be sold during elections.

Penalty.

No liquor to be sold between Saturday night and Monday morning, etc.

night till the hour of eight of the clock on Monday morning thereafter, and during any further time on the said days and any hours on other days, during which, by any By-law of the Municipality wherein such place or places may be situated, the same or the bar-room or bar-rooms thereof ought to be kept closed, save and except to travellers lodging at, or ordinary boarders lodging at the place or places where such liquor is sold, and save and except in cases where a requisition, for medicinal purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; nor shall any such liquors be permitted or allowed to be drunk in any such places, except as aforesaid. during the time prohibited by this section for the sale of the same.

Penalty for
contravention
of last section.

24. For the first offence under the last preceding section, a penalty of not less than twenty dollars, with costs, shall, in case of conviction, be recoverable from and leviable against the goods and chattels of the person or persons who are the proprietors in occupancy, or tenants or agents in occupancy, of such place or places, and who are found by himself or herself, or themselves, or his, her or their servants or agents, to have contravened the enactment in the last section hereof, or any part thereof: For the second offence, a penalty against all such of not less than forty dollars, with costs; for a third offence a penalty against all such of not less than one hundred dollars, with costs; and for a fourth or any after offence, a penalty against all such of not less than three months' imprisonment, with hard labour, in the common gaol of the County wherein such place and places may be, the number of such offences to be ascertained by the production of a certificate from the convicting Justice, or by other satisfactory evidence to the Justice before whom the information or complaint may be made; and convictions for several offences may be made under this and the last preceding section of this Act, although such offences may have been committed in the same day; but the increased penalties hereinbefore imposed shall only be recoverable in the case of offences committed on different days.

Information
and proceed-
ings.

25. Any person or persons may be the informant or informants, complainant or complainants, in prosecuting under the two last preceding sections of this Act; all proceedings shall be begun within twenty days from the date of the offence; all informations, complaints, or other necessary proceedings may be brought and heard before any one or more Justices of the Peace of the County where the offence or offences were committed or done; and the mode of procedure in, and the forms appended to, the Consolidated Statutes of Canada, respecting the duties of Justices of the Peace, out of Sessions in relation to summary convictions and orders, may be followed as regards the cases and proceedings under the said sections of this Act.

Duty of Ma-
gistrate as to
complaints by
the relatives
of a drunk-
ard.

26. It shall be the duty of all Magistrates, on complaint and satisfactory proof by a wife, that her husband or child, or by a husband that his wife or child, or by a child that the mother or father, sister or brother of such child, is guilty of frequent or habitual intoxication, to issue notices in writing to all dealers in intoxicating liquors, against whom a complaint has been made, forbidding the sale or giving away of any intoxicating liquor to such father, mother, wife, husband, child, sister or brother, for the space of six months after such notice, under a penalty of fifty dollars for each and every sale or giving of such liquor, after such notice shall have been given. And when such penalty shall be incurred for selling such liquor to a husband against whom the wife shall have complained, such penalty shall be recovered in her own name,

for her sole benefit, with costs of suit. The person so offending shall forfeit his license, and shall not be allowed a renewal thereof for three years.

27. Whoever shall sell or give away, or suffer to be sold or given away by any person under his control, any intoxicating liquor to any person guilty of habitual or frequent intoxication, after having been forbidden to do so, in writing, by a wife, husband, child, sister or brother, father or mother, or any public officer, within thirty days thereafter, or shall sell or give away such liquor to any pauper, shall be liable to a fine of not less than twenty nor more than fifty dollars for each offence.

Penalty for selling liquor to drunkards.

28. The word "liquors," in all cases mentioned in this Act, shall be understood to mean and comprehend all spirituous and malt liquors, and all combinations of liquors or drinks which are intoxicating.

Meaning of the word "Liquors."

