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No. 165.

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

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**BILL**

An Act for the Suppression of Intemperance.

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Received and read, 1st time, Friday, 13th  
April, 1860.

Second reading, Monday, 6th April, 1860.

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**MR. CLARKE.**

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## An Act for the suppression of Intemperance.

**WHEREAS** the common traffic in Intoxicating Liquors and their use as a beverage are fruitful sources of crime and demoralization ; and whereas it is the first duty of Government to prevent those evils, as far as possible, and to protect the people against them ; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :—

Preamble.

1. From and after the passing of this Act, it shall be unlawful for any person or persons to import into this Province, manufacture, buy, receive, barter, sell or dispose of in any way or for any purpose whatever, any Intoxicating Liquors, except as hereinafter provided.

Traffic in intoxicating liquors forbidden.

2. For the purposes of this Act, any liquor known as alcoholic, shall be deemed and taken to be intoxicating liquor, as well as any other liquor which does or may produce intoxication.

What shall be deemed such.

3. All liquor kept in violation of any provision of this Act shall be deemed and are hereby declared to be a public nuisance.

Keeping liquor a nuisance.

## AGENTS FOR SELLING.

4. The Council of every Municipality in Canada (except Counties) shall appoint a suitable person or persons, as the Agent or Agents of said Municipality, for the purchase and sale of Intoxicating Liquor for Medicinal, Chemical and Mechanical purposes only, and wine for Sacramental purposes only.

Local Municipal Councils to appoint agents for sale of liquors for certain purposes only.

1. The Agents shall receive such compensation for their services as the Council appointing them may allow.

Provisions respecting such agents.

2. The Agents, in the purchase and sale of Intoxicating Liquors, shall conform to such rules and regulations not contrary to the provisions of this Act, as the Council from time to time prescribes for their guidance.

3. There shall be no more than two such Agents at the same time in any Township or Village Municipality, or in any ward of a Town or City.

4. No such Agency shall be kept in, or shall be connected with any tavern, store, grocery, druggist or apothecary shop, boarding or victualing house, saloon, oyster shop, or any place for dancing or gambling, or for using Intoxicating Liquors for chemical or mechanical purposes, nor in or connected with any house or place of permanent or casual entertainment, amusement or recreation, nor shall the owner or keeper of any such house or place be eligible to hold the office of such Agent.

5. Before entering upon his duties every such agent shall receive a license from the Council appointing him ; and such license shall authorize him, for not more than twelve months from the date of the license,

to sell Intoxicating Liquors, at the place specified in the license, for the purposes authorized by this Act, and for no other purposes.

6. But such license shall not be given to such agent until he executes and delivers to the Council appointing him a bond in favor of the Municipality, with two good and sufficient sureties, to be approved by the Council, in the sum of not less than one thousand dollars each, conditioned as follows :— 5

bond.

“ Know all men by these presents that A. B. [*the principal*] and C. D. and E. F. [*the sureties*] are jointly and severally held and firmly bound unto the Corporation of the Town of \_\_\_\_\_ in the penal sum of \_\_\_\_\_ dollars ; for payment whereof we bind ourselves, and each of us binds himself, our and each of our heirs, executors and administrators, firmly by these presents. Sealed with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 10

“ Whereas the above bounden, A. B., has been appointed agent for the said Municipality, to sell at [*here name the particular place*] Intoxicating Liquors for medical, chemical and mechanical, and wine for sacramental purposes only, from the \_\_\_\_\_ day of \_\_\_\_\_ to the \_\_\_\_\_ day of \_\_\_\_\_, unless sooner removed from such agency ; 15

“ Now the condition of this bond is such that if the said A. B. shall in all respects conform to the provisions of an Act passed in the 23rd year of the reign of Her Majesty Queen Victoria, and entitled, “ An Act for the suppression of Intemperance,” and to such rules and regulations as as now are, and from time to time shall be established, by the said Corporation, touching the sale of Intoxicating Liquors, the same not being contrary to the provisions of the said Act, then this obligation to be void, otherwise to be and remain in full force and effect.” 25

