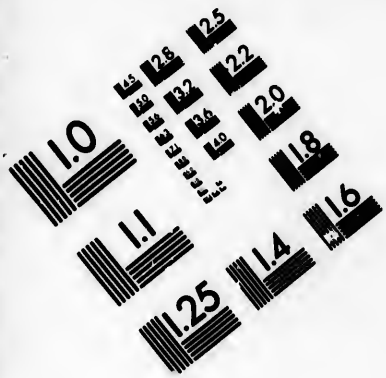


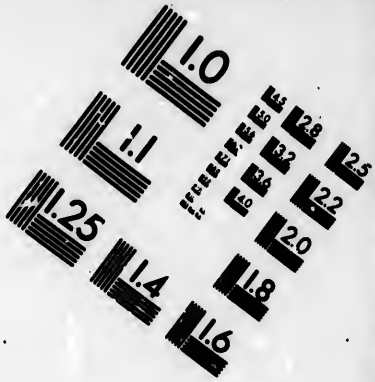
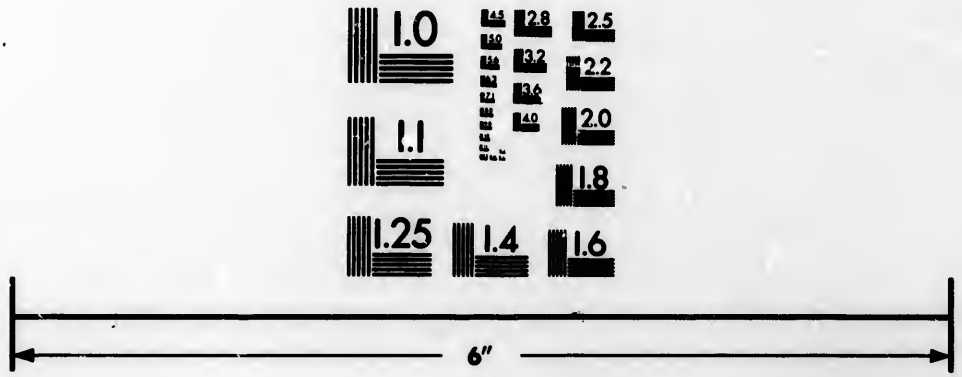


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Technical and Bibliographic Notes/Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming, are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- ☐ Coloured covers/ Couverture de couleur
- ☐ Covers damaged/ Couverture endommagée
- ☐ Covers restored and/or laminated/ Couverture restaurée et/ou pelliculée
- ☐ Cover title missing/ Le titre de couverture manque
- ☐ Coloured maps/ Cartes géographiques en couleur
- ☐ Coloured ink (i.e. other than blue or black)/ Encre de couleur (i.e. autre que bleue ou noire)
- ☐ Coloured plates and/or illustrations/ Planches et/ou illustrations en couleur
- ☐ Bound with other material/ Relié avec d'autres documents
- ☑ Tight binding may cause shadows or distortion along interior margin/ La reliure serrée peut causer de l'ombre ou de la distortion le long de la marge intérieure
- ☐ Blank leaves added during restoration may appear within the text. Whenever possible, these have been omitted from filming/ Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- ☐ Additional comments:/ Commentaires supplémentaires:

- ☐ Coloured pages/ Pages de couleur
- ☐ Pages damaged/ Pages endommagées
- ☐ Pages restored and/or laminated/ Pages restaurées et/ou pelliculées
- ☑ Pages discoloured, stained or foxed/ Pages décolorées, tachetées ou piquées
- ☐ Pages detached/ Pages détachées
- ☑ Showthrough/ Transparence
- ☐ Quality of print varies/ Qualité inégale de l'impression
- ☐ Includes supplementary material/ Comprend du matériel supplémentaire
- ☐ Only edition available/ Seule édition disponible
- ☐ Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image/ Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below/
Ce document est filmé au taux de réduction indiqué ci-dessous.

10X	12X	14X	16X	18X	20X	22X	24X	26X	28X	30X	32X
						✓					

The copy filmed here has been reproduced thanks to the generosity of:

D.B. Weldon Library
University of Western Ontario

The images appearing here are the best quality possible considering the condition and legibility of the original copy and in keeping with the filming contract specifications.

Original copies in printed paper covers are filmed beginning with the front cover and ending on the last page with a printed or illustrated impression, or the back cover when appropriate. All other original copies are filmed beginning on the first page with a printed or illustrated impression, and ending on the last page with a printed or illustrated impression.

The last recorded frame on each microfiche shall contain the symbol → (meaning "CONTINUED"), or the symbol ▽ (meaning "END"), whichever applies.

Maps, plates, charts, etc., may be filmed at different reduction ratios. Those too large to be entirely included in one exposure are filmed beginning in the upper left hand corner, left to right and top to bottom, as many frames as required. The following diagrams illustrate the method:

L'exemplaire filmé fut reproduit grâce à la générosité de:

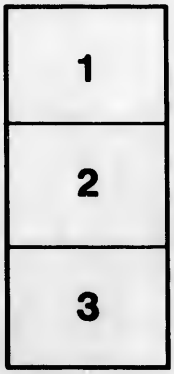
D.B. Weldon Library
University of Western Ontario

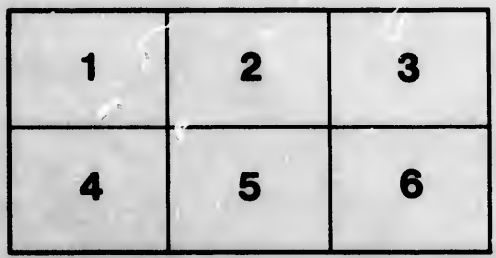
Les images suivantes ont été reproduites avec le plus grand soin, compte tenu de la condition et de la netteté de l'exemplaire filmé, et en conformité avec les conditions du contrat de filmage.

Les exemplaires originaux dont la couverture en papier est imprimée sont filmés en commençant par le premier plat et en terminant soit par la dernière page qui comporte une empreinte d'impression ou d'illustration, soit par le second plat, selon le cas. Tous les autres exemplaires originaux sont filmés en commençant par la première page qui comporte une empreinte d'impression ou d'illustration et en terminant par la dernière page qui comporte une telle empreinte.

Un des symboles suivants apparaîtra sur la dernière image de chaque microfiche, selon le cas: le symbole → signifie "A SUIVRE", le symbole ▽ signifie "FIN".

Les cartes, planches, tableaux, etc., peuvent être filmés à des taux de réduction différents. Lorsque le document est trop grand pour être reproduit en un seul cliché, il est filmé à partir de l'angle supérieur gauche, de gauche à droite, et de haut en bas, en prenant le nombre d'images nécessaire. Les diagrammes suivants illustrent la méthode.





LIQ

P

CHAPTER

AS AME
CH

"AN ACT RES

A

THE KE

TEMPERANCE
DECISIONS
KEEPER
DUTI
W

WITI

Judge of the Coun

T

—THE—

LIQUOR LICENSE ACT

OF THE

PROVINCE OF ONTARIO.

CHAPTER 194 OF THE REVISED STATUTES OF ONTARIO, 1887,

AS AMENDED BY 51 VICTORIA, CHAPTER 30; 52 VICTORIA, CHAPTER 41; AND 53 VICTORIA, CHAPTER 56;

AND THE ACT PASSED 54 VICTORIA, INTITULED

"AN ACT RESPECTING LOCAL OPTION IN THE MATTER OF LIQUOR SELLING;"

BEING

A FULL AND CAREFUL ANNOTATION OF THE STATUTES RESPECTING

THE KEEPING AND SELLING OF INTOXICATING LIQUOR,

INCLUDING NOTES OF CASES ON THE

TEMPERANCE ACT OF 1864; THE CANADA TEMPERANCE ACT, 1878; AND DECISIONS REGARDING THE DUTIES AND LIABILITIES OF INN-KEEPERS AND LICENSE-HOLDERS GENERALLY, AND THE DUTIES AND POWERS OF ALL OFFICERS CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF THE LICENSING LAWS,

WITH AN APPENDIX OF FORMS.

BY

HIS HONOUR J. S. SINCLAIR,

Judge of the County Court of the County of Wentworth, and Local Judge of the High Court of Justice at Hamilton,

AND

EDWIN ERNEST SEAGER.

HAMILTON:
TIMES PRINTING COMPANY, HUGHSON STREET NORTH.

1891.

TO

THE HON. A. S. HARDY, Q. C.,

COMMISSIONER OF CROWN LANDS OF THE
PROVINCE OF ONTARIO,

THIS BOOK

IS,

WITH HIS PERMISSION,

RESPECTFULLY INSCRIBED.

In introdu
sidered that no

If there b
there exists a l
have therefore
a necessity. T
Legislature and
has been fruitf
branch of legis
no subject has
than that dealin
as a matter of
neither those w
should observe
it as it should
but in England

Upon these
fession and publ
to those who sh
No attempt has
has been no effe
or other compe
mere opinions o
even between the
misleading. Bu
that the solution
bodied in the Ac
authorities in w
those contained
the latest autho
notes to the vari
the various quest
up to date, the
available. The
intended to reach
its language and
those provisions
are to be adminis

PREFACE.

In introducing a work on the liquor licensing laws of Ontario, it is considered that no apology is necessary.

If there be one branch of the law more than another concerning which there exists a lack of information, it is that now under consideration; and I have therefore been convinced for a very long time that a work such as this was a necessity. The subject is one which has always presented, both to the Legislature and the Courts of Law, many grave difficulties and perplexities, and has been fruitful of litigation in a marked degree. In fact there has been no branch of legislative or judicial practice more complex or troublesome, and no subject has awakened greater public interest on the American continent than that dealing with the traffic in intoxicating liquors. Yet it would seem, as a matter of fact, that neither lawyers nor laymen, Legislators nor Judges, neither those who frame the law nor those who interpret it, neither those who should observe it nor those whose duty it is to enforce it, are able to understand it as it should be understood. This is not the case in this Province alone, but in England and the United States, wherever licensing laws are in force.

Upon these grounds alone the submission of this work to the legal profession and public may be amply justified. It is intended to assist in imparting to those who should be familiar with it, a knowledge of what the law really is. No attempt has been made to accomplish the impossible, and therefore there has been no effort at interpretation which is not amply supported by judicial or other competent authority. The editors have refrained from presenting mere opinions of their own, which, judging from the conflict of opinion existing even between the highest authorities, would certainly be useless, and might prove misleading. But it has been considered, where more direct authority is wanting, that the solution of many, if not most of the difficult and doubtful points embodied in the Act might be very materially assisted by reference to cases and authorities in which a construction is given to words and phrases similar to those contained in the various clauses of the Statute, and with this in view the latest authorities, British, Canadian, and American, are quoted in the notes to the various sections. All the latest cases having a direct bearing upon the various questions involved are also given. The Canadian cases are given up to date, the British and American cases up to the date of the latest reports available. The very large class of persons interested in the subject, whom it is intended to reach, has made it necessary that the work should be as simple in its language and as free from all technicalities as possible. The fact, also, that those provisions of the Act upon which its success and efficiency chiefly depend are to be administered by Boards of Commissioners and by Officers appointed

more for their intelligence and business capacity than for any special knowledge of the subtleties of law, has been kept in view, and the use of legal phraseology avoided as much as possible. It is hoped that this course will enable the reader to understand more perfectly than otherwise a Statute which is unusually complex and difficult.

A number of forms, in addition to those provided for in the Statute, have been added, including forms of proceedings on *certiorari*, objections to the granting of licenses, notices under the clauses respecting the sale of liquor to minors, inebriates and others, all of which it is thought will be useful and which may prevent the failure of many an action on the ground of defective preliminary proceedings.

The law respecting the rights and liabilities of inn-keepers and lodging-house keepers will also be found embodied in the book, as also the cases under The Temperance Act, 1864, and The Canada Temperance Act, 1878.

The index has been carefully prepared, and in addition to its other uses, will be found to contain an alphabetical table of the words and phrases, the judicial meaning of which is given throughout the book, so that it forms a tolerably complete legal lexicon.

Acknowledgments are due to Mr. James Bicknell, Barrister-at-Law, and also to other members of the legal profession for very valuable assistance in the compilation of the work.

HAMILTON, 10th July, 1891.

TABLE OF CASES.

A

Abott and Medcalf, *in re*, 80.
Accident Ins. Co. v. Crandel, 270.
Agnew v. Jobson, 48.
Aitcheson v. Mann, 75, 195.
Akers v. Howard, 84.
" v. United States, 192.
Allcock v. Sutcliffe, 14.
Allan v. Liverpool, 136.
Allbutt v. General Medical Council, 227.
Allison, *in re*, 35, 237.
Allport v. Nutt, 179, 180.
Amend v. Murphy, 148.
Anchor Marine Ins. Co., v. Corbett, 152.
Ancketill v. Bayliss, 136.
Anderson, *in re*, 260.
Andrew v. White, 89, 109.
Andrews v. Insurance Co., 10.
Angus v. McLachlan, 174.
Ansley v. State, 180.
Apothecaries' Co., v. Lotinga, 118.
Arscott v. Lilley, 244.
Arkell v. Town of St. Thomas, 11, 53, 63, 126, 220.
Armoy v. Fellows, 221.
Ashforth v. Redford, 24.
Ashworth v. Heyworth, 113.
Astor v. Merritt, 148.
Atkinson v. Sellers, 49.
" v. Bell, 69.
Atkyns v. Kinnier, 41.
Atwood v. Rosser, 161.
Attenborough v. Thompson, 35.
Attwood v. Forest, 148.
Attorney-General v. Bailey, 3.
" v. Bowman, 221.
" v. Croyden, 28.
" v. Fitzjohn, 79.
" v. Horne, 47.
" v. Robson, 153.
" v. Rudloff, 221.
" v. Siddon, 124.
" v. Sullivan, 221.
Attorney-General of Hong Kong v. Kwok-a-Sing, 228.
Austin v. Davis, 255, 279, 280, 281, 282, 283.
Avards v. Dance, 179.
Avery, *in re*, 208.
Aylesford v. Morris, 209.
Azemar v. Casella, 117.

B

Baker v. Dening, 27.
" v. Mun. of Paris, 126.
Bailey v. Williamson, 53.
Baird v. Cor. of Almonte, 45.
" v. Wells, 123.
Bagot v. Arnott, 180.
Bandalow v. People, 25.
Bangor (city) v. Rowe, 257.
Bank of Toronto v. Fanning, 39, 44.
Barclay v. Mun. Council of Darlington, 52, 67, 108, 174.
Barlow v. Terrett, 70.
Barnes v. Akroyd, 177.
Barrett, *in re*, 244, 248.
" v. County Court, 47, 192.
Barth v. State, 74.
Bartlett, v. Wells, 61.
Bassett v. Godschall, 39.
Bates, *in re*, 246.
Bathard v. London Sewers Com'rs, 35.
Bath v. White, 78, 189, 191.
Baxter v. Hesson, 18.
" v. Langley, 183.
" v. State, 199.
Bayley v. Manchester S. & L. Ry. Co., 124, 255.
Baylis v. Dineley, 64.
Beckett v. Sutton, 29, 185.
Bedfordshire Justices v. Bedford, 147.
Beebe, *in re*, 243.
Belasco v. Hannant, 178, 195.
Bell v. Cor. of Manvers, 10.
Bellows v. Sowles, 199.
Bennett v. Brumfit, 27.
Benoni v. Backhouse, 214.
Bent v. Roberts, 114.
Bentinick (Lord) v. Connop, 180.
Bendall, *ex parte*, 19.
Besset, *ex parte*, 260.
Bethan v. Gregg, 42.
Betts v. Armitage, 59.
Bew v. Harston, 179.
Bigelow v. Berkshire Life Ins. Co., 270.
Biggs v. Mitchell, 112.
Billings v. Cor. of Gloucester, 32.
Biscoe v. Jackson, 203.

Blades v. Lawrence, 27.
Blair's Case, 159.
Blackburn v. Garland, 280.
" v. Green, 27.
Blackmore v. London & S.W. Ry. Co., 224.
Blackwell v. England, 38.
Blake v. Beech, 238, 324.
Blaufus v. People, 257.
Blouin v. Cor. of Quebec, 2.
Blunt v. Heslop, 214.
Blyth v. Birmingham Water Works Co. 107.
Board of Trade v. Black, 152.
Bobier v. Clay, 271.
Bond v. Conmee, 223, 241, 247, 297.
" v. Evans, 124, 175.
Bonham's Case, 163.
Boon and The Co. of Halton, 327.
Borrodaile v. Hunter, 270.
Bosley v. Davies, 124, 174, 177, 179.
Boston Beer Co. v. Massachusetts, 2, 5.
Boston Loan Co. v. Boston, 74.
Bott v. Ackroyd, 225.
Bowie, *in re, ex p.* Breull, 38.
Bowlby v. Bell, 69.
Bowry v. Bennett, 110.
Bows v. Fenwick, 21, 38, 250.
Boughner, v. Meyer, 180.
Boulton v. Webster, 274.
Boylan v. City of Toronto, 54.
Bracegirdle v. Heald, 14.
Bradley v. Baylis, 186.
Bradshaw v. Vaughton, 27.
Brenan v. Brenan, 62.
Brewer v. Shepherd, 132.
Brigden v. Heighes, 79.
Bridges v. Potts, 98.
" v. State, 77.
Bright v. City of Toronto, 107, 112, 220.
Bristol Athenæum, *in re*, 44.
Bristol Water Works Co. v. Uren, 188.
Brockaway v. Mut. Benefit Life Ins. Co., 278.
Brockville Election Case, 185.
Brodie v. Cor. of Bowmanville, 10, 53, 67, 90, 100, 126, 220.
Brooke v. Hook, 27.
Brophy and the Cor. of Gananoque, 326.
Braunstein v. Accidental Ins. Co., 90, 144.
Brown v. Duncan. 110.
Brown and Wallace, *in re*, 220, 263.
Brown v. Wilkinson, 32, 139.
Bryant v. Beattie, 82.
Bryant v. Reading, 34, 212, 263.
Bryson v. Russell, 288.
Buckle v. Fredericks, 77.
Buckley v. Hann, 76.
Buckmaster v. Buckmaster, 208.
Bunce v. Reed, 14.
Burdett, *in re*, 80.
Burgess v. Boetefeur, 28, 81.
" v. Clements, 171.
Burgh v. Legge. 112.
Burnett v. G. N. of Scotland Ry. Co., 125.
Busby v. Chesterfield Water Works Co., 188.
Butcher v. Steuart, 118.
Byrne v. Arnold, 319.

C

Candy v. Hanmore. 154.
Canada Tem. Act, The, 312.
Canada Tem. Act, 1878, and Co. Perth, *in re*, 312.
Canada Tem. Act, 1878, and Co. Kent, *in re*, 312.
Cannan v. Bryce, 110.
Calye's Case, 178.
Camp v. Rogers, 39.
Carmichael, *in re*, 242.
Carney v. Iowa, 117.
Carpenter v. Mason, 202.
Carson v. McGregor, 180.
Caskill v. Wright, 171.
Cattell v. Ireson, 195, 221.
Cates v. South, 181.
Cavendish v. Cavendish, 44.
Cecil's Case, 29, 138.
Challand v. Bray, 179.
Chamberlain v. King, 48, 223.
Chambers v. Smith, 20.
Chaney v. Payne, 247.
Chapman v. Rand, 312.
" v. Robinson, 32.
Chattillon v. Can. M. Fire Ins. Co., 39, 44.
Chauntler v. Robinson, 39.
Chenie's Case, 29, 138.
Chichester v. Cobb, 27.
Chisholm v. Doulton, 107.
Church, *ex parte*, 348.
City v. Jane, 3.
Clark v. Irwin, 88.
" v. Donnelly, 180.
" v. St. Mary's, Bury St. Edmund, 114.
Clark v. Troy, 285.
Clarke v. Hague, 130.
" v. Yorke, 214.
Clarkson v. Stirling, 88.
Clay v. Yates, 69.
Claydon v. Green, 82.

Cleland v. Robinson, 177.
Clift v. Schwabe, 269.
Cobbet v. Slowman, 221.
Coe and The Cor. of Pickering, 326.
Cohen v. Morgan, 238.
Colchester v. Kewney, 26.
Cole v. Coulton, 178.
Collett v. Dickenson, 64.
Collier v. Worth, 148.
Combined Weighing Co., *in re*, 81.
Commercial Bank v. Watson, 80.
Commonwealth v. Briant, 111, 174, 188.
Commonwealth v. Davis, 158.
" v. Harris, 199.
" v. Harrison, 147.
" v. Kimball, 77.
" v. Latimville, 281.
" v. Leeds, 127.
" v. Lockwood, 24.
" v. Ramsdell, 121.
" v. Rice, 143.
" v. Smith, 158.
Conmee v. C. P. Ry. Co., 213.
Connecticut Mut. Life Ins. Co. v. Groom, 270.
Connolly, *in re*, 259.
Cook v. Humber, 39.
Cooke v. New River Co., 68, 133.
Coolidge v. Choate, 148.
Coombs v. Cook, 113.
Cooper. v. Osborne, 179.
Cooper v. State, 158.
Cooper Man. Co. v. Ferguson, 77.
Corbett v. Haigh, 128.
Cor. of St. Vincent v. Grier, 155.
Cor. of Three Rivers v. Sulte, 2.
Cornwall v. The Queen, 236.
Costar v. Hetherington, 265.
Cotter v. Richardson, 87.
Coulbert v. Troke, 49.
Coulton v. Ambler, 70.
Cowan v. O'Connor, 214.
Cowles v. Richardson, 87.
Cox v. James, 177.
" v. Troy, 27.
Crabtree v. Hole, 179.
Crake v. Powell, 8.
Crawford v. Beattie, 238.
Crepps v. Durden, 182.
Croft and the Town of Peterboro', 22.
Croft's Case, 161.
Cronyn v. Widder, 180.
" v. Griffiths, 180.
Croome v. Mun. Council of Brantford, 53, 67.
Cross and Watts, *in re*, 78, 115, 209, 227.
Crowther v. Thorley, 76.
Crozier v. Taylor, 20.
Cruickshank v. Corby, 37.
Cundy v. Le Cocq, 43, 59, 124, 175, 269.
Cunningham v. Cor. of Almonte, 64, 91.
Curtis, *ex parte*, 263.
Curtis v. Marsh, 132.
Curtis v. Phillips, 71.

D

Dalziel v. G. T. Ry. Co., 155.
Danfield v. Taylor, 179.
Daniel v. Coulsting, 112.
" v. Whitfield, 59.
Daniels v. Mun. of Burford, 155.
Danjon v. Marquis, 80.
Dansey v. Richardson, 6, 174.
Davies v. Goodman, 80.
" v. Harvey, 185.
" v. Hopkins, 78.
" v. Rees, 80.
Day v. Bather, 172.
Day and The Cor. of Storrington, 226.
Deakin v. Lane, 64.
Deal v. Schofield, 78, 115.
De Beauvior v. Welch, 257.
Denny v. Montreal Telegraph Co., 283.
Derry v. Peek, 209.
De St. Aubyn v. Lafrance, 2.
Dickinson, *in re, ex p.* Rosenthal, 80.
Dickinson v. North Eastern Ry. Co., 277.
Dicker v. Angerstein, 258.
Digge v. Higgs, 180.
Dillon v. Cunningham, 64.
Dimes v. Grand Junction Canal Co., 80.
Dixon v. Walker, 105.
Dobie v. Temporalities Board, 2.
Doe v. Laming, 6.
Dodd v. Middleton, 226.
Dodds v. Shepherd, 212.
Dominion Bank v. Cowan, 88.
Donnelly v. Cor. of Clarke, 90.
Doty v. Lawson, 182.
Dow v. Gould Mining Co., 39.
Doyle v. Walker, 170.
Drake's Case, 40.
Drope v. Cor. of Hamilton, 91.
Druitt v. Christ Church, 256.
Duck v. Bates, 26, 29, 37, 152, 185.
Durham Ry. Co. v. Walker, 107.
Dyson v. Mason, 179.

E

Eastabrook v. Union Mut. Life Ins. Co., 270.
East Dean v. Everett, 68.
Easton's Case, 2.
East Peterboro' Election Case, 135.
East Simcoe Election Case, 135.
Eastwood v. Miller, 250.
Edinborough v. Canterborough, 28.
Edington v. Mut. Life Ins. Co., 228.
Eggington, *ex parte*, 221.
Eggington v. Lichfield, 35.
Eglington v. Norman, 37.
Einstein v. Marshall, 209.
Elderton v. Emmens, 278,
Election Cases, 135.
Elliott v. South Devon Ry. Co., 224.
Elsee v. Smith, 293.
Emery v. Richards, 180.
Erichsen v. Last, 76.
Etherington v. Wilson, 120.
Eureka Vinegar Co. v. Gazette Printing Co., 3.
Evans v. Pratt, 179.
Eyston, *ex parte*, 214, 174.

F

Fairclough v. Roberts, 78.
Fall River Iron Works v. Old Colony, etc., Ry. Co., 47.
Farquhar, *in re*, 185.
Fearon v. Mitchell, 113.
Fell v. Knight, 169, 170, 277.
Fetter v. Beal, 214.
Finch v. Blundell, 129, 182.
Fisher v. Bridges, 180.
" v. Howard, 49.
" v. Mowbray, 64.
Fitzgerald v. McKinley, 320.
Flannigan v. McMahon, 19.
Fleetwood v. Hull, 82.
Fleming v. Maddox, 257.
Flemying v. Hector, 122.
Fletcher v. Hudson, 202.
Foggassa's Case, 163.
Folkard v. Metropolitan Ry. Co., 208.
Fore v. Hibbard, 148.
Forwood v. Watney, 88.
Foster v. Diphwys Casson Co., 112.
" v. Kansas, 2.
Foster's Case, 28.
Fraser and Escott, *in re*, 199.
Freeman v. Appleyard, 69.
" v. Reed, 214.
Fredericton v. The Queen, 2, 96.
Frontenac (License Com'rs) v. Co. of Frontenac, 302, 303, 304, 305.
Fry v. Lane, 209.
Fulton v. James, 180.
Furber v. Cobb, 81.

G

Galerno v. Township of Rochester, 192
Galligar v. Payne, 61.
Galloway v. Maries, 21, 250.
Gamble v. Burnside, 42.
Gathercole v. Smith, 81.
Gatty v. Field, 180.
Gemmell v. Garland, 237, 264.
Gibson v. Cor. of Bruce, 53.
Gifford v. Mun. of Darlington, 52, 57.
Gilchrist v. Tobin, 39.
Gill v. Bright, 114, 294.
Gilmore v. Lockhart, 102.
Gladstone v. Padwick, 86.
Glass' Appeal, 26.
Gleason v. Williams, 272, 279.
Godefroy v. Jay, 274.
Goggs v. Lord Huntingtower, 29.
Golding v. Wharton, 202.
Goodeve v. Manners, 180.
Goodman v. Robinson, 129.
Goodland v. Ayscough, 272.
Gordon v. State, 251.
Gorstorf v. State, 4.
Gorsuch v. Rutherford, 119.
Governors of Bedford Infirmary v. Bedford, 147.
Graff v. Evans, 123.
Grafton v. Armitage, 69.
Graham v. Lee, 199.
" v. Lewis, 146.
" v. McArthur, 327, 349.
Grand v. Cor. of Guelph, 91.
Gregory v. Tuffs, 108.
" v. United States, 43, 154, 182.
Green, *in re*, 86, 210.
" v. Edwards, 87.
" v. Penzance, 86, 210.
Greenhouse v. Child, 38.
Greenslade v. Tappscott, 44.
Grey v. Bendino, 178.
Greystock v. Mun. of Otonabee, 52, 65, 67, 126, 168, 174.
Grill v. General Screw Collier Co., 298.
Grimbly v. Aykroyd, 214.
Grogan v. London, etc., Ins. Co., 29.
Gurney v. Atlantic, etc., Ry. Co., 115, 278.

H

Hadfield's Case, 256.

Haigh v. Sheffield (Town Council), 24, 250.
Haines v. Welch, 104.
Hall v. Ewin, 114.
" v. May, 80.
Hallen v. Runder, 69.
Halligan v. Ganley; 24, 62, 180.
Hamilton v. Grainger, 284,
" v. State, 6.
" and the Co. of Brant, 327.
Hamilton and North W. Ry. Co., *in re*, 2.
Hancock Mut. Life Ins. Co. v. Moore, 270.
Hanns v. Johnston, 281.
Hare v. Osborne, 137.
Harris v. Amery, 76.
" v. Jenns, 3.
Harrison v. Leaper, 117.
Hardy v. Bern, 75.
Hartley and the Cor. of Emily, 326.
Haskins v. Newcombe, 199.
Hatton's Case, 165.
Haven v. Hilliard, 221.
Hawes v. Humphrey, 221.
Ha[illegible] v. Justices of Tower Division, 24.
Hayden v. Tiverton, 256.
Hearne v. Garton, 221.
Hemming v. Willetts, 87.
Henry v. Armitage, 35.
Herman v. Seneschal, 48, 223.
Hereford Case (R. v. Jones), 143.
Hersee v. White, 88.
Heseltine v. Siggers, 69.
Heyworth v. Hutchinson, 117.
Highway Commissioners v. Ely, 298.
Hill v. Hill, 153.
Hirst v. Molesbury, 37.
Hittinger v. Westford, 74.
Hoad v. Grace, 185.
Hobbs v. Midland Ry. Co., 192.
Hobson v. Middleton, 114.
Hodgson v. Temple, 110, 284.
Hodge v. The Queen, 1, 7, 9, 12, 15, 234.
Hogan v. Sterritt, 136.
Hogg v. Jones, 256.
Holloway, *ex parte*, 225.
Holmes v. Meynell, 78.
Holt v. Collyer, 6.
Hood v. Franklin, 119.
Hoole v. Smith, 80.
Hooper v. Kenshole, 113.
Hopkins v. Provincial Ins. Co., 39.
do v. Swansea (Mayor of), 52.
How v. Whitfield, 80.
Howard v. Clarke, 289.
Howarth v. Minns, 58.
Howes v. Inland Revenue, 97, 182.
Hoyles v. Blore, 87.
Hudson v. Township of South Norwich, 94.
Hudson Iron Co. v. Alger, 149.
Huffman v. Walterhouse, 20.
Huffmans v. Walker, 283.
Hughes v. Buckland, 48, 223.
Hugill v. Merrifield, 124, 134, 255, 281.
Humble v. Mitchell, 69.
Hunt v. McArthur, 218.
Hunter v. Gilkison, 244.
" v. Lander, 184.
Huntley v. Luscombe, 221.
Hutchinson v. Lowndes, 221.
Hutton v. Waterloo Life Ins. Co., 279.

I

Ings v. London & S. W. Ry. Co., 104.
International Financial Society v. Moscow Gas Co., 86.
Irwell v. Eden, 185.

J

Jackson v. Kassel, 39.
" v. Spittal, 214.
James v. State, 4.
" v. Vane, 105.
Jefferson v. Richardson, 132.
Jeffreys v. London West, 94.
Jenkins v. Cor. of Elgin, 32.
Jenks v. Turpin, 130, 178.
Jephson v. Barker, 23, 159.
Johnson v. Fenner, 148.
" v. Harris, 105.
" and the Co. of Lambton, 329.
Jolly v. Hancock, 85.
Jonas v. Gilbert, 2.
Jones v. Bone, 78.
" v. Heavens, 153.
" v. Whittaker, 63.
Joseph v. Miller, 179.
Judge v. Selmes, 48, 223,
Julius v. Oxford (Bishop of), 8, 68, 195, 202.

K

Keane v. Steadman, 34.
Keefe v. Maclennan, 2.
Keeling, *in re, ex p.* Blanchet, 129.
Kelly v. Earl, 110.
Kensington v. Mansell, 80.
Kenyon v. Eastwood, 37.
King v. Burrell, 107.
" v. England, 59.
" v. Montana, 180.

King v. State, 4.
Kirkbride v. Lafayett Co., 108.
Kitching v. Croft, 283.
Kitson v. Ann Arbor (Mayor of), 118.
Knickerbocker Life Ins. Co. v. Foley, 2, 9.
Knight v. Barber, 70.

L

Lake and Blakeley, 327.
Lake and the Cor. of Prince Edward, 265, 326, 327.
Lalonde, *ex parte*, 348.
Lambe, *ex parte*, 265.
Landaff v. London, 113.
Langley v. Barnstead, 25.
Latham v. Barber, 69.
Lawrence v. Fulton, 257.
Lawrie v. Lee, 37, 61.
Lawson v. Gaskill, 69.
" v. Laidlaw, 64.
" v. State, 146.
" v. Wallasey, 152.
Lea v. Facey, 48, 223.
Leader v. Yell, 18.
Leah v. Minns, 58.
Leary v. Patrick, 160.
Lee v. Gansel, 23, 159.
" v. Gaskell, 69.
" v. Griffin, 69.
Leeds and Grenville v. Brockville, 324.
Leeson v. License Comrs. of Dufferin, 8, 11, 18, 31, 38, 39.
Leeson v. General Medical Council, 289.
Lennox Election Case, 135.
Lester v. Torrens, 4, 87, 186.
Le Taileur v. South Eastern Ry. Co., 76.
Lethbridge v. Lethbridge, 87.
Lewis v. Graham, 76.
Levy, *in re*, 80, 156.
License Comrs. of Frontenac v. Co. of Frontenac, 302, 303, 315.
License Comrs. of North Norfolk v. Co. of Norfolk, 302, 305, 325.
Limpus v. London Gen'l Omnibus Co., 124.
Lincoln Election Case, 135.
Lion the, *re*, 49.
Liquor License Act, 1883, *in re*, 2, 15, 17.
Lister v. Lobley, 39.
Livingston, *in re*, 222.
Lloyd v. Ingleby, 113.
Lock v. Selwood, 225, 237.
London Election Case, 135.
London and Suburban Land Co. v. Field, 6.
London and S. W. Ry. Co. v. Blackmore, 192, 224.
Lowe v. Fox, 81.
Loyd v. Clark 180.
Lucas and McGlashan, *in re*, 221.
Ludwick v. Commonwealth, 279.
Luff and Leaper, 179.
Lynar v. Mossup, 171.
Lynch v. People, 131.
Lyne v. Leonard, 121.
Lyon v. Morris, 34, 212, 263.

M

Macbeth v. Ashley, 9, 48.
Mace and The County of Frontenac, 326.
Mahone v. Mahone, 278.
Maillard v. Argyle, 283.
Malcolm v. Township of Oakland, 94.
Mallet v. Hanley, 31.
Malone and The County of Grey, 326.
Manhattan Life Ins. Co. v. Broughton, 270.
Manis v. State, 192.
Manners v. Johnson, 113.
Manning, *in re*, 83.
Marks v. Benjamin, 24, 139, 147.
Marshall v. Fox, 178, 197.
" v. Platt, 180.
" v. Richardson, 121.
Martelli v. Holloway, 31.
Martin, *in re*, 202.
Martin v. Hewson, 180.
" v. Pridgeon, 288.
Mary Celeste, *in re*, The, 80.
Maryland v. Baltimore, 80.
Masters, *in re*, 222.
Massey v. Sladen, 265.
Matthews, *ex parte*, 348.
Maw v. Handmarsh, 82.
Mayhew v. Locke, 222.
" v. Wardley, 183.
Mears v. Humbolt Ins. Co., 3.
Mechiam v. Horne, 297, 320, 322, 323.
Metcalf, *re*, 312.
Mewburn v. Street, 180.
Midland Ry. Co. v. Whithington, 48, 223.
Miles v. Roe, 202.
Miles and The Cor. of Richmond, 326.
Miller v. Cor. of Fredericksburg, 272.
Mills v. Brown, 127.
" v. Perkins. 118.
Milton-next-Sittingborne v. Faversham, 224.

Minneapolis, etc., Ry. Co. v. Beckwith, 9.
Mitchell v. Darley Main Colliery Co., 214.
" v. Foster, 213, 293.
Modlin v. Snowball, 82.
Mody v. Gregson, 118.
Molson v. Lambe, 328.
Monaghan v. Taylor, 154.
Monck v. Hilton, 143.
Morden v. Porter, 221.
Morewood v. Hollister, 251.
Morgan v. Ravey, 169, 171.
" v. Seaward, 78.
Morrish v. Harris, 112.
Morrison, *ex parte*, 348.
Morton v. Palmer, 136.
Moss v. Townsend, 173.
Mottashed and The Co. of Prince Edward, 327.
Moulson *re*, *ex parte* Knightly, 38.
Moufiet v. Cole, 41.
Mountcashel v. O'Neill, 237.
Mowry v. Horne Life Ins. Co., 279.
Muir v. Keay, 97, 182.
Mulligan v. Cook, 34.
Mulliner v. Florence, 173.
Mullins v. Collins, 48, 59, 175.
Murphy v. Climie, 283.
Murray v. Thornley, 256.
Mut. Benefit Life Ins. Co. v. Holterhoff, 279.

Mc

McAlpine and the Township of Euphemia, 126.
McAvoy v. Mun. of Sarnia, 32.
McCala v. State, 289.
McCall, *in re*, 327.
McCrae v. Waterloo Mut. Fire Ins. Co. 28.
McCurdy v. Swift, 269, 272, 273, 274.
McDougall v. Giacomini, 113.
" v. McMillan, 39.
" v. Patterson, 8.
McGlinchy v. Winchell, 284.
McGrath, *in re*, 29.
McGuire v. Massachusetts, 117.
McHole v. Davies, 113.
McIntee v. McCullough, 145.
McKay v. Brown, 19.
McKinnell v. Robinson, 180.
McKenzie v. Brandon, 257.
McLaren v. Caldwell, 102.
McLean v. Dunn, 115.
" v. G. W. Ry. Co., 155.
" v. Pinkerton, 92.
" and The Cor. of Bruce, 326.
McLellan v. McKimion, 234, 240, 246.
McNellis v. Gartshore, 238.
McRossie v. Provincial Ins. Co., 153.

N

Naef v. Mutter, 38.
Neilly v. Cor. of Owen Sound, 63, 90, 184.
Nelson v. Jarvis, 37, 61.
Nevin v. Ludue, 2.
Newcombe v. Anderson, 170.
Newell v. Hemingway, 123.
Newman v. Bendshye, 131, 284.
" v. Hardwick (Earl of), 131.
" v. Jones, 124, 175, 255.
Newport Bridge, *in re*, 195.
Nichol v. Godts, 117.
Nicholson v. Phœnix Ins. Co., 69.
Nixon v. Nanney, 236.
Norfolk (License Com'rs of) v. Co. of Norfolk, 302, 305.
Norris v. Staps, 10.
Northcote v. Brunker, 4, 237, 264, 279, 280.
North Grey Election Case, 135.
" Ontario " " 135.
" Victoria " " 135.
" Wentworth " " 135.
North Vernon v. Voegler, 273.
Northwick v. St. Pancras, 279.
North York Election Case, 135.
Noxon v. Holmes, 214.

O

O'Dea v. Hickman, 48.
O'Neil and the Co. of Oxford, 327.
Oliver v. Hyman, 120.
" v. White, 148.
Olmstead v. New York (Mayor of), 288.
Oppenheim v. White Lion, 171.
Ormerod v. Todmorden Co., 29, 45, 202.
Orme's Case, 256.
Osborne v. Millman, 150.
Ovenden v. Raymond, 137.

P

Pain v. Broughtwood, 43.
Palin v. Reid, 171.
Pallesier v. Gurney, 64.
Palmer v. Newell, 155.
Parker, *in re*, 148.
Parker v. Green, 178, 195, 221, 260.
" v. Palmer, 117.

Parsons v. Alexander, 179, 180.
" v. Crabbe, 151.
Pasley v. Freeman, 289.
Patten v. Rhymer, 178.
Patterson v. State, 108.
Paulin v. Cor. of Quebec, 2, 127.
Paynter v. James, 208.
Peache v. Coleman, 49.
Pearce v. Brooks, 110, 180.
" v. Com., 6.
" v. Gill, 131.
Peek v. Shields, 221.
People v. Crilly, 2.
" v. Dikeman, 22.
" v. Morris, 32.
" v. Sharpe, 195.
Peplow v. Richardson, 49.
Petherick v. Sargent, 125.
Peverelly v. People, 192.
Pharmaceutical Soc'y v. London & Prov'l Ass'n, 108.
Phillips, *in re*, 208.
" v. Hewson, 136.
Phillpots v. Phillpots, 80.
Philpot v. Jones, 104.
Phœnix Ins. Co. v. Raddin, 149.
Pigg v. Clarke, 61.
Pine v. Barnes, 128, 137.
Pizer v. Fraser, 23.
Pocock v. Gilham, 113.
Pope v. Whally, 113.
Portland Bank v. Apthorp, 71.
Potts v. Jinders, 152.
Poulette v. Hood, 44.
Powell v. Farmer, 112.
" v. Howell, 73.
Power v. Canniff, 180.
Pownall v. Dawson, 112.
Prussia v. Guenther, 4.
Pryor v. City Offices Co., 226.
Purkiss v. Huxtable, 178, 266.

R

Rae v. McDonald, 88.
Railway Sleepers Supply Co., *in re*, 21.
Rand v. Green, 281.
Rau v. People, 3.
Read v. Brown, 214.
" v. Read, 87.
Redfield v. Utica, etc., Ry. Co., 257.
Redgate v. Haynes, 124, 177, 179.
Reeve v. Wood, 221.
Reid v. Lancaster Fire Ins. Co., 25.
" v. McWhinnie, 59, 110, 160, 232, 236, 264.
Respublica v. Shaffer, 289.
Reynolds v. Accident Ins. Co., 271.
Roubottom and the Counties of Northumberland & D., 326.
Richards v. Richards, 279.
Richardson v. Buswell, 148.
" v. Ransom, 302.
" v. Police Com'rs of Toronto, 91.
Ridgway v. Ward, 59.
Richmond v. Tegart, 155.
Rickart v. People, 158.
Riley to Streatfield, *in re*, 298.
Ritchie v. Smith, 110, 284.
Roberts v. Brett, 81, 265.
" v. Climie, 283.
" v. Humphreys, 137.
" v. Orchard, 48, 223.
" v. Watkins, 32, 119.
Robinson v. Briggs, 44.
" v. Cliff, 59.
" v. Waddington, 214.
Rochford v. Rynd, 48.
Roffee v. Bent, 114.
Rogers v. Jones, 239.
Roles v. Rosewell, 75.
Ross, *in re*, 243.
" v. Cor. of York and Peel, 10, 108, 126.
Ross v. Heathcock, 76.
Rosse v. Bramstead, 173.
Royal Canadian Bank v. G. T. Ry. Co., 27.
Ruddick v. Justices of Liverpool, 30.
Rumball v. Munt, 192.
Russell Election Case, 135.
Russell v. Smith, 26.
" v. The Queen, 96, 302.
Ruston v. Tobin, 202.
Ryer and Plows, *in re*, 241.
R. v. Ackroyd, 227.
v. Adams, 246.
v. Adamson, 212.
v. Alcock, 216.
v. Alexander, 319, 324.
v. Allbright, 111, 164, 200, 232, 240, 241.
v. Allen, 160, 215.
v. Ambrose, 114, 157, 313, 318, 325, 349.
v. Andrews, 146.
v. Annandale Justices, 40.
v. Arkwright, 83, 208.
v. Ashton, 178, 179.
v. Atkinson, 321.
v. Austin, 214.
v. Bachelor, 219, 321.
v. Budger, 202.
v. Barber Surgeons, 10.
v. Barnes 176.
v. Barrett, 24, 62, 180, 176.

R. v. Barton, 163.
v. Beard, 3, 4, 349.
v. Belmont, 10, 126.
v. Bembridge, 151.
v. Bennett, 234, 238, 242, 313, 321.
v. Birmingham Justices, 19.
v. Bishop of London, 202.
v. " Oxford, 97.
v. Black, 2, 129, 153, 160, 228, 240, 243.
v. Blakeley, 174.
v. Blaney, 221.
v. Boaman, 2, 164, 200, 221.
v. Bolton, 348.
v. Booth, 19, 79, 81, 82.
v. Borron, 151.
v. Bradford, 320, 349.
v. Brady, 160, 161, 225, 228, 235, 251, 257, 294, 316, 319, 349.
v. Braintree Union, 155.
v. Breen, 114, 160, 232.
v. Brickhall, 238.
v. Bridgenorth, 80.
v. Brooks, 214.
v. Brown, 317, 319, 320.
v. Burah, 2.
v. Burnside, 41.
v. Cambridge (Recorder of), 215.
v. Cameron, 69, 320,
v. Campbell, 110, 157, 255.
v. Cantillon, 225, 228, 234.
v. Carroll, 274.
v. Cavanagh, 125, 127, 130, 160, 167, 232, 238.
v. Chandler, 160, 213, 234.
v. Chapman, 113, 215.
v. Charlton, 235.
v. Chayter, 70.
v. Cheeseman, 199.
v. Cheltenham Commissioners, 215.
v. Cheshire Justices, 35, 263.
v. Clarence, 146.
v. Clark, 317, 321.
v. Clarke, 161, 163, 225, 233, 238, 263.
v. Clennan, 160, 234.
v. Cleworth, 132.
v. Cluff, 247.
v. Cockburn, 39.
v. Collins, 239, 317, 324.
v. Connolly, 127.
v. Conway, 82.
v. Cook, 24.
v. Cottle, 224.
v. County of Wellington, 2.
v. Cowper, 73.
v. Cridland, 237.
v. Crisp, 214.
v. Crofts, 110, 227.
R. v. Croydon Tramway Co., 123.
v. Cruse, 274.
v. Cuthbert 2.
v. Daly, 259, 312, 315.
v. Daggett, 49.
v. Deane, 39.
v. Denham, 5, 74, 118, 160.
v. De Rutzen, 19.
v. Dobbins, 291.
v. Dobson, 159.
v. Doty, 34.
v. Dowling, 245, 349.
v. Downes, 293.
v. Doyle, 251, 292, 293, 294, 315, 320.
v. Dunning, 240.
v. Duquette, 111, 125.
v. Durnion, 314, 317, 325.
v. Eales, 30.
v. Eaves, 264.
v. Edgar, 242, 318.
v. Edmundson, 74.
v. Eli, 217, 235, 319, 323.
v. Elliott, 225, 262, 316, 320, 349.
v. Elwell, 234.
v. Ely Justices, 39.
v. Ely (Isle of), 225.
v. Essery, 264.
v. Excell, 111.
v. Farquhar, 30.
v. Farrant, 216.
v. Faulkner. 5, 74, 160.
v. Fee, 127, 259, 315.
v. Ferguson, 160.
v. Ferris, 161, 233, 319.
v. Firmin, 218.
v. Fisher, 224.
v. Fletcher, 238.
v. Flory, 54, 234.
v. Frauley, 111, 164.
v. Freeman, 118, 242.
v. French, 128, 129, 160, 162, 227, 229, 232, 324.
v. Garland, 228.
v. Garrett, 121.
v. Gaunt, 23, 159.
v. Glamorgan, 113.
v. Good, 161, 319.
v. Gordon, 215, 263.
v. Goulais, 317.
v. Grainger, 233, 246.
v. Grant, 161, 233, 259.
v. Great Yarmouth Justices, 215.
v. Hall, 49, 234, 319, 324, 325.
v. Halpin, 127, 259, 315.
v. Hammond, 216.
v. Hanley, 177.
v. Handsley, 216.
v. Hanley Justices, 19.

R. v. Harris, 40.
v. Hartley, 193, 225, 232, 234, 237, 241, 251.
v. Haslehurst, 155.
v. Hawkhurst, 260.
v. Hazzell, 236.
v. Heath, 317.
v. Hellier, 267.
v. Heffernan, 292, 293, 294, 295, 316, 324.
v. Hickling (Inhabitants), 237.
v. Higgins, 161, 203, 214, 225, 228, 233, 241, 319, 322.
v. Hipswell, 42, 80.
v. Hodge, 9, 111, 164, 234.
v. Hodges, 192.
v. Hodgins, 59, 120, 235, 314, 317.
v. Hodnett, 277.
v. Hoggard, 110, 127, 131, 229, 232, 348.
v. Holland, 40, 176.
v. Hoodless, 265.
v. Howard, 110, 157, 159, 254, 255.
v. Hughes, 294, 238, 324.
v. Humphery, 208.
v. Humphrey, 85.
v. Huntingdon Justices, 216.
v. Hyde, 35.
v. Ivens, 169, 277.
v. Jamieson, 181.
v. Johnson, 154, 236, 245, 314.
v. Jones, 236.
v. Jones (Hereford Case), 143.
v. Justices of Annandale, 40.
v. Justices of Bedfordshire, 263.
v. Justices of Berkshire, 264, 265.
v. Justices of Cheshire, 263.
v. Justices of Great Yarmouth, 215.
v. Justices of Huntingdon, 216.
v. Justices of Kent, 27, 30, 73.
v. Justices of King's Co., 2.
v. " London, 216.
v. " Merthyr Tydvil, 19, 30
v. " Middlesex, 104, 157, 232.
v. " Pirehill, 40.
v. " Queens, 161.
v. " Richmond (Surrey), 216.
v. " Staffordshird, 40.
v. " Surrey, 215, 216.
v. " Warwickshire, 27.
v. Klemp, 214, 216, 218, 235, 314, 319, 320, 325.
v. Kennedy, 227, 234, 242, 314, 315, 325, 349.
v. Konsington, 18, 39.
v. Kent, 213.
v. Kent Justices, 27, 30, 73.
R. v. Kidd, 232, 237.
v. Lackie, 127, 221.
v. Lake, 2, 109, 240, 262, 301.
v. Langford, 215.
v. Lawley, 203.
v. Lawrence, 2, 203, 232, 240.
v. Lee, 216, 312, 321.
v. Lennox, 107, 161, 213, 214.
v. Levecque, 246.
v. Levi, 251.
v. Logan, 161.
v. London Justices, 216.
v. Loxdale, 47.
v. Lynch, 161, 218, 233, 235, 245.
v. Mackenzie, 111, 234, 241.
v. Mabee, 319, 323.
v. Mabey, 234.
v. Malby, 148.
v. Manning, 112.
v. Marsh, 236.
v. Maude, 277.
v. Mead, 233.
v. Menary, 112, 161, 162, 164, 168.
v. Merthyr Tydvil Justices, 19, 30.
v. Meyer, 105, 216.
v. Middlesex Justices, 104, 143, 157, 218, 232, 229.
v. Milledge, 215, 216.
v. Miller, 10.
v. Minshull, 18.
v. Monkhouse, 274.
v. Monteith, 321.
v. Mosier, 243.
v. Morby, 238.
v. McAllan, 246.
v. McAulay, 125, 234.
v. McCarthy, 238, 246.
v. McConnell, 232.
v. McIntyre, 217.
v. McMillan, 164.
v. Neath Canal Nav. Co., 112.
v. Nevins, 323.
v. Newton, 349.
v. Niagara (Board of Police), 90.
v. North Curry, 38.
v. O'Rourke, 2.
v. Osler, 52, 222.
v. Oxford (Bishop of), 97.
v. Palmer, 79, 111, 160, 185.
v Parlee, 125, 127, 167, 232.
v. Paton, 17, 154.
v. Pettitmangin, 216.
v. Picton, 213.
v. Pierce, 136.
v, Piercy, 221.
v. Pipe, 165.
v. Pirehill, 40.
v. Plowright, 210.
v. Poplar Union Ass't Com., 48.

R. v. Powell, 281.
v. Poynder, 113.
v. Price, 81, 265.
v. Prittie, 2, 109, 301, 304.
v. Queens (Justices of), 162.
v. Raffles, 45.
v. Ramsay, 234, 245, 314, 317, 325, 349.
v. Rand, 215.
v. Recorder of Cambridge, 215,
v. " of King's Lynn, 236.
v. Reed, 137.
v. Rice, 62, 176, 178, 195.
v. Richardson, 2, 193, 217, 232, 234, 235, 237, 241, 245, 312.
v. Richmond Justices (Surrey), 216.
v. Ridaway, 236.
v. Robertson, 324.
v. Robinson, 251.
v. Robotham, 221.
v. Roddy, 127, 154, 221, 259.
v. Rodwell, 127, 162, 167, 228, 248.
v. Roe, 288, 320, 321, 322, 349.
v. Rogier, 178.
v. Row, 218.
v. Rowlin, 161, 225, 233, 349.
v. Ryan, 203, 234, 319, 323.
v. Saddler's Co., 87.
v. Sainsbury, 18, 40, 151.
v. Salford, 18, 39.
v. Salomons, 284.
v. Sanderson, 162, 242, 316, 325.
v. Scott, 2, 74, 116, 245.
v. Severn, 72, 109, 116.
v. Shavelear, 312.
v. Shaw, 283, 324.
v. Shipley, 221.
v. Shurmer, 29.
v. Shropshire, 214, 293.
v. Simpson, 214.
v. Slater, 213.
v. Sloan, 267, 291.
v. Smith, 45, 69, 161, 184, 232, 324.
v. Solomon, 160.
v. Sparkham, 161.
v. Spain, 160.
v. Spencer, 10.
v. Sproule, 217, 317, 319.
v. Spurrell, 114.
v. St. Denis, 243.
v. St. George's Southwark, 138.
v. St. James' Westminster, 45.
v. St. Marylebone Vestry, 37.
v. St. Pancras, 89, 138.
v. Staffordshire Justices, 40.
v. Stafford, 91, 110, 160.
v. Stannard, 24, 62, 180, 176.
v. Stone, 221, 324.
v. Stonnell, 229.
R. v. Stephens, 124, 255.
v. Strachan, 89, 108, 110, 160, 229, 232, 263.
v. Strugnell, 112.
v. Summers, 228.
v. Surrey Justices, 215, 216.
v. Sutton, 114, 157, 232, 240.
v. Swalwell, 246, 265.
v. Sweeney, 20.
v. Tandy, 162.
v. Taylor, 2, 109, 116, 218.
v. The Board of Police, Niagara, 90.
v. Tilly, 221.
v. Tisdale, 151.
v. Tithe Commissioners, 195.
v. Toke, 216.
v. Tucker, 161, 318.
v. Tugwell, 21.
v. Vine, 18, 28, 129.
v. Walker, 292, 293, 294, 313, 316, 325.
v. Wallace, 214, 245, 318, 325.
v. Walsh, 248, 313.
v. Warwickshire Justices, 27.
v. Washington, 246.
v. Weale, 165.
v. Wehlan, 245, 246.
v. West Riding Justices (Drake's Case), 40.
v. West Riding Justices, 113.
v. Westmorland, 225.
v. Wheeler, 78.
v. White, 127, 229.
v. Widdop, 324.
v. Wigam, 81.
v. Williams, 40, 110, 151, 159, 161, 254, 255.
v. Willis, 226.
v. Woodcock, 214.
v. Worcester Justices, 265.
v. Wright, 161, 225, 233.
v. Young, 111, 117, 127, 159, 160, 232, 233, 234, 242, 258, 320, 322, 349.
v. Younger, 132.
Ex rel, Brine v. Booth, 111.
" Clancy v. Conway, 111.
" Richmond v. Tegart, 155.

S

Sams v. City of Toronto, 20.
Sampson and Wall, *in re*, 208.
Sanderson v. Jackson, 27.
Sangster v. Kay, 76.
Saunders v. South Eastern Ry. Co., 12.
" v. Pitfield, 114.
Sauvage v. Trouillet, 283.
Schneider v. Norris, 27.

Scott v. Bye, 244.
" v. Gilmour, 4.
Seager v. White, 111, 252.
Searle v. Reynolds, 177.
Sears v. Dillingham, 221.
Selm v. State, 158.
Shakespeare, *in re* Deakin v. Lane, 64.
Sharp v. Dawes, 86.
" v. St. Sauveur, 301.
Sharpe v. Wakefield, 10, 40.
Sharpleigh v. Surdam, 45.
Shaw v. Morley, 22, 38, 250.
Shea v. Leeds, 286.
Shelford v. Louth Ry. Co., 84.
Sheley v. Town of Windsor, 191.
Shelley v. Bethell, 112.
Shepherd v. People, 28.
Shoolbred v. St. Pancras Jus., 78.
Short, *ex parte*, 129.
Shrimpton v. Shrimpton, 97.
Siddall, *in re*, 76, 146.
Sinclair v. Maritime Ins. Co., 271.
Sinden v. Brown, 228,
Spice v. Bacon, 171.
Slater and Wells, *in re*, 163, 208.
Slavin v. Cor. of Orillia, 2, 53, 109, 116.
Smith v. Anderson, 76, 146.
" v. Benton, 110.
" v. Barnham, 202, 298.
" v. Campbell, 34.
" v. Deighton, 281.
" v. Elridge, 175.
" v. Toronto (city), 220.
" v. Vaux, 129, 132.
Soden v. Cray, 238,
Somerset v. Hart, 124, 177, 179.
Southam, *in re*, *ex p.* Lamb, 81.
South London Fish Market, *in re*, 122.
South Essex Election Case, 135.
South Ontario Election Case, 135.
Stallard v. Marks, 5, 74.
Stampford, *ex parte*, 237.
State v. Barr, 113.
" v. Barbour, 2.
" v. Bennett, 3.
" v. Bishel, 179.
" v. Book, 180.
" v. Breswick, 3.
" v. Brunder, 10.
" v. Bullion, 180.
" v. Campbell, 3.
" v. Cantieny, 155.
" v. Cook, 143.
" v. Fay, 96.
" v. Giersch, 3.
" v. Goyette, 3.
" v. Haney, 147.
" v. Haymond, 4.
State v. Henderson, 180.
" v. Holmes, 118.
" v. Hutchinson, 3.
" v. Jersey City, 176.
" v. Kelly, 272.
" v. Knowles, 119.
" v. Laffer, 4.
" v. Lowenhaught, 77.
" v. Marshall, 199.
" v. Mercer, 158.
" v. Moore, 3.
" v. Morrell, 78.
" v. Muncey, 3.
" v. McGinnis, 269.
" v. McMahon, 144, 281.
" v. Oliver, 3.
" v. Packer, 4.
" v. Penny. 186.
" v. Pierce, 269.
" v. Pratt, 279.
" v. Wittmar, 3.
Stevens v. Emson, 159.
Stewart v. Eddowes, 27.
" v. Macdonald, 142.
Stikeman v. Dawson, 64.
Stile v. Walls, 222.
Stinson *qui tam* v. Pond, 69.
Stogden v. Lee, 64.
Stoness v. Lake, 162, 258.
Storie v. Winchester, 42.
Strauss v. County Hotel Co., 6, 115, 174.
Stringer v. Huddersfield, 45.
Stuchberry v. Spencer, 49, 74.
St. Leger v. Magniac, 119.
St. Louis v. Siegrist, 169.
St. Mary's Church v. Tripp, 26.
St. Nicholas', Deptford, v. Sketchley, 192.
St. Vincent (Cor. of) v. Grier, 155.
Squire v. Wheeler, 202.
Squires v. Whiskers, 180.
Summit Grove Meeting Ass. v. New Freedom School Dist., 26.
Sunbolf v. Alford, 178.
Supreme Council of Chosen Friends v. Garrigus, 271.
Sutherland v. Nixon, 88.
Sutton v. Bishop, 28, 159.
" v. Coldfield Gram. School, 37, 61.
Sutton's Hospital, *in re*, 26.
Sweeney v. Spooner, 221.

T

Tarry v. Newman, 225.
Tatum v. State, 278.

Taylor v. Humphreys, 49.
" v. Humphries, 49.
" v. Oram, 97, 182, 183.
" Smettin, 180.
" Vincent, 6.
Teale v. Younge, 87.
Temple v. Toronto Stock Exchange, 88.
Templeman v. Trafford, 5.
Tennant v. Cumberland, 129, 131.
Terry v. Brighton Aquarium Co., 183.
" v. Mun. of Haldimand, 52, 67.
The Lion, *re*, 49.
Thomas, *in re*, 76, 146.
" v. Nokes, 265.
Thompson, *in re*, 272.
" v. Carroll, 10.
" v. Greig, 131.
" v. Harvey, 19, 41, 43.
" v. Lacy, 6, 173.
" Ward, 186.
Threfall v. Borwick, 173.
Thornley v. Reilly, 280.
Thornton v. Clegg, 82.
Tippett v. Hart, 59.
Titley v. Wolstenholme, 80.
Tobacco Pipe Makers v. Woodroffe, 185.
Todd v. Robinson, 76, 148, 152.
Toledo, etc., Ry. Co. v. Spangler, 224.
Toleman v. Portbury, 114.
Tollett v. Thomas, 180.
Toms v. Cuming, 73.
" v. Luckett, 186.
" v. Wilson, 285.
Toomer, *in re* 80.
Travellers Ins. Co. v. McConkey, 270.
Treacher v. Treacher, 6, 74, 77.
Trew v. Ry. Passengers' Ins. Co. 270.
" v. Royal Ins. Co., 271.
Tunnicliffe v. Todd, 214.
Turner, *in re*, 236.
" v. Cor. of Brantford, 272.
" v. Postmaster-General, 238.
Turner v. Wilson, 27.
Twining v. Muscott, 80.
Twycross v. Grant, 43.

U

United States v. Bonham, 59, 77, 111.
" v. Claypool, 43, 154.
" v. Mickle, 77.
" v. Vassar, 117.
" v. Watkinds, 159.
" v. Whittier, 288.
Ulsch v. Miller, 283.
Union Mut. Life Ins. Co. v. Reif, 279.

V

Vallee v. Dumergue, 112.
VanMetre v. Mitchell, 197.
VanValkenburg v. American Pop. Life Ins. Co., 279.
Vaughan v. Weldon, 214.
Vaughton v. Bradshaw, 214.
Vogel v. G. T. Ry. Co., 107.

W

Wakefield v. West Riding Ry. Co., 216.
Walker v. Sharp, 171, 172.
Wall v. State, 4.
Walling v. Potter, 187.
Wallis v. Smith, 88.
Walton v. Walton, 279.
Warden v. Tye, 175.
Warner v. Brighton Aq. Co., 183.
Warnock v. Kloepfer, 88.
Warren v. Peabody, 78.
Waterhouse v. Gilbert, 84, 212, 263.
Watts and Emery, *in re*, 109, 234, 245, 263, 301.
Watson, *ex parte*, 208.
Watson v. Cotton, 74.
Watson v. State, 3.
Webb v. State, 77.
Webster v. Ashton-under-Lyne; Orme's Case, 256.
Webster v. Ashton-under-Lyne; Hadfield's Case, 256.
Weeks v. Wray, 28.
Weil v. State, 77.
Welland Election Case, 185.
Wenlock v. River Dee Co., 227.
Wenner v. State, 180.
West v. Dobb, 81.
West Hastings Election Case, 185.
Westloh v. Brown, 27.
Whaite v. Lancashire & Yorkshire Ry. Co., 75.
Wheeler v. Wheeler, 278.
White v. Redfern, 70.
Whitehouse v. Woolverhampton Ry. Co., 61.
Whitfield v. Banbridge, 178.
Whitley, *in re*, 27, 78.
Whitmore v. Wenlock, 112.
Whitstable Free Fishers v. Elliott, 78.
Whittle v. Frankland, 278.
Widderfield v. Metcalfe, 134.
Wilde v. Bowen, 23.
Wilkinson v. Rogers, 113.
Williams v. Burgess, 24, 213, 293.
" v. Grey, 59.
" v. Mastyn, 274.
" v. Nash, 183.

Wilson v. Church, 212.
" v. Nightingale, 29.
" v. Graybiel, 160.
" v. Quarter Sessions of Huron, 236, 237, 264.
" v. Stuart, 177, 195.
" v. Wallani, 40, 221.
Windsor v. The Queen, 221.
Winning v. Gow, 4.
Wolfenden v. Wilson, 69.
Wolmershausen v. O'Connor, 112.
Woodall, *ex parte*, 127.
Woodard v. Billercay Highway Bd., 89.
Woodhose v. Rio Grande Ry. Co., 298.
Worley v. Spurgeon, 4.
Wray v. Toke, 175, 195, 214, 225.
Wright v. Mun. of Cornwall, 155.
" v. People, 121.
Writt v. Sharmon, 91.
Wylie v. Birch, 274,

Y

Yates v. The Queen, 188.
Young v. Cor. of Binbrook. 94.
" v. Higgon, 28.
Young and Harstor, *In re* 107, 202, 298.
York v, Grindstone, 172

LIST AND EXPLANATION OF THE ABREVIATIONS AND EDITIONS OF TEXT BOOKS AND REPORTS REFERRED TO.

TEXT BOOKS.

*Add. on Con.....	Addison on Contracts, 8th Edition.
Add. on Torts.....	Addison on Torts, 2nd Edition.
Anderson's Dict.....	Anderson's Dictionary of Law, Chicago, 1890.
Arch. Prac.	
Austin's Jurisprudence.... .	Austin's Lectures on Jurisprudence.
Bac. Abr. Ins..... ...	Bacon's Abridgment.
Bl. Com.....	Blackstone's Commentaries.
Browne on Words.....	Irving Browne on the Judicial Interpretation of Common Words and Phrases, (1888).
Burbidge's Crim. Dig.....	Burbidge's Digest of Criminal Law, (1890).
Byles on Bills.....	Byles on Bills of Exchange and Promissory Notes, 14th Edition.
Clarke's Crim. Law.....	Clarke's Criminal Law, (Canadian), (1878).
Co. Litt.....	Cooke on Littleton, (1 Inst.)
Danforth's Dig.....	Danforth's United States Digest.
D. & L. Dig.....	Dale and Lehmann's Digest, (1887).
Dickenson's Guide to Q. S...	Dickenson's Guide to the Quarter and other Sessions of the Peace, 6th Edition.
Drake on Attachment.....	Drake on Attachment, 5th Edition, (1878).
Dwar..... ..... :	Dwarris on Statutes, 2nd Edition.
Harrison's Mun. Man.....	Harrison's Municipal Manual, 4th Edition (1878).
Hawkin's Pleas of the Crown.	Hawkin's Pleas of the Crown, 8th Edition, (1824).
Jarm.....	Jarman on Wills, 4th Edition.
Maxwell on Stat.....	Maxwell on Statutes, 1st Edition.
Mayne on Dam.....	Mayne on Damages, 3rd Edition.
Paley on Con.....	Paley on Convictions, 4th Edition.
Paterson's L. A.....	Paterson's Licensing Acts, 6th Edition, (1885).
Pollock on Con.....*....	Pollock on Contracts, 5th Edition, (1889).
R. & J. Dig.....	Robinson & Joseph's Digest.
Roscoe's C. E.....	Roscoe's Digest of the Law of Evidence in Criminal Cases, 11th Edition, (1890).
Roscoe's N. P.....	Roscoe's Digest of the Law of Evidence at *Nisi Prius*. 15th Edition.

NOTE.—In some cases other editions are referred to, in which event the particular edition is stated in the context.

Russell on Crimes.....	Russell on Crimes, 8th (Am.) Edition.
Saunders' Prac.....	Saunders' Practice of Magistrates' Courts, 5th Edition.
Sinclair's D. C. Act, 1879 ...	Sinclair's Division Courts Acts, 1879.
Sinclair's D. C. Act, 1884....	Sinclair's Division Court Law, 1884.
Sinclair's Con. D. C. Act, 1888.	Sinclair's Consolidated Division Courts Acts, 1888.
Smith's L. C.....	Smith's Leading Cases, 9th Edition.
Smith's Master and Servt....	Smith on Master and Servant, Blackstone Edition, 1886.
Stephen's Dig., or Stephen's Crim.	Stephen's Digest of the Criminal Law, 3rd Edition.
Stroud's Dict.....	Stroud's Judicial Dictionary of Words and Phrases (1890).
Taylor on Evi..... ...	Taylor on Evidence, Blackstone Edition from 8th English Ed.
Trotter on Appeals	Trotter on Appeals from convictions and orders of Justices (1884).
Wharton.....	Wharton's Law Lexicon, 7th Ed. (1883).
Worcester.....	Worcester's Unabridged Dictionary (1864).
Wilson's Prac..	Wilson' Practice of the Supreme Court of Judicature (1888).

REPORTS.

For alphabetical list of abbreviations used in references to British, Canadian and American Law Reports, see the Library Catalogue of the Law Society of Upper Canada, (1886).

For abbreviations used in references to American Reports, see also Drake on Attachment, edition of 1878; and for abbreviations used in this book in references to British Reports, see also Taylor on Evidence, XI. to XXIV., and Robinson & Joseph's Digest, XVI.

ADDENDA.

The following cases have been reported whilst this book was going through the press, and it is suggested that they should be noted under the respective sections to which they refer.

On the trial of a misdemeanor before magistrates, the taking of an information or issue of a summons may be waived.

On a charge for selling liquor without a license contrary to sec. 70, the defendant appeared before the magistrates, pleaded to the charge, and the evidence was gone into and the case closed without objection, the defendant convicted, and a fine of $50 and costs imposed. An objection taken on a motion to quash the conviction that the information was taken before only one Justice of the Peace, was overruled, it being, under the circumstances, held to be waived; but, *Semble*, the information was apparently taken before two Justices.

The adjudication did not state the amount of the costs imposed:

Held, following, R. *v.* Flynn, 20 O. R., 658, that this did not invalidate the conviction; but, *quære*, whether apart from the amending Acts such would be the case. Under secs. 60, 70, of the Act, it is not a valid objection to the conviction that it did not state that imprisonment was for the term specified unless the costs and charges of conveying to gaol were sooner paid: R. *v.* Clarke, 20 O. R., 642.

As to the waiver of information and summons, the following cases were cited: Shepherd *v.* Postmaster-General, 10 Cox, C. C. 15; R. *v.* Shaw, 10 Cox, C. C. 66; Blake *v.* Beech, 1 Ex. D. 320; Whelan *v.* The Queen, 28 U. C. R., 1; Turner *v.* Postmaster-General, 5 B. & S., 756.

On the trial of an offence against a city by-law in the erection of a wooden building within the fire limits, the defendant is not either a competent or compellable witness; and, therefore, where in such a case the defendant's evidence was received and a conviction made against him, it was quashed with costs: R. *v.* Hart, 20 O. R., 611.

In a conviction under sec. 73 for delivering liquor to a person while intoxicated, imprisonment was directed without any provision for distress. On the conviction being brought before the Court on *certiorari*, the Court, under sec. 87 of the Summary Convictions Act, R. S. C., c. 178, as amended by sec. 27 of 53 Vic., c. 37 (D.), amended the conviction by inserting a provision for a distress.

The amending Act came into force after the conviction was made and *certiorari* granted, but it being a matter of procedure, the Court had power to act under it and make the amendment.

In proof of defendant being a licensed hotel-keeper under the Act, a witness, in giving evidence, stated defendant to be such; and although defendant was present and represented by counsel, he allowed the statement to pass unchallenged:

Held, sufficient, as the witness might have obtained his information from the defendant: R. *v.* Flynn, 20 O. R. 638.

Under the power conferred on Justices of the Peace by sec. 2 of R. S. O., c.

74, to order in and by the conviction the payment of reasonable costs, a charge of fifty cents for drawing up a conviction under the Liquor License Act, is authorized.

On motion to quash a conviction, it was objected that the evidence taken before the Magistrates and returned by them, was not shewn to have been read over and signed by the witnesses. *Held*, that the maxim *omnia præsumunter esse rite acta* applied, and as the contrary was not shown, it would be presumed to have been done: R. *v.* Excell, 20 O. R. 633.

The defendant holding a shop license was convicted for allowing liquor to be drunk on the premises contrary to sec. 60.

Quære, whether a conviction in such case need do more than impose the penalty and costs and the provisions of the Summary Convictions Act be called in aid for its enforcement, namely, by the issue of a warrant of distress under sec. 62 in case of non-payment of the fine due, and in default thereof a warrant under sec. 67 for committal; or whether the forms provided for by sec. 53 must be followed providing for distress and in default imprisonment, unless, etc.; but the question was immaterial, as the Court, as a matter of precaution, amended the conviction so as to include these provisions.

An objection that it did not appear that the evidence had been read over to the witnesses was overruled, following R. *v.* Excell, *supra*.

The direction in sub-sec. 2 of sec. 96, as to the witnesses signing their evidence, is not imperative, but directory merely: R. *v.* Scott, 20 O. R., 646.

The opinion was given by the Court that the form of Warrant of Commitment under sec. 66 of the Summary Convictions Act, is the one to be used in such cases, as far as applicable, and by its provisions the imprisonment is directed for the term imposed, unless, &c. *Ib.*

As to liability of inn-keepers who give liquor to persons who thereby become intoxicated under sec. 122, see Trice *v.* Robinson, 16 O. R., 433, in which it was held that since the Judicature Act, the rule in equity prevails, as opposed to that at law, that letters of administration when obtained relate back to the death, and it is sufficient if a plaintiff suing as a plaintiff qualifies before the trial; and that sec. 122 is a remedial measure and should receive a liberal construction.

As to constitutional law, and sale of liquor in original packages, see Wilkerson *v.* Rahrer, 44 Alb. L. J., 26.

CORRECTIONS.

On page 1, in heading, read "as amended by 51 Vic., c. 30," instead of "as amended by 51 Vic., c. 3."

On page 12, note (*x*), fourth line, read "see note (*l*)" instead of "note (*k*)."

On page 35, at end of clause (*d*) of sec. 11, ss. 14, read "53 Vic., c. 56," instead of "53 Vic., c. 55."

LIQ

Amer

An Act re
Liquors.

HER MA
of th
Ontario, ena

1. This
Act." (*a*.)

(*a*) At comm
The original of
(1552), c. 25.

By "The Ta
to Tavern and
inconsistent wi
Vic., c. 28, (O.)
and consolidate
were added by
the revision of
consolidated in
Vic., c. 14, (O.)
c. 43. (O.) 1885,
consolidated in

The Statutes
by 51 Vic., c. 3,

The right of t
sale of intoxicati
vest in boards o
to enact regulati
annex penalties
App. Cas., 117.
bition respectin
Russell *v.* The Q

THE

LIQUOR LICENSE ACT

OF THE PROVINCE OF ONTARIO.

Revised Statutes of Ontario, 1887.

CHAPTER 194,

Amended by 51 Vic. (O.), c. 3; 52 Vic. (O.), c. 41; 53 Vic. (O.), c. 56.

An Act respecting the Sale of Fermented or Spirituous Liquors.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as "The Liquor License Act." (*a*) R. S. O. 1877, c. 181, s. 1.

(*a*) At common law the traffic in intoxicating liquors was a lawful business. The original of the Statutes licensing the traffic is found in 5 and 6, Edw. 6, (1552), c. 25.

By "The Taverns and Shop License Act of 1868," the enactments relating to Tavern and Shop Licenses were amended and consolidated and all acts inconsistent with it were repealed. This Act was afterwards amended by 33 Vic., c. 28, (O.) 1869 and 36 Vic., c. 34, (O.) 1873. These were all repealed and consolidated by 37 Vic., c. 32, s. 61, (O.) 1874, and further amendments were added by 39 Vic., c. 26, (O.) 1865-6 and 40 Vic., c. 18, (O.) 1877; upon the revision of the Statutes in the last named year, the whole were again consolidated in the R. S. O. 1877, c. 181; this was further amended by 41 Vic., c. 14, (O.) 1878, 44 Vic., c. 27, (O.) 1881, 47 Vic., c. 34, (O.) 1884, 48 Vic., c. 43. (O.) 1885, and 49 Vic., c. 39, (O.) 1886, and these enactments are now consolidated in the R. S. O. 1887, c. 194.

The Statutes now in force in Ontario are the R. S. O. 1887, c. 194; amended by 51 Vic., c. 3, (O.); 52 Vic., c. 41, (O.); and 53 Vic., c. 56, (O.)

The right of the Legislative Assembly to legislate in regard to licenses for the sale of intoxicating liquor and the regulation of licensed houses, as well as to vest in boards of License Commissioners, as appointed under the Act, authority to enact regulations of the same character, and to thereby create offences and annex penalties thereto, has been settled definitely in Hodge *v.* The Queen, 9 App. Cas., 117. It was previously decided that a general law as to prohibition respecting all Canada could be enacted by the Dominion Parliament: Russell *v.* The Queen, 7 App. Cas., 829. And it was subsequently held by the

INTERPRETATION.

Interpretation.

2. Where the following words occur in this Act, or in the schedules thereto, they shall be construed in the manner hereinafter mentioned, unless a contrary intention appears:

"Liquors" and "Liquor."

1. "Liquors" or "Liquor" (*b*) shall include all spirituous and malt liquors, and all combinations of liquors and drinks and drinkable liquids which are intoxicating.

Privy Council that the Dominion Parliament could not legislate with respect to licenses for the sale of liquor in shops, taverns or saloons: *In re* Liquor License Act, 1883, and Amending Act, 5 C. L. T., 66; see also 5 C. L. T., 161, 6 C. L. T., 18. As to legislative authority see R. *v.* Burah, 3 App. Cas., 906; Jonas *v.* Gilbert, 5 S. C. R., 356; Easton's Case, 12 A. & E., 645; Saunders *v.* South Eastern Ry. Co., 5 Q. B. D., 462; The City of Fredericton *v.* The Queen, 3 S. C. R., 505; *In re* Slavin and The Cor. of Orillia, 36 U. C. R., 159; R. *v.* Justices of Kings County, 2 Pug., 535; Keefe *v.* Maclennan, 2 Russell & Chesley, 5; Blouin *v.* The Cor. of Quebec, 7 Que., L. R., 18; Cor. of Three Rivers *v.* Sulte, 11 S. C. R., 25; R. *v.* O'Rourke, 1 O. R., 464; Dobie *v.* Temporalities Board, 7 App. Cas., 136; Cooley on Constitutional Limitations, 4th Ed., 77; Vattel, Bk. 2, c. 17, secs. 285, 286; R. *v.* Boardman, 30 U. C. R., 553; R. *v.* Scott, 34 U. C. R., 20; Re Hamilton *v.* North Western Ry. Co., 39 U. C. R., 93; Ont. Dig., 1832-1884, 116 et seq; Paulin *v.* The Cor. of Quebec, 9 S. C. R., 185; cited in R. *v.* Richardson, 8 O. R. 651; Foster *v.* Kansas, 112 U. S., 205; Boston Beer Co. *v.* Massachusetts, 97 U. S., 25, (U. S. Dig., 936); see also Danforth's Dig., 622; R. & J's. Dig., 3703, 4362, 4715; R. *v.* Taylor, 36 U. C. R., 183; R. *v.* Prittie, 42 U. C. R., 612; R. *v.* Lake, 43 U. C. R., 515; R. *v.* Lawrence, 43 U. C. R., 164; R. *v.* Cuthbert, 16 L. J. N. S., 78; R. *v.* Black, 43 U. C. R., 180; R. *v.* County of Wellington, 17 App. R., 421; De St. Aubyn *v.* Lafrance, 2 Cart., 395; Blouin *v.* Corp. of Quebec, 2 Cart., 368; Keefe *v.* McLennan, 2 Cart., 400; R. *v.* Justices of Kings, 2 Cart., 499; Poulin *v.* Corp. of Quebec, 3 Cart., 230.

(*b*) Whether liquors are "spirituous" or "malt" liquors is a question of fact, which it is better to have established by the evidence of a practical chemist; it is a matter for enquiry upon the evidence to be adduced before the justice or justices before whom a complaint is to be tried: Harris *v.* Jenns, 9 C. B. N. S., 152.

Sometimes there is much difficulty experienced in determining whether liquors are "spirituous" or not. See Sinclair's Con. D. C. Acts, 1888, p. 68.

Intoxicating liquors are defined by a statute of Kansas, as: "All liquors and mixtures, by whatever name called, that will produce intoxication." It was held there as a question of fact, that it did not embrace medicines and toilet articles not ordinarily used as beverages, such as tincture of gentian, bay rum and essence of lemon, although containing alcohol. Whether it embraces "McLean's Strengthening Cordial and Blood Purifier," (a mixture of whiskey, syrup of tulu and syrup of wild cherry), and "Sherman's Prickly Ash Bitters," is a question of fact. Whether any particular compound or preparation of this class is then within or without the statute, is a question of fact to be established by testimony.

It was held in Nevin *v.* Ludue, 3 Denio, 450, by Chancellor Walworth, of the State of New York, in a very learned and amusing judgment, that "spruce beer, ginger beer and molasses beer," may properly be termed fermented beer, but they are never considered "strong liquors or intoxicating beverages." Ale and strong beer, in the same case, was held to be "spirituous liquors," but in People *v.* Crilly, 20 Barbour, 268; State *v.* Adams, 51 New Hamp., 568, and State *v.*

Moore, 5 Blakf., 118, it was held that ale was not "spirituous liquor," because produced by fermentation and not by distillation. "Ale, beer, porter, rum, gin, brandy, whiskey and wine" were held to be "intoxicating liquors": State *v.* Wittmar, 12 Missouri, 407. Lager beer is a "malt liquor": State *v.* Goyette, 11 Rhode Island, 592; Watson *v.* State, 55 Alabama, 158. And it is a "strong and malt liquor," and is intoxicating: State *v.* Rush, Rhode Island, Sup. Com., 1881; State *v.* Campbell, 12 Rhode Island, 147. But it is for the jury to say whether it is intoxicating: Rau *v.* People, 62 N. Y, 277 It was held error for the Court to instruct the jury, that beer necessarily meant "a malt liquor": State *v.* Breswick, Rhode Island, 1881, and that it was "purely a question of fact for the jury." See also Harris *v.* Jenns, 6 C. B. N. S., 152; Browne on Words, 143, 144, 205, 208.

It was held that "sweet spirits of nitre" are not spirits within the meaning of the excise acts, and that nothing can be taken to be "spirits," which does not come under the definition of an inflammable liquid produced by distillation, either pure or mixed only with ingredients, which do not convert it into some article of commerce not known in common parlance under the general name of "spirits": per Pollock, C. B., in Atty-Gen'l. *v.* Bailey, 1 Ex., 281.

"Spirituous" means containing, partaking of spirit; having the refined, strong, ardent quality of alcohol in greater or less degree. Hence "spirituous liquors" imply such liquors as contain alcohol, and thus have spirit no matter by what particular name denominated, or in what liquid form or combination they appear. Hence also distilled liquor, fermented liquor, vinous liquor, are all alike, spirituous liquor. Lager beer and wine contain alcohol and generally in such quantities and degree as to produce intoxication. These liquors are therefore "spirituous": State *v.* Giersch, 37 Alb. L. J., 201. This was in North Carolina. In West Virginia, however, a different view of the matter is taken, and it is held that the term does not include wine or other fermented liquor, for the words imply that the beverage is composed in part or fully of alcohol extracted by distillation: State *v.* Oliver, 26 W. Va., 422; S. C., 53. Am. Rep., 79.

In Eureka Vinegar Co. *v.* Gazette Printing Co., Circuit Court, E. D., Arkansas, June 30, 1888, it was held that cider was an alcoholic beverage obtained by fermentation of the juice of apples, and cannot lawfully be sold in a State whose Statutes prohibit the sale of "alcohol, or any spirituous, ardent, vinous, malt or fermented liquors," 38 Alb. L. J., 267; and so also in State *v.* Hutchinson, 36 Alb. L. J., 498; but in State *v.* Oliver, 26 W. Va., 422, S. C., 58, Am. Rep., 677, "cider and crab cider" were held not to be "spirituous" nor of "like nature as wine, ale, porter or beer." 38 Alb. L. J., 430.

Held, that defendant was properly found guilty of selling intoxicating liquor on proof of sale of a bottle of essence of cinnamon, and that the purchaser, after drinking it, had been so affected by it that he could not see after night: Johnson and Woods, J. J., dissent. State *v.* Muncey, 28 W. Va., 494.

"By no possible stretch of construction can 'confectionery' be held to include the selling of liquor by the drink:" City *v.* Jans, 34 La. Ann., 667.

A cordial made of whiskey sweetened and scented with peppermint and other things is a spirituous liquor. Godfrey's Cordial is a very different thing, known for and sold as medicine, and there can be no dangar that the sale of it can promote tippling: State *v.* Bennett, 3 Harr., 565.

Although "Cronk" was sworn to be a kind of beer, the Court would not take judicial notice that it was intoxicating or spirituous: R. *v.* Beard, 13 O. R. 608.

The Court will not take judicial notice that gin is an *inflammable liquid* in the insurance sense of the word: Mears *v.* Humbolt Ins. Co., 21 Alb. L. J., 114.

Gum-camphor and alcohol, sold as a medicine, is not within the Statute pro-

hibiting the sale of "spirituous liquor," and providing that "all mixtures or preparations known as bitters or otherwise, which will produce intoxication," shall be deemed "spirituous liquor." In almost every home will be found the "camphor bottle," containing gum-camphor dissolved in distilled spirits, and used exclusively as a medicine and kept ready for use when needed, but unpalatable as a beverage and never used as such: State *v.* Haymond, 20 W. Va., 18 (1882).

Decoction of whiskey and bitter herbs, barks, etc., when intoxicating and used as a beverage is "spirituous liquor:" Wall *v.* State, 78 Ala., 417.

"Home Bitters," composed of thirty per cent. of alcohol and the rest of water, peelings, seeds, etc., sold as a medicine, although intoxicating was not "spirituous liquors" within the meaning of the law: King *v.* State, 58 Miss., 737. But in Arkansas, "Home Bitters" and "Home Sanative Cordials" containing twenty-two per cent. of alcohol were held to be within an act prohibiting the sale of ardent spirits and all compounds and preparations thereof: Gostorf *v.* State, 39 Ark., 450.

Lime-juice is the color of whiskey, and is made up of lime-juice, sugar, ginger and water, yet the Court strongly objected to country justices taking judicial notice that it is intoxicating or spirituous: R. *v.* Beard, 13 O. R., 608.

Medicated Bitters producing intoxication are "intoxicating liquors" within the meaning of that term as used in local option acts: James *v.* State, 21 Tex. App., 353.

One charged with the sale of malt liquor may be found guilty on proof of sale of "Phœnix," and proof that it is intoxicating: State *v.* Pfefferte, 36 Kan., 90.

An article called "Sunsmile," containing fifteen per cent. of alcohol and capable of producing intoxication, is an intoxicating liquor within the act: Prussia *v.* Guenther, 16 Abb., N. C., 230.

Generally, wine is an intoxicating liquor: State *v.* Packer, 8 North Carolina, 449. But not in Iowa, when made from native grapes, currants or fruits: Worley *v.* Spurgeon, 38 Iowa, 465.

Whiskey is "intoxicating": Egan *v.* State, 53 Indiana, 162.

It was held in Winning *v.* Gow, 32 U. C. R., 528, that "Old Tom Gin" was spirits. Spirits are spirits although diluted with water: Scott *v.* Gilmore, 3 Taunt., 226.

When strong drink ceases to be such and becomes medicine, is discussed in State *v.* Laffer, 38 Iowa, 422. See also Rogers' "Drinks, Drinkers and Drinking."

As to the word "liquor," Patterson, J. A., in Northcote *v.* Brunker, 14 App. R., at page 373, says: "As I read the interpretation clause in the Statute, the word 'liquor,' when used in the Act, not only comprehends intoxicating liquor, but is restricted to that meaning. It is to be 'construed to mean and comprehend all,' &c. The clause was the same in the Act of 1874, 37 Vic., c. 32; but most of the numerous clauses and all of the forms of the R. S. O., in which the word 'liquor' is used, without being qualified by the word intoxicating, come from the Acts of 1876, (39 Vic., c. 26) and of 1877, (40 Vic., c. 18). The word was not employed in the same general way in the Temperance Act of 1864, commonly known as the Dunkin Act, yet when that Act is referred to in the Act of 1876, sec. 27, its prohibition is said to be of the "sale of liquor." The R. S O., c. 181, is 'The Temperance Act of Ontario.' Like the Dunkin Act, it has a definition of 'Intoxicating Liquor,' but none of 'liquor' by itself. Yet we find in sec. 40 of c. 181, the word 'liquor,' used to denote liquors which it is made unlawful to sell without license under the Liquor License Act—meaning of course, 'intoxicating' liquor." All spirituous and malt liquors are

2. "Tavern license" (*c*) shall mean a license for selling, (*d*) bartering or trafficking by retail (*e*) in fermented, spirituous or other liquors, in quantities of less than one quart, (*f*) "Tavern license."

---

assumed for the purposes of the Act to be intoxicating, and all combinations of drinkable liquids, which are intoxicating are placed on the same footing as spirituous and malt liquors: Harrison's Mun. Man., 892. (See Sec. 113.)

(*c*) "License," means a writing or instrument granting permission or authority.—Worcester.

"Licensed premises," as used in the English Licensing Acts, means premises open to the public for the sale of drink, under the provisions of the Act: Lester *v.* Torrens, 2 Q. B. D. 403.

The licenses provided for here are: (1) Tavern Licenses; (2) Shop Licenses; and (3) Wholesale Licenses; the nature of each being defined in the Act. A "tavern license" permits the sale of liquor by retail, which is defined to mean in quantities less than a quart, and the liquor sold to be drunk on the premises. The "shop license" is also a retail license, which permits the sale in quantities of not less than three half-pints, not to be drunk on the premises, and a license by wholesale, or "wholesale license" authorizing the sale of liquor in quantities of not less than five gallons at one time.

A sale by a licensee of any less quantity than is authorized by his license, is a punishable offence; R. *v.* Faulkner, 26 U. C. R., 529; R. *v.* Denham, 35 U. C. R., 503.

(*d*) The person who is the "seller," is the person who keeps the shop or actually conducts the business of the place where the sale is transacted, even though he only sells the article on commission for another person living elsewhere and having no control over the shop or place: Templeman *v.* Trafford, 8 Q. B. D., 397. The definition of the verb "to sell," given by Worcester, is "to deliver, part with, or dispose of, for some equivalent in money; to exchange for money; to vend;—correlative to buy, and distinguished from *to barter*, which implies an exchange of one commodity for another." To barter, is "to traffic by exchanging one commodity for another, to trade by exchange of goods in distinction from trading by the use of money." To traffic, is "to carry on commerce or trade; to buy and sell; to exchange; to barter."

(*e*) Selling a bottle of brandy is selling by retail: R. *v.* Denham, 35 U. C. R., 503, and a sale of a bottle of gin, valued at sixty cents, is a sale by retail: R. *v.* Strachan, 20 C. P., 182. But the Statute here defines the meaning as "in quantities of less than one quart," and a license is necessary in all cases for selling liquors. See sec. 49.

A company under charter has no greater right to sell liquors than individuals can possess, nor is it exempt from any legislative control to which they are subject: Beer Company *v.* Massachusetts, 97 U. S., 25.

It was held that if a person takes a part of a house, either in his own name or in the name of another person, and there personally, or by his agent, makes sales by retail, he carries on business there as a retailer of spirits, even though no spirits are actually stored on the premises, and even though the store was kept in another town: Stallard *v.* Marks, 3 Q. B. D., 412.

(*f*) "The unit or standard measure of capacity from which all other measures of capacity, as well for liquids as for dry goods, shall be derived, shall be the gallon containing ten (10) Dominion Standard pounds weight of distilled water, weighed in air against brass weights, with the water and the air at the temperature of sixty-two degrees of Fahrenheit's thermometer, and with the barometer at thirty inches. The quart shall be one-fourth part of the gallon; the pint shall be one-eighth part of the gallon;" R. S. C., c. 104, s. 15.

Where a drink was sold for ten cents, the Court held that the jury were

which may be drunk in the inn, (*g*) ale or beer-house, or other house of public entertainment in which the same liquor is sold.

"Shop license."

3. "Shop license" shall mean a license for selling, bartering or trafficking by retail in such liquors in shops, stores, or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than three half-pints at any one time, to any one person, and at the time of sale to be wholly removed and taken away, in quantities not less than three half-pints at a time.

"License by wholesale."

4. "License by wholesale" or "Wholesale License" shall mean a license for selling, bartering or trafficking, by wholesale only (*h*) in such liquors in warehouses, stores, shops,

---

authorized in finding that the quantity was less than a quart: Hamilton *v.* State, 103 Ind., 96; 38 Alb. L. J., 430.

(*g*) An "inn" may be defined to be a house in which travellers, passengers, way-faring men and other like casual guests are accommodated with victuals and lodgings and whatever they reasonably desire for themselves and horses, at a reasonable price, when on their way: Thompson *v.* Lacy, 3 B. & Ald., 283; 1 Burn's, Just., Alehouse, 30th Ed., 64.

A refreshment bar, though part of a duly licensed premises, is not an "inn:" R. *v.* Rymer, 2 Q. B. D., 136: Strauss *v.* County Hotel Co., 12 Q. B. D., 27; nor is an ordinary coffee-house: Doe *v.* Laming, 4 Camp., 73; nor is a boarding-house: Dansey *v.* Richardson, 3 E. & B., 144; but a London coffee house, where beds as well as provisions are provided, would seem to be an "inn:" Thompson *v.* Lacy, *supra*; see 1 Smith's L. C., 142; Add. on Con., 297, 298.

An "alehouse" is a place where excisable liquors are sold by retail, to be drunk on the premises. The word is probably synonymous with "public house" and "tavern," which latter words were employed in London and Suburban Land Co. *v.* Field, 16 Ch. D., 645; Holt *v.* Collyer, 16 Ch. D., 718; see Stroud's Dict., 27.

Worcester defines an "ale-house" to be "a house where ale and beer are sold," and a "tavern" to be "a public house where wine and liquors are sold and entertainments for a party are provided;

"An inn," "tavern," "hotel" and "public house" are synonymous in this country, and while they entertain the travelling public, and receive compensation therefor, they do not lose their character, though they may not have the privilege of selling liquors: see Anderson's Dict., 1006.

(*h*) The definition here given is quite clear enough, but in the U. S., a manufacturer of liquor selling in unbroken packages at his place of business to dealers, is not a "wholesale liquor dealer," liable to taxation, as other merchants: Taylor *v.* Vincent, 12 Lea., 282; S. C. 47 Am. Rep. 338; Pearce *v.* Com., 6 Ky. L. Rep. 113. The mere fact that a liquor dealer sold by the quart and in larger quantities, not drunk or intended to be drunk on the premises, is not enough to constitute him a "wholesale dealer:" State *v* Lowenhaught, 11 La., 13.

As a general rule, "wholesale" merchants deal only with persons who buy to sell again, while "retail" merchants deal with consumers; per Bacon, V.C., Treacher *v.* Treacher, W. N. (1874), 4.

or places other than inns, ale or beer-houses, (*i*) or other houses of public entertainment, in quantities not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen bottles of at least three half-pints each, or two dozen bottles of at least three-fourths of one pint each, at any one time. R. S. O. 1877, c. 181, s. 2.

"Three half-pints."

5. "Three half-pints" shall, where bottled liquor is sold, be held to be equivalent to five quarter pints Imperial measure. 44 V. c. 27, s. 23.

"License District."

