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No. 227.

3rd Session, 5th Parliament, 20 Victoriae, 1857.

B I L L .

An Act to amend the Act intituled *An Act to make better provision for granting Licenses to Keepers of Taverns and Dealers in Spirituous Liquors in Lower Canada, and for the more effectual repression of intemperance.*

Received and read first time, Friday, 17th
April, 1857.

Second reading, Friday, 24th April, 1857.

Mr. Sol. Genl. Ross.

An Act to amend the Lower Canada Tavern Licence Act of 1851.

- W**HEREAS it is necessary to amend the Act of 1851, *Preamble.*
intituled, *An Act to make better provision for granting* 14, 15 v.
Licenses to Keepers of Taverns and Dealers in Spirituous Liquors c. 100.
in Lower Canada, and for the more effectual repression of
5 *intemperance,* and to make further provision in relation to pro-
secutions and appeals from decisions under the same : There-
fore, Her Majesty, by and with the advice and consent of the
Legislative Council and Assembly of Canada, enacts as follows:
- I. Whereas by the forty-second section of the said Act, it is
10 provided that all suits, actions or prosecutions for offences com-
mitted against the same, shall be commenced in the name of
one of the Revenue Inspectors, and in the County in which the
offence has been committed ; And whereas it is necessary to
amend the said section in this particular : It is therefore
enacted, that any prosecution for an offence against the said
15 Act committed within the limits of any County, Parish, Town-
ship or Village Municipality, may be instituted in the name of
the Revenue Inspector of the District before any one or more
Justices of the Peace near the residence of such Revenue In-
spector, or in the name of the Secretary or Treasurer, or Secretary-
20 Treasurer of such Municipality, before any Justice of the Peace
therein or in the neighbouring Parish or Township, and in
every such latter case the share which would otherwise have
accrued to the Revenue Inspector, shall be retained by the said
Secretary or other officer of the Municipality for the purposes
25 of education within its limits.
- II. Whenever any judgment shall be rendered under the said
Act, for the amount of any penalty and costs, the Justice or
Justices trying the case may call upon the Defendant to declare
whether or not he possesses sufficient goods and chattels to
30 satisfy the judgment and costs, and in the event of his refusing
to answer to the satisfaction of such Justice or Justices, he may
be forthwith imprisoned in the Common Gaol for a period not
exceeding three months, but no execution shall, in such case,
issue against his goods and chattels.
- III. If the Defendant declare that he possesses sufficient
35 goods and chattels to satisfy the judgment and costs, execution
in default of immediate payment may issue against them ;
and if upon the return of the Bailiff or other officer charged
with the execution of the writ in that behalf, it appear that
40 there has not been a sufficient levy and the Justice be satisfied
by affidavit or otherwise that there has been misrepresentation,

Recital.

Section 42,
amended.Penalties may
be sued for by
Municipal
Secretary or
Treasurers, and
the prosecu-
tor's share re-
tained by the
Municipality
for School
purposes.Imprisonment
of Defendant
convicted and
declaring that
he has not
goods to satis-
fy judgment.Execution in
default of im-
mediate pay-
ment, if he de-
clares that he
has good suffi-
cient.