7. The Agent may purchase Intoxicating Liquors from any licensed manufacturer, or import the same from abroad.

8. The agent shall not purchase any Intoxicating Liquor in this Province, from any person except a licensed manufacturer, or another duly authorized agent for the sale of such Liquor. 30

9. The agent making application for such liquor shall exhibit his license if required.

10. No liquor shall be removed from a manufactory, nor imported into the Province, for him, unless the vessel containing the same be plainly marked upon some conspicuous part thereof, or upon a card or label attached thereto, with the name of the liquor, the name of the vendor, the place where purchased, the name of the agent, and the place where consigned ; somewhat after the following form, but varying to suit the occasion :— 40

### BRANDY.

From

CRAIG & CO.,  
of Toronto,

To

JOHN GREEN,  
AGENT, Oshawa.

11. The agent shall give a written or printed receipt for all purchases of such liquors, and receive and file all bills of purchase.

12. The agent shall not sell to any minor or apprentice, knowing him to be such, without the written order of his parent, guardian or master. Nor to any Indian, Soldier, or Seaman. 45

13. The agent shall not sell to any person known to be of intemperate habits, nor to any person whatever, after having received a written notice from a Councillor of the Municipality, a Minister of the Gospel, or a Justice of the Peace, that the use which such person makes of Intoxica- 50

ting Liquors renders it improper to sell to him such liquors on any account whatever.

14. The agent shall not sell for medicinal purposes more than one quart at one time, except to a practising physician, and in no case shall he dispose of any liquor having reason to suppose an improper use will be made of the same, and he shall only sell or dispose of such liquor for cash.

15. The agent shall not permit any Intoxicating Liquor to be consumed upon, or about his premises.

16. The agent shall enter in a book a correct account of every purchase and receipt of liquors made by him or for him, with the price paid therefor, the cost of transportation, and all expenses connected therewith, and the date and place of purchase, and name of vendor.

17. The agent shall also enter in a book all sales made under his directions and he shall enter the same in manner, or to the effect following:—

Date of purchase.	Name of purchaser.	Residence of purchaser.	Kind and quantity of liquor.	Purpose for which purch'd.	Price per gallon.	Total Cost.
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18. This book shall be open at all reasonable times to the inspection of all the electors of the Municipality.

19. The agent shall file with the clerk of the Municipality in which he sells, between the 1st and 10th days of each month, a copy of all entries made in his book of his sales and purchases, with an affidavit that such copy contains a true account of all the purchases and sales made and of the manner of disposing of liquor disposed of by him, or for him, during the previous month.

20. The agent shall attach to each vessel in which liquor is conveyed from his premises a card, or label, upon which shall be legibly written or printed, a statement of the date of sale, the kind and quantity of liquor therein, the purpose for which it was purchased, as stated by the purchaser, the name of the purchaser, and his own name; and the same may be in the form, or to the effect following:—

TORONTO, April 1st, 1860.

Sold James Brown one quart brandy for chemical purposes.

MOSES CROWN,  
AGENT.

21. Every agent shall properly account to the Council of the Corporation for all monies coming into his hands by virtue of such agency, paying the same to the Council when required; and when directed shall deliver to the Council said books and accounts, with all funds and property in his hands belonging to the Corporation.

22. If any such agent violates any provision of this Act, he shall forfeit his license, after which he shall be ineligible to act as such agent; and the imposition of any fine shall not discharge him from any other penalty or liability.

MANUFACTURE OF SUCH LIQUORS.

5. The Council of any county or city may licence one or more persons, being freeholders and residents of such County or city, to manufacture Intoxicating Liquors at such place within the Municipality as may be designated in the license, and to sell the same to licensed agents only.

Licence to manufacture, and conditions on which it shall be granted, &c]

2. But no such license shall be valid for more than twelve months from the date thereof, nor be granted until a bond be delivered to the Municipality with two good and sufficient sureties, to be approved by

the Council, in a sum not less than two thousand dollars, conditioned that such manufacturer will not, during the continuation of his license, violate any provision of this Act or any provision of any By-law of the Council.