6. "License District" shall mean the City, County, Union of Counties, or Electoral District or Districts, (*j*) or any part of an Electoral District, or a union of parts of two or more Electoral Districts, as the Lieutenant-Governor in Council may by order direct.

"Polling sub-division."

7. "Polling sub-division" shall mean the polling sub-division for the last general election for the District for the Legislative Assembly in which the licensed premises or the premises for which a license is sought are situated.

"License Inspector."

8. "Inspector" shall mean an Inspector of Licenses appointed for a license district under this Act. 47 V. c. 34, s. 1, *part.*

"Canada Temperance Act, 1878," meaning of

9. "*The Canada Temperance Act*" shall extend to and include *The Canada Temperance Act, 1878.* 50 V. c. 33, s. 9.

Board of License Commissioners.

3. There shall be a board of license commissioners (*k*) to be composed of three persons, to be appointed by the Lieutenant-Governor for each city, county, union of coun-

---

(*i*) See Note (*g*) *supra.*

(*j*) See the Act respecting "Territorial Divisions of Ontario," R. S. O., c. 5. See also Sec. 3 and notes thereto.

(*k*) Any doubt as to the authority of the Legislature to create a board of License Commissioners, was settled in Hodge *v.* The Queen, 9 App. Cas. 117, in which it was held that the "Liquor License Act," was within the powers of the Legislative Assembly. See also cases cited in note to sec. 1.

ties, electoral district, or license district, as the Lieutenant-Governor may think fit; (*l*) and any two of the said commissioners shall be a quorum (*m*), and each of them shall cease to hold office on the 31st of December in each year, but he may be re-appointed; and the said office shall be honorary and without any remuneration. R. S. O. 1877, c. 181, s. 3; 48 V. c. 43, s. 8, *part*.

Powers of the commissioners.

4. The board of license commissioners (*n*) may (*o*) at any time before the 1st day of May in each year, pass reso-

(*l*) The word "shall" is imperative: Interpretation Act, R. S. O. 1887, c. 1, s. 8, ss. 2. The appointment of a board of license commissioners is imperative, but the Goverment may use its discretion in appointing the board for either of the divisions named, viz: for each city, county, union of counties, electoral district, or license district, as it may think fit. As a matter of fact there is a board of license commissioners appointed for each electoral district of the Province. A list of the license districts will be found in the appendix.

The power of appointment by the Government, as in this Section provided, impliedly carries with it, in the absence of language to the contrary, the power of removal: Interpretation Act, R. S. O., c. 1, s. 8, ss. 26.

(*m*) "*Quorum*" means the number of members of an administrative or judicial body whose presence is necessary for the acts of the body to be valid. The term is derived from "the justice of the *quorum*," the latter being the first word of the commission appointing the Justices of the Peace for a County, under 1 Ed. III st. 2, c. 16; the words of the commission running thus: "*Quorum aliquem vestrum A. B. C. D., etc., unum esse volumus.*"

A notice of action is necessary in an action for damage against a Board of License Commissioners acting under the Liquor License Act: Leeson *v.* License Com. of Dufferin, 19 O. R., 67.

(*n*) The position of a License Commissioner is honorary and without remuneration, but the Inspector may be paid a salary for his services.

(*o*) In some cases it has been held that the word "may" is not used to give discretion, but to confer a power, the exercise of which depends upon the proof of the particular case out of which such power arises: MacDougall *v.* Patterson, 11 C. B., 755; Crake *v.* Powell, 2 El. & Bl., 210. But it has been said: "Though dicta of eminent judges may be cited to the contrary, it must be the plainest conclusion of common sense that 'may' and such like phrases give in their ordinary meaning an enabling and discretionary power." "They are potential, and never (in themselves) significant of any obligation: per Ld. Selborne, Julius *v.* Bishop of Oxford, 5 App. Cas. 214, p. 235. "They confer a faculty or power, and they do not of themselves do more than confer a faculty or power;" and, therefore, where the point in question is not covered by authority, "it lies upon those who contend that an obligation exists to exercise this power to shew in the circumstances of the case something which, according to the principles I have mentioned, creates this obligation:" per Cairns L. C., Julius *v.* Bishop of Oxford, 5 App. Cas., 214, at p. 223. The Lord Chancellor also collects the principles referred to by him in that case into the following propositions: "Where a power is deposited with a public officer for the purpose of being used for the benefit of persons (1) who are specifically pointed out, and (2) with regard to whom a definition is supplied by the legis-

lutions for regulating and determining the matters following, that is to say: (*p*.)

Defining requisites for granting tavern and shop licenses.

1. For defining the conditions and qualifications requisite to obtain tavern licenses for the retail within the municipality, of spirituous, fermented or other manufactured liquors, and also shop licenses for the sale by retail within the

---

lature, of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised, and the Court will require it to be exercised."

Enabling words are also construed as compulsory, whenever the object of the power is to effectuate a legal right: *per* Ld. Blackburn, S. C., 5 App. Cas., 214, at p. 244. Such words and phrases, therefore, group themselves into two classes: (1) an obligatory duty; and (2) a discretionary or enabling power. It is submitted that the power here given to the License Commissioners comes within the latter class, and that the exercise of it is entirely discretionary. By the R. S. O., 1887, c. 1, s. 8, sub. s. 2, the word "shall" is to be construed as imperative, and the word "may" as permissive. As to the question of discretionary power, see Maxwell on Stats., pp. 100, 101; Macbeth *v.* Ashley, L. R. 2 Scotch App., 352, cited Sinclair's D. C. Act, 1884, p. 12, 13; and for cases in which the enabling words have been held to impose a discretionary or enabling power, see Stroud's Dict., 466; see also remarks in notes to section 18 *post*.

(*p*) The powers of the Commissioners within the limits prescribed in this section are very ample. That they can create offences and annex penalties thereto is shewn in the case of Hodge *v.* The Queen, 9 App. Cas., 117. (ante p. 1).

The expression "regulating and determining," appears to be used here to denote the making by resolution of rules and by-laws governing the subjects mentioned, which are: 1. The conditions and qualifications requisite to obtain licenses; 2. For limiting the number of taverns and shops; 3. For declaring a certain number of tavern licenses in cities and towns, may issue to persons exempted from having the accommodation required; 4. For regulating the taverns and shops to be licensed; and 5. For fixing and defining the duties, powers and privileges of the inspector of their district. The Board of License Commissioners thus formed and endowed is in the nature of a municipal body created and appointed under the authority of the Legislature, with power to pass under the name of resolutions what we know as by-laws, or rules governing matters of a merely local nature in the Province. Such powers are said to be similar to, though not identical in all respects with, the powers belonging to municipal institutions under previously existing laws passed by the local Parliaments. "The powers intended to be conferred are to make regulations in the nature of police or municipal regulations of a merely local character, for the good government of taverns, etc., licensed for the sale of liquors by retail, and such as are calculated to preserve in the municipality peace and public decency, and repress drunkenness and disorderly and riotous conduct:" Hodge *v.* The Queen, 9 App. Cas., 117. As to extent of police power see Minneapolis & St. Louis R'y Co. *v.* Beckwith, 9 S. C. Rep. (U. S.), 207.

It seems, therefore, that the License Commissioners have the same power to make by-laws in relation to the licensing of taverns and in regard to licensed taverns as, under the Municipal Institutions Act of 1866 and other Municipal Acts of the late Province of Upper Canada, was possessed by Municipal Councils and Commissioners of Police, respectively: per Spragge, C. J., in Regina *v.* Hodge, 7 App. R. at p. 259. See note to sec. 1.

The regulations of a municipal body, such as are here authorized, must not be inconsistent with the Acts creating it. Such Acts are its charter, hence all

municipality, of such liquors in shops or places other than taverns, inns, ale-houses, beer-houses or places of public entertainment; (*q*.)

Limiting number of licenses, etc.

2. For limiting the number of tavern and shop licenses respectively, and for defining the respective times and localities within which and the persons to whom such limited number may be issued within the year, from the 1st day of May of one year till the 30th day of April inclusive of the next year. (*r*.) R. S. O. 1877, c. 181, s. 4 (1, 2).

---

laws in contravention of them are void. "The true test of all by-laws is the intention of the Crown in granting the charter, and the apparent good of the Corporation." R. *v.* Spencer, 3 Burr 1833. See Angell & Ames on Corporations, 344; see also R. *v.* Miller, 6 T. R., 277; R. *v.* Barber Surgeons, 1 Ld. Ray'd 584; State *v.* Bruder, 38 Mo., 450; Thompson *v.* Carroll, 22 How., 422; Andrews *v.* Insurance Co., 37 Maine, 256; *In re* Bell *v.* The Cor. of Manvers, 3 C.P. 399. And as in the case of the exercise of other discretionary powers conferred by the Statute, "should be exercised according to the rules of reason and justice, not private opinion; according to law and not humour; it is not to be arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limits, to which an honest man, competent to the discharge of his office, ought to confine himself, that is within the limits and for the objects intended by the Legislature:" Maxwell on Stat. 101; Sharp *v.* Wakefield, 22 Q. B. D., 239, affirmed on appeal, W. N. (1891), 60.

As to the meaning of the word "regulations," see *In re* Snell and the Cor. of Belleville, 30 U. C. R., 81; Ross *v* The Cor. of York and Peel, 14 C. P., 171; *re* Brodie *v.* The Cor. of Bowmanville, 38 U. C. R., 580.

All such by-laws must also be in accord with the common or statute law of the country. "All by-laws must ever be subject to the general law of the Realm, and subordinate to it:" Norris *v.* Staps, Hob. 210, cited in Harrison's Mun. Man., 213.

The 32 Vic., c. 32, s. 6, (O.) provided that the Police Commissioners should have power to pass by-laws "regulating" licensed taverns. A by-law under it providing that the bar-room should be closed and unoccupied, except by members of the keeper's family or his employees, and should have no light therein, except the natural light of day, during the time prohibited by the by-law, was held to be unauthorized and a conviction under it was quashed: per Morrison, J., R. *v.* Belmont, 35 U. C. R., 298. (See Sec. 54.)

(*q*) See secs. 27, 28 and 29, and notes thereto.

(*r*) By Sec. 18, the maximum number of licenses to be issued in each municipality is fixed. The Commissioners may limit the number to less than that prescribed by that section, but they cannot exceed it. See notes to that section.

A by-law of a town passed under 39 Vic., c. 26, sec. 2, sub-s. 3, (O.) limiting the number of shop licenses to be issued in the town to one, and directing the holder of such license to confine the business of his shop exclusively to the keeping and selling of liquor: Held bad as being in effect, prohibiting and creating a monopoly: *In re* Brodie *v.* The Town of Bowmanville, 38 U. C. R., 580.

It is not, as a general rule, intended that Municipal Councils and License Commissioners should have concurrent powers, and it was held that a by-law of the town, providing for the closing of licensed houses during certain hours, and that the holder of a license should not sell intoxicating liquor at any other than the house for which he had received a license, except that in case

3. For declaring that in cities having a population according to the then last Dominion census of less than fifteen thousand, a number not exceeding three persons; a population of between fifteen thousand and thirty thousand, a number not exceeding five persons; a population of over thirty thousand, a number not exceeding ten persons; and in towns having a population of over six thousand, a number not exceeding two persons qualified to have a tavern license, may be exempted from the necessity of having all the tavern accommodation required by law; (*s.*) 47 V. c. 34, s. 2. Exemption from having accommodation.

4. For regulating the taverns and shops to be licensed; (*t.*) Regulating taverns.

5. For fixing and defining the duties, powers and privileges of the inspector of their district. (*u.*) R. S. O. 1877, c. 181, s. 4, (4, 5). Defining duties of Inspectors.

[6. To remove doubts it is hereby declared to be and always to have been the true intent and meaning of this section that regulations duly passed by the board of license commissioners in accordance with the provisions thereof shall remain in force until amended or repealed by the same or any subsequent board of commissioners.] (*v.*) 53 V., c. 56, s. 3.

---

of his removal to another house, the Inspector might endorse his permission on the license, was beyond the jurisdiction of the Council as being an exercise of the powers transferred by the Act to the Board of License Commissioners: *Ib.*

But by-laws prohibiting the giving of liquor to minors, and gambling and disorderly conduct in a licensed house were held valid, as was also a by-law providing that no billiard table should be licensed or kept in a licensed house, and that no sale of liquor should take place between 7 p. m. and 7 a. m.: *In re* Arkell *v.* The Town of St. Thomas, 33 U. C. R., 594.

The Board of License Commissioners are public officers, and as such entitled to notice of action: Leeson *v.* License Com. of Dufferin, 19 O. R. 67.

(*s*) The License Commissioners may, by regulation, exempt a certain number of persons to whom licenses may be granted, in cities and towns, from having all the tavern accommodation required by law (see Secs. 27, 28 and 29). The number is limited by the section, and may not be exceeded under any circumstances: see Sec. 67.

(*t*) As to regulations see Note (*p*) *supra.*

(*u*) As to duties of Inspector see Secs. 129, 134. The Government appoint the License Inspectors, but the License Commissioners are here empowered to pass resolutions fixing and defining the duties, powers and privileges of the Inspector for their district, but they cannot interfere with those duties, powers, etc., provided by the Act.

(*v*) This Sub-Sec. is added, by 53 Vic. c. 56, s. 3. The License Commissioners cease to hold office on 31st December in each year, but may be re-appointed. It has been doubted whether the regulations passed by them do not expire with

Penalties may be imposed by regulations.

5. In and by any such resolution of a board of license commissioners the said board may impose penalties for the infraction thereof. (*w.*) R. S. O. 1877, c. 181, s. 5.

Inspectors of Licenses, appointment, powers and duty and security.

6. An inspector shall be appointed by the Lieutenant-Governor (*x*) from time to time for each city, county, union of counties, electoral district, (*y*) or license district, as the Lieutenant-Governor may think fit; and each inspector shall, before entering upon his duties, give such security (*z*)

---

their term of office, and should not be re-enacted by their successors. The provision here made is intended to remove all doubts on the subject: see sec. 3.

(*w*) Held that the Local Legislature had power by The B. N. A. Act, 1867, to entrust to a Board of Commissioners, authority to enact regulations and to create offences and annex penalties for the infraction of such regulations and the punishment of such offences: Hodge, *v.* The Queen, 9 App. Cas., 117, see also Saunders *v.* S. E. Railway Co., 5 Q. B. D., 456.

(*x*) Where the Lieut-Governor appoints, he would have the inherent right of removal. The Inspector therefore holds his office during the pleasure of the Government: Interpretation Act. sec. 8, ss. 26. See Sinclair's D. C. Act 1888, p. 13.

The words "Lieutenant-Governor" mean the Lieutenant-Governor for the time being of Ontario, or other Chief Executive Officer or Administrator for the time being, carrying on the Government of Ontario, by whatever title he may be designated: Interpretation Act, sec. 8, ss. 6. See note (*k*) to sec. 3.

(*y*) See note (*l*) sec. 3.

(*z*) "Every person appointed to any civil office or employment, or commission in any public department of the Government of this Province, or to any office or employment of public trust, or wherein he is concerned in the collection, receipt, disbursement or expenditure of any public money under the Government of this Province, and who by reason thereof, is required to give security, with a surety or sureties, or otherwise, shall, within one month after notice of his appointment, if he is then in Ontario, or within three months, if he is absent from Ontario, (unless he sooner arrives in Ontario, and then within one month after such arrival), give and enter into a bond or bonds, or other security or securities, in such sum and with such sufficient surety or sureties as may be approved of by the Lieutenant-Governor, or by the principal officer or person in the office or department to which he is appointed, for the due performance of the trust reposed in him, and for his duly accounting for all public moneys entrusted to him or placed under his control." R. S. O., c. 15, s. 9.

The bond to be given must be proved as to the execution thereof, by an affidavit of execution of the attesting witness, in the form of Schedule A. annexed to the Act, (see appendix), made before a Justice of the Peace, and every surety in the bond, shall make an affidavit of justification, in the form Schedule B. annexed to the Act, before a Justice of the Peace. The bonds, with the affidavits annexed, shall be recorded at full length in the office of the Secretary and Registrar of this Province, and the original deposited in the office of the Treasurer of the Province within one month after being entered into or given, if the person resides in Ontario, and if he is absent from Ontario, then within three months after being entered into or given, unless such person arrives sooner in Ontario and then within one month after such arrival. *Ib.*, s. 10.

But the Lieutenant-Governor may in certain cases extend the time for giving security. The Lieutenant-Governor, by an order in Council, may direct that

as the Provincial Secretary may require for the due performance of his said duties, and for the payment over of all sums of money received by him according to the provisions of this Act; and the salary of every inspector shall be fixed by the Lieutenant-Governor in Council. (*a*) R. S. O. 1877, c. 181, s. 6; 48 V., c. 43, s. 8, *part.*

Chief Inspector may be appointed in Toronto.

7. A chief inspector may be appointed for the city of Toronto, and he shall have jurisdiction throughout the said city. He shall perform all the duties of an inspector and shall have all the rights, powers and authority thereof, and shall be charged with the duty of seeing that this Act is enforced in the districts into which the said city is divided. He shall, unless the Lieutenant-Governor otherwise directs, act as the secretary of the board of license commissioners, and shall, in company with the inspector, visit and inspect all premises for which a license is sought, and shall perform such other duties as may be assigned to him by the board or by the Lieutenant-Governor in Council. (*b.*) 49 V., c. 39, s. 19.

Issue of licenses.

8. (1) The Lieutenant-Governor in Council (*c*) may direct the issue of licenses on stamped paper, written or printed, or partly written or partly printed, (*d*) of the several kinds

---

the bond or policy of guarantee of any incorporated or joint stock company empowered to grant guarantees, &c., may be accepted as such security. See the Act respecting Public Officers, R. S. O., c. 15, secs. 9, 27.

The word *security* shall mean sufficient security, and when these words are used one person shall be sufficient therefor, unless otherwise expressly required: R. S. O, 1887, c. 1, s. 8, sub-s. 20.

The security must be given before the Inspector enters upon his duties, and a newly appointed Inspector must be particular not to do anything of an official nature until this provision of the Statute is complied with. As to liability of sureties generally see Sinclair's D. C. Act 1888, p. 16.

(*c*) The words "Lieutenant-Governor in Council," mean the Lieutenant-Governor of Ontario or other person administering the Government for the time being, acting by and with the advice of the Executive Council of Ontario: Interpretation Act, sec. 8, ss. 7.

(*b*) .. "Chief Inspector" means one who is the head or principal over other Inspectors.

The jurisdiction of the officer to be appointed under this section is limited to the City of Toronto. His duties are not only those here defined, but also such as may be assigned to him by the Board of License Commissioners of Toronto, and the Lieutenant-Governor in Council.

(*c*) See sec. 6, note (*a*).

(*d*) "Writing" or "written," or any term of like import, shall include words

hereinbefore mentioned; and the licenses shall be signed by the Provincial Secretary and dated as of the 1st day of May (*e*) in each year, and shall thence continue (*f*) in force for one year, (*g*) and shall expire on the 30th day of April in the next ensuing year.

After the 1st of May

(2) After the 1st of May, tavern (*h*) and shop licenses may be issued between the 1st and 15th days of May in each year; (*i*) and licenses by wholesale (*j*) may be issued between the first and last days of May (*k*) in each year; and all such licenses shall be deemed to have been issued on the said first day of May.

In special cases.

(3.) Where special grounds are shewn, (*l*) the license commissioners may direct one or more licenses to issue at any time after the said 1st day of May, if within the limit authorized by this Act; provided always that the petition or application therefor shall have been filed with the inspector on or before the 1st day of April next preceding. R. S. O. 1877, c. 181, s. 7; 47 V. c. 34, s. 3.

[But this proviso shall not apply to petitions or applica-

---

printed, engraved, lithographed, or otherwise traced or copied: Interpretation Act, sec. 8, ss. 14.

(*e*) The license may issue in some special cases after the 1st May, but in every case must bear that date: "as of the 1st day of May," means as if it had been issued on that day: See Alcock *v.* Sutcliffe, 4 D. & L., 612. All licenses shall be deemed to have been issued on the 1st May, (see ss. 2).

(*f*) "Continue" has been held to mean the same as "to tarry," "to remain": See Co. Litt., 32 a. b., cited Stroud's Dict., 242.

(*g*) "One year" means a calendar year: Interpretation Act, sec. 8, ss. 15. And an agreement not to be performed within the space of one year, was held to mean within 12 calendar months from that date: Bracegirdle *v.* Heald, 1 B. & Ald., 722; Snelling *v.* Huntingfield, 1 C. M. & R., 20. The year under this section is from 1st May until 30th April inclusive; the license being in force during that time.

(*h*) See sec. 2, note (*c*).

(*i*) "Between" two days has been held to exclude both days: Bunce *v.* Reed, 16 Barb., 352 (1853), cited Anderson's Dict., 118. See Arch. Pract., 13th Ed., 163.

(*j*) See sec. 2, ss. 4.

(*k*) Wholesale licenses may be issued at any time during May, but must, like other licenses, be dated on the 1st of that month and will expire on the following 30th of April.

(*l*) The "special grounds" authorizing the extension of the time for issuing the license, it is surmised, would be any extraordinary facts or circumstances the applicant may be able to shew, or which may arise in connection with the matter causing delay, and which the License Commissioners may deem sufficient. The application for the license must have been filed at the usual time.

tions made in counties or cities, in which the second part of *The Canada Temperance Act*, having been in force has been repealed, such repeal taking effect after the said first day of May in any year.] (*m*.) 52 Vic., c. 41, sec. 1.

(*m*) This sub-sec. is added to sub-sec. 3, by 52 Vic., c. 41, s. 1, by way of amendment to the R. S. O., c. 194. It applies to and is to be read as a part of the last sub-section.

The right of the Legislative Assembly to legislate in respect of licenses for the sale of intoxicating liquor, as we have seen in the notes to sec. 1, was established in the case of Hodge *v.* the Queen, 9 App. Cas. 117.

In the session of the Dominion Parliament, held in 1883, it passed an Act respecting the sale of intoxicating liquors and the issue of licenses therefor, entitled "The Liquor License Act, 1883." This Act, in effect, divided the Dominion into a number of license districts; provided for the appointment of Boards of License Commissioners and of Inspectors; defined their duties, powers and functions; and provided for the issue of:—(1) Hotel licenses; (2) saloon licenses; (3) shop licenses; (4) vessel licenses; and (5) wholesale licenses; provided procedure relative to applications for and opposition to the granting of licenses; conferred powers upon Municipal Councils to pass by-laws limiting the number of licenses to be issued, and to prohibit, by a vote of three-fifths, the issue of such licenses; and made other provisions very similar to those contained in "The Liquor License Act" of the Province of Ontario. Doubts having arisen as to whether the Act was within the power of the Dominion Parliament, provision was made by 47 Vic., (D.) c. 32, s. 26, for the determination of the question by reference to the Supreme Court of Canada, or by the Judicial Committee of the Privy Council, at the request of the Governor-General or of the Lieutenant-Governor of any Province. By virtue of such provisions a special case was submitted to the Supreme Court, in which the following judgment was delivered:

"IN THE SUPREME COURT OF CANADA.

Monday, 12th January, A. D. 1885.

PRESENT:—The Honorable Sir William Johnstone Ritchie, Knight, Chief Justice; the Honorable Samuel Henry Strong, J.; the Honorable Telesphore Fournier, J.; the Honorable William Alexander Henry, J.; the Honorable John Wellington Gwynne, J.

A special case, containing the following questions, having been referred by His Excellency the Governor-General in Council, to the Supreme Court of Canada, for hearing and determination, in pursuance of the 26th section of 47 Victoria, chapter 32, intituled: "An Act to amend the Liquor License Act, 1883."

I. QUESTION.—Are the following Acts, in whole or in part, within the legislative authority of the Parliament of Canada, namely: (1) "The Liquor License Act, 1883;" (2) "An Act to amend the Liquor License Act, 1883."

II. QUESTION.—If the Court is of opinion that a part or parts only of the said Acts are within the legislative authority of the Parliament of Canada, what part or parts of said Acts are so within such legislative authority?

And the said case having come before the Court for hearing on the 23rd day of September last, whereupon and upon application of Mr. Bethune, Q. C., one

Licenses, how issued.

9. Every license shall be issued, under the direction of the respective boards of license commissioners, by the inspector for the license district in which the tavern, shop, warehouse or other place to which the license is to apply is situate. (*n*.) R. S. O. 1877, c. 181, s. 8, amended by 53 Vic., c. 56, s. 2.

---

of the Counsel representing the Dominion of Canada, the said case so referred was amended by stating that in pursuance of sec. 26, sub-sec. 3 of the said Act, 47 Vic., c. 32, an Act to amend "The Liquor License Act, 1883," the Provinces of Ontario, Quebec, New Brunswick and British Columbia had become parties to the said case; and the said case having been subsequently further amended by stating that the Province of Nova Scotia had also become a party thereto.

And the said cause, so amended as aforesaid, having come on for hearing before this Court, in presence of Counsel for the said Dominion of Canada, and for the said Provinces, on the 23rd, 24th, 25th, 26th and 27th days of September last past, whereupon and upon hearing what was alleged by Counsel aforesaid, this Court was pleased to reserve the said case for consideration, and the Court having duly considered the same, do now certify to His Excellency the Governor-General in Council, in answer to the questions submitted for the determination of the said Court on the said case, that in the opinion of the said Court the Acts referred to in the said case, namely, "The Liquor License Act, 1883," and "An Act to amend the Liquor License Act, 1883," are and each of them is *ultra vires* of the legislative authority of the Parliament of Canada, except in so far as the said Acts respectively purport to legislate respecting those licenses mentioned in sec. 7 of the said "The Liquor License Act, 1883," which are those denominated vessel licenses and wholesale licenses, and except also in so far as the said Acts respectively relate to the carrying into effect of "The Canada Temperance Act, 1878."

The Honorable Mr. Justice Henry, being of the opinion that the said Acts are *ultra vires* in the whole. The case was subsequently carried to the Privy Council, where the Act was held to be altogether *ultra vires*.

The Acts having been thus declared to be *ultra vires* of the Parliament of Canada, they were suspended by the Act, 48-49 Vic., c. 74.

A full report of the case with the *facta* filed on behalf of the several Provinces and the argument of counsel at the hearing is published in Vol. XVIII, No. 12, Sessional papers, 1885, 85 *a*.

Another case on the subject of legislative authority, is that respecting the boundaries of Ontario published in Vol. XIX, Sessional papers, 1886. See also notes to sec. 42*a*, *post*.

(*n*) This section originally provided for the issue of licenses to vessels by the Inspector, but that provision was repealed by 53 Vic., c. 56, s. 2, and vessel licenses are now abolished. The effect of the section, as it now stands, is that no license can be issued except by the Inspector under the direction of the Board of License Commissioners for the district in which the place where the license is granted is situated.

Vessels.

10. No license shall be issued for the sale of liquor on any vessel navigating any of the great lakes or rivers St. Lawrence or Ottawa, or any of the inland waters of the Province of Ontario, nor shall any liquor be sold or kept for sale in any room or place on any such vessel. (*o*) 53 Vic., c. 56, s. 2, s. s. 2.

No tavern or shop license to be granted except upon petition and report thereon.

11. (1) A license to sell spirituous, fermented or other manufactured liquors, (*p*) by retail, (*q*) in any tavern, ale-house, beer-house, place of public entertainment, (*r*) or shop, (*s*) shall not be granted except upon petition by the applicant to the license commissioners of the district (*t*) in which the license is to have effect praying for the same; nor until the inspector, to be appointed as hereinbefore provided, (*u*) has reported in writing to the license commissioners that the applicant is a fit and proper person to have a license (*v*) and (in the case of a tavern license) has all the accommodation required by law, (*w*) and that the applicant is known to the inspector to be of good character and repute; (*x*) and every such report shall be duly filed by the license commissioners and shall remain open to the

Report to be filed.

(*o*) Until 1889, licenses to vessels were issued under the direction of the Commissioners, by the Inspector for any license district, to or from any port from which the vessel might sail and at any port at which she might call, but such licenses are now abolished and the sale of liquor on any vessel in Ontario is prohibited. It was held that the Parliament of Canada had power to legislate respecting licenses for the sale of liquor on vessels: *In re* Liquor License Act, 1883, 5 O. L. T., 66, cited in note (*m*) to sec. 8, but *quaere* as to the effect of the decision of the Privy Council, that the Act was *ultra vires in toto*. See also the judgment of Galt, C. J., as to local option by-laws, given in notes to sec. 42*a*, *post*.

(*p*) See sub-sec. 1 of sec. 2 and notes thereto.

(*q*) See sub-sec. 2 of sec. 2 and notes thereto.

(*r*) See note (*g*), sec. 2, sub-sec. 2.

(*s*) See sub-sec. 3 of sec. 2.

(*t*) See sec. 2, sub-sec. 6 and notes thereto. The form of petition is given in the appendix hereto.

(*u*) See secs. 6, 7 and notes thereto.

(*v*) See note (*y*) *infra*.

(*w*) See secs. 27, 28, 29 and notes thereto.

(*x*) See cases cited in note (*y*) *infra*.

It was held that the grant of a license to a person, on the condition that he obtained the Inspector's certificate of qualification, was no breach of the statute: *Re* v. Paton, 35 U. C. R., 442; but see the next following note to this section.

inspection of any rate-payer of the municipality or any provincial officer. (*y*)

(*y*) A *mandamus* will not be granted to compel a Board of License Commissioners to issue a license to a person to whom one has been granted, but not issued, by the retiring Commissioners, where they have not completed their functions, their acts having been reversed by their successors: Leeson *v.* License Com. of Dufferin, 19 O. R., 67.

In case any member of the Board of License Commissioners, knowingly issues or causes or procures to be issued, a license contrary to the provisions of the Act, he is subject to a fine of not less than $40 nor more than $100. See sec. 67, *post*. The question as to whether the grant of a license is a judicial act, over which the Court can exercise control, is discussed in R. *v.* Salford, 18 Q. B., 687, in which it was held that though a license was void for not complying with the statute, the granting of it was not an act upon the validity of which the Court could decide upon *certiorari* and that it should be treated as void. See sub-sec. 21.

A license, although obtained by fraud is valid, unless the fraud be practised by the party to whom it was granted: R. *v.* Minshull, 1 N. & M., 277.

See also sec. 91 and notes thereto.

The conditions to be complied with by the applicant, and which the Commissioners may insist on before granting a certificate for a license, are (1) The filing of a petition by the applicant on or before 1st April; (2) The report in writing of the Inspector that the applicant is a fit and proper person, and (if the application is for a tavern license) that he has the required accommodation and is known to the Inspector to be of good character and reputation. The report of the Inspector is open to the inspection of any ratepayer of the municipality or any Provincial officer, but not to the public in general: (see sub-sec. 3). The Court refused to interfere by *mandamus* to compel the Inspector of licenses to examine a certain house fitted up as a saloon, and to grant the proper certificate if it should be found that the applicant had complied with the law: Baxter *v.* Hesson, 12 U. C. R., 139; see also R. *v.* Kensington, 12 Q. B., 654.

It has been held to be an indictable offence to wilfully do any act which is forbidden by Statute, although without any corrupt motive; and it was held to be a misdemeanor for Justices to grant licenses where they had no jurisdiction: R. *v.* Sainsbury, 4 T. R., 457. Still more is such an offence punishable when it proceeds from malicious or corrupt motives: Roscoe's Crim. Ev., 782; see also Russell on Crimes, 5th Ed., 47; Burbidge's Crim. Dig., 109-114; see also secs. 66 and 67 and notes thereto.

A certificate that an applicant for a license is of "good character" is not false because he is cohabiting with a woman without being married to her. "'Character' must mean the estimation in which a man is held by those who are acquainted with him. You cannot pry into the secrets of a man's conduct; if you would do so, there might be many circumstances which would palliate the cohabitation:" per Erle J., Leader *v.* Yell, 16 C. B., N. S. 584, cited in Stroud's Dict., 328. The words "good character" were introduced for the purpose of avoiding the evils found to result from the multiplication of houses licensed to sell beer, &c., which in too many instances were found to be the resort of the enemies of order, morality and religion: S. C. at p. 593. It would seem, therefore, that the words "good character and repute," may not necessarily refer to the conduct and mode of life of the applicant as known to himself, but to his reputation among his neighbors.

A person convicted of felony was held in England to be forever disqualified from selling spirits by retail, and that no license could be granted to any person who had been so convicted, but this was under a statute containing a provision to that effect: R. *v.* Vine, L. R. 10, Q. B., 195.

When petition for license to be presented.

(2) Every petition for a tavern license, which is to take effect on the 1st day of May in any year, shall be filed with the inspector for the license district wherein it is to have effect on or before the 1st day of April next preceding. (*z*)

Report not to be conclusive.

(3) The inspector shall not report in favour of any applicant other than the true owner of the business, (*a*) of the tavern or shop proposed to be licensed, and his report shall be for the information of the license commissioners only, who shall nevertheless exercise their own discretion on each application.

The License Commissioners have a large discretion with respect to the sufficiency of the evidence as to the good character of the applicant, as they have in all other respects regarding applications and the issue of certificates for licenses, and they are not bound by the certificate of the Inspector. Under the English Licensing Act, 32 and 33 Vic., c. 27, s. 8, the applicant is obliged to furnish evidence of good character: See Paterson's L. A., 252; R. *v.* Birmingham Justices, 40 J. P., 132; R. *v.* Merthyr Tydvil Justices, 49 J. P., 213; R. *v.* Hanley Justices, 39 L. T., N. S., 444; *Ex parte* Bendall, 42 J. P., 88. See also notes to sec. 4.

(*z*) The Commissioners, it is thought, may, if they think proper, receive the petition after the day named, as the provision in this section is made for their convenience, and if they should see fit to allow the term to be extended, no one else would be prejudiced.

See sec. 8 and notes thereto.

(*a*) It was held that residence on the premises was not necessary: R. *v.* De Rutzen, 1 Q. B. D., 55. But the certificate must show that the applicant is the true owner of the business. The reason for this requirement, is that the true and responsible owner may be known to the authorities; without this the difficulty of enforcing the law and supervising the conduct of the place licensed would be increased. See sec. 112, ss. 3 and notes thereto.

An English statute provided that every applicant for a license should produce a certificate that he was "the real resident holder and occupier of the house in which he shall apply to be licensed," and it was said, that the only object of requiring such certificate, was to afford the officer, whose duty it was to grant the license, the means of obtaining the necessary information, but his jurisdiction to grant it was not dependent upon the production of the certificate. The Commissioners are not bound by the certificate, but can, if they think fit, obtain the information by other means and they would be warranted in acting upon such information as they may acquire in the case of every application: See Thompson *v.* Harvey, 4 H. & N., 254.

Booth Bros. were the holders of a license to sell liquors, and on 9th December, the license was transferred to T. W. Booth, one of the partners, to enable George S. Booth, the other partner, to become a candidate for Councillor. The nomination took place on 22nd December, and George S. Booth was elected. The election was set aside on the ground that George S. Booth was still one of the true owners of the business, and as such was the holder of a license within the meaning of R. S. O., c. 174, s. 74, and therefore disqualified: R. *v.* Booth, 9 P. R., 452.

A man may be an inn-keeper, although he takes out the license in the name of another, and if he does so fraudulently, he is disqualified to be a Municipal Councillor: McKay *v.* Brown, 5 U. C. L. J., 91; see also Flannagan *v.*

Report may be dispensed with.

(4) Where the applicant for a tavern or shop license resides in a remote part of the license district, or where for any other reason the license commissioners see fit, they may dispense with the report of the inspector, and act upon such information as may satisfy them in the premises. (*b*) R. S. O. 1877, c. 181, s. 9, (1-4).

Board to fix a day for considering applications.

(5) The board of license commissioners shall, on or before the 1st day of April, (*c*) fix a day for considering applications for licenses, being not less than one week (*d*) prior to the 1st day of May in each year, and the inspector shall publish (*e*) in at least two issues (*f*) of a newspaper published in the district, (*g*) if there be one published therein, the date and place of such meeting at least fourteen days before the day of such meeting. (*h*) The inspector shall cause a notice containing similar information to be fixed to or near the outer door of the building in which his office is situated.

McMahon, 7 U. C. L. J., 155; R. *v.* Rymer, 2 Q. B. D., 136; Crozier *v.* Taylor, 6 U. C. L. J., 60.

The person receiving the license is assumed to have satisfied the License Commissioners that he is the true owner, but, notwithstanding, it can be shewn that the licensee was merely the agent of another, who was the real owner of the business: Huffman *v.* Walterhouse, 19 O. R., 186.

(*b*) This section provides that the Commissioners may dispense with the report of the Inspector if they see fit, and act upon such information as may satisfy them in the premises. It is clearly the intention of the Statute that the report is only for the purpose of giving information to the Commissioners, and that they may obtain this information by other means if they think proper.

(*c*) See sec. 8.

(*d*) When time is to be computed as "not less" than a given number of days, it means clear days: Chambers *v.* Smith, 12 M. & W., 2. Where a Statute provided that notice of appeal should be given "within one week," it was held that it meant 7 clear days, and that a notice given on the 22nd for the 29th was insufficient: R. *v.* Sweeney, 2 Ir. L. R., 278. See note (*h*) *infra*. The day fixed should be not later than 23rd April.

(*e*) What constitutes a publication may be a question, and must generally depend upon the circumstances of each case, but by this section it is the printing in two issues of a newspaper published in the district.

(*f*) "At least" two issues means two issues and not less.

(*g*) If there is no newspaper published in the district, no such publication will be necessary. The affixing of the notice to the door of the building in which the Inspector has his office, as below, will be sufficient.

(*h*) This means fourteen clear days: *In re* Sams *v.* The City of Toronto, 9 U. C. R., 181. When time is to be computed as so many days, "at least" clear days are meant, exclusive of the respective days on which the notice is to be given and the meeting held. In this case a notice given on the 9th of April, for the 23rd of April, would not be sufficient. Fourteen days must intervene or elapse

Notice by inspector as to applications

(6) The inspector shall, at least fourteen days before the first meeting of the board (*i*) to consider applications, cause to be published in at least two issues of some newspaper published in the district, if there be one published therein, (*j*) the name of each applicant for a license, who is not at the time of the making of such application a licensee under this Act, or who applies for the licensing of premises not then under license, the description of license applied for, and the place (described with sufficient certainty) where such applicant proposes to sell, and also the total number of tavern and shop licenses issued during the current license year, and the total number of applications for the ensuing year. (*k*) He shall also keep a list of all applications, to be entered in a book to be kept by him for the purpose, containing similar information, and the same shall be open to the public for inspection without charge.

---

between the two dates: See *in re* Railway Sleepers Supply Co., 29 Ch. D., 204; see also Sinclair's D. C. Act, 1879, p. 92, and cases there cited; also Stroud's Dict., p. 60.

(*i*) See note (*d*) to sub-sec. 5.

(*j*) The notice or publication here required may be published at the same time as that provided for in the last sub-section. If there are no newspapers published in the district, then no publication will be required.

(*k*) The publication here provided for should contain: (1) The name of each applicant who is not at the time of the application a licensee under the Act, or who is applying for a license for premises not then under license; (2) a description of the license applied for; (3) a description of the place (described with sufficient certainty) at which such applicant proposes to sell; (4) the total number of tavern and shop licenses issued during the current license year; (5) the total number of applications for licenses for the ensuing year.

The same information must also be entered in a book to be kept for that purpose and be open to the inspection of the public.

The requirements of the Statute should be strictly complied with. Where a Statute requires that the name, place of abode and description of a person be given, and only the name and place of abode is given, there is a total omission of the "description" and not an "inaccurate description:" R. *v.* Tugwell, L. R. 3 Q. B., 704.

The word "place" must be taken to mean the premises for which the license is asked. It may be said that "place" is rather an indefinite term. Where the phrase "place of public resort" occurred in conjunction with the word "house," and both were controlled by the verbs "have" or "keep," it was said that the kind of place intended was of a permanent character, but under sec. 3 of the Betting Houses Act, 1853, where there was a prohibition against keeping or using any "house, office, room or place" for betting, it was held that a large umbrella temporarily fixed into the ground by means of a spiked telescopic handle, is a place: Bows *v.* Fenwick, L. R. 9, C. P. 339; so is a wooden box on which a betting man stands, and which temporarily rests on a spot in "the ring" of a race-course: Gallaway *v.* Maries, 8 Q. B. D., 275; so is

Objections to applications.

(7) It shall be the right and privilege (*l*) of any ten or more electors (*m*) of any polling subdivision to object by petition, or in any similar manner, to the granting of any license within such subdivision.

---

an enclosed yard, whether roofed or not, and however large its dimensions: Shaw *v.* Morley, L. R. 3 Ex., 137; see Stroud's Dict., 593.

The description of place required here should be that by which the premises can be readily known and identified. In cities and places where the houses are numbered, the street and number, etc., and the street and name or other designation by which the hotel, saloon, or shop is usually known, it is thought would be sufficient in other places.

(*l*) A fairly good definition of "right" is: an enforceable claim or title to any subject matter whatever; either to possess and enjoy a tangible thing, or to do some act, pursue a course, enjoy a means of happiness, or be exempt from any cause of annoyance; also, one's claim to something out of possession; and also, a power, prerogative, or privilege, as, when the word is applied to a corporation: People *v.* Dikeman, 7 How. Pr., 180, (1852). In the popular acceptance of the word it means, "the liberty of doing or possessing something consistently with law"; Wharton, 649. A "legal right" is that which is recognized and protected by law. "A right is a measure of control delegated by the Supreme Political Authority of a State, to a person said to be thereby invested with a 'right' over the acts of another person, or other persons said to be made thereby liable to the performance of a duty." Austin's Jurisprudence, 79.

The "right or privilege" here conferred is simply to object to the granting of a license, but the License Commissioners, though they are bound to receive such objection and to hear the parties, are not bound to refuse a certificate for a license in consequence of it.

(*m*) "Ten or more" means not less than ten.

The word "electors," as used in the Municipal Act, means persons entitled, for the time being, to vote at any municipal election, or in respect of any by-law in the municipality, ward, polling sub-division, or police village, as the case may be: Mun. Act, R. S. O., c. 184, s. 2, ss. 9. But in sub-sec. 14 of this section, it is expressly provided that the electors entitled to object to the issue of a new license, are those entitled to vote at an election of a member of the Legislative Assembly, and it has been recently said that the same class of persons are entitled to object under this sub-section as those referred to in sec. 14, viz: those entitled to vote at a Provincial election; Re Croft and The Town of Peterborough, 17 O. R., 522; S. C. on appeal, 17 App. R. 21. See judgment of Burton, J. A., at p. 25; see also sec. 2, sub-sec. 7.

For form of objections see appendix. See also note (*y*) to ss. 14.

The nature of the objections, which may be taken to the granting of a license, is as follows:

(*a*) Relating to the character of the applicant.

(*b*) Relating to his premises.

(*c*) That the licensing thereof is not required in the neighborhood, or that the premises are in the immediate vicinity of a place of public worship, hospital, or school, or that the quiet of the place, in which the premises are situate, will be disturbed if a license is granted.

The objections must be set forth in a petition to the Board of License Commissioners; it must be signed personally by the objectors, and must state specifically what are the objections alleged by them to exist. It is not sufficient for the petition to state generally that licensed premises are not wanted within

(8) The objections which may be taken to the granting of a license may be one or more of the following:

As to character of applicant.

(*a*) That the applicant is of bad fame and character, (*n*) or of drunken habits, or has previously forfeited a license, (*o*) or that the applicant has been convicted (*p*) of selling liquor without a

---

the sub-division, and in that way evade the responsibility which the Statute imposes upon the objectors of stating clearly what the objections are. It must also refer specifically to the granting of the particular license to which objection is taken. A petition must conform to the Statute, which requires it to state the objections specifically; hence, a petition stating the objections in general terms in this manner: "for reasons specified in section 11, sub-section 8, of the Liquor License Act, Revised Statutes of Ontario, or for one or more of such reasons," was held not to be a compliance with the Statute: Pizer *v.* Fraser, 17 O. R., 635.

(*n*) See note (*x*) to ss. 1.

(*o*) "Forfeiture" is a penalty for an offence or unlawful act, or for some wilful omission whereby a person loses some right or office: Wharton, 310. What is meant here is a person who has lost his right to sell intoxicating liquors under the provisions of the Act. See secs. 75, 79, 83 and 91, and notes thereto.

As to "drunken habits," see notes to secs. 73, 122 and 123.

(*p*) The word "convicted," or the "conviction" of a person accused is equivocal. In common parlance, no doubt it is taken to mean the verdict at the time of the trial; but in strict legal sense, it is used to denote the judgment of the Court: per Tindal, C. J., Burgess *v.* Boetefeur, 8 Scott, N. R., 194, and accordingly, it was there held that a person who pleaded guilty to keeping a brothel, on an indictment instituted under s. 5, 25 Geo. 2, c. 36, and who at a subsequent session came up for judgment, was not "convicted" when he pleaded, but when judgment was pronounced. But if under the same section, the plea of guilty be followed by an order that the defendant enter into recognizances to come up for judgment if called upon, he is then "convicted:" per Stephen, J., Jephson *v.* Barker, 3 Times Rep., 40; see Sutton *v.* Bishop, 1 W. Bl., 665; Lee *v.* Gansel, Cowp. 1; Stroud's Dict., 159. "Convicted" has been often, according to many cases in the book, taken for "attainted" and therefore extends to a judgment upon demurrer, which in Foster's Case, was held to be a "conviction" within 23 Eliz. Dwar., 683, citing Foster's case, 11 Rep., 59.

"Upon conviction," in s. 91, Elementary Education Act, 1870, 33 and 34 Vic., c. 75, (Imp.), means "upon summary conviction:" R. *v.* Gaunt, 50 L. J. M. C., 32, cited in Stroud, 160.

"Convicted of felony," is equivalent to "convicted felon:" R. *v.* Vine, L. R. 10, Q. B., 195.

In an action for a penalty under sec. 60 of the 32 Vic., c. 4, it was held in the County Court that the words "every person convicted" did not mean who had been convicted in some criminal proceeding, but that the offence might be proved and the person "convicted" in that action. On appeal, Wilson, J., was of the opinion that the judgment of the County Court was right—Morrison, J., that it was wrong: Wilde *v.* Bowen, 37 U. C. R., 504.

"Conviction" means the act of a legal tribunal adjudging a person guilty of a criminal offence: Wharton, 8th Ed., 180.

It has been held in the United States that "a man is 'convicted' when he is found guilty or confesses the crime before judgment:" Shepherd *v.* People, 25 N. Y., 406 (1862); and that "judgment" or "sentence" is the proper word

license within a period of one year; or that he has kept, (*q*) within a period of two years, (*r*) a place in which the illicit sale (*s*) of liquors was frequent and notorious; (*t*) or—

As to his premises.

(*b*) That the premises (*u*) in question are out of

---

to denote the action of the Court, declaring the consequences to the convict of the fact of his conviction: Commonwealth *v.* Lockwood, 109 Mass., 325-340 (1872).

Where a Statute (33 and 34 Vic., c. 27) provided that a person convicted of felony should not be able to obtain a license to sell spirits by retail, it was held that a free pardon under the Royal sign-manual removed the disqualification: Hay *v.* Justices Tower Division of London, 6 Times Rep., 169.

As to selling without a license see secs. 49, 50, 51, 52, 53 and 70.

(*q*) To "keep" a place or thing involves the idea of having over it the immediate control, of a character more or less permanent. Thus the landlord of a brothel wholly let out in rooms to different tenants at weekly rents, and who has no control over the premises except that of determining the tenancies, does not "keep" the brothel: R. *v.* Stannard, L. & C., 349; R. *v.* Barrett, L. & C., 263; Halligan *v.* Ganly, 19 L. T., 268. And to "keep" a place for a particular purpose involves the idea that it is used for that purpose on more than one occasion; but how many or how frequent these occasions must be is a question of fact to be determined in each particular case: Marks *v.* Benjamin, 5 M. & W., 568.

Under the English "Betting Act," which provides that no place shall be opened, kept or used for the purpose of betting, etc., it was held that: "The intention of the Legislature is to impose a penalty on the owner or occupier of the house, and on the owner or occupier who knowingly and wilfully permits any person to carry on the house, and, what is more, to prevent him having any servants to help him to carry on such a house:" per Smith, J., R. *v.* Cook, 13 Q. B. D., 377; see also Haigh *v.* Town Council of Sheffield, L. R. 10, Q. B. 102.

(*r*) "Within" a certain number of days means clear days: Williams *v.* Burgess, 12 A. & E., 635; Robinson *v.* Waddington, 18 L. J. Q. B., and other cases cited in Stroud, 889. When an act has to be done "within" two times, the time for doing it is some period fairly between those times: Ashforth *v.* Redford, L. R. 9, C. P. 22.

A "year" means a calendar year (that is, that the period must be reckoned by looking at the calendar and not by counting the days): see Interpretation Act, sec. 8, sub-sec. 15; Stroud, 101.

"Within a period of two years" would, therefore, mean a period of time corresponding to that between the 1st of January of the first year and the 31st December of the second year.

(*s*) "Illicit sale" is a "sale" disallowed, forbidden, or made unlawful by the law. Any sale of liquor contrary to the provisions of the Act would be an "illicit sale."

(*t*) A single act contrary to the provisions of the Statute could not be said to be an act of "frequent" occurrence. Worcester's definition of "frequent" is "often done; often occurring; common; usual;" "notorious" means "manifest to all persons; generally known; open; known to the discredit or disadvantage; or, of bad or questionable repute: Anderson's Dict., 716. See Jenkins *v.* Cook, 1 P. D., 80.

(*u*) "Premises" means "a distinct portion of realty; land, or lands; tenements; buildings:" Anderson's Dict., 802.

repair, or have not the accommodation (*v*) required by law, or reasonable accommodation if the premises be not subject to the said requirements; (*w*) or—

(*c*) That the licensing thereof is not required (*x*) in the neighborhood, or that the premises are in the immediate vicinity (*y*) of a place of public

As to the neighborhood.

In a policy of insurance on a vessel, "insured premises" were held to mean the vessel: Reid *v.* Lancaster Fire Ins. Co., 19 Hun., 286, (1879). "Premises" adjacent to a place where liquor is sold embraces a public street or alley fronting on the place: Bandalow *v.* People, 90 Ill., 218, (1878). The term is used here to denote the house and outbuildings for which a license is asked, as required by sec. 27.

(*v*) "Accommodation" means "conveniences:" Worcester. The accommodation required by law must be taken to mean those conveniences and accessories made necessary under this Act. This refers to those premises which are required to possess the accommodation under secs. 27, 28 and 29.

(*w*) The expression "reasonable accommodation" has reference to places in cities and towns exempted from the necessity of having all the accommodation required by law: see sec. 4, ss. 3. It would be unreasonable to expect an exact definition of the word "reasonable." Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy. But mankind must be satisfied with the reasonableness within reach; and in cases not covered by authority, the verdict of a jury, or the decision of a Judge sitting as a jury, usually determines what is "reasonable" in each particular case, so in this case it is apprehended that the reasonableness of the accomodation, so long as it is sufficient to comply with the Statute, will be in the discretion of the License Commissioners, who are the judges of what should be requisite, and whose decision, when once made, shall not be questioned or reconsidered. See sub-sec. 12.

(*x*) "Not required" means, in the sense in which it is used here, that such licensed premises are not necessary in the neighborhood. Whether such licensed premises are needed or not for public convenience is a matter for the consideration of the License Commissioners.

(*y*) In the usual acceptation of the term, "neighborhood" means the adjoining district. As applied to place the word signifies nearness as opposed to remoteness. "*Neighborhood* has reference to the inhabitants; *vicinity* to something that is near. A pleasant or populace *neighborhood* in the *vicinity* of the city or metropolis." Worcester's Dict., 957.

"Whether a place is in the vicinity or neighborhood of another depends upon no arbitrary rule of distance or topography. 'Vicinity' admits of a more indefinite and wider latitude in place than proximity or contiguity, and as applied to territory may embrace a more extended space than that lying contiguous to the place in question; as applied to towns and other territorial divisions, may embrace those not adjacent:". Per Allen, J., Langley *v.* Barnstead, 63 N. H., 247 (1884); 34 Alb. L. J., 286.

The word "immediate" as defined by Worcester, means, "having nothing intervening either as to place, time, or action." These words, however, cannot very well be construed literally. It is probable that the true meaning of "immediate vicinity" is very close to and upon the same street, so that people attending church must pass by and see the tavern or shop. But the question

worship, (*z*) hospital, (*a*) or school, or that the quiet of the place (*b*) in which such premises are situate will be disturbed (*c*) if a license is granted.

---

is one of fact, of which the License Commissioners are to be the judges. It would be well for the Legislature to define what is meant by the expression.

(*z*) "A place of public worship" is generally applied to a church. But it may have a much wider meaning so as to include any place in which the offices of reverence or religious services are performed, and which is open to, or used by the public for that purpose; or a place adopted, for the time being, for assemblages of a public, or *quasi* public character for the purposes of worship: See Russell *v.* Smith, 12 Q. B., 217; Duck *v.* Bates, 12 Q. B. D., 79. But no definition of the phrase "place of public worship" has been given by any Court suitable to all cases. It apparently has no technical meaning, and each case in which its meaning is the subject of contention, will have to be decided on its merits. In the U. S. a Sunday School was held not to be within the expression: Glass' Appeal, 73 Pa., 45 (1873); nor camp meeting grounds belonging to an association deriving profit therefrom: Summit Grove Meeting Assoc. *v.* School District of New Freedom, 12 W. N. C., 103 (Pa. 1882). A building, although used for educational purposes, so long as the use was merely incidental or occasional, or, if habitual, was purely permissive and voluntary and did not interfere with the use for religious purposes, there being no alienation of the building in whole or in part for educational purposes, was held to be a place devoted to religious purposes and exempt from taxation: St. Mary's Church *v.* Tripp, 14 R. I., 309 (1883).

(*a*) A "Hospital" is an eleemosynary institution and, strictly speaking, there is no legal hospital unless it be incorporated and the persons benefitted are themselves the corporation: Sutton's Hospital, 10 Rep. 31*a*; "and of these hospitals some be eligible, some donative, and some presentable:" Co. Litt. 342*a*. Stroud's Dict. 355. But referring to this definition the Court of Ex. in Colchester *v.* Kewney, 35 L. J. Ex. 206, said: "It seems rather more reasonable to hold that the word is used in a popular sense only, and that any institution which, though not in a strictly legal, might, in a popular sense, be called a hospital. * * * But some doubts arise whether even upon this view this institution (the Wandsworth Royal Victoria Patriotic Asylum) would be a "Hospital," by which word we understand rather an institution for the relief of the sick or aged than for the maintenance and education of children." See that judgment, affirmed in L. R. 2 Ex. 253.

Worcester defines a "Hospital" to be "a building in which provision is made for the sick, the wounded, lunatics, or other unfortunate persons," and this is probably the meaning here.

In modern usage the term "school" is applied to any place or establishment of education: Worcester 1284. See also Stroud's Dict. 307: Wharton 260.

(*b*) "Quiet" means freedom from disturbance; ease; rest; repose; stillness; calmness; peace; security: Worcester, 1171.

"Place" is probably intended to mean "neighborhood" here. This word is generally found in conjunction with other words which give it a colour, and is usually controlled by the context. I think in this case the "neighborhood" is evidently intended. "Is situate," *e. g.* the neighborhood in which the premises to be licensed stands.

(*c*) "Disturbed," *i. e.*, interrupted, impeded, or disquieted.—Worcester, 427.

What is meant here is if the licensing of the premises will in any way interfere with the peace, quietness, security or enjoyment of the inhabitants of the

Hearing objectors.

(9) Any person who has signed (*d*) a memorial against the granting of a license may be heard in opposition thereto by himself or his agent. (*e*)

And those authorized by municipalities.

(10) The council of any city, town, incorporated village, or township, (*f*) may authorize any person to appear in a

district in which the hotel, shop or other premises to which the application refers, it is an objection to the granting of such license.

(*d*) Speaking generally, a "signature" is the writing, or otherwise affixing, a person's name, or mark to represent his name, by himself or by his authority, with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written or affixed. But the minute requisite of a signature will vary according to the nature of the document to which it is affixed, and "in every case where a Statute requires a document to be signed by a particular person, it must be a pure question on the construction of the Statute whether the signature by an agent is sufficient:" per Bowen, L. J., *re* Whitley 32 Ch. D. 337; R. *v.* Kent, L. R. 8, Q. B., 305. It was held that where there was nothing in the Act to shew that the legislature intended anything special as to the mode of signature, the ordinary rule applied that the signature by an agent is sufficient; and held also, that though it was irregular for the agent to sign the principal's name without denoting that it was signed by the agent in the character of attorney, the signature was not on that ground invalid: *re* Whitley, 32 Ch. D. 337. A signature may be in pencil as well as ink: Geary *v.* Physic, 5 B. & C., 234; or by initials; Chichester *v.* Cobb, 14 L. T., N. S., 433; or the person's mark; Baker *v.* Dening, 8 A. & E., 94; or by a stamp; Bennett *v.* Brumfitt, L. R. 3, C. P. 28; Blades *v.* Lawrence, L. R. 9, Q. B., 374. If the signature should be printed and recognized by or brought home to a person as having been printed with his authority, it is submitted, that it would be sufficient: Saunderson *v.* Jackson, 2 B. & P. 238; Schneider *v.* Norris 2, M & S. 288; Blades *v.* Lawrence, L. R 9, Q. B. 374. If, before the person signing has parted with the paper, and while it is in his possession, he changes his mind, and draws his pen through his signature, it would not be sufficient under the statute: Cox *v.* Troy, 5 B. & Ald., 474. Recognition of a previous signature would be sufficient, though the paper was altered, if the alteration was assented to: Stewart *v.* Eddowes, L. R. 9, C. P. 311; but the person at the time of assenting must certainly have express knowledge of the alteration in order to bind him: Brook *v.* Hook, L. R. 6, Ex. 89; Turner *v.* Wilson, 23 C. P., 87; Westloh *v.* Brown, 43 U. C. R., 402. See also cases cited Sinclair's D. C. Act (1880), 6. See also Royal Can. Bank *v.* Grand Trunk Ry. Co., 23 C. P., 225.

(*e*) To "hear" a cause or matter means to hear and determine it: per Lord Blackburn, *re* Green, 7 Q. B. D., 273; 6 App. Cas. 657. But sometimes to "hear" is not quite the same as to "hear and determine:" R. *v.* Warwickshire Jus. 2 A. & E. 768. There is a "hearing" of a summons before Justices if the defendant attends on the return day and claims and obtains its dismissal, the complainant having withdrawn the complaint and not appearing: Bradshaw *v.* Vaughton, 9 C. B. N. S. 103. See Stroud's Dict. 343. But as used here the word signifies merely that such person may be allowed to speak. As to the signification of the word "may," see note (*o*), sec. 4.

The persons signing the memorial may either appear themselves, or by an agent. Any one authorized by a person signing the memorial, may be an agent. See Sinclair's D. C. Act, 1879, 107.

(*f*) See Municipal Act, R. S. O., 1887, c. 184, title II.

similar manner (*g*) on behalf of the ratepayers (*h*) of such city, town, incorporated village, or township, as to the granting of a license, and the person so authorized shall have a right to be heard before the board against the granting of such license.

As to objections to character.

(11) Unless at the instance of the board, (*i*) no objection in respect of the character of any applicant shall be entertained until three days' notice has been given to the applicant. (*j*) The notice may be served personally or left at the usual place of residence or business of the applicant. (*k*) The service may be proved orally or by affidavit

---

(*g*) Any one or more of the petitioners may appear before the Commissioners in support of the objections, or they may be represented by counsel or by an agent. The expression "any person" is wide enough to include a woman appearing on behalf of another person. The word "person" by the Interpretation Act, sec. 8, sub-s. 13, includes "any body, corporate or politic or party, and the heirs, executors, administrators, or other legal representatives of such person."

The Council of the Municipality has the right to appoint some one to represent the ratepayers before the Board.

The applicants would also be entitled to be heard by themselves or their agents before the Board.

(*h*) "Ratepayers" must be understood persons *liable to pay*, although they may not have actually paid: Attorney-General *v.* Foster, 10 Ves 339, 346; but it seems to be a necessary qualification that they should have been rated, unless, perhaps, the name has been omitted by mistake or there is a taint of fraud: Edinborough *v.* Canterbury, 2 Russ. 110, cited Stroud's Dict. 648.

In the case of The Public Libraries Act, "shall mean every inhabitant who would have to pay the Free Library assessment in the event of the Act being adopted:" Attorney-General *v.* Croyden, 38 L. J. Ch. 527. It is probable that the word "ratepayers," as used here, is intended to be synonymous with "electors." See note (*m*) ss. 7.

The "ratepayers" have the right also to be represented at the meeting of the Board for the purpose of considering the applications for licenses and of appointing a person to speak for them at such meeting against the granting of any license objected to under the preceding sub-sections.

(*i*) The Board, it seems, may take cognizance of any objection which may exist against granting the license (see sub-sec. 12), although no formal objection has been made to it. In fact the granting or refusing the certificate is entirely in their discretion, and they are not bound to disclose their reasons. But in the case of any formal objection to the character of the applicant being made notice must be given to him. But see note (*s*), sec. 12, ss. 1.

(*j*) The general rule is that "Days" mean consecutive days, except Sunday is the first or last day. The day of service is not to be reckoned as one of the three days: Young *v.* Higgon, 6 M. & W. 49; Weeks *v.* Wray, L. R. 3, Q. B. 212; McCrae *v.* Waterloo M. F. Ins. Co., 26 C. P. 487.

(*k*) The notice may be served personally, or left at the usual place of residence or business of the applicant.

A "notice" may be either in writing or oral; and if directed to be "given"

sworn before a Justice of the Peace or a Commissioner for taking affidavits. (*l*.)

Board may notice matters not mentioned by objectors.

(12) Notwithstanding anything in this Act contained, (*m*) the board may, of their own motion, (*n*) take notice of any matter or thing (*o*) which in their opinion (*p*) would be an objection to the granting of a license, although no notice or

---

it may be in either of those modes; but if it is to be "left" or "served," then there is an implication that the notice is to be written: Wilson *v.* Nightingale, 8 Q. B., 1034; R. *v.* Shurmer, 17 Q. B. D., 323, and especially the judgment of Coleridge, C. J., in the latter case. But "serve" does not enjoin personal service, and a prepaid registered letter is sufficient: *re* McGrath, 24 Q. B. D., 466. In this case the Statute provides that it may be served either personally, or left at his usual place of residence or business.

"Personal service" means serving the person with a copy of process and shewing him the original if he desire it: Goggs *v.* Lord Huntingtower, 12 M. & W., 803; and other cases cited in Sinclair's D. C. Act, 1879.

"Usual place of residence" means the dwelling in which he lives with his family and sleeps at night (see R. *v.* Hammond, 17 Q. B., 772; Grogan *v.* London and Manchester Ins. Ass. Co., 53 L. T. N. S., 761) and "usual place of business" is the shop or apartment in which he carries on his trade, business or calling. If the notice is left at his place of business, it should be done within the usual hours of business or at any rate while some person is there who can receive it.

The notice should be given to the applicant by the persons objecting, as the Act does not provide for the performance of this duty by the Board of Commissioners or the Inspector.

(*l*) Service of the notice may be proved "orally," that is, by word of mouth before the Commissioners; or "by affidavit," *e. g.* a written statement sworn to before a person having authority to administer an oath (Wharton 30), which in this case would be a Justice of the Peace or a Commissioner for taking affidavits. By the R. S. C., c. 141, Justices of the Peace and other persons are prohibited from administering oaths, affidavits, etc., unless authorized by some law in force, and a form of declaration is provided to be used in lieu of such affidavits; but the authority here given is sufficient to justify the administering of an oath. See Interpretation Act, s. 8, ss. 17.

(*m*) "Notwitstanding anything in this Act contained" is equivalent to saying that the Act shall be no impediment to the Board taking notice of anything appearing to them as an ojection to the granting of a license. See Dwar. 683, citing Cheinie's case; Cecil's case, 7 Rep. 20.

(*n*) "Of their own motion," *i. e.*, of their own impulse; without being actuated by any petition or proceedings as provided for in the preceding subsections.

(*o*) "Any" is a word which excludes limitation or qualification; per Fry, L. J., Duck *v.* Bates, 12 Q. B. D. 79; and has the widest possible signification. See Beckett *v.* Sutton, 51 L. J. Ch. 433. "Matter" is also a word of very wide significance, so that "any matter or thing" may be said to mean any cause or thing, real, apparent or imaginary, which in the judgment of the Board of Commissioners may be an objection to the granting of the license.

(*p*) "In their opinion" means according to the judgment of the Board of Commissioners; see Ormerod *v.* Todmorden Co., 8 Q. B. D. 664.

objection has been given or made as by this Act provided: (*q*) in any such case the board shall notify the applicant, (*r*) and shall adjourn their hearing of the application, if requested by him, for any period not exceeding fourteen days in order that any person affected by the objection may have an opportunity of answering the same.

Notice to applicant in such cases.

Decision of Board final.

(13) The decision of the board, when once announced by the chairman, shall not be questioned or reconsidered; (*s*)

(*q*) "No notice given" refers to the notice required in the case of an objection to the character of the applicant: see ss. 11 and notes thereto. An objection made privately to the Commissioners before they come to the meeting would not be an objection within this section: see R. *v.* Merthyr Tydvil, 14 Q. B. D., 584. It must be made "as by this Act provided"—that is by petition, &c. See sub-sec. 7 *ante*; sub-sec. 14 *post*.

(*r*) "The Board shall notify the applicant." This particular clause refers to such objection as the board may see fit to raise on their own impulse. In the case of objections made by petition, except in the case of an objection as to character, no provision is made for notice to the applicant. But if an objection is made to the character by any petition, three days' notice must be given; in the case of the objection being taken by the Commissioners, no time is mentioned, but the applicant should have reasonable notice in any case, and provision is made for an adjournment for a period not exceeding fourteen days, in case the applicant is not prepared to answer the objection at the time, and in case he requests such adjournment, and also in order that any other person affected by the objection may have an opportunity of answering the same. The same adjournment may be made at the request of any other person affected by the objection. "Fourteen days" means not beyond fourteen days. The full period may be taken, excluding the first day.

"In order that any person affected." The word "affected" is usually understood to mean "concerned" or "interested." Its meaning, however, cannot, in the absence of any judicial construction of the term, be clearly defined. The word may, and probably has, a very wide significance as used here, so that the Statute may be made to refer to any one who is in any way interested or concerned in the granting of the license or the premises to which it will apply.

When the Commissioners institute an objection themselves to the granting of a license, it is their duty not to decide then and there, but to give notice to the applicant and adjourn the further hearing, so that he may have an opportunity of answering the objection. Under a similar provision of the law in England it was held that the licensing Justices were bound to have given the applicant notice; see R. *v.* Farquhar, L. R. 9, Q. B. 258: and the Court also quashed an order of the Quarter Sessions for disregarding this matter: Ruddick *v.* Justices of Liverpool, 42 J. P. 406. At the same time if both the applicant and the person objecting act on the assumption that an objection has been duly made and time given to answer it, then it will be taken that they waived literal compliance with the section; R. *v.* Kent Justices, 41 J. P. 263; see also R. *v.* Eales, 42 L. T. (N. S.) 735; R. *v.* Merthyr Tydvill Justices, 14 Q. B. D. 584.

(*s*) In a strictly legal sense "decision" means a judicial determination. The judgment of the Court; Wharton 395. It has been said that the word "decision" is applicable as well to rules and orders not final as to final decisions: per Strong, J., Danjou *v.* Marquis, 3 C. S. R. 253. Under this section the "decision" is the conclusion at which the Board arrives as to whether a

provided, nevertheless, that in cases in which the decision of the board has not been unanimous, or in cases in which the person or persons affected by such decision, (*t*) petition the board and allege facts or grounds for their consideration not formerly before them, the board may by resolution, in which all of the commissioners concur, decide to rehear the case. Where a rehearing is allowed, notice thereof shall be given by the Inspector to at least one of the petitioners or his agent. (*u.*)

Certificate required with application in case applicant is not a licensee.

(14) (*v*) [In the case of an application for a tavern or shop license by a person who is not, at the time of making such application, a licensee under this Act, or in the case of an application for such license for or transfer thereof to premises which are not then licensed, the petition must be

---

certificate for a license shall be granted or not. When once announced by the Chairman it is decisive. But where a new Board of License Commissioners had been appointed before the retiring Board had completed their functions a *mandamus* to compel the new Board to issue a license which had been granted, but not issued, was refused: Leeson *v.* License Com. of Dufferin, 19 O. R. 67. The section provides that the decision, after it has been announced by the Chairman, shall not be questioned (*i. e.*, not called in question or disputed) or "reconsidered" (that is, taken up for renewed consideration), unless (1) the decision has not been unanimous, or (2) the person or persons affected by it petition the Board for a re-hearing for the purpose of considering new facts or grounds bearing upon the question which the Board have not previously had an opportunity of hearing. Under either of such circumstances the Board may, by a unanimous resolution, decide to re-hear the case. But such re-hearing is entirely optional with the Board.

"Provided nevertheless." These words refer to and qualify what has preceded; see Martelli *v.* Holloway, L. R. 5 H. L., 532.

"Unanimous" means "all of one opinion."—Worcester.

(*t*) The term "persons affected by such decision," it is apprehended, refers to those who appeared before the Commissioners at the original hearing of the matter, and not to persons who wish to appear for the first time after the decision has been given. But the Board has ample power to re-open the matter and to hear any further objections not before brought to their notice, from whatever source they may emanate. See notes to sec. 7.

(*u*) "At least one of the petitioners." The notice may be given to one or more of the petitioners, that is, of the persons whose names are subscribed to the petition, as petitioners for the re-hearing: see Mallet *v.* Hanley, 18 Q. B. D., 787.

"Agent" means a person appointed to transact business for another. Wharton 82. The agent in this case no doubt is intended to mean the solicitor or other person appearing for such petitioners or petitioner at the original hearing of the case.

(*v*) This sub-section is substituted for that contained in the original Act R. S. O., c. 194. Before the passing of this sub-section in 1890, a license might be transferred to other premises without any notice being given as required on the application for a new license: see sec. 38. The Legislature has now pro-

accompanied by a certificate (*w*) signed by a majority (*x*) of the electors entitled to vote at elections for the Legislative Assembly (*y*) in the polling sub-division in which the premises sought to be licensed are situated, and the said majority must include at least, one-third of the said electors who are at the time of such application residents within

---

vided that a license cannot be transferred to premises in another polling sub-division, without the petition of a majority of the electors of such sub-division. A transfer may be allowed to other premises, without a petition, in the same sub-division if: (1) the number of licensed premises therein is not increased, or, (2) the majority of the electors therein do not petition against it on some of the specified grounds. The Legislature has not yet required that public notice of an application for a transfer to premises within the same sub-division shall be given, so that it would seem that such a transfer may be made without an opportunity being given to petition against it.

(*w*) A certificate ordinarily need not be in writing unless so stipulated (see Roberts *v.* Watkins, 14 C. B N. S., 592), although the definition given by Dr. Wharton is, "a testimony given in writing to declare the truth of anything:" Wharton 121. Here the certificate must necessarily be in writing and "signed" by a majority of the electors, etc. See note (*d*) ss. 9.

(*x*) "Majority" means the greater number; *i. e.*, more than half: Worcester 271. The majority necessary under the Municipal Act, which requires the consent of a majority of the qualified electors to a by-law, is that of the electors voting on the by-law, and not a majority of all the electors in the municipality: Jenkins *v.* Corporation of Elgin, 21 C. P., 325; but see McAvoy and Municipality of Sarnia, 12 U. C. R., 99; People *v.* Morris, 13 Wend. (N. Y.), 325; Billings and the Cor. of Gloucester, 10 U. C. R., 273.

This section requires "a majority of the electors entitled to vote for the Legislative Assembly," and such majority "must include at least one-third of the said electors who at the time of the application are residents within the said polling sub-division." This, it is clear, comprises a majority of all of the electors.

(*y*) The persons entitled to vote for the Legislative Assembly are: Every male person of the full age of 21 years, a subject of Her Majesty by birth or naturalization, and not disqualified under "The Ontario Election Act," or "The Manhood Suffrage Act," and not otherwise prohibited from voting if duly entered on the list of voters proper to be used, provided such person has resided in the Province for nine months next preceding the time fixed for beginning to make the assessment roll in which he is entitled to be entered, or has so resided for twelve months next preceding the time for making complaint to the County Judge under "The Voters' List Act," and provided also that such person was in good faith at the time fixed aforesaid a resident of, and domiciled in the Municipality in the list of which he is entered, and is at the time of tendering his vote a resident of, and domiciled in the electoral district and had resided in the said electoral district continuously from the time fixed as aforesaid, for beginning to make said roll or for making such complaint, as the case may be: R. S. O., c. 4, s. 3. All of the petitioners must necessarily be residents of the electoral district, as non-residents are not included amongst those "entitled to vote," and the petitions must include one third of all the electors resident in the polling sub-division at the time of the application. "At the time of such application" refers to the time of the filing of the application for a license. See note (*z*) ss. 2. See also Chapman *v.* Robinson, 1 E. & E., 25; Brown *v.* Wilkinson, 15 M. & W., 391.

the said polling sub-division. The foregoing shall not apply to the transfer (*z*) of a license from the holder thereof to some other person for the same premises with the consent of the commissioners, nor to a licensee applying for a license for or permission of the commissioners to remove with his license to other premises (*a*) in the same polling sub-division; provided that such license or permission shall not increase the number of licensed premises in such polling sub-division, (*b*) and shall not be allowed if a majority of the electors duly qualified as aforesaid petition against the same on the grounds hereinbefore set forth or any of such grounds. (*c*)

Clerk of municipality to certify in case of dispute.

(*a*) In case of any dispute (*d*) as to whether the number of electors who have signed the certificate or petition hereinbefore mentioned, compose a majority of the duly qualified electors of the sub-division, or include one-third of the resident electors, or, in case of a dispute, as to whether any one or more persons who have signed the certificate or petition are duly qualified voters, or are residents of the sub-division, the clerk of the municipality (*e*) in which the sub-division is situate, shall take evidence upon oath, or otherwise, (*f*) and determine the

---

(*z*) See sec. 37.

(*a*) See sec. 38.

(*b*) See sec. 38.

(*c*) The grour ·s of objection are set forth in sub-sec. 8 and notes thereto.

(*d*) "A dispute" may refer to disputes of law as well as of fact: see Forwood *v.* Watney, 49 L. J. Q. B. 447. The word ordinarily implies "contention, controversy, or argument."—Worcester 422.

(*e*) See Municipal Act, R. S. O. 1887, c. 184, sec. 245 *et seq.*

(*f*) The word "oath" shall be construed as meaning a solemn affirmation whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath, and in like cases the word sworn shall include the word "affirmed." And in every case where an oath or affirmation is directed to be made before any person or officer, such person or officer shall have full power and authority to administer the same and to certify to its having been made.

Where, by an Act of the Legislature, an oath is authorized or directed to be made, taken, or administered, the oath may be administered and a certificate of its having been made, taken or administered, may be given by any one named in the Act: Interpretation Act, s. 8, ss. 18, 19.

question in dispute, and he shall in such case certify to the board, the number of duly qualified electors and of resident electors respectively for the sub-division and the number of duly qualified electors who have signed the certificate or petition as the case may be and in the case of a certificate, the number of such last mentioned electors who are resident as aforesaid, and his certificate shall be final and conclusive. (*g*.)

As to unorganized districts.

(*b*) In unorganized districts the said certificate shall be signed by at least eleven out of the twenty householders residing nearest (*h*) to the premises in which the applicant proposes to carry on the business for which the license is required.

The enquiry by the clerk upon a reference to him in the case of a dispute should be whether the number of electors who have signed the certificate or petition compose a majority of the duly qualified electors of the polling sub-division, or whether they include one-third of the resident electors, or whether any one or more persons who have signed the certificate or petition are duly qualified voters or are residents of the sub-division, and upon his determination of the question he shall certify to the Board of License Commissioners :

1st. In case the dispute relates to the petition provided for in sub-sections 7 and 8, (*a*) the number of duly qualified electors for the polling sub-division : (*b*) the number of resident electors for the said sub-division : and (*c*) the number of such duly qualified electors who have signed the petition.

2nd. In case the dispute relates to the certificate of the electors to accompany the application for a license under this sub-sec., then the clerk's certificate shall, *in addition* to the facts certified to as above, also contain a statement of the number of electors who have signed the applicant's certificate, who are not only electors but are also residents of the sub-division, so as to show whether they include the requisite one-third of those electors who are at the time of the application residents within the sub-division and entitled to vote at elections for the Legislative Assembly. The facts are to be determined by such evidence as the clerk may be able to obtain "upon oath or otherwise," which means by oath or any other sufficient means : Shelford *v.* Louth Railway, 4 Ex. D. 317. The proper construction of this seems to be that the clerk may ascertain the facts either by the evidence of witnesses to be examined by him on oath, or by some other evidence of an equally satisfactory character. This would probably include references to official documents—the assessment roll, voters' lists, &c., but as the evidence as to residence could not well be obtained from these, it should naturally be obtained on the oaths of persons having a knowledge of the facts, who are brought before him by the parties interested.

(*g*) When a decision is final and conclusive, there is no appeal against it: Waterhouse *v.* Gilbert, 15 Q. B. D., 569 ; Bryant *v.* Reading, 17 Q. B. D., 128; Lyon *v.* Morris, 19 Q. B. D. 139 ; R. *v.* Doty, 13 U. C. R. 398 ; Keane *v.* Stedman, 10 C. P. 435 ; Mulligan *v.* Cooke, 9 U. C. L. J., 122.

(*h*) "Nearest" is synonymous with next : Smith *v.* Campbell, 19 Ves., 400;

(*c*) Such certificate (*i*) shall be in the form N., in the schedule hereto, or to the like effect, (*j*) in respect of the fitness of the applicant to have such license, and the premises in which it is proposed to carry on the business, and the desirability, on the ground of public convenience of having a license granted therefor. Form and requisites of certificate.

(*d*) The certificate in support of any petition for a license to take effect from the first day of May, 1890, shall for the purposes of this section be in time if presented to the commissioners at or before their first meeting for considering applications.] (*k*) 53 Vic., c. 55, sec. 1. Time for presenting certificate.

(15) Any petition against the granting of a license shall be lodged with the inspector at least four days before the said first meeting of the board to consider the application; (*l*) and the inspector shall present the same to the board at the first meeting thereof. Time for filing.

(16) The inspector shall keep a list posted (*m*) in his office for three days previous to the meeting of the board, of all certificates and petitions lodged with him as aforesaid, and every such petition or certificate shall be open for public inspection without fee. (*n*.) Posting list of petitions, etc.

---

and "near" is also the equivalent of "nearest:" Stroud's Dict., 496. See also Bathard *v.* London Sewers Comrs., 54 J. P., 135.

(*i*) "Such certificate," *i. e.*, the certificate required in case of an application for license by a person who is not licensed at the time of making such application, or in case of a transfer of license to premises outside of the polling subdivision then licensed.

(*j*) A substantial compliance is all that is required: *re* Allison, 10 Ex. at page 568, per Parke, B.; R. *v.* Hyde, 7 E. & B., 859; Eggington *v.* Lichfield (mayor, etc.), 5 E. & B., 101; R. *v.* Justices Cheshire, 8 D. & L., 337. See also Henry *v.* Armitage, 12 Q. B. D., 257. See also notes to sec. 103.

(*k*) This provision only applies to applications for licenses for the year 1890-91.

(*l*) The certificate is to be "lodged" or filed in the office of the Inspector "at least four days before the meeting of the board." "At least four days" means four clear days at least. See notes (*d*) and (*h*), sub-sec. 5 *supra*.

(*m*) "Posted" is defined literally to mean "fixed upon a post, as a notice or advertisement."—Worcester, 1108. Here it means placed in such a position that it may be read without asking permission.

(*n*) "Three days" mean clear days. The Act makes no provision as to what the list should contain, but it is submitted that in the case of a petition for a license it should shew the name and residence of the applicant, the premises in

Hearing and determining objections.

(17) Every application (*o*) for a license, and all objections to every such application, shall be heard and determined at a meeting of the board. (*p*.)

Proceedings at hearings.

(18) Every such hearing shall be open to the public, and the board may summon and examine on oath such witnesses as they may think necessary, and as nearly as may be in the manner directed by any Act now or hereafter to be in force relating to the duties of Justices in relation to summary convictions and orders; and any member of the board may administer the oath; but nevertheless nothing herein contained shall prevent the board from retiring or sitting with closed doors while considering or preparing their decision

---

respect of which the license is asked, and the description of license applied for. In the case of certificates, sufficient information should be given to shew the particular applications to which they respectively refer. The original petitions and certificates shall be accessible to the public for the purposes of examination and inspection without any charge.

(*o*) In a strict legal sense the word "application" has been held to include the hearing of a suit as well as an interlocutory proceeding (see International Financial Soc'y *v.* Moscow Gas Co., 7 Ch. D. 241), but in this Act it seems to have been used interchangeably with the word "petition" and as synonymous to it.

(*p*) "Objections to every such application." See sub-section 8 and notes thereto.

To hear a cause or matter means to hear and determine it. It has been said that "hearing" includes not only its necessary antecedents, but also its necessary consequences: per Selborne, L. C., *re* Green, 7 Q. B. D., 273; *nom* Green *v.* Penzance, 6 App. Cas. 657.

See sub-sec. 5 of this section. The meeting must be held on a day to be fixed by the Commissioners, not less than one week prior to the 1st of May in each year, and the certificates and petitions "lodged" with the Inspector at least four days before the day fixed for the meeting, and must be presented by the Inspector at that meeting.

When power is given to "hear and determine" an offence, it was held that a condition is implied that the accused be first cited by a summons and have an opportunity of defence: Dwar. 671, 672.

So in this case it is submitted that the applicant has the right to be heard as well as the objectors, although no express provision is made therefor.

When two or more are to hear and determine a matter, they must sit together and not separately (Burn's Justice Intro. xxiv., cited Dwar., 670) and it must be done under this sub-section at a meeting of the board.

A "meeting" implies a concurrence or coming together of at least two persons: per Coleridge, C. J., Sharp *v.* Dawes, 2 Q. B. D., 26. One swallow does not make a summer, nor does the presence of one Commissioner constitute a meeting. As was said by Coleridge, C. J., in Sharp *v.* Dawes, *sup.*, "No doubt in a particular Statute the word might be used in a special sense, so that the attendance of one might satisfy it;" but under the provisions of this Act it is declared that the presence of two of the Commissioners is requisite to form a *quorum*. See sect. 3 and notes thereto.

or judgment in respect of any application or applications. (*q*)

(19) Any meeting of the board for the consideration of applications may, at the discretion of the board, be adjourned from time to time to the same or any other place or building within the district. (*r*.) Adjourning meetings.

(20) Where the inspector has not taken or set apart premises especially for the purposes of an office, the room or rooms in which he usually conducts his official business, Office of inspector.

(*q*) The meeting shall be held in a place to which the public have or are permitted to have access: see Hirst *v.* Molesbury, L. R. 6, Q. B. 180. It has been held that the expression "open Court" does not include the private room of a County Judge, though often used by him for hearing causes: Kenyon *v.* Eastwood, 57 L. J. Q. B., 455.

By the "public" is meant the people at large: Worcester, 1151. No one who wishes to attend may be excluded. The proceedings are to be conducted in the same manner as in the case of Justices of the Peace on the trial of cases under "The Summary Convictions Act," which provides that the room or place in which the Justice sits shall be deemed an open and public Court to which the public generally may have access, so far as the same can conveniently contain them: R. S. C. 1886, c. 178, s. 33. "Examine on oath." See note to sub-sec. 14.

A power to take examinations or other proof in itself implies that it is to be done on oath: Hoyles *v.* Blore, 14 M. & W., 887.

"The Summary Convictions Act," R. S. C. 1886, c. 178, sects. 13-22, makes provision for enforcing the attendance of witnesses. Sects. 29-32 provide for the case of persons likely to give material evidence and who will not voluntarily appear, and sec. 33, *et seq*, prescribes the duties and powers of the Justices on the hearing and examination of witnesses. See sects. 93-100, post and notes thereto.

The word "any" excludes limitation or qualification: per Fry L. J., Duck *v.* Bates, 12 Q. B. D., 79. But its generality in this case is restricted by the context, and "any member of the Board" applies to the Board having jurisdiction in the particular case under adjudication: see Stroud's Dict., 39.

After having heard the parties or their agents, the Commissioners may either retire or clear the Court and continue their deliberations with closed doors, but this can only be done while they are considering or preparing their decision or judgment. All evidence and argument should be heard in public. The Commissioners should not listen to anything from any person except at the hearing: *re* Cruickshank *v.* Corby, 30 C. P., 466.

(*r*) The words "from time to time" are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and, therefore, not being able to act again in the same direction. The power of adjournment here conferred on the Board of License Commissioners seems to be unlimited. They may adjourn as often as they may think fit: see Lawrie *v.* Lees, 7 App. Cas. 19; *re* Sutton *v.* Coldfield Grammar School, 7 App. Cas. 91; see also Neilson *v.* Jarvis, 13 C. P., 176, in which it was held that where the words were not used an execution was not renewable.

The "same" generally refers to the next preceding antecedent: Co. Litt., 20*b*, 385*b*.

"Within the district" refers to the license district. See sec. 2, ss. 6.

whether at his residence or place of business, shall be deemed to be his office for the purposes of this Act. (*s*.)

Foregoing sub-sections declaratory only.

(21) The foregoing sub-sections of this section are declared to be obligatory (*t*) on the board and inspector, but non-compliance therewith shall not invalidate the action of the board or inspector. Nothing in this sub-section contained shall authorize the granting of a license contrary to the provisions of sub-section 14. 47 V., c. 34, s. 4.

Mode of procedure in obtaining tavern or shop licenses.

12. (1) (*u*) If upon application (*v*) of any person requiring a tavern or shop license, it appears that such applicant is the true owner of the business (*w*) of such tavern or

(*s*) An office is the place where a person usually conducts his business (see Worcester), and his residence is the place where he eats, drinks and sleeps, or where his family or his servants eat, drink and sleep; per Bayley, J., R. *v.* North Curry, 4 B. & C. 959. It has a variety of meanings, according to the Statute in which it is used, per Erle, C. J., Naef *v.* Mutter, 31 L. J. C. P. 359; Shaw *v.* Morley, L. R. 3, Ex. 137; Bows *v* Fenwick, L. R. 9, C. P. 339; see also *re* Bowie, *ex p.* Breull, 16 Ch. D. 484. And a person's place of business may be his residence, but in this case it may be taken to mean the place where he usually sleeps; see Attenborough *v.* Thompson, 2 H. & N. 559; Blackwell *v.* England, 8 E. & B. 541; Greenham *v.* Child, 59 L. J. Q. B. 27; *re* Moulson, *ex p.* Knightly, 51 L. J. Ch. 828; Wallis *v.* Smith, W. N. (1882) 77. See Sinclair's Con. D. C. Act, 1888, 89, 126, 141; Stroud's Dict., 678.

Where the Inspector has no regular office or place of business, the place where he usually conducts his official business, wherever it may be, shall be deemed his office for the purposes of this Act, that is for the purpose of posting up the list of applications and certificates as in sub-sec. 16.

(*t*) The sub-sections of this section must be observed strictly by the Board of License Commissioners and Inspector, and on any refusal or neglect on the part of these officers to comply, the Courts would enforce compliance. Where a public duty devolves upon an official, and no specific remedy is provided in case of his refusal, the Court will grant *mandamus* to command the performance of the duty: Tapping on *mandamus* page 12; R. *v.* W. R. Justices, 1 New Sess. Cas., 247. But see Leeson *v.* License Com. of Dufferin, 19 O. R., 67, in which *mandamus* to compel the issue of a license was refused.

"Shall not invalidate." This only applies to the legal acts of the Commissioners and Inspector. A license issued in contravention of the Statute, as in the case of the granting of a license to a Commissioner or Inspector, is void. See also the licenses prohibited by secs. 13, 14, 15, 16.

(*u*) Under this section an applicant to be entitled to a license must be the true owner of the business, and have complied with the requirements of the law and of any Municipal By-laws in force in that behalf, and also with the regulations and requirements of the Commissioners, and be one of the persons designated or otherwise approved of by the License Commissioners. These are conditions precedent to the granting of the license, and must be complied with before the License Commissioners are authorized to grant the certificate.

(*v*) "Application" and "petition" seem to be used as synonymous or interchangeable terms: see sec. 11, sub-sec. 1 *et seq.*

(*w*) The Canadian Act gives no definition of the term "owner." In the English Licensing Act, 35 and 36 Vic., c. 94, the expression used is "owner of

shop, and has complied with the requirements of the law, and of any municipal by-laws in force in that behalf, and also with the regulations and requirements of the license commissioners, (*x*) and is one of the persons designated or otherwise approved of by the license commissioners, (*y*) the said license commissioners may grant (*z*) such applicant

---

licensed premises," and it is defined to mean "the person for the time being entitled to receive, either on his own account or as mortgagee or other incumbrancer in possession, the rack-rent of such premises." But this conveys a different meaning to the phrase "true owner" as used in our Act. The "owner" is he who has dominion over a thing which he may use as he pleases, except as restrained by law or by contract; it has been held to include the person in possession and control of any article of personality, as the one who hires a carriage: see Dow *v.* Gould Mining Co., 81 Cal., 649 (1867); Camp *v.* Rogers, 44 Conn., 298 (1877). The term is used in this section in its widest sense, it will, therefore, include any one who is entitled for the time being to th possession of the premises and to the control and usufruct thereof; or as said by Bramwell, L. J., Eglinton *v.* Norman 46 L. J. Q. B., 559: "The 'owner' or 'proprietor' of a property is the person in whom it is for the time being beneficially vested and who has the occupation or control or usufruct of it; *e. g.*, the lessee is, during the term, the owner of the property demised." As to the application and meaning of the term "owner" generally, see Gilchrist *v.* Tobin, 7 C. P., 141; Hopkins *v.* Provincial Ins. Co., 18 C. P., 74; McDougall *v.* McMillan, 25 C. P., 75; Chatillon *v.* Can. M. Fire Ins. Co., 27 C. P., 450; Bank of Toronto *v.* Fanning, 17 Gr., 514; Chauntler *v.* Robinson, 4 Ex., 163; Lister *v.* Lobley, 7 A. & E., 124; Cook *v.* Humber, 11 C. B. N. S., 33; R. *v.* Vestry of St. Marylebone, 20 Q. B. D., 415; Woodard *v.* Billericay Highway Board, 11 Ch. D., 214; Jackson *v.* Kassel, 26 U. C. R., 341.

The word "true" has very little significance; it is little more than an expletive. The "owner" of anything is quite as much the owner as the "true owner" can possibly be. A person may be the "true owner" of the business, however, although the license is taken out in the name of another: see note, (*a*) sec. 11., ss. 3. But the license can only be legally granted to the "true owner," and if obtained by fraudulent means may be revoked: see sec. 91. In some cases, however, it may happen that a firm or company are the owners or occupiers, and a license is applied for in the name of a manager or servant of such company. In England this is frequently done, see Paterson's L. A., 158, but it is doubtful if a license could be issued under this Act to such manager or servant.

(*x*) The applicant is bound not only to comply with the regulations—that is, the resolutions or by-laws—of the License Commissioners, (see notes to sec. 4), but must conform to the requirements of the law, to any Municipal By-laws in force in the Municipality, and to the "requirements" of the License Commissioners.

(*y*) See sec. 11, sub-sec. 17 and notes thereto.

(*z*) It is entirely optional with the Commissioners either to grant or refuse the certificate: See R. *v.* Kensington, 12 Q. B., 654; R. *v.* Salford, 18 Q. B., 687. In the latter case, it was held that the granting of a license was not, in itself, a judicial act over which the Court could exercise control. The Court refused to interfere by *mandamus* to compel the Commissioners to issue a license: Leeson *v.* License Com. of Dufferin, 19 O. R., 67. An action will not lie for refusing a license: Basset *v.* Godschall, 3 Wils., 121, 4 Mew's. Dig., 1286; and there is no appeal from their decision. See sec. 11, sub-sec. 13. But see R. *v.* Middlesex Justices, 3 B. & Ad., 938; R. *v.* Deane, 2 Q. B., 96; R. *v.* Cockburn, 4 E. & B., 265; R. *v.* Justices of Ely, 5 E. & B., 489; R. *v.*

a certificate under the hands of any two of them, (*a*) stating that he is entitled to a license for a certain time, (*b*) and for a certain tavern, inn, house or place of public entertainment or shop (*c*) within the municipality, to be mentioned in such certificate.

(2) The license duty (*d*) shall then be paid by the applicant into such bank as may be designated by the Provincial Secretary, to the credit of the "License Fund Account," for the license district; (*e*) and upon production by the applicant to the inspector of the certificate of the license commissioners, together with a receipt shewing payment in full of the duty to the credit of the license fund

---

Justices of West Riding, Drake's Case, L. R., 5 Q. B., 33; R. *v.* Annandale Justices, 37 J. P., 85, cited in Paterson's L. A., 59. When once the case is heard and adjudicated upon, there is no remedy if the Commissioners refuse to grant a license. See R. *v.* Staffordshire Justices, R. *v.* Pirehill, 14 Q. B. D., 13. It was held that under the English Licensing Acts, the discretion of the Justices as to granting or refusing a license, by way of renewal, in respect of excisable liquors to be drunk on the premises, is absolute, provided it be exercised judicially: Sharpe *v.* Wakefield, 22 Q. B. D., 239; affirmed by the House of Lords, W. N., 1891, 60. But in delivering judgment, Lord Bramwell said: "The Legislature has most clearly shewn, that it supposed, contemplated that licenses would usually be renewed: that the taking away of a man's livelihood would not be practised cruelly or wantonly."

It was also held that if the Commissioners act corruptly, the only remedy is a criminal information against them: see sec. 67; see also R. *v.* Holland, 1 T. R., 692; R. *v.* Williams, 3 Burr., 1317; R *v.* Harris, 3 Burr., 1716. See also R. *v.* Sainsbury, 4 T. R., 451.

(*a*) Two members of the Board of License Commissioners form a *quorum*. "Under the hands of any two of them" means that it may be signed by any two of such License Commissioners: see Wilson *v.* Wallani, 5 Ex. D., 155. It also implies that the certificate must be in writing. A certificate signed by less than two would not be sufficient.

(*b*) A "certain time" means for a definite period. The license can only cover one period, namely, the license year, which begins on the 1st May and ends on the 30th April in the next ensuing year: see sec. 8, sub-sec. 1. But under certain circumstances the Commissioners may extend the duration of a license for a period of not more than three months by an endorsement thereon. See sec. 21.