- Imprisonment if his declaration prove false. concealment or fraud on the part of the Defendant, the Justice may imprison such Defendant until the judgment and costs be fully paid, or for a period not exceeding three months.
- Justices may fix day for payment and detain Defendant. IV. It shall also be lawful for such Justices, if they shall deem it expedient, in the event of such penalty and costs not being immediately paid, to appoint some future day for the payment thereof, and to order the offender to be detained in safe custody until the day so appointed, unless such offender shall give security to the satisfaction of such Justices for his or her appearance on such day; and such Justices are hereby empowered to take such security by way of recognizance or otherwise at their discretion; and if at the time so appointed such penalty shall not be paid, it shall be lawful for the same or any other Justice of the Peace, by Warrant under their hands and seals to commit the offender to the Common Gaol or House of Correction within their jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty and costs. 5 10 15
- Or take security. Commitment on failure to pay. Evidence in cases under the said Act to be taken in writing and filed of record. V. In all prosecutions to be instituted after this Act shall have come into force, for any contraventions of the provisions of the above mentioned Act, and in all cases wherein the proof shall not have been commenced before that day, the depositions of the witnesses shall be reduced to writing by the Clerk of the Peace, or some one appointed by him, or in his absence, by the Justice trying the case, and shall be filed of record in the cause, in like manner as if the same had been taken in the Superior Court for Lower Canada. 20 25
- Appeal not allowed in case tried before two Justices, &c. VI. No appeal from any conviction or judgment for any offence against the said Act shall be hereafter allowed under the forty-fourth Section thereof, nor under any other Law or Statute whatever, in any case wherein the trial shall be had before, and the conviction made by two Justices of the Peace or by any Inspector and Superintendent of Police, or Stipendiary Magistrate and another Justice of the peace; nor any appeal according to the practice heretofore observed with respect to such appeals; but any party to the cause, whether complainant or defendant, aggrieved by any conviction or judgment made or rendered by one Justice of the Peace, may within eight days after the making or rendering thereof, and after two days' notice to the opposite party or his attorney, and after having complied, (if a defendant,) with the conditions of the said section, apply to any Justice of the Superior or Circuit Courts, by petition setting forth the grounds of his application, and praying to be permitted to appeal from such conviction or judgment, to the next Court of General Quarter Sessions; and thereupon such Judge if he see fit, may make an order directing the Justice or public officer having the legal custody of the record in such case, to 30 35 40 45
- Section 44, cited. Nor any appeal according to the present practice. New provision for appeal in such cases; either party may appeal. Permission of a Judge required.

- send the same immediately before him, together with a copy of the conviction according to the form in the said Act, and upon examining the same and hearing the parties, he may allow the said appeal or reject the said petition with costs to be taxed by him and entered in execution against the party
- 5 failing by the Justice or Justices who tried the case, or without costs in his discretion; and in the event of the Judge allowing the said appeal, he may order the said petition and record in the said cause to be returned and filed with the Clerk of the Court of Quarter Sessions, to be set down without
- 10 further formality for hearing on the first day next thereafter of the said Court, when the said appeal shall be heard, and shall be restricted to a mere revision of the proceedings, proof and judgment therein, without the admission of any other evidence or the adoption of any further proceedings whatever.
- 15 VII. The said Clerk of the Peace, or other Clerk officiating in this behalf, shall be entitled to charge and receive at the rate of six pence for each hundred words of the said evidence so reduced to writing, or of ten shillings per diem for the time during which he shall be so occupied, in the discretion of the
- 20 Justice trying the case, to be entered in taxation and paid by the party failing on such proceeding, if judgment be rendered therein against either party; and if no judgment be rendered therein within three months after the return of the Summons or Information, then the fees of such Clerk shall be paid equally
- 25 between the said parties.
- VIII. In all Informations and Plaints for the prosecution of offences against the said Act, several counts for the same offence, and several offences under the same section, similar in their nature and only constituting different categories of the
- 30 same offence, may be included, provided the time and place of the commission of each offence be alleged; and the form in Schedule D annexed to the said Act shall be altered in this particular; and the Information or Plaint may be amended before plea to the merits in any matter of form or substance,
- 35 upon motion in writing of the complainant, setting forth the required amendment, but without obliterating or altering the original pleading; and if the amendment be allowed, the Defendant, if he require it, may have a further delay to plead to the merits, or for plea and proof as it may be ordered; and if
- 40 the pleading, in the opinion of the Justice, be so defective either in form or substance, that a legal conviction cannot be based upon it, and be not amended or reformed, the Justice may dismiss the case, the whole with or without costs in his discretion.
- 45 IX. This Act shall come into force on, from and after the first day of July next, and not before.

Transmission of the record, &c.

Trial of the appeal.

Fees to the Clerk of the Peace or Justices' Clerks, &c.

How paid.

Informations may contain several counts.

Form in Schedule to Act of 1851 may be altered.

Amendment allowed.

Commencement of Act.