3. No person engaged in the manufacture of Intoxicating Liquors at the passing of this Act shall be refused such license, if he apply therefor. 5

4. Every person so licensed may manufacture and sell Intoxicating Liquor, and shall enter in a book every sale of liquor made by him, or for him during the continuation of his license, inserting the date of sale, the name and place of residence of the purchaser, the quantity and kind of liquor sold, and the price paid therefor; and this book shall at all reasonable hours be open to the inspection of any Justice of the Peace or any member of the Council of the Municipality,— and at the end of every quarter he shall file a true copy of such book with the Clerk of the Council which granted his license, with an affidavit that the same is a correct copy of said book, and contains a true account of the manner in which all Intoxicating Liquors were disposed of at his manufactory during the preceding quarter. 10 15

5. Such manufacturer shall not permit any Intoxicating Liquor to be consumed upon or about his premises, and shall be deemed an offender against this Act for every sale or disposal of Intoxicating Liquors at his establishment to any person or persons other than Agents for the sale of such liquors, and shall also forfeit his license and be rendered ineligible to engage in such manufacturing for twelve months thereafter. 20 25

6. The imposition of any fine on the manufacturer for a breach of this Act shall not relieve him from any other penalty or liability.

7. The Manufacturer shall also attach a written or printed card, or label to every vessel in which liquor shall be taken from his premises in manner or to the effect following :— 30

TORONTO, March 1st, 1850.

Sold 40 gallons whiskey to John Coon, Agent of Municipality.

TIMOTHY CAREY,  
Manufacturer.

#### DEFECTS IN RECOGNIZANCES.

Defects not to vitiate.

6. No defect in any bond, or writing, or recognizance, or security required by this Act, shall, in any manner, invalidate the same, but the person executing it shall be bound to the full extent of the law requiring the bond, writing, security, or recognizance.

#### RECORD OF LICENSES.

7. The Clerk of every county or city shall keep a record of the names, residences, and certificates, in full, of all persons authorized by the Council of such county or city, to manufacture and sell, as hereinbefore provided in section four; and the Clerk of every township, town and village in the county shall furnish the Clerk of the county with the names and residences of all Agents of townships, towns and villages within the same appointed under this Act; and the county Clerk shall keep a record thereof; and the records shall be kept open to public inspection at all reasonable times; and they shall furnish a list of said names, with their residences, to all persons authorized to manufacture and sell spirituous or intoxicating liquors, and to all Agents whose names have been furnished them as aforesaid under this Act within their respective Counties. 35 40 45

## ADULTERATION.

- 8.** If any persons adulterates, for the purpose of sale, any Beer, or other Malt Liquor, or any Wine, or any distilled liquor, or any spirituous or intoxicating liquor intended for drinking, with Coculus Indicus, Vitriol, Grains of Paradise, Opium, Alum, Capsicum, Copperas, Laurel  
 5 Water, Logwood, Brazil Wood, Cochineal, Sugar of Lead, or any other substance which is poisonous or injurious to health, or if any person shall sell any liquor intended for drinking and adulterated as aforesaid with any substance above named, or any other substance which is poisonous or injurious to health, knowing the same to be so adulterated, he shall be  
 10 punished by imprisonment in the not more than three years.

Punishment of persons adulterating liquors.

## OFFENCES AGAINST THIS ACT, HOW PUNISHED.

- 9.** All Intoxicating Liquor found in this Province, except in the possession or under the control of an officer of the law, having seized the same under this Act, or an agent for the sale of such liquor or a  
 15 person duly authorized to manufacture the same, without having attached to the vessel containing such liquor, a written or printed card, label or mark as herein before provided, and all liquor kept, used, or held for use, in violation of this Act, and the vessels, or casks, containing the same, are hereby declared to be forfeited to the Municipality in  
 20 which the same are found, but such card, label or mark, being attached to the liquor, shall not be taken as proof that the same is not held, or intended for unlawful sale or use

Forfeiture of liquor found in the hands of unlicensed persons.