"Certain" means "known, established, definite; as, a certain date, a certain instrument:" Anderson's Dict., 160. A "certain tavern" is one particularly specified and described in the certificate. The license applies to that particular tavern, inn, &c., and to no other place. See sec. 17.

(*c*) See sec. 2, ss. 2, note (*g*).

(*d*) See sec. 41.

(*e*) See sec. 45.

account, (*f*) the inspector may issue (*g*) the license authorized by the license commissioners. R. S. O. 1877, c. 181, s. 10.

No license to be granted for certain times and places.

13. The license commissioners (*h*) shall not grant (*i*) any certificate for a license, or any certificate whatsoever, (*j*) whereby any person can obtain or procure any license for the sale of spirituous, fermented or intoxicating liquors, on the days of the Exhibition of the Agricultural Association of Ontario, (*k*) the Industrial Exhibition of Toronto, or of any electoral district, or township, agricultural society exhibition, either on the grounds of such society, or within the distance of three hundred yards (*l*) from such grounds. (*m*) R. S. O. 1877, c. 181, s. 11; 47 V., c. 34, s. 14.

No license to ferry boat.

14. No license (*n*) shall hereafter (*o*) be granted to

(*f*) The duty is paid into the bank by the applicant, who obtains a receipt for such payment, and the bank's receipt therefor is to be taken as evidence of such payment.

(*g*) "May issue:" see sec. 4, note (*o*). A license issued without the provisions of this section being complied with would be void: see Thompson *v.* Harvey, 4 H. & N., 254.

(*h*) See sec. 3 and notes thereto.

(*i*) See sec. 66 and notes thereto. See also note (*l*) to sec. 3.

(*j*) See notes to secs. 12, 14.

(*k*) See R. S. O., c. 162, page 1527.

(*l*) It is now established that where there are no special controlling words, distance is not to be measured by the nearest available mode of access, but "as the crow flies," *i. e.*, by the shortest line that can be drawn from one place to another on the map without regard to the curvature or inequalities of the surface of the earth: Mouflet *v* Cole, L. R. 8, Ex. 32; Duignan *v.* Walker, 5 Jur. N. S., 976; Atkyns *v.* Kinnier, 4 Ex., 776; Sinclair's D. C. Act, 1879, 88, 344; Maxwell on Statutes, 173.

(*m*) Under this section no license for the sale of intoxicating liquors of any kind, and no certificate for any kind of license shall be granted. It is inferred that any such certificate, if granted in contravention of this section, would be void. The English Act, 3 and 4 Vic., c. 61, s. 2, provides that every applicant for a license shall produce a certificate that he is the real resident holder and occupier of the house, etc., and it was held that a license granted in contravention of this provision was void: Thompson *v.* Harvey, 4 H. & N., 254. The Court refused to grant a *mandamus* to revoke a certificate for a license granted in contravention of a Municipal By-law: R. *v.* Burnside, 8 U. C. R., 263.

Violations of this section are punishable by a penalty of not less than $50 or more than $100. See sec. 66.

(*n*) "No license" means not any license; see Worcester, page 965, and in this section the full significance of the word is intended to apply; therefore no license of any sort or description can be granted for a ferry.

(*o*) "Shall hereafter." The word shall is imperative; see R. S. O., 1887, c. 1, s. 8, sub-s. 2: "hereafter" means after the time when the Act was

or for (*p*) any ferry boat (*q*). 47 V., c. 34, s. 24, *part.*

No license to be granted to commissioner or inspector.

15. A tavern (*r*) or shop license (*s*) shall not (*t*) be granted to or for (*u*) the benefit of any person (*v*) who is a license commissioner (*w*) or inspector, (*x*) and every license so issued shall be void. (*y*) R. S. O. 1877, c. 181, s. 12.

---

presented for the Royal assent, as is the case with the words "now" or "next:" *Ib.* sub-sec. 3.

(*p*) What is meant here is that no license shall be issued to any ferry boat or to any person for the purposes of such boat. See notes to sec. 15.

(*q*) "Ferry boat:" a boat for conveying passengers across a ferry. See Worcester, 549. A "ferry" is a common highway to all the Queen's subjects, usually across a large and deep river: Stroud's Dict., 281. See R. S. C., 1886, p. 1275; R. S. O., 1887, pages 1162, 1844, 1923, 1944.

The effect of this section is to prohibit the sale of intoxicating liquors on ferry boats; its sale is also prohibited on all vessels navigating the waters of Ontario. See sec. 10, *ante*.

A certificate for a license granted in contravention of this section would, it is presumed, be held void; see Thompson *v.* Harvey, 4 H. & N., 254. The Court refused to grant a *mandamus* to revoke a certificate for a license granted in contravention of a Municipal By-law: see Gamble *v.* Burnside, 8 U. C. R., 263.

(*r*) A "tavern license" is defined to be: "a license for selling, bartering, or trafficking by retail in fermented, spirituous, or other liquors in quantities of less than one quart, which may be drunk in the inn, ale, or beer-house or other house of public entertainment in which the same liquor is sold." See sec. 2, sub-s. 2, and notes thereto.

(*s*) A "shop license" shall mean "a license for selling, bartering or trafficking by retail in shops, stores, or places other than inns, ale or beer-houses, or other houses of public entertainment, in quantities not less than three half pints at any one time to any one person, at the time of sale to be wholly removed and taken away in quantities of not less than three half pints at a time." See sec. 2, sub-sec. 3, and notes thereto.

(*t*) "Shall not." This is imperative: see R. S. O., c. 1, s. 9, ss. 2.

(*u*) A license cannot be granted to any person who is a License Commissioner or Inspector, nor to any other person for the advantage, gain, or profit of such License Commissioner or Inspector (see Worcester's Dict.): see sec. 85. In either case the license issued would be void.

(*v*) By R. S. O., c. 1, s. 7, ss. 13, the word "person" is made to include any body, corporate or politic, or party, and the heirs, executors, administrators, or other legal representatives of such person to whom the context can apply according to law.

(*w*) "License Commissioners." See sec. 3 and notes thereto.

(*x*) "Inspector." See sec. 2, ss. 8.

(*y*) Very frequently the construction given by the Courts to the word "void" is that it should be understood to mean "voidable" only, but when, as in this case, a Statute has some object of public policy in view which requires the strict construction of the term "void," it receives its natural full force and effect; that is, it is "empty and without force," see R. *v.* Hipswell, 8 B. & C., 466; Betham *v.* Gregg, 10 Bing., 352; Storie *v.* Winchester, 17 C. B., 653: see Maxwell on Statutes. When an Act of Parliament makes a thing "void," it shall be void to all intents, and have a very violent relation (Dwar, 653)

16. (1) A tavern or shop license (*z*) shall not be issued for premises within any license district (*a*) of which any of the license commissioners (*b*) or of the inspectors (*c*) for such district is the owner, and every license commissioner who knowingly grants a certificate (*d*) for a license, and every inspector who knowingly (*e*) issues a license for any

License not to be issued for any premises owned by such person in his district.

---

see also Stroud's Dict., 865-868. The intention here is, no doubt, that the full effect of the term should be given to it, and a license issued in contravention of the section would be void and without effect, and any one attempting to sell under it would be guilty of an offence under sec. 49. See also Sinclair's L. & T., 80; Roscoe's N. P., 1003; Pollock on Con., 5th Ed., 476, 477. The license would be void, it is submitted, even if it were not expressly provided that it should be so. Where an Act provided that no license should issue to any person who was not the real resident holder and occupier of the dwelling house in which he should apply to be licensed, it was held that a license issued in contravention of that enactment was void: Thompson *v.* Harvey, 4 H. & N., 254.

(*z*) "Tavern licenses." See sec. 2, ss. 2. "Shop license." See sec. 2, ss. 3.

(*a*) "License district." See sec. 2, ss. 6.

(*b*) "License Commissioners." See sec. 3 and notes thereto.

(*c*) "Inspectors." See sec. 2, ss. 8.

(*d*) "Grants a certificate." See sec. 12, ss. 1.

(*e*) "Knowingly issues." "Knowingly" imports that an accused person knew what he was about to do, and with such knowledge proceeded to commit the offence charged: United States *v.* Claypool, 14 F. R., 128 (1882); Gregory *v.* United States, 17 Blatch., 330 (1879); see Stephen's Crim. Law, 114-118. But where the servant of a licensed victualler knowingly supplied liquor to a constable on duty, without the authority of his superior officer, it was held that the licensed victualler was liable to be convicted, although he had no knowledge of the act of the servant, and although it was not proved that the servant knew the constable was on duty at the time the offence was committed: Mullins *v.* Collins, L. R. 9, Q. B. 292. A conviction of a publican for selling liquor to a drunken person was also affirmed, although the person to whom the liquor was sold had given no indication of intoxication and the publican did not know he was drunk: Cundy *v.* Le Cocq, 13 Q. B. D., 207.

It was also held that it was unnecessary to shew that the seller of an article of food in an altered state knew that it had been altered: Pain *v.* Boughtwood, 59 L. J. M. C, 45. In these cases the word "knowingly" was not a part of the Statutory definitions of the offences created, but was read into the Statute by the Court, and the cases are chiefly valuable as showing the importance of the presence or absence of the word in such definitions.

But where the term "knowingly issues" is used, as in this section, it may be taken to mean "intentionally issues," as in the case of Twycross *v.* Grant, 2 C. P. D., 469, in which it was held that the words "knowingly issuing" mean "intentionally issuing" a prospectus without inserting the information required by the Statute to be specified, although they are admitted under the *bona fide* belief that it is unnecessary to specify them. And so, even if the License Inspector should not be aware of the prohibition, if he intentionally issue the license to one of the persons to whom the issue is prohibited, he would be liable to the penalty.

such premises, contrary to the provisions of this section, shall incur a penalty of $500. (*ee*) R. S. O. 1877, c. 181, s. 13.

Last sub-section not to apply to companies in which commissioner, etc. is a shareholder.

(2) The preceding sub-section shall not extend or apply to premises owned (*f*) or occupied (*g*) by a joint stock company (*h*) in which a license commissioner is a shareholder, but in every such case, and in every case where a license commissioner is the mortgagee (*i*) of any premises or agent (*j*) for the collection of rents in respect of any such premises, such license commissioner shall not, under a penalty of $500, (*ee*) vote upon any question affecting the granting (*k*) of a license to the company or for premises owned or occupied by it, or for premises in respect of which he is such mortgagee or agent. 46 V. c. 25, s. 1.

(*ee*) The penalty is recoverable by action, and one-half thereof shall belong to the Crown and the other half to the private plaintiff, if any: see Interpretation Act, R. S. O., c. 1, s. 8, ss. 30.

(*f*) "Owned." See note (*w*) to sec. 12.

(*g*) "Occupied" refers not only to premises of which a person is tenant, but also to premises actually under his control: Robinson *v.* Briggs, L. R. 6 Ex., 1. But the tenant is, speaking generally, the occupier of premises: R. *v.* Poynder, 1 B. & C., 178; see also Greenslade *v.* Tappscott, 1 C. M. & R., 55. It was held that a person "occupies" a building, notwithstanding that his son and son-in-law live with him: Chatillon *v.* The Canadian M. Fire Ins. Co., 27 C. P., 450; see also Bank of Toronto *v.* Fanning, 17 Grant, 514; Sinclair's L. & T., 59, *et seq.*

(*h*) A "Joint Stock Company" is a body corporate with a capital stock divided into numerous transferable shares. It is usually incorporated by a Charter issued by the Governor-General in Council or Lieutenant-Governor in Council. When the Company requires powers which Parliament or the Legislature has not authorized to be conferred by Charter, a Special Act of Incorporation is necessary: see R. S. C., c. 119; R. S. O., c. 156, 157. A License Commissioner may be a shareholder in such a Company owning or operating an hotel, but he cannot in such case vote on the question of granting a license to such hotel. An institution "in the nature of a Joint Stock Company" does not comprise an institution the rules of which do not permit of any dividend, division, or bonus among its members: *re* Bristol Athenæum, 43 Ch. D., 236.

(*i*) The ordinary meaning of a "mortgage" is a conveyance of freehold, copyhold, or leasehold property with a proviso for redemption to secure an advance: Cavendish *v.* Cavendish, 30 Ch. D., 227; Poulett *v.* Hood, L. R. 5, Eq. 115; and a "mortgagee" is a person who takes a mortgage as security for a loan: Wharton, 486.

If a Commissioner is the holder of any such security upon a hotel, he cannot vote upon the question of granting it a license.

(*j*) And if the hotel belong to another, a License Commissioner cannot act as the collector of rents for such hotel and vote on the question of granting it a license.

(*k*) "Affecting the granting." It is difficult to say just exactly what was the intention of the Legislature in regard to this expression, and what the pro

License limited to person and place for which it was granted, subject to ss. 37, 38.

17. Subject to the provisions of this Act (*l*) as to removals (*m*) and the transfer of licenses, (*n*) every license (*o*) for the sale of liquor shall be held to be a license only to the person therein named (*p*) and for the premises therein described, and shall remain valid (*q*) only so long as such person continues to be the occupant (*r*) of the said premises and the true owner of the business (*s*) there carried (*t*) on. R. S. O., 1877, c. 181, s. 14.

---

ceedings are which may come before the License Commissioners "affecting the granting" of a license, but it is clear that a License Commissioner, who is in any way interested, is precluded from voting upon an application for a license for the premises in which he is so interested. The term "affecting the granting" is limited to questions involving the giving or issuing of a license, and may not extend to the renewal, transfer, removal, and revocation of such license. Good taste, however, and a proper appreciation of his position as a public officer should prevent a Commissioner from interfering in the case of any application in which he has the most remote interest. The English Licensing Acts are far more explicit on this point, and the disqualification of Licensing Justices more extended than that of the License Commissioners under this section.

A license issued to a stock company in which the Commissioners were interested would be void: See *re* Baird and the Cor. of Almonte, 41 U. C. R., 415.

(*l*) "Subject to the provisions of this Act." As to the application of this term, see Ormerod *v.* Todmorden, 8 Q. B. D., 664; R. *v.* St. James, Westminster, 5 A. & E., 391; Stroud's Dict., 766. They are words of qualification and have the effect of excluding from the operation of the section, the removals and transfers of licenses which are provided for in secs. 37 and 38.

(*m*) See sec. 38 and notes thereto.

(*n*) See sec. 37 and notes thereto.

(*o*) "Every license" applies to licenses of every kind in which provision is made for the sale of liquor.

(*p*) "Only to the person therein named." See sec. 11 and notes thereto.

(*q*) The word "valid" is defined by Worcester to mean "good in law," as well as of "having legal strength, force or effect:" see Worcester, 1614. "Validity" is legal sufficiency, in contradistinction to mere regularity: Sharpleigh *v.* Surdam, 1 Flip., 487-489 (1876). What is meant here is that the license shall continue to possess its legal force and authority only so long as the licensee named therein is the occupant of the premises to which it applies.

As to meaning of word "premises," see note (*u*) to sec. 11, ss. 8.

A license to sell spirituous liquors by retail includes reasonable additions to the original premises not diminishing the accommodation, and it is a question of fact whether after such additions the premises are not substantially the same as those licensed: R *v.* Raffles, 1 Q. B. D., 207; R. *v.* Smith, 15 L. T., 178; Stringer *v.* Huddersfield, 33 L. T., 568.

(*r*) "Occupant." See note (*w*), sec. 12, and note (*g*), sec. 16.

(*s*) The intention is that the true owner of the business only shall be licensed, and to prevent the evasion of the law by the transfer of the premises from one person to another without the knowledge or consent of the Commissioners or Inspector. Sec. 112 also contains provisions of a similar character. See notes to that section. See also note (*a*), sec. 11, ss. 3.

(*t*) "There carried on." See notes to sec. 62, ss. 3.

TAVERN LICENSES.

Number.

Limitation of licenses

18. (1) The number of tavern licenses to be granted in the respective municipalities shall not in each year be in excess of the following limitations: in cities, towns, and incorporated villages respectively, according to the following scale, that is to say, one for each full two hundred and fifty of the first one thousand of the population, and one for each full four hundred over one thousand of the population (*u*); but in no case shall this limit authorize any increase in any municipality in excess of the number of licenses therein issued for the year ending the 1st day of March, 1876, unless from the future increase of the popoulation the License Commissioners think a larger number has become necessary, but not in any case exceeding the limit imposed by this Act (*v*);

In cities, towns and villages.

(*u*) The maximum number of licenses to be issued in each municipality is fixed and determined by this section. Under sec. 4, sub-sec. 2, the License Commissioners may, by resolution, limit the number of licenses to less than the maximum here prescribed, but in no case can that number be exceeded.

The greatest number of licenses to be issued in a city of 40,000 would be as follows:

First 1000, one for each 250 - - - - -	4 licenses.
And one for each 400 of the remaining 39,000 -	97 "
Total,	101 licenses.

In the 39,000 there are still 300 remaining after dividing it by 400, but as there is only one license for each *full* 400 of the population, no allowance can be made for a fraction of that number. In a city of 50,000 of a population the greatest number would be 126, In a town of 5,000 inhabitants, the number must not exceed 14. In an incorporated village of 1500 inhabitants, the maximum number would be 5.

The greatest number of licenses in an incorporated village of 800 or 900 of a population would be 3, except in the case of an incorporated village being the County town, when the limit may be 5 in number.

(*v*) The number of licenses authorized in the year ending on 1st March, 1876, is, in the absence of substantial increase of population, to be taken as the limit. In case of an increase of population such as to warrant the issue of a greater number, and the License Commissioners consider a larger number necessary, a greater number may be issued, but in no case must it exceed the number fixed by this section.

"Future increase" refers to 1st March, 1876, and means any increase *after* that date.

It is entirely in the discretion of the Commissioners to say whether there has been such an increase as to render an increased number of licenses necessary. See note (*z*) *infra*.

(z) In incorporated villages, being county towns (w), the limit may be five in number, and in the town of Niagara Falls three hotels, near (x) the Falls of Niagara, and in the town of Port Arthur three hotels (y), which may be licensed, may be excluded (z) from the number which would otherwise be the maximum limit under this Act. R. S. O. 1877, c. 181, s. 15: 49 V., c. 39, s. 21. Exceptions.

19. (1) The number (a) of the population which is to determine the number of licenses at any time under this Act (b) shall be according to the then last preceding census Manner of determining the population

(w) The expression "County Town" shall mean the city, town or village in which the Assizes for the county are held: Municipal Act, R. S. O., c. 184, s. 1, sub-sec. 6.

(x) "Near," as applied to space, has no precise meaning; it is a relative term, depending for its signification on the subject-matter and the circumstances under which it is to be applied to surrounding objects: per Bigelow, C. J., Fall River Iron Works *v.* Old Colony, etc., Ry, Co., 5 Allen, 227 (1862); Barrett *v.* County Court, 44 Mo., 209; Kirkbride *v.* Lafayette County, 108, U. S., 211 (1883). See also Attorney-General *v.* Horner, 14 Q. B. D., 245; 11 App. Cas., 66; R. *v.* Loxdale, 1 Burr., 447. See also note (m) sec. 11, ss. 12.

An ordinary incorporated village falls under the general rule laid down in the first part of the section, but where the village is the county town an arbitrary limit of five is fixed as the maximum.

(y) The meaning is that the three hotels, in addition to the ordinary limit, may be licensed in the several localities mentioned. This sub-section originally extended to the town of Niagara Falls and the town of Clifton only.

(z) It is certainly within the power of the License Commissioners to limit the number of licenses, by resolution, so as to exclude the three hotels mentioned from the number of licenses in the places referred to in this part of the section, but it is questionable whether the expression "may be excluded" gives them any discretion beyond that which they otherwise have under the Act. The word "may" is, by the Interpretation Act, sec. 8, ss. 2, permissive; but it has been held that in cases where the object of a power is to effectuate a legal right, such enabling words are to be construed as compulsory. See note (o) sec. 4. The Commissioners have the power, however, of refusing to grant any license which has been applied for, and their decision in such case is final. See note (z) sec. 12, and note (d) to sec. 19.

(a) The number, *i. e.*, the aggregate. See Worcester, 974.

(b) In strictness anything not authorized by a Statute cannot be "in pursuance" or "under" or "by virtue" of it, whilst if authorized it would need no other protection. But if effect were given to such a construction it would altogether do away with the protection intended to be given; accordingly it is held that if any public or private body or person, charged with the execution of an Act of Parliament, honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting, and acts accordingly, his conduct will be "in pursuance" or "under" or "by virtue" of the Statute under which he believes he is acting, although he errs in such belief. The question whether there was in fact reasonable ground for such belief is a subordinate question and one very material to be pressed on the minds of the jury, but the presence or absence of such reasonable ground can only be relied on for the purpose of determining

with a view to the number of licenses.

(*c*) taken under the authority of the Dominion of Canada, except where the License Commissioners are at any time of opinion (*d*) that, owing to a large increase of population

---

whether the belief was *bona fide* or not; Hermann *v.* Seneschal, 13 C. B. N. S., 392, and cases there cited; S. C., 13 L. T. N. S., 703; Roberts *v.* Orchard, 2 H. & C., 769; Judge *v.* Selmes, L. R. 6., Q. B. 724; Chamberlain *v.* King, L. R. 6, C. P. 474; Agnew *v.* Jobson, 47 L. J. M. C., 67; Midland Ry. *v.* Withington, 11 Q. B. D., 788; Hughes *v.* Buckland, 15 M. & W., 346; Lea *v.* Facey, 19 Q. B. D., 352; Rochfort *v.* Rynd, 9 L. R. Ir., 204; O'Dea *v.* Hickman, 18 L. R. Ir., 283 Maxwell, 278; Roscoe, N. P., 1073, 1088, 1095, 1099-1104. See R. S. O., c. 1, s. 8, sub-sec. 8.

(*c*) "Last preceding census." The word "preceding" ordinarily means "that which goes before, antecedent, previous:" see Worcester, 1115. As to application of the phrase, "preceding twelve months," see R. *v.* Poplar Union Assessment Com., 18 Q. B. D., 364. By "The Census Act," R. S. C., 1886, c. 58, s. 3, it is provided that a census shall be taken in the year 1891 and in every tenth year thereafter. The B. N. A. Act, s. 8, provides for a decennial census. Provision is also made by the Municipal Act for taking the census of the inhabitants, or of the resident male freeholders and householders of the municipality: R. S. O., c. 184, s. 47, sub-sec. 13; but the census here referred to is that "taken under the authority of the Dominion of Canada" every ten years. The last census was taken in 1881, and until the census of 1891 is completed that of 1881 will be the "last preceding census."

(*d*) "Of opinion" means according to the *judgment*. See Ormerod *v.* Todmorden Co., 8 Q. B. D., 664.

Sir Peter Maxwell, in his work on the Interpretation of Statutes, at pages 100 and 101, says: "Where, as in a multitude of Acts, something is left to be done according to the discretion of Justices or other authorities on whom the power of doing it is conferred, the discretion must be exercised honestly and in the spirit of the Act, otherwise the act done would fall within the Statute. 'According to his discretion' means, it is said, according to the rules of reason and justice, not private opinion: according to law and not humour: it is not to be arbitrary, vague and fanciful, but legal and regular. And it must be exercised within the limits to which an honest man competent to the discharge of his office ought to confine himself: that is within the limits and for the objects intended by the Legislature." Cited in Sinclair's D. C. Act, 1884, page 12.

Where the question was whether the Magistrates had exercised a proper discretion in virtually closing up every public house in their district at a certain hour at night, where they had power in any particular locality to shorten the hours during which houses therein should be kept open, Lord Chancellor Cairns said: "If Magistrates, under the guise of exercising a discretion, had taken portion after portion of their district, not with reference to the particular wants or requirements of each portion, but in order by degrees to take possession of the whole district, and under the pretence of exercising a discretion for each portion, had virtually subverted the general rule laid down by the Legislature: if, I say, your Lordships were to find, which I cannot imagine or suppose you ever would find, Magistrates adopting that course for the purpose of doing what I must describe as evading an Act of Parliament, your Lordships would not be prepared to sanction, but would discountenance and prevent the exercise of a power so used:" per Cairns. L. C., Macbeth *v.* Ashley, L. R. 2, Scotch App. 352, at page 357. And at page 360 of the same report, Lord Chancellor Selborne said: "Without meaning to deny that it is confided to the discretion of the Magistrates to determine what particular localities require other hours for opening and closing than those specified, it is obvious that such discretion as

(*e*) since such census, an increased number of licensed taverns (*f*) is needed for the convenience (*g*) and accommodation of travellers (*h*); and in that case, if the License Commis-

---

they have is not an arbitrary discretion to define any localities they please, but they must be such localities as they consider in the honest and *bona fide* exercise of their own judgment to require a difference to be made." Again he says: "The Magistrates must, in the exercise of an honest and *bona fide* judgment, be of opinion that the "particular locality" which they except from the ordinary rule is one which they, from its own special circumstances, requires that difference to be made." These are the general principles on which, according to the highest authority, a discretion conferred by an Act of Parliament should be exercised.

(*e*) What is to be considered a "large increase of population" is a question for the License Commissioners to decide; but where such discretion is given it should not be exercised arbitrarily, but should be an honest and *bona fide* exercise of the judgment: Maxwell, 100, 101.

(*f*) See sec. 2, sub-s. 2, *ante*.

(*g*) The meaning of particular words in a Statute, in the absence of express definition, "is to be found not so much in a strict etymological propriety of language, nor even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained:" per Abbott, C. J., R. *v.* Hall, 1 B. & C. at page 136, approved of in the case of *The Lion*, 2 L. R. P. C., 525.

Under this section the License Commissioners must, in the absence of any decision on the question, use their own judgment as to the necessity for an increased number of licensed houses, such judgment to be exercised on the principles laid down in note (*d*) *supra*.

(*h*) The English Licensing Acts have been prolific of decisions as to the meaning of the term "traveller." Stroud, at page 819, says: "There are at least four classes of 'travellers.' 1. A person cannot be a '*bona fide* traveller' within the Licensing Acts unless the place where he lodged during the preceding night is at least three miles distant from the place where he demands to be supplied with liquor, such distance to be calculated by the nearest public thoroughfare:" Coulbert *v.* Troke, 1 Q. B. D., 1; see also Taylor *v.* Humphreys, 10 C. B. N. S., 429; Taylor *v.* Humphries, 17 C. B. N. S., 539; Fisher *v.* Howard, 11 L. T. N. S., 373; 4 Mew's Dig. 1118; Peache *v.* Colman, L. R. 1, C. P. 324; Peplow *v.* Richardson, L. R. 4, C. P. 168; and whether business or pleasure be the object of the traveller was (Taylor *v.* Humphreys, *supra*; Atkinson *v.* Sellers, 5 C. B. N. S., 442) and still is wholly immaterial.

2. Persons at a railway station "arriving at or departing from, such station by railroad" are for the purposes of the Licensing Acts on the same level as *bona fide* travellers: 37 & 38 V., c. 49, s. 10.

3. Commercial traveller; *i. e.*, "a *bona fide* traveller" within s. 17, 30 & 31 V., c. 90, on which see Stuchbery *v.* Spencer, 55 L. J. M. C., 141.

4. A traveller entitled by common law to be received as a guest by an innkeeper, does not include a person resident in the same country town as that in which the inn is situate and "merely walking about the town for his own recreation and amusement:" R. *v.* Rymer, 2 Q. B. D., 136. The length of time that a man may remain at an inn does not affect his character as a traveller, unless he be received for a definite term under a special contract: Add. C. 303, 304, and cases there cited. See also Sinclair's L. & T., p. 124; but see section 72 and notes thereto.

The cases above cited by Stroud have been discussed and followed in our own Courts. It was said by Hagarty, C. J., in R. *v.* Daggett, 1 O. R., at page

sioners so certify, and the Council of the municipality memorialize the Lieutenant-Governor (*i*) for an increase of the number of licensed taverns, the Lieutenant-Governor in Council may authorize a new census to be taken under the authority of a by-law of the municipality and at the expense of the municipality, and the limit for the number of licenses shall thereafter, upon each such new census, be one for each full two hundred and fifty of the population (*j*) under one thousand, and one for each five hundred over one thousand of the population.

Case of alteration or formation of municipality,

(2) In case of the alteration or formation of any municipality (*k*) subsequent to such census of the Dominion of Canada, the population of such municipality, for the purposes of this Act, may be ascertained by the said License Commissioners by reference to the enumeration (*l*) on

---

544: "I have no doubt whatever that persons—excursionists and others—who come from Buffalo, U. S., by rail and steam, to Toronto, are 'travellers' in the sense of the exception in our Statute. It matters nothing in my judgment whether they travel wholly for pleasure, fresh air, relaxation from work, or with or without luggage, or actually on important business, they are travellers within the meaning of the Statute." The Statute in question was R. S. O., c. 203.

(*i*) "Lieutenant-Governor" means "the Lieutenant-Governor for the time being of Ontario, or other chief executive officer or Administrator for the time being carrying on the Government of Ontario, by whatever title he is designated," and the words "Lieutenant-Governor-in-Council" mean "the Lieutenant-Governor of Ontario or person administering the Government of Ontario for the time being, acting by and with the advice of the Executive Council for Ontario:" R. S. O., c. 1, s. 8, sub-sects. 6, 7. The memorial of the Council of the Municipality is to be addressed to the Lieutenant-Governor of Ontario, while the authority for a new census, if granted, must come from the Lieutenant-Governor-in-Council.

(*j*) Population is made the basis for the calculation of the number of licenses to be issued. The last general census taken previous to the current year will ordinarily give the number of the population, but if the Commissioners consider it necessary, under the circumstances set forth in the section, a special census may be taken to ascertain the population; and upon the result of this special census will depend the right of the Commissioners to increase the maximum number of licenses to be issued. But it must be observed that while section 15 fixes the maximum at one for each 250 under 1,000, and one for each 400 over 1,000, this section allows on a special census one for each 250 under 1,000, but there is only one to be allowed for each 500 over 1,000.

(*k*) New corporations may be formed, or new territory added to those already existing, in which case provision may have to be made for licenses in such newly altered or created Municipalities. This sub-section is intended to meet the requirements of such cases. See also "The Municipal Act," R. S. O, c. 184, pages 17, 61, *et seq.*

(*l*) "Enumeration" means the same thing as "census," *i. e.*, the numbering of the people; see Wharton, 119. As shewn in note (*j*) to sub-sec. 1, the

which such census took place, or by a new census taken under the provisions of this section.

(3) Where, since the said Dominion census, a census has been taken in any municipality under the authority of the Council (*m*) having jurisdiction, the limit may be the same as in the case of a census taken under this section for the purposes of this Act. R. S. O. 1877, c. 181, s. 16. or municipal census.

20. (1) The council of every city, town, village or township (*n*) may, by by-law (*o*) to be passed before the 1st day of March in any year, (*p*) limit the number of tavern licenses to be issued therein (*q*) for the then ensuing license Council may limit number of licenses.

---

basis on which the maximum number of licenses is fixed is that of population, and for the purposes of such limitation the population is to be ascertained either by the result of the last Dominion census or by the result of a special census, to be taken under the circumstances stated in the context.

(*m*) "Council" refers to the Council of the Municipality. As shown above, the Council of any Municipality is empowered to take a census of the inhabitants, or of the resident male freeholders and householders, in the Municipality: The Municipal Act, sec. 479, sub-sec. 18; and in case a census has been taken by the Council under this provision, the population according to that census may be taken as the basis on which to count the number of licenses.

The effect of this section taken as a whole is that for the purpose of calculating the maximum number of licenses to be issued; the population may be ascertained from either of the following sources:

(1) The result of the last Dominion census;

(2) The result of a special census to be taken by the Municipality under authority from the Lieutenant-Governor-in-Council;

(3) The result of any census taken subsequent to the last Dominion census by the Municipality under the authority of the Municipal Act.

(*n*) See Sec. 99 and notes thereto.

(*o*) These are simply enabling words, by which the Council is authorized to pass by-laws. The exercise of the power is, of course, entirely discretionary. See note (*s*), *infra*.

(*p*) By sec. 4, sub-sec. 2, the License Commissioners are authorized to pass resolutions for limiting the number of tavern and shop licenses respectively. This section extends the same powers to Municipal Councils in respect of *tavern licenses only*, but by section 32 such Councils are authorized to pass by-laws of a similar character in respect of shop licenses. By-laws under this section must be passed before the 1st March, and the reason for this is to be found in the requirements of sec. 8 and sec. 11, sub-sec. 2.

(*q*) Sec. 18 makes provision for, and fixes the maximum number of licenses which can be issued in cities, towns, and incorporated villages, and that number cannot in any case be exceeded. The word "limit" means "to confine, or restrict:" see Anderson's Dict., 630. Under the power conferred by this section Municipal Councils may decrease, or restrict, the tavern licenses to be issued in the Municipality to a less number than that fixed by this Act, but they cannot increase it.

year, beginning on the 1st day of May, (*r*) or for any future license year until such by-law (*s*) is altered or repealed,

(*r*) All licenses are to be dated as of 1st May, to continue in force for one year, and expire on 30th April in the next ensuing year; sec. 8, sub-sec. 1.

(*s*) A "by-law" may be defined as a local law of the inhabitants of a place or district, as distinguished from the general law of the Province in which the Municipality is situated: Harrison's Mun. Man., 209. It has the same effect within its limits, and with respect to the persons upon whom it lawfully operates, as an Act of Parliament has upon the subjects at large: Hopkins *v.* Mayor of Swansea, 4 M. & W., 640. See also R. *v.* Osler, 32 U. C. R., 324, and other cases cited in R. & J.'s Dig., 2460, *et seq*; Ont. Dig. (1882-1884), 484, *et seq*; Ont. Dig. (1884-1887), 447, *et seq*. See also sec. 4 and notes thereto.

Under 13 & 14 Vic., c. 65, sec. 4, the Municipality of each Township had power "to make by-laws limiting the number of inns or houses of entertainment in such Township for which licenses to retail spirituous liquors to be drunk therein shall be issued," and it was held that under it a Municipal Corporation had no power to prohibit altogether the licensing of inns for the sale of wines or spirituous liquors by retail to be drunk therein: *re* Barclay and the Mun. Council of Darlington, 11 U. C. R., 470.

Power was given by 16 Vic., c. 184, s. 4, to the Municipality of any Township "to make by-laws for limiting the number of houses or places (other than houses or places of public entertainment) in which persons may be licensed to sell wine," &c., by retail, or for preventing the absolute sale of such liquors within the Municipality; and by the fourth clause of the last Act it was also provided that under the authority of the Act 13 & 14 Vic., c. 65, no by-law for prohibiting the sale of wine or spirituous liquors, ale or beer should have force or effect "unless before the final passing thereof it shall have been adopted and approved by a majority of the qualified electors of the Municipality."

Under these various provisions the Court held that a by-law limiting the number of licenses to one was bad, as amounting in effect to a total prohibition: *re* Barclay and the Municipality of Darlington, 12 U. C. R., 86; *re* Greystock and the Municipality of Otonabee, 12 U. C. R., 458; Terry *v.* the Municipality of Haldimand, 15 U. C. R., 380. But a by-law directing the Clerk of the Municipality to grant licenses to sell spirituous liquors for the year to two parties named, and that no such licenses should be issued to any other persons was held good: Terry *v*, the Municipality of Haldimand, 15 U. C. R., 380. See also sec. 42*a* and notes thereto.

Under the "Act respecting tavern and shop licenses," 32 Vic., c. 32, sec. 6, sub-s. 4, power was granted to every township, town and incorporated village, and the Commissioners of Police in cities, respectively, to pass by-laws for limiting the number of tavern and shop licenses respectively. And it was held (Wilson, J., dissenting) that a Township Municipality was not authorized to pass a by-law "that in each and every year hereafter there shall not be more than four certificates for obtaining tavern licenses issued in the Municipality;" for that there was no power to limit the number of such certificates, and there was a substantial difference between that and limiting the number of licenses: Gifford and the Municipality of Darlington, 35 U. C. R., 285.

By-laws passed by Municipal Corporations under this provision in section of 32 Vic., c. 32, wholly prohibiting the sale of liquors in shops and places other than houses of public entertainment, and limiting the number of taverns to nine, were held valid as being within the power of the Corporation; and that it was within the authority of the Provincial Legislature to confer such power under the exclusive legislative authority given to them with regard to "Municipal Institutions" and to "matters of a merely local or private nature" in

the Province; and was not an interference with "the Regulation of Trade and Commerce" assigned exclusively to the Dominion Legislature: *re* Slavin and The Corporation of Orillia, 36 U. C. R., 159; see also Hodge *v.* the Queen, 7 App. Cas., 117, cited *ante* page 1.

A by-law passed on the 21st July, 1874, appointed an officer under 36 Vic., c. 34, s. 8 (O.), to enforce the provisions of that Act and the Acts therein recited, and also the by-laws of the Corporation respecting shop and tavern licenses. This by-law was passed to fill a vacancy in the office caused by the resignation of the person appointed under a by-law passed in the February previous. The 36 Vic., c. 34, had been repealed when the by-law was passed, by the 37 Vic., c. 32, which gave power to fill a vacancy in such office. *Held* that the by-law was not invalid because not passed in February under section 9 of the last mentioned Act, nor for not defining the duties, etc., of the officer appointed, which might be done by another by-law. Held also upon the facts stated in the case that it was not invalid as not having been passed at a legal meeting of the Council or signed by the Reeve: *Ib.*

A by-law passed under this section (then 39 Vic., c. 26, s. 2, sub-s. 3), limiting the number of shop licenses to be issued in the town to *one*, and directing the holder of such license to confine the business of his shop exclusively to the keeping and selling of liquor was held bad, as being in effect prohibitory and creating a monopoly. It was also held that the Corporation could not pass by-laws restricting the sale of liquors after certain hours and also restricting the sale of such liquors to the house licensed, as these were matters which had been transferred to the Board of License Commissioners. But a provision prohibiting the sale of liquors to any child, servant or apprentice, without the consent of the parent, master, or legal guardian, was held valid as within the powers conferred by the Municipal Act. It was also held no objection to the by-law that it contained no limit as to its duration, as that was determined by the Statute: *re* Brodie and the Cor. of Bowmanville, 38 U. C. R., 580.

Held, that it was not necessary that a by-law respecting saloon and shop licenses should state the number of inhabitants so as to show that the number of licenses fixed was within the statutory limit: *re* Croome and the Mun. Council of Brantford, 6 O. R. 188; see also Gibson *v.* The Corporation of Bruce, 20 C. P., 898; Lumley on By-laws, pp. 83, 84.

A provision in the by-law limiting the number of licenses for the ensuing year, beginning on May 1st, 1884, or for any further license year, until this by-law is altered or repealed, held valid: Croome and The Mun. Council of Brantford, *supra;* Arkell and The Town of St. Thomas, 38 U. C. R., 594; Lumley on By-laws, 85.

An objection that the by-law provided for a duty in excess of $200 which, it was urged, should have been submitted to the electors by separate by-laws, was overruled, because, in fact, the by-law contained no such provision; *quære*, whether several matters, each of which requires the assent of the electors, can be enacted in one by-law, or whether there must be separate by-laws separately submitted to the electors: Croome and the Mun. Council of Brantford, *supra;* see also Mackenzie *v.* The Cor. of Brantford, 4 O. R., 382; Bailey *v.* Williamson, L. R. 8, Q. B. 118; reference is also made to what is known as the "Omnibus" Act, 40 Vic, c. 8 (O.), which includes legislation on several matters in one Act.

The by-law did not state whether it was passed under Dominion or Local legislation. *Held*, that as it stated no particular power as its basis, it must be judicially regarded as emanating from that power which would authorize its passage: Croome and The Mun. Council of Brantford, *supra.*

A provision, "that every person receiving a shop license shall confine the

provided such limit is within the limit imposed by this Act. (*t*)

Copy of by-law limiting to be sent to Commissioners.

(2) The council shall cause a certified (*u*) copy of such by-law to be sent immediately (*v*) after the passing thereof to the license commissioners of the district in which the municipality is situate. R. S. O. 1877, c. 181, s. 17.

Extended licenses.

21. In any case where the License Commissioners of any license district do not think fit, or are unable (*w*) to

---

business of his shop exclusively to the keeping and selling of liquor," is not *ultra vires* and in restraint of trade: *Ib.*

Where the Municipality provided for a duty in excess of $200, it was objected that sec. 35 of the License Act of Ontario, 47 Vic., c. 35, O., in effect repealed the by-law, as it made the duty more than $200, and the Council had not submitted the question to the electors: *Held*, that if repealed it could not be quashed; but *semble*, that the effect of the section was to add the increased duty to the amount already provided for by the by-laws previously passed, unless the Council saw fit, prior to the 15th April, 1884, to amend the by-law as to the license duty payable thereunder: *Ib.* An impression of the corporate seal made on the by-law is sufficient: *Ib.*

The Council of a Corporation has power to pass by-laws limiting the number of tavern licenses; that power is not at all interfered with or diminished by the provisions of the law granting powers to the Board of License Commissioners: Boylan and the City of Toronto, 15 O. R., 13.

It was also held that though the by-law contained on its face no description of the local limits of its operation, the fact that it was passed by the Council of the City of Toronto and could have no operation elsewhere than in that city, shewed that it must, by reasonable intendment, be held operative there: *Ib.* Also that the by-law was not unreasonable or oppressive, or in restraint of trade: *Ib.* A by-law discriminating between different classes of tradesmen is bad: R. *v.* Flory, 17 O. R., 715.

(*t*) The limit fixed by the by-law of the Municipality relates to all future licenses, so long as the by-law remains in force.

(*u*) The R. S. O., 1887, c. 61, s. 25, sub-s. 1, provides for the admission in evidence of copies of public books or documents, provided it is proved that such copies are examined copies or extracts, or that they purport to be signed and certified as true copies or extracts, by the officer to whose custody the original has been entrusted. A "certified copy" is a copy of any official or public document certified under the hand or under the hand and seal of the officer to whose custody the original is entrusted, as a true copy of such original. It is not necessary to prove the signature or seal to such documents. See Taylor on evidence, 1864 *et seq.*

This provision for the sending of a certified copy of the by-law to the License Commissioners is made for the guidance of the License Commissioners in the issue of licenses for the Municipality in which the by-law is passed.

(*v*) "Immediately" means within a reasonable time. See Stroud's Dict., 365; Maxwell, 311; Wharton, 358.

(*w*) The Commissioners, by reason of there being an insufficient population, may not be able to grant a renewal of the license in some cases, and as the fitting and furnishing of a hotel and providing it with a stock of liquors often requires a large expenditure of money, it would be unfair to deprive the licensee of his license, without some kind of notice, and without an opportunity of dis-

grant a new license to any applicant who has been licensed during the preceding twelve months, or any part thereof, they may, nevertheless, by resolution, (*x*) provide for extending the duration of the existing license for any specified period (*y*) of the year, not exceeding three months at their discretion, upon payment by the applicant, of a sum not exceeding the proportionate part (*z*) of the duty payable for such license for the then next ensuing license year; and such license, when a certificate of the extension aforesaid has been endorsed thereon, under the hand of the Inspector for the license district (*a*), shall remain valid for the period specified in the resolution of the License Commissioners, and no longer (*b*); but this provision shall not be construed to confer on the License Commissioners any authority to exceed the limit prescribed by this Act as to the number (*c*) of tavern licenses to be granted in any year, except in cities, where the License Commissioners may in their discretion (*d*), having regard to the particular circumstances of the city, and of each (*e*) application, grant further tavern

posing of his stock, provision is made for an extension of the license for a period not exceeding three months, in order that he may be enabled to close up his business and sell his stock with as little injury and loss as possible under the circumstances.

(*x*) "By resolution" means by a declaration proposed to and duly passed by the vote of a majority of the Board: see Worcester, 1223; Wharton, 639. The resolution must specify the period for which the extension is to be granted.

(*y*) "Any specified period" means some definite portion of the year to be particularly designated in the resolution. The duration of such period is in the discretion of the Commissioners, so long as it does not exceed three months, computed from the expiration of the old license.

(*z*) The duty for the whole year is taken as the basis and the sum payable is not to exceed the proper proportion of that duty for the time the extension is granted; thus if the duty for the year is $200, and the extension is for three months, the sum payable should not exceed $50.

(*a*) The extension of the license thus granted is to be evidenced by an endorsement on the back of the old license, of a certificate signed by the Inspector of the license district. "Certificate under the hand:" see note (*a*), sec. 12. See sec. 2, ss. 8.

(*b*) The license for the previous year is thus rendered valid for the period mentioned in the certificate, but no longer.

(*c*) See sec. 13 and notes thereto.

(*d*) See sec. 4, note (*o*); sec. 11, ss. 1, note (*y*); sec. 12, note (*z*); sec. 19, note (*d*).

(*e*) "Having regard to the particular circumstances of the city, and of each application," means simply taking fairly into consideration the circumstances, etc.

licenses, but within the number of such licenses granted for the year ending on the 30th day of April, 1877, and except in a locality largely resorted to in summer by visitors, where the License Commissioners may, if they think fit, grant one additional tavern license, but not to extend beyond six months, commencing on the 1st day of May in each year (*f*). R. S. O., 1877, c. 181, s. 18.

Beer and wine licenses may be issued.

22. Upon application (*g*) to any Board of License Commissioners, before the 1st day of May in any year, by any one or more persons within any Municipality within the jurisdiction of such Board for a beer and wine license, the Board may by resolution (*h*) declare that any one or more of the tavern licenses which may be lawfully issued, (*i*) and which are to be issued for the license year beginning on the 1st day of May of such year, not exceeding the number so applied for (*j*), may be beer and wine licenses,

---

The "particular circumstances" of the city and of each applicant can be judged solely by the License Commissioners, who may issue licenses in cities to any number within the number issued for the year ending 30th April, 1877. See note (*l*), sec. 8.

(*f*) This latter provision is an extension to all places "largely resorted to in summer by visitors," of the powers given to the Commissioners with regard to licenses in the towns of Niagara Falls and Port Arthur, by sec. 18, ss. 2. But under this section the additional license can only extend from 1st May to 1st November in each year.

(*g*) See note (*o*) to sec. 11, ss. 17. The application under this section may be made at any time before 1st May. The petition for a tavern license must be filed on or before the 1st April next preceding. See sec. 11, sub-s. 2, and notes thereto.

"May." See note (*o*) to sec. 4.

(*h*) "By resolution." See note (*x*) to sec. 21.

(*i*) The maximum number of licenses is fixed by sec. 18, and this number may be reduced by the License Commissioners under sec. 4, sub-s. 2, or by the Municipality under sec. 20. The licenses which under this sec. may be lawfully issued are those authorized under these provisions, and the "wine and beer license" to be issued under this section must be one of the number.

(*j*) It seems that although the application for a wine and beer license may be made to the License Commissioners at any time before the 1st May, yet there must have been a prior application for a tavern license by petition as required under section 11, sub-s. 2, to qualify the person desirous of acquiring the license under this section to obtain it. It must not only be counted amongst those licenses which may be lawfully issued (either under sec. 18, 19, 20 or 21), but also those which have been duly applied for and which are to be issued; and the number must not exceed "the number so applied for." It is also provided that the resolution of the License Commissioners under this section shall not have the effect of prohibiting the sale of spirituous liquors in the Municipality. By 53 Vic., c. 56, s. 18, the Legislature has assumed to vest

and the Board may thereafter cause beer and wine licenses to be issued in any such Municipality, not exceeding the number mentioned in their aforesaid resolution: provided, nevertheless, that nothing in any such resolution contained, shall so limit the number of tavern or shop licenses, as to prohibit within any Municipality the sale of spirituous liquors: and, provided, also, that nothing in such beer and wine license contained, or by reason of the granting thereof, shall authorize the holder thereof, his servants or agents, to sell, barter or otherwise dispose, of (*k*) any kind of intoxicating liquors other than those mentioned in the said beer and wine license (*l*). 44 V., c. 27, s. 19.

Liquors not to be sold by holder of beer and wine license.

23. A beer and wine license shall be construed to mean a tavern license for selling, bartering or trafficking by retail, in lager beer, ale, beer and porter and also in native wines, manufactured in Ontario, containing not more than fifteen per cent. of alcohol, and in light foreign wines containing not more than fifteen per cent. of alcohol, but not including port, sherry or madeira wine, in quantities of less than one quart, which may be drunk in the inn, ale or beer-house, or other house of public entertainment (*m*) in which the same is sold (*n*). 44 V., c. 27, s. 20; 49 V., c. 39, s. 14.

Beer and wine licenses.

---

such power of prohibition in the Municipal Council, subject to the approval of the electors: see sec. 42*a* and notes thereto; also note (*m*), sec. 8.

The definition of a beer and wine license is given in the next section.

(*k*) See sec. 2, ss. 2, note (*d*).

(*l*) The description of liquors authorized to be sold should be mentioned in the license; they are set forth in the next section, and the sale of any other kind of intoxicating liquor would render the seller liable to the penalties for selling without license just the same as if he had no license.

(*m*) See sec. 2, ss. 2, note (*g*).

(*n*) A beer and wine license is defined here; it is a tavern license in every respect, except that the liquors authorized to be sold under it are:

1. Lager beer, ale, beer and porter.

2. Native wines (*i. e.*, wines manufactured in Ontario), containing not more than 15 per cent. of alcohol.

3. Light foreign wines, containing not more than 15 per cent. of alcohol, but not including port, sherry, or madeira wine.

These liquors are to be sold in quantities of less than one quart, and may be drunk on the premises where they are sold. The authority granted under a beer and wine license is, in fact, identical with that conferred by a tavern license so far as relates to the sale of the liquors mentioned in the license, but the licensee is prohibited from selling or keeping upon his premises any other kind of intoxicating liquors. See sec. 2, sub-s. 2, and notes thereto.

Holder of beer and wine license subject to conditions of tavern license.

24. The holder of any such beer and wine license shall hold the same upon the terms and subject to all the conditions and penalties that apply to the holder of a tavern license; (*o*) but, nevertheless, such holder of a beer and wine license shall not sell, barter or give, or keep in the house, (*p*) or upon the premises (*q*) for which such last mentioned license has been granted, any spirituous or intoxicating liquors (*r*) for sale other than those thereby authorized; and as to such other liquors, the holder of such beer and wine license shall be deemed to be unlicensed, and section 132 of this Act shall apply. (*s*) 44 V. c. 27, s. 21.

Holder of beer and

25. (1) If any holder of a beer and wine license, (*t*)

It was held in one case that the word "beer" does not include botanic beer or liquor brewed from sugar and water, though it contain spirit to the extent of 6 or 7 per cent., and therefore no excise license is required for selling such liquor: Leah *v.* Minns, 47 J. P., 198, cited Paterson's L. A., 248. But it was afterwards held in another case against the same defendant that "Summer's Botanic Beer," manufactured from fermented sugar and water and flavored with herbs is "beer" within the meaning of the Int. Rev. Act, 1885, and to retail it necessitates the holding of a license. The effect of which decision would seem to be that no kind of "beer" containing over 2 per cent. of alcohol can be sold without a license;" see Howorth *v.* Minns, 56 L. T., N. S. 316. See sec. 2, note (*b*).

(*o*) The holder of a beer and wine license must comply with all the provisions of this Act, all the resolutions, rules, regulations and requirements of the License Commissioners, and any Municipal By-laws in force respecting tavern licenses; at the same time he is not only liable to the penalties attached to the infraction of these laws respecting tavern licenses, including forfeiture of his license, but is also liable to all the penalties provided in case of the sale of liquors without license, if he contravenes the provisions of this section by the sale of any kind of spirituous liquor which he is not authorized by his license to sell.

(*p*) See sec. 11, ss. 8, note (*q*).

(*q*) See sec. 11, ss. 8, note (*u*); also note (*w*), sec. 25.

(*r*) For the meaning of spirituous and intoxicating liquors, see notes to section 2.

(*s*) Section 132 provides for the seizure of liquor found upon the premises.

(*t*) This section is confined to the case of a person being licensed to sell only those kinds of liquor which are specified in a beer and wine license, who sells or barters or gives or keeps, in his house or upon the premises a different kind of liquor from that which he is authorized to sell. The penalty will attach if he either sells, barters, gives, or keeps in the house, liquors which by his license he is not specifically authorized to sell, or native wines containing more than 15 per cent. of alcohol, or foreign wines containing more than 15 per cent. of alcohol, or port, sherry, or madeira wine.

his servants or agents, (*u*) shall sell or barter, (*v*) give or keep in the house, or upon the premises, for which a license has been granted, intoxicating liquors (*w*) other than those mentioned in his license, for sale (*x*) or, shall knowingly sell, (*y*) or barter, give (*z*) or keep in the house, or upon the premises (*a*) for which a beer and wine license has been granted, native wine containing a greater quantity of alcohol than fifteen per cent. (*b*) thereof, or light foreign wines containing a greater quantity of alcohol than fifteen per cent. thereof, or port, sherry or maderia wine, (*c*) he shall

wine license not to sell or keep spirits on premises licensed.

(*u*) The liability of the principal for the acts of his servants or agents is not left to inference; the holder of the license is liable in every case of an infraction of the law upon the licensed premises by any one who has been left in charge of them As to liability of the proprietor for the acts of his servant, see sec. 73 and notes thereto; see also U. S. *v.* Bonham, cited 36 Alb., L. J. 354.

(*v*) "Barter." See note (*d*) to sec. 3, sub-sec. 2.

(*w*) "Keep in the house" means in the house to which the license refers, see sec. 17 and notes thereto; see also Tippett *v.* Hart, 10 Q. B. D., 483. As to the construction of the word "keep," see sec. 11, ss. 8, note (*q*).

"Intoxicating liquors." For meaning of this expression see note (*b*) to sec. 2, ss. 1. "Intoxicating liquors" and "spirituous liquors" are used in the Act as convertible terms, see Reid *v.* McWhinnie, 27 U. C. R., 289. "Other than those mentioned in the license," see section 22 and notes thereto.

(*x*) See Robinson *v.* Cliff, 1 Ex. D., 294; Ridgway *v.* Ward, 14 Q. B. B., 110; Daniel *v.* Whitfield, 15 Q. B. D., 408; R. *v.* Hodgins, 12 O. R., 367. A sale implies there shall be one who sells and one who buys: King *v.* England, 4 B. & S., 782; Williams *v.* Grey, 23 C. P., 561; see sec. 70 and notes thereto. As to when a sale will be presumed, see secs. 108, 112.

(*y*) The importance of the presence or absence of the word "knowingly" in statutory definitions of offences has been discussed in the following cases: Mullins *v.* Collins, L. R. 9, Q. B. 292; Cundy *v.* LeCocq, 13 Q. B. D., 207. Where the word is omitted it will often be supplied, but this should only be done when it is clear the Legislature intended some such qualification, per Cave, J., Betts *v.* Armstead, 20 Q. B. D., 771; see also note (*e*) to sec. 16. The word, it is submitted, applies to and qualifies all the words following it, and these words apply only to native and foreign wine having a greater percentage of alcohol than 15 per cent., and port, sherry and madeira wine.

(*z*) See note (*d*) to sec. 2, sub-s. 2.

The word "give" was not in the original Crooks Act. It is made an offence to "give" intoxicating liquor in order to prevent such colorable transactions as the sale of a worthless article accompanied with intoxicating liquor for which it may be pretended that no charge is made.

(*a*) See sec. 11, ss. 8, note (*u*).

(*b*) The question of whether the wine contains more than 15 per cent. is one of fact which must be proved by the evidence of a chemist, and the percentage mentioned must be determined by weight. When there is any evidence on which the Magistrate or Justices can find, the Court will not interfere. See notes to sec. 70.

(*c*) The sale of port, sherry, and madeira is prohibited altogether under a beer and wine license. On a prosecution for selling any liquors, the sale of

be subject to the penalties provided by section 70 of this Act, and in addition thereto, upon a conviction for a second offence the board of license commissioners may, by resolution, revoke and cancel his beer and wine license, (*d*) and in the event of failure on their part so to do, application may be made by any resident (*e*) of the municipality to the Judge of the County Court, in the manner prescribed in section 92 of this Act, which shall apply to such application for an order to revoke and cancel said license; (*f*) and if it appears to such Judge that the holder of any such beer and wine license has been twice convicted (*g*) of having sold or given intoxicating liquors other than those mentioned in the license, or of having kept the same upon or in the licensed premises, for sale, or of having knowingly sold or given (*h*) native wine containing a greater percentage of alcohol than fifteen per cent. thereof, or light foreign wines containing a greater percentage than fifteen per cent. thereof, or port, sherry or madeira wine, as hereinbefore mentioned, or of having knowingly kept the same upon or in the licensed premises, then the said Judge shall make an order revoking and cancelling the said license, and it shall be revoked and

---

which is prohibited, it is a question of fact for the Magistrate or Justices to find whether the liquor sold is such as is prohibited. See sec. 70 and notes thereto.

(*d*) See note (*x*), sec. 21.

To "revoke" is to undo a thing, or to destroy or make void some deed that had existence until the act of revocation made it void: see Wharton, 647.

The words "cancel," and revoke, as used here, mean nearly the same thing. To "revoke" is literally to "call back," but the meaning as given in Wharton, *supra*, is very nearly the same as the definition of the word "cancel" as given in Worcester, p. 196. The original meaning, according to Bartolus, was to expunge or wipe out the contents of an instrument by two lines drawn in the manner of a cross; but the word is now used to signify any manner of obliteration or defacement. See Wharton, 111.

(*e*) See note (*g*) to sec. 11, ss. 10, *ante* "any person," and note (*s*) to sec. 11, ss. 20, "resident."

(*f*) Sec. 91 gives power to the County Judge upon the complaint of the Inspector, Board of License Commissioners, or the County-Attorney, where a licensee has been convicted on more than one occasion of any offence against sec. 79, or more than three occasions of any violation of any of the provisions of the Act, or where the license has been obtained by fraud, to cancel the license of the offender; and sec. 92 merely provides for the procedure in such cases. See those sections and notes thereto.

(*g*) See notes to sec. 70.

(*h*) As to meaning of the phrase "knowingly sold," etc., see note (*y*) *supra*.

cancelled from the date of such order, or from the passing of the aforesaid resolution by the commissioners. 44 V. c. 27, s. 22; 49 V. c. 39, s. 15.

(2) The percentage mentioned in the preceding sub-section, shall be determined by weight. 49 V. c. 39, s. 15.

Inspector may test liquors kept by licensee.

26. The Inspector (*i*) may from time to time (*j*) take from the liquors kept by a person holding a beer and wine license upon the premises sufficient thereof to determine whether they are of a different kind from those mentioned in the license, or contain more alcohol than is by law allowed. 44 V. c. 27, s. 24.

Accommodation.

Accommodation required.

27. Every tavern (*k*) or inn authorized to be licensed under the provisions of this Act shall contain, (*l*) and during the continuance of the license shall continue to contain, (*m*) in addition to what may be needed for the use of the family (*n*) of the tavern or innkeeper, (*o*) not less (*p*)

(*i*) "The Inspector," see secs. 6, 7, 127 and 128. See also sec. 2, ss. 8.

(*j*) "Time to time." These are words which are constantly introduced where it is intended to protect a person who is empowered to act from the risk of having completely discharged his duty when he has once acted, and, therefore, not being able to act again in the same direction: Lawrie v. Lees, 7 App. Cas., 19; *Re* Sutton Coldfield Grammar School, 7 App. Cas., 91; Whitehouse *v.* Wolverhampton R'y Co., L. R., 5 Ex., 6; Stroud's Dict., 313. See also Neilson *v.* Jarvis, 13 C. P., 176. The words may be construed to mean "as often as he pleases."

(*k*) Every tavern. See sec. 2, sub-s. 2.

(*l*) This is imperative (see sec. 8, sub-s. 2, of the Interpretation Act, R. S. O., p. 3). The existence of the requisite accommodation is a condition precedent to the granting of the license. By sec. 11, sub-s. 1, the Inspector is required to report to the License Commissioners that the applicant has all the accommodation required by law.

(*m*) "Shall continue to contain." This is also imperative and a condition upon which the continuation of the license depends.

(*n*) "Family" has various meanings and is controlled by the context. The primary legal meaning of the word is "children:" per Jessel, M. R., Pigg *v.* Clarke, 3 Ch. D., 674. In popular acceptance it included parents, children, servants and all those whose domicile or home is in the same house, and under the same management or head: Cheshire *v.* Burlington, 31 Conn., 329 (1863). In its more limited sense it signifies father, mother and children; in its ordinary acceptation, all the relatives who descend from a common root; in its most extensive scope, all the persons who live under the authority of another, including even servants: per Bermudez, C. J., Galligar *v.* Payne, 34 La. An., 1018 (1882), and another and more comprehensive definition is, a number of persons who live in one house and under one management or head: Poor *v.* Hudson Ins. Co., 2 F. R., 438 (1880); see also Stilson *v.* Gibbs, 53 Mich., 280

than four bed-rooms, and in cities six bed-rooms, together with, in every case, a suitable complement (*q*) of bedding and furniture, and (except in cities and incorporated towns) there shall also be attached to the said tavern or inn, proper stabling for at least six horses; (*r*) but the foregoing requirements shall not apply to such taverns as come within sub-section 3 of section 4 of this Act. (*s*) R. S. O. 1877, c. 181, s. 19 (1); 47 V. c. 34, s. 5.

Not to communicate with grocery.

(2) Such tavern or inn shall form no part of, and shall not communicate by any entrance (*t*) with any shop or store wherein goods or merchandise known as groceries or provisions are kept for sale; but this sub-section shall not apply to taverns in townships, unless so provided by by-law of the township council. R. S. O. 1877, c. 181, s. 19 (2).

(1884). As used here, it probably comprises the usual members of the household, including servants, but not lodgers and guests (see Pigg *v.* Clarke, *supra*); and it is intended that the accommodation required shall be in addition to that needed for the usual members of the household and the servants employed about the place.

(*o*) To keep a place or thing involves the idea of having over it the immediate control, of a character more or less permanent: R. *v.* Stannard, L. & C., 349; R. *v.* Barrett, L. & C., 263; Halligan *v.* Ganly, 19 L. T. N. S., 268; R. *v.* Rice, 18 L. T. N. S., 382. See note (*q*) sec. 11, ss. 8.

(*p*) "Not less," *i. e.*, four bed-rooms or more in places outside of cities, and six bed-rooms or more in cities.

(*q*) "Suitable complement" is rather a vague expression and may mean much or little, according to the ideas of the tavern-keeper and of the Inspector and License Commissioners, as to what is fit and proper, taking into consideration the other surroundings of the place. It was held in Marriage Articles that a trust to "provide suitably" for the settler's younger children is not too vague to be executed, but the Court will direct an enquiry what the provision should be: Brenan *v.* Brenan, I. R. 2, Eq. 266; Lewin, 117. A "suitable complement" means a full and complete provision of appropriate and necessary bedding and furniture.

(*r*) "At least six horses," *i. e.*, six horses or more. This only applies to taverns or inns in rural districts, and not to cities and incorporated towns. No stabling accommodation is required in cities and incorporated towns.

(*s*) Sub-sec. 3 of sec. 4 empowers the License Commissioners to exempt from the necessity of having any of the accommodation required by this section:

In a city of less than 15,000, not more than	3	Taverns
In a city of over 15,000 and not less than 30,000	5	"
In a city of over 30,000	10	"
And in towns of over 6,000 not more than	2	"

The Commissioners are also empowered to pass resolutions regulating the accommodation required. See sec. 3 and notes thereto.

(*t*) "Entrance" here means passage for entering, or inlet: see Worcester, 490. By sec. 64 the entrance to the hotel is required to be separate from the entrance to the bar; under the provisions of section 32 the Council of any Muni-

Every tavern to be an eating house.

28. In addition to the accommodation required by the last preceding section, each tavern or house of entertainment shall be shewn, to the satisfaction of the license commissioners, to be a well-appointed and sufficient eating-house, with the appliances requisite for daily serving meals to travellers; and the requirements of this section shall apply to all taverns or houses of entertainment, without any exception whatever, and continuously for the whole period of the license. (*u*) R. S. O. 1877, c. 181, s. 20.

City or town council may prescribe further requirements as to tavern.

29. The council of any city or town (*v*) may, by by-law (*w*) to be passed before the 1st day of March in any year, (*x*) prescribe for the then ensuing license year beginning on the 1st day of May, any requirements in addition to those in the last preceding two sections mentioned, as to accommodation (*y*) to be possessed by taverns or houses of entertainment, as the council may see fit; and the license commissioners upon receiving a copy of such by-law

---

cipality may require that there shall be no internal communication between shops licensed to sell intoxicating liquors and places for the sale of other goods and merchandise, and Municipal Councils, in passing by-laws for the licensing of billiard tables, may provide that there shall be no direct communication between the place in which such billiard tables are licensed for use and any place in which liquor is sold: Neeley and The Cor. of Owen Sound, 37 U. C. R., 289: Arkell and The Cor. of St. Thomas, 38 U. C. R., 594; see also Jones *v.* Whittaker, L. R. 5, Q. B. 541.

(*u*) By this section it is necessary that every tavern should have the means of supplying the travelling public with meals, and by section 72, a tavern keeper failing or refusing to supply lodgings, meals, or accommodation to travellers, is, on conviction, liable to a penalty of $20. See notes to sec. 19 and notes to sec. 72. These requirements are also imperative, and the existence of the appliances provided for is a condition not only of the granting but of the continuance of the license.

The section applies to all taverns including those excepted from the accommodation required by sec. 27 and those which may be exempted under sub-sec 3 of sec. 4.

(*v*) City or town. See sec. 99 and notes thereto.

(*w*) See notes to secs. 20, 32, 42 and 42*a* as to the powers of Municipal Councils to pass by-laws.

(*x*) See note (*p*) to sec. 20.

(*y*) The two preceding sections prescribe in general terms the accommodation required in the case of persons applying for licenses for taverns or other houses of entertainment; this section empowers Municipal Councils of cities and towns to further regulate the accommodation required, but in doing so they cannot, of course, decrease the extent of the accommodation required by the preceding sections.

"Accommodation" means "provision of conveniences, applied often, as it is here, to things requisite to ease and refreshment:" Worcester, 12.

shall be bound to observe the provisions thereof; and such by-law shall continue in full force for such year and any future year until repealed. (*z*) R. S. O. 1877, c. 181, s. 21.

Security to be given.

Security to be given by tavern licensee.

30. Before any tavern license is granted (*a*) the person applying for the same shall enter into a bond (*b*) to Her Majesty in the sum of $200, with two good and sufficient sureties, (*c*) (to be approved of by the Inspector) (*d*) in the sum of $100 each, conditioned for the payment of all fines and penalties (*e*) such person may be condemned to pay

(*z*) The latter part of this section is in effect the same as the latter part of sub-secs. 1 and 2 of sec. 20. The by-law, when passed, will apply to all future licenses, so long as the by-law remains in force. In section 20 provision is made for transmission of a copy of the by-law to the Commissioners; here the Commissioners are not bound by it until a copy of it has been received by them. Upon its receipt, however, they must comply with its terms and require all persons obtaining licenses in the Municipality to do so.

(*a*) The mode of procedure in issuing tavern licenses is set forth in sec. 12, by which it is provided, that upon the License Commissioners granting a certificate stating that the applicant is entitled to a license, the license duty shall be paid, and upon the applicant producing such certificate, together with a receipt for the payment of the duty, the Inspector may issue the license. The security required should be given and approved before the issue of the license.

(*b*) For form of bond see Schedule A.

The security required is a bond, and the giving of this bond is a condition precedent to the granting of the license. A license issued without this bond could be cancelled under sections 91, 92.

(*c*) An infant cannot be a party to the bond: Fisher *v.* Mowbray, 8 East, 330; Baylis *v.* Dineley, 3 M. & S., 477; Stikeman *v.* Dawson, 16 L. J. Ch., 205; nor would he be bound by it even if he had fraudulently represented himself to be of age: Bartlett *v.* Wells, 1 B. & S., 836. A married woman could, it is submitted, be one of the sureties, provided she were possessed of separate estate: Lawson *v.* Laidlaw, 3 App. R., 77 and 92, and cases there cited; Collett v. Dickenson, 11 Ch. D., 687: Dillon *v.* Cunningham, L. R., 8, Ex., 23; *Re* Shakespeare, Deakin *v.* Lane, 30 Ch. D., 169; Pallesier *v.* Gurney, 19 Q. B. D., 519; Stogdon *v.* Lee, W. N. (1891), 47: but in the present state of our law it would not be well to approve of such a bond. The applicant must be a party to the bond himself, for this section says that he shall enter into a bond with two sufficient sureties. The word "sureties" alone means sufficient sureties: see Interpretation Act, s. 8, ss. 20. See notes to sec. 31. A bond to Her Majesty does not bind the property of the person giving it to any greater extent than a bond to a subject: R. S. O., c. 94.

(*d*) The bond should also be approved of before the issue of the license. The Inspector is the judge as to the sufficiency of the sureties. It is his duty to see that they are sufficient. No affidavits of justification are required, as is usually the case, but the Inspector may, if he sees fit, require the sureties to justify. No provision is made for payment of money into the hands of the Inspector, in lieu of a bond. The security must be in the form of a bond.

(*e*) The origin of the word "fine" is from "Finis," and "signifieth a pecunarie punishment for an offence, or a contempt committed against the

for any offence against any Act, by-law or provision in the nature of law, relative to taverns or houses of public entertainment then and thereafter to be in force, and to do, perform and observe all the requirements thereof, and to conform to all by-laws and regulations that may be established by competent authority in such behalf (*f*), and such bond shall be in the words or to the effect of Schedule A to this Act (*g*); and when executed shall be filed in the office of the Inspector, to be by him transmitted to the office of the Provincial Secretary (*h*). R. S. O. 1877, c. 181, s. 22.

King, and regularly to it imprisonment appertaineth. And it is called 'Finis,' because it is an end to that offence:" Co. Litt., 126*b*.; see Stroud's Dict., 285. A "penalty" is a punishment, whether in property or in person, imposed by law or by judicial decision; the distinction therefore between a fine and a penalty is that the first is pecuniary and is imposed, and the latter may be either pecuniary or the infliction of a pain, and is inflicted or incurred; a "fine" being imposed for the violation of some rule or law, and a "penalty" for a crime: see Worcester, 556, 1051; see also note (*n*) sec. 46.

(*f*) The condition in the bond is:

1. That the licensee will pay all fines and penalties he may be condemned to pay for any offence against any Statute or other provision having the force of law now, or hereafter to be in force, relative to any tavern or house of public entertainment.

2. That he will do, perform, and observe all the requirements of such Statute or other provision.

3. That he will conform to all rules and regulations that are or may be established by competent authority in such behalf.

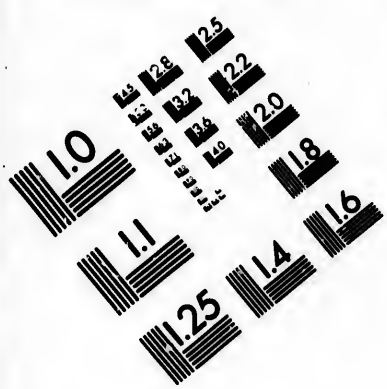
The doctrine of strict construction applies to contracts of sureties, and they are never held responsible beyond the clear and absolute terms and meaning of their undertakings, and presumptions and equities are not allowed to enlarge, or in any degree change or alter, their obligation: see Add. on Con., Edson Ed., 653 *et seq.*, and also appendix to Add. on Con., Edson Ed., p. 66-71.

When a bond is given to secure the faithful performance of a duty, etc., if the office is an annual office, and there is a fresh appointment each year, the surety is only answerable during the current year: Add. on Con., Edson Ed., 654. Under this section, therefore, and the form prescribed, a new bond should be furnished every year.

(*g*) See sec. 103 and notes thereto.

(*h*) It is the duty of the Inspector to examine the bond and see that the sureties are sufficient, and also to receive it when it has been executed and approved, and to transmit it to the office of the Provincial Secretary. Formerly the bond was sent to the Provincial Treasurer's Department.

Before the introduction of the "Crooks Act" was thought of, the Courts held that a Municipality could, before granting a license, require a certificate from the Township Treasurer that the applicant had deposited a bond binding him in £50, with two sufficient sureties, conditioned as in this section prescribed: Greystock and The Municipality of Otonabee, 12 U. C. R., 458.



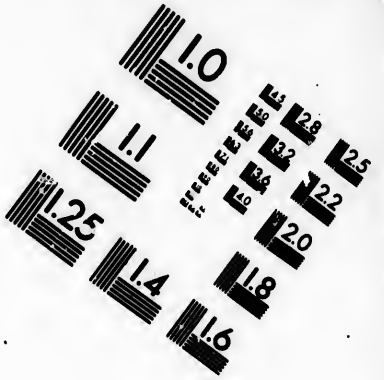
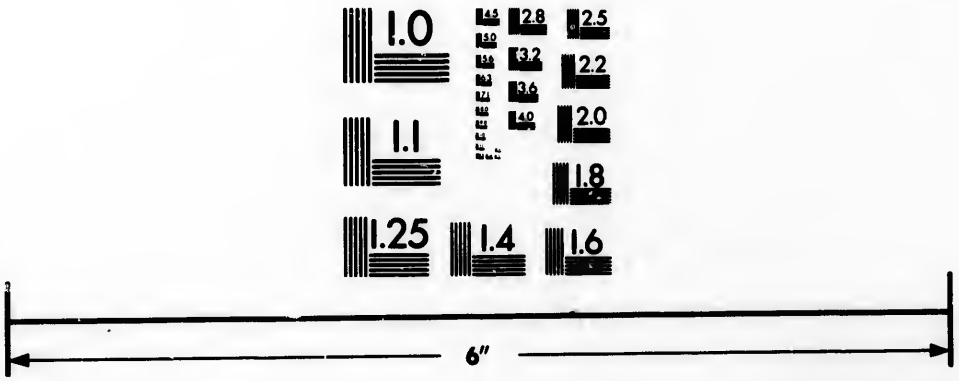


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

2.8
3.2
2.5
2.2
2.0
1.0

SHOP LICENSES.

Shop licenses, to whom given.

31. A shop license (*i*) shall not be granted (*j*) to any person (*k*) unless he has filed his application (*l*) with the Inspector on or before the 1st day of April in that year (*m*), and unless the Inspector has reported to the License Commissioners (*n*) that he is a person of good character, and that his shop and premises are suitable for carrying on a reputable business (*o*), and unless he executes with sureties a bond in the form expressed in Schedule B to this Act (*p*). R. S. O. 1877, c. 181, s. 23.

Security.

(*i*) See sec. 2, sub-sec. 3, as to what is a shop license.

(*j*) This is imperative, see Interpretation Act, sec. 8, sub-sec. 2. The provisions of this section are conditions precedent to the granting of a license.

(*k*) See sec. 11, ss. 10, and notes thereto.

(*l*) The word "application" is used here, while the word "petition" is used with regard to tavern licenses; see sec. 11, sub-sec. 1. Both words are evidently intended to mean the same thing.

(*m*) "On or before 1st April." See sec. 11, sub-sec. 2 and notes thereto. The petition for a tavern license must also be filed before this date.

(*n*) The wording of sec. 11, sub-sec. 1, is similar to this, except that in the case of a tavern license, the Inspector is required to report that the applicant is a fit and proper person to have a license, and has all the accommodation required by law. The notes to that sub-section are applicable to this.

(*o*) "Reputable business." See "good character and repute," p. 18, note (*y*).

(*p*) "Bond." See notes to sec. 30. See also sec. 103 and notes thereto.

The requirements precedent to the granting of a shop license are:

1. The filing of an application with the Inspector, on or before the 1st April, in the year in and for which the license is asked.

2. The report of the Inspector, that the applicant is a person of good character and that his shop and premises are suitable for carrying on a reputable business.

3. The execution of a bond with sureties, conditioned that the applicant "will pay all fines and penalties which he may be condemned to pay for any offence against any Statute or other provision having the force of law now, or hereafter to be in force, relative to any shop wherein liquor may be sold by retail, and will do, perform, and observe all the requirements thereof, and conform to all rules and regulations that are or may be established by competent authority in such behalf."

Sec. 30 requires two "sufficient sureties" besides the applicant himself: this section requires "sureties" besides himself. The word "sureties" shall mean sufficient sureties, and the word "security" shall mean sufficient security; and when these words are used one person shall be sufficient therefor, unless otherwise expressed: Interpretation Act, sec. 8, sub-s. 20; so that one surety is sufficient to comply with the requirements of this section. See notes to sec. 30.

Number of shop licenses limited, and licenses may be subjected to certain restrictions.

32. (1) The Council of every city, town, village or township may, by by-law to be passed before the 1st day of April (*q*) in any year, limit the number of shop licenses to be granted therein (*r*) for the then ensuing license year, beginning on the 1st day of May (*s*), and by such by-law or any other by-law (*t*) passed before the 1st day of April, may require the shopkeeper to confine the business of his shop solely and exclusively (*u*) to the keeping and selling

(*q*) The License Commissioners have power to pass resolutions limiting the number of tavern and shop licenses to be issued within the year: See sec. 4, sub-sec 2, and the Council of every city, town, village or township, are also empowered to limit the number of tavern licenses, under sec. 20. This section extends the powers of such Municipalities to the limiting of shop licenses, and confers the power of restricting and regulating the sale of liquor in such shops. The notes to ss. 2 of sec. 4, and to secs. 20 and 29 are applicable to this section. And see also notes to secs. 42 and 42*a*.

(*r*) The number of tavern licenses are limited by sec. 18, but the Act places no restriction upon the number of shop licenses to be issued.

A by-law limiting the number of shop licenses in a town to one, and requiring the licensee to confine his business exclusively to the keeping and selling of liquors is bad, as being in effect a prohibitory law and creating a monopoly: Brodie and The Cor. of Bowmanville, 38 U. C. R., 580. See also Barclay and The Mun. of Darlington, 11 U. C. R., 470; Cunningham and The Cor. of Almonte, 21 C. P., 459; Barclay *v.* The Mun. of Darlington, 12 U. C. R., 86; Greystock *v.* The Mun. of Otonabee, 12 U. C. R., 458.

A by-law directing licenses to be granted to sell spirituous liquors for the year to two parties named, and that no such licenses should be issued to any other persons. Held good under the special circumstances set out in the case: Terry *v.* The Cor. of Haldimand, 15 U. C. R., 380. See also Gifford *v.* The Mun. of Darlington, 35 U. C. R., 285, cited in note (*s*) to sec. 20.

A by-law prohibiting the sale of liquor in shops and places other than houses of public entertainment and limiting the number of taverns to nine, held valid as being within the power of Corporation: Slavin *v.* The Cor. of Orillia, 36 U. C. R., 159.

A by-law prescribing the following restrictions was held valid: 1, limiting the number of licenses for the ensuing year, beginning on May 1st, 1884, or for any further license year until this by-law is altered or repealed. 2, That the by-law should remain in force until altered or repealed. 3, That every person receiving a shop license shall confine the business of his shop solely and exclusively to the keeping and selling of liquor; and it was held that this was not in restraint of trade: Croome *v.* the Cor. of Brantford, 6 O. R., 188.

(*s*) See note (*r*) to sec. 20.

(*t*) The by-law must be passed before the 1st April, in order that the License Commissioners may have sufficient notice thereof before their first meeting: s. 11, ss. 5.

The by-law may include provisions for limiting the number of licenses to be issued as well as other regulations or restrictions: see Croome *v.* Brantford, 6 O. R., 188.

(*u*) "Solely and exclusively," *i. e.*, separately and to the exclusion of everything else. "Exclusive" means that which debars, deprives or excepts; as an exclusive right, privilege or jurisdiction, which is possessed, enjoyed or exercised independently of another or others: Anderson's Dict., 429.

of liquor (*v*), or may impose any restrictions upon the mode of carrying on such traffic as the Council may think fit (*w*); and such last-mentioned by-law may be made to come into force on the 1st day of May then next ensuing, or on the 1st day of May of the succeeding year (*x*), and any such by-law so passed shall not be repealed (*y*) during the three years next after the year in which the same comes into force. R. S. O. 1877, c. 181, s. 24 (1); 47 V., c. 34, s. 6 (1).

Certified copy to be sent to License Commissioners.

(2) It shall be the duty of the Clerk (*z*), immediately after the passing of such by-law, to send a certified copy thereof to the License Commissioners within whose license district the Municipality is situate, and such by-law shall be binding upon the License Commissioners, and any shop license to be issued shall conform to the provisions thereof (*a*); and such by-law shall remain in force for any

---

(*v*) See note (*y*) sec. 11, ss. 8; see also notes to secs. 49, 70, 71.

The words "liquor," "intoxicating liquor," and "spirituous liquor" are used in this Act as convertible terms. See note (*b*), sec. 2, at p. 4, *ante*.

(*w*) The Council in passing a by-law may impose such restrictions as it sees fit: Cairns, L. C., was of the opinion that the words "if he shall see fit" were mere surplusage, and if omitted, the clause would mean exactly the same thing as it does with them inserted: Julius *v.* Bishop of Oxford, 5 App. Cas., 228. See note (o), p. 8, *ante*.

(*x*) "Succeeding year," *i. e.*, the year which immediately follows that in which the by-law is passed: see East Dean *v.* Everett, 8 E. & E., 574. The by-law must be passed before the 1st April, but it may be framed so as not to come into force until the next year.

(*y*) This is imperative, and the by-law when once passed must remain in force for three years from the 1st May in the year in which it is made to come into operation. It is also provided that it shall remain in force until repealed.

(*z*) The Clerk of the Municipality is here referred to, and it is his duty to comply with the directions of this section. If he neglects or omits to do it, he will be liable to the penalty imposed. Ignorance of the law would be no excuse for such neglect or omission. See notes to sec. 20, sub-sec. 2.

(*a*) Whenever a Statute declares a thing "shall" be done, the natural and proper meaning is that a peremptory mandate is enjoined. But when the thing has reference to:

(*a*) The time or formality of completing any public Act, not being a step in a litigation, or accusation; or,

(*b*) The time or formality of creating an executed contract whereof the benefit has been, or, but for their own act, might be, received by the individuals or private companies or private corporations; the enactment will generally be regarded as merely directory, unless there be words making the thing done void, if not done in accordance with the prescribed requirements. Sometimes the word may be used in the same section as compulsory and as optional. For a curious instance of this, see Cooke *v.* New River Co., 38 Ch. D., 56, on appeal, 14 App. Cas., 698. But in this

future year until repealed, and any Clerk who neglects, omits, or refuses to send such certified copy shall incur a penalty of not less than $40 nor more than $100 (*b*). R. S. O 1877, c. 181, s. 24 (2).

Limitation on issue of shop licenses.

33. (1) No shop license (*c*) to sell liquors (*d*) in any store, shop, place or premises where groceries or other merchandise (*e*) are sold, (*f*) or exposed for sale, (*g*) other

---

case it is submitted that the expressions "shall be binding" and "shall conform" are, under ordinary circumstances, compulsory, though their effect might depend very much upon the character of the regulations or restrictions prescribed in the by-law. In respect of the number of licenses to be issued the License Commissioners must conform to the by-law, and issue no more than the maximum number of licenses allowed thereby.

(*b*) "Not less than $40." It was held that the similar expression, "not less than $50," in the C. T. Act, 1878, should be construed as "$50 and no less." A conviction imposing a penalty of $75 was therefore quashed: R. *v.* Smith, 16 O. R., 454; Stimson *qui tam v.* Pond, 2 Curtis, 502. But see R. *v.* Cameron, 15 O. R., 115, in which it was held that the convicting Justices may inflict a penalty in excess of $50; and a penalty of $60 was allowed to stand. Under this sec. there can be no question as to the intention of the Legislature. The penalty is restricted to the amounts mentioned, so that no fine of less than $40 nor more than $100 may be inflicted.

See notes on "convictions" sec. 70.

(*c*) See sec. 2, sub-s. 3.

(*d*) See note (*v*) to sec. 32 and note (*b*) to sec. 2, pp. 2-5.

(*e*) "Groceries" or "grocery" is a word used to signify the commodities found in the establishment of a grocer, and is generally used in the plural form as it is here. It has been said that: "technically a grocery is a place where, amongst other things, liquor is sold, and in this country all grocers as a rule sell liquor in the same manner as other merchandise; so that whether the term 'grocery' as used in the application (for insurance) is interpreted in its strict sense or in the ordinarily accepted meaning, in either case it implies a place where liquor may be sold:" and it was held that in insuring a village "grocery" the Insurance Company had knowlege that liquors might be sold therein: Nicholson *v.* Phœnix Ins. Co., 45 U. C. R., 359.

The term "merchandise," as ordinarily understood, signifies, "the objects of commerce; anything usually bought or sold; goods, wares, commodities:" Worcester, 899.

Any chattel or chattels to be sold and delivered by one party to another comes within the phrase, "goods, wares and merchandise," as used in the Statute of Frauds: Atkinson *v.* Bell, 8 B. & C., 277; and therefore a set of artificial teeth has been held to come within the meaning of the phrase: Lee *v.* Griffin, 1 B. & S., 272; see also Wolfenden *v.* Wilson, 33 U. C. R., 442. But if the substance of a contract be work and labor, it is not within the meaning of the phrase, as for instance, an artist painting a picture, a solicitor preparing a deed, a printer printing a book, or an engineer making plans and models for an intended patent: Clay *v.* Yates, 1 H. & N., 73; Lee *v.* Griffin, 1 B. & S., 272; Grafton *v.* Armitage, 2 C. B., 336. Fixtures are not within the phrase: Hallen *v.* Runder, 1 C. M. & R., 266; Lee *v.* Gaskell, 1 Q. B. D., 700; see also Humble *v.* Mitchell, 11 A. & E., 205; Latham *v.* Barber, 6 T. R., 67; Bowlby *v.* Bell, 3 C. B., 284; Watson *v.* Spratley, 10 Ex., 222; Heseltine *v.* Siggers, 1 Ex., 856; Freeman *v.* Appleyard, 7 L. T 282;

than (*h*) mineral or aerated waters (not containing spirits), ginger ale, liquor cases, bottles, or liquor baskets, or packages, taps or faucets, (*hh*) or in any store, place or premises connected by any internal communication (*i*) with such first-mentioned store, shop, place or premises, shall hereafter be granted to any person who was not a licensee or the holder of a shop license on the 25th day of March, 1884, or to his assigns. (*j*)

Knight *v.* Barber, 16 M. & W., 66; Coulton *v.* Ambler, 18 M. & W., 403.

The words "goods, wares and merchandise," in a conviction for selling without a pedlar's license, under 49 Vic. c. 18, s. 495, ss. 3, and 48 Vic. c. 40, s. 1 (O), were too general, and the conviction was quashed: R. *v.* Chayter, 11 O. R., 217.

The restriction upon the sale of things besides liquors and other articles specifically mentioned in this section is enlarged by the wording of sub-section 2, which prohibits the sale of "any other commodity" See note (*k*) *infra*.

(*f*) "Are sold." See note (*d*), sec. 2, ss. 2, and notes to sec. 70. As to when sale will be presumed, see sec. 108 and notes thereto.

(*g*) "Exposed for sale." To "expose" means to set out, bring into view; display, exhibit: Anderson's Dict., 435. See also White *v.* Redfern, 5 Q. B. D., 15; Barlow *v.* Terrett, W. N. (1891), 79. As to evidence of sale, and of keeping for sale, see secs. 108-113.

(*h*) The words "other than" create an exception: Wrotesley *v.* Adams, 1 Plow., 195. As used here it creates an exception in favor of the commodities specifically mentioned, viz.: Mineral or aerated waters not containing spirits; ginger ale; liquor cases; bottles; liquor baskets or packages; taps or faucets; all of which are allowed to be sold in licensed shops as well as liquors.

(*hh*) "Mineral water" is water impregnated with or containing minerals; "aerated water" is that which is impregnated or filled with carbonic acid, or air: see Worcester's Dict. These waters, as well as ginger ale, are not to be sold in less quantities than half a dozen bottles, and are not to be consumed on the premises. See sub-section 3.

(*i*) Persons who were licensed to sell under a "shop license" on 25th March, 1884, and their assigns were not subject to the provisions of this sub-section. But the Council of any Municipality (see sec. 32) and the License Commissioners may impose the same or similar restrictions in respect of all shop licenses. Sub-sec. 4 of this section also provides that no license shall be granted after 1st May, 1888, to *any shop* connected by internal communication with any store, shop, place or premises where groceries or other merchandise are sold, etc. If the provisions of this section are not complied with, no license can be issued. The Inspector could not report the premises suitable for carrying on a reputable business, as required by sec. 31, if there were any such communication. See secs. 74 and 75 and notes thereto.

(*j*) The word "assignee" or "assign" means a person appointed by another to do any act or perform any business; also a person who takes some right, title, or interest in things by an assignment from an assignor. They are divided into (1) assignees by deed, as when a lessee of a term sells or assigns to another; and (2) assignees by law as when property devolves upon an executor without any specific appointment, the executor is assignee in law to the testator. Assignees in bankruptcy are those persons in whom the property of a bankrupt vests by virtue of their appointment: Wharton, 62; Stroud's Dict., 56.

(2) If any other commodity (*k*) or goods are sold or exposed for sale, save as aforesaid, (*l*) in any licensed shop (*m*) in the preceding sub- section provided for, the license shall be void, (*n*) and such licensed person (*o*) may be convicted of selling liquor without license, upon proof that any other commodity or goods is or are exposed for sale or sold at such shop, save as aforesaid, and such conviction shall be conclusive evidence (*p*) that such person is unlicensed. Nothing in this section shall limit the authority of municipal councils in respect of shop licenses under the next preceding two sections. (*q*) All the provisions (*r*) regard-

License void if other goods sold.

(*k*) "Commodity" means, according to Worcester, "goods, wares, merchandise," but it has a very wide signification. Within the meaning of the constitution of Massachusetts, "commodities" embraces everything which may be the subject of taxation, including the privilege of using a particular branch of business or employment, as the business of an auctioneer, of an attorney, of of a tavern-keeper, of a retailer of liquors: Portland Bank *v.* Apthorp, 12 Mass., 256, and it was held that the the four words "Commodities, Emoluments, Profits and Advantages" are of one sense and nature, implying things gainful: London *v.* Southwell, Hob., 304; Stroud's Dict., 20. "Goods" has also a very extensive meaning and comprehends almost everything that a merchant can sell or a customer buy. See Stroud's Dict., 329. In a merchant's store, it refers to the merchandise and commodities kept for sale: Curtis *v.* Phillips, 5 Mich., 113; Anderson's Dict., 489.

(*l*) "The words "save as aforesaid" refer to the liquors authorized to be sold by virtue of the license, and the articles excepted in sub-sec. 1.

(*m*) "Any" is a word excluding limitation or qualification, therefore, every shop, store, or place, other than inns, ale or beer houses, or other houses of public entertainment licensed to sell, barter, or traffic, by retail, in liquors in quantities of less than three half pints, as described in sec. 2, ss. 3, is included in the restrictions imposed by this section.

(*n*) The license is not only void, but the conviction of the holder under this section is conclusive evidence that it has ceased to exist.

(*o*) Under this section alone the holder of the license is liable to conviction. There is no provision in it for the punishment of the person actually making the sale, if he is not the holder of the license. But see sec. 112 and notes thereto. As to proof of license, see sec. 106.

(*p*) "Conclusive evidence" is that which is not to be questioned, controverted, or contradicted: not requiring support. See notes to sec. 112.

(*q*) The "next preceding two sections" are, of course, secs. 31 and 32. The former has no reference to the authority of Municipal Councils. The powers conferred upon such Councils by sec. 32 are not interfered with by this section.

(*r*) The phrase, "all the provisions," is probably intended to include provisions made by the Act and by the by-laws of a Municipality, and the regulations of the License Commissioners which are applicable to tavern licenses and which, by virtue of this section, are made applicable to shop licenses. As to provisions for "closing taverns," see secs. 54, 55 and 71. As to "evidences of sale," see secs. 108-114, see also sec. 62. As to liability of purchaser, see sec. 58, and as to unlawful consumption by, see sec. 78.

ing the closing of licensed taverns and sales, and evidences of sales therein during prohibited hours shall apply to shops licensed in any municipality after the by-law secondly provided for in the next preceding section shall have come into force, and to shops which are provided for in the next preceding sub-section.

Mineral waters not to be consumed upon licensed premises.

(3) The aforesaid mineral or aerated waters or ginger ale shall not be sold in less quantities than one-half dozen bottles, and shall not be allowed to be consumed upon the licensed premises under the same penalty as is provided for a breach of section 60 of this Act. (*s*)

Conditions for obtaining shop license.

(4) From and after the 1st day of May, in the year 1888, no shop license shall be granted to any person to sell liquors in any store, shop, place, or premises where groceries or other merchandise are sold, or exposed for sale, except as aforesaid or in any store, place or premises, connected by any internal communication with such first-mentioned store, shop, place or premises. (*t*) 47 V., c. 34, s. 6 (3-5, 7).

LICENSES BY WHOLESALE.

Issue of licenses by wholesale.

34. (*tt*) The Inspector (*u*) of the license district, (*v*) in any Municipality (*w*) in which the license applied for is to have effect, shall issue to any applicant (*x*), upon a requisi-

(*s*) This provision prohibits the sale of mineral, aerated waters and ginger ale in less quantities than six bottles at one time, and also prohibits its use upon the premises.

As to meaning and effect of the expression "allowed to be consumed," see notes to secs. 73, 74, 76 and 78. And as to proof of consumption, see sec. 109.

Section 60 prohibits the consumption of liquor in shops, and the penalty for an infraction of its provisions is that imposed by sec. 70.

(*t*) This clause practically repeals that part of sub-sec. 1 referring to the holders of shop licenses granted previous to 25th March, 1884, and places all licensed shops on the same footing with regard to the internal communication prohibited by the section. See secs. 74-77 and notes thereto.

(*tt*) By the B. N. A. Act, sec. 91, ss. 2, 3, exclusive power is given to the Dominion Parliament to legislate in all matters affecting trade and commerce, and to raise money by any mode or system of taxation. By sec. 92, ss. 2 and 9, power is given to the Provincial Legislatures to levy direct taxes within the Province, and also to exclusively legislate with reference to shop, saloon, tavern, auctioneer and other licenses, in order to the raising of a revenue for provincial, local or municipal purposes. In R. *v.* Severn, 2 S. C. R., 70, it was held that the Provincial Legislature had not the power to tax and regulate the trade of a brewer, as that would be a restraint and regulation of trade and commerce;

tion (*y*) therefor signed by him (*z*), and after payment (*a*) to the Inspector of the proper duty thereon, a license for selling fermented, spirituous or other liquors (*b*), by wholesale only (*c*), in his warehouse (*d*), store (*e*), shop, or place

---

and that the words "other licenses" in ss. 9 of sec. 92 did not extend to licensing brewers. Ritchie and Strong, J. J., dissented. Since that time the Privy Council has held "The Liquor License Act, 1883," to be *ultra vires* of the Dominion Parliament, including the provision respecting wholesale licenses: see sec. 8, note (*m*); see also *ex. p.* Driscoll, 27 New Bruns. Rep. 2 Cart., 392.