29. It shall be the duty of every Sheriff, Under Sheriff, Constable, Policeman, or Officer of Police to arrest or cause to be arrested all persons found actually engaged in the commission of any offence forbidden by this Act, and to take such persons before any two or more Magistrates of the same City or Municipality, and on satisfactory proof by the oath of any person, to such Magistrates, that the offence charged has been committed (unless such person shall elect and consent to be tried by such Magistrates), he shall require a bond to be executed by such offender in the penal sum of one hundred dollars, with sureties who shall justify in double the amount, severally conditioned, that such offender will appear at the next Term of the Court of General Quarter Sessions, to be held in such County or City, and abide the order and judgment thereon; and if such offender cannot, or refuses to give such bond, to commit him to the County Jail until such judgment of the said Court, or until he be discharged according to law; and it shall be the duty of the Magistrate or Magistrates to entertain any complaint of a violation of this Act made by any person under oath, and forthwith to issue a warrant and cause such offender to be brought before them, to comply with the provisions of this section; and such Magistrate shall, within ten days, cause such bond, together with all papers and affidavits, with a list of the persons and residences of the complainants and witnesses examined before him, to be delivered to the County Attorney of the respective County or City, whose duty it shall be forthwith to prosecute the same.

Duties of Sheriffs, Constables, &c., under this Act.

30. It shall be the duty of every such officer, whenever he shall find any person intoxicated in any public place, to apprehend such person and take him before some Magistrate of the same City or Municipality, and if such Magistrate shall, after due examination, deem him too much intoxicated to be examined, or to answer on oath correctly, he shall direct the said officer to keep him in some jail, lock-up, or other safe and convenient place, until he shall become sober, and thereupon forthwith to bring him before the said Magistrate; and whenever any person shall be brought before any Magistrate, as provided in this section, it shall be the duty of such Magistrate to administer to such person an oath or affirmation, and examine him as to the cause of such intoxication, and to ascertain the person or persons who sold or gave the liquor to such person; such intoxication being hereby declared to be an offence against the provisions of this Act, punishable, upon conviction, by a fine of not less than two nor more than ten dollars, and costs at the same rate as in Courts of Special Sessions, and imprisonment in the County Jail, Work-

Duty of officers as to persons found intoxicated.

Punishment for intoxication.

Penalty for
Magistrates
refusing to
hear com-
plaints.

house or Penitentiary until paid, not, however, to exceed ten days. It shall be the duty of such officers to arrest or cause to be arrested all such persons when so intoxicated, and of the Magistrate to entertain such complaint and make such examination, under the penalty of fifty dollars, with full costs of suit for any neglect to comply with the provisions of this section. 5

Grand Jurors
to inquire in-
to offences
against this
Act.

§21. It shall be the duty of Courts to instruct Grand Jurors to inquire into all offences against the provisions of this Act, and to present all offenders under this Act and also all persons who may be charged with adulterating imported or other intoxicating liquors with poisonous or deleterious drugs or mixtures, or selling the same, or with knowingly importing or selling intoxicating liquors or wines adulterated with poisonous or deleterious drugs or mixtures; which offences are hereby declared to be misdemeanours, to be punished by imprisonment in the Penitentiary, or Jail, for a period of three months and by a fine of one hundred dollars. 10
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Railway and
other Incor-
porated Com-
panies not to
employ
drunkards

§22. All incorporated companies and persons in this Province, engaged in conveying passengers, including especially all railroad, steamboat and ferry companies, and all kinds of corporations conveying for hire persons or property, shall be and are hereby required to refuse employment to all persons who on good and sufficient proof, shall be shown to indulge in the intemperate use of intoxicating drinks, and any such company which shall retain in its employ any person or persons who shall on competent proof be shown to be intoxicated at any period whilst in the active service of such company or person either as engineer, conductor, fireman, switch-tender, commander, pilot, mate or foreman or in any way connected with the moving power or management, or whose duty if neglected, would diminish the safety and security of life, limb or property entrusted thereto, such company or corporation shall be liable to pay a sum of not less than fifty dollars nor more than one hundred dollars to the County Treasurer in the County where the offence may be committed and proved before any Court of competent jurisdiction. 20
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Prosecutions
for breach of
security
bond.

§23. Whenever a breach of the condition of a bond, given upon the granting of any license, shall happen, it shall be the duty of the Board of Inspectors, the Reeve of the Municipality, Mayor of the City in which the person who shall incur the penalty shall reside, to prosecute the same to judgment. 35

Penalties:
how recover-
able.