- 10.** Any Mayor, Alderman, Sheriff, Deputy Sheriff, Chief of Police, or Deputy Chief of Police, Police Officer, Constable or Watchman, in his  
 25 municipality, may, without a warrant, arrest any person or persons whom he may find in the act of illegally selling, transporting, or distributing intoxicating liquors, and seize the liquors, vessels and implements of sale in the possession of said person or persons, and detain them in some place for safe keeping until warrants can be procured on complaint  
 30 made for the trial of said person or persons, and for the seizure of said liquor, vessels, and implements under the provisions of this Act; and it shall be the duty of the several officers aforesaid to enforce the penalties provided in this Act, or cause them to be enforced, against every person who shall be guilty of any violation thereof of which they  
 35 can obtain reasonable proof.

Power to arrest offenders without warrant, &c.

Obligation to prosecute.

- 11.** If any Sheriff, Deputy Sheriff, Chief of Police, or Deputy Chief of Police, Constable, or Police Officer is furnished with a written notice of any violation of this Act, and the names of witnesses thereof, and  
 40 for two weeks neglects to commence an action thereon, or prosecute any complaint, the person giving such notice may commence such action or prosecute such claim thereafter, and such person shall then be entitled to all fines imposed and collected for said violation of this Act.

Penalty on officers neglecting to prosecute.

- 12.** If any expressman, common carrier, or other person, shall, for the purpose of conveying to any other person, receive any spirituous or  
 45 intoxicating liquor which has been sold or is intended for sale in violation of this Act, he having reasonable cause to believe that the same has been so sold or is intended to be sold, such expressman, common carrier, or other person, shall, on conviction thereof, pay *twenty dollars* and the costs of prosecution, and shall stand committed until the same  
 50 be paid; the same to be recovered on complaint before any Justice of

Penalty for conveying liquors unlawfully sold &c.

the Peace, either in the place where said liquor is received, or in any place through which it is carried, or in the place at which it is delivered to the purchaser, or any person for him.

Such conveyance unlawful.

**13.** It shall not be lawful for any corporation, person or company, knowingly to receive, transport or carry any Intoxicating Liquor from one place to another within this Province, nor bring such liquor from abroad into the Province, excepting in bond, unless each vessel or cask containing the same be plainly marked or labelled as aforesaid. 5

Obtaining liquor on false pretences.

**14.** No person shall procure Intoxicating Liquor from an authorized agent or manufacturer professedly for purposes permitted by this Act, and make an unlawful use of the same, nor procure such liquor by forging, or improperly obtaining any card, mark or label referred to in this Act. 10

Warrant to search for liquor unlawfully kept.

**15.** If any three municipal electors make oath or affirmation before any Justice of the Peace, that they have reason to believe, and do believe that Intoxicating Liquor, intended for sale or barter, or to be used in contravention of this Act, is kept or deposited in any house or place in the Municipality, or on any adjoining water, the said Justice of the Peace shall issue his warrant to any Sheriff, police officer, bailiff or constable, requiring him forthwith to search for, seize such liquor if found, and the vessels or casks containing the same, and to arrest the owner or keeper thereof, and to convey the liquor and vessels or casks so seized to some proper place of security, there to be kept until final action thereon. 15 20

Forfeiture of liquor.

**16.** The owner or keeper so arrested shall be brought before such Justice, or some other Justice of the Peace, and if it be proved that the said liquor was kept or intended for sale or use contrary to the provisions of this Act, it shall be, together with the vessels or casks containing the same, declared forfeited, and the owner or keeper of such liquor shall be deemed an offender against this Act. 25 30

Particular kind of liquor need not be alleged, &c.

**17.** In any proceeding for a violation of the provisions of this Act, it shall not be necessary to specify or prove the precise kind of liquor which is the subject of the charge, but to allege it as "intoxicating liquor" only, and proof of the unlawful act in relation to any such liquor, shall be deemed sufficient, although the particular kind may not be shown. 35

Agents punishable.

**18.** All Clerks, Agents and Servants shall be proceeded against as principals, and incur the same penalties for a violation of this Act.

County Attorney to sue.

**19.** It shall be the duty of the County Attorney to prosecute all suits under this Act. 40

As to liquor seized when the owner is unknown.