(*u*) See sec. 2, ss. 8.

(*v*) See sec. 2, ss. 6.

(*w*) For the meaning and effect of the word "any," see note (o) to sec. 11, ss. 12.

(*x*) The word "shall" is imperative: see Interpretation Act. Licenses by wholesale may be issued between the 1st and last days of May, but all such licenses shall be deemed to have been issued on the said 1st day of May. See sec. 8, ss. 2.

"Any applicant" is equivalent to all applicants, without any limitation or restriction: see Powell *v.* Howell, L. R. 3, Q. B. 654; Holmes *v.* Meynell, T. Raym, 452; Stroud's Dict., 39. The restrictions in the next following section disqualify a retail dealer in other goods from holding a wholesale license to sell liquors upon the premises in which other goods are sold, and confines the busines to selling by wholesale and in unbroken packages.

(*y*) A "requisition" is a formal demand or request: See Anderson's Dict., 886; Wharton, 687. The definition given by Worcester is, "the act of requiring; application for a thing to be done by virtue of some right; requirement; demand; claim; exaction."

It may be noted that in case of a wholesale license, the word "requisition" is used, while, in the case of tavern and shop licenses, the terms used are "petition" and "application," respectively.

(*z*) Speaking generally, a signature is the writing, or otherwise affixing, a person's name, or mark to represent his name, by himself or by his authority, with the intention of authenticating a document as being that of, or as binding on the person whose name or mark is so written or affixed. But the minute requisites vary according to the nature of the document to which it is affixed: R. *v.* Kent Justices, L. R. 8, Q. B. 305; and "in every case where a Statute requires a document to be signed by a particular person, it must be a pure question on the construction of the Statute whether the signature by an agent is sufficient:" per Bowen, L. J., *re* Whitley, 33 Ch. D., 337. In this section the requisition is to be signed "by him," and it is submitted that the meaning of this is, that the requisition should be signed by the applicant himself: see Toms *v.* Cuming, 7 M. & G., 88; Davies *v.* Hopkins, 27 L. J. C. P., 6, and see also cases cited in note (*d*), *ante* p. 27. A lithographed signature was held insufficient: R. *v.* Cowper, 24 Q. B. D., 533.

(*a*) The Inspector must have received the duty before he issues the license. The "proper duty" is $250: see sec. 41, ss. 1, and sec. 44, ss. 1. This amount cannot be increased by a by-law of the Municipality.

(*b*) See sub-sec. 1 of sec. 2.

(*c*) The wholesale license, as its name indicates, is for a sale by wholesale, that is to say, in quantities of not less than five gallons, or one dozen bottles of at least three half pints each, or two dozen bottles of at least three fourths of a pint each. The sale is intended to be made at one time and not on different occasions on the same or different days; and the sale by the holder

to be defined (*f*) in the said license, and situate within the said Municipality (*g*), and such license shall be deemed a license by wholesale within the meaning and subject to the provisions of sub-section 4 of section 2 of this Act (*h*). R. S. O. 1877, c. 181, s. 25.

---

of a wholesale license of any quantity less than that authorized by his license is a punishable offence: R. *v.* Faulkner, 26 U. C. R., 529; R. *v.* Denham, 35 U. C. R., 503. It was held that neither this nor the provisions of sections 49 and 70 applied to brewers: R. *v.* Scott, 34 U. C. R., 20, and other cases cited in notes to sec. 51.

Under the English Licensing Act, it was held that a *bona fide* traveller for a licensed dealer required no license: Stuchbery *v.* Spencer, W. N., (1886) 132; see Stallard *v.* Marks, 3 Q. B. D., 412; but see note (*g*) *infra*, and sec. 17. As a rule "wholesale" merchants deal only with persons who buy to sell again, whilst "retail" merchants deal with consumers: per Bacon, V. C., Treacher *v.* Treacher, W. N., (1874) 4.

(*d*) A building or shed enclosed on two sides and roofed, used for purposes connected with the occupation of a wharf, and also as a place of deposit for goods, was not a "warehouse:" Watson *v.* Cotton, 5 C. B., 51, at p. 54. A "warehouse" was construed to be *ejusdem generis* (of the same nature) with "dwelling-house, outhouse, yard, garden, *or other place:*" R. *v.* Edmundson, 2 E. & E., 77.

(*e*) In the United States and Canada a "store" is generally a shop for the sale of goods, or a building in which goods of any kind are kept for sale: Worcester, 1421. In England it is never applied to a place where goods are sold, only to a place where they are deposited. In this country it denotes both of these places: Barth *v.* State, 18 Conn., 440 (1847).

The common use of "store," when applied to a building, is to designate a place where traffic is carried on in goods, wares and merchandise, and not to designate a storehouse: Hittinger *v.* Westford, 135 Mass., 259 (1883); Boston Loan Co. *v.* Boston, 137 Mass., 335 (1884); Anderson's Dict., 979.

(*f*) See section 17 *ante*, note (*q*).

(*g*) "Within the said Municipality" means "the Municipality in which the license is applied for" (see *supra*), and confines the selling of liquor to such Municipality. Section 17 provides that a license shall only be for the premises described in the license, and that the license shall remain valid only so long as the licensee continues to be the occupant of the premises and true owner of the business.

(*h*) Sub-sec. 4 of sec. 2 defines the meaning of "license by wholesale" and "wholesale license" to mean "a license for selling, bartering, or trafficking, by wholesale only, in such liquors in warehouses, stores, shops, or places other than inns, ale or beer houses, or other houses of public entertainment, in quantities of not less than five gallons in each cask or vessel at any one time; and in any case where such selling by wholesale is in respect of bottled ale, porter, beer, wine, or other fermented or spirituous liquor, each such sale shall be in quantities not less than one dozen bottles of at least three half pints each, or two dozen bottles of at least three fourths of a pint each, at any one time. The licenses provided for by the Act are four in number, viz.: (1) Tavern licenses—sec. 2, sub-sec. 1; (2) shop licenses—sec. 2, sub-sec. 3; (3) wholesale licenses—defined above, and (4) beer and wine licenses—sec. 29.

See notes to sec. 35.

35. Wholesale licenses (*i*) may be issued (*j*) at any time (*k*) during the year after the license commissioners (*l*) of the district (*m*) in which such license is to have effect, have directed the same to be granted, (*n*) and shall be strictly limited (*o*) to persons who carry on the business of selling by wholesale or in unbroken packages, (*p*) and any wholesale license so issued shall be and become void (*q*) in

Regulations as to issue of wholesale licenses.

(*i*) See sec. 2, ss. 4, and note (*c*) to sec. 34.

(*j*) See note (*a*) to sec. 34. In general, the word "may" is permissive: Interpretation Act, sec. 8, ss. 2. But notwithstanding this, the word must be governed by the context, and where the Statute makes provision for effectuating a legal right, it and other enabling words are construed as compulsory: see Roles *v.* Rosewell, 5 T. R., 538; Hardy *v.* Bern, 5 T. R., 636; Maxwell on Stats., 224; Aitcheson *v.* Mann, 9 P. R., 473; Julius *v.* Bishop of Oxford, 5 App. Cas., 214, and other cases cited in note (*o*), p. 8 *ante*.

(*k*) These words have the widest possible signification and mean that the license may be issued at any period of the year.

(*l*) See sec. 3.

(*m*) See sec. 2, ss. 6, and note thereto.

(*n*) The mode of procedure in issuing tavern and shop licenses is provided for in sec. 12, but there is no provision made in respect of the issue of wholesale licenses. What is meant by the expression used here is not quite clear, but it may be presumed that some such proceeding as that provided for in sec. 12 is intended, and that upon the certificate of the Commissioners "directing" him to do so, and upon payment of the duty in the last section required, the Inspector shall issue the license to the applicant.

(*o*) "Strictly limited," means that all those who do not carry on business of selling by wholesale in the way here described shall be rigorously excluded from having a license to sell under this and the preceding section.

The qualification required by a person to entitle him to a wholesale license is that he shall carry on a strictly and exclusively wholesale business. See note (*q*) *infra*.

(*p*) A "package" is a parcel or bundle. Paintings laid upon one another without any tie or covering, in a waggon having sides but no top, is a package within the English Carriers' Act, 11 Geo. 4, and 1 Wm. 4, c. 68, secs. 1, 2; Whaite *v.* Lancashire & Yorkshire Ry. Co., L. R., 9, Ex., 67.

In the United States it was held that a package must be interpreted to mean small parcels or bundles, whose appearance would give no adequate information of their value to the carrier: Southern Express Co. *v.* Crook, 44 Ala., 468; S. C. 4, Am. Rep. 140.

The term "unbroken packages" may be construed as parcels containing goods as originally put up by the importer or manufacturer. The Municipal Act, 29, 30 Vic. c. 51, sec. 252, provided that: "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 not less than five gallons or one dozen bottles."

(*q*) This is a provision for the forfeiture of the license. This forfeiture arises in the event of the licensee at any time, either directly or indirectly, carrying on the business of a retail dealer in any other goods, wares or merchandise, and the forfeiture may occur if such retail business is carried on by means of a partner, clerk, agent, or any other person. This only applies, however, to the

case the holder thereof, at any time during the currency of the said license, directly or indirectly, (*r*) or by or with any partner, (*s*) clerk, (*t*) agent (*u*) or other person, (*v*) carries on, (*w*) upon the premises to which such license applies,

---

premises mentioned in the license, he is not prohibited from carrying on any sort of business upon other premises. As to meaning of term void see note (*y*) to sec. 15, *ante* p. 42.

(*r*) "Directly or indirectly." The addition or omission of these words to the offence of an officer of a Corporation, being "interested" in a contract with his Corporation, seem to be immaterial: Todd *v.* Robinson, 14 Q. B. D., 789.

(*s*) "An agreement that something shall be attempted with a view to gain, and that the gain shall be shared by the parties to the agreement is the grand characteristic of every partnership: Lindley, 1; and persons engaged in any trade, business, or adventure upon the terms of sharing the profits and losses to be derived therefrom, are necessarily to some extent partners in that trade, business, or adventure, nor is the writer aware of any case in which persons who have agreed to share profits and losses have been held not to be partners:" *Ib.* 11.

(*t*) "Clarke (clerke)." "*Clericus* is two fold: *ecclesiasticus* (which Littleton here, s. 180, intendeth), and he is either secular or regular, so called because he is *servus et hæreditas domini*, and *laicus*, and in this sense is signified a penman who getteth his living in some Court or otherwise by the use of his pen:" Co. Litt., 120a.

A clerk or servant is a person bound either by express contract or by conduct implying such contract, to obey orders and submit to the control of his master in transaction of the business which it is his duty as such clerk or servant to transact: Steph. Cr. 237; see *Ib.* to page 240 for cases in illustration.

A "clerk" is a person employed in an office, public or private, for keeping records, whose business is to write or register in a proper form the transactions of the tribunal or body to which he belongs: People *v.* Fire Commissioners, 73 N. Y., 442 (1878); see Ross *v.* Heathcock, 57 Wis., 96 (1883).

(*u*) "An agent is a person duly authorized on behalf of another, or one whose unauthorized act has been duly ratified:" Evans Prin. & Agt. See note (*u*) to sec. 11, p. 81, *ante*.

(*v*) The words, "or other person," are intended to give to the section a very wide scope and to apply to the acts of any one who may, in any way, be connected with the holder of the license.

(*w*) The phrase, "carrying on," implies a repetition or series of acts: per Brett, L. J., Smith *v.* Anderson, 15 Ch. D., 247; see also *re* Siddall, 29 Ch. D., 1; Crowther *v.* Thorley, 48 L. T., 644; *Re* Thomas, 14 Q. B. D., 379; Harris *v.* Amery, L. R. 1, C. P. 148. To "carry on" a business means, primarily, to carry on one's own business; therefore it cannot be said in reference to a salaried clerk "that he carries on business" at the place where his employer's office is: Lewis *v.* Graham, 20 Q. B. D., 780; S. C., sustained, W. N. (1888) 204; Buckley *v.* Hann, 5 Ex., 43; Sangster *v.* Kay, 5 Ex., 886; Le Taileur *v.* The South-Eastern Ry., 3 C. P. D., 18. "The business must be some business in which he has control, or acts as one of the partners engaged in carrying it on;" and "a particular clerk or workman who is engaged about the business, but has no control over it whatever, cannot be said to carry on business:" per Coleridge, C. J., Lewis *v.* Graham, *supra*. But "there is no principle of law which decides what 'carrying on' trade is; a multitude of circumstances make up what is called 'carrying on' a trade:" per Jessel, M. R., Erichsen *v.* Last, 8 Q. B. D., 414. It has been said that the phrase "has been comparatively little considered or discussed" (see Sinclair's Con. D. C. Act, 1888,

the business of a retail dealer (*x*) in any other goods, wares

p. 125), but it is submitted that it is not so much because there has been no consideration or discussion of it, but because the authorities have been unable to agree upon its meaning, or because it takes so many different forms that it is impossible to lay down a general rule which will apply to all. The definition of the phrase "to carry on," as given by Worcester, is "to prosecute; to help forward; to continue; *as to carry on business;*" and it would seem as though the remarks made by Brett, L. J., in Smith *v.* Anderson, *supra*, might be applied to this as well as any other cases where the phrase is used, and that whatever "carrying on business" may mean, it implies a "repetition or series of acts," and "that series of acts is to be a series of acts which constitute a business."

The same principle has been laid down in American cases: see Weil *v.* State, 52 Ala., 20; United States *v.* Jackson, 1 Hughes, 582 (1875); Cooper Manuf. Co. *v.* Ferguson, 113 U. S., 735 (1885). See also Sinclair's D. C. Acts, 1879, 86-88; Stroud's Dict., 108-110, 38 Alb., L. J., 342; Sinclair's Con. D. C. Act, 1888, 125, 126; Anderson's Dict., 152.

The licensee is not prohibited from carrying on a retail business upon *other* premises unconnected in any way with those to which his license applies. But, see note (*q*), sec. 35.

(*x*) The holder of a "wholesale license" is not compelled to confine his business exclusively to the selling and keeping of liquors as the holder of a "shop license" is; but he must not, either himself or by any partner, clerk, agent or other person, carry on business as a retail dealer in any other goods, etc. The notes to sec. 34 shew in a general way what a "wholesale dealer" is, and it is important to know what the strict legal definition of a "retail dealer" may be. It has been held, in the United States, that a retail dealer is one who sells by small quantities, to suit customers, articles which are bought in larger amounts: State *v.* Lowenhaught, 11 Lea, 15 (1883); Webb *v.* State, 11 Lea, 664 (1883). To "retail" is to sell in small quantities; to sell by small parcels or quantities, and not in gross, as to sell half a pint of alcohol at once: Commonwealth *v.* Kimball, 7 Metc., 308 (1843); Bridges *v.* State, 37 Ark. 226 (1881).

To constitute the offence of carrying on the business of a retail liquor dealer without having paid the tax required by United States law, the accused must have procured the liquor sold with intent to retail it, or, having it on hand, formed the intent to retail it, and carried out that intent by one or more acts: United States *v.* Bonham, 31 F. R., 808 (1887).

Gratuitously distributing ardent spirits at a public gaming table does not constitute the keeper of the table a retailer of spirituous liquors: United States *v.* Mickle, 1 Cranch, C. C. 268 (1808).

"As a general rule *wholesale* merchants deal only with persons who buy to sell again, whilst *retail* merchants deal with consumers:" per Bacon, V. C., Treacher *v.* Treacher, W. N. (1874) 4. Wharton defines "retail" "to sell in small parcels, and not in gross." A wholesale and retail sale of liquors is defined by the Act, see sec. 2.

For the purpose of the English Licensing Acts the sale of beer, cider or perry, in any less quantity than four and a half gals. is selling by retail; but as regards spirits, there is no definition in the Acts, so that each case must be decided on its own circumstances: Paterson's L. A. 5. By 6 Geo. 4, c. 81, a retailer of beer is defined as, "every person, not being a brewer, who shall sell strong beer only in casks, containing not less than four and a-half gallons, Imperial standard gallon measure, or in not less than two dozen reputed quart bottles at one time to be drunk and consumed elsewhere than on his, her, or their premises," and it was held that if the quantity sold at one time be four

or merchandise. (*y*) R. S. O. 1877, c. 181, s. 26.

Manufacturers of native wine.

36. Manufacturers (*z*) of native wines, (*a*) from grapes grown and produced in Ontario, (*b*) and who sell such wines in quantities of not less than one gallon, or two bottles of not less (*c*) than three half-pints each at one time, [to be wholly removed and not drunk upon the premises], (*d*) shall

---

and a-half gallons or more, it is not sold "by retail," though it be delivered in pint or half pint bottles: Fairclough *v.* Roberts, 24 Q. B. D., 350. See also Shoolbred *v.* St. Pancras Jus., 24 Q. B. D., 346; Jones *v.* Bone, L. R. 9, Eq. 674; Buckle *v.* Fredericks, 44 Ch. D., 244.

(*y*) See note (*s*), sec. 33.

(*z*) A person who mixes by boiling together drugs to form a nostrum is not a manufacturer; but a person who converts several things into articles of farm or domestic use, so that a new article is formed, is: per Smith, C. J., N. C. Sup. C., May 7, 1888, State *v.* Morrell, 38 Alb., L. J. 259. Worcester also defines "manufacture" as "the process of making any thing by art, or of reducing materials into a form fit for use by the hand or by machinery," and "manufacturer" as "one who manufactures." For other authorities on the meaning of the word, see Morgan *v.* Seaward, 2 M. & W., 558; R. *v.* Wheeler, 2 B. & Ald., 349; Anderson's Dict., 654.

(*a*) "Native wines," as here described, are those manufactured from grapes, grown *and produced* in Ontario. Worcester defines "native" as "that which grows in the country." See also Whitstable Free Fishers *v.* Elliott, W. N. (1888) 27.

(*b*) The words, "grown and produced," imply nearly the same thing: "grown" means "raised or produced by cultivation," and "produced" means "brought forth; borne; yielded." See Worcester, 135; see also Warren *v.* Peabody, 8 C. B., 800.

(*c*) "Not less" means "nothing less." So that no quantity less than one gallon, or two bottles containing not less than three half pints each, can be sold at one time.

(*d*) This clause is added by 52 Vic. c. 41, s. 2. A person licensed to sell beer by retail "to be drunk or consumed off the premises," who supplied a pint of beer to a traveller who sat upon a bench placed and fastened against the wall of the house, returning the mug in which he was served, was held to have been properly convicted of selling beer to be drunk on the premises: Cross *v.* Watts, 13 C. B. N. S., 289.

A person licensed to sell beer not to be drunk on the premises, whose servant handed beer in a mug through an open window to a person who, after paying for it, drank it immediately, standing on the highway as close as possible to the window, was held to be improperly convicted of selling beer on the premises: Deal *v.* Schofield, L. R. 3, Q. B. 8. In another case the beer was sold to a person who carried it across the highway to a cottage about fourteen yards from defendant's premises, and handed the beer to a person who was standing in his own garden, who drank some of it, returning the rest to the purchaser and others who drank it standing close to the wall. The jug was refilled and the beer drank several times in this way. The defendent received the money on each occasion and saw, or might have seen what was going on; and it was held this did not justify a conviction for permitting drinking on the premises: Bath *v.* White, 3 C. P. D., 175.

Where defendant had two shops, a grocer's and a draper's, which formed part of his house, and both could be entered from the house at the back, as

be exempt (*e*) from any duty under this Act, and shall not be required to obtain any license for so selling wines so manufactured. R. S. O. 1877, c. 181, s. 27. Amended by 52 Vic. c. 41, sec. 2.

TRANSFER OF LICENSES.

Transfers of licenses.

37. (1) In case any person (*f*) having lawfully obtained (*g*) a license (*h*) under this Act before the expiration of his license (*i*) dies, or sells, or by operation of law or otherwise assigns (*j*) his business, or removes (*k*) from the house or place in respect of which the said license applies, his license shall, *ipso facto* (*l*), become forfeited,

---

well as the customers' entrance. The grocery business had an entrance for customers on one street and the draper's a customers' entrance on another street. During the day there were means of going, and customers occasionally passed, from one shop to the other, but after ten o'clock shutters or partitions were put up, and all means of communication, except through the house, prevented. It was held defendent could not be convicted of having the house open for the sale of liquor after ten o'clock at night: Brigden *v.* Heighes, 1 Q. B. D., 330; see also R. *v.* Palmer, 46 U. C. R., 262. See notes to sec. 54.

(*e*) This provision is evidently intended as "an encouragement of home industry." "Exempt" means "free from:" see Attorney-General *v.* Fitzjohn, 2 H. & N., 465. The exemption only applies to the kind and quantity of wine mentioned in the context, and if not strictly observed the seller will be liable to the penalty for selling without a license under secs. 49, 70.

(*f*) See note (*g*) p. 28, *ante*.

(*g*) "Lawfully obtained" means comformably or agreeably to law, that is, in compliance with the provisions of this Act: See Worcester.

(*h*) See sec. 2. This applies to all licenses issued in pursuance of this Act.

(*i*) The license expires on the 30th April in each year; see sec. 8, ss. 1.

(*j*) The provision made here is wide enough to cover any case of a licensee becoming divested of his interest in the business; if he dies, his legal representatives must apply to and obtain the consent of the License Commissioners in the manner set out below; if he sells, it is the duty of the purchaser to obtain such consent. The holder of the license may become divested of his interest in the business by virtue of some legal process, as in the case of a sale of the business under an execution. A lease is said to be surrendered by act and operation of law, when the lessee has been a party to some act, the validity of which he is estopped from disputing and which would not be valid if his lease had continued to exist: See Sinclair's L. & T., 89. But the meaning of the phrase here has, it is submitted, a much more extensive meaning than this and extends to any case in which the licensee has ceased to be the owner of the business, by reason of any legal process or proceeding: See R. *v.* Booth, 3 O. R., 144, cited below.

(*k*) A license applies only to the particular premises described in it and to which it applies. The licensee must also be the true owner of the business, and so it is provided that if he ceases to be the owner of the business or removes to other premises, his license becomes void.

(*l*) "*Ipso facto*" was originally a phrase applied to a centure of excommunication in the Ecclesiastical Courts immediately incurred for divers offences

and be absolutely null and void to all intents and purposes whatsoever (*m*),—unless such person (*n*), his assigns, (*nn*) or legal representatives, within one month (*o*) after the death,

---

after lawful trial. It means "by the very act itself," and therefore no proceeding of any kind is necessary to annul the license in any of the events specified. It becomes void of itself the very moment the event takes place, unless the consent of the License Commissioners is obtained in the manner provided and at the time specified.

(*m*) The word "forfeit" is defined in Dr. Johnson's Dictionary to be: "Something lost by the commission of a crime; Something paid for the expiation of a crime; a fine; a mulct;" and the verb "to forfeit" is defined to mean, "to lose by some breach of condition; to lose by some offence."

The word "forfeit" means not only the actual taking away of the property on breach of a condition, but also the doing or suffering the thing which creates a liability to such deprival: *re* Levy, 30 Ch. D., 119. It involves the idea of permanent loss or liability thereto: Kensington *v.* Mansell, 13 Ves., 246; Twining *v.* Muscott, 12 M. & W., 832; Dimes *v.* Grand Junction Canal, 9 Q. B., 469. A clause of forfeiture in a law is construed differently from a similar clause in an engagement between individuals. A Legislature always imposes a forfeiture as a punishment inflicted for a violation of some duty enjoined by law, whereas individuals commonly make it a matter of contract: Maryland *v.* Baltimore, etc., Ry. Co., 3 How., 552 (1845). Where an absolute forfeiture is the penalty, title accrues to the Government when the penal act is committed: *re* The Mary Celeste, 2 Low., 356 (1874).

Where an enactment has some object of public policy in view which requires the strict construction, the word "void" receives its natural full force and effect: Maxwell, 256, 257, citing per Bayley, J., R. *v.* Hipswell, 8 B. & C., 471. See note (*y*) to sec. 15, *ante*.

When an instrument is "void" it is so nugatory and ineffectual that nothing can cure it: Wharton, 763. The word "null" is defined by Worcester to mean "void; of no legal force; ineffectual; invalid; useless;" and the expression "absolutely null and void" means that, in the fullest sense, the license shall become inoperative, nugatory, ineffectual, and of no legal force; and the expression, "to all intents and purposes whatsoever," which follows, if it can be said to add anything to the effect of that which precedes it, indues it with all the force that can be expressed in words, see Phillpotts *v.* Phillpotts, 10 C. B., 85; *re* Toomer, *ex parte* Blaiberg, 23 Ch. D., 254; Davies *v.* Rees, 17 Q. B. D., 408; Davies *v* Goodman, 5 C. P. D., 128; *re* Burdett, 20 Q. B. D., 310, and other cases cited in Stroud's Dict., 865-868.

(*n*) "Unless" is, probably, of like value as "except" in creating a condition precedent: *re* Dickinson, *ex parte* Rosenthal, 20 Ch. D., 315; see also R. *v.* Bridgnorth, 10 A. & E., 66. The condition precedent created here is the obtaining of the consent of the License Commissioners to the transfer after the death, assignment, or removal of the licensee.

(*nn*) Assigns are persons who become by act of the party or operation of law entitled to rights or property theretofore vested in some other person. A devisee, an heir, executor, and an administrator, have each been held to be an assign: How *v.* Whitfield, 1 Vent., 338; Titley *v.* Wolstenholme, 7 Beav., 425; Hall *v.* May, 3 K. & J., 585. A purchaser is, of course, an assign: Hoole *v.* Smith, 17 Ch. D., 434. An execution creditor is also, under some circumstances, an assign: *Re* Abbott and Medcalf, 20 O. R., 299; Commercial Bank *v.* Watson, 5 L. J., 163; see also Stroud's Dict., 56.

(*o*) See note (*r*) p. 24, *ante*. The application to the License Commissioners should be made within one month, although the time for granting the consent

assignment, or removal of the original holder of such license, or other period, in the discretion of the License Commissioners of the district in which the license has effect, obtains their written consent (*p*) either to the continuance (*q*) of the said business or to the transfer of such license to any other person, and thereupon (*r*) forthwith (*s*) transfers (*t*) the same to such other person, who, under

---

may be extended by the License Commissioners for such other period in their discretion. The Commissioners may also, if they see fit, extend the time for making the application.

(*p*) The consent here required is obtained on an application for a transfer, which must be filed with the Inspector, see sub-sec. 3.

"As to what is a written consent:" See West *v.* Dobb, L. R., 5 Q. B., 460. In an Act of Parliament, expressions referring to writing, shall, unless the contrary intention appears, be construed as including words printed, painted, engraved, lithographed or otherwise traced or copied: Interpretation Act, sec. 8, ss. 14.

The consent should be signed by the License Commissioners.

The consent of the License Commissioners does not of itself validate a transfer of a license: See R. *v.* Booth, 3 O. R.. 144.

(*q*) The business may be continued in the place for which the license was originally issued in the name of the original licensee, or it may be transferred to some other person and the business continued by him, in the house or place to which it applies, but no other.

(*r*) Upon obtaining the consent of the Commissioners, the license is to be "forthwith" transferred.

(*s*) "Forthwith" is to be construed according to circumstances, but it may be said to mean with as little delay as possible; with all reasonable celerity: Roberts *v.* Brett, 20 C. B. N. S., 148; Burgess *v.* Boetefeur, 7 M. & G., 494; *Re* Southam, *ex parte* Lamb, 19 Ch. D., 169; Furber *v.* Cobb, 18 Q. B. D., 494; R. *v.* Price, 8 Moo., P. C. C., 203; Lowe *v.* Fox, 15 Q. B. D., 667; affirmed 12 App. Cas., 206. But where a consequence is "forthwith" to follow on an event, the word imperatively excludes a time within which something else may be done, inconsistent with that consequence; thus where a Statute provided that a Town Council, on receiving the resignation of a person elected to a corporate office, is "forthwith" to declare that office vacant, the resignation cannot be withdrawn: R. *v.* Wigan, 14 Q. B. D., 908.

(*t*) The verb "transfer" is one of the widest terms that can be used: per James, L. J., Gathercole *v.* Smith, 17 Ch. D., 1. A "transfer," *e. g.*, of a debt, does not necessarily mean Absolute Transfer: per Cotton, L. J., *re* Combined Weighing Co., 43 Ch. D., 104. The definition of the verb "to transfer," as given by Worcester, is: (1) "To carry, remove, or pass from one place or person to another; to transport; (2) to make or pass over; to convey as a property or right; to consign." And the substantive, as: (1) "The act of transferring; removal from one place or person to another; (2) the delivery or conveyance of property, right or title to another." The meaning of the word, as used here, is to convey or pass over the right of one person to another. Under the English Licensing Act, 1872, sec. 2, the appeal to Quarter Sessions created by ss. 27, 28 and 29, and 9 Geo. 4, c. 61, is repealed except in so far as they relate to the Renewals of Licenses or to the Transfer of Licenses. The tenant of a licensed house gave it up on 29th Sept., and in the meantime, having received notice of opposition, purposely neglected to apply for a renewal

such transfer, may exercise (*u*) the rights (*v*) granted by such license, subject to all the duties and obligations of the original holder thereof, until the expiration thereof (*w*), in the house or place for which such license was issued and to which it applies (*x*), but in no other house or place (*y*).

---

of the license. The incoming tenant applied for a license at the next Special Sessions; this was refused and he appealed. Held, that the application was not for a new license, but for a Renewal or Transfer, and therefore the right of appeal was not taken away: Thornton *v.* Clegg, 24 Q. B. D., 132.

(*u*) "To exercise" means "to pursue, carry on; and to put in use, as to *exercise* authority." See Worcester, 516.

(*v*) "Rights" signifies those qualities in a person by which he can do certain actions, or possess certain things which belong to him by virtue of some title or authority: see Worcester, 1239. The rights to be exercised here are those which apply to the sale of liquor in the manner specified in the license. See also note (*l*) p. 22, *ante*.

(*w*) The time for expiration in every case is 30th April. See sec. 8, ss. 1.

(*x*) See note (*q*) *supra*.

(*y*) See note (*q*) to sec. 17.

Upon the sale of a public house as a going concern, it is of the essence of the contract that the license of the house be transferred: Day *v.* Luhke, L. R. 5, Eq. 336; and therefore, when, upon the day for the completion of the contract, the vendors were not in a position to transfer the license, the purchaser was held entitled to repudiate the contract: Cowles *v.* Gale, L. R. 7, Ch. 12; Claydon *v.* Green, L. R. 3, C. P. 511; Modlin *v.* Snowball, 29 Beav., 641.

Where the executors of the owner of a public house renewed the license in the name of the deceased owner, it was held that the license was absolutely void: Cowles *v.* Gale, *supra*. There is no covenant implied in a parol demise, that the lessee will not suffer any thing to be done whereby the license shall become forfeited: Maw *v.* Hindmarsh, 28 L. T., 644. A covenant by the lessee of a tavern that he would do nothing to endanger the license can be enforced by the assignee of the reversion, but there is no breach of it in selling liquor after hours, if the conviction is not endorsed on the license as required by the English Licensing Acts: Fleetwood *v.* Hull, 23 Q. B. D., 35. A, being the keeper of an hotel without a license, and B being cognizant of that fact, upon the transfer of the premises to B, £150 were deposited in the hands of a stakeholder to be handed over to B if A failed to procure and transfer a license. B having failed to give notice and attend the Magistrates on the licensing day, was held not entitled to recover the £150: Bryant *v.* Beattie, 4 Bing. N. C., 254.

The defendant and his brother were carrying on business as Booth Bros. and had a license in the name of the firm to sell intoxicating liquors. Before the nomination of members of the Parkdale Council, the defendant, with the consent of the License Commissioners, transferred his interest in the license to his brother in order to qualify as a Councillor, but the business continued as before: Held, that a license cannot lawfully be transferred except in the cases mentioned in this section, none of which had occurred here, that the consent of the Commissioners did not validate the transfer, and therefore the defendant retained his interest in the license and was disqualified: R. *v.* Booth, 3 O. R., 144; 9 P. R., 452. See also R. *v.* Conway, 46 U. C. R., 85.

On transfer of tavern license new report necessary

(2) In every such case of a transfer (*z*) of a tavern license, the person in whose favour any such transfer is to be made shall first produce (*a*) to the License Commissioners a report of the Inspector similar (*b*) to that mentioned in section 11 of this Act (*c*). R. S. O. 1877, c. 181, s. 28.

Provisional consent to a transfer of license.

(3) Upon receipt (*d*) by the Inspector of an application for a transfer of a license, and pending (*e*) the consideration and consent thereto by the Board of License Commissioners, the Inspector may (*f*) within one month (*g*) thereafter, (*h*) issue to the proposed transferee a written provisional consent in the form Schedule M to this Act annexed, under which the proposed transferee may exercise the rights granted by the license issued to the premises until the written consent (*i*) of the Board of License Commissioners may be obtained: provided always that such written consent shall not operate or extend beyond one month from the time of the death of the original licensee or from the sale or transfer by the licensee or by operation of law; and provided further that such provisional consent

---

(*z*) "Transfer," see note (*t*) *supra*.

(*a*) To "produce" means "to bring forward; to offer to view; to shew." Worcester, 1135.

(*b*) See sec. 11, sub-sec. 1 and notes thereto.

(*c*) The Inspector must report that the applicant is a fit and proper person to have a license, and (in case of a tavern license), has all the accommodation required by law, and is known to the Inspector to be of good character and repute. See the notes to sec. 11, sub-sec. 1.

(*d*) "The words 'on' or 'upon,' it has been decided, may either mean before the act done to which it relates, or simultaneously with the act done, or after the act done, according as reason and good sense require with reference to the context and subject-matter of the enactment," per Denman, C. J.: R. *v.* Arkwright, 12 Q. B., 970; R. *v.* Humphrey, 10 A. & E., 335. See Add. on Con., Edson Ed., 191.

(*e*) A legal proceeding is pending as soon as commenced and until it is concluded: See Stroud's Dict., 576. Therefore, the application for a transfer is pending from the time of its receipt by the Inspector, until finally disposed of by the Commissioners. But this period must not exceed one month from the time of the death of the original licensee, or from the sale or transfer by him of the license.

"Consent," see note (*o*) to sub-sec. 1.

(*f*) This provision is optional. See note (*o*) to sec. 4.

(*g*) See note (*r*) p. 24, *ante*.

(*h*) As to the meaning of "thereafter," see *re* Manning, 29 S. J., 683; Stroud's Dict., 802. It refers here to the date of the receipt of the application.

(*i*) See note (*d*) sec. 8.

(*j*) shall not have any force or effect, unless the same be countersigned by one member of the Board (*k*). 44 V., c. 27, s. 1.

Report of Inspector may be dispensed with.

(4) Where an application is made for a transfer of a license issued to a tavern or shop situate in a remote part of the license district, or where for any other reason the License Commissioners see fit, they may dispense with the report of the Inspector, and act upon such information as may satisfy them in the premises (*l*). 47 V., c. 34, s. 7.

REMOVAL OF LICENSEE.

Inspector may consent to removal of tavern keeper to another house.

38. (1) Any inspector (*m*) may, (*n*) after resolution (*o*) of the license commissioners allowing the same, endorse (*p*) on any tavern or shop license permission to the holder thereof, or his assigns or legal representatives, to remove from the house to which his license applies to another house to be described in the endorsement to be made by the inspector on the license, and situate within the same municipality, and possessing all the accommodation required by law. (*q*)

(*j*) A "Provisional" consent is a temporary one, provided for present need, or for the time being: Worcester, 1147. The consent hereby provided for is to operate only during the time the application for the final written consent of the License Commissioners is pending, and is not to exceed one month in duration from the date of the death of the original licensee, or from sale or transfer of the business.

(*k*) "To countersign" means to authenticate a document which has already been signed by the signature of another; the provisional consent must be signed by the Inspector and authenticated by the signature of at least one of the License Commissioners, and until this is done it has no force or effect.

(*l*) The provision made in this sub-section is the same as that contained in sec. 11, ss. 4. See notes to next sub-section.

(*m*) "Any Inspector." See note (*o*) to sec. 11, ss. 12 *ante*. It should be noted that the expression used is "any Inspector;" not the Inspector for the license district in which the premises are situated, though the latter is, no doubt, intended.

(*n*) See note (*o*) to sec. 4.

(*o*) See note (*p*) to sec. 4; see also note (*x*), sec. 21.

(*p*) A direction to "endorse" anything on a document means, as a general rule, to write it on the back of the document: Akers *v.* Howard, 16 Q. B. D., 739 (a decision on the Ballot Act). But this definition is not of universal application; for it is not essential to the validity of an endorsement on a Bill of Exchange or Promissory Note that it should be on the back of the document: Byles on Bill, 14 Ed., 171. In the case of an endorsement upon the license, however, it should be written on the back of the document.

(*q*) The license applies only to a particular place described, and the death,

(z) Such permission, (r) when the approval of the inspector is endorsed on the license, (s) shall authorize the holder of the license to sell the same liquors in the house mentioned in the endorsement (t) during the unexpired portion of the term for which the license was granted, (u) in the same manner, and upon the same terms and conditions; but no such permission shall be granted unless and until (v) the person applying therefor has filed with the license commissioners a report of the inspector containing the information required by law in case of application for a license, and any bond or security (w) which such holder of a license may have given for any purpose relative to such license, shall apply to the house or place to which such removal is authorized, but such permission shall not entitle him to sell at any other than this one place. R. S. O. 1877, c. 181, s. 29.

Effect of such consent.

Bond to apply.

39. Where the inspector (x) is required, (y) in the

Mileage to be paid

assignment, or removal of the original holder of such license operates as a forfeiture of the license under sec. 37, ss. 1, unless the consent of the Commissioners is obtained, as provided in that section, or unless permission is first obtained from the License Commissioners under this section. The difference between sec. 37 and this one is, that the former provides for the transfer of the license to a person continuing the business in the premises to which it applies, and this section for the transfer to other premises. See note (k), p. 21, *ante*.

(r) "Such permission" refers to the permission of the License Commissioners mentioned in the last sub-sec.

(s) This section is very loosely framed. It is not expressly stated that the approval of the Inspector for the license district in which the premises are situated is required. But the word "when," like "if," is ordinarily a word of condition, or of conditional limitation, and, as used here, imports that the approval of the Inspector is a requisite condition. See Jolly *v.* Hancock, 7 Ex., 820, and other cases cited in Stroud's Dict., 879.

(t) The permission here granted, like the license itself, applies to a particular place, and only authorizes the sale of liquor in that place.

(u) "During the unexpired portion of the term for which the license was granted," would be from the date of the permission to the following 30th April.

(v) "Unless and until." These words create a condition precedent, which, in this case, is the report of the Inspector, as in sec. 11, sub-sec. 1. (See notes thereto); and the report must be delivered to the License Commissioners before this permission is given.

(w) "Bond or security." The security required in case of a tavern license is provided for in sec. 30, and that for shop license, in sec. 31. See notes to these sections.

(x) This section is intended to make provision for payment of the Inspector's expenses in the case of a necessary inspection previous to the transfer or removal of the license under the last two sections.

Inspector in certain cases.

case of an application for leave to transfer or remove a license, to make an inspection, under the next preceding two sections and to travel, in order to make such inspection, a distance of more than three miles from his office or residence, (*z*) the person making such application for a transfer or removal, shall pay (*a*) to the inspector, in addition to all other fees, (*b*) the sum of ten cents per mile, one way, (*c*) for his travelling expenses, and the same shall be deposited by the inspector to the credit of the license fund; (*d*) but the inspector may be allowed the same, (*e*) or so much thereof as is necessary to pay the actual cost (*f*) of his travelling expenses in order to make such inspection, upon his accounts being rendered and approved in the ordinary manner; (*g*) but this section shall not apply to city license districts. (*h*) 44 V. c. 27, s. 18.

(*y*) The Inspector must furnish a report in every case of a removal: see note to sec. 38 above; but in the case of a transfer the report may be dispensed with under sub-sec. 4, sec. 37. There is no provision making an inspection indispensable, though the Inspector would scarcely be performing his duty properly were he to report without making such an inspection as would enable him to speak from personal knowledge of the facts reported.

(*z*) "Office or residence." See sec. 11, ss. 20, and notes thereto.

(*a*) See Interpretation Act, sec. 6, ss. 2, and section 3, note (*l*), *ante*.

(*b*) By section 41, ss. 6, the fees payable for every transfer or removal is $5 and the mileage, as provided in this section.

(*c*) It is not very clear as to whether the Inspector is entitled to charge for more than one trip, but probably if more than one be made necessarily, he would be entitled to the mileage on each. See Sinclair's D. C. Acts 1879, 344, and D. C. Act, 1886, 103-129.

(*d*) See secs. 45, 46.

(*e*) The license fund is under the control of the License Commissioners and Inspector, subject to the regulations of the Lieutenant-Governor-in-Council. The Commissioners are given discretion here as to whether the Inspector shall be paid the mileage received for the necessary inspection, or such part of it as may be necessary to pay his actual travelling expenses, or cost of inspection.

(*f*) "The word 'actual' does not usually advance the meaning. Speaking generally, a thing is not more itself because it is spoken of as 'actual,' nor an act more done or enjoined because it is said, or required to be 'actually' done:" Gladstone *v* Padwick, L. R., 6, Ex., 203. The "actual cost" of his travelling expenses, means railway fare, or if the place to be inspected is not accessible by railway, then the hire of a conveyance, but it must not exceed the allowance made for mileage.

(*g*) By sec. 117, ss. 2, the mileage or other expenses shall be verified by the oath of the Inspector, and by ss. 3 of the same section, he is required to make quarterly returns in detail, under oath to the department of the Provincial Secretary, of all sums received by him for mileage and other expenses in that section provided for.

(*h*) No provision is made for payment of mileage and expenses to the Inspector of city license districts.

WHERE LICENSE LAPSES.

How licenses may be granted for premises where for any cause the license becomes void, etc.

40. In case for any cause (*i*) the license becomes void (*j*), or in case the term or interest (*k*) of the holder of a license in the premises licensed (*l*) ceases before the expiry of the license (*m*), or if such licensee absconds (*n*) or abandons (*o*) the premises, or becomes insolvent (*p*), the

(*i*) As to the meaning and effect of "any," see note (o), sec. 11, ss. 12. "Cause" as used here must be taken to mean anything which, under the provisions of the Act, produces the effect of annulling the license. The word means "that which produces or effects a result; that from which anything proceeds, and without which it would not exist:" Webster's Dict. See sec. 33, ss 2; sec. 35; sec. 37, ss. 1; sec. 59, ss. 2; sec. 71, ss. 1; secs. 75, 79, 83 and 91 for causes which lead to the forfeiture of licenses.

"License" here means any license.

(*j*) See note (*m*), sec. 37.

(*k*) The word "term" may signify either the time or the estate granted: Green *v.* Edwards, and other cases cited in Woodfall, 144. The word "term" means not only for the interest but for the time: Green *v.* Edwards, Cro. Eliz., 216; Cotter *v.* Richardson, 7 Ex., 151.

The legal meaning is: "A limitation of an estate to a certain period, as for life or for years; an estate or interest conveyed for a certain time or limited to a certain period of time:" Burrill, cited in Worcester, 1490.

A term is usually created by a deed or specialty contract called a lease or demise under the common law: Wharton, 723.

"Interest" means any estate, right, or title in realty: Wharton, 385. See also Stroud's Dict., 396-398.

(*l*) The expression "licensed premises" was construed to mean premises open to the public for the sale of drink under the provisions of the Act: Lester *v.* Torrens, 2 Q. B. D., 403. But property is frequently spoken of, as it is here, as "premises" without a preceding description or mention of it, and may be taken to mean houses; when used in connection with other words, as a mansion, house, garden, and premises, it is as nearly as possible synonymous with appurtenances: see Lethbridge *v.* Lethbridge, 4 D. G. F. & J., 35; Read *v.* Read, W. N. (1866), 386; Hemming *v.* Willetts, 7 C. B., 709; Stroud's Dict., 610; Wharton, 576. See also sec. 2, ss. 2.

(*m*) The "term or interest" of the licensee may cease (*i. e.*, be determined) in a number of ways. If he is the tenant his interest would expire at the expiration or on the determination of his lease. It would also "cease" on his death or assignment, or on the disposal of the premises as specified in section 37, and, in any such event, unless the consent of the License Commissioners to the continuance of the license is obtained, the license will become void.

(*n*) The legal meaning of the term "absconds" is "to go out of the jurisdiction of the Courts, or to lie concealed in order to avoid any of the processes." Wharton, 5.

(*o*) "To abandon the premises" means to give up, relinquish, or forsake them. See Worcester, 2. It is used here in its ordinary and natural sense.

(*p*) A man is in "insolvent circumstances," not only if he is "behind the world if an account were taken, but insolvent to the extent of being unable to pay just debts in the ordinary course of trade and business:" per Willes., J., R. *v.* Saddlers' Co., 10 H. L. Cas., 404; Teale *v.* Younge, McCl. & Y., 497. "Insolvency" is the state of one who has not property sufficient for the full

License Commissioners may grant a new license (*q*) for the same premises (*r*), subject to the provisions of this Act, upon such terms (*s*) as to the payment or refund (*t*) by the new licensee of the duty for the unexpired period to the person entitled thereto under the original license, as to the License Commissioners may seem just. R. S. O. 1877, c. 181, s. 30.

---

payment of his debts. An "insolvent," as distinguished from a "bankrupt," was said to be an insolvent who was not a trader; for originally only a trader could be a bankrupt in the sense of obtaining an absolute discharge from his debts, while the future estate of an insolvent remained liable for his debts even after his discharge: Wharton, 378.

Under a by-law of the "Toronto Stock Exchange" it was provided that a member becoming bankrupt or insolvent should not be able to take his seat as a member of the Corporation, or be present at any meeting thereof; and such seat should revert to the Corporation to be sold by them, etc. Under this by-law it was claimed that a member who was offering to compromise with his creditors was insolvent within the meaning of the by-law, and his name was struck out of the list of members; but it was held that the insolvency under the by-law did not refer to a condition of insolvency, but to a definite act of insolvency under a Bankrupt or Insolvent Act, *e. g.* by an assignment or the issue of a writ of attachment, and therefore the member did not come within its terms: Temple *v.* The Toronto Stock Exchange, 8 O. R., 705.

It was said by McLean, C. J., in Sutherland *v.* Nixon, 21 U. C. R., 629, at page 633: "It does not necessarily follow because a man is unable on a particular day to meet his debts and pay them in money, that he is therefore insolvent:" see also Hersee *v.* White, 29 U. C. R., 232. See also Rae *v.* McDonald, 13 O. R., 352; Warnock *v.* Klœpfer, 14 O. R., 238; 15 App. R., affirmed by the Sup. Ct., 324; Clarkson *v.* Sterling, 14 O. R, 460; 15 App. R., 234; Dominion Bank *v.* Cowan, 14 O. R., 465.

(*q*) The power to grant a new license arises, 1. Where the original license becomes void from any cause. See note (*a*) *supra*.

2. Where the term or interest of the holder of the original license in the premises is determined before the expiration of his license. See note (*m*), *supra*.

3. In case the licensee absconds (see note (*n*), *supra*) or abandons (see note (*o*) *supra*) the premises, or becomes insolvent, the License Commissioners in either of these events, may, in their discretion, grant a new license for the same premises. The new license will be subject to the provisions of sections 8 and 11, and must bear date as of 1st May and will expire on the 30th April. See sec. 8.

(*r*) The new license can only issue for the premises described in the original license, which has become void or been forfeited. There is no power given to issue new licenses for the premises unless application is made prior to 1st April. See sec. 8, ss. 3.

(*s*) The power of the License Commissioners to impose terms as to the duty to be paid is very ample, but it would not be legal for them to exact more than the duty payable by other licensed houses in the same municipality.

(*t*) The Commissioners may also remit or refund to the original holder of the license such part of the original duty paid by him as they may think just, and may require the new licensee to pay to him part of the duty imposed upon the former.

DUTIES PAYABLE.

41. (1) The following license duties (*u*) shall hereafter be payable, and shall, subject to the provisions of the next following three sections, be in lieu (*v*) of all others, Provincial or Municipal, that is to say (*w*): Duties.

1. For each wholesale license (*x*) - - -		$150 00
2. For each tavern license in (*y*) cities - -		100 00
" " towns (*z*) -		80 00
" " other municipalities (*a*)		60 00
3. For each shop license (*b*) in cities - -		100 00
" " towns - - -		80 00
" " other municipalities -		60 00
R. S. O. 1877, c. 181, s. 31 (1-3).		
4. For each beer and wine license (*c*) in cities -		50 00
" " " towns -		40 00
" " " other municipalities		30 00

5. [Paragraph 5 and sub-sec. 2 are struck out by 53 Vic., c. 56, s. 2, sub-sec. 3.]

(*u*) The word duty, as used here, means "a tax; an impost, or imposition:" Wharton, 258. Formerly an imperial as well as Provincial duty was exacted, under the Imperial Act, 14 Geo. 3, c. 88, but since the 1 & 2 Will. 4, c. 23, the issuing of such licenses has been regulated by the Provincial Legislature: Andrew *v.* White, 18 U. C. R., 170. The duties specified here are the lowest that can be imposed under any circumstances. See sec. 43. As to the Provincial duty see sec. 44. As to payment of duty see R. *v.* Strachan, 20 C. P., 120, cited in notes to sec. 43.

(*v*) The phrase "in lieu" means "instead of:" see Wharton, 429; and a fine provided by Statute "in lieu of" other means of payment, may become the primary fine: R. *v.* St. Saviour's, 7 A. & E., 925.

(*w*) It was held that a Dominion license issued to a brewer was sufficient to authorize the selling by wholesale of the ale, etc., brewed by himself and that a Provincial license was not required: R. *v.* Young, 8 O. R., 476; and other cases cited in note (*tt*), sec. 34, and also notes to sec. 51.

(*x*) See sec. 2, ss. 4; note (*k*) sec. 8; secs. 34, 35, 61, 144.

(*y*) See sec. 2, ss. 2, and secs. 11, 12, 18, 21, 27, 28, 29 and 30.

(*z*) As to cities and towns, see sec. 99 and notes thereto.

(*a*) "Other Municipalities." This term will include incorporated and police villages and townships.

For duties payable in unorganized districts, see sec. 138, ss. 2.

(*b*) As to "shop licenses," see sec. 2, ss. 3; sec. 4, ss. 2; secs. 21, 31 and 42.

(*c*) As to "beer and wine licenses," see secs. 22, 23, 24, 25, 26 and 33.

6. For every transfer or removal (*d*) of a license under sections 37 and 38 of this Act, $5, and the mileage of the Inspector, as provided by section 39 of this Act (*e*), 44 V., c. 27, s. 2.

Council may impose a larger duty up to $200, but not more without

42. (1) The Council of any Municipality (*f*) may by by-law (*g*) to be passed before the 1st day of March (*h*) in any year, require (*i*) a larger duty to be paid for tavern or shop licenses therein, but not in excess of $200 in the whole (*j*), unless the by-law has been approved (*k*) by the

---

(*d*) As to "transfer" and "removal," see secs. 37 and 38.

(*e*) As to mileage to the Inspector, see sec. 39.

The duties payable under this section and section 44 are the only imposts which can be legally exacted, unless the amount is increased by a by-law under secs. 42, 43.

It was held that the duty, whether Provincial or Municipal, should be paid to the Provincial Government: R. *v.* The Board of Police of Niagara, 4 U. C. R., 141. But provision is now made for a "License Fund," comprising the duties, fines and penalties received by the Inspector, and the application of it is governed by secs. 45 and 46.

(*f*) "Any Municipality." See sec. 11, ss. 12, note (*o*).

(*g*) "By-law." See notes to sec. 4; also notes to sec. 20.

(*h*) "1st day of March." See secs. 20 and 32.

(*i*) "Require" has been held in certain cases to mean, "reasonably require:" see Braunstein *v.* Accidental Ins. Co., 1 B. & S., 782. That construction is unnecessary here as the duty which may be required to be paid is limited to $200, unless the approval of the electors is obtained.

The Court refused to interfere with a by-law fixing the sum to be paid for a license for billiard tables at $300, on the ground that the sum required was extravagant, disproportioned to the nature and profits of the business, and that it was in effect a prohibition: *re* Neilly and The town of Owen Sound, 37 U. C. R, 289.

(*j*) "$200 in the whole" is the maximum amount which can be imposed by a by-law without the assent of the electors. The Government duty imposed by sec. 44 is in addition to that imposed by sec. 41, as well as any duty which may be required by a by-law under this section. If the amount is over $200, one-half of the excess is payable to the Provincial Treasurer and the other half to the Municipality; see sec. 45. It was held that a by-law providing that the duties to be paid for a tavern license should be $100, and for a shop license $200, meant that the sums mentioned should include the Government duty, and therefore to be within the power of the Council under this section: *re* Brodie and The Cor. of Bowmanville, 38 U. C. R., 580. But if a by-law require a larger duty than $200 in the whole, that is, including the Government duty, it must be submitted to the electors for approval: see judgment of Harrison, C. J., in Brodie and The Cor. of Bowmanville, at p. 588; but sec. 44 has been enacted since this decision was pronounced.

A township cannot make the sum payable vary according to the locality, as in certain villages named $100, and elsewhere $75; Donelly and The Cor. of of Clarke, 38 U. C. R., 599.

The Court, because of the long delay in moving, refuse a *rule nisi* to quash a by-law passed eighteen months before, which ought to have been moved

electors (*l*) in the manner provided by *The Municipal Act* (*m*) with respect to by-laws which before their final passing require the assent of the electors of the Municipality. R. S. O. 1877, c. 181, s. 32 (1). consent of electors. Rev. Stat. c. 184.

(2) Such by-law shall take effect from the passing thereof (*n*), unless passed later than the 1st day of March (*o*) in any

against on the ground that it was not submitted to the electors: *re* Sheley and The Town of Windsor, 28 U. C. R., 569; *re* Drope and The Cor. of Hamilton, 25 U. C. R., 363; Richardson and The Police Commissioners of the City of Toronto, 38 U. C. R., 621.

As to the repeal of a Township by-law by an incorporated village, which was at the time of incorporation in force in the Township: see Cunningham *v.* The Cor. of Almonte, 21 C. P., 459. If there has been a license granted and issued under a by-law, the quashing of the by-law does not annul the license: R. *v.* Stafford, 22 C. P., 177.

Under 13, 14 Vic. c. 65, Municipal Councils had power to discriminate between different kinds of public houses, and were authorized to charge differently in the cases of saloon and tavern licenses, and require different accommodation: *re* Grand and The Cor. of Guelph, 27 U. C. R., 46, but this is now provided for by the Statute, and the Municipality has no such power.

When the plaintiff leased a tavern to the defendant for three years at a rent of $400 a year, payable quarterly, "the said lessor to allow the said lessee the amount he has to pay for his license fees out of the first quarter's rent in each year," and the license fee when the lease was issued, and for some years previously was $85, but in the following year was raised to $200, it was held that the lessee could claim no allowance beyond the first quarter's rent, the lessor being bound to allow the fee only provided it did not exceed such rent: Writt *v.* Sharman, 41 U. C. R., 249.

(*k*) "Approved" may be construed as "confirmed" or "ratified:" see Worcester's Dict. The following definition has been given: "To concur in the propriety or expediency, the legality or constitutionality of; to give executive sanction to; as, to approve an ordinance proposed by the Council of a city," etc.; Anderson's Dict. In the Municipal Act the phrase used is "assent." It was held that secs. 293-306 of the Municipal Act were the clauses providing the machinery, but that secs. 308-312 of that Act were not applicable: *re* Croft and the Town of Peterborough, 17 App. R., 21.

(*l*) The electors entitled to vote upon a by-law under this section are those entitled to vote at Municipal elections: *re* Croft and the Town of Peterborough, 17 O. R., 522; 17 App. R., 21.

(*m*) "The Municipal Act," R. S. O. 1887, c. 184, division III, secs. 293-328, pages 1846-1856, makes provisions as to proceedings to be taken for ascertaining the assent of the electors, except in cases otherwise provided for. But it has been held that: "The machinery is to be found in clauses 293 to 306 inclusive. Clauses 308 to 312 become inapplicable, inasmuch as the description of persons entitled to vote has already been defined": per Burton, J. A. *Re* Croft and The Town of Peterborough, 17 App. R., 21, at p. 26. See note (*l*) *supra*.

(*n*) The date of the assent or signification of the Lieutenant-Governor, as the case may be, is the date of the commencement of the Act, if no later commencement is therein provided: Interpretation Act, (R. S. O., 1887,) p. 8.

An enactment "from henceforth *de cætero*," does not necessarily imply a new law, as may be seen upon the doubts arising on the Stat. Merton, c. 2: Dwar., 685, cited Stroud's Dict., 312.

year, in which case it shall come into force on the 1st day May of the next (*p*) succeeding year, and every such by-law shall remain in force until repealed (*q*). R. S. O. 1877, c. 181, s. 32 (2); 49 V., c. 39, s. 3.

(3) Any by-law so approved shall not (*r*) be varied (*s*) or repealed (*t*) unless the varying or repealing by-law has been in like manner (*u*) submitted to and approved of by the electors of the Municipality. R. S. O. 1877, c. 181, s. 32 (3).

Preamble

42a. [Whereas the following provision of this section was at the date of Confederation, in force as part of *The Consolidated Municipal Act*, (29 & 30 V., c. 51, s. 249, sub-sec. 9), and was afterwards re-enacted as sub-sec. 7 of s. 6 of 32 V., c. 32, being *The Tavern and Shop License Act of 1868*, but was afterwards omitted in subsequent consolidations of *The Municipal and The Liquor License Acts*, similar provisions as to local prohibition being contained in *The Temperance Act of 1864*, 27 & 28 V., c. 18; and the said last mentioned Act having been repealed in municipalities where not in force by *The*

The word "from" excludes the day from which the time is to be reckoned: Wharton, 419. See McLean *v.* Pinkerton, 7 App. R., 490.

(*o*) See sec. 20 and note (*p*) thereto.

(*p*) The word "next" in an Act, shall be construed as having reference to the time when the Act was presented for the Royal Assent: Interpretation Act, (R. S. O., 1887, page 3). See note (*x*) to sec. 32.

(*q*) The by-law continues in force from the time of its passing, or from the 1st May in the "next succeeding year," until it is repealed; there is therefore no occasion for its renewal each year.

(*r*) The words "shall not," as used here, are peremptory; see Interpretation Act, R. S. O. 1887, page 3; see also notes to sec. 8, *ante*.

(*s*) The approval of the electors must be obtained, in the same manner as provided in sub-sec. 1, to any by-law making any alteration in the original by-law; nor can the by-law be repealed without such approval.

(*t*) It was held that a Municipal Council of a village incorporated and separated from a Township, in which before, and at the time of the incorporation, a by-law existed prohibiting the sale of liquors in shops and places other than houses of public entertainment within the Township, could not, by a by-law not submitted to the electors for their approval, repeal the prohibiton so far as it affected the village: *In re* Cunningham *v.* The Cor. of Almonte, 21 C. P., 459.

(*u*) "In like manner" refers to the manner of obtaining the approval of the electors, as in sub-sec. 1. The expressions "as aforesaid," "in manner aforesaid," "as before," "in like manner," "on the same terms and conditions," are often used to imply the same thing. They are simply referential expressions indicating that something is to be done in a manner which has been before described. Here the reference is to everything in the section which refers to a by-law submitted for the approval of the electors.

Canada Temperance Act, it is expedient that municipalities should have the powers by them formerly possessed; it is hereby enacted as follows: (*v*)

(*v*) This provision is introduced by 53 Vic., c. 56, s. 18 (O), and is intended to take the place of what was known as the "local option" clause of the Municipal Institutions Act, 29, 30 Vic., c. 51, s. 249, ss. 9. Under it Municipal Councils were empowered to pass by-laws "for prohibiting the sale by retail of spirituous, fermented, or other manufactured liquors in any inn or other house of public entertainment, and for prohibiting totally the sale thereof in shops and places other than houses of public entertainment, provided the by-law before the passing thereof has been duly approved by the electors of the Municipality in the manner provided by this Act."

Section 252 of the same Act also provided: "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."

It has been objected that the clause now under consideration was an interference with sec. 252 of 29, 30 Vic., c. 51, and that by-laws passed under it are in excess of the authority of the Provincial Legislature, and effect has been given to that objection in the following judgment of Chief Justice Galt in three cases of motions to quash Local Option By-laws passed by Municipal Councils, with the approval of the electors, under the authority of this section, as follows:

"These three motions are made to set aside three by-laws that had been passed in their respective Municipalities. The by-laws are based on the 18th sec. of c. 56, 53 Vic., which enacts that 'the Council of every township, city, town, and incorporated village may pass by-laws for prohibiting the sale by retail of spirituous, fermented, or other manufactured liquors in any tavern, inn or other house or place of public entertainment, and for prohibiting altogether the sale thereof in shops and places other than houses of public entertainment.' There are several objections applied to each of these by-laws. The first is that there is no penalty enacted. The second is that the respective Municipalities had no authority to pass the by-laws to take effect at once; and lastly, that the said by-laws are in excess of the authority of the Provincial Legislature.

To deal with the last objection, or reference to section 18 it will be found that the provision to which I have referred was at the date of Confederation in force as part of the Consolidated Municipal Act, 29 and 30 Vic., c. 51, sec. 249, ss. 9, and by provision at the end of section 18, authorizing the Council to pass such by-laws, it is provided 'that nothing in this section contained shall be construed into an exercise of jurisdiction by the Legislature of the Province of Ontario beyond the revival of provisions of law which were in force at the date of the passing of the B. N. A. Act.' It appears to me that in framing sec. 18 of c. 56 the provisions of the 29 and 30 Vic. to which I have referred have been overlooked. The clause which under sec. 18 purports to be re-enacted has reference simply to shop and tavern licenses, and it is sub-sec. 9 of sec. 249 which has been re-enacted. Judging from the whole Statute, c. 51, it will be seen that on reference to sec. 252 no such general provision as is now contended for under the present Statute had application, because under sec. 252 it was positively enacted that no tavern or shop license should be necessary for selling any liquors in the original packages in which the same had been received from the importer or manufacturer, provided such packages contain respectively not less than five gallons or one dozen bottles.

It is manifest from this that when the Legislature enacted the above sec. 249 it was not the intention that there should be a general prohibition, but it was that the prohibition should be confined to shop and tavern licenses.

To give effect to the by-laws now before me, according to their literal expres-

sion, it would be positively illegal for the owner of a distillery to sell spirituous liquors at his distillery in case such a by-law was in force in the Municipality in which the distillery was located, and it was quite manifest that such never was and never could have been the intention of the Legislature. Their intention was that the provision of sub-sec. 9, which is similar to sec. 18 of 53 Vic. applied only to cases of shop and tavern licenses.

Then as to the objection that there is no penalty. The case of Hall *v.* Nixon, L. R., 10 Q. B., page 152, appears to be in point. It is true that the quotation which I am about to make is not part of the judgment of the Court, but it is cited by Lush, J., as showing the inefficiency of a by-law to which no pecuniary penalty is attached. He says:—"To secure the obedience to a by-law, it is necessary that a penalty of some kind should be annexed to a breach of it, or otherwise the by-law will be nugatory. The only penalty permitted by the law of England is a pecuniary one. That obedience to a by-law cannot be enforced by the imprisonment of the offender or by the forfeiture of his goods, there are a multitude of authorities." On this ground also the by-law appears to me to be invalid.

Then as to the operation of the by-law. From the terms of the respective by-laws they were to go into force at once, and therefore a person in possession of a tavern or shop license would have been prohibited from carrying on his business. Now, under the liquor license law, licenses remain in force till the 30th of April of each year, consequently it was not in the power of the Municipality to pass a by-law interfereing with the rights of license holders until their respective licenses had expired. It is quite unnecessary to consider the question as to the legislation being *ultra vires*, because by the Act itself, the Legislature expressly limits the operation of the Statute to the powers which they possessed and exercised at the date of the passing of the B. N. A. Act. Were it otherwise, it appears to me that such an absolute prohibition as is contained in these respective by-laws would be an interference with trade and commerce, which unquestionably are within the exclusive jurisdiction of the Dominion Parliament. As I have said before, the authority exercised by the Legislature of Canada previous to Confederation was confined in this particular instance to tavern and shop licenses, and did not authorize Municipalities to prohibit the sale of liquors where the same had been received from the importer or manufacturer.

In my opinion, therefore, these by-laws must be quashed, but as they were enacted in accordance with the terms of s. 18, there will be no costs beyond the costs of the motion and the argument. In several cases there was a vast number of affidavits filed. The costs of these are not to be taxed against the Municipalities. This does not apply to such affidavits, as in the opinion of the taxing officer were necessary to bring the by-laws before the Court:" *Re* Malcolm and The Township of Oakland; *re* Huson and The Township of South Norwich; *re* Jeffreys and The Village of London West, 22nd April, 1891 (not reported); *re* Young and The Corp. of Binbrook, May 1st, 1891 (not reported).

In consequence of this judgment, and in view of the importance of the questions arising out of it, and in order to declare the meaning of the Legislature, the following enactment was passed during the last session of the Provincial Legislature:

AN ACT RESPECTING LOCAL OPTION IN THE MATTER OF LIQUOR SELLING.

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Section 1 of 53 V., c. 56, s. 18, declared.

1. It is hereby declared that the Legislature of this Province by enacting section 18 of the Act *To improve the Liquor License Laws*, passed in the 53rd year of Her Majesty's reign, chaptered 56,

for the revival of provisions of law which were in force at the date of *The British North America Act, 1867*, did not intend to affect the provisions of section 252 of *The Consolidated Municipal Act*, being chapter 51 of the Acts passed in the 29th and 30th years of Her Majesty's reign by the late Parliament of Canada, which enacted that "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," save in so far as the said section 252 may have been affected by the 9th subsection of section 249 of the same Act, and save in so far as licenses for sales in such quantities are required by *The Liquor License Act*; and the said section 18 and all by-laws which have heretofore been made or shall hereafter be made under the said section 18 and purporting to prohibit the sale by retail of spirituous, fermented, or other manufactured liquors, in any tavern, inn, or other house or place of public entertainment, and prohibiting altogether the sale thereof in shops and places other than houses of public entertainment, are to be construed as not purporting or intended to affect the provisions contained in the said section 252, save as aforesaid, and as if the said section 18 and the said by-laws had expressly so declared. Rev. Stat. c. 194.

Preamble

2. Whereas doubts have arisen as to the power of this Legislature to enact the provisions of the said section 18, or of the said section as explained by this Act, and it is expedient to avoid a multiplicity of appeals involving the said question, the Lieutenant-Governor-in-Council is to refer to the Court of Appeal for Ontario under authority of *The Act for expediting the decision of Constitutional and other Provincial questions*, the question of the constitutional validity of the said section 18 and its true construction, effect and application. Reference of constitutional questions to courts.

3. The reference under this Act to the Court of Appeal by the Lieutenant-Governor-in-Council is to be heard in priority to any other cause or matter in said Court, unless the Court otherwise orders. Reference to have priority of hearing in courts.

4. In case any by-law passed under said section 18 is quashed before the passing of this Act the application may be re-heard by the High Court of Justice, at the instance of the municipality which passed said by-law, by motion of ten days' notice served on the relator, or within such further time as may be allowed by a judge of the High Court, and the court shall make such order for the rescission of the order to quash and as to costs as to the Court shall seem meet. Re-hearing where by-law already quashed.

5. The limit as to the time for appealing from the judgment or order of any Court, in the case of quashing a by-law, or any other judgment, shall not apply to an appeal against a judgment or order quashing a by-law passed under the said section 18. Time for appeal.

Powers of Municipal Councils as to prohibitory sale of liquors.

The Council of every township, city, town and incorporated village, may pass by-laws (*w*) for prohibiting (*x*) the sale by retail (*y*) of spirituous, fermented, or other manufactured liquors, (*z*) in any tavern, inn, or other house or place of public entertainment, (*a*) and for prohibiting altogether the

Extension of licenses until questions referred are determined.

6. Where any such by-law has been quashed or has been passed and shall not be quashed before the determination of the questions referred under this Act, by the Lieutenant-Governor-in-Council, to the Court of Appeal, the license Commissioners, under the *Liquor License Acts*, are not to grant licenses to any new applicants, and may only extend the duration of any existing license, from time to time, for any specified period of the year, not exceeding three months at any one time in their discretion, upon payment of a sum not exceeding the proportionate part of the duty payable for such license for a year.

Suspension of proceedings pending to quash by-laws.

7. All proceedings to quash by-laws passed under the authority of said section 18, or the enforcement of orders for payment of costs thereon shall be suspended, and no proceedings to quash other such by-laws shall be instituted until after the final determination of the questions to be referred as hereinbefore provided.

It was held by the Supreme Court, that the Dominion Parliament alone has the power of prohibiting the traffic in intoxicating liquors in the Dominion or any part of it: Fredericton *v.* The Queen, 3 S. C. R., 505.

And it has been also decided by the Privy Council that a general law as to prohibition respecting all Canada is within the scope of the Dominion Parliament: Russell *v.* The Queen, 7 App. Cas., 829, but that it could not legislate with respect to licenses for the sale of liquor in shops, taverns and saloons. See notes to sec. 1, also note (*m*), p. 15, *ante*, and note (*tt*) to sec. 34, p. 72, *ante*.

(*w*) "By-laws." See sec. 20, *ante*, and notes thereto.

(*x*) The verb "to prohibit," means "to forbid; to interdict; to inhibit:" Worcester, 1137. A total prohibition is: "The interdiction of the liberty of making, selling, or giving away intoxicating liquors for other than medicinal, scientific and religious (sacramental) purposes: Anderson's Dict., 823.

It was held that authority conferred upon a town by its charter to prohibit the sale of liquor, did not embrace a power to regulate sales. The exercise of the power to regulate sales provides for the continuance of the traffic under prescribed rules. The power to prohibit is to be used only for suppression: State *v* Fay, 44 N. J. L., 476, (1882).

(*y*) See sec. 2, ss. 2, also notes to secs. 34 and 35.

(*z*) "Spirituous, fermented, or other manufactured liquors." See note (*b*) to to sec. 2 *ante*, p. 2.

This is a wider expression than that used in the Interpretation clause, sec. 2, ss. 1, *ante*. The words used there in defining the meaning of "liquors" or "liquor" are "all spirituous and fermented malt liquors, and all combinations of liquors and drinks and drinkable liquors which are intoxicating." The prohibition authorized here includes all of these and "other manufactured liquors" as well. For meaning of "manufactured" see note (*z*) to sec. 36, *ante*.

(*a*) See note (*g*) to sec. 2, ss. 2.

sale thereof—in shops and places other than houses of public entertainment: (*b*)—Provided (*c*) that the by-law, before the final passing thereof, has been duly approved (*d*) of by the electors of the municipality in the manner provided by the sections in that behalf of *The Municipal Act*: (*e*) provided further that nothing in this section contained, shall be construed into an exercise of jurisdiction by the Legislature of the Province of Ontario beyond the revival of provisions of law which were in force at the date of the passing of *The British North America Act*, and which the subsequent Legislation of this Province purported to repeal.] 53 V., c. 56, s. 18.

Power to pass by-laws under Rev.Stat., c. 194, ss.

42b. [(1) In license districts, (*f*) where the second part of *The Canada Temperance Act* is in force, it shall be lawful (*g*) for the Council of any city, town, village or

---

(*b*) See note (*q*) to sec. 11, ss. 38.

A house of public entertainment does not mean a place of "diversion or amusement, but the provision of food, drink, and whatever else might be reasonably required for the personal comfort of guests:" see Taylor *v.* Oram, 1 H. & C., 370; Muir *v.* Keay, L. R. 10, Q. B. 594; Howes *v.* Inl. Rev. 1 Ex. D., 385.

(*c*) The word "provided" creates a condition precedent, and is synonymous with the phrases "on condition," "in case," "so soon as," "if," "when," etc: see Shrimpton *v.* Shrimpton, 31 Beav., 425, and other cases cited, Stroud's Dict., 879; see also Worcester, 1147. The conditions precedent to the by-law provided for here are: 1. The approval of the electors, and 2. that any power beyond that possessed by the Ontario Legislature at the time of Confederation is not to be exercised.

(*d*) "Approved." See note (*k*) to sec. 42.

(*e*) Municipal Act. See notes to sec. 42.

For cases on the Legislative authority of the Province of Ontario, see note to sec, 1, and note (*m*) sec. 8.

(*f*) "License districts." See sec. 2, ss. 6.

"The C. T. Act is in force." See secs. 141-153.

(*g*) "It shall be lawful." These words used in a Statute conferring an authority to do a judicial, or, indeed, any other act which the public interest, or even individual right, may demand, makes it imperative on those so authorized to exercise the authority when the case arises; "when, therefore, the language in which the authority is conferred is only directory, permissive, or enabling; for instance, when it is enacted that the person authorized 'may' or 'is empowered' or 'shall if he deems it advisable' or that 'it shall be lawful' for him to do the act, it has been so often decided as to have become an axiom that such expressions have a compulsory force, unless there be special grounds for a different construction:" Maxwell on Stats., 219; see The Queen *v.* Bishop of Oxford, 4 Q. B. D., 553; Aitcheson *v.* Mann, 9 P. R., 473; R. *v.* Tithe Commissioners, 14 Q. B., 474. See note (*o*) to sec. 4, *ante*.

20, 32 and 42, pending repeal of C. T. Act.

township at any time after (*h*) a petition to the Governor-in-Council, (*i*) as required by the said Act and amendments thereto, praying for the revocation (*j*) of the order in Council passed for bringing the second part of the said Act into force, has been deposited with the sheriff or registrar of deeds of the county or city, to pass by-laws under sections 20, 32 and 42 (*k*) of *The Liquor License Act;* and all by-laws so passed shall take effect upon, from and after (*l*) the repeal of the said second part of *The Canada Temperance Act* in any such Municipality, and shall remain in force as provided by the said sections; and no by-law already passed in any Municipality under said sections 20, 32 and 42 of the said *Liquor License Act* or any of them subsequent to the deposit of the said petition with the said sheriff or registrar during the year 1889, shall be invalid by reason only of the same having been passed while the second part of *The Canada Temperance Act* was in force or after the dates mentioned in any of the said sections respectively.

(2) Nothing in this section contained shall be construed as in any way extending the powers of the said Municipalities, to pass by-laws under any of the said sections 20, 32

(*h*) "At any time after" means at any time of any year after: see Bridges *v.* Potts, 17 C. B. N. S., 314.

(*i*) "Petition the Governor-in-Council." See R. S. C., 1886, c. 106, sec. 96 *et seq.*, page 1423.

(*j*) "Revocation," the undoing of a thing granted, or destroying or making void of some deed that had existence until the act of revocation made it void. It may be either *general* of all acts and things done before, or *special* to revoke a particular thing: Wharton, 647.

(*k*) "Sections 20, 32 and 34." In order that provision may be made for the proper working of this Act, upon the repeal of The Canada Temperance Act, and to place the Municipality in the same position as it was before the introduction of the second part of the C. T. Act, the Municipality is here empowered to pass by-laws under sec. 20 limiting the number of tavern licenses; under sec. 32 limiting the number of shop licenses and regulating the sale in shops; and under sec. 42 fixing the amount of the license duty if it is thought advisable that such duty should be in excess of that provided by the Statute. The latter by-law must, however, be approved of by the electors if the duty is to be in excess of $200 in the whole.

(*l*) The by-laws so passed by the Municipality will not take effect if the Order-in-Council bringing the C. T. Act into force is not repealed. But if repealed, the by-laws passed under this section will immediately come into force, and those Municipalities in which the by-laws existed previous to the introduction of the C. T. Act are thus able to place themselves in the same position as before. But all such Municipal by-laws must be passed *after* the deposit of the petition for the repeal of the C. T. Act.

and 42 after the dates limited in the said sections respectively in any year subsequent to the year of the repeal of the said second part of *The Canada Temperance Act* in any of such Municipalities.] (*m*) 52 Vic., c. 41, sec. 8.

When duties now exceed the statutory figure they are not affected.

43. In any municipality where, by virtue of any by-law in that behalf, passed under the provisions of any former Act (*n*), a larger sum or duty in the whole than that mentioned in section 41 (*o*) was on the 10th day of February, 1876, (*p*) payable for any shop or tavern license, such sum or duty shall be the lowest duty payable under this Act for any such license, until altered by by-law (*q*) of the municipality to be passed for the purpose, but in no case shall the duty be under the amount in the said section specially prescribed. R. S. S. 1877, c. 181, s. 33.

(*m*) The effect of this and the first sub-section together is that if a Municipality in which the C. T. Act has been in force desires to reinstate any by-laws limiting the number of tavern (sec. 20) or shop licenses, or restricting the sale of liquor (sec. 32), or fixing the amount of the license duty in excess of $200 (sec. 42), existing before the introduction of the C. T. Act, such Municipality may re-enact any such by-laws, or pass any new ones within the scope of its authority, at any time of the year in which the repeal of the C. T. Act takes effect, subsequent to the date of the deposit of the petition for such repeal with the Sheriff or Registrar; but after that year any such by-laws must be passed in the usual manner and before the 1st March, as required by the sections named. See secs. 141-152.

(*n*) Before the passing of "The Liquor License Act," the Municipality had power to pass by-laws under 32 Vic. c. 32, s. 10, determining the duties to be paid for licenses, but no by-law exacting a duty of more than $130 per annum could be passed without the approval of the electors. The powers given to Municipalities were very much the same as those conferred by this Act: 32 Vic. c. 32; 36 Vic. c. 34; 37 Vic. c. 32, s. 23; and by 39 Vic. c. 26, s. 16 (which is the Act passed 10th February, 1876) the maximum duty to be imposed by by-law without the approval of the electors was increased to $200.

(*o*) Section 41, viz., $200.

(*p*) "10th day of February, 1876." This is the date of the passing of the Act 39 Vic. c. 26, by which the provision was made requiring the assent of the electors to a by-law imposing a license duty in excess of $200. The powers of Municipalities previous to this were as stated in note (*n*) *supra*.

(*q*) "Until altered." If a by-law of the Municipality was in force on the date mentioned fixing the duty to be imposed, that duty is the lowest payable under the Act until a new by-law is passed changing the amount. But the amount must not, even in that case, be less than the duty fixed by section 41.

If a new by-law is passed it must comply with the provisions of the section under which it is authorized. See secs. 20, 32 and 42, and the notes thereto.

It was held per Gwynne, J., that although no new by-law had been enacted by the Municipality under sec. 6, sub-s. 6, of 32 Vic., c. 32, the applicant was bound to have paid for the license, which he had in fact obtained, the amount due under the by-law then in force, and that the payment after complaint, but

Additional license duties.

44. (1) Over and above (*r*) the duties for licenses hereinbefore imposed (*s*), and any duties which have been or may be imposed by any Municipal By-law (*t*), unless the Municipality shall by by-law otherwise provide (*u*), there shall be paid, in order to the raising of a revenue for Provincial purposes, for the exclusive use of this Province, the following additional duties thereon, the whole of which shall form part of the Consolidated Revenue of the Province (*v*):

1. For each wholesale license (*w*) - -	$100 00
2. For each tavern or shop license (*x*) in cities of over 20,000 inhabitants - - - -	150 00
For each tavern or shop license in cities of less than 20,000 inhabitants - - - -	100 00
For each tavern or shop license in towns -	70 00
" " in incorporated villages	60 00
" " in townships - -	30 00
For each tavern license in cities granted to premises exempted from the necessity of having all the tavern accommodation provided by law - - - - - - - - -	200 00
do. do. in towns - -	170 00

---

before judgment, of the sum fixed by the latter Act, did not enure to make the license valid from its date: R. *v.* Strachan, 20 C. P., 182.

(*r*) "Over and above" is defined in Worcester's Dict., as "besides; beyond what was first supposed or immediately intended."

(*s*) "Hereinbefore imposed" refers to the duties imposed by sec. 41. See notes to that sec. This section has been added since the judgment in *re* Brodie and The Cor. of Bowmanville, 38 U. C. R., 580, cited in the notes to sec. 42, and there has been no decision as to the effect of this provision on the powers conferred by sec. 42, with respect to the increase of license duties. But it is certain that the duties imposed by this section are in addition to all other duties, whether Provincial or Municipal, unless it is otherwise provided in the Municipal by-law. See note (*a*) *infra*.

(*t*) See sec. 42 and notes thereto.

(*u*) The Municipality, in any by-law determining the amount of the duty to be paid, may provide that the duties payable under this section shall be inclusive of the amount fixed by the by-law, so long as the whole amount does not fall short of the amount imposed by sec. 41, added to the duty payable under this section.

(*v*) The Consolidated Revenue Fund of the Province is authorized and regulated under the provisions of R. S. O., 1887, c. 19.

(*w*) See sec. 2, ss. 4 and secs. 34, 35, 41.

(*x*) "Tavern license," see sec. 2, ss. 2; "shop license," see sec. 2, ss. 3.

3. For each beer and wine license (*y*), a fee in addition to that provided by sub-section 4 of section 41, of one-forth that hereby added to tavern licenses - - - - -

4. [Paragraph 4 is struck out by 53 Vic., c. 56, s. 2, subsec. 4.]

Population, how determined.

(2) The population of a city for the purpose of this section shall be determined by the enumeration taken by the Municipal assessors at the last preceding assessment (*z*).

License duties imposed by municipalities.

(3) Nothing herein contained shall limit the right of the Council of any Municipality, without submitting the same to the ratepayers, by their by-law to fix the duties or fees upon tavern or shop liceases, wholly for the use of the Municipality, and the sum so fixed, or to be fixed, by any Municipal Council, may be, in addition to the sum imposed by this section, in and for the respective Municipalities above mentioned (*a*). 49 V., c. 39, s. 1.

LICENSE FUND.

The duties, fines and pen-

45. (1) All sums received from duties on tavern, shop and wholesale licenses (*b*), and for transfers and

---

(*y*) See s. 23. The duty on a beer and wine license is $30 in cities, $40 in towns, and $30 in other Municipalities, by adding one fourth thereto, the total duty of $62.50 in cities, $50 in towns and $37.50 in other Municipalities is obtained.

"Over 20,000" means upwards of 20,000.

"Less than 20,000" has been read as "not exceeding" 20,000: See Garby *v.* Harris, 7 Ex., 591.

(*z*) For the purpose of limiting the number of licenses under sec. 18, the last preceding census is taken as a basis. Under this section, the enumeration taken by the Municipal assessors at the last preceding assessment, is the basis on which the population is to be ascertained, The census is obtained from the assessment roll, which must show the number of persons in each family rated as a resident. R. S. O. 1887, c. 193, page 2091.

The "last preceding" assessment is that shewn by the finally revised roll immediately preceding the date of the issue of the license.

(*a*) The Council of a Municipality can impose duties wholly for the use of the Municipality, in addition to the duties above mentioned, without submitting the by-law determining such additional duties to a vote of the ratepayers. It is submitted that the effect of this is to give Municipalities power under section 42, to establish a license fee, which shall be payable wholly to the Municipality, and be separate and distinct from the Provincial fee. But see the following section and notes thereto.

(*b*) The licenses are issued by the Inspector under the direction of the License Commissioners (sec. 9), and the procedure to be followed in the issue of the

alties to form a license fund.

removals thereof (*c*), and received by the Inspector for fines and penalties (*d*), shall form the license fund of the license district, for which the Board of License Commissioners has been appointed. R. S. O. 1877, c. 181, s. 34 (1); 44 V., c. 27, s. 3; 48 V., c. 43, s. 8, *part*.

Application of the fund.

(2) So much of the license fund as is not specially appropriated otherwise (*e*), shall be applied (*f*), under regulations (*g*) of the Lieutenant-Governor-in-Council (*h*), for the pay-

---

license is as follows: A certificate is granted by the License Commissioners under the hands of any two of them to the applicant, stating that he is entitled to a license. The duty is then paid by the applicant into such bank as may be designated by the Provincial Secretary to the credit of the "License Fund Account" for the district, and upon the production of the certificate of the Commissioners and the receipt of the bank for the duty, the Inspector may issue the license (sec. 12). The duties payable upon licenses, it will be observed, are not to be paid to the Inspector, but into the bank.

(*c*) The fees for transfers and removals are payable to the Inspector, to be by him paid in to the credit of the "License Fund Account," sec. 39.

(*d*) "Fines and penalties" are to be paid by the convicting Magistrate to the Inspector, and paid in by him to the "License Fund Account," sec. 46.

From this it would appear that the only moneys which should be allowed to pass through the Inspector's hands are those collected for transfer and removal of licenses and for fines collected by the convicting Magistrates.

It would appear that all license duties must be paid into the bank designated by the Provincial Secretary, including the duties payable to the Municipalities under sec. 42 and sec. 44, ss. 3.

The words "all sums received," it is contended, are wide enough to include everything—*Qui omne dicit, nihil excludit* (in the mention of all things nothing is excluded), see cases cited Stroud's Dict., 28; although in some cases it may by the context mean "any," 1 Jarm., 504; Gilmour *v.* Lockhart, H. T., 6 Vic.; R. & H. Dig., 265. And in McLaren *v.* Caldwell, 8 C. S. R., 436, "all streams" were held to mean those streams which in their natural state permit lumber to be floated down them; but this decision was reversed on appeal to the Privy Council, where it was held that the expression meant "all streams without any limitation:" 9 App. Cas., 392.

(*e*) "Appropriated otherwise," means set apart by law for some other purpose; see Worcester, 1006, Stroud's Dict., 548-550; as, for instance, that portion which is set apart for the exclusive use of the Municipality under its by-law.

(*f*) "When a Statute confers an authority to do a judicial, or indeed any other act, which the public interest or even individual right may demand, it is imperative on those so authorized:" Maxwell, 219. See also notes to secs. 3 and 4, *ante*, and note (*g*) to sec. 42*b*. The fund created under this section must be applied in the manner directed.

(*g*) Acts which delegate subordinate legislative authority, or other powers, are subject to the principle of strict construction. Thus a general order made by the Judges of the Court of Chancery, under Parliamentary authority to regulate the procedure of that Court, and which directed how a defendant, "in any suit," might be served with process abroad, was held by Lord Westbury, to be limited to those suits in which service abroad had been provided for by law, viz.: suits relating to land and public stock, by the 2 Wm., 4, c. 38 and 4 and 5 Wm., 4, c. 82. If the order had been construed as literally applicable

ment of the salary and expenses of the Inspector, and for the expenses of the office of the Board and of officers, and otherwise in carrying the provisions of the law into effect, and the residue, on the 30th day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor-in-Council, shall be paid over,—one-third to the Treasurer of the Province, to and for the use of the Province, and the other two-thirds to the Treasurer of the city, town, village, or township municipality in which the licensed premises are respectively situate (*i*); but in cases where any Municipality by by-law requires a larger duty in the case of tavern or shop licenses to be paid than the specific sums mentioned in sections 41 and 44 for any license, the whole of such excess shall be paid over to the Treasurer of such Municipality. [But all sums imposed by the Municipality in excess of the sum of $200, mentioned

---

to all suits, it would while professedly only regulating the proceedure, have in effect extended the jurisdiction of the Court, an object foreign to the Act which conferred the power of regulation: Maxwell on Stats., 265.

(*h*) See note (*a*) to sec. 6; see also Interpretation Act, sec. 8, ss. 7.

(*i*) The manner in which the fund is to be applied is:

1. In payment of the salary and expenses of the Inspector, and the expenses of the officers, and otherwise in carrying the provisions of the law into effect.

2. In payment, (*a*) to the Treasurer of the Province of one-third of the residue, and (*b*) to the Treasurer of the Municipality in which the license premises are respectively situate of the remaining two-thirds.

This applies only to the amounts paid in under sections 41 and 44, and the fines, penalties and costs relating to transfers and removals received by the Inspector.

Where Municipalities have by by-law fixed the license duties at a greater amount than that provided for in secs. 41 and 44, the whole of the excess up to $200 is to be paid to the Treasurer of the Municipality, and the excess over $200 to be divided equally between the Province and the Municipality.

Some question may arise as to who are the "officers" referred to whose expenses are to be paid out of the fund. The expenses of the "Board and of Officers" are here spoken of, but it is submitted that no payment for the expenses to officers can be legally made whose appointment is not expressly provided for by the Act.

The Lieutenant-Governor and the License Commissioners, with the sanction of the Lieutenant-Governor-in-Council, have power to appoint one or more officers to enforce the Act: see secs. 127, 128; and the expenses of these officers are here provided for.

The fund is under the control of the License Commissioners and Inspector, subject to the regulations of the Lieutenant-Governor-in-Council, and no draft can be made upon it except by cheque signed by the Inspector, and countersigned by the chairman or at least two of the Commissioners.

in section 42 of this Act, shall be divided equally between the Province and such Municipality.] (Amended by 52 V., c. 41, sec. 3.)

Cheques upon the license fund account.

(3) Cheques (*j*) upon the license fund account shall be drawn by the Inspector, and countersigned (*k*) by the Chairman of the Board (*l*), or any two of the License Commissioners, subject to the regulations of the Lieutenant-Governor-in-Council. R. S. O. 1877, c. 181, s. 34 (2, 3).

Application of

46. (1) Any penalty (*m*) in money (*n*) recovered (*o*)

(*j*) A "cheque" is a Bill of Exchange drawn on a Banker, payable on demand: Bills of Exchange Act, 1890 (53 Vic., c. 33, s. 72), page 26; a "Bill of Exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay, on demand or at a fixed determinable future time, a sum certain in money to, or to the order of, a specified person or to the bearer:" Bills of Exchange Act, 1890, page 2. A cheque drawn by the Inspector must, therefore, be signed by him.

(*k*) See note (*k*) to sec. 37.

(*l*) The Act makes no provision for the appointment of a Chairman.

The Commissioners will be presumed to appoint a chairman from among them.

The addition, "Chairman of the Board of License Commissioners, for the license district of ———" to the signature, is the proper form in which to countersign the cheques. This will be a mere "*descriptio personæ*," an addition to the name or signature as "president," "agent," "assignee," "executor," etc.

(*m*) As to meaning and effect of the word "any," see note (*o*) to sec. 12, *ante*, p. 29; and as to "penalty" see note (*s*) to sec. 30.

(*n*) "Money, originally stamped coin, is now applied to whatever serves as a circulating medium, including bank notes and drafts, as well as metallic coins; cash is ready money and is sometimes restricted to coin or metallic money bearing a legal stamp; but it is commonly used to include bank notes, drafts, etc.:" Worcester, 925. A "penalty in money" is a "fine," or pecuniary penalty, as distinguished from punishment by imprisonment. But the word "penalty" alone is more frequently used to denote a pecuniary punishment: Bouvier, cited Worcester, 1051; and where the words "penalty or forfeiture" were used in an Act, it was held that they should be construed as clearly relating "to a sum inflicted:" R. *v.* The Justices of Middlesex, 9 Q. B. D., 41.

(*o*) The word "recover" has a technical meaning in law whereby it signifies to recover by action and the judgment of the Court, but it is said that there are cases which may be found in which the word has the larger and more popular sense of "recover" by any legal means which would include, *e. g.*, a distress: per Willes, J., Haines *v.* Welch, L. R. 4, C. P. 91. In that case it was held that the word in s. 1, 14 & 15 Vic., c 25, includes the right to distrain. See that and other cases cited Stroud's Dict., 660. But the amount of a verdict is not "recovered" till judgment can be signed upon it: per Brett, J., Ings *v.* Lond. & S. W. Ry., L. R. 4, C. P. 17.

It was decided that a debt for spirituous liquors was not "recovered" within the Tippling Act, 24 Geo. 4, c. 40, s. 12, by crediting an unappropriated payment therefor: Philpott *v.* Jones, 2 A. & E., 41. "Recover as damages" in

under this Act, in cases in which an inspector (*p*) is the prosecutor (*q*) or complainant, (*r*) shall be paid (*s*) by the convicting Justice, Justices or Police Magistrate (*t*) to the inspector, and paid in by him to the credit of the "License Fund Account." (*u*) penalties where Inspector is prosecutor.

(2) In case the whole amount of the penalty and costs is not recovered, the amount recovered shall be applied, first, to the payment of the costs, and the balance shall be appropriated as hereinafter mentioned. (*v*) Where the whole penalty and costs are not recovered

(3) In any case where the inspector has prosecuted and obtained a conviction, and has been unable to recover the amount of costs, the same shall be made good out of the said license fund. (*w*) Where costs are not recovered.

---

a Local Improvement Act means to recover before Justices: Blackburn *v.* Parkinson, 1 E. & E., 71.

As to meaning of "sum recovered," see Johnson *v.* Harris, 15 C. B., 357; Dixon *v.* Walker, 7 M. & W., 214; James *v.* Vane, 2 E. & E., 883; see also Clark *v.* Irwin, 8 L. J., 21.

(*p*) "An Inspector." See sec. 2, ss. 7.

(*q*) "Prosecutor." The "prosecutor" is one who prosecutes another for a crime in behalf of the Government: Blackstone, cited Worcester, 1144. The word "prosecution," in 49 Vic., c. 51, s. 1 (*d*), includes the proceedings before Magistrates as well as before a higher Court: R. *v.* Meyer, 11 P. R., 477.

(*r*) "Complainant" is the person who commences a prosecution: Collier cited Worcester, 279, one who lays the information before the Magistrate.

It is only when the Inspector acts either in the capacity of prosecutor or complainant that the penalty is payable in the manner provided; in the case of a private prosecution under the Act it should be applied in the same manner as any other fine: see Interpretation Act, R. S. O. 1887, c. 1, s. 8, ss. 30-33; R. S. O. 1887, c. 76; R. S. O. 1887, c. 77.

(*s*) This is imperative, and the convicting Justice, or Justices, must pay the fines as directed.

(*t*) "Convicting Justice." One Justice of the Peace may try certain cases; see secs. 97, 99.

"Justices." Two or more Justices of the Peace may try certain cases: see sec. 96.

"Police Magistrate." See R. S. O. 1887, c. 72. By sec. 21 a Police Magistrate may sit alone with the powers of two or more Justices of the Peace.

(*u*) "License Fund Account." See secs. 39, 45 and notes thereto.

(*v*) "Hereinafter mentioned." The word "hereinafter" is evidently a misprint; it should be "hereinbefore." It is clear that if there is any sum remaining after payment of costs, it should be paid into the License Fund Account.

(*w*) This applies only to cases where the Inspector is prosecutor or complainant, as provided in sub-sec. 1, and where the costs of the information and conviction cannot be recovered from the defendant. In that event the costs are to be paid out of the License Fund.

Indemnity of Inspector where he fails to obtain a conviction.