§24. All prosecutions for penalties or forfeitures incurred by persons in contravention of this Act, excepting in cases otherwise provided for by this Act, shall be recoverable with costs before any two or more Justices of the Peace having jurisdiction in the City or Municipality in which the offence is committed, upon the oath of one credible witness, one-half of which penalty or forfeiture shall be paid to the informer or complainant, and the other half to the Municipality. 40

County At-
torney or Re-
corder to
take charge of
appeal cases.

§25. Whenever a judgment shall have been rendered by any two or more Justices of any City or Municipality for any violation of this Act, or on any bond given under the provisions thereof, and an appeal shall be taken by the defendant on such judgment, it shall be the duty of the County Attorney of the County, or Recorder of the City in which such action shall arise, if required to do so, to take charge of such case on behalf of the complainant or Board of Inspectors, and prosecute the same to final judgment. The Inspectors or other officer or officers engaged in any 45
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such or any other prosecution for violation of the provisions of this Act, may receive such compensation for services as shall be necessary to cause the provisions of this Act to be observed and enforced, as the Councils of their respective Counties or Cities shall deem just and reasonable.

6 Such expenditure shall be audited and paid as other County or City charges.

10 **36.** Whenever a judgment shall be obtained against any person licensed under this Act, for a violation thereof, or on the license bond, it shall be the duty of the Magistrates or Court before whom the judgment shall be had, to transmit to the next Court of Quarter Sessions of the County a statement of such conviction or judgment, and of the offence for which it was obtained; and such Court shall notify the person or persons against whom such judgment was rendered to appear on some certain day to show cause why the license granted to him shall not be revoked, and 15 the Court may in its discretion revoke such license.

Duty of Magistrate before whom judgment shall be had.

37. The person whose license shall be revoked shall be incapable of receiving any such license to sell spirituous liquors or wines for the space of three years from the time of such revocation.

Effect of revocation of License.

20 **38.** In every case where it shall have been proved before the convicting Magistrate that alcoholic liquors were sold by the person sued, at a certain place, on a certain day, it shall be deemed and held to have been proven that such violation has been persisted in and repeated by such person at such place, on each succeeding day, down to that on which the action was brought; and judgment shall be given against the defendant 25 for such successive violations, unless he shall have proved on the trial that he totally and finally discontinued and abandoned the sale of such liquors at such place on a certain day prior to that on which the action was commenced, in which case judgment shall be entered against him for daily violations of the restrictive provisions of this Act up to the day 30 on which he finally discontinued the sale of such liquors.

What shall be construed to be a repetition of the offence.

39. Whenever any person shall be imprisoned on any execution for a penalty incurred under this Act, in default of the payment thereof he shall not be discharged from prison or entitled to the liberties of the jail until he shall have remained therein thirty days, when the amount 35 of such judgment shall be fifty dollars or more, and not less than ten nor more than twenty days, in the discretion of the Court, where it shall be under that sum, or until such judgment be paid, unless in case otherwise provided.

Duration of imprisonment.

40 **40.** Actions for penalties for the violation of this Act, unless otherwise specially provided, shall be brought by and under the exclusive control of the Board of Inspectors of their respective Counties or Cities; and such actions, where not otherwise provided, shall be brought in the name of such Board of Inspectors.

Actions for penalties.

45 **41.** In case the parties or persons whose duty it is by the provisions of this Act to prosecute, shall neglect to prosecute for any penalty or forfeiture provided by this Act, for the period of ten days after complaint to them that any provision of this Act has been violated, accompanied with reasonable proof of the same, any other person may prosecute therefor in the name of the Board of Inspectors.

In case the proper parties fail to prosecute.

Inconsistent
enactments
repealed.

42. All sections and sub-sections or parts of such sections or sub-sections of the fifty-fourth chapter of the Consolidated Statutes for Upper Canada, "respecting the Municipal Institutions of Upper Canada," as are inconsistent with the provisions of this Act, are hereby repealed.

Act to apply
to Upper
Canada only.

43. This Act shall apply to Upper Canada only, and shall take effect upon, from and after the first day of January, one thousand eight hundred and sixty-one, and not before. 5