**20.** If the owner or possessor of liquor seized under this Act, is unknown to the officer making such seizure, the liquor shall not be forfeited until the fact of such seizure has been advertized, with the number and description of the casks or packages as near as may be, by posting up a written or printed notice thereof in at least three public places in the Municipality, and publishing the same in a newspaper, if one be published in the Municipality; and if it is proved to the satisfaction of the Justice within two weeks from the time of the seizure, that the liquor was, at the time of the seizure, the property of any person authorized under this Act to hold the same, it shall be delivered to the 45 50



owner claiming it, and the owner shall give his receipt therefor, and the receipt shall be filed with the other papers relating to the case.

21. If any person claiming any interest in any spirituous or intoxicating liquor seized as a nuisance, and having knowledge or notice as required by this Act, of the seizure, does not assert his claim upon the trial, he shall be deemed to have waived his claim, and shall not afterward assert any right thereto whatever, or any claim for damages.

Claim of owner when to be made—or forfeited.

22. Judgment of forfeiture against any spirituous or intoxicating liquor, under the provisions of this Act, shall operate as a judgment *in rem*, and the validity of such judgment shall not be contested or questioned in any action, in any Court, by any person, except by appeal from the judgment by which the forfeiture is declared; and no Court shall take jurisdiction of any action of replevin or any other action to try the validity of the proceedings in which the forfeiture is declared, except as herein provided.

Judgment condemning liquor not to be questioned except by appeal.

23. In case any Peace Officer, Policeman or Constable receives satisfactory information that any Intoxicating Liquor is kept for sale or use, or is sold or used contrary to this Act, in any tent, shanty, hut or place not being a dwelling house, or at any public fair, or on or near the ground of any cattle show, exhibition, militia or military muster, or on any public occasion of any kind, he is hereby required to make diligent search at such place, and if he finds therein or thereat any Intoxicating Liquor, he shall seize the same with the vessels containing it and shall arrest the keeper of the place, or the owner or keeper of the liquor found as aforesaid, without warrant, and shall forthwith take him before any Justice of the Peace, having jurisdiction, with the liquor and vessels so seized.

Arrest of persons selling liquor in tents, huts, &c.

24. Upon proof that the said Intoxicating Liquor was found in the possession, or under the control of the accused, in any tent or shanty or other place as aforesaid, and was there kept to be sold, or in any way furnished to the persons there assembled, he shall be deemed an offender against this Act, and the liquor and vessels so seized shall be declared forfeited by the order of the said Justice, who shall award such costs as he shall deem just:—But should such prosecution fail, no officer making such seizure shall be condemned in costs unless it be proved that he was moved to make such seizure by malice.

Forfeiture of liquor.

Costs. Officer protected unless malice proved.

25. Whenever a judgment for damages is recovered against any Justice of the Peace, Sheriff, Deputy Sheriff, Constable, or other Officer, in any action brought against him on account of any thing heretofore done by him in good faith in his official capacity, under and by virtue of this Act, he shall receive the amount of damages and costs so recovered against him of the Treasurer of the county; provided the judge before whom the case is tried shall certify, under his hand, that the said judgment was recovered against such Magistrate or Officer on account of some act done by him in good faith, in his official capacity under this Statute.

Officer to be reimbursed. damages recovered against him for anything done under this Act.

26. The Treasurer of the county shall also pay to any such Magistrate or Officer against whom judgment is recovered as aforesaid, such further sum as the Judge who tries the case shall, in his said certificate, certify has been fairly and reasonably expended by said Magistrate or Officer in carrying on the defence of the suit.

And also his costs.

Cases in appeal.—Atty. General to prosecute, &c.

**27.** All cases under this Act which shall come by appeal, before any Court shall, in such Court, be conducted by the Attorney or Solicitor General on behalf of the prosecution; and the Attorney General shall not have authority to enter a *nolle prosequi*, except by consent of the Court, and where the purposes of Justice manifestly require it. 5

Provisions to be observed when liquor is seized as a nuisance.