(4) In any case where the inspector has prosecuted and failed to obtain a conviction, he shall be indemnified against all costs out of the license fund, should the Justice, Justices or Police Magistrate before whom the complaint is made certify that such officer had reasonable and probable cause for preferring such prosecution or complaint. (*x*) R. S. O. 1877, c. 181, s. 35.

REGULATIONS AND PROHIBITIONS.

Licenses to be kept exposed.

47. All licenses (*y*) shall be constantly and conspicuously exposed (*z*) in the warehouses, shops or in the bar room (*a*) of taverns, inns, alehouses, beerhouses or other places of public entertainment, (*b*) and in the bar-saloon, or bar cabin of vessels, (*c*) under a penalty of $5 for every day's wilful or negligent omission so to do (*d*), to be re-

(*x*) The Inspector is to be indemnified against the costs in case he fails to obtain a conviction. In such case he might be made liable for the costs (see R. S. C. 1886, c. 178, s. 70), and, therefore, he is secured against such liability out of the fund. But the Justices or Police Magistrate must first certify that there was reasonable and probable cause for the prosecution.

"Reasonable and probable cause." In actions for malicious prosecutions, "it is now a settled question that the question of reasonable and probable cause must be decided by the Judge:" Roscoe's N. P., 851; and so in this case the question is one which must be settled by the Justices or Police Magistrate on the facts adduced in evidence during the hearing.

"Reasonable and probable cause" in such cases has been held to be: "Such a state of facts in the mind of the prosecutor as would lead a man of ordinary caution and prudence to believe that the person accused is guilty of the offence with which he is charged." See Roscoe's N. P., 811-813; see also Anderson's Dict., 157; Stroud's Dict., 655.

(*y*) "All licenses." This applies to licenses of every kind. See note (*a*) to sec. 45.

(*z*) "Constancy is the quality of being constant; unalterable continuance:" Worcester 300; and "conspicuous" is defined to mean "obvious to the sight; seen at a distance:" *Ib.* The license must, therefore, not only be kept continually exposed but must also be so prominently placed as to be readily seen.

(*a*) The word "bar-room" is not to be found in any dictionary of the English language. It England the "bar" of a tavern or inn is a part of a room in such tavern or inn enclosed by a low partition, with a counter at which the reckoning is received and refreshments are sold. The "bar-room" is, of course, the room in which such bar is placed; but the word "bar-room" is not used in England.

(*b*) Definitions of "taverns, inns, alehouses, beerhouses, and other places of public entertainment" are given in the notes to sec. 2, *ante*.

(*c*) "Bar-saloon, or bar cabin of vessels." These words should be struck out as no licenses are now issued to vessels.

(*d*) The omission by the license holder of his duty under this section will subject him to a fine of $5 for every day's failure in its performance, whether wilful or not.

covered (*e*) with costs (*f*) from the merchant, (*g*) shop-keeper (*h*) or tavern, inn, alehouse or beerhouse-keeper or keeper of any other place of public entertainment, or master, captain or owner of the vessel (*i*) so making default. R. R. O. 1877, c. 181, s. 37. Penalty.

48. Every person (*j*) who keeps a tavern (*k*), or other place of public entertainment (*l*), in respect of which a tavern license has duly issued (*m*) and is in force (*n*), shall Tavern keepers to exhibit notice of being licensed.

"Wilful" is a word of familiar use in every branch of law, and although in some branches of law it may have a special meaning, it generally, as used in Courts of law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. It amounts to nothing more than this, that he knows what he is doing, and intends to do what he is doing, and is a free agent: per Bowen, L. J., *re* Young and Harston, 31 Ch. D., 174; and to "neglect" doing, "is the omission to do some duty which the party is able to do:" per Patteson, J., King *v.* Burrell, 12 A. & E., 468. When "negligently" is a part of the definition of an offence, it implies that the act constituting the offence shall have been done or caused by the alleged offender himself; proof that it was done by the alleged offender's servant, without more, will not bring the charge home: Chisholm *v.* Doulton, 58 L. J. M. C., 133. "Negligence is the omitting to do something that a reasonable man would do, or the doing something which a reasonable man would not do:" per Alderson, B., Blyth *v.* Birmingham Water Works Co., 11 Ex., 781. As to the meaning of the words "neglect or refusal" and "negligence or omission" in a Statute, see Vogel *v.* Grand Trunk Ry. Co., 10 App. R., 162.

(*e*) See note (*o*) to sec. 46.

(*f*) $5 for every day's omission to expose the license, with the costs of hearing and conviction is the limit of the penalty to be imposed. A conviction imposing a greater or less penalty would be bad: R. *v.* Lennox, 26 U. C. R., 141; *in re* Bright and Toronto, 12 C. P., 433. See Form of Conviction, Sch. D., No. 1.

"With costs" means the costs of and incident to the conviction: Dwar., 692, citing Durham Ry. *v.* Walker, 2 Q. B., 966.

(*g*) "Merchant." This refers to the holder of a wholesale license. The word is usually applied to a wholesale trader: see Worcester, 899. It relates back to the word "warehouses."

(*h*) Shop-keeper refers to the holder of a "shop license."

(*i*) "Or master, captain, or owner of the vessel," should be struck out. See note (*c*) *supra*.

(*j*) A penalty on "every person" concerned in an offence may be recovered for the same offence against each person therein concerned: R. *v.* Dean, 12 M. & W., 39. See also notes to sec. 58, *post*.

(*k*) "Tavern." See note (*g*) to sec. 2, ss. 2.

(*l*) "Other place of public entertainment." See note (*b*) to sec. 42*a*, *ante*.

(*m*) "Duly issued" means issued under the authority of the Act. See Wharton, 231 and cases there cited.

(*n*) The requirements of this section, of course, only apply to taverns and other houses of public entertainment licensed under this Act. But exhibiting a sign denoting that the place is licensed, when it is not, is prohibited. See sec. 49, ss. 2.

exhibit (*o*) over the door (*p*) of such tavern, inn, alehouse, beerhouse, or other place of public entertainment, in large letters, the words: "*Licensed to sell wine, beer, and other spirituous or fermented liquors*" and in default thereof, shall be liable to a penalty of $5, besides costs (*q*). R. S. O. 1877, c. 181, s. 38.

Penalty.

No person shall sell liquors without license.

49. (1) No person (*r*) shall sell by wholesale or retail (*s*) any spirituous, fermented, or other manufactured liquors without having first obtained a license under this Act authorizing him so to do (*t*): but this section shall not apply to sales under legal process or for distress, or sales by assignees in insolvency.

(*o*) The duty imposed here is compulsory upon the keeper of every tavern and house of public entertainment licensed, and if omitted through carelessness or negligence, is punishable the same as if done wilfully. To "exhibit" means nearly the same thing as the word "expose" in the last section. *i. e.*, "to show or expose publicly." See Worcester, 517. Proof that there is nothing over the door denoting that the house is licensed, has in England been held *prima facie* evidence in an action for penalties that the house is unlicensed: Gregory *v.* Tuffs, 6 C. & P., 271.

(*p*) "Over the door" means, in the ordinary sense, above the door; but it has been held that it does not mean vertically above, as in an indictment for playing cards in a room over a saloon: Patterson *v.* State, 12 Tex. Ap., 222, (1882).

(*q*) See note (*n*) to sec. 46.

As to form of conviction under this sec. see Sch. D., No. 2.

(*r*) The word person, *prima facie*, includes a corporation as well as a natural person; per Selborne, L. C., Pharmaceutical Soc'y. *v.* Lond. & Provincial Supply Ass'n., 5 App. Cas., 857.

By the Interpretation Act, (R. S. O. c. 1, s. 8, ss. 13), the word "person" is made to include "any body corporate or politic, or party, and the heirs, executors, administrators or other legal representatives of such person to whom the context can apply according to law."

(*s*) "Wholesale or retail." This section applies to all persons. There can be no sale of intoxicating liquor without a license: R. *v.* Strachan, 20 C. P., 182. (See sec. 2 and notes thereto.) But there are certain statutory exceptions in sections 51 and 52, by which Brewers are exempted from the necessity of taking out a retail license, and Chemists are permitted to sell liquor in certain quantities, for medicinal purposes only, besides the exceptions in this section provided for.

"Spirituous, fermented, or other manufactured liquors." See note (*b*) to sec. 2, for definitions of these terms and cases thereon. See also R. *v.* Denham, 35 U. C. R., 508; R. *v.* Strachan, *supra*; 16 L. J., N. S., 241; Add. on Con., Vol. 11, p. 1161; Paterson's L. A., p. 5.

(*t*) It was said by Wilson, J., in Ross *v.* The Cor. of York and Peel, 14 C. P., 171, at p. 174: "The sale of intoxicating drinks has been placed, and wisely so, under stringent and special legislation in many respects." See also Barclay and The Municipality of Darlington, 11 U. C. R., 470. The licenses authorized by the Act are: (1) Tavern licenses, sec. 2, ss. 2, 11, 12, 18, 21, 27 and 30;

(2) Shop licenses, sec. 2, ss. 3, sec. 4, ss. 2, 21, 31, 32, 33 and 60; (3) Wholesale licenses, sec. 2, ss. 4, 34, 35 and 144; (4) Beer and wine licenses, sec. 22, 23, 24, 25 and 26; (5) Brewers licenses, see sec. 51. No penalty can now be recovered for selling liquor without a license from the Governor or Lieutenant-Governor under the Imperial Act, 14 Geo., 3, c. 88, for since the 1 and 2 Wm., 4, c. 23, the issuing of such licenses has been regulated by the Colonial Legislature: Andrew *v.* White, 18 U. C. R., 170. In the Statute 32 Vic., c. 32, the reading was "without the license therefor by law required," remarking upon which Morrison, J., said: "It does not enact that any person selling without a tavern license or shop license, (the licenses authorized and contemplated by the Act), or a license issued by virtue of the Statute, shall be subject to the penalty, the language is, 'any person who shall sell, &c., without the license therefor by law required,'" and it was held that a person holding a brewer's license from the Dominion, was not required to take out any further license: R. *v.* Scott, 34 U. C. R., 20, p. 27. The language of the section has been changed, but it is still held that a brewer does not require a Provincial license. See R. *v.* Taylor, 36 U. C. R., 185; R. *v.* Severn, 2 S. C. R., 70, cited in notes to sec. 51.

A conviction under this section, in a Municipality where "The Temperance Act of 1864" was in force, was held bad. It was also held *ultra vires* of the Ontario Legislature, to enact that the provisions of the Licensing Act should have full force in a Municipality where the Temperance Act is in force: R. *v.* Prittie, 42 U. C. R., 612. See also Slavin *v.* The Cor. of Orillia, 36 U. C. R., 159. Under 40 Vic. c. 18, s. 30 (O) the Licensing Acts were held by Wilson, J., to be in full force and effect in all Municipalities where the Temperance Act, 1864, was in operation, with the exception of those provisions which relate to the granting of licenses to sell by retail, and a conviction for selling liquor contrary to this section in a county in which the Temperance Act is in force is valid, although such conviction would be illegal at Common Law: R. *v.* Lake, 7 P. R., 215, but this decision was reversed, the Court holding that the conviction was invalid and must be quashed, the proper construction of 40 Vic. c. 18, s. 30 being that the Legislature intended either that a wholesale license must be taken out for the sale of liquor in the quantities allowed to be sold, under the Temperance Act of 1864, in Municipalities where that Act is in force, and making a sale thereof a contravention of secs. 24 and 25 of 37 Vic. c. 32, O (secs. 49 and 50 of this present Act) as a selling by wholesale without a license; or as providing in addition that a sale in such Municipalities of the quantities prohibited by the Temperance Act should be a contravention of said secs. 24 and 25 as a selling by retail without license, and if the former were the intention, then the conviction was bad, as it was for selling by retail under a provision of the License Act not in force when the conviction was made; and if the latter, the Legislature were exceeding their powers in directly legislating on criminal law and enacting criminal procedure for the punishment of offences against the Temperance Act: S. C. 43, U. C. R. 515; see sec. 147. See also *in re* Watts and *in re* Emery, 5 P R., 267, in which it was said by Gwynne, J., "any sale of intoxicating liquors is in effect illegal as made without a license, unless the accused has the protection not only of a license, but also of a by-law of the Municipality authorizing the same."

Besides the enactments against the sale of liquor without license under the laws of Ontario, the following Statutes of the Dominion are in force in this Province: R. S. C. c. 151, secs. 1, 13, 14, 15, 31, An "Act respecting the preservation of peace in the vicinity of public works: 50 and 51 Vic. (D) c. 46, s. 1; 16 and 17 Vic. c. 69, s. 12; the object aimed at being the maintenance of discipline on board Her Majesty's ships; R. S. C. c. 8, s 83, for prohibiting the sale of liquor on polling days; The Canada Temperance Act, R. S. C. c. 106; The Railway Act, 51 Vic. (D) c. 29, s. 293, by which the sale or gift of liquor to any servant of a Railway Co. while on duty is made punishable upon conviction

by a fine of $50 or one month's imprisonment with or without hard labor, or by both fine and imprisonment: R. S. C. c. 43, ss. 94-105; 50 & 51 Vic. (D) c. 33, s. 10; 51 Vic. (D) c. 22, s. 4, and R. S. C. c. 85, secs. 10, 11, as to sale of intoxicating liquor to Indians; R. S. C. c. 50, secs. 92-100; and 51 Vic. (D) c. 19, s. 18, as to such sales in the Territories; and R. S. C. c 53, secs. 35-43, in Keewatin; see also "The Temperance Act, 1864," 27 & 28 Vic., (P. C).

The owner of a shop is liable for any unlawful act done therein, in his absence, by a clerk or assistant, and a conviction of the owner for the sale of liquor without a license by a female attendant was held good; but "it may be that if the act was an isolated act, wholly unauthorized by him, and not done in any way in the course of business, but a thing done wholly by the unwarranted or wilful act of the subordinate," the owner might escape personal responsibility: R. *v.* King, 20 C. P., 246.

A conviction for selling "a certain quantity, to wit, one pint," was held sufficient: Reid *v.* McWhinnie, 27 U. C. R., 289.

A conviction that defendant "did sell wine, beer, and other spirituous or fermented liquors, to wit, one glass of whiskey, contrary to law," held bad for uncertainty as not shewing whether the offence was for selling without a license or during ilegal hours: R. *v.* Hoggard, 30 U. C. R., 152.

The sale of a bottle of gin without a license is contrary to law; and *semble*, that even if a license be necessary only on a sale by retail, the sale of a bottle, value 60 cents, would be a sale by retail: R. *v.* Strachan, 20 C. P., 182.

The quashing of a by-law under which a certificate has been granted and license issued, does not nullify the license; and a conviction for selling without license cannot, under these circumstances, be supported: R. *v.* Stafford, 22 C. P., 177.

A plea to an action for goods sold, etc., to the effect that the plaintiff's claim was for intoxicating liquors, etc., that the defendant was not the holder of a license and was accustomed to sell liquors without a license, and that the liquors were furnished to be sold contrary to law to the knowledge of the plaintiff, was held bad, because, by the License Act, there was a class of persons, to wit, druggists, etc, who might sell without license, and the plea did not allege that the defendant was not one of such class: Kelly *v.* Earl, 29 C. P., 477; see also Hodgson *v.* Temple, 5 Taunt. 181; Brown *v.* Duncan, 10 B. & C., 93; Bowry *v* Bennet, 1 Camp., 348; Pearce *v.* Brooks, L. R. 1, Ex. 215; Cannan *v.* Bryce, 3 B. & Ald., 179; Ritchie *v.* Smith, 6 C. B., 462.

In Smith *v.* Benton, 20 C. R., 344, the plaintiffs, wholesale merchants, having a license to sell in Middlesex, supplied liquors to the defendant, who carried on a place of public entertainment in Kent before and after the repeal of the C. T. Act in the County. It was held that the plaintiff could not recover the price of liquors sold before the repeal.

A married woman, who was lessee of certain premises in which her husband sold liquor without a license, was held liable, although the sale took place in her absence: R. *v.* Campbell, 8 P. R., 55; see sec. 112.

The defendant, a servant of one Ward, the keeper of an unlicensed tavern, was convicted of selling liquor in the absence of her master; Cameron, J., held the conviction good, the case being undistinguishable in principle from R. *v.* Williams, 42 U. C. R., 462, though he would otherwise have held the master alone responsible: R. *v.* Howard, 45 U. C. R., 346.

In R. *v.* Williams, 42 U. C. R, 462, the occupant of the house in which the sale took place was in gaol, and the conviction of the wife for selling in the house was sustained: see R. *v.* Crofts, 2 Stra., 1120; Paley on convictions, 5th Ed., 72, and cases there cited. In an opinion delivered by Simonton, J., in U. S. Dis. Ct., Car., Aug. 1, 1887, it was said that "the presumption that a wife,

who, on her husband's premises, and in his presence, and with his knowledge, makes illegal sales at retail of intoxicating liquors, does so as his agent, does not attach to such sales so made by a woman living with a man as his concubine; and to authorize the conviction of the man for such sales by the concubine, the jury must be satisfied, from the evidence, that she was acting as the agent of the accused when she made the sale: United States *v.* Bonham, cited 36 Alb., L. J. 354.

It was held in the Mass. Sup. Jud. Ct. that an illegal sale by a bartender in his master's shop, and in the regular course of his master's lawful business, was not *prima facie* a sale by the master: Commonwealth *v.* Briant, 23 L. J. N. S., 195.

Where a wife held a license, and the husband carried liquor to a private house and sold it at a raffle there going on, and brought back the money and gave it to his wife, she was convicted of selling at an unlicensed place: Seager *v.* White, 51 L. T. N. S., 261, cited Paterson's L. A., 87.

In R. *v.* Frawley, 46 U. C. R., 153, and R. *v.* Allbright, 9 P. R., 25, it was held that a Magistrate had not power to impose imprisonment with hard labor, and the conviction was therefore invalid, but this decision was reversed and it was held that the word "imprisonment" used in sec. 92 of the B. N. A. Act means imprisonment with or without hard labor, and that the Legislature of this Province has power to impose hard labor in addition to imprisonment: R. *v* Hodge, R. *v.* Frawley, 7 App. R., 246; 9 App. Cas., 117.

It was held that the Liquor License Act applies to Indian land under lease from the Crown to a private individual, and a conviction for selling liquor without a license on Dickinson's Island was upheld: R. *v.* Duquette, 9 P. R. 29.

The defendant was licensed to sell "in and upon the premises known as the Palmer House." The Palmer House stood upon the front part of a deep lot owned by the defendant, the rear part of which was enclosed and used as a fair ground, immediately within which enclosure the defendant sold liquor, for which he was convicted. *Held*, that the conviction was right and that the fair ground, though part of the lot on which the hotel stood, was not used in connection therewith or for its enjoyment, and it was not covered by the license: R. *v.* Palmer, 46 U. C. R., 262.

The defendant was convicted for selling liquor without a license, and for allowing liquor sold by him to be consumed on the premises; and one penalty was inflicted "for his said offence." Held bad, in not showing for which offence the penalty was imposed; also that it was bad in not showing the place where the offence was committed: R. *v.* Young, 5 O. R., 184*a*.

Where the offence was selling liquor to an Indian, it was held no objection to a conviction under this Act, for if so the defendant was guilty of two offences, one under the latter Act and one under the Indian Act: R. *v.* Young, 7 O. R., 88. See also R. *v.* MacKenzie, 6 O. R, 165.

The Court refused to quash a conviction on the ground that the only witnesses were blind persons, and that the defendant was compelled to speak in order that they might be able to identify him: R. *v.* Excell. Div. Ct., 6th Dec., 1890.

An agreement of a licensed person to sublet a room to an unlicensed person to sell liquors, is contrary to public policy: Ritchie *v.* Smith, 6 C. B., 462; see also Stallard *v.* Marks, 3 Q. B. D., 412, cited in note (*e*), sec. 3.

The sale of liquor without a license does not disqualify the seller from holding the office of alderman, under the Municipal Act, R. S. O. 1877, c. 174, s. 74; though he may have rendered himself liable to penalties for breach of the Liquor License Act: R. *ex rel.* Clancy *v.* Conway, 46 U. C. R., 85; R. *ex rel.* Brine *v.* Booth, 9 P. R., 452.

(z) No person unless duly licensed shall by any sign or notice hold himself out to the public as so licensed; and the use of any sign or notice for this purpose is hereby prohibited (u). R. S. O. 1877, c. 181, s. 39.

Persons not to keep

50. No person shall keep or have (v) in any (w) house, (x) building, (y) shop, (z) eating-house, (a) saloon, (b)

(u) It has been held that a Municipal Council has power to compel the removal of a notice, such as is required by sec. 48 of this Act, from over the door of a house not for the time licensed: *In re* Bright *v.* The City of Toronto, 12 C. P., 433.

The word "notice," as defined by Stroud, is "a direct and definite statement of a thing, as distinguished from supplying materials from which the existence of such thing may be inferred:" per Parke, B., Burgh *v.* Legge, 5 M. & W., 420; Vallee *v.* Dumergue, 4 Ex., 290; see note (o) to sec. 48.

"Will not hold himself out nor seek to induce others to believe:" see Wolmershausen *v.* O'Connor, 36 L. T., 921, cited Stroud's Dict., 353.

See R. *v.* Menary, 19 O. R., 691, cited *post*.

(v) "To keep" a place or thing involves the idea of having over it the immediate control of a character more or less permanent. See note (q) to sec. 11, ss. 8, *ante*. The words "have" and "keep" are not *per se* synonymous in the phrase "to have or keep," and it does not comprehend permanency of character as in the case of the word "keep." Therefore where the owner of a theatre allowed the place to be used gratuitously on a few occasions for the performance of stage plays, to which the public were admitted, it was held a keeping or having a house for the public performance of stage plays without a license: Shelley *v.* Bethell, 12 Q. B. D., 11. But it would seem that the person to whom such occasional permission was given would neither "keep" nor "have" the theatre: R. *v.* Struguell, L. R. 1, Q. B. 93. See also Biggs *v.* Mitchell, 2 B. & S., 523; Foster *v.* Diphwys Casson Co., 18 Q. B. D., 432.

(w) See notes to sec. 11, ss. 12, *ante* p. 29.

(x) A "house" is a structure of a permanent character structurally severed from other tenements (and usually, but not necessarily, under its own separate roof) that is used, or may be used, for the habitation of man, and of which the holding (as distinct from lodgings) is independent. There are a number of authorities in support of this definition, all of which will be found in Stroud's Dict., 358. It is not necessary that a "house," if adapted for residential purposes, should be actually dwelt in: Daniel *v.* Coulsting, 7 M. & G., 122. See note (k) to sec. 11, *ante* p. 21.

(y) "Building." Stroud says, "What is a 'building' must always be a question of degree."

The phrase "house, warehouse, counting house, shop, or other building," as used to confer the franchise in the English Reform Act, includes in its last term only buildings of a permanent character used for residentiary or commercial purposes, and does not include a tool shed: Pownall *v.* Dawson, 11 C. B., 9; Powell *v.* Boraston, 18 C. B. N. S., 175; Morrish *v.* Harris, L. R. 1, C. P. 155.

Query, is a "pig-sty" such a "building?" Powell *v.* Farmer, 18 C. B. N S., 168. A cow-house may be: Whitmore *v.* Wenlock, 7 Scott's N. R., 489. An unfinished house is a building: R. *v.* Manning, 25 L. T., 573. The masonry on the sides of a canal is not sufficient to constitute a "building." A London street, though paved and faced with stone-work, would yet be land; whilst Holborn viaduct would be a building; per Blackburn, J., R. *v.* Neath Canal Nav. Co., 40 L. J. M. C., 197. A bay window is a "building," and its addition

or house of public entertainment, (*c*) or in any room (*d*) or place (*e*) whatsoever, any spirituous, fermented or other manufactured liquors (*f*) for the purpose of selling, bartering or trading therein, (*g*) unless duly licensed (*h*) thereto under the provisions of this Act; nor shall the occupant (*i*)

spirituous, etc., liquors for sale unless licensed.

---

to a house will be a breach of a covenant not to erect "any building" in advance of the house: Manners *v.* Johnson, L. R. 1, Ch. D. 673; and a wooden advertisement hoarding is a contravention of a covenant not to erect a "building or erection" on the premises: Pocock *v.* Gilham, 1 Cab. & El., 104. See Stroud's Dict., 91.

(*z*) The word "shop" implies a place where a *retail trade* is carried on: a blacksmith's shop is rather a warehouse than a shop: R. *v.* Chapman, 7 J. P., 132. "In order to constitute a 'shop' there must be some structure of a more or less permanent character:" per Miller, J., Hooper *v.* Kenshole, 2 Q. B. D., 127. It must be something "more than a mere place for sale;" it imports a place for storing, also where the commodities admit of storing: per Miller, J., Pope *v.* Whalley, 6 B. & S., 303; Llandaff *v.* Lindon, 8 C. B. N. S., 515; Fearon *v.* Mitchell, L. R. 7, Q. B. 690; McHole *v.* Davies, 1 Q. B. D., 59. A wooden shed affixed to a house and supported on wooden posts was held to be a shop: Ashworth *v.* Heyworth, 10 B. & S., 309; see also Wiltshire *v.* Baker, 5 L. T., 355; Wiltshire *v.* Willet, 11 C. B. N. S., 237. A private house converted into a place for selling photographs, albums, etc., is a "shop:" Wilkinson *v.* Rogers, 2 D. G. J. & S., 62. A tavern was held not to be a "shop:" Coombs *v.* Cook, Cab. & El., 75. See note (*k*), sec. 11, p. 21.

(*a*) "Eating-house." The meaning of this term is quite obvious.

(*b*) The meaning of the term "saloon," as defined by Worcester, is "a place of refreshment." Some humorous references to the decisions on the meaning of the term are to be found in "Drinks, Drinkers, and Drinking," by R. V. Rogers, jr., in 27 Alb., L. J. He says: "Judges do not exactly know, at least when on the bench, what a 'saloon' is. They say it does not necessarily import a place to sell liquor; that it may mean a place for the sale of general refreshments, Kitson *v.* Mayor of Ann Arbor, 26 Mich., 325; or, that it may mean a room for the reception of company, or for an exhibition of works of art, etc., State *v.* Mansker, 36 Tex., 364. * * * * Neither an enclosed park of four acres in extent, nor an unenclosed and uncovered platform, erected for dancing and where lager beer is sold, can rightly be considered a 'saloon' or a 'house' or 'building' within the meaning of the Connecticut Statute forbidding Sunday selling of intoxicating liquors, etc., State *v.* Barr, 39 Conn., 41." Mr. Roger's paper is also to be found in 16 L. J. N. S., 239.

But a "saloon" is now usually held to mean "a place where intoxicating liquors are sold:" McDougall *v.* Giacomini, 13 Neb., 434 (1882); Anderson's Dict., 917.

(*c*) See note (*b*) to sec. 42*a*, *ante*.

(*d*) See note (*o*) to sec. 11, p. 29, *ante*.

(*e*) See note (*k*) to sec. 11, p. 21, *ante*.

(*f*) See note (*b*) to sec. 2, p. 2, *ante*.

(*g*) See note (*d*) to sec. 2, p. 5, *ante*.

(*h*) "Duly licensed," means licensed by the proper persons in the manner and under the authority of the Act: See Butcher *v.* Steuart, 11 M. & W., 857; R. *v.* West Riding Jus., 1 Q. B. D., 220; Lloyd *v.* Ingleby, 15 M. & W., 465; R. *v.* Glamorgan, 40 J. P., 150. See also note (*c*) to sec. 2, p. 5, *ante*.

(*i*) The tenant, though absent, is usually the "occupier" of premises: R. *v.*

of any such shop, eating-house, saloon, or house of public entertainment, unless duly licensed, permit any liquors, (*j*) whether sold by him or not, to be consumed upon the premises, (*k*) by any person other than members of his

---

Poynder, 1 B. & C., 178, but a servant or other person, who may be there *virtute officii*, is not an occupier: Clarke *v.* St. Mary, Bury St. Edmunds, 1 C. B., N. S., 23; Bent *v.* Roberts, 3 Ex. D., 66; R. *v.* Spurrell, L. R., 1 Q. B. 72. See also Saunders *v.* Pitfield, 4 Times Rep., 233.

The ordinary meaning of the term "occupant," is "one who has the actual use or possession of a thing," and the legal definition as given by Burrill, is "one who takes possession of a thing of which there is no owner, or of a thing which has been abandoned:" Worcester, 983. See also Wharton's Dict., 515. "Occupancy is the thing by which title was in fact originally gained; every man seized to his own continued use such spots of ground as he found most agreeable to his own convenience, provided he found them unoccupied by any one else:" Blackstone, (by Kerr, 4th Ed.) Vol. II., p. 74. "Occupancy is the taking possession of other things which before belonged to nobody:" 2 Broom & Hadley's Com., p. 411. But it was held, O'Connor, J., dissenting that an "occupant" to be within the terms of the 46 Vic., c. 24, s. 9, (D.) must be a proprietor or tenant of the land: Conway *v.* Canada Pacific R'y Co., 7 O. R., 673.

An "occupant" is defined by Wharton as "he who is in possession of a thing:" see Wharton's Dict., 515. See also Stroud's Dict., 524, 525. See also sec. 112, ss. 3.

(*j*) The word "permit" means the same as suffer: per James, L. J., *Ex parte* Eyston 7, Ch. D. 145, and "permitting and suffering" do not bear the same meaning as "knowing of and being privy to;" the meaning of them is that the covenanter should not concur in any act over which he had control: per Bayley, J., Hobson *v.* Middleton, 6 B. & C., 303; nor does the phrase mean 'to hinder and forbid:" per Lopes, L. J., Hall *v.* Ewin, 37 Ch. D., 74; Roffey *v.* Bent, L. R. 3, Eq. 759.

It was held that a sale in which the lessee took no part, but which was made under a Bill of Sale he had given was not "permitted" by him: Toleman *v.* Portbury, L. R. 7, Q. B. 344. See also note (*d*), sec. 2, p. 5, and note (*j*), p. 120.

It is to be observed that there is no exception or proviso in this section; but sec. 51 enacts that secs. 49 and 50 shall not prevent any brewer, distiller, or person duly licensed by the Government of Canada for the manufacture of fermented, spirituous, or other liquors, from keeping, having or selling any liquor manufactured by him, etc., and the 52nd sec. also excepts "any chemist or druggist duly registered" from the provisions of this section; but it was held that a conviction under this section need not negative the exceptions contained in secs. 51 and 52. It was also held that the penalty attaches where the act complained of was done either by the occupant or any other person, and "that the occupant should be in all cases responsible, and that he should not be heard to say that the act was done by some other person without his directions:" R. *v.* Breen, 36 U. C. R., 87.

Since this decision the section has been amended by the addition of the latter part of the section from the word "Act" in the sixth line, thus prohibiting the consumption of liquors on the premises, whether sold by the occupant or not.

It was held that two several defendants could not be jointly convicted of an offence under this section and that the award of one penalty against them jointly was erroneous: R. *v.* Sutton, 42 U. C. R., 220; see Gill *v.* Bright, 25 L. T. N. S., 591, cited Paterson's L. A., 14. See also R. *v.* Ambrose, 16 O. R. 251.

(*k*) "Consumed upon the premises." Where a beer retailer placed a bench

family (*l*) or employees, (*m*) or guests (*n*) not being customers. (*o*) R. S. O. 1877, c. 181, s. 40; 47 V. c. 34, s. 8.

Sections 49-50 not to apply to brewers, etc.

51. (1) Sections 49 and 50 shall not prevent any brewer (*p*), distiller (*q*), or other person (*r*) duly licensed

---

just outside his street door, and his customers sat on the bench whilst drinking ale he supplied to them, it was held that the ale was sold "to be consumed on the premises:" Cross *v.* Watts, 13 C. B. N. S., 239; but ale handed through a window to a customer who called for it and drank part of it whilst standing on the highway, was held not to have been sold "to be consumed on the premises," though he drank the remainder whilst sitting on the window sill of the house: Deal *v.* Schofield, L. R. 3, Q. B. 8. See also notes to sec. 112.

(*l*) See note (*n*) to sec. 27.

(*m*) An "employee" is "one who is employed; an official; a clerk; a servant:" Worcester, 478. It applies equally to a person within or without an office, whether a servant or clerk: Webster's Dict. It usually embraces a laborer, servant, or other person occupied in an inferior position: Gurney *v.* Atlantic, etc., Ry. Co., 2 N. Y. Sup. Ct., 453, (1873).

(*n*) An inn-keeper's "guest" is a traveller who by himself, or his beast, has been, however temporarily, accepted to and remains under hospitality within an inn or its curtilage: Calye's case, 1 Sm. L. C., Edson Ed. 251 and cases there cited; Strauss *v.* County Hotel Co., 12 Q. B. D., 27; Sinclair's L. & T., 124. The term in its ordinary acceptation means a visitor; one who is entertained at the table of another: Worcester, 647.

(*o*) A "customer" means an accustomed buyer: see Worcester, 352. A distinction is here made between those guests who are merely entertained as such, and those who visit the occupant for the purpose of dealing or trading as well as for entertainment. It was held that the word "customer" included intending as well as actual customers: McLean *v.* Dun, 39 U. C. R., 551; S. C. 1, App. R. 153. See remarks of Patterson, J. A., at page 172 of that report.

An agreement, the object of which is to enable an unlicensed person to sell spirituous, fermented or manufactured liquors without a license, is illegal and cannot be enforced at law. See note (*t*) to sec. 49; also sec. 126 and notes thereto, and see also notes to sec. 109,

(*p*) By the Inland Revenue Act, R. S. C., 1886, c. 34, s, 172, ss. c, the expression "brewer," is defined to mean and include any person who occupies, carries on, works, or conducts any brewery, either by himself or his agent. A "brewery" means and includes any place or premises where any beer or malt liquor, or beverage in imitation of malt liquor, is manufactured, &c.

A Dominion license may be granted to any person who has complied with the conditions of the Inland Revenue Act, if the district Inspector of Inland Revenue has approved of granting it, and the applicant has given security in the sum of $1000, in a bond to be entered into by himself and two good and sufficient sureties, before the Collector of Inland Revenue, his deputy or other officer authorized thereto by the Department of Inland Revenue. See R. S. C., 1886, c. 34, secs. 173-176.

(*q*) By the Inland Revenue Act cited above, the expression "distiller" means and includes any person who conducts, works, occupies, or carries on any distillery, or who rectifies any spirits by any process whatsoever, either by himself or his agent; and every person making or keeping beer, or wash, prepared or in preparation, or fit for distilling, or low wines or faints, or having in his possession or use a still or rectifying apparatus, shall be deemed to be a distiller and liable to the several duties, obligations, penalties and forfeitures

by the Government of Canada for the manufacture of fermented, spirituous, or other liquors (*s*), from keeping, having or selling (*t*) any liquor manufactured by him in any building wherein such manufacture is carried on, provided such building forms no part of and does not communicate (*u*) by any entrance with any shop or premises wherein any article authorized to be manufactured under such license is sold by retail (*v*), or wherein is kept any broken package of such articles.

(2) Every such brewer, distiller, or other person (*w*),

---

imposed by law on distillers, or who has in his possession, complete or partially completed, or who imports, makes or manufactures, in whole or in part any still, worm, rectifying or other apparatus suitable for the manufacture of wash, beer or spirits. A license may be granted to a distiller under similar circumstances to those governing the issue of a brewer's license. See the Inland Revenue Act, secs. 122-126.

(*r*) The other licenses provided for in the Inland Revenue Act are licenses to rectifiers; importers or makers of apparatus; manufacturing chemists or druggists; compounders of imitations of British or foreign wines, brandy, rum, gin, Old Tom, Geneva schnapps, British or foreign whiskey, and bitter liquors and cordials, when containing alcohol; maltsters and bonded manufacturers.

The general provisions as to licenses are to be found in secs. 9-26 of the Inland Revenue Act.

The Court of Queen's Bench held that to entitle a brewer or distiller to sell liquor manufactured by himself, it was not necessary to obtain a license from the Provincial Government; but that decision was reversed by the Court of Appeal, and afterward restored by the Supreme Court: see R. *v.* Taylor, 36 U. C. R., 183; S. C., 36 U. C. R., 218; R. *v.* Severn, 2 S. C. R., 70. See also R. *v.* Scott, 34 U. C. R., 20; Slavin and The Corporation of Orillia, 36 U. C. R., 172; and see notes to sec. 34, *ante*, p. 72, and note (*t*) to sec. 49.

(*s*) See notes to sec. 2, *ante*, p. 2. The word "liquors" has a most comprehensive meaning, and includes all kinds of liquors: Morrison, J., R. *v.* Scott, 34 U. C. R., 26.

(*t*) See note (*s*) to sec. 50.

(*u*) See note (*v*) to sec. 74. There is a similar provision in the Dominion Act respecting licensed manufacturers: see Inland Revenue Act, R. S. C. 1886, c. 34, s. 15, ss. 3.

(*v*) This applies to all persons holding a license to manufacture, and, therefore, every person holding a license as a manufacturing brewer or distiller, or as a wholesale dealer, must keep his premises separate and distinct from any place in which a retail liquor business is carried on. See note (*x*) to sec. 35, as to meaning of the word "retail."

(*w*) Under the B. N. A. Act the power to regulate trade and commerce rests exclusively with the Dominion Parliament, as also the right to raise money by the mode of indirect taxation, except so far as the same may be expressly given to the Local Legislature. Making it necessary to take out and pay for a license to sell by wholesale or retail, spirituous, fermented, or other manufactured liquors is raising money by the indirect mode of taxation. The powers of the Local Legislature are restricted to "shop, saloon, tavern, auctioneer and other licenses, in order to the raising of a revenue for provincial, local, or municipal

shall also first obtain a license to sell by wholesale under this Act the liquor so manufactured by him, when sold for consumption within this Province, under which license the said liquor may be sold by sample (*x*), or in original packages (*y*), in any Municipality, as well as in that in which it is manufactured; but no such sales shall be in quantities less than those prescribed in sub-section 4 of section 2 of this Act. R. S. O. 1877, c. 181, s. 41.

---

purposes, but it was not intended by the words 'other licenses' to enlarge the powers referred to beyond shop, saloon and tavern licenses, in the direction of licenses to effect the general purposes of trade and commerce and the levying of indirect taxes, but rather to limit them to licenses which might be required for objects which were merely Municipal or local in their character:" per Ritchie, C. J., Severn *v.* The Queen, 2 S. C. R., at pp. 96, 97. It was held, therefore, that the power to tax and regulate the trade of a brewer, being a restraint and regulation of trade and commerce, falls within the class of subjects for the exclusive Legislative authority of the Parliament of Canada; and that the license imposed was a restraint and regulation of trade and commerce and not the exercise of a police power; and that the right conferred on the Ontario Legislature to deal exclusively with shop, saloon, tavern, auctioneer and "other licenses" does not extend to licenses to brewers or "other licenses" which are not of a local or Municipal character.

It was also held that a brewer licensed to manufacture ale, &c., at Palmerston under a Dominion License, was authorized to sell in other places within the Province without taking out a Provincial License. "He pays one Government for the privilege of brewing, he cannot be compelled to pay another for the privilege of selling:" per Rose, J.: R. *v.* Young, 8 O. R., 476.

The following cases in the U. S. Courts are referred to:

A license received under an Act of Congress, gives no right to keep or sell intoxicating liquors in violation of a State law, and is no defence to a Statute of the State: McGuire *v.* Massachusetts, 3 Wall, 387; United States *v.* Vassar, 5 Wall, 462; Carney *v.* Iowa, *ib.* 480.

The requirement of payment of such license is only a mode of imposing taxes on the licensed business; and the prohibition under penalties, against carrying on the business without license, is only a mode of enforcing the payment of such taxes: *Idem.*

The provision of the Acts of Congress requiring such licenses and imposing penalties are constitutional: United States *v.* Vassar, 5 Wall, 462.

A fine of $50 and imprisonment at hard labor for 3 months is not excessive cruel or unusual: Carney *v.* Iowa, 5 Wall, 480. The above cases are cited in Index Dig,, U. S. Sup. Ct., p. 936. See also Danforth's Dig., 663.

(*x*) "A sale 'by sample' has only reference to the *quality* of the article sold:" per Parke, B., Nichol *v.* Godts, 10 Ex., 191. In that case the contract was for "Foreign refined Rape Oil, warranted only equal to samples." It was held that the buyer was not bound to accept oil which corresponded with the samples, but was not Foreign Refined Rape Oil; se also Azemar *v.* Casella, L. R. 2, C. P. 677; Heyworth *v.* Hutchinson, L. R. 2, Q. B. 447. But a sale by sample simpliciter is a warranty that the bulk shall be equal to the sample: Parker *v.* Palmer, 4 B. & Ald., 387; yet a sale by sample does not exclude implied warranty of merchantable quality respecting such matters as the sample

Nor to chemists. Rev. Stat. c. 151.

52. (1) The said sections numbered 49 and 50 of this Act shalll not prevent any chemist or druggist (*z*) duly registered as such under and by virtue of *The Pharmacy Act*, from keeping, having or selling (*a*) liquors for strictly medicinal purposes, (*b*) and then only in packages of not

---

would not disclose to a purchaser using ordinary skill and diligence: Mody *v.* Gregson, L. R. 4, Ex. 49; Drummond *v.* Van Ingen, 12 App. Cas., 284.

(*y*) "Original packages." See note (*p*), sec. 35.

(*z*) "Chemist and druggist." A "chemist" is a professor of, or one who is versed in, the science of chemistry: Worcester, 232; and a "druggist" is a dealer in drugs and medicines: Worcester, 450. A pharmaceutical chemist is one who prepares medicines. "The Pharmacy Act," R. S. O., c. 151, s. 19, enacts, that "that any person registered under this Act, and no other person, shall be entitled to be called a pharmaceutical chemist," and no other than a pharmaceutical chemist, or his employees, are authorized to dispense medicines; and by sec. 24 no one is allowed to assume the title of "Chemist and Druggist," or "Chemist" or "Druggist" or "Pharmacist" or "Apothecary" or "Dispensing Chemist" or "Dispensing Druggist," in any part of Ontario, unless so registered. But such enactment does not apply to medical practitioners. A chemist may prepare and vend, but not prescribe or admininister, medicines: Allison *v.* Haydon, 4 Bing., 621; see also R. S. O. 1887, c. 148; cited note (*f*), *infra*.

"A chemist is one who sells medicines which are ked for; he does not select the medicines:" per Creswill, J., Apothe Co. *v.* Lotinga, 2 Moo. & R., 500.

In the United States a "druggist," in the popular acceptation, is "one who deals in medicines, or in the materials used in the preparation of medicines," in its largest signification: Mills *v.* Perkins, 120 Mass., 42 (1876); and properly, one whose occupation is to buy and sell drugs without compounding or preparation: State *v.* Holmes, 28 La. An., 767 (1876).

(*a*) "Keeping, having or selling." See notes to sec. 50.

Formerly the provision against selling intoxicating liquors without a license, in the Liquor License Act, contained no exception in favor of chemists or druggists. The Act 36 Vic., c. 31, s. 1, (O), prohibited persons from keeping or having in any house, shop, &c., any spirituous liquors for the purpose of selling therein unless licensed thereto. But that provision was not to apply to brewers or distillers duly licensed by the Government of Canada, nor to any "chemist or druggist," &c. It was held that this merely referred to the keeping of liquor for the purposes of selling, but did not authorize chemists and druggists to sell, per Richards, C. J.: R. *v.* Denham, cited below.

But by 37 Vic., c. 32, the provisions of the Statute respecting chemists and druggists were amended by sec. 27, so as to permit the sale of liquors by them, for strictly medicinal purposes, in packages of not more than 12 ounzes at one time, except under a certificate from a registered medical practitioner.

(*b*) It was held that on an information against a registered druggist for selling spirituous and intoxicating liquors by retail, without having the license to do so, as required by law, the said spirituous and intoxicating liquor having been sold for other than strictly medicinal purposes only, it was not necessary to shew that the defendant was not licensed to sell liquor, that it was for him to shew that he was licensed; that the magistrate having decided that it was not bought for medical purposes, and did not think the evidence shewod it was so sold, the Court could not quash the conviction for want of evidence; and that selling a bottle of brandy for $1.25, was a sale by retail: R. *v.* Denham, 35 U. C. R., 503.

more than six ounces (*c*) at any one time (*d*) except under certificate (*e*) from a registered medical practitioner; (*f*) but it shall be the duty of such chemist or druggist to record in a book, (*g*) to be open to the inspection (*h*) of the license commissioners or inspector, every sale or other disposal by him of liquor, and such record shall show as to every such sale or disposal, the time when, the person to whom, the quantity sold, and the certificate, if any, of what medical practitioner, and in default of such sale or disposal being so

---

As to what is a sale by retail see Gorsuch *v.* Butterfield, 2 Wis., 237, and also note (*x*) to sec. 35.

The mere fact that a person says he wants liquor as a medicine will not exonerate a druggist from the charge of selling it as a beverage, nor entitle the druggist to sue for it in the Division Court: See State *v.* Knowles, (Iowa), 11 N. W. Rep., 620. It was held in one case, that where the sale was by a druggist, as alleged, to fill perscriptions, proof of other sales was admissable to show intent by proof of prescription and the quantity of liquor it called for: Dobson *v.* State, 5 Lea, (Tenn.,) 271.

(*c*) "Not more than six ounces" means six ounces or less; the maximum quantity allowed to be sold without the certificate of a registered medical practioner being six ounces.

(*d*) "At any one time" means at the same time, see Hood *v.* Franklin, L. R. 16, Eq. 496; St. Leger *v.* Magniac, W. N. (1880), 183.

(*e*) The usual meaning of "certify" does not require anything written; otherwise, why should parties ever expressly stipulate as to certifying in writing? per Byles, J., Roberts *v.* Watkins, 14 C. B. N. S., 592; it was there held that an architect's certificate need not be in writing unless so stipulated. But the meaning of the word "certificate," as defined by Wharton, is "a testimony given *in writing* to declare or verify the truth of anything:" Wharton's Dict., 121. See note (*w*) to sec. 11, p. 32, *ante*.

It is an offence against the Act to give a colorable certificate; see ss. 2.

(*f*) "Medical practitioner." The Statutes respecting the medical profession are 29 Vic., c. 34; 32 Vic., c. 45; 37 Vic., c. 30; R. S. O., c. 142, and R. S. O., c. 148. For the provisions as to the registration, see secs. 21-38 of the last-mentioned Act. By sec. 50 certificates by unregistered persons are declared to be invalid, and any person wilfully or falsely pretending to be a registered practitioner is liable to a penalty not exceeding $50 and not less than $15, (sec. 46) and any person using a title implying that he is registered, is liable to a penalty not exceeding $100 nor less than $25.

(*g*) The expression "to record" means to register or enrol, so as to preserve the memory of the fact or transaction or occurrence taking place. The terms "record" and "register," as used here, are synonymous: see Worcester 1195; Wharton, 625. It is the duty of the chemist or druggist to enter in his book, 1. the fact of the sale; 2. the time of sale; 3. the person to whom the liquor is sold; 4. the quantity sold; 5. particulars of the certificate, if any, and 6, the name of the medical practitioner by whom it was given.

The record applies to all sales whether under a doctor's certificate or not.

(*h*) "Open to the inspection." This expression conveys the meaning that the persons referred to (*e. g.*, the License Commissioners and Inspector) are to have free access to the book kept by the chemist or druggist at all reasonable times as a matter of right.

placed on record, (*i*) every such sale or disposal shall, *prima facie*, (*j*) be held to be in contravention (*k*) of the provisions contained in the said sections 49 and 50 of this Act. (*l*) R. S. O. 1877, c. 181, s. 42; 44 V. c. 27, s. 4.

Medical practitioner or Justice of

(2) Any medical practitioner or Justice of the Peace (*m*) who colourably (*n*) gives a certificate or requisition (*o*) for

---

(*i*) The consequences entailed by neglect of the chemist or druggist to make the necessary entries will ensue whether such neglect is intentional or not. In such case the burden of proving that the sale is legal will fall upon the person making such sale.

(*j*) A "sale" is defined by Blackstone as "a transmutation of property from one man to another in consideration of some price. A more modern writer has defined it to be "a transfer of the absolute or general property in a thing for a price in money:" Benjamin on sales, 2nd ed., p. 1; Smith's Mer. Law, 10th ed., vol. 11, p. 596.

"To dispose" means to give away; to bestow: Worcester, 421. But the word "disposal" is used here in a wider sense than this. The word "dispose" can be applied in many ways. A person may dispose of his property or business by gift, exchange or sale; a person may have a disposing mind as in making his will, meaning that he is conscious of the act he is doing; a person may dispose his grounds or books according to a certain plan or order; and a person may not be disposed to do a particular act, meaning that he is not inclined to do it: per Wilson. C. J., R. *v.* Hodgins, 12 O. R. 367, at p. 371. In this case it was held that there was no variance between the information and conviction because the former used the expression "disposal," and the latter "sale." The word is also considered in Oliver *v.* Hyman, 30 U. C. R., 517. See also Stroud's Dict., 218, 219. See note (*s*) to sec. 54.

"*Prima facie*" evidence is that which not being inconsistent with the falsity of the hypothesis, nevertheless raises such a degree of probability that it must prevail if it be credited by the jury unless it be rebutted, or the contrary proved: Wharton, 581.

(*k*) "Contravention" means an act done in violation of a legal condition or obligation: Wharton, 177.

(*l*) See schedule D., No. 11, for form of conviction. See also as to breaches of this section, sec. 101, sub-sec, 6.

(*m*) The reference is to the certificate of a Justice of the Peace under sec. 54, authorizing the sale of liquor for medicinal purposes by licensed liquor vendors during prohibited hours, on the production by the purchaser of a certificate of a licensed medical practitioner, or a Justice of the Peace, but such liquor is not to be drunk on the premises.

(*n*) The ordinary meaning of the word "colorable," as defined by Worcester, is "specious, plausible;" *e. g.*, having the appearance of truth but not being so in reality. The word means the reverse of *bona fide*: Stroud's Dict., 137; and see judgment of James, L. J., Etherington *v.* Wilson, 1 Ch. D., 160. A colorable act is one which is done for the purpose of evading the law, and any certificate given for that purpose would come within this section. See Wharton's Dict., 152; Worcester, 260, 1183.

(*o*) "Certificate or requisition." This is, no doubt, intended to cover the case of a certificate given by a medical practitioner to another person for the purpose of obtaining intoxicating liquors, as well as the case of a medical practitioner obtaining such liquors for his own use. A requisition ordinarily means "an application for a thing to be done by virtue of some right."

medical purposes, without which liquor could not be lawfully obtained, (*p*) or be lawfully obtained from a chemist or druggist in quantities of more than six ounces, (*q*) to enable or for the purpose of enabling (*r*) any person to obtain (*s*) liquor to drink as a beverage, (*t*) shall, for the first offence, be liable to a penalty of not less than $10 nor more than $20, and for a second or any subsequent offence, (*u*) of not less than $20 nor more than $40. 47 V. c. 34, s. 12.

Justices of the Peace not to give a requisition for liquor colourably.

(3) Nothing in this section shall restrict the sale of methylated alcohol, (*v*) or oil of whiskey or other medicines for cattle or horses. (*w*) 50 V. c. 8, *Sched.*

Exceptions.

See note (*y*), sec. 34.

(*p*) "Lawfully obtained." This has reference to the selling of liquor for medicinal purposes, permitted under sec. 54.

(*q*) "More than six ounces." This applies to sub-s. 1 of this section.

(*r*) In the case of a contravention of the English Salmon Fishery Act, 1865, it was held: "That an unlicensed person does not fish 'for' salmon unless he fishes for the purpose of catching salmon, etc.:" Marshall *v.* Richardson, 58 L. J. M. C., 45; but the intent is immaterial *qua* the offence of using without license an instrument other than that permitted by the Act for catching salmon, etc., Lyne *v.* Leonard, L. R. 3, Q. B. 156.

(*s*) "To obtain" means "to get, to acquire:" Worcester, 982. The word 'obtain' means the same as the word 'get' in its sense of 'acquire':" per Maule, J., R. *v* Garrett, 1 Deers, C. C., 232, cited Roscoe's Crim. Evi., 11th Ed., 471. But in the case of obtaining money by false pretences it has a special meaning. See Roscoe's Crim. Evi., 471; Stroud's Dict., 523. In this section the meaning is clear, it is to get intoxicating liquor for the purpose of drinking it.

(*t*) The word "beverage" is defined by Worcester as "liquor to be drunk." If the liquor is supplied for the purpose of being drunk, it is sufficient: "as a beverage," would seem to be mere surplusage. But it is here used, however, to distinguish between liquor used for medicinal purposes, and liquor which is drunk in the ordinary way "as a beverage."

(*u*) See notes to sec. 101, for formalities and evidence required for conviction for a second offence.

(*v*) "Methylated alcohol," usually known as "methylated spirit," is composed of alcohol mixed with wood naptha, in such proportions and subject to such regulations as the Department of Inland Revenue may determine. See The Inland Revenue Act, R. S. C. 1886, c. 34, s. 234.

By 51 Vic. c. 16, s. 7, (D), "when wood naptha, wood alcohol or any similar or equivalent substitute for methylated spirit is to be used for manufacturing purposes, it shall be supplied to the manufacturer by the Department of Inland Revenue, or by such agency and on such conditions as are determined by departmental regulations in that behalf, and the price thereof shall not exceed the actual cost with the addition of fifteen per cent.

(*w*) "Oil of whiskey," or "oil of wine" is an essential oil obtained in the distillation of spirits and is usually destroyed, in this country, under the supervision of an Inland Revenue Officer.

As to sale by druggists, see Commonwealth *v.* Ramsdell, 25 Alb. L. J., 365; Wright *v.* People, 101 Illinois, 126.

CLUBS.

Clubs or societies incorporated under Rev. Stat. c. 172, not to sell liquors.

53. (1) Any Society (*x*), Association (*y*) or Club (*z*), which has been or shall be formed or incorporated (*a*) under *The Act respecting Benevolent, Provident, and other Societies* (*b*), and any unincorporated Society, Association or Club, and any member (*c*), officer (*d*) or servant (*e*) thereof, or person resorting thereto (*f*), who shall sell or barter (*g*) liquor to any member thereof or to any other person (*h*)

(*x*) "Society" means an association of persons united together by mutual consent. It may be formed for the purpose of deliberation, or to determine and act jointly for some common purpose, or for the promotion of some object, either literary, religious, benevolent, political, or convivial. They are either incorporated, in which case they are known to the law, or unincorporated, of which the law does not generally take notice. Such associations as are formed for commercial purposes or for purposes of gain are usually called companies, or partnerships. Those formed for convivial or political purposes are most usually denominated clubs.

(*y*) An "association" is a very similar organization to a "society," in fact, according to lexicographers, the terms "society" and "association" are synonymous.

(*z*) "Clubs" or club-houses are associations to which individuals subscribe for the purposes of mutual entertainment and convenience, the affairs of which are generally conducted by a steward or secretary, who acts under the immediate superintendence of a committee. The members of a club, merely as such, are not liable for debts incurred by the committee for work done or goods supplied: Wharton, 145. See Flemyng *v.* Hector, 2 M. & W., 172.

(*a*) "Incorporation means the formation of a legal or political body with the authority of perpetual existence and succession, except so far as it may be limited by the Act under which it is incorporated:" Wharton, 364. See note (*h*), p. 44, *ante*.

(*b*) The Act respecting Benevolent, Provident, and other Societies, R. S. O. 1887, c. 172, provides that a society may be formed of any five persons, of full age, for any purpose which is not illegal, except for the purpose of trade and commerce, or for any of the purposes provided for by a schedule given in the Statute. R. S. O. at page 1699.

(*c*) It was held that the word "members" in s. 199 of the English Companies Act, 1862, does not necessarily mean shareholders: *re* South London Fish Market, 39 Ch. D., 324.

(*d*) Neither a banker nor a solicitor is an "officer of a Joint Stock Company," within the meaning of s. 165 of the English Companies Act, 1862; but a trustee may be. See Stroud's Dict. and cases there cited. The officers to be appointed under the Act are trustees, a treasurer, a secretary and other officers. It is presumed that such officers as are named in the Act, and such other officers as the association may appoint under it, would come within this section.

(*e*) See note (*t*) to sec. 35, *ante*.

(*f*) "To resort" means "to have recourse; to betake oneself; to go; to repair:" Worcester, 1224.

(*g*) See note (*j*) to sec. 52, *ante*, for consideration of the term sale; also see note (*d*) to sec. 2, p. 5, as to the term "sale and barter."

(*h*) "Any other person." This expression is comprehensive and includes every one to whom a sale may be made. See note (*o*) to sec. 11, p. 29, *ante*.

without the license therefor by this Act required, shall be held to have violated section 49 of this Act, and shall incur the penalties provided for the sale of liquor without license (*i*).

Keeping of liquor by clubs or societies a violation of sec. 50.

(2) (*j*) The keeping or having in any house or building, or in any room or place occupied or controlled (*k*) by such Club, Association or Society, or any member or members thereof, or by any person resorting thereto, of any liquor for sale or barter, shall be a violation of section 50 of this Act.

(*i*) This section was amended by 53 Vic., c. 56, s. 4. It was formerly applicable only to the Societies incorporated under "The Act respecting Benevolent, Provident and other Societies, and any unincorporated Society, Association or Club, *which has been or may be formed or carried on specially or chiefly for the purpose of selling, bartering, or supplying, or of enabling any such Society, Association or Club, to sell, barter, or supply liquor to the members thereof, or to others, without a license under this Act, and so as by means of such organization to evade the operation of this Act.*" But the words in italics were struck out, the effect of which was to extend the Act to every sort of organization which may be formed for any purpose whatever, if incorporated "under the Act respecting Benevolent, Provident and other Societies," or if unincorporated. Previous to this amendment it was held that where liquor was supplied to members, but where such sale was not the special or main object of the Club, etc., but merely an incident resulting from its principal object, there was no violation of the License Act; but that if the sale or supplying of liquor was the main object of the incorporation it would be otherwise. It was also held that the question was one for the decision of the Magistrates on the evidence, and where the Magistrate found that the special or main object of the Club was the sale of liquor with intent to evade the Liquor License Act, the Court refused to interfere with the finding: R. *v.* Austin, 17 O. R., 743.

Under the English Licensing Act it was held that where there is a Club or Association of persons, such as a Subscription Club, who buy liquor for the whole body and then distribute it among the members according to rules and by-laws of their own, there would be no violation of the law respecting the sale of liquor without license: Graff *v.* Evans, 8 Q. B. D., 373; Newell *v.* Hemingway, 58 L. J., 46. But MacMahon, J., in his judgment in R. *v.* Austin, says: "These cases are, however, of little value in determinining the question to be decided in the present case under the special enactment I have endeavored to construe" (p. 746). Under the English Licensing Acts the rights of "Proprietory Clubs" to supply liquors to their members are not recognized, and the proprietor, or any servant actually managing the Club, is deemed the person selling without license; see Paterson's L. A., 3. A proprietory club is one in which the members have no interest, but merely the use of the property. The property is owned by the proprietor: Baird *v.* Wells, 44 Ch. D., 661.

(*j*) See notes to sec. 50.

(*k*) For meaning of the word "occupant," see sec. 50 and notes thereto. "Control" is defined by Worcester as "superintendence; power of directing; government; command; as 'to have control of any person or thing.'"

It was held that to give or refuse assent to certain proposed acts was exercising control: per Esher, M. R., R. *v.* Croydon Tramways Co., 18 Q. B. D., 39, at p. 42.

Con-sumption of liquor,

(3) Proof of consumption or intended consumption of liquor (*l*) in such premises by any member of such Club,

(*l*) MacMahon, J., in R. *v.* Austin, 17 O. R., 743, at p. 745, says: "There was, I conceive, ample proof of 'intended consumption of liquor in such premises' by the members of the Club, so as to make the defendant liable as a member of the club, to be held 'to be the person who has or keeps therein such liquor for sale or barter,' within the meaning of sub-sec. 3 of sec. 53, provided there was evidence upon which the magistrate could have found that the Club had been incorporated or carried on specially or chiefly for the purpose of evading The Liquor License Act." In that case, the evidence shewed that the Club was composed of 150 members, and had rooms rented for the purposes of the Club, two of which were used for natural history and reading rooms, in which there were six stuffed birds. The Club took one paper, some members occasionally giving a paper, and one member having his *World* delivered at the Club, and it was left there. A third room had a pool table, it was also used as a refreshment room, being fitted up with a small counter, with a working board behind it for mixing drinks, where the steward, who was employed by the Club, kept ale, lager beer, whiskey, gin, cigars and lemons for lemonade. The Police Inspector, who laid the information, also found in the room a counter with glasses, bottles and a large quantity of beer, lager beer, whiskey, gin, &c. The defendant was the secretary and treasurer of the Club and was convicted upon this evidence. It was held that the trustees and members of a Club could not be convicted for selling liquor without license, when such sale was made by the steward of the Club, in direct contravention of the orders of the trustees and members and without their knowledge and assent, the money received by him being paid by him to the account of the Club: Newman *v.* Jones, 17 Q. B. D., 132. But where an act is done by a servant, "not from any caprice of the servant, but in the course of employment," the master is held answerable: Bayley *v.* Manchester S. & L. R'y. Co., L. R., 7 C. P., 420; Attorney-General *v.* Siddon, 1 Cr. & J., 220; R. *v.* Stephens, L. R. 1 Q. B., 702; R. *v.* King, 20 C. P., 246; Limpus *v.* The London General Omnibus Co., 1 H. & C., 526; Cooley on Torts, 243. On the authority of these cases, it was held in our Court of Appeal, that the defendant was liable for the act of his bar-keeper, although it had been forbidden by the defendant: Austin *v.* Davis, 7 App. R., 478; in which case, Hugill *v.* Merrifield, 12 C. P., 269, (a case in which the same decision was given as in Newman *v.* Jones, *supra*), was overruled. The law with respect to the liability of the master for the servant's acts, in such cases, seems to be somewhat uncertain. But this is the principle laid down in the judgment of A. L. Smith, J., in Newman *v.* Jones, that although the legal presumption is, "that whatever a servant does in the course of the employment with which he is intrusted, and as part of it, is the master's act," this presumption may be rebutted, and where the servant's act is done in direct contravention of the *bona fide* orders given and without the knowledge or assent, direct or indirect, of the master or principal, the latter is not liable.

In the case of Bond *v.* Evans, 21 Q. B. D., 249, it was held that where gaming had taken place upon licensed premises to the knowledge of a servant of the licensed person who was in charge of the premises, but without any knowledge or connivance on the part of the licensed person, the latter was liable and that he was rightly convicted. In that case it was stated by Mr. Justice Stephen (p. 257) that "the trustees of a club were on a different footing from a licensed vitualler, who is the proprietor of a house and the holder of a license. For these reasons, I think Newman *v.* Jones stands on its own circumstances and is distinguishable from the present case." The judgment in Bond *v.* Evans follows Bosley *v.* Davies, 1 Q. B. D., 84; Redgate *v.* Haynes, 1 Q. B. D., 89; see also Somerset *v.* Hart, 12 Q. B. D., 360; Condy *v.* Le Cocq, 13 Q. B. D. 207.

Association or Society, or person who resorts thereto, shall be conclusive evidence of sale of such liquor, and the occupants of the premises or any member of the Club, Association or Society, or person who resorts thereto shall be taken conclusively to be the person who has or keeps therein such liquor for sale or barter; and any liquor found upon such premises shall be liable to seizure in the manner provided by this Act (*m*). 47 V., c. 34, s. 9. evidence of sale.

54. (1) In all places (*n*) where intoxicating liquors are, or may be, sold by wholesale or retail, no sale or other disposal (*o*) of the said liquors (*p*) shall take place therein, or on the premises (*q*) thereof, or out of or from the same (*r*), All places where intoxicating liquors sold to be closed

---

In R. *v.* McAulay, 14 O. R., 643, the act of the wife was held to be that of the husband, and a conviction of the defendant for selling liquor to Indians, the sale having been made by the defendant's wife without his knowledge or assent, he being away at the time and for sometime afterwards, was sustained.

But whatever the law may be with regard to the liability of the master for the acts of the servant, the liability of the occupants of the premises, the members of the club who resort thereto, is sufficiently clear under this section. See cases cited in notes to sec. 112.

(*m*) See sec. 132 and notes thereto.

(*n*) "In all places." "All" has been held to be equivalent to "each and every:" see judgment of Lord Fitzgerald in Burnett *v.* G. N. of Scotland Ry. Co., 54 L. J. Q. B., 539; but by a context may mean "any:" 1 Jarm., 504, cited Stroud's Dict., 28.

"All places where intoxicating are or may be sold," has been held to apply only to licensed premises, and that a person who is not the holder of a license cannot be convicted for selling liquor on prohibited days: R. *v.* Duquette, 9 P. R., 29.

(*o*) It was held that an information stating that defendant, "a licensed hotel-keeper in the town of Peterborough, did on Sunday the 2nd July, 1876, at the hotel occupied by him in the said town, dispose of intoxicating liquor to a person who had not a certificate therefor," sufficiently showed that the hotel was a licensed hotel at which liquor was allowed to be sold: R. *v.* Cavanagh, 27 C. P., 537. But important changes in the provisions of the Act have since been made by sec. 55. See that sec. and notes thereto.

"Sale or other disposal" would include gift. See Overton *v.* Hunter, 1 L. T. N. S., 366; Petherick *v.* Sargent, 6 L. T. N. S., 48. See notes to sec. 52.

(*p*) "Liquors" is invariably used in the sense of intoxicating liquors. See sec. 2, ss. 1.

(*q*) It was held that a sale "at the hotel" fairly enough describes a sale "in the hotel." A person who is *at* home or *at* church may rightly be *in* his house or *in* church, and one who keeps a hotel *at* such a building, may be said to keep it *in* the building: per Wilson, J., R. *v.* Cavanagh, 27 C. P., 537. See also R. *v.* Parlee, 23 C. P., 359.

(*r*) No sale can be made, under this section, of liquor to be drunk either upon the premises (see note (*d*) to sec. 36) or to be consumed off the premises.

from seven o'clock on Saturday night till six o'clock on Monday morning.

to any person or persons whomsoever (*s*), from or after (*t*) the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter, and during any further time on the said days, and any hours or other days during which, by any Statute in force in this Province (*u*), or by any by-law in force in the Municipality (*v*) wherein

(*s*) "To any person or persons whomsoever," covers cases in which "a sale or other disposal" of liquors could be made, so that if it were not for the exceptions mentioned further on it would amount to an absolute prohibition.

(*t*) "From" means "beginning at," and "after" means "subsequent to:" See Worcester, 30, 592.

The time for selling is precisely seven o'clock and nothing may legally be sold or disposed of after that hour: See *re* McAlpine and The Township of Euphemia, 45 U. C. R., 199, as to meaning of "from and after."

Formerly there was an exception in favor of travellers on Sunday: Baker *v.* The Mun. of Paris, 10 U. C. R., 621; *In re* Barclay and The Mun. of Darlington, 12 U. C. R., 86; *In re* Ross *v.* The Cor. of York and Peel, 14 C. P., 171; but this exception does not exist under the present Act.

(*u*) Sales of liquor are prohibited on any polling day by sec. 57. By sec. 83 of the "Dominion Elections Act," R. S. C., c. 8, no spirituous or fermented liquors, or strong drinks are to be sold or given at any hotel, tavern, shop, or other place within any polling district during the whole of the polling day, at any election for the House of Commons, under a penalty of $100 and to imprisonment for a term not exceeding six months in default of payment of such penalty, and a like provision is also contained in The Canada Temperance Act, R. S. C., c. 106, s. 74.

(*v*) The Municipality has no power under the Act to pass by-laws prohibiting the sale of liquors on Sunday unless some such power is here conferred. The power of regulating taverns and shops to be licensed is given to the Board of License Commissioners (see sec. 3), and their functions in that respect are performed by resolutions, not by by-laws (see sec. 4). The powers possessed before the introduction of the Liquor License Act, by Municipal Councils and Boards of Police Commissioners, are, with the exception of those conferred by secs. 20, 32 and 42, and some other hereafter enumerated, now given to the License Commissioners. What, if any, power is hereby conferred on Municipal Councils it is impossible to say, but it is thought the License Commissioners possess the only power to regulate these matters. A by-law providing that the bar-room should be closed and unoccupied, except by members of the keeper's family or his employees, and that there should be no light therein except the natural light of day during prohibited hours, was held bad and in excess of the powers of Police Commissioners: R. *v.* Belmont, 35 U. C. R., 298. Formerly Municipal Councils could pass by-laws prohibiting the sale to a person in a state of intoxication: *In re* Greystock and The Cor. of Otonabee, 12 U. C. R., 458; or to idiots and insane persons: *In re* Ross and The Cor. of York and Peel, 14 C. P., 171; and it has more recently been held that they may prohibit the sale of intoxicating liquors to a child, servant or apprentice, without the consent of the parent, master or guardian: *In re* Brodie and The Cor. of Bowmanville, 38 U. C. R., 580, cited *ante*, p. 53. But in the same case it was held that the Municipality could not exercise powers which had been transferred to the License Commissioners by the Licensing Act. But a clause prohibiting gambling, profane swearing, blasphemous or grossly insulting language, or any indecency or disorderly conduct in any tavern or shop was held to be valid as authorized by the Municipal Act. See notes to secs. 20, 32 and 42, *ante*. See also *in re* Arkell and The Town of St. Thomas, 38 U. C. R., 594.

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 in cases where a requisition for medical pur- Exception.

It has been questioned whether or not a resolution passed by the License Commissioners for the purposes of the section would be "a by-law in force in the Municipality" within the meaning of the section; but it is of no importance, as the License Commissioners have ample powers under sec. 4. See Hodge *v.* The Queen, 9 App. Cas., 117; and other cases cited in notes to sec. 4, *ante*.

The charge under this section must be certain, and so stated as to be pleadable in the event of a second prosecution for the same offence, therefore a conviction for that G. H. "did sell wine, beer, and other spirituous or fermented liquors to wit, one glass of whiskey contrary to law," was held bad for uncertainty, as not shewing whether the offence was for selling without license or during illegal hours: R. *v.* Hoggard, 30 U. C. R., 152; R. *v* Parlee, 23 C. P., 359; R. *v.* Cavanagh, 27 C. P., 537; R. *v.* Young, 7 O. R., 88; see also notes to sec. 70.

Where in proceedings for selling liquor on Sunday it was not shewn that the defendant had a license or that the place in which the liquor was sold was one where intoxicating liquors were or might be sold by wholesale or retail, the conviction was held bad: R. *v.* Rodwell, 5 O. R., 186.

The prohibition and regulation of the sale of liquor in taverns and saloons was held within the powers of the Local Legislature: Poulin *v.* Quebec, 9 S. C. R., 185: Hodge *v.* The Queen, 9 App. Cas., 117.

It was held that an information for selling liquors on Sunday is so far a charge of a criminal character that the defendant cannot be compelled to give evidence against himself: R. *v.* Roddy, 41 U. C. R., 291; R. *v.* Lackie, 7 O. R., 431; see also R. *v.* Halpin, 12 O. R., 330; R. *v.* Connolly, 4 C. L. T., 301. But the decisions in the two latter cases were not approved of in R. *v.* Fee, 13 O. R., 590, in which case Boyd, C., in delivering the judgment of the Court, said: "My opinion is we ought not to follow the cases cited. The decision of Galt, J., in 12 O. R., (R. v. Halpin), was one rather out of comity to the decision of the Court of Prince Edward's Island, (reported in 4 C. L. T., 301), than because of the independent views of the learned Judge himself," and it was held that under The Canada Temperance Act, a defendant is compellable when called as a witness to answer questions even though tending to criminate himself.

The origin of the legislation making the defendant a competent and compellable witness in liquor cases is to be found in 36 Vic., c. 10, s. 4, (O), and this enactment was carried into R. S. O. 1877. c. 62, s. 9; and is now to be found, somewhat changed, in R. S. O. 1887, c. 61, s. 9. These sections, together with secs. 115, 116 of this Act, are now the governing enactments respecting evidence of parties to proceedings such as these. The whole question is very ably discussed in the judgment in R. *v.* Fee, *supra*. See the notes to secs. 115-116.

It was held in a case before Paxson, J., at the Quarter Session, Philadelphia, May 4, 1372, that it is a conspiracy for two or more persons to act in concert in unlawful measures to enforce the Sunday Liquor Law, as by inducing a tavern keeper to furnish beer on Sunday by artifice or persuasion: Commonwealth *v.* Leeds, reported 8 L. J. N. S., 216.

A conviction for selling liquor on Sunday was required at one time to negative the exceptions: see R. *v.* White, 21 C. P., 354, in which it was held that a conviction was bad because it did not shew that the liquor was not supplied upon a requisition for medicinal purposes: see also Mills *v.* Brown, 9 U. C., L. J., 246. But it has since been held, and the law now is, that it is unnecessary to negative the exceptions: R. *v.* Breen, 36 U. C. R., 84.

poses, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent (*w*); nor shall any such liquor, whether sold or not, be permitted or allowed to be drunk in any such places during the time prohibited by this Act for the sale of the same, except by the occupant or some member of his family, or lodger in his house. R. S. O. 1877, c. 181, s. 43.

Inspector to prosecute for

(2) Where a prior conviction or convictions have been had (*x*), it shall be the duty of the Inspector (*y*), when

(*w*) The only exceptions created are: the sale for medicinal purposes on the production by the buyer or his agent of a requisition signed by a licensed medical practitioner or by a Justice of the Peace (see note (*s*) to sec. 52). Such liquor, when supplied on the authority mentioned, is not to be drunk on the premises except by the occupant himself, or by some member in his family or lodger in his house.

Special attention is directed to the wording of the latter part of this section. It is generally supposed that supplying liquor to the members of the occupant's family or lodgers in his house is not prohibited; and it is stated in the note to this section in Harrison's Mun. Man., p. 927, that "This, however, does not prevent the licensee giving to some member of his family or lodger in his house." It is submitted that the annotator did not read the section carefully. It is expressly provided that no sale or other disposal shall be made to *any person or persons whomsoever* except for medicinal purposes, and even then the liquor shall not be drunk on the premises, "except by the occupant or some member of his family or lodger in his house." The English Licensing Act, 1874, contains a provision that no person keeping a house licensed under the Act shall be liable to any penalty for supplying intoxicating liquors after the hours of closing, to private friends, *bona fide* entertained by him, at his own expense. And it was held that the landlord cannot obtain the benefit of this enactment by saying to the ordinary customers when the hour of closing arrives that if they stay he will treat them as private friends, as this would be an evasion of the Act: Corbett *v.* Haigh, 42 L. T. N. S., 185. See also Pine *v.* Barnes, 20 Q. B. D., 221; note (*s*) to sec. 70.

(*x*) The duty of the Justices is, in the first instance, to enquire concerning the subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was previously convicted as alleged in the information. If he admits the previous conviction he may be forthwith sentenced. If he deny it, stand mute, or do not answer directly to the question, it becomes the duty of the Justice to enquire concerning the first conviction. The number of previous convictions is provable by a certificate under the hand of the convicting Justice or Clerk of the Peace, without proof of signature or official character. A conviction may be had in any case for the first offence, notwithstanding there may have been a prior conviction for the same or any other ofience. Convictions may be made for several offences although such offences may have been committed on the same day; but the increased penalty or punishment is only recoverable in the case of offences committed on different days and after information laid for a first offence. Power is given to the Justice to amend a second or subsequent conviction in case of the previous conviction being set aside, quashed, or rendered void: see sec. 101; R. *v.* French, 34 U. C. R., 183, 184, cited below. The occupant is personally liable to these penalties and punishments, notwithstanding the sale, barter, or traffic be made by some other person who cannot be proved to have done so under or by the direction of the occupant: see sec. 112, ss. 1.

aware of the same (*z*), or when the same have been brought to his knowledge, to prosecute as for a second or subsequent offence, as the case may be, but an omission by the Inspector to do this shall not invalidate any conviction that may have been obtained (*a*). This sub-section shall only

second offence where sale on Saturday night and Sunday.

The offences under this section are not merely offences against the license issued for a particular year, but offences against the Act and the social order which it is intended to enforce. Whether the several offences are committed on several days in the same year, or on different days in different years, the offences are still against social order and still against the law, and must be still classed as first, second, third, and fourth, according to the time of their commission: see *ex parte* Short, L. R. 5 Q. B., 174; R. *v.* Vine, L. R. 10, Q. B. 195. Therefore, it was held that the previous offence need not be against the same license, but may be against a license granted for a previous year: R. *v.* Black, 43 U. C. R., 180. See also Finch *v.* Blundell, 5 L. T. N. S., 672; Smith *v.* Vaux, 6 L. T. N. S., 46; Tennant *v.* Cumberland, 1 E. & E., 401; 4 Mew's Dig., 1117.

(*y*) "Duty of the Inspector." "Duty" means an obligation. It is therefore an imperative obligation upon the Inspector to prosecute for a second offence as herein provided.

(*z*) "When aware of the same," If the Inspector has been the prosecutor or complainant in a previous prosecution resulting in a conviction, he must be "aware" of such conviction. But although it is the duty of the Inspector to prosecute for a second or subsequent offence when he is aware of a previous conviction or convictions, his neglect to do so will not invalidate any conviction that may have been obtained.

F was convicted on the 5th Feb. before R, a Justice of Peace, for that he did on Sunday, the 19th of January, sell and receive pay for intoxicating liquor at his hotel, and was fined $40 and costs to be paid forthwith, and in default of distress to be imprisoned for twenty days at hard labor. On 12 Feb. he was convicted before S and L, two Justices of the Peace, for that he did "on Sunday, the 26th of January, sell and receive pay for intoxicating liquors," etc., "the same being the third offence," etc., and was fined $100 and costs, and in default of distress to be imprisoned for fifty days. A certificate of the first conviction was before the Magistrates on the second conviction. There was evidence of the sale of liquor on three Sundays, but the information did not allege the previous offence. It was not shewn whether defendant was licensed. *Held*, that the first conviction was bad, for it did not shew whether it was for selling liquor without a license or having a license, for selling on Sunday; and if for selling without a license it was bad, because it awarded imprisonment at hard labor; and if for selling on Sunday, then because it was not alleged to be a second offence. *Held*, also that the second conviction was bad, because, if for selling without a license, the fine was beyond what the Statute warrants, and if for selling on Sunday, it was not shewn or charged that defendant was licensed, and because the information did not charge the two previous offences: R. *v.* French, 34 U. C. R., 403. For further notes see sec. 71.

(*a*) A final judgment is not "obtained" within the meaning of the English Bankruptcy Act, sec. 4, (*g*) by any one except the successful party to the action himself, or his personal representative, who, for this purpose, are in fact the same person: *ex parte* Woodall, 13 Q. B. D., 479. An assignee of a judgment debt is not within the phrase: *re* Keeling *ex parte* Blanchett, 17 Q. B. D., 303. But the assignee of a judgment debt is a person who has "obtained" the judgment for the purpose of getting a garnishee order: Goodman *v.* Robinson, 18 Q. B. D., 332.

apply to convictions for violations of that portion of the next preceding sub-section which prohibits the sale or other disposal of liquors in all places where intoxicating liquors are or may be sold, from and after the hour of seven of the clock on Saturday night till six of the clock on Monday morning thereafter; but where any prior conviction is for a violation of the said next preceding sub-section the onus of establishing that it was not for a violation during the said hours from Saturday night until Monday morning shall lie upon the defendant (*b*). 47 V., c. 34, s. 13.

(3) Any Inspector who shall knowingly or wilfully violate the provisions of this section shall incur a penalty of not less than $10 and not more than $20 (*c*). 49 V., c. 39, s. 17.

When keeper of house

55. (1) The keeper (*d*) of any licensed tavern (*e*) in a city or town (*f*) shall keep (*g*) the bar-room or room in

(*b*) This sub-section applies to offences committed during the prohibited hours from Saturday night until Monday morning, not to infractions of other Statutes prohibiting sales at particular times; but any conviction under the section may be held to be for an offence against the provisions of the Act respecting the sale between Saturday night and Monday morning if the defendant does not shew the contrary. This is for the purpose of determining whether the conviction is for a first, second, or other subsequent offence. As to what are to be considered prior convictions, see sec. 101, ss. 6.

(*c*) As to effect of "knowingly or wilfully," see note (*e*) sec. 6, and note (*y*) sec. 25.

(*d*) "The keeper" is one who keeps: Stroud's Dict., 415. To keep a place or thing involves the idea of having over it the immediate control of a character more or less permanent. Thus, the landlord of a brothel, wholly let out in rooms to different tenants at weekly rents, and who has no control over the premises except that of determining the tenancies, does not "keep" the brothel: R. *v.* Stannard, 9 L. T. N. S., 428; R. *v.* Barrett, 7 L. T. N. S., 435; Halligan *v.* Ganly, 19 L. T. N. S., 268; 3 Mew's Dig., 435. And to keep a place for a particular purpose involves the idea that it is used for that purpose on more than one occasion; but the how many or how frequent those occasions must be is a question to be determined in each case: Marks *v.* Benjamin, 5 M. & W., 565; see Clarke *v.* Hague, 2 E. & E., 281; Jenks *v.* Turpin, 13 Q. B. D., 505; 1 Mew's Dig., 107. See also note (*g*) to sec. 11, p. 24, *ante*. The word "keeper" is defined as including the person actually contravening the provisions of the section, whether acting for himself or another or others, and the actual offender, as well as the "keeper" is personally liable to the penalties, and both the keeper and offender may be jointly or separately prosecuted (see notes *infra*), but only one of them may be convicted of the same offence. See also R. *v.* Cavanagh, 27 C. P., 537, cited note (*u*) to sec. 54.

(*e*) "Licensed tavern." See sec. 2, ss. 2, p. 5, *ante*.

(*f*) "City." See note (*j*) to sec. 2, p. 7.

(*g*) "Shall keep." "*Keep* is a very general term and is variously applied:" Worcester, 798. In the sense it is used here, "to keep closed," it is difficult to define. But "to keep" involves the idea of permanency more or less prolonged,

which liquor is trafficked in, (*h*) closed as against all persons, guilty of

as in R. *v.* Stannard, cited above. To keep a place or thing in repair presupposes the putting it in repair and maintaining it in that condition: Payne *v.* Haine, 16 M. & W., 546; and "to keep a place closed" would, by analogy, mean that the place should not only be closed up, but that it should be maintained in that condition during the whole period specified, namely, from seven o'clock on Saturday night until six o'clock on Monday morning. To "Keep open" implies a readiness to carry on the usual business in a store, saloon, etc.: Lynch *v.* People, 16 Mich., 477 (1868).

(*h*) The "bar-room or room in which liquor is trafficked in," is the place in the tavern, &c., which is ordinarily used for the sale or disposal of liquor and is referred to in sec. 63, under the provisions of which there must only be one such room in the tavern, and in sec. 110, where it is enacted that light in the bar-room during prohibited hours is *prima facie* evidence of sale. The object of closing the bar-room is to prevent the sale or exposure for sale of liquor during those hours in which such sale, &c., is prohibited. The charge in a conviction under this section must be certain. A conviction that H. "did keep his bar-room open and allow parties to frequent and remain in the same contrary to law," was held clearly bad as shewing no offence. The exact time ought to be stated; see R. *v.* Hoggard, 30 U. C. R., 152. It was held that a conviction, under the English Licensing Acts, for allowing beer to be consumed in a licensed house at other hours than those prescribed, must state the time fixed at which houses may be kept open and the hour at which the beer was consumed: Newman *v.* The Earl of Hardwick, 8 A. & E., 124.

The offence of selling during prohibited hours is different to that of keeping open during such hours, and the evidence which might be sufficient to prove one offence may be insufficient to prove the other. Great care is therefore required in selecting the proper section under which to proceed. As stated in note (*i*) to sec. 54, there was formerly an exception in favor of travellers on Sunday, but this no longer exists. Under sec. 54, the consumption of liquor previously purchased is not allowed in any case, at least as between the customer and licensee. A conviction for more than one offence is bad: Newman *v.* Bendahye, 10 A. & E., 11.

The following English cases are referred to as illustrative of the distinction between selling and keeping open: A beer-house keeper was charged with opening his house for the sale of beer before a certain hour on Sunday. The evidence was that the door was shut at twelve o'clock on Saturday night, but about two on Sunday morning a constable saw the keeper and another man drinking ale inside, and soon afterwards the man came out. There was no proof of selling beer, and the Court of Queen's Bench held there was no evidence of the offence of keeping his house open though there was some of selling beer during the time: Tennant *v.* Cumberland, 1 E. & E., 401. An ale-house keeper was charged with keeping his house open during prohibited hours. The evidence was that guests remained in the house after closing, but there was no selling of beer after the hour of closing. The Court held there was no evidence of keeping open, and that an ale-house keeper was not bound to turn his guests out when the clock struck twelve: Cates *v.* South, 23 J. P., 739. In another case some country farmers had met to transact business and remained after the hours of closing, the outer doors being open, and the court held there was evidence of keeping open: Pearce *v.* Gill, 41 J. P., 742.

An ale-house keeper was charged with opening his house in prohibited hours. The door was kept partly open, and during the prohibited hours some men were found inside with glasses before them and liquor, and the Court held this was evidence to support the charge: Thompson *v.* Greig, 34 J. P., 214. In a case where men were seen to come out, though the front door was shut, but there was no evidence of selling liquor. It was held there was no evidence to support

violation of provisions as to Sunday closing.

other than those permitted to enter the same under clauses (*a*) and (*b*) of this section, between the hours of seven o'clock on Saturday night and six o'clock on Monday morning thereafter; (*i*) and any keeper of such licensed tavern who allows or suffers any person or persons to frequent or to be present in such bar-room or room in which liquor is trafficked in during the time aforesaid, shall be guilty of an offence under this Act, unless it be established to the satisfaction of the Police Magistrate or other Justice or Justices before whom the prosecution is heard,

(*a*) That the person so found frequenting, or present in the bar-room where liquor is trafficked in, as aforesaid, was at the time he or she so frequented or was present in such bar-room, a member of the family or household, (*j*) (other than a lodger, boarder, or guest) or a servant, or employee of such keeper actually engaged in necessary domestic occupation or service within the said bar-room, (*k*)

---

a charge of keeping open: Jefferson *v.* Richardson, 35 J. P., 69. Where a man was seen to go into the house after the hour of closing, and to come out with a bottle of beer and it was explained that he had previously called before the hour of closing and paid for the beer, the Court held there was evidence to support the defendant's conviction for keeping open: Brewer *v.* Shepherd, 36 J. P., 373. See also Finch *v.* Blundell, 5 L. T. N. S., 672: Smith *v.* Vaux, 6 L. T. N. S., 46.

(*i*) "*Seven o'clock on Saturday night and six o'clock on Sunday morning.*" Under the English Licensing Acts it was held that the Justices are not bound to follow Greenwich time: Curtis *v.* Marsh, 23 J. P. 663.

(*j*) "Member of the family," see notes to sec. 27, p. 61, *ante*. That this is only intended to apply to the "family" in its strictest sense is shewn by the context—boarders, lodgers and guests, who might otherwise be held to be comprised in the term, being excluded.

(*k*) What the term "*necessary* domestic occupation or service" includes is not at all certain. In the interpretation of the Sunday Act, 29 Car. 2, c. 7, it was held that baking rolls on a Sunday was not a work of necessity: Crepps *v.* Durden, 2 Cowp., 64; nor is baking bread in the ordinary course of a baker's business: R. *v.* Younger, 5 T. R., 451; but baking dinners for customers is: R. *v.* Cox., 2 Burr., 787; R. *v.* Younger, 5 T. R., 449. Whether haymaking (and, indeed, it would seem any other work not covered by authority) is of "necessity" is a question of fact on which the finding of the Justices is conclusive: R. *v.* Cleworth, 4 B. & S., 928.

("Domestic" means pertaining to the house. A "domestic servant" is a house servant, one who "dwells remote from all knowledge of his lord's purposes; he lives as a kind of foreigner under the same roof; a domestic, and yet a stranger too: South, cited Worcester's Dict., 436.

(*b*) Or that such person was present therein lawfully engaged in receiving or supplying liquor which might lawfully be sold during said prohibited hours. (*l*)

(2) The word "keeper" when used in this section shall include the person actually contravening the provisions of this section, whether acting on behalf of himself or of another or others, and the actual offender as well as the "keeper" of the licensed tavern shall be personally liable to the penalties and punishments which may be imposed for the infraction or violation of this section, and at the prosecutor's option the actual offender may be prosecuted jointly with or separately from the keeper, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. (*m*) 49 V., c. 39, s. 11.

When persons other than keeper of house guilty.

56. Any person so found in such bar-room, or who has been present therein during the prohibited hours, in the preceding section mentioned, and who does not come within the exceptions and proviso in that section contained, shall be guilty of an offence under this Act, and upon conviction thereof shall be liable to a penalty for each offence of not more than $10 and not less than $2 with costs (*n*). 49 V., c. 39, s. 12.

Books are articles of "domestic" use and enjoyment: Cornwall *v.* Cornwall, 10 L. J. Ch., 364. Watering private horses and washing private carriages is using the water for a domestic *use or purpose:*" Busby *v.* Chesterfield Waterworks Co., E. B. & E., 176. Water used for the amenities of a house, *e. g.*, watering a pleasure garden attached to and occupied with the house, may be legitimately held to be used for domestic purposes: per Smith, J., Bristol Waterworks Co. *v.* Uren, 15 Q. B. D., 637: Cooke *v.* New River Co., 14 App. Cas., 698; and any kind of occupation or work connected with the house or household may be said to come within the meaning of "domestic service or occupation."

(*l*) This applies to the sale of liquor upon the certificate of a medical practitioner or Justice of the Peace. See secs. 52, 53, 54.

(*m*) Formerly the holder of a license could alone be prosecuted for selling liquor on prohibited days, but under this sub-section, the hotel or tavern keeper and the actual offender are both personally liable and may be prosecuted either jointly or separately, at the prosecutor's option, although only one of them may be convicted of the same offence.

(*n*) This section creates an offence in any person being found in the bar-room during prohibited hours, and who is not either a member of the licensee's family or household, a servant, or employee of the licensee actually engaged in

No sales on polling days.

57. No sale or other disposal of liquor (*o*) shall take place in any licensed premises (*p*) within the limits of a polling subdivision (*q*), on any polling day (*r*) for or at any Parliamentary election or election of a member for the Legislative Assembly, or any municipal election, or on any day in which a vote in accordance with the provisions of *The Canada Temperance Act*, is being taken, from or after the time of six o'clock in the morning of the said day, until the following lawful day at six o'clock in the morning (*s*). 47 V., c. 34, s. 10.

R. S. C., c. 106.

---

necessary domestic occupation or service within the bar-room, or not present for the purpose of receiving or supplying liquor which may be lawfully sold during prohibited hours, under the certificate of a medical practitioner or Justice of the Peace. In order to convict it is not necessary that an offence should have been committed by the keeper, nor that the person found on the premises should have consumed or purchased liquor during the prohibited hours. The mere presence of the person so found is sufficient *prima facie* evidence of the offence, and unless it is explained that he is one of those persons coming within the exceptions (*a*) and (*b*) of ss. 1 of sec. 55, he will be liable to a penalty of not more than $10 nor less than $2.

(*o*) "No sale or other disposal." See note (*n*) to sec. 54.

(*p*) This section applies to all places having licenses of any kind, either wholesale or retail, shop, tavern, saloon, or beer and wine licenses.

(*q*) "Polling sub-division." See The Ontario Election Act, R. S. O. c. 9, secs. 8-14; The Municipal, R. S. O. c. 184, secs. 97-101. This section only applies to a polling sub-division in which there is an election being held.

(*r*) Polling day. See The Ontario Election Act, R. S. O. c. 9, secs. 23-26; Municipal Act, R. S. O. c. 184, secs. 88-96; R. S. C. c. 8, s. 83, and The Canada Temperance Act, R. S. C. c. 106, s. 74.

(*s*) This section applies to all days on which any election may be held for the House of Commons, The Ontario Legislature, The Municipal Council, or under the provisions of The Canada Temperance Act.

It was held in an action for penalties under the Con. Stat. of Canada c. 6, s. 81, prohibiting the sale of liquor on polling days, that a Judge was wrong in directing the Jury that defendant was responsible for his agent's (bar-keeper's) acts, although done in direct contravention of the defendant's command, and the question of connivance on the defendant's part, notwithstanding his command to his bar-keeper, not having been left to the Jury, a new trial was ordered without costs: Hugill *v.* Merrifield, 12 C. P., 269. But this decision was overruled in the case of Austin *v.* Davis, 7 App. R., 478; Newman *v.* Jones, 17 Q. B. D., 132, and other cases cited in notes to secs. 53 and 54. See also Widderfield *v.* Metcalfe, 21 U. C. R., 247.

The Ontario Election Law, R. S. O., c. 9, s. 161, provides that "no spirituous, or fermented liquors, or strong drink shall be sold or given in any hotel, tavern, shop or other place within a polling sub-division, during the polling day therein or any part thereof, under penalty of $100 for every offence, and the offender shall be subject to imprisonment not exceeding six months, at the discretion of the Court or Judge, in default of payment of such fine."

The distribution of spirituous liquors on the polling day, with the object of promoting the election of a candidate, will make his election void: South Grey Election, (Ont.), Hunter *v.* Lauder, 1 E. E. C., 52; Russell Election, (Ont.),

58. (1) Every person, (*t*) not being the occupant or a Obtaining

Ogilvie *v.* Baker, 1 H. E. C., 199; South Ontario Election, (Ont.), Farwell *v.* Brown, 1 H. E. C., 420; South Essex Election, (Ont.), McGee *v.* Wigle, 1 H. E. C., 235; North Grey Election, (Ont.), Boardman *v.* Scott, 1 H. E. C., 362; North Wentworth Election, (Ont.), Christie *v.* Stock, 1 H. E. C., 343; North Victoria Election, (Ont.), McRae *v.* Smith, 1 H. E. C., 252; Lincoln Election, (Ont.), Rykert *v.* Neelon, 1 H. E. C., 391, (not approved of in North Wentworth Election, (Ont.), Christie *v.* Stock, 1 H. E. C., 343). But the violation of the law prohibiting the sale of liquor on polling day is not a corrupt practice, unless committed in order to influence votes at the Election complained of: North York Election, (Ont.), Gorham *v.* Boultbee, 1 H. E. C., 62; Brockville Election, (Ont.), Flint *v.* Fitzsimmons, 1 H. E. C., 139; London Election, (Ont.), Jarman *v.* Meredith, 1 H. E. C., 214.

It was held that under this section, which was substituted for sec. 66 of the Election Law of 1868, tavern keepers, or persons acting under that capacity for the time, who sell or give liquor at taverns on polling day and within the hours of polling are guilty of corrupt practices; but persons who treat or are treated at such taverns are not affected by the Statute: Ford's vote, Lincoln Election (2) (Ont.), Pawling *v.* Rykert, 1 H. E. C., 500.