**28.** Whenever any spirituous or intoxicating liquor is seized as a nuisance, under this Act, the following provisions shall be observed in regard thereto:—

1. The Officer seizing the liquor shall keep the same safely in some secure place until final judgment. 10

2. If judgment of forfeiture be given against such liquor, or any part of it, the officer shall deposit such liquor for safe keeping with the County Agent duly appointed to sell intoxicating liquor, and take his receipt therefor. 15

3. If no appeal be taken within            days, the Officer shall return the receipt, and take and destroy the liquor under the order of the Magistrate.

4. If any appeal is taken, the Officer shall return his order to the proper Court, indorsed that he has delivered the liquor so seized to the County Agent for safe keeping, and the County Agent shall keep such liquor subject to the order of the Court to which the appeal is made. 20

5. Whenever judgment is given for the Defendant on the seizure of such liquor as a nuisance, the Attorney prosecuting the action may appeal therefrom at any time within three days, without any bond being filed on the part of the Appellant, and the officer seizing the liquor shall not return it to the place of seizure until the expiration of three days. 25

6. And whenever final judgment is given that the liquor so seized is not a nuisance, and not subject to forfeiture, the County shall pay the costs of the seizure, carriage, safe keeping, and return of the liquor, and the fees of Officers, Jurors and Witnesses in such cause. 30

7. But the County shall be liable for no other costs in any case, except the keeping of persons under arrest and imprisonment for a violation of this Act, as in other cases. 35

Devices for eluding this Act to be public nuisances.

**29.** Every contrivance or device made use of to sell, or deal out to, or provide for any person Intoxicating Liquor, and at the same time to conceal or disguise the vendor of such liquor is hereby declared to be a public nuisance—and both the keeper and owner of the premises where such device exists, shall be deemed offenders against this Act, unless it appears, upon the examination, that such device was unknown to such keeper or owner, and in that case he shall be free from such offence. 40

Liquor not to be given away in certain places.

**30.** No spirituous or intoxicating liquors shall be given away, or be kept with intent to be given away, in any Tavern, Boarding-House, Public Eating-House, Grocery, Oyster Shop, Store, Bar-Room, Confectionery, or other place of Public Entertainment; or in any Theatre, Museum, or other place of public resort; or on any Steamboat, or other Craft carrying passengers; and for any violation of this Section, the person offending shall be fined to the same extent as for selling such liquors contrary to this Act. 45

Persons letting houses, &c., for illegal sale of liquor, &c., to be.

**31.** If any person knowingly lets any building or tenement owned by him, or under his control, for any of the purposes rendered illegal by this Act, or knowingly permits any such building or tenement, or part thereof, to be so used while under his control, or if after due notice of 50

any such use of said building or tenement, he omits to take all reasonable measures to eject the said person from the premises as soon as the same may lawfully be done, he shall be deemed guilty of the maintenance of such nuisance, and be punished by a fine of not less than *one hundred dollars*, nor more than *one thousand*, or by imprisonment in the County Jail not less than thirty days, nor more than six months.

Guilty of a nuisance.

32. In case any person rents or leases any building or premises, and knowingly suffers the same to be used or occupied, for the sale of intoxicating liquors, contrary to this Act, such building and premises so leased and occupied, shall be held liable for, and may be sold to pay all fines and cost assessed against the person occupying such building, or premises, for any violation of this Act.

Building to be liable for fines, &c.

33. In case such building, or premises, belong to any minor, insane person or idiot, the guardian or guardian, of such minor or minors, or insane person, or idiot who has control of such building or premises, shall be liable for, and account to such ward or wards, insane person or idiot, for all damages in consequence of the use and occupation of such building and premises, and liabilities for such fines and costs, as aforesaid.

Guardians, &c., so letting buildings to be answerable to those they represent.

34. Intoxication shall be deemed an offence against this Act, and if any person is found intoxicated in any public house or place, or on any street or highway, or being intoxicated shall be found anywhere committing a breach of the peace, or disturbing other persons by making an unusual noise, any Peace Officer shall, without warrant, arrest such person and take him before a Justice of the Peace, and if the person so arrested fully discloses the name of the person from whom, and the place, time and manner in which he procured the liquor which produced his intoxication, he shall be retained as a witness against the vender of the liquor, if furnished in contravention of this Act, and then discharged;—but if the intoxicated person refuses to give said evidence he shall be deemed an offender against this Act.