A person buying a glass of beer for himself alone is not guilty of a corrupt practice: East Peterborough Election (Ont.), Stratton *v.* O'Sullivan, 1 H. E. C., 245.

The majority of the respondent was 337; but it appeared that two agents of respondent bribed between 40 and 50 voters; that in close proximity to the polls spirituous liquor was sold and given at two taverns during polling hours, and that one of such agents took part in furnishing the liquor; and that such agent had, previous to the election, furnished drink or other entertainment to a meeting of electors held for the purpose of promoting the election. Held that the result of the election had been affected thereby, and that the election was void: West Hastings Election (2) (Ont.), Holden *v.* Robertson, 1 H. E. C., 539.

About an hour after a meeting of a few friends of the respondent at a tavern, one of their number was sent some distance to buy oysters for their own refreshment, of which the parties and others partook. The following day a friend of the respondent treated at a tavern, and not having change, the respondent gave him 25 cents to pay for the treat. Held, not a corrupt practice: Welland Election (Ont.), Buchner *v.* Currie, 1 H. E. C., 187.

It was held that a violation of this section during polling hours by an agent of the candidate, must be conclusively presumed to have been intended corruptly to influence the election: Prescott Election (Ont.), Cunningham *v.* Hagar, 1 E. C., 88; North Ontario Election (Ont.), Treleaven *v.* Gould, 1 E. C. 1.

But where one S, an agent of the respondent, on the election day brought some liquor to a blacksmith shop near a poll, being a place where the neighbors were in the habit of congregating to warm themselves, etc., there being no tavern in the neighborhood, and treated those present (most of them being voters) without reference to their voting, and without distinction as to which side they supported. Held not a corrupt practice: Lennox Election (Ont.), Miles *v.* Roe, 1 E. C., 41.

The giving of refreshments to persons "having voted or being about to vote" on the polling day is also a corrupt practice: West Simcoe Election (Ont.), Bedford *v.* Phelps, 1 E. C., 128; see also West Northumberland Election (Dom.) Henderson *v.* Guillet, 10 S. C. R., 635; East Simcoe Election (Ont.), Reid *v.* Drury, 1 E. C., 487.

(*t*) "Every person." Dr. Johnson says that the word "every" was formerly spelt "everich," and that the true meaning is "each one of all;" and Stroud, commenting on this definition, says: "The word may be used in this sense,

liquor at member of his family or lodger (*u*) in his house, who buys

although other lexicographers may give another meaning to it:" Stroud's Dict., 258. The definition given by Worcester is, "each; all; taken separately." An innkeeper, whilst in his own inn after the same is closed, is not within the phrase: "Every person found drunk on licensed premises," as used in s. 12, 35 and 36 Vic., c. 94: Lester *v.* Torrens, 2 Q. B. D., 403. But "every person" committed "for any offence or misdemeaner" to bear his own charges of being conveyed, includes deserters as well as ordinary criminals: R. *v.* Pierce, 3 M. & S., 62; and a penalty on "every person" concerned in an offence may be recovered for the same offence against each person therein concerned: R. *v.* Dean, 12 M. & W., 39.

"It includes all the separate individuals which constitute the whole regarded one by one; as in the expression, 'every person not having a license shall be liable to a fine:'" per Simpson, C. J., State *v.* Penny, 19 S. C., 221 (1882).

(*u*) "Not being the occupant," etc. As to the meaning of "occupant," see note (*g*) to sec. 16 *ante*. As to meaning of the expression "member of his family," see note (*j*) to sec. 55 *ante*.

A "lodger," generally speaking, "is a person whose occupation is part of a house, and subordinate to, and in some degree, under the control of a landlord or his representative, who either resides in or retains the possession of or dominion over the house generally, or over the outer door, and under such circumstances that the possession of any particular part of the house held by the lodger does not prevent the house being in the possession of the landlord:" Stroud's Dict., 443. "Where a landlord resides in part of a house, and there is an outer door from the street, and he, by himself or his servants, has the control of this outer door and undertakes the care or control of rooms let to other persons, and the access to them and the rooms themselves have not anything in the nature of an outer door, and are not structurally severed from the rest of the house, there could be little hesitation in saying that an occupier of those rooms, being part of the house, is only a "lodger." On the other hand, if there be no real outer door to the street, and neither the landlord nor his servants, nor any one representing him occupies any part of the premises or exercises any control over any part of them, and the rooms occupied by another person are structurally severed from the rest of the house, and have an outer door to the general landing or staircase, and no one but such tenant has or exercises any care or control over the room or that outer door, as a general proposition, the person so occupying those rooms could not be a lodger. It is always important in determining whether a man is a lodger to see whether the owner of the house retains his character of master of the house, and whether he occupies a part of it by himself or his servants, and at the same time retains the general control and dominion over the whole house, and this he may do though he do not personally reside on the premises:" per Bovill, C. J., Thompson *v.* Ward, L. R. 6, C. P. 360, 361. See also Ancketill *v.* Baylis, 10 Q. B. D., 577; Bradley *v* Baylis, 8 Q. B. D., 195; Hogan *v.* Sterrett, 20 L. R. Ir., 344; Phillips *v.* Henson, 3 C. P. D., 26; the judgment of Brett, J., Morton *v.* Palmer, 51 L. J. Q. B., 7; Toms *v.* Luckett, 5 C. B., 23; the rooms may be unfurnished; see Allan *v.* Liverpool, L. R. 9, Q. B. 180, in which Mr. Justice Blackburn defines the meaning of the word and in concluding says: "the person who takes in another to lodge must retain power in and dominion over the house, as the master of a house usually does in this country. It is not absolutely necessary that he should live or sleep in the house; he may live elsewhere and yet reserve power in and dominion over the house, such as a master does in this country usually have. If, however, he goes away, if he gives up all power of dealing with the house or master, then I do not think it is possible to say that he takes another person to lodge with him." And a very good definition is given by Cotton, L. J., in the same case. He says: "I think

or obtains, or attempts to buy or obtain intoxicating liquor (*v*) during the time prohibited by this Act (*w*) for the sale thereof, in any place where the same is or may be sold (*x*) by wholesale or retail, (*y*) shall be guilty of an offence under this Act. 48 V., c. 43, s. 1.

prohibited time an offence

---

that a 'lodger' is a man living in a house owned by or leased by another person, and to some extent living there with that other person."

The exemption from the penalty is confined to the occupant, members of his family and lodgers in his house. The lodger must be an occupant of the licensed house in order to claim the exemption. This exemption does not extend to the sale of liquor—such sale is illegal—during prohibited hours, but it will be seen that under section 54 the same class of persons is exempt from the prohibition against allowing liquor to be drunk on the premises, when the liquor is obtained for medicinal purposes. In this section such persons are exempted from the penalty for buying or obtaining or attempting to buy or obtain liquors during the prohibited time.

It was held that the exemption in the English Licensing Acts (which permits the sale of liquor to travellers and lodgers during the prohibited hours) extended to the guests of such lodgers: Pine *v.* Barnes, 20 Q. B. D., 221.

In any proceeding against a person for an infraction of this section it will rest with the defendant to prove that he comes within the exemptions. See Roberts *v.* Humphreys, L. R. 8, Q. B. 483.

A lodger in licensed premises is not allowed to play games in the house after the closing hour for the sale of liquors: Ovenden *v.* Raymond, 34 L. T. N. S., 698; Hare *v.* Osborne, 34 L. T. N. S., 294. But there is nothing to prevent a lodger entertaining his friends so long as there is no selling to such friends, see Paterson's L. A., 135.

(*v*) "Buys or obtains," etc. To "buy" is to obtain by paying a price or equivalent in money; to "obtain" means "to get possession of; to gain; to acquire; to procure in any manner;" and an "attempt to buy or obtain" means to try by any means, to buy or procure.

"An attempt to commit a crime is an act done with intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. The point at which such a series of acts begins cannot be defined; but depends upon the circumstances of each particular case. An act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is not an attempt to commit that crime. The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself:" Stephen's Crim., 37, 38; see R. *v.* Cheeseman, 31 L. J. M. C., 89; R. *v.* Reed, 11 O. R., 242.

"Intoxicating liquor." See sec. 2, ss. 1, and notes thereto.

(*w*) "During the time prohibited by this Act." See secs. 54, 57 and notes thereto.

(*x*) "Is or may be sold." See notes to sec. 54.

(*y*) "Wholesale or retail." See notes on pages 6, 73 and 74, *ante*.

By sub-section 3, provision is made for the protection of officers and persons charged with the enforcement of the law. Sub-sec. 2 of sec. 71 of this Act, originally provided a penalty for each offence against this sub-section, of not more than $10 and not less than $2 with costs. But this provision was repealed by 53 Vic., c. 56, s. 6, and a new sub-sec. substituted as in the context of this work.

Power to exempt witness from penalty.

(2) Notwithstanding anything in this Act contained, any Police Magistrate or Justice of the Peace (*z*) before whom any information or complaint (*a*) is laid or made for the prosecution of any offence (*b*) against the provisions of sub-section 1 of section 54 may, having regard to the demeanour of any witness and his mode of giving his evidence, (*c*) by certificate in that behalf exempt such witness from the operation (*d*) of sub-section 1 of this section and from all proceedings (*e*) and penalties (*f*) thereunder in respect of the subject matter of such information or complaint. (*g*) 48 V., c. 43, s. 4.

"Notwithstanding anything in this Act contained," is equivalent to saying that this Act shall be no impediment to the action of the Police Magistrate or Justices as stated, and the expression precisely corresponds to the words "as if this Act had not been made." See Dwar., 683, citing Cheinie's case; Cecil's case, 7 Rep., 20.

(*z*) "Police Magistrate or Justice of the Peace." See notes to sec. 96.

(*a*) "Information or complaint." See sec. 102 and notes thereto.

(*b*) "Prosecution" means a proceeding either by way of indictment or information in the criminal Courts in order to put an offender upon his trial. In all criminal prosecutions the Queen is nominally the prosecutor: Wharton, 581.

"Any offence" applies to sub-sec 1 only, *e. g.*, the offences of buying or obtaining, or attempting to buy or obtain, liquor during the time prohibited by the Act for the sale thereof.

"May." This is one of the cases in which the word may is used in a permissive sense. See Interpretation Act, sec. 8, ss. 2.

(*c*) "Having regard to the demeanour, &c.," means that the Police Magistrate or Justices, taking notice and observing the conduct and demeanour of the witness, if such conduct and demeanour be satisfactory to him or them, may by certificate, &c., exempt such witness from the penalties attached by ss. 1 to his offence: See R. *v.* St. George's Southwark, 19 Q. B. D., 533; R. *v.* St. Pancras, 24 Q. B. D., 371.

"By certificate." See note (*w*) p. 32.

(*d*) "The operation" means the legal effect of the enactment in consequence of his violation of its provisions.

(*e*) "Proceedings" refers to any proceeding that may be brought. A "criminal proceeding" is a far larger term than "criminal prosecution:" see Yates *v.* The Queen, 14 Q. B. D., 648.

(*f*) "And penalties." See note (*e*) to sec. 30, *ante*.

(*g*) "Information or complaint." The subject matter is the matter or offence concerning which the information or complaint is made and upon which the evidence of such witness is given at that time. The protection to the witness here provided for cannot be made to extend to any other than that particular case or offence.

The provisions of this sub-sec. apparently conflict with those of sec. 87, which provides that no Police Magistrate or Justice or Justices of the Peace, etc., shall have power or authority to remit, suspend, or compromise any penalty or punishment inflicted under this Act. But this latter provision only applies in case of the conviction of an offender, and the Magistrate's cer-

[(2b.) (*h*) The purchaser (*i*) of any intoxicating liquor from a person who is not licensed to sell the same, (*j*) or any person who drinks upon the premises (*k*) liquor so purchased, at the time of the purchase thereof (*l*) shall be guilty of an offence under this Act.] (*m*)

(3) If it shall be made to appear (*n*) to the Police Mag- Provision where

tificate under this provision is a protection against the conviction of an offender who has given satisfactory evidence.

(*h*) This clause is inserted by 52 Vic., c. 41, sec. 4, O.

(*i*) "The purchaser." The word "purchase," in its legal significance, means to acquire by any other means than by descent or devolution of law: Wharton, 635. In its popular sense it means to obtain anything by way of bargain and sale for money or some other valuable consideration. It is equivalent to "buy;" see Worcester, 1156. But it may have even a wider meaning, and the word "purchaser" may be held to include any one not only who "purchases" or "buys," but who obtains or procures intoxicating liquor from an unlicensed person by any means or in any manner. The clause is evidently intended to have a wide scope, for it includes not only the purchaser, but also any person who drinks liquor so purchased.

(*j*) "Who is not licensed to sell the same." This clause, of course, only applies to persons who do not hold any description of license, and refers to section 49.

(*k*) "Drinks upon the premises." See sec. 109 as to evidence of consumption; see also notes to sec. 36.

(*l*) "At the time of the purchase thereof" may not mean precisely at the moment the purchase is made. "At" means "near," though it may, according to the context, mean "co-existent or coincident with," as "at the same time: Worcester, 92.

"In determining what was the general object of the Legislature or the meaning of its language in any particular passage, it is obvious that the intention which appears to be most agreeable to convenience, reason and justice, should in all cases open to doubt, be the true one:" Maxwell on Stats., 166; and this principle has been generally observed whenever anything is to be done at a particular time. See Stroud's Dict., 58: Brown *v.* Wilkinson, 15 M. & W., 391.

(*m*) "Shall be guilty," etc. The evident intention of the Legislature is to make the purchase of liquor, as well as the drinking of it at the time of its purchase, an offence against the Act, in order that the law may not be evaded by mere technicalities, or defeated for want of evidence.

There is no penalty provided here for the offence created by this clause, but by sec. 78, ss. 1, the seller is liable to a penalty of not less than $20 for a first offence, and not less than $10 nor more than $50 for a second offence. By ss. 2 of sec. 78 the purchaser is liable to a penalty of not less than $10 or more than $20, for drinking or causing any one to drink or allowing liquors to be drunk in a house or premises to which a shop or wholesale license applies, and section 85 provides for penalties for violation in cases not otherwise provided for. See notes to that section.

(*n*) This sub-section is intended for the protection of officers charged with the enforcement of the law and persons acting under the authority of the License Commissioners, or of any Inspector or Provincial Officer.

"If it shall be made to appear," means that whenever it is shewn by the evidence. The word "if" is synonymous with the phrases "when" or "pro-

alleged violation of sub-s. 1 committed in detecting breach of law.

istrate or Justices before whom any complaint under this Act is heard, that the person charged with the violation of sub-section 1 [or 2b.] (*o*) of this section was so acting as an officer whose duty it was to enforce the liquor license laws, (*p*) or under the instructions or authority in writing (*q*) of any board of license commissioners, inspector or provincial officer, for the purpose of detecting a known or suspected offender against the liquor license laws, and of obtaining evidence upon which he might be brought to justice, the defendant shall not be convicted. (*r*) 48 V., c. 43, s. 5, as amended by 52 Vic., c. 41, s. 5.

---

vided," or "in case" or "so soon as." See cases cited in Strouds Dict., 879. A person charged with an offence under this section must shew that he comes within this exemption here made.

(*o*) "Or 2b." This is added by 52 Vic., c. 41, s. 5, and refers to sec. 2b. introduced by sec. 4 of the same Act, see *supra*.

(*p*) "Officer." See notes to sec. 125.

"Whose duty it was to enforce the liquor license laws," refers to the Inspector, Provincial Inspector, all officers appointed under secs. 127, 128 and 129, and any officer, policeman or constable acting under secs. 129 and 134.

(*q*) "Instructions" mean either orders or authorative information or direction given by a principal or superior officer to an agent or subordinate. See Worcester, 763.

"To instruct" often means to convey information, as a client to a Solicitor, or a Solicitor to a Counsel, and the expressions "instructions" and "authority" are sometimes used as synonymous terms.

An "authority" is an official or judicial command; also a legal power to do an act given by one man to another, see Wharton, 70. When a document is to be in writing, it usually means that it must be signed. See Stroud's Dict., 376, 899. By the Interpretation Act the "words 'writing' or 'written,' or any term of like import, shall include words printed, painted, engraved, lithographed or otherwise traced or copied."

(*r*) "Shall not be convicted." In case the accused proves that he is one of the persons exempt, the Magistrate or Justices will have no option in the matter, they must dismiss the charge.

The persons who are guilty of offences under this section are, 1. the purchaser or obtainer on unlicensed premises of intoxicating liquor during the time prohibited by the Act for the sale thereof; 2. any one attempting to buy or procure such liquor on such licensed premises during such time; 3. the purchaser of liquor from an unlicensed person; 4. any person who, at the time of such purchase, drinks liquor so purchased upon the premises where it is procured. The exemptions from the operation of the section are divided into two classes: those exempt from sub-section 1, being witnesses whose demeanor is satisfactory to the Magistrates and Justices, and those who are exempt from the operation of the whole section, including sub-sec. 2 (*b*), viz.: Any officer charged with the duty of enforcing the Act, or who is acting under instructions from the License Commissioners, Inspector or Provincial Inspector, for the purpose of detecting a known or suspected offender and of obtaining evidence to convict such offender. This latter class includes Inspectors and other officers appointed by the Government under section 127, officers appointed by the License Commis-

Sale of liquors from ships in port prohibited.

59. (1) Where a license is issued under this Act, to authorize the sale of liquors upon any vessel navigating any river, lake, or water in this Province, no sale or other disposal of liquor shall take place thereon or therefrom, to be consumed by any person other than a passenger on the said vessel, whilst such vessel is at any port, pier, wharf, dock, mooring or station; nor shall any liquor, whether sold or not, be permitted or allowed to be consumed in or upon any vessel departing from and returning to the same port or wharf, dock, mooring or station, within the time hereinafter in this section mentioned, by any person during the hours prohibited by sec. 54, for sale of the same except for medical purposes as provided in the said section.

Penalty.

(2) In case any such sale or other disposal of liquor takes place, the said license shall *ipso facto* be and become forfeited and absolutely void, and the captain or master in charge of such vessel, and the owner or person navigating the same, as well as the person actually selling or disposing of liquor contrary to this section, shall be severally and respectively liable to pay to the Crown for the public uses of this Province the sum of $100; and any person who sells or disposes of any liquor contrary to the provisions of this section, shall also be liable to the same penalty and punishment therefor as are hereinafter prescribed in section 71 of this Act. (*s*) R. S. O. 1877, c. 181, s. 44.

---

sioners with the sanction of the Lieutenant-Governor-in-Council under sec. 128, Policemen and Constables as well as Inspectors under sec. 129, and lastly, any person who may be authorized or instructed in writing by the Board of License Commissioners or by any Inspector or Provincial Inspector, for the purpose of detecting a known or suspected offender, and of obtaining evidence upon which to convict such offender. This latter class includes those persons usually known as "informers" appointed by the License Commissioners or Inspector, with authority or directions in writing signed by such Board or Inspector.

(*s*) The issue of licenses to vessels navigating any of the great lakes, or the rivers St. Lawrence or Ottawa, or any of the inland waters of the Province of Ontario, is abolished, and selling or keeping any liquor for sale in any room or place on any such vessel is prohibited by sec. 10, 53 Vic., c. 56 (O); and unless such licenses are re-instated hereafter, this section will be inoperative; the sale of liquor on board any such vessel within the Province of Ontario being restricted by the provisions prohibiting the sale of liquor without license.

"Sale or other disposal." See notes to sec. 54.

"Thereon or therefrom." See notes to sec. 54.

A "passenger" on a boat is looked upon in the same light as a lodger in a

Shop license not to authorize liquor sold to be consumed in the house

60. No person having a shop license to sell by retail, (*t*) and no chemist or druggist (*u*) shall allow any liquors sold by him or in his possession, (*v*) and for the sale of which a license is required, to be consumed within his shop, (*w*) or within the building (*x*) of which such shop forms part, or which communicates by any entrance with such shop, either by the purchaser thereof, (*y*) or by any other person not usually resident (*z*) within such building, under the penalty, in money, (*a*) imposed by section 70 of this Act. R. S. O. 1877, c. 181, s. 45.

Penalty.

Liquor not to be consumed on premises of persons

61. No person having a license to sell by wholesale, shall allow any liquors sold by him or in his possession for sale, and for the sale or disposal of which such license is

---

house, and so privileged to consume spirituous or fermented liquors when other people are prohibited. The only exception is when the vessel is departing from or returning to port within the hours mentioned in sec. 54. See Harrison's Mun. Man., 932 (*o*).

The penalties are cumulative: (1) Forfeiture of license; (2) Penalty of $100 on the captain or master in charge of the vessel and the owner or person navigating the same, as well as the person actually selling or disposing of the liquor contrary to the section; (3) Penalties under section 71. See sec. 101, sub-s. 6.

(*t*) "Shop license to sell by retail." See sec. 2, ss. 3, and sec. 31, *ante*.

(*u*) "No chemist or druggist." See notes to sec. 52.

(*v*) "Sold by him or in his possession." This expression has a very extensive meaning. The holders of shop licenses and chemists and druggists are allowed to have liquors in their possession and to sell them in certain quantities, but they must not permit such liquor to be drunk in their shop or premises, or anywhere in the building in which it is situated, or any building which communicates by any entrance with the shop; and this applies to the gift of such liquor as well as to its sale. This section only applies to liquors for the sale of which a license is required; chemists and druggists do not require a license except for manufacturing purposes, (see notes to sec. 51, *ante*), but any liquors which they are authorized to sell may not be consumed on the premises.

(*w*) "Within his shop." See note (*q*) to sec. 54.

(*x*) "Within the building." See note (*y*) to sec. 50.

(*y*) "Purchaser thereof." See note (*i*) to sec. 58.

(*z*) "Usually," in its natural sense, is defined by Worcester to mean "commonly; customarily; ordinarily; frequent;" but in its legal sense the meaning of the word "usual" is not so easily stated. But it has been held that the place where an individual eats, drinks and sleeps, or where his family or servants eat, drink or sleep is his usual residence: R. *v.* North Curry, 4 B. & C. 959. See Stroud's Dict., 678; see also notes to sec. 11, p. 29, *ante*.

(*a*) This is the penalty prescribed for selling liquor without a license. It is not less than $50 and not more than $100 besides costs. Sec. 70 provides for punishment by imprisonment for second, third or subsequent offences, but these latter penalties do not apply to this section. In this the penalty is merely the pecuniary one. See sec. 71, ss. 2.

required, to be consumed within his warehouse or shop, or within any building which forms part of or is appurtenant to, or which communicates by any entrance with any warehouse, shop or other premises wherein any article to be sold or disposed of under such license is sold by retail, or wherein there are kept any broken packages of such articles. (*b*) R. S. O. 1877, c. 181, s. 46.

having license by wholesale

62. (1) No person shall by himself (*c*) or his partner, (*d*) servant, (*e*) clerk, (*f*) agent (*g*) or otherwise, (*h*) sell or deliver (*i*) intoxicating liquors of any kind (*j*) to any per-

Prohibition of sale to unlicensed

(*b*) This section applies to wholesale licenses only; its provisions are nearly the same as those of the next preceding section, except that no penalty is provided for. See notes to sections 2, 34, 35, 144; also notes to sections 54 and 60.

See Sch. D., sec. 10, for form of conviction.

(*c*) "No person shall by himself." Where a person "himself" has to do a thing he cannot do it by an agent: Monks *v.* Jackson, 1 C. P. D., 683. So where a person reported guilty of malpractices at an election is to be heard "by himself," he cannot appear by Counsel: Hereford Case, R. *v.* Jones, 23 Q. B. D., 29.

(*d*) "Or his partner." See note (*s*) to sec. 35, *ante*.

(*e*) "Servant." "The relation of master and servant exists when a person calls in the assistance of others, where his own skill and labor are not sufficient to carry out his own business or purpose:" Wharton, 463; see note (*t*), sec. 35.

(*f*) A "clerk or servant" (*qua* embezzlement), is a person bound either by express contract or by conduct implying such a contract to obey the orders and submit to the control of his master in the transaction of the business which it is his duty as such clerk or servant to transact: Steph. Cr. 239, cited Stroud's Dict., 134; see also note (*t*) to sec. 35.

(*g*) "Agent." See notes to sec. 49, notes to sec. 54, and note (*u*) to sec. 35.

(*h*) "Or otherwise" generally means something or some one in the same class as those which precede it. As to this "no authority is necessary," per Cleasby, B., Monck *v.* Hilton, 2 Ex. D., 268, and Pollock, B., S. C. at p. 278. But it is a general rule which is not infrequently found inapplicable: Stroud's Dict., 549. It may be construed as enlarging rather than limiting the words which it follows: see Monck *v.* Hilton, 2 Ex. D., 268; Johnson *v.* Fenner, 33 J. P., 740; R. *v.* Middlesex Jus., 41 J. P., 629; *re* Slade, 36 L. T. N. S., 402.

In this section it refers to the subject matter, and includes a sale in any manner not particularly specified. See Commonwealth *v.* Rice, 9 Metc., 258 (1845), and other cases cited in Anderson's Dict., 740.

(*i*) "Sell or deliver." As to meaning of the term "to sell," see note (*d*) to sec. 2, p. 5, and also notes to sec. 54.

The ordinary meaning of the term "deliver" is "to give over" or "transfer" from one person to another: see Worcester, 378. But in law a "delivery" of goods, etc., may be made without any actual transfer taking place. As to the delivery of bills and notes, speaking generally, "delivery" means "transfer of possession, actual or constructive, from one person to another: The Bills of Exchange Act, 1890, 53 Vic., c. 33, s. 2, ss. (*f*).

sed persons.

son not entitled to sell liquor, (*k*) and who sells such liquor, or who buys for the purpose of re-selling, (*l*) and any violation of the foregoing provision shall be an offence under this Act. (*m*)

(2) (*n*) But no person shall be convicted under this section who establishes (*o*) to the satisfaction (*p*) of the Police Magistrate or other Justice or Justices (*q*) before whom the

---

The delivery of goods may be either real or symbolical, actual or constructive. Things capable of manual delivery—such as a watch, book, or a gun—are usually transferred from the hand of the vendor to that of the purchaser, and this constitutes a real or actual delivery. And where bulky commodities are to be delivered, they are removed from the warehouse of the vendor to that of the purchaser and placed under the control of the latter. This also constitutes an actual delivery. But where the transfer is effected by the vendor giving the purchaser the means of removing the goods, and the control of them as by handing over the key of the room, warehouse, or receptacle, in which the goods are deposited, there is a case of symbolical or constructive delivery; but in the latter case the goods to be delivered must be separated from others and identified so that nothing remains to be done but delivering in order to complete the contract. A law against selling or delivering intoxicating liquors to a minor was held not to include a delivery to a minor for his father: State *v.* McMahon, 53 Conn. 415 (1885).

(*j*) "Liquors of any kind" mean intoxicating liquors. See note (*b*) to sec. 2, p. 4, *ante*.

(*k*) "Any person not entitled to sell liquor" may mean not only any person who has not a license to sell liquor in places where this Act is in force, but also any person who, under any prohibitory law in force, is not authorized to sell such liquor. But no conviction can be made under this Act in places where the C. T. Act is in force. See notes sec. 49.

(*l*) The section first prohibits the sale of liquor to a person who is not authorized to sell it, for the purpose of re-sale, and then makes it an offence; 1. for any such vendor to sell, and, 2. for any such purchaser to buy liquor for the purpose of re-selling it.

(*m*) The penalty is not provided for, therefore the offence is one covered by sec. 85.

(*n*) This sub-sec. applies only to the vendor. If he be charged with an infraction of this section, the onus of proving that he believed the purchaser was licensed will lie with the defendant.

(*o*) "Establishes" may be taken to mean, "confirms" by evidence or otherwise a fact which exists but which does not appear on the face of the proceedings.

(*p*) Where one party has to do something to the satisfaction of another, as for instance to furnish proof satisfactory to him, it does not follow that the latter is to act capriciously, he can only ask for a reasonable fulfilment of the obligation: Braunstein *v.* Accidental Ins. Co., 1 B. & S. 782.

By "satisfactory" evidence, what is meant is, "that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt. The circumstances which will amount to this degree of proof can never be previously defined; the only legal test of which they are susceptible is their sufficiency to satisfy the mind and conscience of an ordinary man, and so to convince him, that he would venture to act upon that conviction in matters of important personal interest: Taylor on Evi., 8th Ed., 2.

(*q*) By sec. 96 all prosecutions under secs. 49, 50, 54, 59, 60, 66, 70 and 79

prosecution is heard (*r*) that he had reason to believe and did believe (*s*) that the person to whom the liquor was sold or delivered was duly licensed to sell such liquor, or did not sell liquor unlawfully, or did not buy to re-sell.

(3) This section applies only to a sale or delivery of liquor in any city, town or village (*t*) by a person residing (*u*) or carrying on business (*v*) therein to a person who sells

---

or any section for the contravention of which a penalty or punishment is prescribed by sec. 70, are to be before two or more Justices of the Peace. A Police Magistrate has the same power, in certain cases, as two Justices of the Peace, by R. S. O. c. 72, s. 21; see notes to sec. 96. Under sec. 99, one Justice may hear such cases in certain rural Municipalities, and by sec. 97, all other prosecutions, except those above mentioned, may be before one Justice of the Peace.

(*r*) "Heard." See note (*e*) p. 27, *ante*, and note (*p*) p. 36 *ante*.

(*s*) "Reason to believe and did believe." Where there is a question of belief, it is for the Judge or Justices before whom the case is tried to decide whether the facts upon which such belief rests are reasonable or satisfactory. The rule in actions on the case for malicious prosecutions is thus stated in Taylor on Evidence, 8th Ed., p. 43; "If a Magistrate on being sued for false imprisonment, were to rely, under 'not guilty by Statute,' upon want of notice of action or the like, the question whether he believed, with some colour of reason and *bona fide*, that he was acting in pursuance of his lawful authority, would, in strictness, be for the jury to determine under all the circumstances, if the plaintiff should desire their opinion to be taken on evidence; though if, as is commonly the case, these questions were first submitted to the Judge on an application for a non-suit, and the plaintiff did not then desire them to be left to the jury, he would be bound by the decision of the Judge, if the Court should think it warranted by the evidence. See also Pollock on Torts, 149. So that in any prosecution under this section the question of whether the defendant "had reason to believe and did believe" that the person to whom the liquor was sold or delivered was duly licensed to sell such liquor, or did not sell liquor unlawfully, or did not buy to re-sell, is for the Justice or Justices to decide; see McIntee *v.* McCullough, 2 E. & A., page 390. It must be noted that there are three grounds of belief under which a defendant may escape from a prosecution under this section. 1st. That the person to whom the liquor was sold or delivered was duly licensed to sell such liquor. By which is meant that the vendor believed the purchaser had a license to sell the particular kind of liquor sold, either by wholesale or retail. Such belief would not be reasonable if the quantity sold was less than the purchaser could lawfully sell, or if the license which the vendor believed the buyer to have did not authorize the sale of the kind of liquor purchased; as, for instance, if the license was said to be a beer and wine license, and the liquor sold was not such as is authorized to be sold under that license. 2nd. That he believed the purchaser to be a person who did not sell unlawfully—*e. g.*, one who, not being licensed, was not in the habit of selling liquor in any form, or having a special license, or being a chemist or druggist, did not sell liquor in contravention of such license or of the Act. And 3rd, that the liquor purchased was not bought to be re-sold.

(*t*) As to the meaning and scope of the words "city, town, or village," see note (*j*) to sec. 2, p. 7.

(*u*) "Residing." See notes to sec. 11, ss. 11, p. 29.

(*v*) Or carrying on business. The phrase "carrying on" implies a repetition

liquor unlawfully in the same city, town or village. (*w*) 49 V., c. 39, s. 13.

---

or series of acts: per Brett, L. J., Smith *v.* Anderson, 15 Ch. D., 247. See also *re* Siddall, 29 Ch. D., 1; *re* Thomas, 14 Q. B. D., 379. The term "business" as used here refers to the business of liquor selling: R. *v.* Cook, 13 Q. B. D., 377.

The phrase "carries on business" has not been fully considered or discussed. "Business" is a term of extensive import and indefinite meaning. In its broadest sense it includes nearly all the affairs in which an individual can be an actor. What is meant here, however, is that which is most commonly denominated business. In such a connection, it has been held that a person who merely has an office in a place where he receives [illegible]s and is engaged in winding up the affairs of an insolvent firm to which [illegible] belonged does not "carry on" business. A person who superintends the business cannot be said to carry on the business, for he is only acting on behalf of his principal; he does not furnish the capital, and no one carries on a business unless he provides the money that is needed in it, or has an interest in it by contributing his labor. The capital may be borrowed, but it must stand in the name of the person who is said to "carry on the business." Therefore, it follows that a business to be carried on must be the person's *own* business, and not that of another. But in the case of two persons who had failed after having carried on business in a district for a long time, and after their failure, one was employed as a clerk and the other as an agent to superintend the business, it was held that both were carrying on business in the district.

"The phrase 'carrying on business' looks to the scheme and purpose to which all the transactions tend, the design and object which the party has in view. In carrying on a business there are many affairs which are merely incidental and which may be, and often are, transacted elsewhere than at the place where the business is located, and such transactions may be of such frequent, and even daily occurrence, as to require an agency of considerable duration. Such collateral or incidental transactions do not constitute the business, nor are they a carrying on of business in the sense of the law." The authorities upon this subject are so numerous that there is not room for them here, but they may be found in Sinclair's D. C. Act, 1879, 84-88; Sinclair's Con. D. C. Act, 1888, 125; 38 Alb. L. J., 342. See also Graham *v.* Lewis, 59 L. T. N. S., 35. It was held that if a person takes a house, or part of a house, either in his own name or in that of another person, and there personally or by his agent makes sale of spirits, even though no spirits are actually stored on the premises, he carries on the business of selling liquor there: Stallard *v.* Marks, 3 Q. B. D., 412; and even though the store was kept in another town, *Idem.* Selling a single drink was held not to be "carrying on business:" Lawson *v.* State, 55 Ala., 118; L. R. 2, C. P. 270; R. *v.* Andrews, 25 U. C. R., 196.

(*w*) If any prosecution should ever be instituted under this section, it will be necessary to prove, in addition to the other facts which may be gathered from the foregoing notes, that the purchaser is "a person who sells liquor unlawfully in the *same* city, town and village." "Unlawfully" means something which is "forbidden by some definite law:" per Stephen, J., R. *v.* Clarence, 22 Q. B. D., 23; and in this case it has reference to the sale of liquor in any manner forbidden by the Act.

The word "same" generally refers to the next preceding antecedent: Co. Litt. 20*b*, 285*b*, as it here refers to the city, town, or village in which the liquor is sold or delivered, and in which the business of the seller is carried on: see Stroud's Dict., 698.

An agreement, the object of which is to enable an unlicensed person to sell

63. Not more than one bar (*x*) shall be kept (*y*) in any house or premises licensed under this Act (*z*). 47 V., c. 34, s. 23. One bar only.

64. No tavern license shall be granted in respect of any house in any city, town or incorporated village not already licensed, (*a*) unless such house has a separate front entrance, in addition to the entrance to the bar or place where liquors are sold. 47 V., c. 34, s. 25. Entrance to hotel to be separate from bar.

65. If any person (*b*) holding a license (*c*) purchases Licensee

spirituous, fermented or manufactured liquors without a license, is illegal and cannot be enforced at law. See sec. 126 and notes thereto.

(*x*) "One bar." See note (*h*) to sec. 55.

(*y*) "Shall be kept." See note (*a*) to sec. 32, p. 68, and note (*o*) to sec. 27.

To "keep" a place for a particular purpose involves, as has been shewn, the idea that it is used for that purpose on more than one occasion: Marks *v.* Benjamin, 5 M. & W., 568, cited in note (*q*) to sec. 11, p. 24 *ante*.

"Keep open" implies a readiness to carry on the usual business in a store, saloon, etc.: Lynch *v.* People, 16 Mich. 477 (1868), and also to allow general access for the purposes of traffic, although the outer entrance is closed: Commonwealth *v.* Harrison, 11 Gray, 308 (1858). Keeping spirituous liquor for sale is having possession and control of it with intent and readiness to make a sale. This may be long continued practice, or it may be instantaneous: State *v.* Haney, 58 N. H., 379 (1878).

"House or premises." See note (*q*) to sec. 17 *ante*.

(*z*) There is no penalty attached to the keeping of more than one bar, nor is it made an offence to do so; but the prohibition is absolute, and it therefore belongs to that class of "provisions" for the violation of which "no other punishment is prescribed" than that provided by sec. 85. "Every one commits a misdemeanor who wilfully disobeys any Statute by doing any act which it forbids or by omitting to do any act which it requires to be done, and which concerns the public or any part of the public, unless it appears from the Statute that it was the intention of the Legislature to provide some other penalty for such disobedience:" Burbidge's Crim. Dig., 115, 116.

(*a*) "Not already licensed" refers to the date of the passing of the Act, viz.: 25th March, 1884, so that all houses licensed since that date must be provided with a front door entrance separate from the entrance to the bar. The term "separate" as used here means "unconnected." The "front" of a building is that part which fronts or abuts upon any public street, and if the building is situated upon more than one public street it "fronts" on all such streets; per Pollock, C. B., Bedfordshire Jus. *v.* Bedford, 7 Ex., 658; Governors of Bedford Infirmary *v.* Bedford, 7 Ex., 768. A building may therefore have more than one front entrance. The entrance to the "bar" may be upon one street and that to the other part of the house on another street, but there must be at least two separate entrances. No penalty attaches to non-compliance with this provision except that the License Commissioners must not grant a license to any house in any city, town or incorporated village, which has not complied with it by furnishing separate entrances.

(*b*) "Any person." See note (*g*) to sec. 11, p. 28, *ante*.

(*c*) "Holding a license," means being legally in possession of a license, *e. g.*, a person licensed to sell liquors by wholesale or retail, or under the provisions of the beer and wine license clauses of this Act.

not to purchase certain articles, or receive them in pledge.

(*d*) from any person any wearing apparel (*e*), tools (*f*), implements of trade or husbandry (*g*), fishing gear (*h*), household goods (*i*), furniture (*j*), or provisions (*k*) either by way of sale or barter (*l*), directly or indirectly (*m*), the

(*d*) "Purchases." See notes to sec. 58.

(*e*) "Wearing apparel" consists of that which is worn or made to be worn. Cloth actually appropriated thereto may be regarded as apparel: Richardson *v.* Buswell, 10 Metc., 507, (1845); see also Astor *v.* Merritt, 111 U. S., 202, (1884).

(*f*) "Tools" are "mechanical instruments of any kind for working with." The term includes all instruments of manual operation, but particularly such as are used by farmers and mechanics: Oliver *v.* White, 18 S. C., 241, (1882).

(*g*) "Implements" is used for things of necessary use in any trade or mystery which are employed in the practice of the said trade, or without which the work cannot be accomplished. And so, also, for furniture of household with which the house is filled. And in that sense you shall find the word often in wills and conveyances:" Termes de la Ley, cited Stroud's Dict., 462.

"Implements of trade" are those implements used in a man's trade or business. It has been held that the expression "implements of a debtor's trade," refers to the business of a mechanic, as a carpenter, blacksmith, silversmith, printer or the like: Attwood *v.* De Forest, 19 Conn., 517; 11 Metc., 79; 6 Gray, 298, 23 Iowa, 359. They rarely include animals: Coolidge *v.* Choate, 11 Metc., 82; a music teacher's piano has been held to be an instrument of business: Amend *v.* Murphy, 69 Ill., 338.

"Implements of husbandry" are instruments of all kinds used in husbandry. A steam engine used for working a threshing machine was held to be an instrument of husbandry: R. *v.* Malty, 8 E. & B., 712.

(*h*) "Fishing gear" includes all instruments, nets, tackle, blocks, ropes, &c., used in the trade or business of fishing.

(*i*) "Household goods" includes all personal chattels that may contribute to the use or convenience of the householder or the ornament of the house, such as plate, linen, china, (both useful and ornamental), pictures, prize medals, coins or trinkets if framed or otherwise disposed of as household ornaments, &c.: Stroud's Dict., 359-361.

(*j*) "Furniture." It has not yet been declared what is meant by "furniture:" per Brett, M. R., *re* Parker, 14 Q. B. D., 636; but the definition given by Worcester is, "goods put into a house for use or ornament." It has a very wide meaning and includes everything which goes to the furnishing of a house, such as sofas, chairs, tables, sheets, blankets, and counterpanes, wash-hand basins and wash-hand stands, linen and crockery, and other things besides those enumerated may be included in the term: see *re* Parker, *supra*. The word relates ordinarily to moveable personal chattels, but is very general in meaning and application, and the meaning changes, so as to take color of, or to accord with the subject to which it is applied: Fore *v.* Hibbard, 63 Ala., 412 (1879).

(*k*) "Provisions" includes all those things which are used for food, victuals or provender: Worcester, 1147. See Collier *v*, Worth, 1 Ex. D., 464, cited Stroud's Dict., 630.

(*l*) "Sale or barter" means the exchange of goods either for money or for commodities of other kinds. See note (*d*) to sec. 3, p. 5, *ante*.

(*m*) "Directly or indirectly" means either in a direct manner or by implication or circumlocution: Worcester, 407. It was held that the addition or omission of these words to an offence was immaterial: Todd *v.* Robinson, 14 Q. B. D., 739. But see Stewart *v.* Macdonald, 11 L. J. N. S., 19.

consideration (*n*) for which, in whole or in part, is any intoxicating liquor (*o*) or the price thereof (*p*), or receives from any person any goods in pawn (*pp*), any Stipendiary or Police Magistrate, or any two Justices of the Peace (*q*),

(*n*) "Consideration" means "the price, motive, or matter of inducement of a contract: see Wharton, 167. It also means an equivalent or compensation: Worcester, 298.

The definition given by Gray, J., in Phœnix Ins. Co. *v.* Raddin, 120 U. S., 197 (1887), is: "That which the party to whom a promise is made does or agrees to do in exchange for the promise."

(*o*) "Intoxicating liquor." See sec. 2, ss. 1, and notes thereto.

(*p*) The "price thereof" may be either the sum for which anything may be bought, or at which its value is rated; or an equivalent or compensation in any form asked or paid for anything: See Worcester's Dict., 1127; Anderson's Dict., 809. "The first and general meaning originates in the fact that property is ordinarily sold for money; not because the word is restricted to that meaning:" per Earl, C., Hudson Iron Co. *v.* Alger, 54 N. Y., 177 (1873).

The Latin is *pretium*—reward, value, estimation, equivalent.

(*pp*) "Receives from any person any goods in pawn." "Pawn," or pledge, is defined by Wharton as: "A bailment of goods by a debtor to his creditor, to be kept till the debt is discharged;" which is, in other words, something given as security for the repayment of a debt; or, as Worcester defines it, "something given for the repayment of money borrowed."

"As to things which may be the subject of pawn. These are ordinarily goods and chattels; but money, debts, negotiable instruments, choses in action, and, indeed, any other valuable thing of a personal nature, such as patent-rights and manuscripts, may, by the common law, be delivered in pledge. It is not indispensable that the pledge should belong to the pledgor; it is sufficient if it is pledged with the consent of the owner. By the pledge of a thing, not only the thing itself is pledged, but also as accessory the natural increase thereof. There must be an actual delivery of the thing to the pledgee, though not an actual *manual delivery*—such acts as the law deems *sufficient* to constitute a *delivery* (see note (*i*) to sec. 62), being all that are required; and it is also necessary that the thing should be delivered as security for some debt or engagement. It may be delivered for some future debt or engagement as well as for a past debt, or for one or many debts and engagements; upon condition or absolutely; for a limited time or an indefinite period. It may also be implied from circumstances, as well as arise by express agreement, and it matters not what is the nature of the debt or engagement. The pledge is understood to be a security for the whole and for every part of the debt or engagement. It is undivisible." This is the definition and description of what constitutes a "pawn," or pledge, in Wharton's Lexicon, at p. 541. As to what are the pledgee's or pawnee's rights, see Story on Bailment. The Statutory definition of a pawnbroker is: "Every person who takes or receives, by way of pawn, pledge or exchange, any goods for the repayment of money lent thereon." And it is an offence against the Statute to exercise the trade of a pawnbroker without license, punishable by a fine of $50 for every pledge taken, and a fine of $40 for neglect to exhibit a sign: see R. S. O., c. 154.

(*q*) "Stipendiary Magistrate." See R. S. O., c. 91, secs. 2-7.

"Police Magistrate." See note (*t*) to sec. 46, p. 105.

"Two Justices of the Peace." See notes to sec. 96.

Stipendiary and Police Magistrates have the same power as two Justices of the Peace by R. S. O., c. 72, s. 21, and R. S. O., c. 91, s. 7.

on sufficient proof on oath (*r*) being made before him or them of the facts, may issue his or their warrant for the restitution (*s*) of all such property, and for the payment of costs (*t*); and in default thereof (*u*) the warrant shall contain directions for levying by sale of the offender's goods to the value of such property so pawned, sold, or bartered, and costs, and the offender shall also be liable to a penalty not exceeding $20 (*v*). 47 V. c. 34, s. 27.

Restitution may be ordered and enforced.

(*r*) "Sufficient proof" is equivalent to the phrase "satisfactory evidence." See note (*p*) to sec. 62. It is that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt: Taylor in Evi., 2.

The word "oath" shall be construed as meaning a solemn affirmation whenever the context applies to any person and case by whom and in which a solemn affirmation may be made instead of an oath: Interpretation Act, R. S. O. 1887, c, 1, s. 8, ss. 18.

"Proof made upon oath" admits proof on affidavit, but is not confined to it: per Esher, M. R., Osborne *v.* Milman, 56 L. J. Q. B., 264.

(*s*) "Restitution" means the restoring of anything unjustly taken from another: Wharton, 641.

The "warrant for the restitution" of such property would be similar to the writ of restitution awarded in cases of stolen property: see R. S. C., c. 174, s. 250, ss. 2. For form of such warrant see appendix.

(*t*) By sec. 100, the Justice or Justices may order that the defendant shall pay to the prosecutor or complainant such costs as to the said Justice or Justices may seem reasonable, &c. See that sec. and notes thereto.

(*u*) "Default" means "an omission of some act which a person ought to do in order to entitle himself to a legal remedy, as non appearance in Court at a day assigned," and also, "to fail in performing any act, contract or stipulation, or to appear in Court;" see Worcester, 372, Stroud's Dict., 192. A better definition, perhaps, is "an omission of that which a man ought to do," neglect. The warrant is to contain directions for levying the value of the goods only on default of restitution and payment of costs. What procedure is to be had in order to ascertain the value of the goods is not shewn, but it is suggested that it would be the duty of the Justice or Justices to ascertain this in the enquiry before them.

(*v*) "Not exceeding $20" means $20 or less.

The procedure which should be followed in carrying out the provisions of this section is not defined. Any person may be prosecutor or complainant—sec. 93. The initiative proceedings must be in compliance with sec. 94. For form of information see appendix of forms. If the Justice or Justices find that there is sufficient proof adduced (1) that the defendant is a person holding a license; (2) that he has purchased, exchanged, or bartered liquor for any of the things enumerated in this section, or given liquor as the consideration, either wholly or in part, for the purchase or exchange of such articles; or (3) has received them in pledge for liquor or for the payment of money, or received them in pledge under any circumstances, then such Justice or Justices may issue the warrant for the restitution of such property, and if the property is not forthcoming, then for the value of such property as per form of warrant in the appendix.

PENALTIES.

66. It shall not be lawful (*w*) for the license commissioners of any license district, (*x*) or any of them, (*y*) nor for any inspector, (*z*) either directly or indirectly, (*a*) to receive, take, or have (*b*) any money whatsoever, (*bb*) for

Not lawful to take money for certificate, etc.

(*w*) "It shall not be lawful" is an imperative command prohibiting the acts which follow being done by the persons to whom it relates. It is equivalent to saying: "It shall not be allowed by law." Where the Statute forbids the doing of a thing, the doing of it wilfully, although without any corrupt motive, is indictable; and in R. *v.* Sainsbury, 4 T. R., 451, it was held to be a misdemeanor in Magistrates to grant an ale license where they had no jurisdiction. "It is a general rule that a public officer is indictable for misbehaviour in office. And where the act done is clearly illegal, it is not necessary, in order to support an indictment, to shew it was done with corrupt motives. Still more is such an offence punishable when it proceeds from malicious or corrupt motives:" Roscoe's C. E., 782; see also Russell on Crimes, 49.

An officer is indictable for neglect of a duty incumbent on him either by common law or by Statute.

A "public officer" is defined as "one who is invested with authority to execute any public duty and legally bound to do so:" see 7 Rep. Crim. Law Crs., c. 4, p. 153, and of 5 Crim. Law Crs., p. 40, cited Burbidge's Crim. Dig., 109; and every public officer commits a misdemeanor who, in exercise, or under color of exercising, the duties of his office, does any illegal act, or abuses any discretionary power with which he is invested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act or from the circumstances of the case: Stephen's Dig., 119; R. *v.* Wyat, 1 Salk., 380; R. *v.* Bembridge, 3 Doug., 327; Bacon's Abridgment, tit., "Office and Officer," N.; R. *v.* Borron, 3 B. & Ald., 434.

If the illegal act consists of taking, under color of office, from any person any money or valuable thing, which is not due from him at the time when it is taken, the offence is called "extortion." If it consists in inflicting upon any person any bodily harm, imprisonment or other injury, not being extortion, the offence is called "opression:" R. *v.* Tisdale, 20 U. C. R., 272; Parsons *v.* Crabbe, 31, C. P., 151.

It was held, where two Justices refuse licenses to the keepers of public houses, because they refuse to vote as the Justices wish, the Justices commit "oppression:" R. *v.* Williams, 3 Burr., 1317. See notes (*t*) and (*z*) to sec. 12. A public officer is also liable to indictment for frauds and breaches of trust, neglect of official duty, and refusal to serve any public office which he is required by law to accept if duly appointed. See Stephen's Dig., 123; Burbidge's Dig., 109-144.

But under this section a penalty is prescribed, and no other punishment or penalty can be inflicted in respect of any of the corrupt acts mentioned in the section: see note (*z*), sec. 63.

(*x*) "License Commissioners." See sec. 3 and notes thereto.

"Any license district." See sec. 2, ss. 6, and notes thereto.

(*y*) "Any of them." "Any" is a word which excludes limitation or qualification, and is as wide as possible. See note (*o*), p. 29, *ante*.

(*z*) "Any Inspector." See sec. 2, ss. 8; secs. 6, 7, 11, 67 and 127.

(*a*) "Directly or indirectly." See note (*m*) to sec. 65.

(*b*) "Receive." See Stroud's Dict., 569: it means to take; accept; obtain: Worcester, 1191.

any certificate, license, report, matter or thing (*c*) connected with or relating to (*d*) any grant of any license, (*e*) other than the sum to be paid therefor as the duty under the provisions of this Act, (*f*) or to receive, take or have any note, (*g*) security or promise (*h*) for the payment of any such money or any part thereof, from any person or persons whatsoever (*i*); and any person or persons guilty of, (*j*) or

Penalty.

"Take or have" is a phrase of wide meaning and includes any acts of a receptive character which could possibly be performed.

(*bb*) "Any money whatsoever" is also a phrase of very extensive meaning. It is said that "whatsoever" as a rule excludes any limitation or qualification, and implies that the genus to which it relates is to be understood in its utmost generality: see judgment of Fry, L. J., Duck *v.* Bates, 13 Q. B. D., 843.

(*c*) "Matter or thing" is an expression of the same kind as the foregoing. "Matter" is whatever is perceptible to the senses; that about which one speaks, thinks or writes; anything with which one is concerned; any affair, business, concern: see Worcester's Dict., 388; Anderson's Dict., 665. And "thing" means "subject-matter; substance; effects; any object that may be possessed:" Anderson's Dict., 1029. It is usually applied to denote an act, action, deed, event, transaction, matter, and circumstance: Worcester's Dict., 1501. See Potts *v.* Jinders, 2 Dowl. & L., 986.

(*d*) "Relating to," means to have reference or relation to: see Worcester, 1208. In Compagnie Financiere *v.* Peruvian Guano Co., 11 Q. B. D., 55. Brett, L. J., discussing the words "relating to the matter in question," said: "It seems to me that every document relates to the matters in question in the action, which not only would be evidence upon any issue, but also which it is reasonable to suppose, contains information which *may*—not which *must*—either directly or indirectly enable the party requiring the affidavit either to advance his own case or to damage the case of his adversary." See Anchor Marine Ins. Co. *v.* Corbett, 9 S. C. R., 73; *re* Betts, 19 Q. B. D., 39; Board of Trade *v.* Block, 13 App. Cas., 570. See also Lawson *v.* Wallasey, 11 Q. B. D., 229.

(*e*) "Grant of any license." See secs. 8, 9, 11, 12, 13, 17, 18, 19, 20, 21, 32 and 40.

(*f*) "Under the provisions of the Act." See secs. 41, 42, 44; also secs. 12, 45, 138 and 150.

(*g*) "Note," probably means promissory note.

(*h*) "Security or promise." A "security," speaking generally, is anything that makes money more assured in its payment, or more readily recoverable as distinguished from (*e. g.* a mere I. O. U.), which is only evidence of a debt: Stroud's Dict., 708; see also Byles, especially preface to 1st Ed.; Fisher, 51 *et seg.*: A "promise" is "an engagement for the performance or non-performance of some particular thing, which may be either by deed, or without deed, when it is said to be by parol. It is usually applied when the engagement is by parol only, for a promise by deed is technically called a *covenant*: Wharton, 590.

(*i*) "Any person or persons." See note (*g*) to sec. 11, p. 28, *ante*.

(*j*) "Guilty of" means justly chargeable with: see Worcester, 647. The word "guilt," according to some authorities, is from the Anglo-Saxon *wiglian, bewiglian, gewiglian*, to conjure, to devine, and hence to practise, cheat, imposture, and enchantment; the past participle of *gwiglian* is *gewiglet*, guilded, guilt: *Tooke*. Others say it is derived from *gildan*, to pay a tax, and originally

concerned in, or party to (*k*) any act, matter or thing contrary to the provisions of this section, or of sections 12 and 13, (*l*) shall forfeit and pay to and for the use of Her Majesty a penalty of not less than $50, nor more than $100, (*m*) besides costs, for every such offence. R. S. O. 1877, c. 181, s. 47.

Penalty for issuing any

67. Any member (*n*) of a board of license commissioners or any inspector, officer or other person (*o*) who,

---

signified the fine or mulct paid for an offence, and afterwards the offence itself. See Wharton, 335.

(*k*) "Concerned in" means to be interested in; to be affected by.

A shareholder in a company which has a contract with a local authority, would seem not to be "concerned in" that contract: per Brett. M. R., Todd *v.* Robinson, 14 Q. B. D., 739. But to do part of a work for another, knowing that that other has contracted with a local authority to do the work, is to be "concerned in" the contract: Nutton *v.* Wilson, 58 L. J. Q. B., 443.

Acting as a salaried servant is being concerned in a business within a covenant not to be concerned in such business: Hill *v.* Hill, 55 L. T. N. S., 769; Jones *v.* Heavens, 4 Ch. D., 636. The owner of a vessel, who knowingly lets it to be employed in smuggling, is "concerned in" the illegal unshipping of goods: Atty.-Gen *v.* Robson, 5 Ex., 790.

It was said by Morrison, J., McRossie *v.* The Provincial Ins. Co., 34, U. C. R., at p. 59, that in the case of a condition in a policy of Insurance requiring certain information under the hand of a Magistrate or Notary Public not "concerned in" the loss, &c., meant the same as "interested in."

A "party to" any act or transaction is "a person concerned or having any part in the affair or transaction:" Worcester, 1039. Wharton's definition is "a person concerned in any act." See also Stroud's Dict., 568; Anderson's Dict., 753.

As to meaning of "party to a cause," see Cameron *v.* Allen, 10 P. R., 192.

(*l*) "Sections 12 and 13." Section 12 applies to the procedure in obtaining tavern or shop licenses: and sec. 13 prohibits the granting of any license or certificate at Agricultural Exhibitions. See these sections and notes thereto.

(*m*) "Not less than $50." In R. *v.* Black, 43 U. C. R., 180, Harrison, C. J., said: "Then what is meant by fining a man not less than $40? Does this mean that he may be fined *any*, and if any, what amount above $40? Does it intend that for a second offence the offender may be fined $100, when the fine for the third offence is not less than $100?" In this section the penalty is not less than $40 nor more than $100, clearly shewing that the intention of the Legislature is that the fine may be either $40 as the minimum, or any sum above that up to $100 as the maximum penalty to be awarded.

(*n*) "Any member." A "member" means one of a community, society, or association; as any one of the License Commissioners. See Worcester, 896; Anderson's Dict., 669.

(*o*) "Board of License Commissioners." See secs. 3, 4 and 5.

"Any Inspector." See secs. 2 and 6 and notes thereto.

"Officer." See sec. 53 and notes thereto; see also notes to sec. 66.

"Other person" applies to any other person of the same class. See note (*g*) to sec. 11, p. 28, *ante*.

license contrary to this Act.

contrary to the provisions of this Act, (*p*) knowingly issues, (*q*) or causes or procures (*r*) to be issued, a tavern or shop license, or a certificate therefor, shall, upon conviction thereof, (*s*) for each offence pay a fine of not less than $40, nor more than $100, and in default of payment of such fine, the offender or offenders may be imprisoned in the county gaol of the county (*t*) in which the conviction

---

(*p*) "Contrary to the provisions of this Act," means opposed to the terms and directions, and to the rules and requirements of the Act.

A verdict "contrary to law," is contrary to the principles of law applicable to the facts which the jury were to try: Candy *v.* Hanmore, 76 Ind., 128, (1881).

(*q*) "Knowingly issues," imports that the person doing the act prohibited, knew what he was about to do, and with such knowledge proceeded to commit the offence. See cases cited in note (*e*), sec. 16, and note (*y*) to sec. 25; see also United States *v.* Claypool, 14 F. R., 128, (1882); Gregory *v.* United States, 17 Blatch. 330, (1879).

The 32 Vic., c. 32, as amended by 33 Vic., c. 28, (O) (now repealed), enacted that no certificate for a license should be issued until the Inspector had reported that the proper accommodation, &c., had been provided, and that any member of a Municipal Council, who should, contrary to the Act, vote for, or issue, or cause, or procure to be issued a certificate, &c., should on conviction be liable to a fine. B. applied for a license, but the Inspector reported that his premises were insufficient. A minute was entered at a meeting of the Council, that the license should be issued as soon as the applicant produced the Inspector's certificate, and the defendant, the Reeve, signed a certificate and gave it to the clerk, instructing him not to hand it over until he had received the certificate of the Inspector; Held, that there had been no breach of the Statute: R. *v.* Paton, 35 U. C. R., 442.

A *certiorari* will not lie to remove a conviction under this section, which has been affirmed and amended on appeal to the Sessions, for issuing a license contrary to the Act, the procedure being regulated by 32, 33 Vic., c. 31, s. 71 (D), as amended by 33 Vic., c. 271, s. 2 (D), now R. S. C., c. 178, s. 83: R. *v.* Grainger, 46 U. C. R., 196; see also R. *v.* Johnson, 30 U. C. R., 423; R. *v.* Roddy, 41 U. C. R., 291, and see notes to sec. 105, ss. 2.

(*r*) "Causes or procures." To "cause" means "to effect, as an agent; to produce; to occasion:" Worcester's Dict., 215. "Procure" means "to obtain; to acquire; to gain; to win; to get by effort or purchase; to provide; to furnish; to contrive; to forward; to bring about; to prevail on; to persuade; to solicit:" *Ib.*, 1134.

See *re* De Ros, 31 Ch. D., 81; Monaghan *v.* Taylor, 2 Times Rep., 685; Marsh *v.* Conquest, 17 C. B. N. S., 418; Stroud's Dict., 116.

(*s*) "Upon conviction thereof." See note (p), p. 23.

(*t*) "The County Gaol of the County." The meaning of the word "County" in regard to this, means County or union of Counties: R. S. O. 1887, c. 250, s. 2. See also secs. 22-27 of the same Act. As to transfer of prisoners to Central Prison see R. S. O. c. 238, s. 12.

By R. S. O. c. 243, no license shall be granted for retailing spirituous liquors within any gaol or prison; and if any gaoler, keeper, or officer of the prison, sells, lends, uses or gives away, or knowingly permits or suffers any spirituous liquors or strong drink to be sold, used, lent or given away in such gaol or prison or to be brought into the same other than such as may be prescribed by or given by the prescription or direction of a legally qualified medical practi-

takes place for a period not exceeding three months. (*u*) R. S. O. 1877, c. 181, s. 48.

68. If an officer (*v*) of any municipal corporation (*w*) is convicted of [having knowingly committed (*x*)] any offence under this Act, he shall, in addition to any other penalty (*y*) to which he may be liable under this Act, thereby forfeit

Forfeiture of office by municipal officer if convicted.

---

tioner, such gaoler, keeper, or other officer shall, for every such offence, forfeit the sum of $80, etc., and for a second conviction he shall forfeit his office.

(*u*) "Not exceeding three months" means for no more than three months. The word "month" means a calendar month: Int. Act, sec. 8, ss. 15. See Palmer *v.* Newell, W. N. (72) 9; R. *v.* St. George's, Southwark, 19 Q. B. D., 533.

(*v*) "If an officer." An officer is "a person invested with an office:" Worcester, 987. An architect to a School Board was held to be an officer within rule 7, Sch. 3, of the English Elementary Education Act, 1870, 33 & 34 Vic., c. 75: Scott *v.* Clifton School Board, 1 Cab. & El., 435. A Union Chaplain or Doctor is an officer within the Poor Law Amendment Act: R. *v.* Braintree Union, 1 Q. B., 180; R. *v.* Haslehurst, 13 Q. B. D., 253.

The Clerk to Stipendiary Magistrates appointed under 53 Geo. 3, c. 72, was held not an officer of a Borough, County or division of a County: R. *v.* Manchester, 9 Q. B., 458. Township Councillors are not Township officers: Wright *v.* Municipality of Cornwall, 9 U. C. R., 442; Daniels *v.* Municipality of Burford, 10 U. C. R., 478; Corporation of St. Vincent *v.* Grier, 13 Gr., 173. The Tie Inspector of a Railway Company is not an officer of the Company: Dalziel *v.* Grand Trunk Ry. Co., 12 L. J. N. S., 149; neither are an engine driver nor a paymaster of a railway: McLean *v.* Great Western Ry. Co., 7 P. R., 358. The overseer of highways was held to be an officer of a Municipality: R. *ex rel*, Richmond *v.* Tegart, 7 L. J., 128. See secs. 2, 6, 7, 127, 128, 129, 134.

(*w*) "The officers of a Municipal Corporation," appointed under the Municipal Act, consist of: 1. the head, called in Counties the *Warden*; in cities and towns, the *Mayor* and in townships and incorporated villages the *Reeve* thereof. 2. The Clerk, or some person appointed in his stead. 3. The Treasurer, or Treasurer *pro tem.* 4. The Assessors. 5. The Collectors. 6. The Auditors. 7. The Valuators: R. S. O. c. 184, secs. 243-269. See also Harrison Mun. Man., 5th ed., 179-197. The operation of the section is restricted to *officers* of Municipal Corporations. The *members* of Municipal Councils are treated of in the next section.

(*x*) "Is convicted." See note (*p*), p. 23.

"Having knowingly committed" are words added by 53 Vic., c. 56, s. 5; see note (*e*) to sec. 16, and note (*y*), p. 59.

"Any offence." An "offence" is defined to be: "the transgression of a law; an act committed against a law, or omitted where the law requires it: Worcester, 986. It is used as a *genus*, comprehending every crime and misdemeanor, or as a *species* signifying a crime not indictable, but punishable summarily, or by the forfeiture of a penalty: Wharton, 516; see also note (*o*), p. 29. It includes also such violations of Municipal Ordinances as are punishable by fine or imprisonment: State *v.* Cantieny, 34 Minn., 9 (1885).

(*y*) "In addition to any other penalty." The penalties imposed by this section are not in substitution for, but in addition to the ordinary penalties. The words "any other penalty" refer to penalties *ejusdem generis* not prescribed by this section.

and vacate his office and shall be disqualified from holding any office in any municipality in this Province for two years thereafter (*z*). R. S. O. 1877, c. 181, s. 49, as amended by 53 V. c. 56, s. 5.

Forfeiture of office by member of council if convicted.

69. If a member (*a*) of any municipal council (*b*) is convicted of [having knowingly committed (*c*)] any offence under this Act, he shall, in addition to any other penalty to which he may be liable under this Act, thereby forfeit and

---

(*z*) "Forfeiture" is a penalty for an offence or unlawful act, or for some wilful omission whereby a person loses his property, right or office, together with his title, which devolves upon others: see Wharton, 310; Worcester, 579. The word "forfeit" means not only an actual taking away of property or of a right in the breach of a condition, but also the doing or suffering a thing which creates liability to such a deprival: *re* Levy, 30 Ch. D., 119. It involves the idea of permanent loss or liability thereto: Stroud's Dict., 298; see also note (*o*), p. 28. "Forfeit and vacate" means that he shall not only be liable to lose his office, but that it shall be taken away from him and rendered vacant, and that he shall quit possession of it. This is a peremptory mandate, and disobedience to it would render the offender liable to indictment; see notes to sec. 66. The offender will be personally incapable of holding any office in any Municipality in the Province for two years.

"Any Municipality" is defined by the Municipal Act to mean "any locality, the inhabitants of which are incorporated or are continued or become so under this Act." R. S. O., c. 184, s. 2, ss. 1.

See notes to sec. 69.

(*a*) "A member." See note (*n*) to sec. 67.

(*b*) "Any Municipal Council." The members of Municipal Councils are, in counties, the Reeves and Deputy-reeves of the townships and villages within the county, and of any towns within the county which have not withdrawn from the jurisdiction of the Council of the County; in cities, the Mayor and three Aldermen for every ward; in towns, the Mayor and three Councillors for every ward, when there are less than five wards, and two Councillors for each ward when there are five or more, and if the town remains in the jurisdiction of the County Council, then a Reeve shall be added and a Deputy-reeve for every 500 names of persons entitled to vote at Municipal elections appearing on the last revised voters' list; in incorporated villages the Reeve and four Councillors with one additional Councillor for every 500 persons entitled to vote at Municipal elections on the last revised voters' list; in townships, the Reeve and four Councillors, one Councillor being elected for each ward, where the township is divided into wards, but if the township has the names of 500 persons entitled to vote at Municipal elections on the last revised voters' list, then the Council shall consist of a Reeve, Deputy-reeve, and three Councillors, and for every 500 additional names of persons entitled to vote on such list, there shall be elected an additional Deputy-reeve instead of a Councillor. See R. S. O., c. 184, s. 64, *et seq.* as amended by 51 Vic., c. 28, secs. 7, 8; Harrison's Mun. Man., 5th ed., 60-67.

(*c*) "Having knowingly committed" is inserted here by 53 Vic. c. 56, s. 6. See note (*x*), sec. 68, and note (*y*), p. 59.

The last section is restricted to officers of Municipal Corporations while this section applies to the members of Municipal Councils.

See notes to sec. 68.

vacate his seat, and shall be ineligible to be elected (*d*) to or to sit or vote in any municipal council for two years thereafter; and if any such person, after the forfeiture aforesaid, sits or votes in any municipal council, he shall incur a penalty of $40 for every day he so sits or votes. R. S. O. 1877, c. 181, s. 50, amended by 53 Vic., c. 56, s. 5. Penalty.

70. Any person (*e*) who sells or barters (*f*) spirituous, Penalty for selling

(*d*) "Ineligible to be elected" means literally that such person cannot be chosen. A person who is "ineligible," therefore, cannot be a candidate. "He that cannot be admitted cannot be elected; and the votes given to a man '*ineligible*,' being given in vain, the highest number of an eligible candidate becomes a majority:" Johnson. The expression refers as well to disqualification to hold, as to disqualification to be elected to, an office: State *v.* Murray, 28 Wis., 99 (1871).

The consequences of being found guilty of an offence under this section are: (1) Liability to the penalty imposed by this Act for the particular offence committed; (2) Forfeiture of the seat; (3) Personal incapacity, for two years thereafter, to be a candidate at a Municipal election or to sit and vote in any Municipal Council; and (4) a penalty of $4 for every day such offender may sit and vote in the Municipal Council after such disqualification.

"After the forfeiture aforesaid" refers to the time of the conviction, as forfeiture does not ensue until conviction.

(*e*) "Any person." See note (*g*) to sec. 11, ss. 10.

In R. *v.* Williams, 42 U. C. R., 462, it was held that the wife of the occupant of a house in which a sale took place was liable to be convicted, her husband being in gaol at the time; and that a married woman or servant who commits the act of selling contrary to the law is included in the expression "any person who sells." See also R. *v.* Howard, 45 U. C. R., 346, in which it was held that the Legislature intended to include a servant who sells without the authority of the occupant; and R. *v.* Campbell, 8 P. R., 55, where a married woman was held liable although the sale took place in her absence.

It was held that a conviction of two persons under this sec. was bad, as they could not be jointly convicted, nor one penalty awarded against them jointly, and that such a conviction could not be amended: R. *v.* Sutton, 42 U. C. R., 220; see also R. *v.* Justices of Middlesex, 2 Q. B. D., 520; R. *v.* Ambrose, 16 O. R., 251.

(*f*) "Who sells or barters." A sale implies the transfer of property for money, though time may be given for payment; and so when a liquor dealer furnishes liquor and receives in payment therefor pool-checks, which he has previously sold, worth the price of the liquor, the transaction is not a sale but a 'barter': Massey *v.* State, 74 Ind., 368. Where a club was formed, the purposes of which, as described in its charter, were as follows: "The 'Concordia' shall be dedicated to the intellectual, moral and social improvement of its members, the refinement of their tastes, and the development of good feeling among them. In furtherance of these objects it shall afford them opportunities for scientific cultivation, and rational amusements, and shall place before them, as far as may be, the best models of musical and dramatic art." Lager beer would not seem to be calculated to further these objects, but the Court held: "We conclude that the members of such associations as the 'Concordia' is admitted to be, who obtain refreshments and liquor at the club by paying into the common fund the price fixed by the regulations of the

society, cannot be said in any sense to buy their liquors from the Corporation, nor can the Corporation be said to *sell* them to the members within the meaning of the Act of 1866. It is argued by the Attorney-General that the liquors and other supplies are purchased by the Corporation, and are consequently its property; and when furnished to a member are sold to him, and if the sale is made on Sunday it is an offence within the Act of 1866. But that Act equally prohibits the sale of any article of merchandise whatever on Sunday, and if the argument of the appellee be sound, the society could not furnish a meal to a member on Sunday without violating the law and subjecting itself and its officers to the penalties prescribed by the Act of 1866. We do not so construe the law. The society is not an ordinary Corporation, but a voluntary association or club united for social purposes; each member must be elected and each is joint owner of the property and assets and entitled to the privileges of the society as long as he remains a member. Among these privileges is that of partaking of the provisions and refreshments provided for the use of its members. Such a transaction is not a barter or sale in the way of trade, and therefore is not within the purview or meaning of the Act of 1866:" Seim *v.* State, 55 Md., 566; S. C. 39, Am. Rep. 419. (Under our law such transactions are made illegal. The case is cited chiefly for its reference to the meaning of "sale and barter:" see sec. 58 and notes thereto.)

Where an Association was formed for the avowed purpose of promoting temperance, friendship, etc., they claimed to have bought the dram shop of one of their members, who was elected their treasurer, and who continued in the possession of the dram shop, having no license to sell intoxicating liquors. Each member was required to pay $1, for which he received a ticket with the numbers from one to twenty upon it, and upon presenting this ticket at the bar, the member received liquors or cigars, as he wished, and paid for the same by having numbers punched out of his ticket, each number representing five cents. Any person could become a member by paying $1. The treasurer received all the money, and rendered no account to the other members. He also bought all liquors and cigars. *Held* that this was a device to evade the law, and that the treasurer was guilty of unlawfully selling intoxicating liquors. In such a case, if the liquors really belonged to the Association, and the treasurer acted for them, then all the members would be guilty of unlawful selling, as the liquor would be partnership stock, and the company would have no more right to sell to the individual members, or partners, than a stranger would: Rickart *v.* People, 79 Ill., 85.

A Society or Club of persons, having a treasurer and other officers, met every Sunday, and each person on becoming a member, paid into the treasury a certain sum and monthly assessment thereafter, to form the basis of a fund to pay expenses and for relief, and the treasurer, by order of the Club, and for the Club, on each Saturday evening purchased a keg of "lager beer" and placed it in the hall where the meetings were held, and on Sunday whenever a member desired to have a glass of beer he got it, drank it on the premises and delivered to the treasurer five cents, which money was placed in the treasury to keep up the funds, pay expenses, and for relief for sickness and other mishaps to members: *Held*, that this constituted a *sale* by the treasurer, as agent of the Club, within the meaning of the Statute prohibiting the sale of intoxicating liquors on Sunday: Marmot *v.* State, 48 Ind., 21; see also Commonwealth *v.* Smith, 102 Mass., 144; State *v.* Mercer, 32 Iowa, 405. The foregoing cases are cited in Browne on the Judicial Interpretation of Common Words and Phrases, pp. 384-392.

See also cases cited in notes on pages 5, 59, *ante*.

"In a 'barter,' the consideration, instead of being in money, is paid in goods or merchandise susceptible of a valuation:" Commonwealth *v.* Davis, 12 Bush, 241, (1876); Cooper *v.* State, 37 Ark., 418, (1881).

fermented or manufactured liquors of any kind, or intoxicating liquors of any kind, (*g*) without the license therefor by law required, (*h*) shall (*i*) for the first offence, on conviction thereof, (*j*) forfeit and pay a penalty of not less than

without license.

(*g*) "Spirituous, fermented, or manufactured liquors of any kind." See note (*b*), p. 2, note (*s*), p. 78, and note (*z*) p. 96, *ante*.

(*h*) "Without the license therefor by law required." A license irregularly issued, when there is no fraud in the obtaining of it, is a protection against penal consequences: Stevens *v.* Emson, L. R., 1, Ex. D., 100. The proof of being licensed rests with the defendant: see sec. 114, ss. 1. The production of a license, which on its face purports to be duly issued, is *prima facie* evidence in favor of the defendant: sec. 114, ss. 2; see also R. *v.* Dobson, 7 East, 218; and it was held that it was no objection to a conviction, that it did not show defendant was not licensed: R. *v.* Young, 7 O. R., 88.

A married woman was lessee of certain premises in which her husband sold liquor without a license. *Held*, that she was liable although the sale took place in her absence: R. *v.* Campbell, 8 P. R., 55.

A servant of the keeper of an unlicensed tavern is liable to be convicted for selling liquor in the keeper's absence, but Cameron, J., would otherwise have held but for R. *v.* Williams, 42 U. C. R., 462; R. *v.* Howard, 45 U. C. R, 346. See cases cited in notes to sec. 49.

A conviction for selling liquor without a license, purporting to be made by three Magistrates, but signed only by two, was returned with a *certiorari*: Held, if an objection at all, a ground for sending back the writ, that the third Magistrate might sign the conviction: R. *v.* Young, 7 O. R., 88.

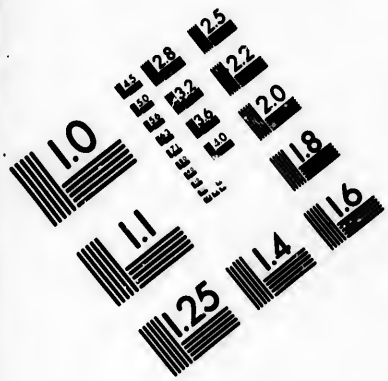
It was held no objection to a conviction under this section, that the offence was selling liquor to an Indian contrary to the Indian Act of 1880. For if so, the defendant was guilty of two offences, one under this Act and one under the Indian Act, and the defendant might be liable to a penalty under both Acts: R. *v.* Young, 7 O. R., 88.

(*i*) "Shall." See note (*l*) to sec. 3, p. 8, and note (*a*), sec. 32, p. 68.

No Magistrate, or Justice, or Justices, License Commissioner, or Inspector, or Municipal Council, or Municipal officer, shall suspend or compromise any penalty or punishment inflicted under this Act. See sec. 87.

(*j*) "On conviction thereof." The word "convicted" or the "conviction" of a person accused is equivocal. In common parlance, no doubt it is taken to mean the verdict at the time of the trial; but in a strict legal sense it is used to denote the judgment of the Court; per Tindal, C. J., Burgess *v.* Boetefeur, 7 M. & G., 481; and accordingly it was there held that a person who pleaded guilty to keeping a brothel on an indictment instituted under s. 5, 25 Geo. 2, c. 36, and who at a subsequent Sessions came up for judgment, was not convicted when he pleaded, but when judgment was pronounced. But if under the same section the plea of guilty be followed by an order that defendant enter into recognizance to come up for judgment when called on, he is then "convicted:" per Stephen, J., Jephson *v.* Barker, 3 Times Rep., 40; see Sutton *v.* Bishop, 1 W. Bl., 665; Lee *v.* Gansel, Cowp. 1, cited Stroud's Dict., 159. But in the United States it was said that the word "conviction" ordinarily signifies "verdict," not "judgment:" United States *v.* Watkinds, 6 Fed. Rep., 158; Blair's case, 25 Gratt., 850. "Upon conviction" in s. 91 of the Imperial Elementary Education Act, 1870, 33 and 34 Vic., c. 75, means "upon summary conviction:" R. *v.* Gaunt, 43 L. T. N. S., 696.

The charge in the conviction should be certain and so stated as to be pleadable in the event of a second prosecution for the same offence: R. *v.* Hoggard, 30



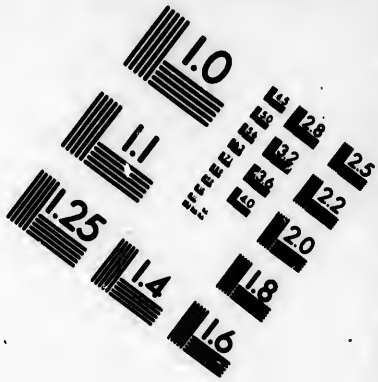
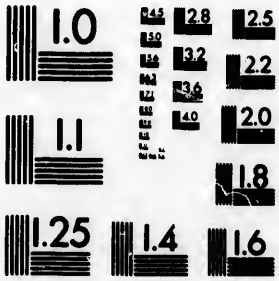
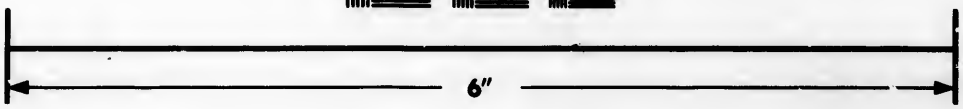


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

U. C. R., 152; R. *v.* French, 34 U. C. R., 403, and other cases cited in notes to sec. 105. Where the defendant was convicted for selling liquor without a license, and for allowing liquor to be consumed on the premises, and one penalty was inflicted "for his said offence:" *Held* bad in not shewing for which offence the penalty was imposed: R. *v.* Young, 5 O. R., 184*a*. See also R. *v.* Solomon, 1 T. R., 251; R. *v.* Chandler, 14 East, 267; R. *v.* Clennan, 8 P. R., 418; R. S. C. c. 178, s. 26; Wilson *v.* Graybiel, 5 U. C. R., 227; R. *v.* Spain, 18 O. R., 385.

But it is not necessary to mention the Statute or the person to whom the liquor was sold: R. *v.* Strachan, 20 C. P., 182; R. *v.* Faulkner, 26 U. C. R., 529; but see R. *v.* Cavanagh, 27 C. P., 537.

Nor is it necessary to mention the kind and quantity; a conviction setting out that defendant sold spirituous liquor by retail without license, stating time and place was held sufficient: R. *v.* King, 20 C. P., 246.

The conviction should also shew the place where the offence was committed, in order that the jurisdiction of the convicting Justices may appear: R. *v.* Young, 5 O. R., 184*a*.

The conviction should correspond with the minute of the actual adjudication and where at the close of the case the Magistrate made a minute in which he stated that he found the defendant guilty, and imposed a fine of $50 and costs to be paid by a date named, and awarded imprisonment for thirty days in default of payment, and afterwards when drawing the formal conviction he adopted the form J 1. in the Schedule to the Summary Conviction Act, directing that in default of payment by the day named, the penalty should be levied by distress and sale, and awarded imprisonment in default of sufficient distress. The conviction was held to be open to the objection that it did not correspond to the minute of adjudication and therefore could not be supported for want of jurisdiction in the Magistrate to make it: R. *v.* Brady, 12 O. R., 358.

The quashing of a by-law under which a license had been granted does not nullify the license, and a conviction for selling without a license, cannot under these circumstances be supported: R. *v.* Stafford, 22 C. P., 177.

See R. *v.* Denham, 35 U. C. R., 503, cited in note (*b*) to sec 52; R. *v.* Breen, 36 U. C. R., 84, cited in note (*v*) to sec 54; R. *v.* Duquette, 9 P. R., 29, cited in note (*t*) to sec. 49; R. *v.* Palmer, 46 U. C. R., 262.

It is not necessary to negative the exceptions: R. *v.* Denham, 35 U. C. R., 503; R. *v.* Breen, 36 U. C. R., 84.

See also cases cited in notes to secs. 49, 50, 51 and 52.

Where there is no evidence that any intoxicating beverage has been sold and therefore no evidence to support a conviction, the conviction will be quashed: R. *v.* Beard, 13 O. R., 608.

As to variance see R. *v.* Allen, 15 East, 333; Leary *v.* Patrick, 15 Q. B., 266, R. S. O., c. 74, s. 1; R. S. C.. c. 178, s. 6; R. *v.* Hodgins, 12 O. R., 367.

A conviction under 40 Geo., 3, c. 4, for selling liquor without license, was quashed because the information did not charge any special offence, or shew time and place: R. *v.* Ferguson, 8 O. S., 220.

A conviction for selling "a certain spirituous liquor called whiskey," was held a sufficient statement of the offence under the clauses 29, 30 Vic., c. 51, s. 254, although the phrase used there is "intoxicating liquor of any kind," for intoxicating liquors and spirituous liquors are convertible terms, and whiskey is recognized as a spirituous liquor: Reid *v.* McWhinnie, 27 U. C. R., 289.

The principle that a wife is exempt from liability in certain criminal acts upon the ground of coercion on the part of the husband, does not apply when the wife has committed the offence by the husband's order or procurement, if she committed it in his absence; in such a case the presumption arises that

$50 besides costs, and not more than $100 besides costs; (*k*) and in default of payment (*l*) thereof he shall be impris-

she acted by coercion of her husband, and the presumption, when it does arise, is removable by proof that the wife was the more active party, even when the offence was committed in the presence of her husband; and it was held she could be convicted of selling gin against the injunctions of 9 Geo. 2, c. 23; Croft's case, Str. 1120, Russ. on Crimes., 3rd. Ed., 20, 21; per Gwynne, J., R. *v.* Williams, 42 U. C. R., 462.

"The first offence." The penalties prescribed by the section are on a graduated scale. For the first offence the person convicted is made subject to a pecuniary penalty of not less than $50 besides costs, and not more than $100 besides costs, and in default of payment thereof he shall be committed to the county gaol of the county in which the offence is committed for a period of not less than three months. The minimum period of imprisonment is given, but no limit is fixed as to the maximum period.

Where a second or subsequent offence is not charged in the information, the proceedings will be as for a first offence in every case, and a conviction may be had as for a first offence, although there may have been prior convictions; see sec. 101, ss. 3; see R. *v.* Rodwell, 5 O. R., 136.

There is no provision in this section for the collection of the penalty by distress, and it was recently held that the Justices had no power to award distress under this section: R. *v.* Brady, 12 O. R., 358; R. *v.* Lynch, 12 O. R., 372.

In R. *v.* Menary, 19 O. R., 391, Armour, C. J., said: "I doubt very much the power of Justices to issue a distress warrant under section 70, or to make the imprisonment thereby imposed dependent upon payment of the fine and costs." See further notes to sec. 100, and R. *v.* Higgins, 18 O. R., 148; R. *v.* Clarke, 19 O. R., 601, cited in notes to sec 102.

But by sec. 7, 53 Vic. c. 56, the power to make imprisonment dependent on payment of the fine and costs has since been expressly given in all cases where the Justices are authorized, as they are under this section, to adjudge that a penalty in money and costs be paid, and that in default the defendant be imprisoned. See sec. 88 and notes thereto.

The penalty must not be in excess of that warranted by the Statute: R. *v.* Sparham, 8 O. R., 570; R. *v.* Logan, 16 O. R., 335; and when the maximum penalty was imposed, a defect in the conviction in the provision for distress, is not cured under R. S. C. c. 178, secs. 87, 88. See also R. *v.* Smith, 16 O. R., 454.

Where more than one Justice of the Peace takes part in a conviction, an immediate return thereof to the Clerk of the Peace is necessary: Atwood *v.* Rosser, 30 C. P., 628; R. S. O. c. 76, s. 1.

A greater penalty cannot be imposed by the Municipality or the Board of License Commissioners than that which the Statute declares: R. *v.* Lennox, 26 U. C. R., 141.

No penalty can be recovered for selling liquor without a license under the Imperial Act, 14 Geo. 3, c. 88: Andrew *v.* White, 18 U. C. R., 170.

(*k*) "Besides costs." Held that the Magistrates in ordering the defendant to pay $1 for the use of the hall for trying the case were clearly exceeding their jurisdiction: R. *v.* Elliott, 12 O. R., 524. It was held also that the imposition of the costs of commitment and conveying the defendant to gaol was unauthorized, and that R. S. O., c. 74, s. 1, did not affect the question: R. *v.* Rowlin, 19 O. R., 199; R. *v.* Wright, 14 O. R., 668; R. *v.* Ferris, 18 O. R., 476; R. *v.* Tucker, 16 O. R., 127; R. *v.* Good, 17 O. R., 725; R. *v.* Grant, 18 O. R., 169. But since the passing of the Act 53 Vic., c. 56, s. 7, ss. 1, the Magistrates have

oned in the county gaol of the county in which the offence was committed, for a period of not less than three months, and to be kept at hard labor, in the discretion of the convicting magistrate; and for the second offence, (*m*) on conviction thereof, such person shall be imprisoned in such gaol for the period of four months, to be kept at hard labor in the discretion of the convicting magistrate; and for the third or subsequent offence, (*n*) on conviction thereof, such

Punishments for second and third offences.

power to impose the costs of commitment and conveying defendant to gaol; see sec. 71, ss. 2, and sec. 88 and notes thereto. Even although the Justices had no power to require costs of conveying the defendant to gaol to be paid by him the conviction was amendable: R. *v.* Menary, 19 O. R., 691. Where it was alleged that too large a sum had been charged for costs, it was held that the conviction being regular on its face, and not showing any excess of jurisdiction, such an irregularity (even if it existed) could not be enquired into on an application for prisoner's release: R. *v.* Sanderson, 12 O. R., 178. See sec. 100 and notes thereto.

(*l*) "Default of payment." See notes to sec. 67. "If a fine is ordered to be paid forthwith and it is not so paid, there is, then, the default in payment which calls for the alternative punishment of imprisonment:" per Armour, C. J., R. *v.* Menary, 19 O. R., 691.

(*m*) For a second offence the person convicted shall be imprisoned in the county gaol of the county in which the offence was committed for the period of four months, without the option of a fine, to be kept at hard labor in the discretion of the convicting Magistrate.

As to the meaning of the term "second offence" see sec. 101, ss 6.

The principle of treating repeated offences and those offenders who by committing them appear to be hardened and incorrigable with greater severity than such as appear for the first time, has been given effect to by the Legislature for a very long period. By 15 Geo. 2, c. 28, s. 3, the counterfeiting of coin or uttering of counterfeit coin was punishable by one year's imprisonment, but it was provided that for a second offence the person convicted should be adjudged "guilty of felony, without the benefit of clergy," and in 1799 it was held as a matter of pleading that in order to warrant the greater punishment it was necessary to shew in one and the same count of the indictment not only the first, but the second commission of the offence: see judgment of Harrison, C. J., Stoness *v.* Lake, 40 U. C. R., 320, at p. 330; see also R. *v.* Tandy, 2 Leach, 833; R. *v.* Martin, 2 Leach, 923, cited therein.

"The proof of these, being material allegations, is of course necessary:" see R. *v.* Martin, L. R. 1, C. C. 214, cited in Stoness *v.* Lake, 40 U. C. R., at p. 330. By analogy there would appear to be no doubt that in strictness the information for a second or subsequent offence should shew whether the offender was previously convicted, and if so, whether once or twice, in order to justify the graduated scale of punishment prescribed by this section: R. *v.* French, 34 U. C. R., 403, cited in judgment of Harrison, C. J., in Stoness *v.* Lake, 40 U. C. R., 320; R. *v.* Justices of Queen's, 2 Pugs. N. B., 110; see also sec. 101, ss. 4.

But where the defendant disputed the evidence of a first conviction, but did not take objection to an information in which he was not charged with a *second* offence, it was held that he had waived the objection to the information: Stoness *v.* Lake, 40 U. C. R., 320. See sec. 101 and notes thereto.

(*n*) For the *third* or any *after* offence the penalty is imprisonment for *six*

person shall be imprisoned in such gaol for the period of six months, to be kept at hard labor (*o*) in the discretion of

months, to be kept at hard labor, in the discretion of the convicting Magistrate. The mode of proving the previous offences is by production of a certificate under the hand of the convicting Justices or Police Magistrate or of the Clerk of the Peace, without proof of his signature or official character, or other satisfactory evidence. See sec. 101, ss. 2, and notes thereto. The authorities cited in the foregoing notes with regard to a second offence are applicable to a third or any subsequent offence.

There is no limit of time specified between the first, second, third or any subsequent offence. Any number of offences may be committed on the same day, but the increased penalty or punishment shall only be recoverable in case the offences are committed on different days and after information is laid as for a first offence: R. *v.* Rodwell, 5 O. R., 186, and other cases in notes to sec. 101; see sec. 101, ss. 4; and as to meaning of "third offence," see sec. 101, ss. 6.

(*o*) "The punishment of imprisonment consists in the detention of the offender in prison, and in his subjugation to the discipline appointed for prisoners during the period expressed in the sentence:" R. S. C., c. 181, s. 28 (7), Stephen's Digest Crim. Law. Art. 4, cited in Burbidge's Dig., 15. "Imprisonment is of two kinds: (i.) Imprisonment with hard labor. (ii.) Imprisonment without hard labor." As to hard labor, see note below. See Burbidge's Dig., 15, 16; Wharton's Dict., 360; 1 Stephen's Hist. of Crim. Law, 483-487.

The power of imprisoning is generally given either as an original punishment or as the means of enforcing payment of a pecuniary fine: See Slater and Wells, 9 L. J., 21; *re* Greystock and Municipality of Otonabee, 12 U. C. R., 458-462, and in regard to offences cognizable by summary jurisdiction is derived solely from legislative authority. See Paley on Con., 5th. Ed., 315. Statutes which provide for the summary trial of offenders are strictly construed. See R. *v.* Barton, 12 Q. B., 889.

When a Statute provides "imprisonment" without stating its commencement it commences immediately: Foggassas' case, Bonham's case, Plow. Com., 17*b*, and 8 Rep., 119; but if there be no limit to its duration, the prisoner must remain at the discretion of the Court: Dwar. 674, citing Dalt., 410.

The defendant being present in Court on a charge which was disposed of, was, without any summons having been issued, charged with another offence, namely, of selling liquor without a license. The information was read over to him to which he pleaded "not guilty," and evidence for the prosecution having been given, he thereupon asked for and obtained an enlargement till the next day, when, on his not appearing, he was convicted in his absence and fined $50 and costs, and in default, without any distress having been directed, imprisonment was awarded. Held, that under the circumstances the issuing of a summons was waived. Held, also, that the conviction awarding imprisonment in default of payment was properly drawn for by this section (70), under which the conviction was made, there was no power to direct distress: R. *v.* Clarke, 19 O. R., 601. But see note (*k*) *supra*.

The defendant was convicted before two Justices of the Peace of selling liquor without a license contrary to sec. 49. A conviction was drawn up and filed with the Clerk of the Peace in which it was adjudged that the defendant should pay a fine and costs, and if they were not paid forthwith, then, inasmuch as it had been made to appear on the admission of the defendant that he had no goods whereon to levy the sums imposed by distress, that he should be imprisoned for three months, unless those sums and the costs and charges of conveying him to gaol should be sooner paid. An amended conviction was afterwards drawn up and filed, from which the parts relating to distress and the

the convicting magistrate; (*p*) and in the event of the imprisonment of any person upon several warrants of commitment under different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent. (*q*) 49 V., c. 39, s. 4.

---

costs of conveying to gaol were omitted. A warrant of commitment directed the gaoler to receive the defendant and imprison him for three months, unless the said several sums and the costs of conveying him to gaol should be sooner paid. Upon a motion to quash the convictions and warrant: *Held*, that the mode adopted for bringing the defendant before the Justices was not a ground for quashing the conviction and *semble*, also, that it was not improper to arrest him instead of merely summoning him: *Held* also, that the fact that the defendant was remanded by only one Justice could not affect the conviction.

Held also, that if the Justices were bound to issue a distress warrant, the insertion of the words relating to the admission of the defendant that he had no goods, was proper; and if they had no power to issue a distress warrant, these words were mere surplusage and did not vitiate the conviction:

Held also, that if the Justices had no power to require the costs of conveying him to gaol to be paid by the defendant, the conviction was amendable, as and when it was amended; for the amendment was not of the adjudication:

Held, lastly, that having regard to sec. 105 of the R. S. O., c. 194, and to the evidence before the Justices, the conviction and warrant should not be quashed: R. *v.* Menary, 19 O. R., 691; see 53 Vic., c. 56, s. 7, ss. 1, cited above.

"Hard labor." "Imprisonment in a penitentiary, in the Central Prison for Ontario, in the Andrew Mercer Ontario Reformatory for females, and in any reformatory for females in the Province of Quebec, is with hard labor, whether so directed in the sentence or not: R. S. C., c. 181, s. 28 (4). Imprisonment in a common gaol or a public prison, other than those last mentioned, (*a*) may be with or without hard labor in the discretion of the Court or person passing sentence, if the offender is convicted on indictment under 'The Speedy Trials Act,' or before a Judge of the Supreme Court of the North-West Territories; (*b*) may, in other cases, be with hard labor, if hard labor is part of the punishment for the offence of which such offender is convicted. And if such imprisonment is to be with hard labor the sentence must so direct:" Burbidge's Dig., 16, 17; see also Stephen's Dig., Art. 6; R. S. C., c. 181, s. 28 (5), as enacted in 51 Vic., c. 47, s. 1, (D).