Intoxicating an officer against this Act.

Offender to be let off on giving the name of the person who sold him the liquor.

35. If any person in a state of intoxication commits any offence against the person or property of any one, the person who furnished the offender the liquor, or any part thereof which occasioned his intoxication, if the same was furnished in violation of this Act, shall be subject to the same action on behalf of the party aggrieved as might be brought against the person intoxicated, and the aggrieved party, or his representative, may bring either a joint action against the person intoxicated and committing the offence and the person who furnished the liquor, or a separate action against each.

Person selling the liquor answerable for offences by intoxicated party

36. Any person may maintain an action in any court in this Province against any other person who unlawfully sells or delivers any liquor to the husband, wife, parent, child, guardian, ward, apprentice or servant of the plaintiff, and it shall not be necessary in any such action to aver or prove any specific damage to the plaintiff by such sale, or delivery, but upon such proof the court or jury shall assess the damage at not less than twenty-five cents and the costs of suit, and if any special damage be shown, then at such higher sum as may be just, and judgment shall be given accordingly.

Action against any person selling liquor to husband, wife, &c., or plaintiff.

37. Any married woman may prosecute and maintain such action in

Action by married woman.

her own name with or without the consent of her husband, and the damages she recovers shall go to her separate use.

Husband or wife may testify.

38. Upon the trial of any action under either of the preceding sections the plaintiff, or the wife, or husband of the plaintiff, may be examined as a witness on the part of the plaintiff, any law or rule to the contrary notwithstanding.

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Illegality of sale presumed until the contrary shown.

39. Upon the trial of any complaint, suit, or information, under this Act, proof of the keeping, delivery, sale or barter of Intoxicating Liquor by the defendant, shall be sufficient to sustain an allegation that the same was unlawful, and unless he proves the contrary, judgment shall be rendered against him.

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Penalty for contravention of this Act.

40. Any person violating any of the provisions of this Act shall be liable to a fine of not less than *twenty-five dollars*, nor more than *one hundred dollars* and the costs of prosecution, in the discretion of the convicting Justice, which fine shall belong, one-half to the prosecutor, and the other to the Municipality where the offence is committed; unless the prosecution be brought in the name of the Corporation of the Municipality, which, in such case, shall receive the whole amount of the fine; and in default of payment of any such fine and all costs, the offender shall be imprisoned at hard labor until the same be paid; such imprisonment, however, not to be less than ten days nor more than two calendar months, as the convicting Justice may direct.

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Imprisonment if fine be not paid.

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Unlawful sale to disqualify as Juror.

41. No person proved to have been engaged in the unlawful sale of Intoxicating Liquor, within one year of the time of any trial under this Act, shall be competent to sit as a juror thereon; and if his disqualification be known he shall be challenged when called as such juror.

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And for any municipal office.

42. No person who has been engaged in the unlawful sale of Intoxicating Liquor shall, for one year from the time he was so engaged, be qualified to be elected to any office under the Act respecting the Municipal Institutions of Upper Canada.

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Liquors, &c., not subject to *replevin*.

43. Liquors seized under this Act, and the vessels containing them, shall not be taken from the custody of the officer in charge by writ of *replevin* or any other process, while the proceedings herein provided for are pending, and final judgment thereon shall, in all cases, be a bar to all suits for the recovery of the liquor or casks seized, or the value of the same, or any alleged damages by reason of such seizure and detention.

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Appeal from conviction.

44. Either the complainant, or other person prosecuting on his own behalf, or that of a Municipality, or the defendant, in any action arising under this Act, may appeal from the decision of a Justice of the Peace, and the laws regulating appeals from decisions of Justices shall apply in all cases under this Act.

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Officers, &c., bound to enforce this Act.

45. It shall specially be the duty of all Peace Officers, Municipal Officers, Justices of the Peace, and Collectors of Customs, to enforce the provisions of this Act, and every person legally required to enforce, or to assist in enforcing its provisions, refusing or neglecting so to do, shall be deemed an offender against this Act.