It was formerly held that the Provincial Legislature had no power to impose hard labor as a penalty: see R. *v.* Black, 43 U. C. R., 180; R. *v.* Hodge, 36 U. C. R., 141; R. *v.* Frawley, 46 U. C. R., 158; R. *v.* Allbright, 9 P. R., 25; R. *v.* Pipe, 1 O. R., 43. But the question was decided in Hodge *v.* The Queen, 9 App. Cas., 117, in which it was held that No. 15 of sec. 92 of the B. N. A. Act of 1867, confers the power upon the Provincial Legislature of imposing "hard labor" as a penalty, and that the word "imprisonment" in that Act means imprisonment with or without hard labor. See also R. *v.* Boardman, 30 U. C. R., 553; R. *v.* McMillan, 2 Pugs. N. B., 110.

(*p*) "In the discretion of the convicting magistrate." See note (*d*) sec. 19, p. 48.

(*q*) "The terms of imprisonment under such warrants shall be consecutive and not concurrent."

In case a person is convicted of more than one offence under the Act, whether for selling liquor without license or for any other violation of this Act, and

71. [(1) Offences (*r*) against sub-section 1 of section 54 (*s*) of this Act shall be punishable (*t*) on summary conviction as follows (*u*) :— Penalties for contravention of sec. 54 (1).

whether the different warrants of commitment are issued in default of payment of a penalty or of distress for same, or in carrying out the penalty for a second or subsequent offence under this section or otherwise, the terms of imprisonment are to follow each other and are not to be contemporaneous.

For warrant of commitment see Sch. J.

(*r*) "Offences." See note (*x*) to sec. 68.

(*s*) Sub-sec. 1 of sec. 54 prohibits the sale or disposal of intoxicating liquors, in places where such liquors are or may be sold, during the hours between seven o'clock on Saturday night and six o'clock on Monday morning, or during the time such places are to be closed under any Statute in force in the Province, or by any by-law of the Municipality, and also prohibits the drinking of liquors on any such premises during such time. See notes to that section.

(*t*) "Shall be punishable." See notes to sec. 70.

(*u*) Whenever it is stated that an offender is liable, "on summary conviction," to any punishment, the meaning is that he is so liable on summary conviction before one or any greater number of Justices of the Peace, or before any person having the authority of two or more Justices of the Peace: R. S. C., c. 174, s. 2 (*b*): c. 178, s. 5. Hatton's case, 2 Salk. 477; Dalt., c. 6, s. 8; R. *v.* Weale, 5 C. & P., 135; cited in Burbidge's Dig., 1. According to this definition offences against sub-sec. 1 of sec. 54, may therefore be tried before one or any greater number of Justices of the Peace, or before any Stipendiary, or Police Magistrate, within the limits of their jurisdiction. But by sec. 96, all prosecutions for the punishment of any offence against the provisions of sec. 54, &c., may take place before any two or more Justices of the Peace having jurisdiction in the county or district in which the offence is committed. See notes to sec. 96.

The offences punishable under sub-section 1 of section 71, apply only to places where liquors are or may be sold by wholesale or retail.

The punishment for the first offence is a fine of not less than $20 and not more than $40, besides costs, and the Justices shall order that the same and any sums also awarded for costs may be recoverable by distress and sale of the goods and chattels of the defendant, and that in default of sufficient distress the offender may be imprisoned in the County gaol of the County in which the conviction is made for a period not exceeding fifteen days. See sub-sec. 2 of this sec. See also notes to sec. 70.

For a second offence the penalty is a fine of not less than $40 nor more than $80, besides costs, or in the alternative twenty days imprisonment.

A conviction imposing both fine and imprisonment would be bad. It will be noted, however, that when imprisonment is awarded, it is to be imprisonment with hard labor. Magistrates have no discretion in this matter as in the case of a conviction under sec. 70. The Magistrate shall also adjudge that the penalty and costs may be recoverable by distress, etc., as in the case of a first offence, and that in default of sufficient distress the offender be imprisoned for twenty days. See sub-sec. 2. See also notes to sec. 70.

In the case of a second offence in was held that a conviction imposing a fine of $40, and in default of sufficient distress, imprisonment for ten days at hard labor, was bad: R. *v.* Black, 48 U. C. R., 180; and it would still be bad as the penalty imposed was not authorized. See notes to sec. 70.

For the third offence the penalty is not less than $80 and not more than $100, besides costs, or fifty days imprisonment with hard labor. As in the case of a conviction for a second offence, the Magistrates cannot award two penalties

First offence. (*a*) For the first offence, by the imposition of a penalty of not less than $20, and not more than $40, besides costs.

Second offence. (*b*) For the second offence by the imposition of a penalty of not less than $40 and not more than $80, besides costs, or twenty days' imprisonment with hard labor.

Third offence. (*c*) For the third offence by the imposition of a penalty of not less than $80 and not more than $100 besides costs, or fifty days' imprisonment with hard labor (*v*), and such conviction for a third offence shall in addition to any other punishment by law provided, *ipso facto* (*w*), operate as a forfeiture (*x*) of the license held by the person so convicted (*y*), and disqualify (*z*) him from obtaining a license for two years thereafter (*a*).

---

under this clause. They may adjudge that the defendant pay the pecuniary penalty, which must not exceed $100, or they may adjudge that he be imprisoned for fifty days with hard labor, but they have no power to order the infliction of both penalties. But if the pecuniary penalty is awarded, then they shall also adjudge, as in the case of a first and second offence, that the same and any sums also awarded for costs may be recoverable by distress, etc. See sub-sec. 2.

See also notes to sec. 70.

And in addition to any other punishment, the conviction for a third offence, of itself, and without any further adjudication or proceeding being taken, works (1) a forfeiture of the license by the person convicted, and (2) his disqualification for holding or obtaining a license for two years.

Convictions imposing increased penalties for second and third offences are bad, unless proceedings have been taken for the first offence: R. *v.* Rodwell, 5 O. R., 186. See also sec. 101, ss. 4.

(*v*) As to imprisonment and the infliction of "hard labor" as a penalty. See note (*o*) to sec. 70.

As to conviction, see note (*j*) to sec. 70.

(*w*) "*Ipso facto*" means "by the very act itself"—originally a censure of excommunication in the Ecclesiastical Court, immediately incurred for divers offences after lawful trial: see Wharton, 889.

(*x*) "Forfeiture." See note (*o*) to sec. 11, p. 23 and note (*m*) sec. 37, p. 80.

(*y*) "License held by the person so convicted," applies to any license over which the Legislature has control. It could not apply to licenses issued by the Dominion Government. See notes on pages 1 and 15, note (*tt*) p. 72 and notes to sec 51.

(*z*) "Disqualify." See notes to secs. 68 and 69.

(*a*) Two years thereafter, means two years from the date of conviction. See note (*g*) p. 14 and note (*r*) p. 24.

In the section as originally enacted, it was provided that in case of conviction, the penalty "shall 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 the said place or places, who shall be found by himself, herself, or themselves, or his, her, or their servants or agents, to have contravened the enactment in the preceding section," &c, and it was held that the clause aimed wholly against licensed places and that the proprietors, tenants and agents in occupancy were the persons to be proceeded against. That the proprietor, merely as such, was not liable. He should be also the proprietor in occupancy. The license to sell is granted to the person in occupancy and not to the mere owner of the property. The occupant who is licensed is amenable to certain penalties for acts done, or omitted to be done, on the premises in the conduct of the business. The owner of the house or land has no such liabilities merely from his being such owner. Therefore, where it was stated in a conviction, "that one G. P. of, &c., Innkeeper, after the hour of seven in the evening and before the hour of twelve of the night of Saturday," &c., "in and at his tavern at, &c., being a place where intoxicating liquors are allowed to be sold by retail, did unlawfully sell and otherwise dispose of, and permit and allow to be drunk, &c., one glassful of beer," &c., it was held that the conviction was bad, as not necessarily bringing the defendant within the class of persons against whom this section was aimed, for the word "Innkeeper" only amounts to a mere description and not to an averment of his filling such a character; and the words "in and at his tavern," would not necessarily mean the proprietor in occupancy, &c., to whom the license is granted, and who alone is liable, but would also include the owner or proprietor, even if he were not the occupant: R. *v.* Parlee, 23 C. P., 359. But the section as amended, and as it now stands, simply provides that "offences against sub-section 1 of sec. 54, shall be punishable on summary conviction, as follows:"

In other words, sub-section 1 of sec. 54 describes the offence, and sub-section 1 of this section merely prescribes the penalty.

See notes to secs. 49, 54 and 70, and see especially remarks in notes to sec. 73 as to the liability of master, servant, and manager.

An information stating that defendant, "a licensed hotel-keeper in the town of P., did, on Sunday, the 2nd July, 1876, at the hotel occupied by him in the said town, dispose of intoxicating liquor to a person who had not a certificate therefor," etc., and the conviction thereunder stated that the defendant was convicted "upon the information and complaint of J. R., the above-named complainant, and another, before the undersigned," etc., "for that the defendant," etc., in the words of the information. Held that the person to whom the liquor was sold should have been named and described, but as such an objection, under 32, 33 Vic., c. 29, sec. 32, D. (now R. S. C., c. 174, s. 143), which applies to informations, was only tenable on motion to quash the information when before the Magistrate. *Quære*, whether 32, 33 Vic., c. 31, sec. 5, D. (now R. S. C., c. 178, s. 28, ss. 1), which enacts that no objection to any information for any defect in substance or form therein shall be allowed, would not be a sufficient answer to the objection. Held also that it sufficiently appeared that the hotel was a licensed hotel at which liquor was allowed to be sold; that a sale "at" the hotel was equivalent to a sale "therein, or on the premises thereof;" and that it sufficiently appeared that the defendant was the proprietor in occupancy, or tenant or agent in occupancy." Held also that the words "and another" could be treated as surplusage, it appearing that J. R. was the only complainant: R. *v.* Cavanagh, 27 C. P., 537.

Where in a conviction it was not shown that defendant had a license or that the place where the liquor was sold was one where intoxicating liquors were or might be sold by wholesale or retail, it was held the conviction was bad: R. *v.* Rodwell, 5 O. R., 186; see also sec. 101, ss. 4.

Recovery of penalties by distress.

(2) Where in any such conviction (*b*) a penalty in money (*c*) is imposed under the preceding sub-section, the Justices shall order or adjudge that the same (*d*) and any sums also awarded for costs may be recoverable by distress and sale of the goods and chattels of the defendant, and that in default of sufficient distress, the offender be imprisoned in the county gaol of the county in which the conviction is made, for a period not exceeding fifteen days in the case of a first offence, twenty days in the case of a second offence, and fifty days in the case of a third offence, in each such case with hard labor, unless in each such case the penalty and costs by the conviction adjudged to be paid, and all costs and charges of the distress and also the costs and charges of the commitment and conveying of the defendant to prison, (the amount thereof being ascertained and stated in the warrant of commitment) are sooner paid (*e*).

Penalty for contravention of sec. 58, ss. 1.

(3) Every person convicted of an offence against sub-section 1 of section 58 of this Act shall be liable to a penalty for each offence of not more than $10 and not less than $2, besides costs (*f*). 53 V. c. 56, s. 6.]

(*b*) This sub-sec. applies only to convictions for offences against the provisions of sub-sec. 1 of sec. 54. See that clause in the Act and the notes thereto, also note (*e*) *infra*.

(*c*) "A penalty in money." For a first offence the penalty is a pecuniary one, but subsequent offences are punishable either by fine or imprisonment. See note (*e*) to sec. 30, note (*n*) sec. 46 and note (*u*) *supra*.

(*d*) "The same," *i. e.*, the fine.

(*e*) This sub-section was evidently introduced in consequence of the decisions in R. *v.* Menary, 19 O. R.. 691, and other cases cited in notes to sec. 70, maintaining the inability of the Justices to adjudge that the fine and costs be recoverable by distress, etc., or that the imprisonment be dependent upon payment of the fine, etc., and it completely alters the law respecting these questions. Now, in case a money penalty is imposed for a violation of sub-sec. 1 of sec. 54, the Justice is not only empowered, but he is required to order or adjudge that such money penalty and any sums awarded for costs, may be recoverable by distress, etc., and in default of sufficient distress, that the defendant be imprisoned for a period not exceeding fifteen days for a first offence, twenty days for a second offence, and fifty days for a third offence, in each case with hard labor, and that the imprisonment is to be dependent upon payment of the penalty and costs awarded by the conviction with all costs and charges of the distress and the costs of the commitment and conveying of the defendant to prison, all of which were declared by the Courts to be beyond the jurisdiction of the convicting Justices, previous to the amendment of the section.

It must be noted, however, that this sub-section does not apply to secs. 49 and 70. It is only applicable to secs. 71 and 54, ss. 1.

(*f*) See notes to sec. 58, ss. 1.

Besides costs. See note (*k*) to sec. 70.

72. Every tavern keeper (*g*) failing or refusing (*h*), either personally or through any one acting on his behalf, except for some valid reason (*i*), to supply lodging (*j*), Penalty for refusing lodging, etc.

(*g*) "Every tavern keeper." At common law a common inn-keeper is one who makes it his business to entertain travellers and passengers and provide lodgings and necessaries for them, their horses and attendants: Add. on Con., 298. By the Statute, R. S. O., c. 154, s. 1, an "inn" is made to include an hotel, inn, tavern, public house, or other place of refreshments, the keeper of which is now by law responsible for the goods and property of his guests, and an "inn keeper is defined as the keeper of any such place. "Tavern" includes "hotel:" City of St. Louis *v.* Siegrist, 46 Mo., 594, cited Browne on the Interpretation of Words, etc., 450. "Tavern," "hotel," and public house are, in this country, used synonymously, and while they entertain the travelling public, and keep guests, and receive compensation therefor, they do not lose their character, though they may or may not have the privilege of selling liquors. The distinction, as respects inn and tavern-keepers, observed in England under the common law, does not exist with us, and different names are applied to them, though "hotel" and "house" are usually and commonly used to denote a higher order of public house than the ordinary tavern or inn. The Legislature, in making use of the word "tavern," undoubtedly and manifestly intended to apply it to the whole class, and make it comprehend all hotels and houses that entertain and accommodate the public for compensation: per Wagner, J., in St. Louis *v.* Siegrist, *supra*. See notes to sec. 2, ss. 2, and note (*a*), p. 19. As to meaning of "every," see note (*t*) to sec. 58, p. 135.

(*h*) "Failing or refusing." The term "failing or refusing" is, it is thought, synonymous with "neglecting or refusing." Failure implies the state or condition of being wanting; a falling short; deficiency or lack; defect; want; absence; default; defeat: Anderson's Dict., 445. A tavern is required by sec. 28 to be a well appointed and sufficient eating-house with the appliances requisite for daily serving meals to travellers, and these requirements are applicable to all taverns or houses of entertainment without any exception whatever. It is quite clear, therefore, that it is intended, that the simple omission to comply with the requirements of the Statute in this respect should be an offence. The phrase used in relation to the same offence at common law is "neglects or refuses."

The inn-keeper is liable also, if such omission or refusal is his own or his agent's. See notes to sec. 73.

(*i*) "Except for some valid reason." The only reasons which would relieve a tavern-keeper of his liability are set forth in the judgment of Coleridge, J., in R. *v.* Ivens, 7 C. & P., 219, in which it was stated that "an indictment lies against an inn-keeper who refuses to receive a guest, he having at the time room in his house, and either the price of the guest's entertainment being tendered to him or such circumstances occurring as will dispense with that tender." "He has no right to say to one, you shall come into my inn, and to another you shall not, as every one coming and conducting himself in a proper manner has a right to be received." But, "if a person came to an inn drunk, or behaved in an indecent or improper manner, I am of opinion that the inn-keeper is not bound to receive him." Coming to the inn at a late hour of the night was held to be no excuse, nor was the refusal of the guest to disclose his name and abode. Neither was the fact that the guest was travelling on Sunday sufficient excuse, and the use of the expression "and be damned to you" by the guest, was no sufficient reason for keeping a man out of his bed who had been travelling till midnight (see also Fell *v.* Knight, 8 M. & W., 276), nor can the inn-keeper discharge himself of the duty imposed on him by the common law by express notice to his guest: Morgan *v.* Ravey, 6 H. & N., 265; nor

meals (*k*), or accommodation to travellers (*l*), shall for each offence (*m*), be liable, on conviction to forfeit and pay any sum not exceeding $20 (*n*). 47 V. c. 34, s. 26.

---

under pretence of sickness or absence from home, but an infant who keeps an inn can claim the privilege of infancy, which takes precedence over custom: Cross *v.* Andrews, Roll. Abr., 2. But a guest who has been received loses the right to be entertained, if he refuses to pay a reasonable demand: Doyle *v.* Walker, 26 U. C. R. 502. The inn-keeper has sole right to select the guest's apartment, and if he finds it expedient to change it and assign him another, he cannot be treated as a trespasser for entering to make the change: *Ib.* All the inn-keeper is required to do is to find reasonable and proper accommodation for his guests, and if a guest refuses such accommodation when tendered, the inn-keeper may compel him to quit the inn and seek accommodation elsewhere: Fell *v.* Knight, 8 M. & W., 276.

(*j*) "Lodgings," in the sense which it is used here, usually has reference to sleeping accommodation, and may be defined as a temporary habitation or place of rest for the night: Worcester, 851. The framer of the Act probably did not sufficiently consider the difficulty which has always existed as to the meaning of this expression, and that authorities differ materially as to the meaning of the words "lodger" and "lodging." In the present state of the decisions it is impossible to frame a definition which will accurately distinguish between a boarder, a guest and a lodger. But see note (*u*) to sec. 58, *ante*, p. 136, and notes, *infra*.

(*k*) "Meals." The word meal is defined to signify "a portion or quantity of food taken at one time; a repast:" Worcester, 890.

(*l*) "Or accommodation to travellers." See notes to secs. 27, 28, 29. It is thought that this expression is wide enough to cover any accommodation which a guest may require and which it is the duty of the tavern-keeper to supply. See notes, *infra*.

(*m*) "Shall for each offence." Every case of neglect or refusal is punishable, and a conviction may follow every such case. $20 is the maximum fine and no minimum is fixed. See note (*b*), sec. 38.

(*n*) The existence of necessary accommodation for the purposes of this section is a condition precedent to the granting of the license. Its continued existence is also necessary to the continuance of the license. See secs. 27, 28, 29.

An inn-keeper is not bound to receive the goods of persons who do not lodge or go to his inn as guests, but only make it a place of deposit, nor is he bound to receive horses from persons who merely intend using his stables, going elsewhere for lodging and entertainment: Add. on Con., 298, cited Sinclair's L. & T., 122.

J and his wife took rooms in premises kept by defendant, called the "Shandon House," partly furnishing them and agreeing to pay $50 per month for rooms and board. They left the place in debt and leaving a piano which they had rented from the plaintiff. Held that the relation between the defendant and J was not that of inn-keeper and guest, but of boarding-house keeper and boarder, and that as the piano was not the property of J and his wife, the defendant had no lien upon it for board and lodging under R. S. O. c. 147. Query, whether the house kept by the defendant was an inn: Newcombe *v.* Anderson, 11 O. R., 665.

The plaintiff had been for some time a guest of the defendant, an inn-keeper, and on leaving the inn after paying his bill, was allowed to leave a box containing papers and books in the room of the inn used for storing luggage, etc., plaintiff intending to take it away the following day, but was prevented by

illness and did not call for it for several weeks, when he found it was lost. There was no other evidence of negligence in the matter. The Court of Appeal held that plaintiff could not recover: Palin *v.* Reid, 10 App. R. 63.

Of the Protection of the Guest from Robbery and Theft. In addition to the liabilities and duties which attach to all lodging-house keepers and lessors of furnished apartments, which the keeper of an inn shares in common with them, there is added by law the duty of protecting the goods of a guest from robbery: Morgan *v.* Ravey, 6 H. & N., 265; Add. on Con., 299; (see also R. S. O. c. 154.)

But he is not responsible for robbery by the guest's servant or companion: Calye's Case, Smith's L. C. 246, nor where the guest has not exercised the care which a prudent man might be expected to take: Oppenheim *v.* White Lion Hotel Co., L. R. 6 C. P. 515; see cases cited in Add. on Con. pp. 300-302.

Limitation by Statute of the Liability of Inn-Keepers. By the Statute R. S. O. c. 154, sec. 3, it is enacted that no inn-keeper shall be liable to make good to any guest any loss or injury to goods or property brought to his inn (not being a horse or other live animal or any gear appertaining thereto or any carriage) to a greater amount than $40, except where such goods or property have been stolen, lost or injured through the wilful act, default or neglect of such inn-keeper, or any servant in his employ or where such goods or property have been deposited expressly for safe custody with such inn-keeper.

If an inn-keeper refuses to receive for safe custody any goods or property of his guest or if such guest through any default of such inn-keeper is unable to deposit such goods or property as aforesaid, the inn-keeper shall not be entitled to the benefit of this Act in respect of such goods or property (sec. 4).

In case of a deposit for safe custody the inn-keeper may require, as a condition of his liability, that such goods or property be deposited in a box or other receptacle fastened or sealed by the person depositing the same (sec. 3).

Every inn-keeper shall cause to be conspicuously posted in the office and public rooms and in every bed-room in his inn a copy of sec. 3 of the Act printed in plain type; and he shall be entitled to the benefit of the said section in respect of such goods or property only as are brought to his inn while such copy is so posted. The copy to be posted should be a correct copy: see Spice *v.* Bacon, L. R. 2 Ex. D. 463.

Losses occasioned by the misconduct of a guest. A guest who takes a private room at an inn to exhibit goods for sale, and receives customers, and invites the admission of strangers into the inn, upon whose ingress and egress the inn-keeper has no check, cannot hold the landlord responsible for the safety of goods in the room so used: Burgess *v.* Clements, 1 Stark. 251.

The rule of law resulting from all the authorities is, that the goods remain under the charge of the inn-keeper and the protection of the inn so as to make the inn-keeper liable for a breach of duty, unless the negligence of the guest occasions the loss in such a way as that the loss would not have happened if the guest had used the ordinary care that a prudent man may be reasonably expected to have taken under the circumstances: Add. on Con. 303; see Cashill *v.* Wright, 6 Ell. & Bl. 900; see Walker *v.* Sharpe, 31 U. C. R. 340.

Who are guests and travellers. A man does not become a guest at an inn by merely delivering his goods to the landlord to keep. He must show he was a traveller and a guest at the inn, and if he has been a guest but gives up his room and quits the inn for a few days leaving his goods in charge of the landlord the latter is liable only as a bailee: see cases cited in Lynar *v.* Mossop, 36 U. C. R. 230 and in Palin *v.* Reid, 10 App. R. 63.

"A man may become a guest by leaving his horse as much as if he stayed himself, because the horse must be fed, by which the inn-keeper has gain,

otherwise than if he had left a trunk or a dead thing," York *v.* Grindstone, 1 Salk. 388: Day *v.* Bather, 2 H. & C. 14: Walker *v.* Sharpe, 31 U. C. R. 340.

"If an host invite one to supper, and the night being far spent, invites him to stay all night, if he is afterwards robbed, yet shall not the host be charged (as inn-keeper) for this guest was no traveller," Bac. Abr. Ins. (C.) 5 cited in Add. on Con. 303.

The duration of the guest's stay at an inn does not alter his character or vary the liability of the inn-keeper although the guest may not be said to be a traveller, being at the end of his journey.

But if he takes apartments for a term, or resides in an inn under special contract for his bed and board, he is not in contemplation of law sojourning there as a traveller, but in the character of a lodger at a private boarding-house. The landlord is therefore not responsible as an inn-keeper if such a guest is robbed: Add. on Con. 304.

Exemption of Guest's Property from Distress for Rent. By the Statute R. S. O. c. 143, s. 44, it is enacted that if a superior landlord shall levy or authorize to be levied a distress on any furniture, goods, or chattels of any boarder or lodger for arrears of rent due to the superior landlord by his immediate tenant the boarder or lodger may serve the superior landlord or the bailiff or other person employed by him to levy the distress, with a declaration in writing, made by the boarder or lodger setting forth that the immediate tenant has no right of property or beneficial interest in the furniture, goods or chattels so distrained or threatened to be distrained upon, and that such furniture, goods or chattels are the property or in lawful possession of such boarder or lodger; and also setting forth whether any and what amount by way of rent, board or otherwise is due from the boarder or lodger to the immediate tenant; and the boarder or lodger may pay to the superior landlord or to the bailiff or other person employed by him as aforesaid the amount, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of the superior landlord; and to such declaration he shall annex a correct inventory, subscribed by the boarder or lodger, of the furniture, goods or chattels referred to in the declaration.

Sec. 45 enacts that if a superior landlord or bailiff or other person employed by him, after being served with the before mentioned declaration and inventory, and after the boarder or lodger shall have paid or tendered to the superior landlord, bailiff or other person the amount, if any, which by the last preceding section the boarder or lodger is authorized to pay, shall levy or proceed with a distress on the furniture, goods or chattels of the boarder or lodger, the superior landlord, bailiff or other person shall be deemed guilty of an illegal distress, and the boarder or lodger may replevy such furniture, goods or chattels in any Court of competent jurisdiction and the superior landlord shall also be liable to an action at the suit of the boarder or lodger, in which action the truth of the declaration and inventory may likewise be enquired into.

Sec. 46 enacts that any payment made by a boarder or lodger pursuant to section 44 of the Act shall be deemed a valid payment on account of the amount due from him to the immediate tenant mentioned in the said section.

The declaration hereinbefore referred to shall be made under and in accordance with "The Act respecting Extra Judicial Oaths," (R. S. O. c. 141).

Inn-keepers, Lien.—By R. S. O. 1887, c. 154, s. 2. "Every inn-keeper, boarding house keeper, and lodging house keeper shall have a lien on the baggage and property of his guest, boarder or lodger for the value or price of any food or accommodation furnished such guest, boarder or lodger, and in addition to all other remedies provided by law shall have the right in case the same remains unpaid for three months to sell by public auction the baggage and property of such guest, boarder or lodger, on giving one week's notice by adver-

tisement in a newspaper published in the Municipality in which the inn, boarding house or lodging house is situate, or in case there is no newspaper published in the Municipality, in a newspaper published nearest to such inn, boarding house or lodging house of the intended sale, stating the name of the guest, boarder or lodger, the amount of his indebtedness, a description of the baggage or other property to be sold, the time and place of sale, and the name of the auctioneer; and after the sale the innkeeper, boarding house keeper or lodging house keeper, may apply the proceeds of the sale in payment of the amount due to him and the costs of such advertising and sale, and shall pay over the surplus, (if any), to the person entitled thereto on application being made by him therefor."

By sub-section 2 it is enacted that "where an innkeeper, boarding house keeper, lodging house keeper, or livery stable keeper, has by law a lien upon a horse or other animal for the price or value of any food or accommodation supplied to such animal, or for care or labor bestowed thereon, he shall in addition to all other remedies provided by law have the right in case any part of such price or value remains unpaid for the space of two weeks, to sell by public auction such horse or other animal on giving two weeks' notice by advertisement in a newspaper published in the Municipality in which the inn, boarding house, lodging house or livery stable is situate," etc. The provisions for the advertisement, sale and application of the proceeds thereof being the same as in sec. 1.

An inn-keeper has a lien under the common law upon goods belonging to the guest and brought by him to the inn, for his charges for board and lodging supplied to the guest, and it has been held that the lien attaches even to goods which do not belong to the guest, if the inn-keeper receives them in the belief that they do so belong; and also when the goods are such as the inn-keeper was not bound to receive; Thompson *v.* Lacy, 3 B. & A., 283; Threfall *v.* Borwick, L. R., 7 Q. B., 711; and also to goods deposited with him by the guest: Mulliner *v.* Florence, 3 Q. B. D., 484.

But he cannot detain the guest, or take off his clothing in order to obtain payment of his bill: Sunbolf *v.* Alford, 3 M. & W., 248.

The inn-keeper holds the chattels detained by him in the nature of a pledge, so that if he once allows his guests to take them away and so gives up the pledge, he cannot afterwards retake them.

If after a debt has been contracted by a guest, the inn-keeper allows the goods or animals on which he has a lien for keeping them to be taken away, and they are subsequently brought to the inn and a new debt contracted, the inn-keeper can only detain them for the latter portion of the debt, and not for the former: Add. on Con., 304.

If several animals are brought to an inn by a guest, each is a pledge for its own keep but not for the keep of the others; so that if all but one are taken away that one cannot be detained for the cost of keeping the whole number: Moss *v.* Townsend, 1 Bulstr., 207.

If the chattel is taken away without the hosteller's consent, the latter may take it on a fresh pursuit as a distress rescued, if he follows promptly, but not otherwise: Rosse *v.* Bramsteed, 2 Roll., 438.

The relative duties and obligations of inn-keeper and guest continue no matter how long the latter's horses may be kept at an inn until some fresh contract or arrangement is made; Calye's case, Smith's L. C., 246; see B. & J's. Dig., 1790.

"Fire Escapes." The lessee of a hotel, under certain circumstances, may erect fire escapes and have a right of action or set-off against the lessor for the cost thereof; 51 Vic., (O) c. 34, s. 2.

"Liability of lodging house keepers." Every lodging house keeper is bound

Penalty for permitting

73. If any person licensed (*o*) under this Act permits (*p*) drunkenness, (*q*) or any violent, quarrelsome,

---

to take the same care of his house as every prudent householder might be expected to take, and to be careful in the choice of his servants.

When articles belonging to his lodgers are actually placed in his hands, he will be responsible for the loss of them like any other bailee, but not on the ground of their having accompanied and been placed in his house by a lodger. The lodger must take care of his own goods in his lodgings: Holder *v.* Soulby, 8 C. B. N. S., 254; Dansey *v.* Richardson, 3 Ell. & Bl., 144.

Where goods were left with the inn-keeper merely for the accommodation of a traveller, who intended to, but did not spend the night at the inn, it was held that the relation of landlord and guest was not established so as to make the inn-keeper responsible: Strauss *v.* County Hotel Co., 12 Q. B. D., 27.

An inn-keeper who accepts security from his guest for the payment of hotel charges does not waive his lien upon the goods of the guest, unless there is something in the nature of the security, or in the circumstances under which it was taken, which is inconsistent with the existence or continuance of the lien, and therefore destructive of it.

An inn-keeper retaining the goods of his guest by virtue of such lien is not bound to use greater care as to their custody than he uses as to his own goods of a similar description: Angus *v.* McLachlan, 23 Ch. D., 230.

(*o*) "Any person." See notes to sec. 70. The section applies only to the holders of a license under the Act.

(*p*) "Permits." It was held in a clause of forfeiture on alienation that the word "permits" means the same as "suffers:" per James, L. J., *Ex parte* Eyston, 7 Ch. D., 145, and Cockburn, C. J., in Bosley *v.* Davies, 1 Q. B. D., 84 at p. 87, says: "A man may be said to 'suffer' a thing to be done if it is done through his negligence," and it was held that where "words are used such as those in this section, actual knowledge in the sense of seeing and hearing by the party charged is not necessary." The cases cited in the notes below will shew what construction is put upon this expression by the Courts. See notes to sec. 74, and see further Commonwealth *v.* Briant, 34 Alb. L. J., 439, cited in notes to sec. 76. See also note (*j*), p. 114, *ante*.

(*q*) "Drunkenness." When a person is said to be "drunk," it means that he is drunk on intoxicating liquors, and not on opium, ether or laughing gas: State *v.* Kelly, 47 Vt., 294. A person who is in the habit of drinking intoxicating liquors intemperately is not necessarily in the habit of getting "drunk" or "intoxicated." The word "intoxicate" means to become inebriated or drunk, but intemperance does not necessarily imply drunkenness: Mullinix *v.* People, 76 Ill., 211; cited Browne on the Judicial Interpretation of Words, 205. A similar definition is given in Wharton's Lexicon, 255. To be drunk means to be intoxicated with strong liquor; inebriated; tipsy; drunken. And drunkenness is defined to be: (1) intoxication, ebriety, inebriety; (2) Habitual intoxication, sottishness: Worcester, 451. A person cannot be punished for being drunk on the public street at common law; there must be some special by-law or enactment making it a punishable offence: *in re* Livingstone, 6 P. R., 17. A person cannot be arrested in his own house for being drunk, unless he is creating a disturbance of the peace: R. *v.* Blakeley, 6 P. R., 243.

A by-law prohibiting the sale of liquor to any person in a state of intoxication, Held good: *In re* Greystock and The Municipality of Otonabee, 12 U. C. R., 458. But a by-law forbidding the sale of liquor to any habitual drunkard, after being notified not to do so by any relative or friend of such drunkard, was held to be unauthorized: Barclay *v.* The Municipality of Darlington, 12 U. C. R., 86.

The clause of the English Licensing Act, 35 and 36 Vic., c. 94, s. 13, provides, that, "if any licensed person permits drunkenness, or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he shall be liable to a penalty not exceeding for the first offence ten pounds, and not exceeding for the second and any subsequent offence twenty pounds." It will be seen that the words of prohibition are identical with those of our own Act, with the exception that in ours the words "or delivers" are inserted after the word "sells." The English cases are therefore applicable to our law.

It was held that the prohibition created by this enactment is absolute and that knowledge of the condition of the person served with liquor was not necessary to constitute the offence. Therefore, where a publican sold intoxicating liquor to a drunken person, who had no indication of intoxication, and without being aware that the person so served was drunk, it was held that he was properly convicted and that the license holder could not set up the defence that "he and his pot man considered the customer not to be drunk or at least that it was very doubtful whether he was so," for the risk of discovering the fact rests with the license holder: Cundy *v.* Le Cocq, 13 Q. B. D., 207. But see Newman *v.* Jones, 17 Q. B. D., 132, cited in note (*l*) to sec. 53, p. 124, *ante*.

In the case of Bond *v.* Evans, 21 Q. B. D., 249, Mr. Justice Manisty, at p. 251, quoting from the judgment of Stephen, J., in Cundy *v.* Le Cocq, says: "I am of opinion that the words of the section amount to an absolute prohibition of the sale of liquor to a drunken person, and that the existence of a *bona fide* mistake as to the condition of the person served is not an answer to the charge, but is a matter only for mitigation of the penalties that may be imposed. I am led to that conclusion both by the general scope of the Act which is for the repression of drunkenness and from a comparison of the various sections under the head of 'offences against public order.'" See also the cases cited below as to permitting gaming, etc.; see also Mullins *v.* Collins, L. R. 9, Q. B. 292.

The mere supply of liquor to a drunken person is not permitting drunkenness "to take place:" Smith *v.* Eldridge, 48 J. P. 25, cited in Stroud's Dict., 787.

The offence here is in terms confined to a licensed person who permits or sells. Where the only evidence was that a person had been drinking in a licensed house, and three-quarters of an hour later was found drunk in a ditch about 100 yards distant, it was held that there was some evidence on which the Justice might convict the keeper of the licensed house under this section: *ex parte* Ethelstane, 32 L. T. N. S., 339. But, at the same time, to permit implies that there is power to prevent; and if a customer becomes drunk, but not from the effect of drink given in the house, the license holder cannot be deemed to permit it. A licensed person cannot be convicted under this section for being drunk on his own premises: Warden *v.* Tye, 2 C. P. D., 74. In a conviction under this section it will not be necessary to state the names of the persons who were permitted to be drunk: Wray *v.* Toke, 12 Q. B., 492.

"Violent, quarrelsome, or riotous or disorderly conduct." Webster defines violent in its primary sense as meaning "physical force," and it is also defined as "highly excited feeling or action; vehemence; impetuosity; wildness; paroxysm:" Worcester, 1631.

A "quarrel" is a dispute, contest: Wharton, 604; also "a brawl, petty fight, scuffle, affray, wrangle, altercation, broil, feud, a breach of concord, an angry dispute, a noisy contest; it is a general term for an angry or hostile contest, however conducted, though it commonly means an angry contest or altercation between two persons:" see Worcester, 1166; and the term "quarrelsome" is defined as "a disposition to quarrel, contentious, disputatious, irritable, irascible, choleric, petulant."

"Disorderly houses." In addition to the enactments here provided against

drunken- riotous or disorderly conduct (*r*) to take place on his

disorderly taverns, the following clauses respecting disorderly houses are given in Burbidge's Crim. Dig., pp. 173 and 174:

"Every one who commits any common nuisance is guilty of a misdemeanor.

"Every one who keeps a disorderly house commits a common nuisance.

"Any person who appears, acts, or behaves as master or mistress, or as the person having the care, government or management of any disorderly house, is to be deemed and taken to be the keeper thereof, and is liable to be prosecuted and punished as such, although, in fact, he is not the real owner or keeper thereof:" 25 Geo. 2, c. 36, s. 8; 21 Geo. 3, c. 49, s. 2.

"But the owner of a house, conducted as a disorderly house by a person to whom he lets it as a weekly tenant, is not the keeper of the house merely because he knows the use to which it is put, and does not give the tenant notice to quit:" see R. *v.* Barrett, L. & C., 263; R. *v.* Stannard, L. & C., 349, where the whole house was let in parts to different women as weekly tenants.

"The following are disorderly houses, that is to say: common bawdy houses; common gaming houses; common betting houses; disorderly places of entertainment." "A common bawdy house is a house or room, or set of rooms, in any house kept for the purposes of prostitution, and it is immaterial whether indecent or disorderly conduct is or is not perceptible from the outside:" R. *v.* Rice, L. R. 1, C. C. R. 21.

P was a licensed victualler, and during his absence elsewhere at work the police noticed two prostitutes and two men enter the premises, where they proceeded a little later to occupy a double-bedded room, and after three hours, the police, having entered the room, found the two women concealed in bed with P's wife, and the men in a house by themselves. No evidence of previous misconduct against P was given, and his wife and servants gave no rebutting evidence in his favor. Held, there was ample evidence that P permitted the premises to be a brothel, though he was absent, and no previous case of the kind was proved: R. *v.* Holland, 46 J. P., 312.

(*r*) Disorderly places of entertainment. "Every house, room, or other place opened or used for public entertainment or amusement, or for public debating on any subject whatsoever, upon any part of the Lord's Day, called Sunday, and to which persons are admitted by the payment of money or by tickets sold for money," are disorderly places of public entertainment in Ontario, British Columbia, Manitoba and the North West Territories, and the following are deemed to be places to which persons are admitted by the payment of money, although money is not taken in the name of, or for admittance, that is to say, any house, room or place (1) at which persons are supplied with tea, coffee, or other refreshments of eating or drinking on the Lord's Day, at any greater price than the common and usual prices at which the like refreshments are commonly sold upon other days thereat, or at places where the same are usually sold; (2) any house, room or place opened or used for any of the purposes aforesaid, at the expense of any number of subscribers or contributors to the carrying on of any such entertainment or amusement or debate on the Lord's Day, and to which persons are admitted by tickets to which subscribers or contributors are entitled." See 21 Geo. 3, c. 49, secs. 1, 2; R. *v.* Barnes, 45 U. C. R., 276; Burbidge's Crim. Dig., 180, 181.

"Riotous" means practising or pertaining to riot or loose festivity: Worcester, 1241. The word "riot" comes from *riote*, a brawling strife. See 4 Bl. Com., 146; Hawkin's Pleas of the Crown, 513.

"Disorderly conduct" is conduct which is "contrary to law and good order, or deviating from established rules, intemperate, excessive, tumultuous, turbulent:" Worcester, 419. Any conduct which is contrary to law: Anderson's Dict., 364; State *v.* Jersey City, 25 N. J. L., 541 (1856). A "disorderly" inn

premises, (*s*) or sells or delivers (*t*) intoxicating liquor to any drunken person, or permits and suffers any drunken person to consume (*u*) any intoxicating liquor on his premises, or permits and suffers persons of notoriously bad character (*v*) to assemble or meet on his premises, or suffers

ness, etc.

---

is an inn kept in a disorderly manner and suffered to be resorted to by persons of bad character for any improper purpose: Stephen's Crim., 125; Roscoe's Crim., 821; cited Stroud's Dict., 218.

A "disorderly person" is a person amenable to police regulation for misconduct affecting the public: Bl. Com., 169.

The term "misbehaviour" is also used as denoting improper or unlawful conduct.

(*s*) "On his premises." See note (*d*), p. 78, note (*q*), p. 45.

(*t*) "Sells or delivers." See note (*f*) to sec. 70, and notes on pages 5, 59, and note (*d*), p. 143, *ante*.

Not only the sale, but the delivery of intoxicating liquor to a drunken person is prohibited, and to permit or suffer any such liquor to be consumed on his premises by a drunken person is also a separate offence.

(*u*) As to illegal consumption of liquor see secs. 60, 61, 77, and notes thereto, and as to proof of consumption see sec. 109.

Any servant, wife, or manager of the house will not be liable to be convicted for doing the acts here prohibited; but they may in some cases be convicted under 11 and 12 Vic., c. 43, s. 5 (our Statutes R. S. C., c. 145, s. 8) as aiders and abettors: Wilson *v.* Stuart, 3 B. & S., 913; and their acts will render the licensed person liable, unless there is strong evidence that the latter gave express orders to the contrary, and did what he could to enforce his orders.

The Courts will hold this to be one of the cases excepted from the general rule, and that the master is responsible for the act of his servant or manager; if it be held otherwise, the Statute may be very easily evaded. It may be reasonably assumed that the law requires some responsible person to be always on such premises, and in charge of them, who represents the master in the conduct of the house; and though a master is not usually responsible for the crimes of his servant, this may well be deemed an exception: Bosley *v.* Davies, 1 Q. B. D., 84; Redgate *v.* Haynes, 1 Q. B. D., 89; Somerset *v.* Hart, 12 Q. B. D., 360. There must be some one on licensed premises to conduct the house, and the master must in that view be the person liable for acts done knowingly by the servant or manager in contravention of these enactments. See Barnes *v.* Akroyd, L. R. 7 Q. B. 474; Cox *v.* James, L. R. 7 Q. B. 135; Searle *v.* Reynolds, 14 L. T. N. S., 518; R. *v.* Hanley, 9 L. T. N. S., 827. It is absolutely necessary that there should be some evidence of knowledge on the part of the master or servant: Harrison *v.* Leaper, 5 L. T. N. S., 640; see also Paterson's L. A., 17-25.

In an action brought for the illegal arrest of a guest at an inn under a warrant issued on an information laid by one R., charging the person who kept the inn with keeping a disorderly house, it was held that R., the informant, not being in any way connected with the arrest of the plaintiff was not liable: Cleland *v.* Robinson, 11 C. P., 416.

(*v*) "Persons of notoriously bad character." "Every one at common law is entitled to keep a public inn, but if he sells ale, wine, or spirits, he comes within the licensing Statutes, and may be indicted and fined as guilty of a public nuisance, if he usually harbour thieves, or suffer frequent disorders in his house, or take exorbitant prices, or refuse to receive a traveller as a guest into

his house, or to find him in victuals upon the tender of a reasonable price:" Roscoe's Crim., 771.

The remarks as to the offence of permitting drunkenness are applicable to this offence and to all the offences under this section. It is not necessary to prove knowledge on the part of the licensed person or his servant. If persons of notoriously bad character are permitted or suffered to assemble and meet on his premises, he is liable. As in the case of a drunken person he must take the risk of discovering their character: see cases cited *supra*. Where the servant of a licensed person supplied liquor to a constable on duty, without the authority of his superior officer, the licensee was held liable, although he had no knowledge of the act of his servant: Mullins *v.* Collins, L. R. 9, Q. B. 292.

See note (*x*) to sec. 11, *ante*, p. 17, and note (*y*), p. 18, *ante*, as to "bad or good character."

It has been held that prostitutes are entitled, like other people, to refreshment, and that it cannot be reasonably implied from the fact of the licensed person supplying them with refreshment, that he permits them to *assemble* in an unlawful manner: see Grey *v.* Bendino, 37 L. J. M. C., 294; Purkiss *v.* Huxtable, 1 E. & E., 780; Whitfield *v.* Bainbridge, 30 J. P., 308; 4 Mew's Dig., 1109; Parker *v.* Green, 2 B. & S., 299; Belasco *v.* Hannant, 3 B. & S., 13; Cole *v.* Coulton, 2 E. & E., 695; cited Paterson's L. A., 20.

The question as to whether such characters are allowed to remain longer than necessary for reasonable refreshment, is partly a matter of arithmetic, the nature of the meal or refreshment being generally the best material for showing whether they remained longer than was necessary for its consumption: Paterson's L. A., 19, 20.

It is not essential that prostitutes who "meet" should be the same persons. It is enough that persons of their class frequently come to the house, and that one is there though for the first time, if known as to character: *Ib.*

The licensee allowed a meeting to be held at his house for the purpose of getting up a subscription in aid of the wife and children of a man charged with a criminal offence, or for procuring means for his defence. At the meeting were several thieves, or reputed thieves. Held that the licensee was guilty of an offence within the meaning of the section: Marshall *v.* Fox, L. R. 6, Q. B. 370.

The question as to what is an unlawful game under the English Gaming Act, 8 and 9 Vic., c. 109, and the Betting Houses Act, 17 and 18 Vic., c. 38, was discussed in Jenks *v.* Turpin, 13 Q. B. D., 505, where the game of baccarat, as played, was held to be more a game of chance than of skill, and illegal. In R. *v.* Rogier, 1 B. & C., 272, the Court said if the gaming tended to injure public morals it was illegal and indictable. And the keeping of a common gaming house was said to be illegal at common law: R. *v.* Rice, L. R. 1, C. C. R. 21. But mere excessive gaming not in a common gaming house is not unlawful. Hawkins, J., said "that the result of the Statutes now is that some games are expressly declared to be absolutely forbidden, and to the gaming at which a penalty is attached. Such are ace of hearts, faro, basset and hazard, passage and every other game with a die or dice, except back gammon and roulette, (roly-poly), and any other mere game of chance. The other games are unlawful when played in common gaming houses. Thus bowling, coyting, cloyat, cayles, half bowl, tennis, dicing table, or carding were unlawful till 1845, after which games of mere skill were said not to be illegal." Therefore, that the Betting Houses Act, 17 and 18 Vic., c. 38, treats only of games of chance, or of games of chance and skill combined, as illegal.

"To game" is to play at any game, whether of skill or chance, for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful: R. *v.* Ashton, 1 E. & B., 286; Patten *v.* Rhymer, 3

E. & E., 1; Parsons *v.* Alexander, 5 E. & B., 263; Bew *v.* Harston, 5 Q. B. D., 454: Dyson *v.* Mason, 22 Q. B. D., 351. But in view of the "serious doubts" expressed by Cockburn, C. J., in Bew *v.* Harston, *supra*, the clause in the above definition expressed in the words "whether of skill or chance," cannot be regarded as absolutely settled by authority: Stroud's Dict., 320.

The rule is, however, that no game however lawful in itself, if played for money or money's worth, can be permitted in licensed premises. Thus nine pins or skittles played for beer are unlawful: Danfield *v.* Taylor. 20 L. T. N. S., 483; Luff *v.* Leaper, 36 J. P., 54; and an inn-keeper is guilty of "suffering any gaming" if he permits even his private friends to play at cards or other games of chance for money or money's worth, however small the stakes: Foot *v.* Baker, 5 M. & G., 335; Patten *v.* Rhymer, 3 E. & E., 1. Games of skill, such as "skittles," "skittle pool," (a game played on a billiard table), "puff and dart," (a game the object of which is to hit a mark with a dart blown through a tube), cannot be played for money or money's worth: Luff *v.* Leaper, 36 J. P., 54; Dyson *v.* Mason, 22 Q. B. D., 351; Bew *v.* Harston, 3 Q. B. D., 454. Playing for beer or for a dead rabbit were held in these cases to be playing for "money or money's worth."

The licensed keeper cannot set up any exemption from this enactment on the ground that the persons playing at the game were his own private friends and not customers: Patten *v.* Rhymer, 3 E. & E., 1; Hare *v.* Osborne, 34 L. T. N. S., 294; Cooper *v.* Osborne, 35 L. T. N. S., 347.

There is no penalty imposed by this Act on persons who may be allowed to game in the house.

It was held under the English Licensing Acts, that if the game is played without the knowledge of the licensed person, no penalty is incurred by him: Avards *v.* Dance, 26 J. P., 427. But if the conduct of the landlord was such that he leaves the management of the house to a servant, and either he or such servant close his eyes to what is going on, the landlord will be guilty of the offence, his gross negligence or the wilful shutting of his own or his manager's eyes being equivalent to "suffering the gaming to be carried on": Bosley *v.* Davies, 1 Q. B. D., 84; Redgate *v.* Haynes, 1 Q. B. D., 89. So when the manager goes to bed and leaves the house under the management of the "boots" during late hours, and gaming goes on, the licensed person may be rightly convicted: Crabtree *v.* Hole, 43 J. P., 852. But where all that was proved was that the potman saw some gambling and did nothing to prevent it, and the master was in another part of the building and knew nothing whatever about the matter, the Justices refused to convict and the High Court held they were right: Somerset *v.* Hart, 12 Q. B. D., 360.

Cards and dice are not in themselves unlawful: Allport *v.* Nutt, 1 C. B., 989; nor dominoes: R. *v.* Ashton, 1 C. B., 286. Cockburn, C. J., in Bew *v.* Harston, 3 Q. B. D., at p. 486, says: "I am inclined to think 'gaming' implies something which in its nature depends on chance, or in which chance is an element." But the authorities are all against this view, and when billiards or any games are played for money, or money's worth, as shown above, the play comes under the description of gaming.

In the United States "gambling" also includes playing billiards for beer, oysters or cigars: State *v.* Bishel, 39 Iowa, 42. A horse race is a "gambling device:" Joseph *v.* Miller, 1 New Mex., 621. The Court said: "The word 'gambling' is a word of very general application, and is not restricted to wagering upon any particular game of chance. In the adjudicated cases on this subject we find that Judges have often applied this word indiscriminately to wagering of all kinds." But in England a trotting match at £25 sterling a side along a turnpike road was not held an illegal race: Challand *v.* Bray, 1 Dowl., N. S. 783. So was a steeplechase: Evans *v.* Pratt, 4 Scott, N. R. 378. A horse race for $50 or upwards, if according to the Statute, is a legal race:

Bentinck (Lord) *v.* Connop, 5 Q. B., 693; see also Fulton *v.* James, 5 C. P., 182. A lottery is an illegal game: Clark *v.* Donnelly, T. T., 5 and 6 Vic.; Cronyn *v.* Widder, 16 U. C. R., 356. A sale of land by lottery is illegal: Marshall *v.* Platt, 8 C. P., 189; see also Cronyn *v.* Griffiths, 18 U. C. R., 396; Power *v.* Canniff, 18 U. C. R., 403; Loyd *v.* Clark, 11 C. P., 248; Mewburn *v.* Street, 21 U. C. R., 306, 498; Goodeve *v.* Manners, 5 Grant, 114. A game of hazard is an unlawful game whether played in private or at a public gaming table: McKinnell *v.* Robinson, 3 M. & W., 434. See Pearce *v.* Brooks, L. R. 1, Ex. 213; Bagot *v.* Arnott, 2 Ir., C. L. 1. A cock fight is an illegal game: Squires *v.* Whiskers, 3 Camp., 140. But see Martin *v.* Hewson, 10 Ex., 737. Billiards in itself is not an unlawful game: Parsons *v.* Alexander, 1 Jur., N. S. 660. Sweepstakes on a horse race is illegal: Gatty *v.* Field, 9 Q. B., 431. A lottery upon a horse race, it is submitted, is also illegal: Allport *v.* Nutt, 1 C. B., 974. Any lottery is illegal: Taylor *v.* Smetten, 11 Q. B. D., 209. A deed of land made in pursuance of a lottery is void: Fisher *v.* Bridges, 3 E. & B., 642. A foot race is, under our law, legal and valid: Emery *v.* Richards, 14 M. & W., 728. But it is illegal in England, Diggle *v.* Higgs, 2 Ex. D., 422.

In Kennon *v.* King, 2 Montana, 437, it was ruled that it was a question for the Court and not for the jury to decide whether the game of cards called poker is generally a game of chance. A horse race is a game of chance when the betting on it is made through an instrument called a "Pari Mutuel:" Tollett *v.* Thomas, L. R. 6, Q. B. 514. Back-gammon as usually played is not a game of chance: Wemmer *v.* State, 55 Ala., 198. Playing billiards when the loser pays is a game of chance: State *v.* Book, 41 Iowa, 55, and other cases cited in Browne, 146. Betting on a horse race is "gaming:" Carson *v.* McGreggor, 57 Ill., 473.

Playing cards for amusement without any stakes or bets is not gaming: Ansley *v.* State, 36 Ark., 67. Betting on an election was held in the U. S. not gaming: State *v.* Henderson, 47 Ind., 127.

"The word 'gaming' has been held to extend to physical contests, whether of man or beast, when practised for the purpose of deciding wagers, or for the purpose of diversion, as well as to games of hazard or skill, by means of instruments or devices:" Boughner *v.* Meyer, 5 Colo., 71; and in Ansley *v.* State, *supra*, the Court said "Bouvier defines gaming to be a contract between two or more persons, by which they agree to play by certain rules at cards, dice, or other contrivances, and that one shall be the loser and the other the winner." Bishop says: "And even the word gaming, without the prefix unlawful, seems usually to imply something of an unlawful nature, by betting on the sport; being indeed ordinarily an ingrediment in its signification; or a game of an evil or immoral tendency." And so in England the Court held that "the provisions of the Licensing Acts were not infringed by allowing dominoes to be played there. But if money or money's worth is staked upon the game the publican may be lawfully convicted."

"Gaming" and "gambling" were held in the U. S. not to be synonymous terms, and a charge of keeping a room for "gambling" alleges no offence under a Statute against keeping a room for "gaming:" State *v.* Bullion, 42 Tex., 77.

R. S. O. c. 159, prohibits the sale of "any lot, card or ticket, or other means or device for selling or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatsoever."

The defendant placed in his shop window a globular glass jar, securely sealed, containing a number of buttons of different sizes. He offered to the person who should guess the number nearest to the number of buttons in the jar, a pony and cart, which he exhibited in his window, stipulating that the successful one should buy a certain amount of goods: *Held*, that as the approximation of the number of buttons depended upon the exercise of judgment, observation,

any gambling or any unlawful game (*w*) to be carried on (*x*)

and mental effort, this was not a "mode of chance for the disposal of property" within the meaning of the Act: R. *v.* Jamieson, 7 O. R., 149; R. *v.* Dodds, 4 O. R., 390. A similar case was decided in the same way. But in another case the complainant went to defendant's place of business, and being told by defendant that in certain spaces on two shelves there were in cans of tea a gold watch, a diamond ring, or $20 in money, he paid $1 and received a can of tea which, containing an article of small value, he handed the can back, paid an additional 50 cents and received another can, which also contained an article of small value. He handed this can back and paid another 50 cents and secured another can, which also contained an article of small value. He then refused to pay any more money, and went away taking the third can and the article in it with him. On a complaint laid by him before the P. M., the defendant was convicted in that he unlawfully did sell certain packages of tea, being the means of disposing of a gold watch, a diamond ring, $20 in money, by mode of chance against the form of the Statute, etc. Held, that the conviction was right, and also that the "Summary Convictions Act" applied to cure any defect in the form of conviction: R. *v.* Freeman, 18 O. R., 524.

The Ontario cases on the subject of illegal gaming or gambling will be found at pages 1620-1624 and 4506 of R. & J's Digest; Ont. Digest, 1884, 308-310; Ont. Digest, 1887, 296; and for a further reference to the English cases see 3 Mews Digest, 1921, 1945-1975. See also Sinclair's Con. D. C. Act, 1888, 63-68. Stroud's Dict., 320. Browne on the Judicial Interpretation of Words, etc., 142-149.

(*w*) "Unlawful gaming houses." "A common gaming house is any house, room or place kept or used for the purpose of unlawful gaming therein by any considerable number of persons.

Gaming means playing at games either of chance, or of mixed chance and skill.

Unlawful gaming means gaming carried on in such a manner, or for such a length of time, or for such stakes, (regard being had to the circumstances of the players), that it is likely to be injurious to the morals of those who game.

All gaming is unlawful in which (1) a bank is kept by one or more of the players, exclusively of the others; or (2) in which any game is played, the chances of which are not alike favorable to all the players including among the players, the banker or other person by whom the game is managed, or against whom the other players stake, play or bet:" Burbidge's Crim. Dig., 175.

The following circumstances are evidence (until the contrary is proved) that a house, room or place is a common gaming house, and that the persons found therein were unlawfully playing therein:—

(1) Where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game are found in any house, room or place suspected to be used as a common gaming house, and entered under warrant or order issued under The Revised Statutes, c. 158, or about the person of any of those found therein. (2) Where any constable or officer, authorized as aforesaid to enter any house, room or place, is wilfully prevented, or obstructed, or delayed in entering the same or any part thereof, or where any external or internal door or means of access to any such house, room or place so authorized to be entered is found to be fitted with any bolt, bar, chain, or any means or contrivance for the purpose of delaying, preventing, or obstructing the entry into the same or any part thereof of any constable or officer authorized as aforesaid, or for giving alarm in case of such entry; or (3) if any such house, room or place is found fitted or provided with any means or contrivance for unlawful gaming, or for concealing, removing or destroying any instrument of gaming: Burbidge's Crim. Dig., 174-176. R. S. C. c. 158, s. 4; 8 & 9 Vic. c.

on his premises, (*y*) he shall be liable (*z*) to a penalty of not less than $10 and not exceeding $50 (*a*). 47 V., c. 34, s. 28.

Penalty for internal communication

74. Every person (*b*) who makes or uses, or allows to be made or used, (*c*) any internal communication (*d*)

109, s. 8; R. S. C. c. 158, s. 8; 17 & 18 Vic. c. 28, s. 2; games of chance or of chance and skill combined, are illegal. See Burbidge's Dig., 175, cited *ante*.

(*x*) "To be carried on." See note (*w*), p. 76.

(*y*) "On his premises." See notes, pp. 5, 24, 45, 78, *ante*.

(*z*) "Shall be liable." See notes to sec. 70.

(*a*) "Not less than $10 and not exceeding $20." The penalty is a minimum fine of $10 and a maximum fine of $20. As to the recovery of the penalty see sec. 88 and notes thereto.

See also sec. 79 and notes thereto.

(*b*) "Every person." See note (*t*) to sec. 58, p. 135.

A penalty on "every person" concerned in an offence may be recovered for the same offence against each person therein concerned: R. *v.* Dean, 12 M. & W., 20.

In this section "every person" includes the licensed person as well as the unlicensed person who makes or uses any internal communication, and both are therefore liable to the penalty. See Paterson's L. A., 18.

(*c*) "Allows to be made or used." The word "allow" is defined thus: "To suffer; to tolerate." The word "tolerate" is defined thus: "To allow so as not to hinder; to permit as something not wholly approved; to suffer; to endure; to admit. Every definition of "suffer" and "permit" includes knowledge of what is done under the sufferance and permission, and intention that what is done is to be done, and it was held that "knowledge" would not strengthen the implication: Gregory *v.* U. S., 17, Blatchf. 328, cited in Browne's Judicial Interpretation of Words, etc., 311. See note (*p*) and note (*j*), p. 114, *ante*, to sec. 73; "permit."

In Doty *v.* Lawson, 14 F. R., 901 (1883), "allow," in its ordinary sense, was defined as "to grant, admit, afford, or to yield, to grant license to, permit. It implies a power to grant some privilege or permission."

(*d*) "Any internal communication" means any door or opening in the wall in the interior of the licensed premises which will afford means of communication between one building and another, or between that part of a building which is licensed and another. "Communication" is defined thus: (1.) "The act of communicating or imparting; (2) Conference; conversation; intercourse; (3) Passage from one thing to another:" Worcester, 276. There seems no reason why the communication should necessarily be large enough to allow persons to pass through in order to constitute an offence.

(*f*) "Public entertainment." See note (*b*) to sec. 42*a*, p. 97.

The kind of place meant here may be one in which amusement and gratification of some kind, as well as food and drink, is furnished. By the 23 Vic., c. 27, s 6 (Imp.), a refreshment house requiring a license is a building "kept open for public refreshment, resort and entertainment." "Entertainment," as there used means "not diversion or amusement, but the provision of food, drink, and whatever else might be reasonably required for the personal comfort of guests," *e. g.*, cigars, coffee, ginger beer, or lemonade, the provision of which does not cease to be "entertainment" because no seats are provided for their more comfortable consumption: see Taylor *v.* Oram, 1 H. & C., 370; Muir *v.* Keay, L. R. 10, Q. B. 594; Howes *v.* Inl. Rev., 1 Ex. D., 385.

between any licensed premises and any unlicensed premises which are used for public entertainments (*f*) or resort, or as a refreshment house, [or between any licensed shop and any store, shop, place or premises where groceries or other merchandise are sold], (*g*) shall be liable (*h*) to a penalty of not less than $10 and not exceeding $50 for every day during which such communication remains open. (*i*) 47 V., c. 34, s. 29, amended by 52 Vic., c. 41, s. 6. munications with unlicensed premises.

75. Where the council (*j*) of any city, town, village or township (*k*) has by by-law (*l*) required licensed shopkeepers to confine the business of their shops so licensed solely and exclusively (*m*) to the keeping and selling of Penalty for allowing internal communication with premises

---

In other cases it was held that the word meant "amusement and gratification of some sort other than food, meat and drink:" per Pollock, C. B., Taylor *v.* Oram, *supra*; Terry *v.* Brighton Aquarium Co., L. R. 10, Q. B. 306; Warner *v.* Brighton Aquarium Co., L. R. 10, Ex. 291. But a place of public worship, where no music but sacred is performed or sung, where nothing dramatic is introduced, where discourses delivered are intended to be instructive and contain nothing hostile to religion, where the object of the promoters may be either to advance their own views of religion or to make science the handmaid of religion, is not used for public entertainment, etc.: Baxter *v.* Langley, L. R. 4, C. P. 21. See Stroud's Dict., 248.

In England a house "kept open for public refreshment, resort and entertainment, between 10 p. m. and 5 a. m., is required to be licensed: 24 & 25 Vic.. c. 91, s. 8 (Imp.), and such a house is called a "Refreshment house."

(*g*) The words in brackets were inserted by 52 Vic., c. 41, s. 6.

See notes to sec. 32, *ante* p. 67, and notes to sec. 33, *ante*, pp. 69-71.

"Shall be liable," *i. e.*, on conviction. See note (*p*) to sec. 11, p. 23, *ante*.

(*h*) The minimum penalty is $10, and the maximum $50, for every day during which the communication remains open. The day begins as soon as the clock strikes 12 p. m. of the preceding day: Williams *v.* Nash, 28 Beav., 93.

(*i*) This section does not interfere with the natural right of any licensed person to enlarge his premises by adding other premises, so long as both are used as one house.

(*j*) "The Council." See Mun. Act, R. S. O. c. 184.

(*k*) "City, town, village or township." See note (*j*), sec. 2, ss. 6.

(*l*) "Has by by-law." See secs. 20, 32 and 42 and notes thereto.

(*m*) "Solely and exclusively of keeping and selling of liquor," refers to the power granted by sec. 32. See notes to that sec.

"Any person." See note (*g*) to sec. 11, ss. 11, p. 28. Note the distinction between the words "any person" here and "every person" as used in the last section. Where two were convicted under a Statute which enacts that if "any person" shall trespass in the day time on land in search of game, "such person" shall be liable to a penalty of two pounds, it was held that every offender is liable to a separate penalty: Mayhew *v.* Wardley, 14 C. B. N. S., 550; Maxwell on Stats., 176, 179. See note (*b*) to sec. 74. The language used in the first part of this section is nearly the same in effect as that used in the last section since its amendment.

liquor, any person who makes or uses or allows to be made or used, any internal communication between any such licensed premises and any shop or premises in which other goods are sold, shall be liable to a penalty upon conviction for the first offence of not less than $20 and not exceeding $50 for every day, or part of a day, upon which such communication remains open, and in default of payment thereof, shall be imprisoned (*n*) in the county gaol of the county in which the offence was committed, for a period of not less than one month, to be kept at hard labour in the discretion of the convicting Justice, and for a second offence (*o*) upon conviction thereof his license shall, *ipso facto*, become forfeited and void (*p*). 49 V. c. 39, s. 18.

in which other goods are sold.

There is a difference, however, in the penalty. By this section a penalty of not less than $20 and not more than $50 for every day or part of a day upon which such communication remains open, and in default of payment imprisonment is imposed. And the additional punishment of forfeiture of the license ensues upon conviction for a second offence.

(*n*) "Imprisoned." As to imprisonment with or without hard labor, see notes to sec. 70.

(*o*) "Not less than one month." The minimum period of imprisonment to be imposed is one month. There is no maximum fixed, but in such case it should not be for such a period as would be considered excessive. See R. *v.* Smith, 16 O. R., 454, in which it was held that "not less than $50" meant $50 and no less, and "not less than $100" was intended to mean $100 and no less. In that case the Statute provided that any person violating the Act should be liable on conviction to a penalty of "not less than $50 for the first offence, and not less than $100 for the second offence." Chief Justice Armour in delivering the judgment of the Court said: "In putting a construction upon them (*i. e.*, 'not less than $50' and 'not less than $100') we must bear steadily in mind the nature of the offences that are to be tried; that they are not *mala in se*, but merely *mala prohibita*; the judicial character and position of the functionaries that are to try them, too often partisans appointed solely for the purpose of enforcing this Act (The Canada Temperance Act); the fact that *certiorari* is taken away, and that appeal is limited to the case where the conviction has been had before two Justices." Under these circumstances the Court would not impute to the Legislature the intention of giving these functionaries power to impose penalties to any amount, and it was held that $50 was the maximum penalty which could be inflicted for a first offence, and $100 the maximum for a second offence.

As to second offence see notes to sec. 70.

(*p*) As to forfeiture of license see notes to sec. 71; and see also note (*o*), p. 23, and note (*m*), p. 80.

A by-law enacting that it should be unlawful to have any means of communication between a room in which a billiard or bagatelle table was kept and any place where liquors might be sold, held valid: *Re* Neilly and The Town of Owen Sound, 37 U. C. R., 289. It was held that a by-law limiting the number of shop licenses to *one* and directing the holder to confine the business solely and exclusively to the keeping and selling of liquor, was bad as being in effect prohibitory and creating a monopoly on the authority of *re* Barclay and

76. Any licensed person (*q*) who allows (*r*) to be supplied (*s*) in his licensed premises (*t*), by purchase or otherwise (*u*), any description whatever of liquor (*v*) to any person apparently under the age of [eighteen] years (*w*), of

Penalty for allowing liquors to be supplied to

The Township of Darlington, 12 U. C. R., 86; Greystock and The Municipality of Otonabee, *Ib.*, 458; and Terry *v.* The Municipality of Haldimand, 15 U. C. R., 380. But a by-law providing that "every person receiving a shop license shall confine the business of his shop solely and exclusively to the keeping and selling of liquor, is not *ultra vires* and in restraint of trade; Croome and the City of Brantford, 6 O. R. 188.

(*q*) "Any licensed person." See sec. 33, notes (*m*) and (*o*), p. 71.

The section is restricted to persons licensed under this Act, the sale by any other person would be in contravention of sec. 49.

(*r*) "Who allows." See note (*p*) to sec. 73 "permits," and note (*c*) to sec. 74 "allows."

But see Commonwealth *v.* Briant, 34 Alb., L. J., 439. cited in note (*d*), *infra*.

(*s*) "To be supplied." To "supply" means "to furnish, give, provide." It is generally used in the sense of "to furnish," as "goods to be supplied." See Hoad *v.* Grace, 7 H. & N., 494, and also as to "provide, furnish, supply goods, &c.:" see Davies *v.* Harvey, L. R., 9 Q. B., 433.

(*t*) "In his licensed premises." See note (*q*) to sec. 54. The prohibition is absolute; the sale to minors is forbidden by this section "in his licensed premises," and a sale elsewhere would be an offence against sec. 49: R. *v.* Palmer, 46 U. C. R., 262.

(*u*) "By purchase or otherwise." As to the meaning of terms "purchase," "sale" and like expressions, see notes on pages 5, 29, 120, 125, and 139, and as to effect of the term "otherwise," see Stroud's Dict., 548.

(*v*) "Any description whatever of liquor." It has been said that the term "liquor" means "intoxicating liquor." See note (*s*) to sec. 51, p. 116, and by sec. 2, ss. 1, "liquors" or "liquor" "shall include all spirituous and malt liquors and all combinations of liquors and drinks, and drinkable liquids which are intoxicating." We have also seen that "any" is a word which excludes limitation or qualification: per Fry, L. J., Duck *v.* Bates, 12 Q. B. D., 79, as cited in Stroud's Dict., 89; and that its signification is "as wide as possible:" per Chitty, J., Beckett *v.* Sutton, 51 L. J., Ch., 488. A remarkable instance of this wide generality is furnished in *re* Farquhar, 4 Notes of Ecc. Cases, 651, cited in Williams on Executors, 119, 120, wherein the words "any soldier" were construed as including minors, so that soldiers and seamen, within s. 11, 1 Vic., c. 26, can make Nuncupative Wills though under age: Stroud's Dict., 39. The phrase "any description whatever" used here, is one which may be given as extensive a meaning as possible, and although the generality of such terms may be restricted by the subject matter, or the context: (see *Ex parte* Bagster, 24 Ch. D., 477; Irwell *v.* Eden, 18 Q. B. D., 588; Tobacco Pipe Makers *v.* Woodroffe, 7 B. & C., 838; and other cases cited in Stroud's Dict., 89; see also Maxwell on Stats., 55, 61, 66, 68, 71, 76, 106, 152, 160, 164, 176, 179). Its widest and most elastic signification should be allowed to prevail in a case of this kind, and it should at least include all kinds of liquor which contain any trace of alcohol.

(*w*) The expression, "to any person apparently under the age of eighteen years," "leaves it to the discretion of the Justices to find that fact, and in arriving at their conclusion they may be guided by the opinion of witnesses, as well as their own judgment, though their own view will be sufficient. But if at the hearing it be proved that the person is above eighteen then the Justices

either sex (*x*), not being resident on the premises or a *bona fide* guest or lodger (*y*), shall, as well as the person who actually gives or supplies the liquor (*z*), be liable to pay a penalty of not less than $10 and not exceeding $20 for every such offence. 47 V., c. 34, s. 30, amended by 53 V., c. 56, s. 8.

person apparently under age of 18.

[(2) Any licensed person who allows to be supplied in his licensed premises (*a*), by sale or otherwise (*b*), any description whatever of liquor to any person under the age of twenty-one years (*c*) (hereinafter called the minor) in

Supplying liquor to minors after notice.

---

will not be justified in convicting, although such a ground would not be sufficient for quashing a conviction after it had been made on the best judgment the Justices could arrive at for the time being: " Paterson's L. A., 11.

The words "eighteen years" were inserted by 53 Vic., c. 56, s. 8, in lieu of "sixteen years," the age specified in the clause as originally framed.

(*x*) "Of either sex." The words "any person" would be sufficient to include both male and female, but the Legislature appears to have determined that what is meant by this expression should not be left to implication.

(*y*) "Not being resident on the premises as a *bona fide* guest or lodger." As to when a person may be considered a *bona fide* guest or lodger, see note (*n*) to sec. 50, note (*u*) to sec. 58, and notes to sec. 72; and as to the meaning of "resident," see note (*k*) to sec. 11, ss. 11, p. 29.

(*z*) "Shall," etc., refers to the person licensed. He is responsible, whether the liquor be supplied by himself or his servant. The notes to sec. 73 apply to this section; but the liability of the licensee is not left to implication here. He, as well as the person who actually gives or supplies the liquor, is liable to the penalty imposed. The penalty in this case must not be under $10 and not more than $20.

(*a*) This sub-section is added by 53 Vic., c. 56, s. 8. It applies, as in case of the last sub-section, to licensed persons only. See note (*q*), *supra*.

(*b*) "By sale or otherwise." The words used on the last sub.sec. are "purchase or otherwise." The terms are here used interchangeably. See note (*s*) referred to in note (*u*), *supra*.

(*c*) A person under the age of twenty-one years is an infant, whose contracts are void or voidable. In criminal matters, a person of the age of fourteen may be capitally punished for any capital offence, but under the age of seven he cannot. The period between seven and fourteen is subject to much uncertainty; the rule applicable to it depends on the infant's capacity to discern good from evil; if he could, then the maxim is, "malice supplies the want of age," and he may be convicted and executed.

A male at twelve years of age may take the oath of allegiance, at fourteen he is at years of discretion, so far at least that he may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one he is at his own disposal. At twelve years a female is at years of maturity and may enter into a binding marriage, or consent or disagree to one contracted before, and at twenty-one may dispose of herself and all her property. Full age in male or female is twenty-one years, which age is completed on the day preceding the twenty-first anniversary of a person's birth: Wharton, 32.

respect of whom a notice in writing (*d*) has been given to any such licensed person, signed by the father, mother, guardian or master of such minor, correctly stating the age of such minor, and forbidding such licensed person to sell or supply such minor with liquor, the said minor not being resident on the premises or a *bona fide* guest or lodger (*e*), shall, as well as the person who actually gives or supplies

---

(*d*) See notes on pages 13 and 81 as to what is generally a sufficient notice in writing.

The notice under this section should contain (1) the name, place of residence and occupation of the infant, for the purpose of identification.

(2) His correct age at the time of giving the notice; and

(3) It should in the terms of the Act forbid the licensed person to whom it is given to sell or supply such minor with liquor.

(4) The relation of the person giving the notice to such minor.

(5) It must be signed in person by the father or mother, or the guardian or master of the infant (as the case may be). The following form of notice is suggested:

I, A. B., of the City of Hamilton, in the County of Wentworth, carpenter (or *as the case may be*), the father (or *mother* or *guardian* or *master*, as the case may be) of C. D. (name in full), of the same place, laborer, (or *as the case may be*) an infant under the age of twenty-one years, and who is at this date of the age of years, months, and days (or who was on the day of last—the date of his last birthday—of the age of years) do hereby forbid you to sell or supply the said C. D. with liquor, the said C. D. not being resident on the premises in respect of which you are licensed, or a *bona fide* guest or lodger therein, and this notice is given under and in pursuance of the Statute 53 Vic., chap. 56, sec. 8, in that behalf.

Dated at Hamilton, the 1st day of May, 1891.

Yours, etc.,

A. B.

To E. F. of the said City of Hamilton, a person licensed to sell intoxicating liquors under the Liquor License Act, R. S. O. c. 194, and amendments thereto.

The notice may be given to any number of licensed persons, but in each case it must be signed by the person by whom it is given, personally.

(*e*) "A *bona fide* guest" is one who is away from home receiving accommodation at an inn as a traveller, although he may be a townsman and neighbor: Walling *v.* Potter, 35 Conn., 183. The Court observed: "A guest is one who patronizes an inn as such. But it is said none but a traveller can be a guest at an inn in a legal sense." "A public house of entertainment for all who choose to visit it, is the true definition of an inn." "Webster defines a traveller as one who travels in any way." Distance is not material. "A townsman or neighbor may be a traveller, and therefore a guest at an inn, as well as he who comes from a distance:" Browne on the Judicial Interpretation of Words, etc., 160. An inn-keeper's "guest" is a *traveller*, who, by himself or his beast, has been, however temporarily, accepted to, and remains under, hospitality within an inn or its curtilage (see Calye's case, 1 Smith's L. C., 246, cited in note (*n*) to sec. 72, at p. 171, *ante*): Strauss *v.* County Hotel Co., 12 Q. B. D., 27; see also definition of a "traveller" in notes to sec. 19, p. 49, *ante*.

the liquor, be liable to pay a penalty of not less than $10 and not exceeding $20 besides costs for every such offence (*f*).] 53 V. c. 56, s. 8.

Punishment for allowing

77. (1) If any person having a license to sell liquors not to be drunk on the premises (*g*), himself takes or carries,

---

(*f*) It must be noted that the penalty imposed by this section differs from that imposed by sub-sec. 1, in providing for costs in addition to the penalty. In other respects the penalty is the same, $10 being the minimum and $20 the maximum fine.

The notes to sub-sec. 1 are applicable to this sub-sec.

At one time it was held that a Municipality could not by by-law impose such restrictions as are in this section contained: Barclay and The Township of Darlington, 12 U. C. R., 86; Greystock and The Municipality of Otonabee, *Ib.*, 458. But such provision was authorized by the Municipal Act, 36 Vic., c. 48, s. 379, ss. 31, and was held valid under that enactment independently of 37 Vic., c. 32, O., and that the power was not transferred to the License Commissioners: Brodie and The Town of Bowmanville, 38 U. C. R., 580; Arkell and The Town of St. Thomas, *Ib.*, 594.

In a case in the United States, the defendant was duly licensed to sell liquors to be drunk on the premises, and was indicted for selling to a minor. It was claimed that the sale was made by the bar-tender without defendant's authority. Held, that there was evidence for the jury to consider, and which might warrant it in finding that the sale was authorized by defendant, but that it was going too far to hold that it raised a presumption of fact that such was the case The fact that a man employs a servant to conduct a business expressly authorized by Statute, and that the servant makes the unlawful sale in the course of it, does not necessarily overcome the presumption of innocence, merely because the business is liquor selling and may be carried beyond the Statute limits: Commonwealth *v.* Briant, 34 Alb. L. J., 339.

(*g*) This section applies only to those persons who are licensed to sell liquors not to be drunk on the premises. See sec. 2, ss. 3; secs. 60, 61 and 36, and notes thereto. The intention is to punish any evasion of the Statute which consists in allowing people to drink liquor on other premises, for the profit of the seller when the license is for the sale of liquor "not to be drunk on the premises."

This section is the exact counterpart of sec. 6 of the English Licensing Act, 1872, 35 and 36 Vic., c. 94. In commenting on that section it was said: "It seems to prevent the holder of a particular license doing substantially the very thing which his license forbids, for if his customers could drink the liquor in the immediate neighborhood, the house would be used practically in the same way as if licensed for consumption on the premises:" Paterson's L. A., 10. But it appears to cover more than that. It is very evidently the intention of the legislature to make it impossible for persons holding these limited licenses, either to supply unlicensed places, which they might themselves own or have an interest in, as well as to evade their part of the responsibility by allowing intoxicating liquor, which may be legally sold to be consumed in any place, in which the licensee may be interested, other than that to which the license applies. It does not apply only to neighboring places but to any place, and would include any booth, tent, shed or other place erected or established for the purpose of supplying refreshments at fairs and other public gatherings, at which the illicit sale of liquor is often carried on to a considerable extent. And although the actual settler would be liable in such a case, the really responsible party—he who supplies the liquor and reaps the greater portion of the profit—

or employs or suffers any other person (*h*) to take or carry, any liquor out of or from the premises of such licensed person for the purpose of being sold on his account or for his benefit or profit, and of being drunk or consumed in any other house, tent, shed or other building of any kind whatever, belonging to such licensed person, or hired, used or occupied by him, or on or in any place whether enclosed or not, and whether or not a public thoroughfare, such liquor shall be deemed to have been consumed by the purchaser thereof, on the premises of such licensed person, with his privity and consent (*i*), and such licensed person shall be punished accordingly, in manner provided by this Act (*j*).

Liquor to be unlawfully consumed on premises.

(2) In any proceeding under this section it shall not be necessary to prove that the premises, or place, or places to

What proof of offence sufficient.

might not so easily be made accountable, being protected in some measure by his license.

Speaking of the place of consumption, Paterson's Licensing Acts at p. 10, says: "These words would, *prima facie*, include the whole world, and there must of necessity be some implied restriction. The highway must obviously be adjacent to the house or within view of the house, otherwise the sale or consumption will be too remote. The 'enclosed place' cannot include the purchaser's own house, or tent, or shed, otherwise the liquor never could in any conceivable place be legally consumed." It is, however, quite evident that the places described in the section include every place in which liquor may be consumed. But the foundation of the offence is that the liquor should be taken or carried from the premises of such licensed person (that is, the premises to which the license applies) either by the licensee himself or some other person for the *purpose of being sold* on his account or for his benefit or profit, as well as of being drunk or consumed in any of the places specified, and it is quite within reason that such places should include even the whole world. The sale of it without this section would be an offence against section 49, for which the actual seller would be liable, and this section merely extends such liability to the licensed person who supplies the liquor for that purpose under the circumstances set forth in the context.

It is no offence where the transaction is a *bona fide* sale of beer to be consumed off the premises, if the purchaser drink it in his own premises adjoining or on the highway or in any other place other than the premises of the licensee: and it was so held in Bath *v.* White, 3 C. P. D., 175. But in that case Lindley, J., said: "If the evidence had clearly shewn that the appellant was conniving at the drinking on the highway near her premises, the conviction might have been sustained. But there is nothing to shew that she knew what was to be done with the beer." The conviction in that case, however, was under sec. 5 of the English Licensing Act, 1872, which corresponds with sec. 78 of this Act.

"On the premises." See notes on pages 78 and 125.

(*h*) "Suffers any other person." See note (*r*) to sec. 76.

(*i*) "With his privity and consent." "Privity" means participation in interest or knowledge. Privies are those who are partakers, or have an interest in any action or thing, or any relation to another: Wharton, 388.

which such liquor is taken to be drunk belonged to or were hired, used or occupied by the seller, if proof be given to the satisfaction of the Court hearing the case, that such liquor was taken to be consumed thereon or therein with intent to evade the conditions of his license (*k*). 47 V. c. 34, s. 31.

Case of purchasor drinking liquor on premises where bought, etc.

78. (1) If any purchaser (*l*) of any liquor from a person who is not licensed to sell the same to be drunk on the premises, (*m*) drinks, or causes or permits any other person to drink such liquor on the premises where the same is sold, (*n*) the seller of such liquor shall, (*o*) if it appears (*p*)

(*j*) "Shall be punished accordingly in manner provided by this Act" means that the penalties incurred are those provided for permitting liquor to be consumed on the premises. See sec. 78.

As to proof of consumption, see sec. 109.

(*k*) Under this sub-section the only proof necessary to establish that the place or places to which the liquor was taken to be drunk belonged to, or were hired, used or occupied by the seller, is that the liquor was taken to be consumed thereon or therein with intent to evade the law, that is, that it was the intention of the seller, as well as the person to whom it was furnished, that it should be sold and consumed in the manner specified in sub-sec. 1.

"The intent must mean the intent of the seller, for the buyer may, in defiance of the seller, drink it on the premises, and the seller could not be held liable; at least, if he had no reasonable expectation that this defiance of law would be perpetrated there:" Paterson's L. A., 11.

As shewn in the notes of sub-sec. 1, the intention is the "head and front" of the offence, and the intent must be implied from the circumstances. It is for the Court to find from the facts adduced whether there was an intention by the licensee to evade the conditions of his license or not.

"The Court hearing the case" applies not only to the Justices before whom the case may originally be brought, but to any Court having power to review their decision.

"With intent to evade the conditions of his license." The words used here are taken from the section of the English Licensing Act, 1872. They do not seem entirely consistent with other parts of the Statute. The license itself, in fact, need not contain any conditions, the conditions being contained in the Act. In England it used to be different, the license itself containing the conditions on which it was issued. The conditions referred to, however, are those in the Act.

(*l*) "Any purchaser." See note (*i*) to sec. 58, p. 139.

(*m*) "Of any liquor." See note (*b*) to sec. 2.

(*n*) "From a person who is not licensed to sell," etc. See sec. 1 and notes thereto. There is no doubt that this section is intended to apply only to that class of persons who are authorized to sell liquor not to be drunk on the premises, and its object is to make such persons, as well as the purchasers of liquors, liable for its consumption contrary to the terms of the license. It has been said that if this be the intention the word "not" in the second line is misplaced, and that it should be put before "to be drunk" in that line, as a person "not licensed to sell liquor to be drunk on the premises" may mean either a person who has no license at all of any kind, or one who has a

that such drinking was with his privity or consent, (*q*) be subject to (*r*) the following penalties, that is to say:

For the first offence (*s*) he shall be liable to a penalty not exceeding $20; First offence.

For a second and any subsequent offence he shall be liable to a penalty of not less than $10 and not exceeding $50; Second or subsequent offence.

For the purpose of this section (*t*) the expression "premi- Interpretation.

---

license to sell liquor which is "not to be drunk on the premises." This may be so, but, although the clause is not very scientifically framed, its relation to the class of persons whose license prohibits the consumption of liquor on the premises, it is submitted, is sufficiently clear.

At all events, if a conviction under this section shews: (1) That premises on which the liquor was drunk were "not licensed to sell liquor to be drunk on the premises;" (2) That the sale of liquor was made on such premises; (3) That such liquor was drunk by the purchaser or some other person upon the premises upon which it was sold; and (4) That it appeared that such drinking was with the privity or consent of the seller, it will be a good conviction.

The expression "premises" is defined to include any premises adjoining or near the premises where the liquor sold if belonging to the seller or under his control or used by his permission. There must be some "reasonable evidence" that there was a sale of the liquor by the person charged with the offence "to be drunk on the premises, or on premises with his privity or consent:" *per* Lindley, J., Bath *v.* White, 3 C. P. D., at p. 179, cited more fully in note (*g*), sec. 77.

No description of the offence is given in the schedule to the Act.

"Causes or permits." See note (*j*) to sec. 50, *ante* p. 114, and also notes to secs. 73 and 74, and note (*x*), *infra*.

(*o*) "The seller of such liquor shall." This part of the section applies only to the "seller." The person licensed is responsible for any such sale. See note (*u*) to sec. 73 as to the responsibility of licensee for the acts of those in charge of licensed premises. He is also liable to conviction under secs. 60, 70 and 77. As to meaning of the term "seller," see note (*d*), sec. 2, and notes on pages 59, 120 and 143.

(*p*) "If it appears." See note (*n*) to sec. 58.

(*q*) "With his privity or consent." See note (*i*) to sec. 77.

The consent or privity of the seller is to be implied from the circumstances. If the drinking takes place upon the premises, it will be *prima facie* evidence that it was done with the consent of the seller. But if he was unable to control or prevent the act, he could not be said to consent to it. See also note (*x*) below.

(*r*) "Be subject to," is used here as a term synonymous with "be liable to.' See notes to sec. 70.

(*s*) "First offence." See notes to sec. 70. The maximum penalty for a first offence is $20, with no minimum fixed.

The second and any subsequent offence is punishable by a minimum fine of $10 and a maximum one of $50. See notes on pages 128, 129, and notes to sec. 70.

(*t*) "For the purposes of this section," means that in the accomplishment of the intent, aim and object of the section, the expression used shall include, etc.

ses where the same is sold" shall include any premises adjoining or near (*u*) the premises where the liquor is sold, if belonging to (*v*) the seller of the liquor, or under his control, (*w*) or used by his permission. (*x*)

(*u*) "Adjoining or near the premises." See note (*x*) to sec. 19. In one case "adjoining" was said to mean not simply "near," but "touching," "in contact with:" Akers *v.* United N. J. Ry. Co., 43 N. J. L., 110 (1881).

But in popular use it seems to have no fixed meaning. Frequently expresses nearness: Peverelly *v.* People, 3 Park. Cr. R., 69, 72 (1855).

In a penal Statute it means absolutely contiguous without anything between: per Park, J., in R. *v.* Hodges, Moo. & M., 341. But in other Statutes the meaning is not so strict: see London & S. W. Ry. Co. *v.* Blackmore, L. R. 4, H. L. 610; judgment of Manisty, J., Hobbs *v.* Midland Ry. Co., 20 Ch. D., 418: Galerno and the Township of Rochester, 46 U. C. R., 279.

"Near" may mean within a mile or one mile and a-quarter. At least that was the construction given to the term under a Statute prohibiting giving away or selling liquor on election days "near" an election ground. The Court said: "a contrary holding would make the law a dead letter on the Statute book, as it would authorize parties to constantly violate it by removing to a distance of one, two, or even more miles, and then to sell or give intoxicating liquors to persons attending, or proposing to attend elections, who could and would by joint contributions get up joint stock jug-groceries, thus keeping down a scantiness in supply of the exhilarating as well as warlike fluid, and has been often done in violation of the 'Camp Ground' law:" Manis *v.* State, 3 Heisk. 315. And two miles and a-half was held to be "near" in Barrett *v.* County Court, 44 Mo., 197; cited in Browne's Judicial Interpretation of Words, 273.

(*v*) "If belonging to." The word "belonging" is defined by Worcester as "pertaining to; attached to;" and the primary meaning of "belong" is given as "to be the property of; to be possessed by."

In Sturges Bourne's Act, (59 Geo., 3, c. 12), s. 17, churchwardens and overseers are to hold as a body corporate all buildings, etc., "belonging" to the Parish. Property, though applicable to general parochial purposes, is not within this phrase if the legal estate therein be vested in known existing trustees: St. Nicholas, Deptford, *v.* Sketchley, 8 Q. B., 394; overruling Rumball *v.* Munt, 8 Q. B., 382.

(*w*) "Or under his control" implies "power of directing; government; command: Worcester, 308. See also note (*k*) to sec. 53, p. 123, *ante*.

(*x*) "By his permission." See note (*j*) to sec. 50.

Permission may be implied from a person's neglect to prevent an act from being done when he has the power to prevent it. It may mean more than authority or leave to do a thing. Worcester's definition is "the act of permitting; liberty or license granted; grant of authority to do something; leave; license; liberty; toleration." And see the definition given in notes to sec. 73 and 74.

Paterson says: "The consent or privity must refer to some premises as to which the seller's consent would be matter of legal right, for he could not be said to consent to something he cannot prevent or control. Hence, if, for example, the field of a third person adjoins the house, and if the seller has no interest in it, and the purchaser gets into the field and there drinks the liquor, it will be difficult to hold that he did so with the privity or consent or permission of the seller, since the seller will not be able either to give or take away the permission to go into another's field. Such a case as this seems to be covered by this section. If the last paragraph of section 6 (sub-sec. 2 of sec.

(2) Any purchaser of liquors in a house or premises to which a shop or wholesale license applies, who drinks or causes any one to drink, or allows liquor to be drunk in the shop or premises where the same has been purchased, shall be liable to a penalty of not less than $10 and not exceeding $20. (*y*) 47 V., c. 34, s. 32. Penalty on purchaser in certain cases.

79. The mayor (*z*) or Police Magistrate (*a*) of a town or city, (*b*) or the reeve (*c*) of a township or village, with Keepers of disorderly inn

77 of our Act) "had been applicable to this section, this difficulty would have been met." "Another difficulty may arise when the man who purchases the liquor does not drink it himself, but hands it over to a third person, who drinks it on the premises or near them; the penalty seems not to apply to such a case. The Justices may, however, in such a case, hold that the real purchaser was the one who drank the liquor, and the other or nominal purchaser was his agent, if the facts warrant the inference, for under sec. 62 (sec. 109 of our Act) the consumer is *prima facie* a purchaser." And the seller may be liable under sec. 49: Paterson's L. A., 8.

But these difficulties need not arise, for where there is no intention to evade the law, it is submitted there can be no offence.

And in the case of the purchaser drinking the liquor, or causing or permitting any one else to drink it, as in the case supposed, he is punishable under sub-sec. 2 if the act is done in a licensed place, and under sub-sec. 2*b* of sec. 58, if in an unlicensed place.

See sec 109 and notes thereto.

(*y*) This sub-section applies to the purchaser of liquors at a place licensed as a retail or wholesale shop, and if such purchaser drinks the liquor which he purchases in such shop, or if he gives it to any one else to drink, or allows any one else to drink it in such shop or premises, he is liable to the penalty.

As to premises to which a shop or wholesale license applies see secs. 2, ss. 3, 31, 33 and 60, as to "shop licenses; and secs. 2, ss. 4, 34, 35 and 61, as to "wholesale licenses."

As to meaning of "allows" see notes, *supra*.

See R. *v.* Hartley, 20 O. R., 481; R. *v.* Richardson, 20 O. R., 514, cited in notes to sec. 105.

(*z*) The "Mayor" is the head of the Municipal Council in every city or town: Municipal Act, R. S. O. c. 184, s. 243, and he is *ex officio* a Justice of the Peace for the County in which the Municipality lies: *Ib.*, s. 415: and he is entitled to act as such where there is no Police Magistrate, or in the absence or illness, or at the request of the Police Magistrate: R. S. O. c. 72, secs. 6, 13, 20. It is the duty of the Mayor, where there is no Police Magistrate, to attend at the Municipal police office daily, or at such times or for such periods as may be necessary for the disposal of such business as may be brought before him as a Justice of the Peace: *Ib.*, s. 432; but any Justice of the Peace having jurisdiction may, at the request of the Mayor, act in his stead at such police office: *Ib.*

(*a*) Every city and every town having more than 5,000 inhabitants shall have a Police Magistrate: R. S. O. c. 72, s. 2. Every other town *may*, if the Lieutenant-Governor-in-Council see fit to make such appointment, have a Police Magistrate: *Ib.*, sec. 3. Police Magistrates may also be appointed in counties and districts: *Ib.*, secs. 8-10. As to jurisdiction see note (*d*) below.

(*b*) "Town or city." See note (*j*) p. 7, *ante*.

(*c*) The "Reeve" of a township or village is, like the Mayor of a city or

subject to certain penalties.

any one Justice of the Peace, (*d*) or any two Justices of the Peace (*e*) having jurisdiction (*f*) in the township or village, upon information to them, or one of them (*g*) respectively, that any keeper (*h*) of any inn, tavern, ale-house, beer-house or other house of public entertainment, (*i*) situate within their jurisdiction, (*j*) sanctions or allows (*k*) gambling or

---

town, the head of the Council, and *ex officio* a Justice of the Peace for the County in which the Municipality is situated. The "Reeve" cannot act alone under this section. He must be associated with one Justice of the Peace having jurisdiction in such township or village.

(*d*) A "Justice of the Peace can only act within the limits of the locality specified in his commission. His authority is in no case attached to the person so as to be capable of being exercised elsewhere. He cannot intermeddle, or take any recognizance or examination, or exercise any authority in any matter in the County specified in his commission while he is making his abode in another County; neither can he cause one to be brought before him out of the County where he is commissioned, for "being out of the County where he is in commission. he is but a private man." See Paley on Convictions, 5th ed., 18. Under the "Municipal Act," s. 418, "Every Justice of the Peace for a County shall have jurisdiction in all cases arising under any by-law of a Municipality in the County where there is no Police Magistrate." The power of a Justice of the Peace cannot be exercised where there is a Police Magistrate, except in the absence of such Police Magistrate or at his request. See R. S. O. c. 72, secs. 2, 6, 13.

(*e*) "Any two Justices of the Peace." The power of two Justices of the Peace under this section is equal to that of a Mayor or a Police Magistrate, or of the Reeve and one Magistrate.

(*f*) "Having jurisdiction." See note (*d*) *supra*.