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Act not to prevent

46. Nothing in this Act shall be construed to prevent the making of cider from apples, or wine from grapes, currants, or other fruit grown

- and gathered in this Province by the manufacturer, or the sale thereof by him, in quantities not less than three gallons at any one time, no part of which shall be drunk upon or about the premises; nor shall this Act be construed to prevent the manufacture and sale of burning fluids of any kind, perfumery, essences, drugs, varnishes, nor any other article of trade and commerce, composed in part of alcohol or other spirituous liquor, if not capable of being used as a beverage, nor intended for use as a beverage, or in evasion or contravention of this Act.
47. Nothing in this Act shall be construed to forbid the owning, possession or keeping of liquors of foreign production imported by the owner or keeper thereof contained in the original packages in which it was by the said owner or keeper imported; and nothing contained in this Act shall be construed to prevent any Chemist, Artist or Manufacturer, in whose art or trade they may be necessary, from keeping at his place of business such spirituous liquors, as he may have occasion to use in his art or trade, but not for sale; and nothing in this Act shall be constructed to prevent the manufacture and sale of Cider for other purposes than that of a beverage or of unadulterated Wine for sacramental purposes.
48. In any case where, under the provisions of this Act, Intoxicating Liquor, and the vessels containing the same, are declared forfeited, the officer having the same in charge shall deliver said liquor, and the vessels, over to an agent for the sale of liquor in the Municipality or Ward where the offence was committed, and file a receipt for the same with the convicting justice, and if in the opinion of such agent the liquor is unfit for sale he shall destroy it, and otherwise shall sell the same for the Municipality.
49. All payments or compensation for money, labor, or personal or real property, made by sale or delivery of Intoxicating Liquor, contrary to this Act, are hereby declared to be void, and in any action touching such money, labor, personal or real estate, the purchaser and seller of such liquor may be examined as witnesses, and all contracts, notes, bills, bonds, and agreements, made in whole, or in part consideration of Intoxicating Liquor, illegally sold, shall be void, except in the hands of innocent holders.
50. Any person offending against, or violating any of the provisions of this Act, may be prosecuted before any one or more Justices of the Peace, having jurisdiction where the offence was committed.
51. No action or other proceeding under this Act, or which may be necessary to carry out its provisions, shall be held to be void, or allowed to fail for any defect of form, and no particular form of words shall be requisite in any information, prosecution or action, instituted or made for enforcing any of the provisions of this Act, and any such information, prosecution or action may be laid and prosecuted to judgment and execution before any one Justice of the Peace.
52. In all cases under this Act, reasonable costs, fees and expenses shall be allowed by the Justice or Court, in the same manner as are now allowed in criminal cases, and as near as possible corresponding thereto.

manufacture  
of certain  
articles.

As to foreign  
liquors in  
original pack-  
ages, &c.

How liquor  
forfeited shall  
be disposed  
of.

Payments and  
contracts to  
making sale of  
liquor to be  
void.

Exception.

Prosecution of  
offenders.

Suits, &c., not  
void for want  
of form, &c.

Costs.

Grand Jury  
to be charged  
as to offences  
against this  
Act.

53. It shall be the duty of the presiding Judge of every Court of Oyer and Terminer, and of every Court of Sessions, specially to charge every Grand Jury to inquire into all violations of or offenses under this Act.

Existing  
licences not  
affected.

54. Nothing in this Act shall affect the right of any person now having a license to sell intoxicating liquor during the period for which his license was granted ; but such person shall have and exercise the rights and privileges which he now enjoys, until the expiration of such time, subject to all the provisions of law now in force regulating his conduct under such license. 5

Inconsistent  
enactments  
repealed.

55. All Acts and parts of Acts of this Province, contrary to the provisions of this Act, are hereby repealed, but such repeal shall not effect any suit or proceedings commenced previous to the passing of this Act, nor have the effect of reviving any Act or part of Act formerly repealed. 10

Commence-  
ment of Act.

56. This Act shall come into force and take effect upon the day of 1860. 15