(*g*) "Upon information." Informations before a Justice of the Peace under "The Summary Convictions Act" must be laid within six months, if no time is specially limited for making any complaint or laying any information by the Act or law relating to the particular case, except in the N. W. Territories and part of the County of Saguenay, where twelve months is the time limited: sec. 11. Under this Act, however, the time for laying all informations is limited to thirty days after the commission of the offence or after the cause of action arose, and cannot be laid afterwards. It must be in writing, and laid before any Justice of the Peace for the County or district in which the offence is alleged to have been committed; and it may be made without any oath or affirmation to the truth thereof. See sec. 109.

"To them, or one of them." The information may be laid before one Justice of the Peace, but there must be two for the subsequent proceedings.

(*h*) "Any keeper." See note (*d*), p. 130, *ante*.

(*i*) "Any inn, tavern, ale house, beer house, or other house of public entertainment." See sec. 2, ss. 3, and notes thereto. See also note (*b*), p. 97, *ante*.

(*j*) "Within their jurisdiction" means within the jurisdiction of the Mayor, Police Magistrate, Reeve, Justice or Justices. See note (*d*), *supra*.

(*k*) "Sanctions or allows." This phrase is used here in lieu of the phrase "permits or suffers," in sec. 73. To "sanction" means to give a sanction, validity, or authority to; to ratify, to legalize, to confirm, to countenance, to support, to authorize, to warrant, to allow. As used here, it is submitted that the term is nearly synonymous with that used in sec. 73. See notes to that section.

riotous or disorderly conduct (*l*) in his tavern or house, may summon the keeper of such inn, tavern, ale or beer-house to answer the complaint, and may investigate (*m*) the same summarily (*n*), and either dismiss the complaint (*o*) with costs to be paid by the complainant, (*p*) or without costs, or convict the keeper (*q*) of having an improper or a riotous or a disorderly house, (*r*) as the case may be, and annul his license,

(*l*) "Gambling." See notes to sec. 73.

"Riotous or disorderly conduct." See notes to sec. 73.

It was held in England that an information for using an engine for the purpose of taking game against 1 and 2 Wm. 4, c. 32, s. 23, is a criminal proceeding, and consequently the person charged is an incompetent witness: Cattell *v.* Ireson, E. B. & E., 91; and so when the information under the English Statute; 9 Geo. 4, c. 61, charged an inn-keeper with having "unlawfully and knowingly permitted and suffered persons of notoriously bad character to assemble and meet together in the house and premises:" Parke *v.* Green, 2 B. & S., 299. The charge that an inn-keeper allowed "drunkenness and other disorderly conduct" was held not to be too vague: Wray *v.* Toke, 12 Q. B., 492. See notes to sec. 73.

(*m*) "May investigate" means may examine or enquire into. See note (*o*) p. 8, *ante*.

An "investigation" was held to include an inquiry directed by the Legislature and conducted by any of its committees: People *v.* Sharp, 107 N. Y., 427, (1887).

(*n*) "Summarily." See note (*u*) to sec. 71, p. 165, *ante*, title, "summary conviction."

(*o*) "Dismiss the complaint." See secs. 93-99 as to procedure.

(*p*) As to costs see sec. 100. Under this section the Justices may either award that the cost be paid by the complaint or that no costs shall be paid by either party.

(*q*) "Or convict the keeper." It will be noted that the Justices *may* either "dismiss the complaint" or "convict the keeper." The word "may" and other like enabling phrases, such, for instance, as "is empowered," or "shall, if he deems it advisable," or "it shall be lawful," have a compulsory force unless there be special grounds for different construction: Maxwell on Stats., 219. Where a power is given for the futherance of justice, it is to be exercised and is a command. Where a thing to be done is for the public benfit, or in advancement of public justice, words which are otherwise only directory, permissive or enabling, become compulsory: *In re* Newport Bridge, 2 E. & E., 377; R. *v.* Tithe Commissioners, 14 Q. B., 474. But see Julius *v.* Oxford, (Bishop of), 5 App. Cas., 214; Aitchison *v.* Mann, 9 P. R., 473, and see note (o) to sec. 4, *ante*, and cases there cited.

"The keeper." See note (*d*) to sec. 55.

(*r*) "Improper, or a riotous, or a disorderly house, as the case may be." These are three distinct offences. An improper house means an indecent house. The permitting of prostitutes to assemble for the purposes of prostitution, would appear not only to be "improper," but has been held to be disorderly conduct on the part of the inn-keeper: Belasco *v.* Hannant, 5 B. & S., 13; Wilson *v.* Stewart, *Ib.*, 913; R. *v.* Rice, L. R. 1 C. C. R., 21. And see cases cited in notes to sec. 73.

(*s*) or suspend the same for not more than sixty days, with or without costs, as in his or their discretion may seem just; (*t*) and in case the keeper of any such inn, tavern, ale-house, beer-house or place of public entertainment, is convicted under this section, and his license annulled, he shall not be eligible to obtain a license for the period of two years thereafter and shall also be liable to the penalties by section [85] prescribed. (*u*) R. S. O. 1877, c. 181, s. 53; 44 V., c. 27, s. 6, amended by 53 Vic., c. 56, s. 9.

Provisions as to harbouring constables on duty.

80. Any person (*v*) licensed to sell wine, beer or spirituous liquors, (*w*) or any keeper of the house, shop, room, or other place (*x*) for the sale of liquors, who knowingly harbours or entertains (*y*) any constable belonging to

---

(*s*) "Annul his license." The penalty for offences under this section may be: (1) the entire revocation of the license, or (2) the suspension of the same for not more than sixty days with or without costs, as to the Justice or Justices may seem just, and in the event of his license being revoked, disqualification for holding a license for two years following.

(*t*) "As in his or their discretion may seem just." See notes to sec. 19, p. 48 *ante*, for remarks as to discretionary powers, such as are here conferred.

(*u*) "Penalties by section 85 prescribed." The words "section 85" were substituted by 53 Vic. c. 56, s. 9, for "section 70" in the original Act.

The penalties are cumulative, and the convicted keeper, in addition to those penalties here prescribed, may be adjudged to pay a fine of not less than $20 nor more than $50, besides costs for the first offence; and not less than $40 nor more than $60, besides costs, for the second offence; and to be imprisoned for the period of three months at hard labor for the third or any subsequent offence. And if there be a conviction under this section on more than one occasion, the license may be revoked by the County Judge, and the person licensed disqualified from obtaining a license for two years thereafter. See sec. 91.

For Form of conviction see Schedule D, No. 13.

(*v*) "Any person." See note (*g*) to sec. 11, ss. 10.

The section applies as well to all persons holding licenses of any kind as to the keeper of any place where liquors are sold; this includes druggists and all others authorized to sell liquors either by wholesale or retail.

(*w*) As to the meaning of "wine, beer, or spirituous liquors," see note (*b*) to sec. 2, and for meaning of "wine and beer license" see sec. 73.

(*x*) As to the "keeper of any house, shop, room, or other place for the sale of liquors," see note (*d*) to sec. 55.

(*y*) "Knowingly harbors or entertains." Guilty knowledge is the essence of the offence. It is an offence knowingly to harbour or entertain any constables belonging to any police force. But see note (*e*), p. 43, and note (*y*), p. 59, and also cases cited below.

The word "harbour" is defined by Dr. Johnson and other lexicographers "to entertain," "to permit to reside," "to shelter," "to secure;" and Dr. Webster adds, "to secrete." It has various shades of meaning not defined by any synonym. "Receiving and entertaining a person clandestinely and for the purpose of concealment" may well be called "harbouring," as the word is

any police force, (*z*) or suffers (*a*) such person (*b*) to abide or remain in his shop, (*c*) room or other place during any

---

sometimes used. Yet one may harbour without concealing. He may afford entertainment, lodging and shelter to vagabonds, gamblers and thieves, without a purpose or attempt at concealment, and yet it may be correctly affirmed of him that he "harbours" them. Neither in legal use nor in common parlance is the word "harbour" precisely defined by the words "entertain" or "shelter" given by Dr. Johnson as two of its meanings. It implies impropriety in the conduct of the person giving the entertainment or shelter. "An inn-keeper is said to '*entertain*' travellers and strangers, not to 'harbour' them; but may be accused of 'harbouring' vagabonds, deserters, fugitives or thieves, persons whom he ought not to '*entertain*:'" per Greer, J., Van Metre *v.* Mitchell, 2 Wall. Jr., 317. But it is made an offence here either to "harbour" or to "entertain" a constable. To "harbour" thieves means to give persons shelter or to permit them to congregate, even though it be only to take part in a "friendly lead" for the purpose of raising a legitimate subscription: Marshall *v.* Fox., L. R. 6, Q. B. 370.

(*z*) A constable is an officer to whom our law commits the duty of maintaining the peace, and bringing to justice those by whom it is infringed: Wharton, 169. The office of constable is one of great antiquity. It comes from the Latin *stabuli*—in the Eastern Empire, a superintendent of stables, or master of horse, who at length obtained the command of an army. A constable is the proper officer to a Justice of the Peace, and so is bound to execute warrants: Bac. Abr. "constable." The Council of every town not having a Police Board *shall*, and the Council of every incorporated village *may* appoint a chief constable, and one or more constables for the Municipality, and the persons so appointed shall hold office during the pleasure of the Council: Mun. Act, sec. 445. See Harrison's Mun. Man., 331.

And in cities and towns having a Police Board, the force shall consist of a chief constable and as many constables and other officers and assistants as the Council may deem necessary. But in cities the number shall not be less than the Board reports to be absolutely required: Mun. Act, s. 440.

The constables belonging to this latter force are the persons to whom this section applies, and it applies to the chief constable as well as to every member of the force. It has been said that a police officer may not necessarily be a constable, and that there may be a wide difference between the offices of "constable" and "police officer." But it is specially declared by the Municipal Act (sec. 443) that the constables appointed by the Board shall have generally all the powers which belong by law to constables duly appointed. For duties and obligations of police officers and constables generally see Dillon on Mun. Cor., 3rd. ed., sec. 210; Harrison's Mun. Man., 5th. ed., pp. 327-334.

It seems to be an offence to "harbour or entertain" any such constable, whether he is on duty or not, but, subject to the regulations of the Board of Police Commissioners, the members of the force should have as much right to receive entertainment at an inn as any other person, so long as they are not on duty.

(*a*) "Or suffers." See notes to sec. 73.

(*b*) "Such person," *i. e.*, such constable.

(*c*) "To abide or remain." The words "abide" and "remain," 'though perhaps not exactly synonymous, have very nearly the same meaning. As defined by Worcester, "abide" may either mean: (1) "To stay in a place temporarily; to sojourn:" (2) "To dwell; to reside:" (3) "To remain; to continue:" (4) "To endure without offence; to bear."

And the definition of "to remain" is: "To abide; to continue; to endure;

part of the time appointed for his being on duty, unless for the purpose of quelling any disturbance, or restoring order, or otherwise in the execution of his duty, (*d*) shall, for any of the offences aforesaid, be deprived of his license (*e*). R. S. O. 1877, c. 181, s. 54.

Penalty in case any person com.

81. Any person who, having violated any of the provisions of this Act, (*f*) compromises, compounds or

---

to stay; to tarry." The section of the English Statute corresponding with this is differently worded and more comprehensive.

It is as follows:

"If any licensed person—

(1) Knowingly harbours or knowingly suffers to remain on his premises, any constable during any part of the time appointed for such constable being on duty, unless for the keeping or restoring of order, or in execution of his duty; or

(2) Supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer; or bribes or attempts to bribe any constable,

he shall be liable to a penalty not exceeding for the first offence £10, and not exceeding for the second or any subsequent offence £20." 35 and 36 Vic., c. 94, s. 16.

Under this section it was held that if a servant or manager of the premises knowingly serve a constable on duty, the master may be convicted though personally having nothing to do with the matter: Mullins *v.* Collins, L. R. 9 Q. B., 292. But in all cases either the master or servant must know that the person is a constable on duty, and his being in uniform, and not being asked if he was on duty, etc., is good *prima facie* evidence of such knowledge: Paterson's L. A., 26.

The section in our Act is taken from a much earlier English Statute, viz: 2 and 3 Vic., c. 93, s. 16; 10 and 11 Vic., c. 89, s. 34.

It will be noted that the fact of the constable being in uniform and not being asked if he was on duty, etc., is sufficient to shew knowledge on the part of the offender that the offence was committed "during any part of the time appointed for his being on duty."

(*d*) The last part of this section is more ambiguous than the first. If the constable was on duty, and entered the house "for the purpose of quelling any disturbance or restoring order," the licensed person could not be said to "harbour or entertain" him, or to suffer him to "abide and remain" in the place.

"Or otherwise in the execution of his duty." It is part of the duty of every policeman or constable to assist in enforcing the license law. See secs. 129, 134, and while in discharge of any such duty he comes within the exception.

(*e*) "Be deprived of his license." Loss of the license is the only penalty for the contravention of this section.

For form of conviction, see Sch. D, No. 14.

(*f*) This section applies only to a person who has (1) violated any of the provisions of the Act; and (2) compromises, compounds, or settles, or (3) offers or attempts to do so. The first requisite is to prove that the person charged with the offence has "violated some provision of the Statute." It is also necessary to shew then that the defendant has (1) compromised or compounded

settles, (*g*) or offers or attempts to compromise, compound or settle (*h*) the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, (*i*) or if a complaint has been made with the view

promises, compounds, or settles a case.

---

or settled the offence, or (2) has offered or attempted to do so with the view (*a*) of preventing any complaint being made or (*b*) of getting rid of such complaint if it has been made, or (*c*) of stopping such complaint, or (*d*) of having such complaint dismissed for want of prosecution.

It will be seen that there are several offences covered by this section, and a conviction for more than one upon the same information would be bad. See cases cited below.

(*g*) "compromises, compounds or settles." To "compromise" is defined as "an adjustment of claims in a dispute by mutual concession; also, a mutual promise of two or more parties at difference to refer the ending of their controversy to arbitration: Wharton, 160. It imports a yielding of something by each of two parties: Bellows *v.* Sowles, 55 Vt., 399 (1883). This is shewn by its derivation; the Latin word is *com-promittere*, to mutually promise, to arbitrate. To "compound" means "to arrange; to come to terms:" Wharton. To "compound" a debt is to abate part of it on receiving the residue. Demands are compounded when adjusted by payment of part in satisfaction of the whole: per Kent, C. J., Haskins *v.* Newcombe, 2 Johns, 408, as cited in Anderson's Dict., 218.

Compounding a penal action is a misdemeanor, whether any offence has, in fact, been committed or not: Burbidge's Dig., 150.

To "settle" means "to adjust; to liquidate; to balance as an account; or to pay as a debt:" Worcester, 1317. "Settle" implies the mutual adjustment of accounts and an agreement upon the balance: Baxter *v.* State, 9 Wis. 44, and other cases cited in Anderson's Dict., 944.

A criminal offence cannot be referred to arbitration, nor can a compromise contrary to the terms of this section, and it was held that a prosecution for selling without a license cannot be referred: *in re* Fraser and Escott, 1 L. J. N. S., 324.

(*h*) "Offers or attempts." "An 'offer' is a proposal to be accepted or rejected;" also an "effort, endeavour or attempt:" Worcester, 987. But a mere offer to give security on property, if it can be effectually done, is not an "attempt" to anticipate or incumber the property within a clause of forfeiture: Graham *v.* Lee., 23 Beav., 388. "An attempt" is an endeavor to commit a crime or unlawful act: Wharton, 66. An attempt to commit a crime may be committed in cases in which the actual offender voluntarily desists from the actual commission of the crime itself: see R. *v.* Cheeseman, L. & C., 140; Stroud's Dict., 63. The word "offer" may be convertible with "attempt;" Commonwealth *v.* Harris, 1 Pa. Leg. Gaz.R., 457. See Anderson's Dict., 726. An "attempt" conveys the idea of physical effort to do an act or to accomplish an end: State *v.* Marshall, 14 Ala., 414, 415.

(*i*) "Any person or persons." See note (*g*) to sec. 11, ss. 10.

"With the view," means with the intention, design, purpose. See Worcester's Dict.; Anderson's Dict. With a view of rehearing means for the purpose of a rehearing: Richards *v.* Burden, 59 Iowa, 756.

"Getting rid of such complaint," *i. e.*, for the purpose of being freed or cleared from the charge.

"Stopping," *i. e.*, hindering the proceedings or thwarting the prosecution.

"Having the same dismissed for want of prosecution." An action is said to be dismissed for want of prosecution when the default is made by the person

of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, (*j*) shall be guilty of an offence under this Act, and on conviction thereof shall be imprisoned at hard labour in the common gaol of the county in which the offence was committed for the period of three months. R. S. O. 1877, c. 181, s. 55.

Penalty for being concerned in any such compromise, etc.

82. Every person (*k*) who is concerned in, or is a party to, the compromise, composition or settlement (*l*) mentioned in the next preceding section, shall be guilty of an offence under this Act, and on conviction thereof (*m*)

---

who is plaintiff, complainant, or prosecutor, and charged with the prosecution of the action.

Under the "Summary Conviction Act," sec. 59, the information or complaint may be dismissed with costs against the prosecutor or complainant, and by sec. 70 such costs may be levied by distress, and in default of payment the prosecutor or complainant may be imprisoned for not more than one month.

See also secs. 82 and 84 and notes thereto.

(*j*) "Or otherwise." See Stroud's Dict., 548.

A conviction to the effect that the defendant did unlawfully attempt and offer to compound and settle with one R., a certain offence with a view of stopping or having the said charge dismissed for want of prosecution, is bad (1) for not shewing that the defendant was a person who had violated any of the provisions of the Act; (2) for stating the charge in the alternative with a view of stopping or having (these being two separate offences); and (3) for adjudging the defendant to pay a sum for costs without saying to whom: R. *v.* Mabey, 37 U. C. R., 248.

It was held that the provisions of this section were within the legislative authority of the Ontario Legislature: R. *v.* Boardmen, 30 U. C. R., 553, and that the Magistrates had power to impose imprisonment at hard labour: R. *v.* Allbright, 9 P. R., 25, and other cases cited in note (*a*), sec. 1.

The penalty imposed is imprisonment at hard labour in the common gaol of the County in which the offence was committed for the period of three months.

The conviction must follow the Statute; the imposition of any greater or less penalty would render it invalid, and no pecuniary fine can be imposed.

For form of conviction, see Sch. E, No. 15.

(*k*) "Every person." See sec. 48, note (*j*).

Sec. 81 applies to the person who has himself violated any provisions of the Statute; this section is applicable to all who are in any way concerned in the compromises mentioned in sec. 81.

The meaning of the term "concerned in" is discussed in note (*k*) to sec. 66.

A "party to," the compromise is one who is concerned in it or has taken any part or action, or engaged in any way in the transaction: Worcester, 1039.

(*l*) The same proof is necessary for a conviction under this as would be required under sec. 81. See notes to that section.

(*m*) "On conviction thereof." See note (*j*) to sec. 70.

shall be imprisoned in the common gaol of the county in which the offence was committed for the period of three calendar months (*n*). R. S. O. 1877, c. 181, s. 56.

Person violating law may be disqualified from holding license.

83. Any holder (*o*) of a beer and wine license who has been convicted of selling liquor without the license therefor required by law, or contrary to the terms of his license, or of this Act, (*p*) shall, in addition to any other penalty provided, (*q*) if the Police Magistrate or other Justice or Justices before whom the prosecution was heard, (*r*) certify (*s*) that the offence (*t*) was in his or their opinion, a wilful one, (*u*) be disqualified, (*v*) from having

---

(*n*) The penalty imposed by this section is imprisonment for three months. Hard labor is not imposed in this case.

See sec. D., No. 16 for form of conviction.

(*o*) "Any holder." See notes to sec. 24.

This section applies to any person having a license to sell beer and wine under secs. 22, 23, 24. Such a license only authorizes the sale by retail of lager beer, ale, beer and porter, and native and light foreign wines which contain not more than 15 per cent. of alcohol, but not including port, sherry or madeira. As to all other liquors the holder of this license is deemed to be unlicensed and sec. 132 applies. See sec. 24 and notes thereto.

(*p*) "Contrary to the terms of his license" refers to the sale of liquors not authorized by the license, and, "or of the Act," applies to any other provision of the Act. The license is held upon the terms and subject to all the conditions and penalties that apply to a tavern license, so that the owner, if he sell liquor which he is not authorized to sell, is liable to be convicted for selling liquor without a license, (secs. 49, 70,) and is liable also to all the penalties provided for infractions of the law by the holder of a tavern license, (sec. 24).

(*q*) "In addition to any other penalty." Besides the other penalties mentioned above, the holder of the license is subject to that provided for in this section. As to meaning of "penalty," see note (*e*), p. 64, and note (*n*), p. 104.

(*r*) "If," here creates a condition precedent, which is, that the Police Magistrate, or Justice, or Justices before whom the prosecution is heard shall certify that the offence was, in his or their opinion, a wilful one. If this is not done the penalty here provided will not attach to the offence. But should such a certificate be granted the penalty must follow, "shall" here being in the nature of an imperative command. See note (*l*), p. 8, and note (*a*), p. 68.

"Before whom the prosecution was heard," means before whom the case was heard and finally disposed of. See note (*e*), p. 27.

The defendant, on an application for a certificate under this section, would be entitled to be heard. See Dwar., 671-672.

(*s*) "Certify." See note (*e*), p. 119.

The certificate can, of course, only be made *after* conviction.

(*t*) "That the offence," *i. e.*, the offence of which the holder of the license has been convicted. The section does not make any provision as to the time for issuing the certificate.

(*u*) "In their opinion," means according to their judgment.

or holding a liquor license for, (*w*) and during the then next succeeding license year, (*x*) and any license granted to or obtained by any such person during such period shall be void (*y*). 49 Vic. c. 39, s. 16.

Penalty for tampering

84. Any person who, on any prosecution under this Act (*z*), tampers with a witness (*a*), either before or after he

---

"In the opinion of the Court or Judge," s. 57, Jud. Act., 1873, means according to the judgment of the Court or Judge, which judgment is subject to appeal: Ormerod *v.* Todmorden Co., 8 Q. B. D., 664; *re* Martin, 20 Ch. D., 365.

The "opinion" of a Bishop that proceedings should not be taken under the Public Worship Regulation Act, 1874 (37 & 38 Vic. c. 85), has to be stated "with reason of his opinion" (s. 9); this does not give him an absolute discretion; his reasons may be examined on application for a *mandamus*: R. *v.* Bishop of London, 24 Q. B. D, 213; Ruston *v.* Tobin, 10 Ch. D., 558; Julius *v.* Bishop of Oxford, 5 App. Cas., 214; Golding *v.* Wharton Co., 1 Q. B. D., 374. See note on "discretion," sec. 19, p. 48, *ante*.

"Wilful" is a word of familiar use in every branch of law, and although in some branches it may have a special meaning, it generally, as used in Courts of Law, implies nothing blameable, but merely that the person of whose action or default the expression is used is a free agent, and that what has been done arises from the spontaneous action of his will. "It amounts to nothing more than this, that he knows what he is doing and intends to do what he is doing, and is a free agent:" per Bowen, L. J., Young and Harston, 31 Ch. D., 174. See also Squire *v.* Wheeler, 16 L. T. N. S., 93; Carpenter *v.* Mason, 12 A. & E., 629. But it has been said that the word "wilfully" is sometimes used as denoting evil intention; in fact, that such is the common use of the word in the English language, and it was therefore held that a surveyor was not guilty of the offence "of wilfully receiving" a higher fee than he was entitled to when acting under an honest mistake: R. *v.* Badger, 5 E. & B., 137; Smith *v.* Barnham, 1 Ex. D., 419; Miles *v.* Roe, 10 P. R., 218.

(*v*) "Be disqualified." See note (*z*), p. 156. See also Lewis *v.* Carr, 1 Ex. D., 484; Fletcher *v.* Hudson, 7. Q. B. D., 611.

(*w*) "From having or holding." This disqualification includes the obtaining of a liquor license as well as the holding of one which has been obtained. It simply means that the License Commissioners cannot grant, and the person convicted cannot hold, a license during the period of disqualification.

(*x*) "During the next succeeding license year" means from 1st May of the year following that in which the conviction was secured to 30th April in the next year. Thus if the conviction was obtained on 1st July, 1891, the person convicted would be disqualified from the 1st May, 1892 to 30th April, 1893. But the license for the year 1891-2 would be good until it expires.

(*y*) "Shall be void." See note (*y*), p. 42, and note (*m*), p. 80.

This means that any license granted or obtained for the year next succeeding the conviction is void. But there is no forfeiture of the license held at the time of the conviction. This may not be what the Legislature intended, but it is what the section means.

(*z*) "Any prosecution under this Act" is applicable to every proceeding taken and offence charged against any person, as a licensee or otherwise, under any of the provisions of the Act.

(*a*) "Tampers with a witness." "Every one who conspires with any other person to accuse any person falsely of any crime, or do anything to obstruct,

is summoned or appears as such witness on any trial or proceeding under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself, or to swear falsely, shall be liable to a penalty of $50 for each offence. R. S. O. 1877, c. 181, s. 57. with a witness.

85. Any person who violates any other provision of this Act, (*b*) in respect of which violation no other punishment is prescribed, shall for the first offence, (*c*) on conviction thereof, (*d*) forfeit and pay a penalty of not less than $20 besides costs, and not more than $50 besides costs; [and in default of payment thereof, he shall be im- Penalty for violations in cases not otherwise provided for.

---

pervert, or defeat the course of justice; or in order to obstruct the due course of justice, dissuades, hinders, or prevents any person lawfully bound to appear and give evidence as a witness from so appearing and giving evidence, or endeavors to do so; or obstructs, or in any way interferes with, or knowingly prevents, the execution of any legal process, civil or criminal," is guilty of a misdemeanor: Burbidge's Dig., 139; R. *v.* Lawley, 2 Stra., 904; Russell on Crimes, 5th. ed., 558-561; R. *v.* Higgins, 2 East, 5, 18.

It was held that this section was *ultra vires* of the Local Legislature, for the Acts therein declared to be offences were criminal offences at common law, and within the exclusive jurisdiction of the Dominion Legislature, and were not brought within the Local Legislature by sub-sec. 15 of sec. 92 of the B. N. A. Act, either as coming under Municipal institutions, or as being enactments to enforce the law as to shop, saloon, etc., licenses, in order to raise a revenue for Provincial, Local or Municipal purposes. A conviction under it for inducing a witness to absent himself was quashed: R. *v.* Lawrence. 43 U. C. R., 164.

Where it appeared that the defendant had attempted to tamper with the informant, the Court strongly condemned his conduct, and refused him the costs of quashing a conviction under The Canada Temperance Act: R. *v.* Ryan, 10 O. R., 254.

(*b*) "Any person." See note (*g*) to sec. 11, ss. 10.

This applies to any person, whether the holder of a license or not, who is guilty of any offence for which a penalty is not otherwise specially provided by the Act.

"To violate," means to break or do violence to; to infringe; to transgress.

It was held that a bequest to found an institution will generally be valid if it be added "so as not to violate the Mortmain Acts:" Biscoe *v.* Jackson, 35 Ch. D., 460.

(*c*) "Any other provisions of this Act." The *ejusdem generis* principle it seems, does not apply in general to the interpretation of Statutes conferring powers on the judiciary or other public functionaries, or in the construction of wills, and the word "other" may, and it is evidently intended here to, include all provisions of the Act without limitation, for which no penalty is expressly prescribed.

"First offence." See notes to sec. 70.

(*d*) "On conviction thereof." See note (*j*) to sec. 70.

"Not less than $20 besides costs, and not more than $50 besides costs." See note (*k*) to sec. 70.

prisoned in the county gaol of the county in which the offence was committed, for a period not exceeding one month, and to be kept at hard labor in the discretion of the convicting Magistrate]; (*e*) and for the second offence, (*f*) on conviction thereof, such person shall forfeit and pay a penalty of not less than $40, besides costs, (*g*) and not more than $60, besides costs, and in default of payment (*h*) thereof he shall be imprisoned (*i*) in the county gaol of the county in which the offence was committed, for a period not exceeding two months, (*j*) and to be kept at hard labor, (*k*) in the discretion of the convicting Magistrate; (*l*) and for the third or subsequent offence, (*m*) on conviction thereof, such person shall be imprisoned in such gaol for the period of three months, to be kept at hard labor, in the discretion of the convicting Magistrate. (*n*) 49 V., c. 39, s. 5. *part.* Amended by 52 Vic., c. 41, s. 7.

Imprisonment under different

86. In the event (*o*) of the imprisonment of any person (*p*) upon several warrants of commitment (*q*) under

(*e*) The clause within brackets is inserted by 52 Vic., c. 41, s. 7.

(*f*) "Second offence." See note (*m*) to sec. 70; see also sec. 101.

(*g*) "Besides costs." See note (*k*) to sec. 70.

(*h*) "In default." See note (*l*) to sec. 70.

(*i*) "Imprisoned." See note (*o*) to sec. 70.

(*j*) "Not exceeding two months." See notes to sec. 70.

(*k*) "At hard labor." See notes to sec. 70, p. 164.

(*l*) "In the discretion of the convicting Magistrate." See note (*d*) to sec. 19, p. 48.

(*m*) "Third or subsequent offence." See note (*n*), p. 162, and sec. 101.

(*n*) See sec. 101, ss. 6.

(*o*) "In the event" means "if it shall happen." "Event," that which shall come to pass: Anderson's Dict., 418.

(*p*) "Of any person." See note (*g*) to sec. 11, ss. 10. "Any person" here means any person convicted of offences against the provisions of the Act.

(*q*) "Upon several warrants." "Several" may mean: (1) "Different," "Distinct from one another;" or (2) "Divers," "sundry;" "consisting of more than two:" Worcester, 1318. In the sense in which it is used here it is probably intended that the word should take its primary meaning, and that "upon several warrants" should be read "upon more warrants than one."

The R. S. C., c. 181, s. 27, provides that "when an offender is convicted of more offences than one, before the same Court or person at the same sitting, or when any offender under sentence or undergoing punishment for one offence is convicted of any other offence, the Court or person passing sentence may, on the last conviction, direct that the sentences passed upon the offender for his several offences shall take effect one after another."

different convictions in pursuance of this Act, whether issued in default of distress for a penalty or otherwise, the terms of imprisonment under such warrants shall be consecutive and not concurrent. (*r*) 49 V., c. 39, s. 5, *part*. convictions.

Penalties not to be remitted.

87. No Police Magistrate or Justice or Justices of the Peace, license commissioner or inspector, (*s*) or municipal council or municipal officer, (*t*) shall have any power or authority to remit, suspend or compromise any penalty or punishment inflicted under this Act. R. S. O. 1877, c. 181, s. 58. Penalties or punishments not to be remitted.

88. [(1) In all cases of convictions under *The Liquor License Act* or of this Act, where the Justice or Justices are authorized to adjudge that a penalty in money, or a penalty in money and costs, be paid by the defendant, and that in default of payment thereof, the defendant be imprisoned Costs of commitment and conveying to gaol.

As to "warrants of commitment," see sec. 103, and Sch. I & J for forms of warrant. See also notes to sec. 105.

(*r*) "Different convictions" may be either distinct convictions for infractions of the same section or of any number of different sections.

"In default of distress for a penalty or otherwise." The meaning here conveyed is that in all commitments to prison the terms of imprisonments must follow each other and not run concurrently.

The power of imprisonment is either as the means of enforcing payment of a pecuniary penalty or as the direct punishment for an offence committed against the provisions of the Act. In either case the terms of imprisonment must be consecutive.

(*s*) "Police Magistrate." See notes to sec. 79.

"Justice or Justices of the Peace." See notes to sec. 79.

"License Commissioners." See sec. 8.

"Or Inspector." See sec. 2, ss. 8, and secs. 6, 7.

(*t*) "Or any Municipal Council or Municipal Officer." See notes to sec. 69.

It has been said by a very high authority, that: "In the past Municipal Councils and others have been too ready to remit penalties to those who are likely to be useful at elections. This section is designed to prevent the continuance of such a flagrant abuse of the law:" Harrison's Mun., Man., 944.

But it is very much to be questioned whether any such functionaries, or any one else for that matter, ever possessed the authority to remit, suspend or compromise the penalties prescribed by this Act. If they ever did possess the power, however, the Statute declares in unmistakeable terms that it does not now exist.

"Any penalty or punishment." The word "any" here excludes limitation, and this expression is applicable to all penalties and punishments, whether pecuniary or otherwise imposed for any violation of this Act.

for any period, with or without hard labor, the Justice or Justices may by the conviction adjudge that the defendant be imprisoned, unless the sum or sums adjudged to be paid, and also the costs and charges of the commitment and conveying of the defendant to prison are sooner paid (*u*).

(2) The amount of the costs and charges of the commitment and conveying of the defendant to prison are to be ascertained and stated in the warrant of commitment.] 53 Vic. c. 56, s. 7.

Application of Penalties.

(See also sec. 45.)

Application of penalties.

89. The penalties in money (*v*) under this Act, or any portion of them which may be recovered, (*w*) shall be paid

---

Sec. 88 of R. S. O., c. 194, was repealed by 53 Vic., c. 56, s. 10. The above is sec. 7 of the last mentioned Act.

(*u*) This provision has been introduced in order to provide a means for the release of an offender, even after commitment, by the payment of his fine and costs. It was formerly held that the Justices were exceeding their jurisdiction in making the imprisonment dependent on payment of the fine and the costs of the commitment and conveying the defendant to prison. See cases cited in notes to sec. 70. But under this sub-section the Justices are empowered by the conviction to adjudge "that the defendant be imprisoned, unless the sum or sums adjudged to be paid and also the costs and charges of the commitment and conveying the defendant to prison are sooner paid." But the amount of such costs and charges must be stated in the warrant of commitment. This sub-section applies to commitments under sec. 70 and all other sections providing for a pecuniary penalty and costs, and imprisonment in default of payment thereof.

The whole section applies to all prosecutions, and convictions made under this Act, in which the Justice or Justices are authorized to award: (1) A penalty in money; or (2) a penalty in money and costs, and to order that in default of payment thereof the defendant be imprisoned.

These sections are 67, 70, sub-sections 1 and 2 of 71, 75 and 85.

The sections to which these provisions do not apply are those which do not provide for imprisonment in default of payment of the fine: These are 47, 48, 52, sub-sec. 2, sec. 54, sub-sec. 3, secs. 56, 59, 65, 66, 69, 71, sub-sec. 3, 72, 73, 76, 78 and 84.

(*v*) "The penalties in money." See note (*n*), sec. 46.

(*w*) "Or any portion thereof," etc. In the first instance the fine is payable to the Magistrate or Magistrates who sign the conviction in the particular case in which the money is recovered. It cannot be paid to any other Magistrate. "In the case" means the case in which the penalty is awarded and recovered. The Justice or Justices receiving it must pay it over to the Inspector in cases in which he, or any officer appointed by the Lieutenant-Governor or License Commissioners, is prosecutor or complainant, and in other cases to the Treasurer of the Municipality. It is illegal for the Justice receiving the fine to retain money recovered in his possession and to pay it over when he sees fit to do so. The money should be applied as the law directs immediately upon its receipt.

to the convicting Justice, Justices, or police Magistrate in the case, and shall by him, or them, in case the inspector (*x*) or any officer appointed by the Lieutenant-Governor or by the license commissioners, is the prosecutor or complainant, (*y*) be paid to the inspector as provided in section 46, and in case such inspector or officer is not the prosecutor or complainant, then the same shall be paid to the treasurer of the municipality wherein the offence was committed. (*z*) R. S. O. 1877, c. 181, s. 60.

Municipalities to set apart a third.

90. The council of every municipality (*a*) shall set apart (*b*) not less than one-third part of such fines or penalties received by the said municipality for a fund to secure the prosecutions for infractions of this Act, and of any by-laws passed in pursuance thereof (*c*). R. S. O. 1877, c. 181, s. 61.

(*x*) "The Inspector" is bound to prosecute when information of any offence against the provisions of the Act is given to him. See sec. 129.

(*y*) "Or any other officer appointed by the Lieutenant-Governor." See sec. 127.

"Or by the License Commissioners." See sec. 128.

One of the officers mentioned may appear and prosecute although complaint is laid by another person. In other cases he may lay the complaint and employ another to appear at the hearing as prosecutor. In either case the fine recovered must be paid to such officer. See sec. 46. As to meaning of prosecutor, etc., see note (*q*) to sec. 46, p. 105.

(*z*) The duty imposed on the Magistrates as well as on the Inspector is imperative, and all moneys received, as mentioned in the section, must be paid by the Magistrate to the Inspector if he be prosecutor or complainant, and by the Inspector be paid into the license fund. All such moneys go to form the "License Fund." See sec. 45.

(*a*) "The Council of every Municipality" includes all Municipal Corporations, and provisional Corporations. See Mun. Act, R. S. O. c. 184, secs. 64-72.

(*b*) "Shall set apart." This provision is imperative. To "set apart" means to "separate for a particular purpose or use;" in this case for the purpose of carrying out the provisions of the Act. The sum so set apart or any interest received from its investment cannot be used for any other purpose. See *re* Barber and the city of Ottawa, 39 U. C. R., 406.

(*c*) The fund here created is composed of one-third part of all money penalties received by the Municipality under the provisions of the last preceding section, and it should be devoted exclusively to securing the prosecution of offenders against the Act or any by-laws of the Municipality passed in pursuance of secs. 20, 32 and 42. The duty of the Municipality is here manifest. The general scheme of the Act seems to be not only to make the License Commissioners and Inspectors responsible for its enforcement, but that that duty should be equally incumbent upon the Councils of all Municipalities and Municipal officers charged with the preservation of the peace or the administration of the law within the Municipality, including the Board of Police Commissioners, Chief of Police, and all members of the Police force. See sec. 134.

REVOCATION OF LICENSES BY COUNTY JUDGE.

Power of County Judge where license improperly obtained or licensee convicted

91. Upon the complaint (*d*) of the inspector (*e*) or the board of license commissioners (*f*) or the county attorney, (*g*) that a license (*h*) has been issued contrary to any of the provisions of this Act (*i*) or of any by-law in force in the said municipality, (*j*) or that the license has been obtained by any fraud, (*k*) or that the person licensed has been con-

---

(*d*) "Upon the complaint." The word "upon" is in many cases used elliptically for "upon condition of," as "upon payment of costs;" "upon conviction:" Dwar. 692. Or it may mean when, or in case of; where an act is to be performed "upon" or "on" payment or tender of money, it means "when:" Courtright *v.* Deeds, 37 Iowa, 508 (1873). "Upon the death" of a person, is equivalent to "in case of" his death: Conrow *v.* Conrow, 14 W. N. C., 483 (1884). It may mean *before* the act done to which it relates, or *simultaneously with* it, or *after* it is done, "according as reason and good sense require, with reference to the context and subject-matter of the enactment:" per Denman, C. J., R. *v.* Arkwright, 12 Q. B. 970, citing R. *v.* Humphery, 10 A. & E., 335, see Add. on Con., 191; Stroud's Dict., 84; Anderson's Dict., 1069. Where the expressions used are "upon admission to a public corporate office," "upon the trial," "on notice being given," etc., it is generally meant that the act to be done is within a reasonable time *after* these particular events: see R. *v.* Humphery, 10 A. & E., 335; Folkard *v.* Metropolitan Ry. Co., L. R. 8 C. P., 470; *re* Sampson and Wall, 25 Ch. D., 482; *re* Phillips, 34 Ch. D., 467; Buckmaster *v.* Buckmaster, 35 Ch. D., 21; *re* Leigh, 40 Ch. D., 290. But payment "on delivery" means both acts are to be done simultaneously: Paynter *v.* James, L. R. 2, C. P. 348.

The "complaint" may be in the form of a short petition to the Judge, the form of which is suggested in sec. 92; but a more complete form will be found in the appendix hereto.

(*e*) "The Inspector" here means the Inspector for the license district in which the license was issued, appointed under sec. 6.; see sec. 2, ss. 8.

(*f*) "The Board of License Commissioners" means the License Commissioners for the district in which the license was issued. See sec. 3.

(*g*) The "County Attorney" means the County Crown Attorney for the County in which the license was issued, appointed under R. S. O., c. 79, s. 3. He is required to attend to the prosecution of all cases committed to him by an Inspector or officer appointed under this Act. See sec. 129.

(*h*) "A license" means "the license which is attacked in the petition." See Stroud's Dict., 1.

(*i*) "Contrary to any of the provisions of this Act." See secs. 8, 9, 11. 12. 13, 14, 15, 16, 17, 18, 20, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 42, 64. The License Commissioners and Inspector are liable for issuing any license contrary to the provisions of the Act. See secs. 66, 67.

(*j*) "Or any by-law in force in the Municipality." See sects. 20, 32, 42.

(*k*) "Fraud" is something "dishonest and morally wrong:" per Wills, J., *ex parte* Watson, 21 Q. B. D,, 301. "It means something more than mistake or misconception. There must be some intention to commit fraud or otherwise to derive an unfair benefit: *re* Avery, 36 Ch. D., 307.

"It does not mean deceit or circumvention; it means an unconscientious use of the power arising from the circumstances and conditions:" per Selborne,

victed (*l*) on more than one (*m*) occasion of any violation of the provisions of section 79 of this Act, or has been convicted on three several occasions (*n*) of any violation of any of the provisions of this Act, (*o*) whether the offences in respect of which such convictions were made were the same or different in their character, so long as such convictions were for offences committed on different days, (*p*)

of offence against Act.

L. C., Aylesford *v.* Morris, 8 Ch., 484; Fry *v.* Lane, 40 Ch. D., 312; Stroud's Dict., 305.

"In the general acceptation of the phrase there would seem to be no real difference between 'legal fraud' and 'fraud:'" Derry *v.* Peek, 14 App. Cas., 337; Stroud's Dict., 430.

Wharton says, at p. 314: "Fraud is deceit in defrauding or endeavoring to defraud another of his right by artful device, contrary to the rule of honesty." "It is impossible to lay down a definition completely comprehending fraud, and no rule can, from the very nature of the subject, be invariable. Fraud is infinite; '*Crescit in orbe dolus*:' and were the Courts to prescribe the limits of their equitable relief against fraud, or to define the species of evidence receivable in support of it, their decrees would be continually eluded. To afford complete protection, new principles must be created to meet new species of fraud."

As to circumstances which will amount to fraud, see Evans on Principal and Agent, 562.

"It is a settled fact that, independant of duty, no action will lie for a misrepresentation, unless the party making it knows it to be untrue, or makes it with a fraudulent intention to induce another to act on the faith of it:" Evans on Principal and Agent, 392. "Fraud" means craft, cunning, cheating, imposition, circumvention: Anderson's Dict., 474. An artifice to deceive or injure: Byles on Bills, 9th. ed., 127.

(*l*) "Or has been convicted." See note (*p*), p. 23.

It was held that the Justices were not warranted in adjudicating a forfeiture of the license without legal proof of former convictions. A mere reference to the records of the petty sessions, where former convictions were entered will not suffice: Cross *v.* Watts, 13 C. B. N. S., 239.

(*m*) "More than one." It seems that two or more convictions under sec. 79 will be sufficient ground for the cancellation of the license.

(*n*) "Three several occasions." The word "several" is sometimes used to denote "any small number more than two:" Worcester, 1318. And in reference to this meaning of the word it was held that "seven is several." "The Court said: 'several' means more than two, but not very many, and includes seven:" Einstein *v.* Marshall, 58 Ala., 153; S. C. Am. Rep., 729; cited Browne on Judicial Interpretation of Common Words, etc., 418.

But as used in this section "three several occasions" means three separate and distinct dates or times, though the word is, perhaps, not the best that could have been found to express it. These occasions must be on different days.

(*o*) "Any violation." See note (*o*) to sec. 11, p. 29, for meaning of "any." The expression is wide enough to include offences committed in different years. The convictions need not be for the same offence, but may be for any offence against any provision of the Act.

(*p*) "On different days." But although the convictions may be for the same

the Judge of the County Court of the county (*q*) in which any municipality is situate in any part of which the license granted is intended to take effect, (*r*) shall summon the person to whom such license issued to appear, and shall proceed to hear and determine the matter of the said complaint in a summary manner, and may upon such hearing, (*s*) or in default of appearance of the person summoned (*t*), determine and adjudge that such license upon any of the causes aforesaid, ought to be revoked, and thereupon shall order and adjudge that the same be revoked and cancelled

---

or different offences, they must be for offences committed on different days. See sec. 101, ss. 4, and notes thereto.

(*q*) "The Judge of the County Court." "Words directing or empowering a public officer or functionary to do any act or thing, or otherwise applying to him by his name or office, shall include his successors in office and his and their lawful deputy:" R. S. O., c. 1, s. 8, ss. 27.

The Junior Judge of the County is given jurisdiction with reference to the business of any Courts or to any other matter or thing over which the Senior Judge of a County Court has jurisdiction: R. S. O., c. 46, s. 12. By R. S. C., c. 138, the expression "Judge" applied to a Judge of the County includes a Junior Judge.

As to the jurisdiction of Judges of other Counties, see R. S. O., c. 46, secs. 14, 16.

(*r*) "Is intended to take effect." This might as well be expressed by saying "the County in which the premises mentioned in such license are situated; see secs. 12, 17.

(*s*) "Shall summon." The Judge, it seems, has no discretion; he must, upon the petition or complaint, which, it appears, need not be verified in any way, issue a summons calling upon the alleged offender to appear before him. A form of summons is given in the appendix hereto.

"Shall proceed to hear and determine." The Judge must also proceed with the hearing of the matter. When power is given to "hear and determine" an offence, the condition is implied that the accused be first cited by summons and have an opportunity of defence: Dwar. 671, 672.

To "hear" a cause or matter means to hear and determine it: *re* Green, 7 Q. B. D., 273, or as Selborne, L. J., said in the same case: "hearing includes not only its necessary antecedents, but also its necessary or proper consequences:" *Ib. nom.*, Green *v.* Penzance, 6 App. Cas., 657. See notes to sec. 101.

A provision that certain matters shall be "heard and finally determined" by an inferior Court does not oust the supervision of the High Court: R. *v.* Plowright, 3 Mod., 95, cited Maxwell, 106. But under this and the next following section the decision of the County Judge is final.

"Upon such hearing" means in the event of the person summoned appearing and of the trial proceeding in his presence.

(*t*) "In default of appearance." In the event of the person summoned failing to obey the summons. When a party neglects to take the steps which are required of him, judgment is given against him by default, and this may arise whether the default is intentional or through mistake or neglect. His failure is taken to be an implied confession of the facts alleged against him in the complaint.

accordingly, (*u*) and thereupon the license shall be and become inoperative and of none effect, and the person to whom such license issued shall thereafter, during the full period of two years, be disqualified from obtaining any further or other license under this Act. R. S. O. 1877, c. 181, s. 62; 47 V. c. 34, s. 15.

Procedure under preceding section.

92. The complaint in the preceding section mentioned, may be by a short petition to the Judge entitled "In the County Court of the County of——and "In the matter of the license granted to (*naming the defendant*)," (*v*) praying for the revocation of the said license, and upon hearing the evidence adduced, (*w*) or upon default of appearance of the prosecutor or defendant, (*x*) the Judge may dismiss the matter of the complaint or make such order as he deems just, with or without costs to be paid by the prosecutor or defendant, and the order on adjudication of the Judge shall be final and conclusive, and shall not be the subject of appeal or revision by any Court whatever. (*y*) R. S. O. 1877, c. 181, s. 64.

(*u*) "Determine and adjudge" mean nearly the same thing. The Judge may decide either (1) upon the evidence adduced, if the defendant appear, or (2) upon the implied confession, if he fails to appear, that the license should be revoked; and if he so find he "shall order and adjudge" that the same be revoked and cancelled accordingly. A form of such order may be found in the appendix.

The effect of the judgment and order is that the license not only is cancelled, but that the person to whom it is issued is disqualified for two years from obtaining any further or other license under the Act.

(*v*) The grounds on which the license will be revoked are: 1. that it has been issued contrary to the provisions of this Act (note (*i*) sec. 91), or of any by-law in force in the Municipality (note (*j*), sec. 91); or, 2, that the license has been obtained by fraud (note (*k*), sec. 91); or, 3, that the holder of the license has been convicted on more than one occasion of any violation of sec. 79 of this Act (notes (*m*) and (*n*), sec. 91); or, 4, that such holder has been convicted on three several occasions of any violation of any of the provisions of this Act (note (o), sec. 91).

For form of petition see appendix.

The proceedings are entitled in the County Court of the County in which the licensed premises are situated. Subpœnas and other process required for the purpose of enforcing the attendance of witnessess may be issued in the County Court. See Harrison's Mun. Man., 946.

(*w*) "And upon hearing the evidence adduced." See note (*s*), sec. 91.

(*x*) "Or upon default of appearance." This appears to be merely a repetition of the provision in sec. 91. See notes to that section.

(*y*) The power given to the Judge is discretionary. He may either dismiss the complaint, or make such order as he deems just.

PROSECUTIONS.

Any person may be prosecutor, etc.

93. Any person (*z*) may be prosecutor or complainant in prosecutions under this Act. (*a*) R. S. O. 1877, c. 181, s. 66.

Information.

94. All informations or complaints (*b*) for the prose-

As to the discretion of a Judge, see note (*d*) to sec. 19. See also Maxwell on Stats., 100-104, 325; R. *v.* Adamson, 1 Q. B. D., 201; Wilson *v.* Church, 9 Ch. D., 552 and 558; L. R. Dig., 1885, 1413-1415; L. R. Dig., 1880-1885, 508, 509; Sinclair's D. C. Law, 1884, 12; Stroud's Dict., 216.

When a decision is "final and conclusive" an appeal is taken away: Waterhouse *v.* Gilbert, 15 Q. B. D., 569; Bryant *v.* Reading, 17 Q. B. D., 128; Lyon *v.* Morris, 57 L. T. N. S., 324; Dodds *v.* Shepherd, 1 Ex. D., 75; Stroud's Dict., 145, 282; so that the words following are mere surplusage.

The jurisdiction here conferred is statutory and limited to the particular cases for which provision is made, see Maxwell, 265. The following remarks will also apply to the power conferred upon the Judge under this section:

"The rule which requires that penal and some other statutes shall be construed strictly, seems to depend on the reasonable expectation that when the Legislature intends so grave a matter as the infliction of suffering, or an encroachment on natural liberty or rights, or the grant of exceptional exemptions, powers and privileges, will not leave its intention to be gathered by mere doubtful inference, or conjecture, it in 'cloudy and dark words' only, but will express it in terms reasonably plain and explicit. It does not require or justify that suspicious scrutiny of the words, or those hostile conclusions from their ambiguity or from what is left unexpressed, which characterize the judicial interpretation of affidavits in support of *ex parte* applications or of Magistrates' convictions where the ambiguity goes to the jurisdiction. Nor does it allow the imposition of a restricted meaning on the words for the purpose of withdrawing from the operation of the Statute a case which falls both within its scope and the fair sense of its language. This would be to defeat, not to promote, the object of the Legislature; to misread the Statute and misunderstand its purpose; and no construction is admissible which would sanction an evasion of the Act. But it requires that the language shall be so construed that no cases shall be held to fall within it which do not fall both within the reasonable meaning of its terms and within the spirit and scope of the enactment. If the Legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented, it is not competent to a court to extend them. It is immaterial, for this purpose, whether the proceedings for the enforcement of the penal law be criminal or civil:" Maxwell, 287-289.

(*z*) "Any person." See note (*g*), p. 28.

(*a*) A "prosecutor" is defined by Blackstone as one who prosecutes another for a crime in behalf of the Government. A "complainant" is said by Wharton to mean "one who urges a suit or commences a prosecution against another." The meaning of the two terms seems to be as nearly as possible the same, except, perhaps, that the first is often used in reference to criminal prosecutions and the latter to civil prosecutions.

The term "informant" is used as denoting the person who begins a prosecution or who lays the information upon which proceedings are instituted. See notes (*q*) and (*r*), p. 105.

(*b*) "All informations or complaints." See note (*a*) to sec. 93.

"Informations are of a two-fold character, one granted by the Queen's Bench

cution of any offence against any of the provisions of this Act, shall be laid or made in writing (*c*) (within thirty days after the commission of the offence, or after the cause of action arose, and not afterwards), (*d*) before any Justice of

When to be laid.

---

at the relation of a private person, and the other laid by the Attorney-General, *ex proprio motu*, as to the officer of the Crown:" per Denman, J., R. *v.* Slator, 8 Q. B. D., 267. But the information thus defined relates to an information in the High Court. The information which is referred to in this section, and in other places in the Act, usually means an information leading to a Justice's summons or warrant for an offence punishable upon summary conviction. Stroud says that in this connection the term "information" is used as distinguished from "complaint," which usually leads to an order for the payment of money or otherwise: Stroud's Dict., 886. Laying the information is the commencement of a prosecution before a Magistrate: R. *v.* Lennox, 34 U. C. R., 28. The only practical distinction between an information and complaint seems to be that "a conviction is the record of an affirmative adjudication upon an information for an offence or act punishable either by penalty or imprisonment, and that an order is a record of a like adjudication upon a complaint for non-payment of a sum of money or for the doing of some other thing; a distinction which is of no very great moment, as both are issued in the same way. The requirements of an information or complaint are:

(1) *It* should be in writing (see note (*c*), *infra*).

(2) It should be signed by the informant, but need not be sworn or affirmed by him.

(3) It should state the day and year on which it is laid, in order that it may appear that it was laid subsequently to the offence and within the time limited by the Act: R. *v.* Kent, 2 Ld. Raym., 1546; R. *v.* Fuller, *Ib.* 510; R. *v.* Picton, 2 East, 196; R. *v.* Chandler, 14 East, 272; but see note (*d*), *infra*.

(4) The name and style of the Justice before whom it is laid, and that he is acting for his County or district, in order to shew his authority and jurisdiction.

(5) The name of the informant or complainant.

(6) The name or names in full of the defendant or defendants.

(7) The time of the commission of the offence, in order that it may appear that the information was laid in due time, and made to protect the defendant against another charge in respect of the same matter. The exact day, however, need not be stated if the time is within the Statutable limits (see note (*d*) *infra*). The place where the offence was committed must also be stated in the body of the information, though it is not now so important to do this as it was formerly, as it is capable of amendment if any variance appears between the information and evidence, so long as the offence is committed within the jurisdiction of the Magistrate.

(8) An exact and legal description of the offence with the same certainty as an indictment. For description of offences see schedule D.

(9) Where the question turns upon any particular sums they must be particularized.

(10) It must only charge one offence, but if several offenders are engaged jointly in the commission of one offence, they may be included in the one information or separate informations may be laid against each offender. See Saunders' Prac., 33-52. See also sec. 104 and notes thereto.

The form of information is given in Schedule C.

(*c*) "In writing." See note (*d*), p. 13.

(*d*) "Within thirty days" after an event means clear days: Williams *v.*

Burgess, 12 A. & E., 635; Robinson *v.* Waddington, 13 Q. B., 753; Mitchell *v.* Foster, 12 A. & E., 472; Freeman *v.* Reed, 8 L. T., 458; R. *v.* Shropshire, 8 A. & E., 173; Blunt *v.* Heslop, *Ib.*, 577. See notes on pages 20 and 24.

The expression "after the commission of the offence" usually refers to violations punishable on summary conviction as crimes; and the expression "after the cause of action arose," to civil remedies.

An "offence," in general, implies something criminal, while a "cause of action," is defined by Wharton as "a right to sue," and though implying a wrong, does not usually comprehend anything criminal. The provisions of this section apply, however, only to proceedings before Justices of the Peace and not to civil cases in which remedies are provided, as might at first appear. See sec. 122, *et seq.*

A "cause of action" is the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment: per Esher, M. R., Read *v.* Brown, 22 Q. B. D., 128. The expression "cause of action" means in general "cause of one action:" Grimbly *v.* Aykroyd, 1 Ex., 479; see Noxon *v.* Holmes, 24 C. P., 541, and the cases there referred to. There have been so many decisions on the meaning of this expression that it would be impossible to find room for them here. But the following cases may be referred to briefly: A "cause of action" does not arise out of a damage-causing tort, or out of a tort not actionable until damage done; therefore, the Statute of Limitations does not begin to run until damage happens, and each recurrence of a distinctly new damage (as distinguished from a development of an old one), gives rise to a fresh cause of action: Fetter *v.* Beal, 1 Salk., 11. See Clarke *v.* Yorke, 47 L. T. N. S., 381; Benomi *v.* Backhouse, E. B. & E., 622; 9 H. L. Cas., 503; Mitchell *v.* Darley, Main, Colliery Co., 10 Q. B. D., 457; see Add. on Torts, 59, 60; Cowan *v.* O'Connor, 20 Q. B. D., 640; Jackson *v.* Spittal, L. R. 5 C. P., 542; Vaughan *v.* Weldon, L. R. 10, C. P. 47; Sinclair's D. C. Act, 1879, 79, 84 *et seq*; see also notes to sec. 122.

In a case under a provision that "all prosecutions under this section shall commence within twenty days after the commission of the offence, or after the cause of action arose, and not afterwards;" the information against defendant was taken on the 30th Dec., 1872, laying the offence on 16th Dec. On 15th January, 1873, a summons was issued on the information, and on 30th the defendant was tried and convicted: *Held*, that the prosecution was commenced in time, and that laying the information is the commencement of the proceedings. But when the delay in proceeding after laying the information is great, and defendant is seriously prejudiced thereby, he might, perhaps, obtain relief from the Court: R. *v.* Lennox, 34 U. C. R., 28. In R. *v.* Austin, 1 C. & K., 621, it was held that where the warrant of commitment was dated 11th Dec., 1844, and the offence committed on 12th January, 1844, the prosecution was commenced within 12 calendar months after the commission of the offence. In R. *v.* Wallace, 1 East, P. C. 186, it was held that the information was the commencement of the prosecution. But where it was necessary that the prosecution should commence within three months and the prisoners were apprehended within that time, but the indictment not prepared until afterwards, it was held the prosecution was not in time: R. *v.* Phillips, R. & R., 369; R. *v.* Brooks, 2 C. & K., 402. See Tunnicliffe *v.* Tedd, 5 C. B., 553; Vaughton *v.* Bradshaw, 9 C. B. N. S., 103, Paley on Con.; R. *v.* Crisp, 7 East, 389; R. *v.* Huggins, 3 C. & P., 414; R. *v.* Simpson, 10 Mod., 248; Saunders's Prac., 50.

It was held that the conviction need not shew that the prosecution was commenced within the time limited, as it is a matter of defence where the limitation of time is in a clause subsequent to the penal section of this Act: R. *v.* Strachan, 20 C. P., 182; Wray *v.* Toke, 12 Q. B., 492; R. *v.* Woodcock, 7 East, 146.

the Peace (*e*) for the county or district in which the offence is alleged to have been committed, and may be made without any oath or affirmation to the truth thereof, and the same may be according to the form of Schedule C. to this Act or to the like effect. R. S. O. 1877, c. 181, s. 65. Form.

License Commissioners or Inspectors who are Justices prohibited from trying certain complaints.

95. No license commissioner or inspector (*f*) who is a Justice of the Peace, shall try or adjudicate upon any complaint for an infraction of any of the provisions of this Act committed within the limits of the license district for which he is a license commissioner or inspector (*g*); but this section shall not be construed to apply to a Judge, or Junior Judge or Deputy Judge of a county. R. S. O. 1877, c. 181, s. 67.

(*e*) "Any Justice of the Peace," means one Justice of the Peace. See note (*d*) to sec. 79, as to jurisdiction.

It seems the information may be laid before one Justice of the Peace, but in some cases the trial must take place before two or more. See secs. 96, 97, 99. See R. *v.* Klemp, 10 O. R., 143.

Where the information was taken before a single Justice of the Peace, who was acting for the Police Magistrate in his absence and at his request, and upon such information the defendant was brought before two Justices of the Peace and remanded until the day on which he was convicted, and then convicted by the Police Magistrate himself. *Held*, that the information was properly taken under the provisions of sec. 6 of the "Summary Convictions Act," which is made applicable both by R. S. O., c. 194, s. 96, and R. S. O., c. 74, s. 1: R. *v.* Gordon, 16 O. R., 64.

(*f*) "No License Commissioner," &c. See sec. 3 and notes thereto. See also notes to sec. 94.

(*g*) The Justice should be free from all bias. Strict impartiality should be the first and most conspicuous attribute of the administration of justice, and no man should adjudicate in a cause or matter in which he has any interest. See Paley on Con., 5th Ed., 38, *et seq.*; Saunders' Prac., 14. And where two Justices were licensed Auctioneers, and persisted in sitting on a case for breach of a by-law respecting Auctioneers, they were held to be disqualified: R. *v.* Chapman, 1 O. R., 582. See R. *v.* Justices of Great Yermouth, 8 Q. B. D. 525; R. *v.* Rand, L. R. 1 Q. B., 220: R. *v.* Justices of Surrey, 1 Jur. N. S., 1138; R. *v.* Allen, 10 Jur. N. S., 796; R. *v.* Milledge, 4 Q. B. D., 332. It was held that it was improper for the Justice to sit, the complainant being his daughter, and that this was a good ground for quashing the conviction: R. *v.* Langford, 15 O. R., 52.

"By the word *interest* must be understood not merely pecuniary interest, for indeed, the cases rarely arise in which any pecuniary benefit can directly result, but that interest which a man may be supposed to have in a proceeding which affects his property, relatives, servants, or connections:" Saunders' Prac., 15. "If any one of the Justices is interested in the decision of the question before them, he should abstain from taking part in the proceedings, since his interference may not only give great dissatisfaction but have the effect of rendering the judgment abortive:" See R. *v.* Cheltenham Commissioners, 1 Q. B., 467; R. *v.* Justices of Hertfordshire, 6. Q. B., 753; R. *v.* Recorder of Cambridge, 8 El. & Bl., 637; R. *v.* Justices of Surrey, 16 J. P., 407; R. *v.*

Hammond, 9 L. T. N. S., 423. A Magistrate who has such interest ought not even to appear on the bench, although the fact of his mere presence on the bench during part of the trial will not be sufficient ground for setting aside the decision if he took no part in the hearing: R. *v.* Justices of London, 18 Q. B., 421.

Objection must be taken to the Magistrate at the hearing: Wakefield *v.* The West Riding Ry. Co., 13 L. T. N. S., 590. The objection cannot be supported if the Magistrate was not at the time aware of his interest: R. *v.* Justices of Surrey, 16 J. P., 407; 1 Jur. N. S., 1138; 4 Mew's Dig., 1183. To make such an objection available it must be shewn that at the time of the hearing the party was in ignorance of the existence of interest in the Justice: R. *v.* Justices of Richmond. Surrey, 2 L. T. N. S., 378. The expression of an opinion on the subject cannot affect the conviction founded upon it: R. *v.* Alcock, 37 L. T. N. S., 829; 4 Mew's Dig., 1183; R. *v.* Klemp, 10 O. R., 143. The interest to disqualify must be of a personal and private description and not such as arises from the performance of a public duty: R. *v.* Pettitmangin, 9 L. T. N. S., 87; 4 Mew's Dig., 1182; R. *v.* Justices of Huntingdon, 4 Q. B. D. 522. But see R. *v.* Meyer, 1 Q. B. D., 178; R. *v.* Milledge, 4 Q. B .D., 332. These cases and others are reviewed in R. *v.* Klemp, 10 O. R., 143.

The Court refused to quash a conviction under the C. T. Act, on the ground that one of the convicting Magistrates had not the necessary property qualification, the defendant not having negatived the Magistrate's being a person within the terms of the exception or proviso of sec. 7 of c. 71, R. S. O., 1877, being sec. 9 of c. 71, R. S. O. 1887 ("except where otherwise provided by law"); R. *v.* Hodgins, 12 O. R., 369. But the possibility of bias is not sufficient to disqualify; it must be real bias and a substantial interest when it is not pecuniary: R. *v.* Handsley, 8 Q. B. D., 383; R. *v.* Meyer, 1 Q. B. D., 173: R. *v.* Milledge, 4 Q. B. D., 332; R. *v.* Alcock, Ex. p. Chilton, 37 L. T. N. S., 829; R. *v.* Lee, 9 Q. B. D., 394; Conmee *v.* C. P. R. Co., 16 O. R., 639. A Magistrate who has been served with a subpœna to give evidence in a particular case is not thereby disqualified from sitting as a Magistrate on the hearing and adjudication of the case: R. *v.* Toke, 12 Q. B., 492; R. *v.* Sproule, 23 L. J. N. S., 153; R. *v.* Farrant, 20 Q. B. D., 58. And where it was alleged that the prosecutions for offences against the Act were taken before the Magistrates because it "was notorious that they were thorough going Scott Act men," and that they had said that in no case of conviction would they inflict a less fine than $50, and it was also alleged that one of them was a member of a local committee for prosecuting offences against the Act, but it appeared he had resigned from the committee before the Act came into force in the County, it was held there was no disqualifying interest in the Magistrates nor any real substantial bias attributable to them, nor any reason why they should not lawfully adjudicate in the case: R. *v.* Klemp, 10 O. R., 143.

On the other hand, in a case under the "Scott Act" it appeared that the defendant was Steward of a social club. The members were elected by ballot, and on paying an entrance fee of $1 and subscription of $25 per month were entitled to use the club-room and buy from the steward spirituous liquors. The members were not responsible for goods ordered or for any general expenses. An information was laid against defendant on 10th Sept., 1885, for an offence against the second part of the C. T. Act, 1878, and on 21st Sept. he was, about 4 p. m., served with a summons to appear at 8.30 a. m. next day before two Magistrates. On 22nd Sept. informations were, in two other cases, laid against him for similar offences, and he was in each, at 8.15 a. m., served with a summons to appear before the Magistrates at 9 a. m. that day. When the Magistrates' Court met the first case was partially gone into, and before it was closed the prosecution asked the Magistrates to take up the second and third cases. The defendant stated that he had not understood what the summonses

96. (1) All prosecutions (*h*) for the punishment of any offence (*i*) against any of the provisions of sections 49, Certain prosecutions to

meant, and by advice of Counsel refused to plead. The Magistrates entered a plea in each case of not guilty, and went on with both cases. The evidence in both shewed that the offences charged in each case occurred on dates different from those laid in the informations. The Magistrates amended the dates in the informations. The defendant and his Counsel were in Court all the time awaiting completion of the evidence in the first, but refused in any way to plead or take part in the second and third cases, or to ask adjournment thereof. The Magistrates, after taking all the evidence therein, at the request of the defendant, adjourned the first case, and in the second and third cases convicted the defendant of the offences charged in the informations. It was shewn by affidavits that the Magistrates were willing in these cases, had defendant pleaded, to adjourn after taking the evidence of the witnesses present. There were also affidavits shewing that the Magistrates had been, before the "Scott Act," interested in promoting prohibition. It was held that the proceedings were contrary to natural justice, as the summonses were served almost immediately before the sittings of the Court which defendant was called to attend. The convictions were therefore quashed with costs against the complainant. The learned Judge said: "Justices of the Peace who are opposed to the principle of prohibition ought not on that account to decline to try cases under the Act where in force any more than other cases for breach of the law of the land. They are bound to administer the law of the land as it is, and in its integrity. The law and the accused should have a fair and impartial trial, for in the execution of the laws and the administration of justice neither partisanship nor favoritism ought to influence a Judge, and Justices of the Peace are Judges. On the other hand, Justices of the Peace who are in favor of the principle of prohibition ought not to be too anxious and ready to travel from their own neighborhood to distant places in the county where there are resident Justices to try such cases. If they do so they may expect that their motives will be, as they are in this case, impugned." "Any Justice of the Peace who cannot, and does not, make up his mind to do even-handed justice, give fair play, and administer the law in such cases, had better, for his own sake and that of the Act, refrain from acting:" R. *v.* Eli, 10 O. R., 727. See also R. *v.* Sproule, 23 L. J. N. S., 153. It was held that the fact of one of the convicting Justices being a chemist and druggist did not incapacitate him from acting and adjudicating upon a prosecution for having liquor for sale without license: R. *v.* Richardson, 20 O. R., 514.

Attachment lies against Commissioners of Courts of Requests who try cases in which they have an interest, though remote: R. *v.* McIntyre, Tay., 22, cited R. & J's. Dig., 1972.

By R. S. O. 1887, c. 71, s. 15, a penalty of $100 is imposed on any Justice who acts as such without having taken and subscribed the oath of qualification.

For other cases on the question of disqualifying interest in the Magistrate, see R. & J's., 1972; 4 Mew's Dig., 1091, 1179-1185; L. R. Dig., 1865-1880, 2043-2046; L. R. Dig., 1881-1885, 731; L. R. Dig., 1886-1888, 277; Saunders' Prac., 14-19, 82, 359; Paley on Con., 5th Ed., 38, *et seq.*

(*h*) "All prosecutions." See sec. 54, note (*n*).

(*i*) "Any offence." See note (*o*), p. 29.

This section applies to these offences: Selling liquor without license, (secs. 49, 70); the use of any sign or inducement leading to the belief that the person is licensed when he is not, (sec. 49, ss. 2); keeping spirituous liquor for sale without license, or permitting liquors to be consumed on unlicensed premises, (sec. 50); clubs or societies selling without license, (sec. 53), selling liquor during prohibited hours, (sec. 54); selling liquors from ships in port, (sec. 59);

be before two or more Justices.

50, 54, 59, 60, 66, 70, and 79 of this Act, or any section for the contravention of which a penalty or punishment is prescribed by [section 85], whether the prosecution is for the recovery of a penalty or for punishment by imprisonment, may take place before any two or more of Her Majesty's Justices of the Peace (*j*) having jurisdiction in the county or district in which the offence is committed (*k*).

---

allowing liquors to be drunk on the premises of any person having a shop license, or on the premises of any chemist or druggist, (sec. 60); the acceptance of money by License Commissioners or Inspectors, (sec. 66); keeping a disorderly house or place of public entertainment, or allowing gambling, &c., on the premises, (sec. 79); and offences for which no punishment is specially prescribed, whether any such offences are for a pecuniary penalty or punishment by imprisonment. The purchaser of wearing apparel, &c., or receiving goods in pawn for liquor by any licensed person is an offence requiring the adjudication of a Stipendiary or Police Magistrate, or two Justices of the Peace, (sec. 65).

Any prosecutions for these offences must be before two or more Magistrates, except in cases in which an appeal lies against the conviction to the County Judge, and the offence is committed in a township, or an incorporated or police village, or in an unorganized district, when the prosecution may take place and a conviction be made before one or more Justices. See sec. 99, and notes thereto.

It was said that the Crown is not obliged under this section to prosecute before two Magistrates, as a private individual would be, but may proceed in the High Court by information: per Wilson, J., R. *v.* Taylor, 36 U. C. R., 183.

(*j*) "Two of Her Majesty's Justices of the Peace." See sec. 79, note (*d*), and see also R. *v.* Row, 14 C. P., 307, in which it was held that a conviction by two Justices of the County of Middlesex, sitting in the City of London, Ont., was bad, as they had no jurisdiction in the latter place. See also Hunt *v.* McArthur, 24 U. C. R., 254, in which it was held that where a Magistrate was acting out of his jurisdiction an action for malicious arrest was misconceived. See R. *v.* Firmin, 33 U. C. R., 523; R. *v.* Lynch, 19 O. R., 664.

It was held that in a case under sec. 70 for selling liquor without a license, a remand of the defendant by only one Justice could not affect the conviction: R. *v.* Menary, 19 O. R., 691.

And an information can be laid before one Justice, although two must try the case: R. *v.* Klemp, 10 O. R., 143; see also R. *v.* Russell, 13 Q. B., 237.

"A Police Magistrate sitting at a Police Court, or other place appointed in that behalf, shall have full power to do alone whatever is authorized by any statute in force in the Province relating to matters within the legislative authority of the Legislature of the Province, to be done by two or more Justices of the Peace; and every Police Magistrate shall have such power while acting anywhere within the County for which he is *ex officio* a Justice of the Peace:" R. S. O., c. 72, s. 21. And a like provision is contained in the "Summary Convictions Act," sec. 10.

(*k*) The words "being within the jurisdiction of such Justice" in sec. 13 of the Summary Convictions Act, R. S. C. c. 178, were held to refer to the time when the offence or act was committed, and not to the time when the information was laid; and an order *nisi* to quash a conviction for an offence against the second part of the C. T. Act on the ground that where the defendant was not within the territorial jurisdiction of the convicting Magistrate at the time the information was laid, having left it after the offence was committed, was

(2) The Justice (*l*) shall in all cases reduce to writing the evidence of the witnesses examined before them, and shall read the same over to such witnesses, who shall sign the same (*m*). R. S. O. 1877, c. 181, s. 68. Amended 53 Vic. c. 56, s. 11.

Evidence to be taken in writing.

97. All prosecutions under this Act (*n*), other than those mentioned in the preceding section whether for the recovery of a penalty or otherwise, may be brought and heard before any one or more of Her Majesty's Justices of the peace in and for the county where the forfeiture took place, or the penalty was incurred, or the offence was committed or wrong done. R. S. O. 1877, c. 181, s. 69.

All other prosecutions may be before one or more Justices.

---

refused. It was held that the Magistrate had jurisdiction: R. *v.* Bachelor, 15 O. R., 641.

See further notes, secs. 104, 105.

(*l*) "The Justices" here referred to are those sitting at the hearing of any prosecution under the Act. The evidence in all cases should be reduced to writing, and in doing this the Magistrates should use as nearly as possible the exact language of the witnesses.

(*m*) Sec. 36 of "The Summary Convictions Act" provides that "every witness at any hearing shall be examined upon oath or affirmation, and the Justice before whom any witness appears for the purpose of being examined shall have full power and authority to administer to every witness the usual oath or affirmation."

In Acts of Parliament expressions referring to writing shall, unless the contrary intention appears, be construed as including references to printing, lithography, photography, and other modes of representing or reproducing words in a visible form. See note (*d*) to sec. 8.

As to signature see note (*s*), sec. 34.

(*n*) This section applies to all prosecutions under the Act other than those mentioned in sec. 96. Among these may be included—neglect to expose license (sec. 47); failure to exhibit notice of being licensed (sec. 48); giving a colorable certificate by any medical practitioner or Justice of the Peace (sec. 52, ss. 2); failure to keep the bar-room closed on Sunday (sec. 55); being found in a bar-room during prohibited hours (sec. 56); selling liquor on polling days (sec. 57); obtaining liquor at prohibited times (sec. 58, sec. 71, ss. 3); purchasing liquor from an unlicensed person (sec. 58, ss. 2*b*); allowing liquor to be consumed in premises licensed to sell by wholesale (sec. 61); selling liquor to unlicensed persons (sec. 62); keeping more than one bar in any licensed house (sec. 63); not providing separate entrance to the bar (sec. 64); issuing license contrary to the Act (sec. 67); refusing to furnish lodgings, meals, etc. (sec. 72); permitting drunkenness, etc. (sec. 73); using internal communication between licensed and unlicensed houses (sec. 74); allowing internal communication with premises in which other goods are sold (sec. 75); supplying liquors to minors (sec. 76); allowing liquor to be unlawfully consumed on premises (sec. 77); purchaser of liquor from an unlicensed person, drinking same on premises where bought (sec. 78); purchaser drinking liquor in premises to which shop or wholesale license applies (sec. 78, ss. 2); harbouring constables on duty (sec. 80); compromising offences (sec. 81); being concerned in such compromise (sec. 82); tampering with a witness (sec. 84).

Prosecutions under resolutions of License Commissioners, imposing penalties.

98. In all cases where the board of license commissioners passes a resolution in pursuance of the powers conferred upon them by sections 4 and 5 of this Act, (*o*) and in and by any such resolution, penalties are imposed for the infraction thereof, such penalties may be recovered and enforced by summary proceedings before any Justice of the Peace having jurisdiction, in the manner and to the extent that by-laws of municipal councils may be enforced under the authority of *The Municipal Act*; (*p*) and the convictions in such proceedings may be in the form set forth in section 427 of the said last mentioned Act. R. S. O. 2877, c. 181, s. 70; 47 V., c. 34, s. 17.

Rev. Stat. c. 184.

As to the right of appeal; see sec. 118; R. *v.* Firmin, 33 U. C. R., 523.

See *in re* Brown and Wallace, 8 L. J. N. S., 81.

See also notes to sec. 96 and 99.

(*o*) Secs. 4 and 5 of this Act empower the Board of License Commissioners to pass resolutions for regulating and determining the following matters: (1) Defining requisites for granting tavern and shop licenses; (2) limiting the number of licenses; (3) exemption from having accommodation in certain cases; (4) regulating taverns; (5) defining duties of Inspectors; (6) imposing penalties for the infraction of such resolutions. See notes to those sections.

(*p*) This section practically incorporates those provisions of the Municipal Act for the enforcement of the by-laws of Municipal Councils. Formerly the power of regulating taverns and shops was vested in Municipal Councils, see Smith *v.* The City of Toronto, 10 C. P., 225; *in re* Bright *v.* The City of Toronto, 12 C. P., 433. This power now belongs to and is to be exercised by the Boards of License Commissioners, except where provision is made to the contrary by the Act: per Harrison, C. J., Brodie and The Corporation of Bowmanville, 38 U. C. R., 580, p. 585; *in re* Arkell and The Town of St. Thomas, 38 U. C. R., 594. See also sec. 54, note (*v*), and secs. 20, 32, 42, and notes thereto.

Sec. 420 of the "Municipal Act" provides that "every fine and penalty imposed by or under the authority of the Act may, unless other provision is specially made therefor, be recovered and enforced with costs by summary conviction before any Justice of the Peace for the County or the Municipality in which the offence was committed, and in default of payment the offender may be committed to the common gaol, house of correction, or lock-up house of the County or Municipality, there to be imprisoned for any time in the discretion of the convicting Justice, not exceeding (unless where the provision is specially made) thirty days, and with or without hard labour, unless such fine and penalty and costs, including the costs of committal, are sooner paid."

A conviction ordering imprisonment in default of payment of the fine without any provision for distress, under this section would be bad: R. *v.* Bleakley, 6 P. R., 244.

By sec. 421, the Justice or other authority before whom a prosecution is had for an offence against a Municipal by-law, may convict the offender on the oath or affirmation of any credible witness, and shall award the whole or such part of the penalty or punishment imposed by the by-law as he thinks fit, with the costs of prosecution, and may by warrant under the hand and seal of the Justice or other authority, or in case two or more Justices act together therein, then

under the hand and seal of them, cause any such pecuniary penalty and costs, or costs only, if not forthwith paid, to be levied by distress and sale of the goods and chattels of the offender.

The word "credible witness" in this section is equivalent to "competent witness:" Hawes *v.* Humphrey, 9 Pick. Mass., 350; Haven *v.* Hilliard, 23 Pick. Mass., 10; Armoy *v.* Fellows, 5 Mass., 219; Sears *v.* Dillingham, 12 Mass., 238; Jarmon on Wills, 3rd. ed., 82; so that such witnesses only can be properly examined as are competent witnesses in a Court of Justice. When pecuniary interest amounted to a disqualification, the informer, when entitled to a part of the penalty, was incompetent both on the ground of interest and on the ground of being a party entered on the record: R. *v.* Tilly, 1 Str., 316; R. *v.* Stone, 2 Ld. Raym., 1545; R. *v.* Blaney, Andr., 240; R. *v.* Piercy, *Ib.*, 18; R. *v.* Robotham, 3 Burr., 1472; R. *v.* Shipley, cited in Gilb., 113; and other cases cited in Harrison's Mun. Man., 312. But so far as this Act is concerned, it is expressly provided that "the person giving or making the information or complaint shall be a competent witness:" sec. 424, Mun. Act. See also R. S. O. c. 61, s. 9, which provides that "on the trial of any proceeding, matter or question, under any Act of the Legislature of Ontario, or the trial of any proceeding or matter before any Justice of the Peace, Mayor or Police Magistrate, not being a crime, the party opposing or defending, or the wife or husband of the person opposing or defending, shall be competent and compellable to give evidence therein." But persons on trial for a criminal offence cannot testify for or against themselves: see Windsor *v.* R., 7 B. & S., 490; Attorney-General *v.* Radloff, 10 Ex., 84; but see notes to sec. 115. If imprisonment may, in the first instance, follow the conviction, the proceeding is in general looked upon as a criminal one: per Platt, B., Attorney-General *v.* Radloff, 10 Ex., 84.

There are many crimes, properly so called, which are liable to be punished on summary conviction. But there are a vast number of acts, which in no sense are crimes, which are punishable; such, for instance, as keeping open house after certain hours, and a variety of breaches of police regulations, which will readily occur to the mind of any one: per Martin, B., 10 Ex. 84, at p. 96. Where the proceeding is for the purpose of obtaining redress for a violation of a private right only, the proceeding is a civil one; but on the other hand, if the proceeding is for the punishment of an offence against the general interest of the community and for the punishment of the infraction of some public duty, it is a criminal proceeding: per Sir A. Cockburn, in arguing the same case, p. 86. It is not an easy matter to draw a line and so be able to decide on which side of the case it should be placed. See Attorney-General *v.* Bowman, 2 B. & P., 532; Attorney-General *v.* Siddam, 1 C. & J., 220; Huntley *v.* Luscombe, 2 B. & P., 530; Rackham *v.* Bluck, 9 Q. B., 691; Cobbet *v.* Slowman, 9 Ex., 633; *Ex parte* Eggington, 2 E. & B., 717; Sweeny *v.* Spooner, 3 B. & S., 329: Reeve *v.* Wood, 5 B. & S., 364; Attorney-General *v.* Sullivan, 32 L. J. Ex., 92; Easton's case, 12 A. & E., 645; Cattel *v.* Ireson, E. B. & E., 91; Morden *v.* Porter, 7 C. B. N. S., 641; Hearne *v.* Garton, 2 E. & E., 66; Parker *v.* Green, 2 B. & S., 299; *In re* Lucas and McGlashan, 29 U. C. R., 81; R. *v.* Boardman, 30 U. C. R., 553; R. *v.* Roddy, 41 U. C. R., 291; Peek *v.* Shields, 6 App. R., 639; R. *v.* Lackie, 7 O. R., 431, and other cases cited in notes to sec. 115.

The Justice may impose the *whole* or *such part* of the penalty as he *thinks fit*.

The warrant is required to be under the "*hand and seal*" of the Justice and must therefore be in writing: Hutchinson *v.* Lowndes, 4 B. & Ad., 118; see also Wilson *v.* Wallani, 5 Ex. D., 155.

Sec. 422 provides that in case of there being no distress found, out of which the penalty can be levided, the Justice may commit the offender to the common gaol, house of correction, or nearest lock-up house, for the term or same part thereof specified in the by-law.

The power of commitment is here contingent on there being no distress found, out of which the penalty can be levied. See notes to secs. 70, 88, 105, and note (*u*), p. 165.

The commitment must be in writing: Mayhew *v.* Locke, 2 Marsh, 377; and it should be drawn up immediately after the commitment is ordered; *in re* Masters, 33 L. J., Q. B. 146. Detention of the party cannot be justified further than necessary to make out the warrant: Hutchinson *v.* Lowndes, 4 B. & Ad., 118; but the detention of the party till the return of the warrant of distress may, it seems, be by parole: Stile *v.* Walls, 7 East, 533.

For forms, see appendix.

By sec. 424, the person giving the information or complaint is made a competent witness.

By sec. 425, ratepayers, members, officers, etc., of the Corporation are also made competent witnesses.

Sec. 426 provides that witnesses may be compelled to attend and give evidence in the same manner and by the same process as they are compelled to attend and give evidence on summary proceedings before Justices of the Peace in cases tried summarily under the Statutes now in force, or which may be hereafter enacted. See notes to sec. 115.

Sec. 427 provides that it shall not be necessary in any conviction made under any by-law of any Municipal Council to set out the information, appearance, or non-appearance of the defendant or the evidence or by-law under which the conviction is made, but all such convictions may be in the form following:

PROVINCE OF ONTARIO, COUNTY OF TO WIT: } Be it remembered that on the day of , A. D. 18 , at , in the County of

A. B. is convicted before the undersigned, one of Her Majesty's Justices of the Peace in and for the said County, for that the said A. B. *(stating the offence and the time and place, and when and where committed)*, contrary to a certain by-law of the Municipality of the of in the said County of , passed on the day of , A. D. 18 , and entituled (reciting the title of the by-law), and I adjudge the said A. B., for his said offence, to forfeit and pay the sum of , to be paid and applied according to law, and also to pay C. D., the complainant, the sum of for his costs in this behalf. And if the said several sums are not paid forthwith (*or* on or before the day of , *as the case may be*), I order that the same be levied by distress and sale of the goods and chattels of the said A. B.; and in default of sufficient distress I adjudge the said A. B. to be imprisoned in the common gaol of the said County of (*or*, in the lock-up at), for the space of days, unless the said several sums, and all costs and charges of conveying the said A. B. to such gaol (or lock-up) are sooner paid.

Given under my hand and seal, the day and year first above written, at , in the said County.

[L. S.] J. M.,
J. P.

A form adapted from this for a conviction under sec. 98 of the License Act will be found in the appendix.

The conviction should shew the by-law to have been passed by the Council of the particular Municipality: R. *v.* Osler, 32 U. C. R., 324. The omission of the date or title of the by-law would not be fatal to the conviction, if the by-law be in other respects sufficiently referred to: *Ib.* But some reference to the by-law is necessary: *In re* Livingstone, 6 P. R., 17

99. When by this Act (*q*) it is provided that any prosecution may take place before two or more of Her Majesty's Justices of the Peace, (*r*) having jurisdiction in the county or district in which the offence is charged to have been committed, (*s*) then in case (*t*) an offence is committed in a township, or in an incorporated, or police village, or in an unorganized district, the prosecution may take place before and a conviction or order may be made by, one or more of such Justices of the Peace, instead of "two or more" of such Justices, whenever an appeal lies against such conviction or order to the County Judge (*u*).

One justice may hear case in rural municipalities.

The remarks upon the sections of the Municipal Act here quoted are taken chiefly from Harrison's Mun. Man., pp. 311-317. Reference to this excellent work is recommended. Full notes will be found at pages 311-317, 360-367 of that work. Notes on similar subjects are to be found in other parts of this work, as for instance, on the question of the competency of the parties to prosecutions under the Act as witnesses. Reference to the index will enable the reader to find these notes.

(*q*) "When by this Act," means when "in pursuance of this Act," or "under and by virtue of this Act." In strictness anything not authorized by a Statute cannot be in "pursuance" or "under and by virtue" of it, whilst if authorized it would need no other protection. But if effect were given to such construction, it would altogether do away with the protection intended to be given; accordingly it is held that if any public or private body, or person charged with the execution of an Act of Parliament, honestly intends to put the law in motion and really, and not unreasonably, believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct would be "in pursuance" or "under or by virtue" of the Statute under which he believes he is acting, although he errs in such belief. The question whether there was in fact reasonable ground for such belief, is a subordinate belief and one very material to be pressed on the minds of the jury; but the presence or absence of such reasonable ground can only be relied on for the purpose of determining whether the belief was *bona fide* or not: Herman *v.* Seneschal, 13 C. B. N. S., 392; Roberts *v.* Orchard, 2 H. & C., 769; Judge *v.* Selmes, L. R., 6 Q. B., 724; Chamberlain *v.* King, L. R. 6 C. P., 474; Midland R'y. Co. *v* Withington, 11 Q. B. D., 788; Hughes *v.* Buckland, 15 M. & W., 346; Lea *v.* Facey, 19 Q. B. D., 352; Sinden *v.* Brown, 17 App. R., 178; Bond *v.* Conmee, 16 App. R. 398; Maxwell, 278; Roscoe, N. P., 1073, 1088, 1095, 1099-1104; Stroud's Dict., 639.

"When" usually creates a condition precedent: Jolley *v.* Hancock, 7 Ex., 820. See note (*t*) below.

(*r*) "Two or more of Her Majesty's Justices of the Peace." See notes to sec. 96; also secs. 65, 79 and notes thereto.

(*s*) "Having jurisdiction," &c. See note (*d*) to sec. 79.

(*t*) "Then in case," creates a condition precedent. See note (*q*), *supra*. The phrases "if," "when," "provided," "in case," "so soon as," have been said to be synonymous: Shrimpton *v.* Shrimpton, 31 Beav., 425. See sec. 38, note (*s*), p. 85.

"Is charged," means is "accused." To "charge" is defined by Wharton as "to prefer an accusation against any one." See notes to sec. 70.

(*u*) This section applies to the prosecution of offences committed in a Town-

When such prosecution takes place before or a conviction or order is made by one Justice instead of two or more, the forms in the schedule to this Act may be altered and adapted so as to meet the exigencies of the case. 49 V. c. 39, s. 20.

Costs in convictions or orders under ss.

100. In all cases of conviction, or orders made under and in pursuance of sections 65, 72, 73, 74, 76 and 78 of this Act (*v*), the Justice or Justices making the same

---

ship, incorporated village, police village, or in an unorganized district, and in which an appeal lies against a conviction of the Magistrate to the County Judge. For cases coming within the latter condition see sec. 118. See also secs. 97 and 99 and notes thereto.

"Township" includes "Townships, union of Townships, or united Townships, as the case may be." Municipal Act, sec. 2, ss. 5.

An "incorporated village" is a village of 750 inhabitants or more, incorporated under the Municipal Act, secs. 9-17.

An unincorporated village, as distinguished from an "incorporated village," may be defined as a collection of houses merely without any incorporation. The words "town" and "village" are used in this sense in English Acts of Parliament: see R. *v.* Fisher, 8 C. & P., 612; Elliott *v.* South Devon Ry. Co., 2 Ex., 725; R. *v.* Cottle, 16 Q. B., 412; Elliott *v.* South Devon Ry. Co., cited R. *v.* Cottle, 16 Q. B., 420; Milton-Next-Sittingborne *v.* Faversham, 10 B. & S., 548; London & S. W. Ry. Co. *v.* Blackmore, L. R. 4 H. L., 610; Blackmore *v.* London & S. W. Ry. Co., 19 L. T. N. S., 5; Bond *v.* Conmee, 16 App. R., 398.

In the United States a railway station house, a warehouse, a store, a blacksmith's shop, a post-office, and five or six dwelling houses were held to constitute a village: Toledo, etc., Ry. Co. *v.* Spangler, 71 Ill., 568. "So it seems that a lawyer and a church are not essential to a 'village':" Browne on the Judicial Interpretation of Words, etc., 503. Webster defines a village to be "an assemblage of houses in the country less than a town or city and inhabited by farmers and other laboring people." See Truax *v.* Pool, 20 Iowa, 256; Browne on the Judicial Interpretation of Words, etc., 476. A "police village" may be set apart by a County Council with such limits as are deemed expedient (sec. 639 Mun. Act). The members of the Executive and Legislative body of a police village consist of three trustees (sec. 641 Mun. Act). They are elected by the persons whose names appear by the assessment roll of the Township to be entitled to vote in such police village (sec. 652 Mun. Act), and the nomination for such trustees takes place annually on the last Monday in December, the election on the first Monday in January (sec. 648 Mun. Act).

"Unorganized districts" are such as have not been erected into an organized Municipality. See "The Unorganized Territory Act," R. S. O. c. 91.

"One or more such Justices of the Peace." See sec. 79, note. (*d*).

"Two or more such Justices." See secs. 94, 96, 97, and notes thereto.

(*v*) A "conviction" is the act of a legal tribunal adjudging a person guilty of a criminal offence: Wharton, 180; and see note (*b*), sec. 94. An "order" is a mandate, precept, command; particular orders are made to enforce payment of money, to enforce obedience to justice, and compel that which is right to be performed: Wharton, 521.

A "conviction" is a record of an affirmative adjudication upon an information for an offence or act punishable by a penalty or imprisonment; and an

may, in his or their discretion, award and order, in and by the conviction or order, that the defendant shall pay to the prosecutor or complainant such costs as to the said Justice or Justices seem reasonable in that behalf, and not inconsistent with the fees established by law to be taken on proceedings had by and before Justices of the Peace (*w*). 48 V. c. 43, s. 7. 65, 72—74, 76 and 78.

PROCEDURE IN CASES WHERE PREVIOUS CONVICTION CHARGED.

101. The proceedings (*x*) upon any information for Proceed-

"order" is a like adjudication upon a complaint for non-payment of a sum of money, or for the doing of some other thing: Saunders' Prac., 28.

The Justice or Justices on conviction should first make a minute or memorandum thereof, and the conviction or order is afterwards drawn up in proper form: Saunders' Prac., 161. And the conviction must follow the adjudication: R. *v.* Brady, 12 O. R., 358; R. *v.* Higgins, 18 O. R., 148; R. *v.* Cantillon, 19 O. R., 197. But see R. *v.* Hartley, 20 O. R., 481, cited in notes to sec. 105.

As to form of conviction, see sec. 102.

This section applies to convictions under the sections mentioned, and not to any other.

(*w*) "Upon conviction." The Justice or Justices may either order the defendant to pay the prosecutor or complainant his costs, or may not in his or their discretion. The conviction must contain the order for payment of costs, and must specify the amount: Bott *v.* Ackroyd, 5 Jur., N. S. 1053; R. *v.* Isle of Ely, 5 E. & B., 489; Tarry *v.* Newman, 15 M. & W., 645; Wray *v.* Toke, 12 Q. B., 492, 509; R. *v.* Westmoreland, 1 D. & L., 178; Lock *v.* Sellwood, 1 Q. B., 736; *ex parte* Holloway, 1 Dowl., 26.

See R. *v.* Wright, 14 O. R., 668; R. *v.* Rowlin, 19 O. R., 199; R. *v.* Clarke, 19 O. R., 601; all of which will be found in this work. See case cited in notes to secs. 70 and 105.

Costs of the application to quash a conviction will be adjudged against a private prosecutor where he lays an information without having reasonable ground for believing that the charge will be sustained by proper evidence: R. *v.* Kennedy, 10 O. R., 396.

"As may seem reasonable." See sec. 11, ss. 8, note (*w*), p. 25.

The costs awarded must not be inconsistent with the fees established by law to be taken in proceedings by and before Justices of the Peace.

The fees of Justices of the Peace are fixed by R. S. O. c. 78, where no other fees are expressly provided; and by sec. 4 of that Act the witness fees to be allowed in cases of assault, trespass or misdemeanor, are 50 cents per day for every day's attendance, where the distance travelled in coming to and returning from the adjudication does not exceed 10 miles, and 5 cents for every mile above 10.

For table of fees allowed to Justices see Appendix.

The Magistrate ordered the defendant to pay $1 for the use of the hall for trying the case and condemned the defendant in default of distress to imprisonment: Held, that in ordering payment of this sum there was a clear excess of jurisdiction: R. *v.* Elliott, 12 O. R., 524.

See The Summary Convictions Act, R. S. C., c. 178, secs. 58-61.

(*x*) The "proceedings." "Proceeding" has been defined as meaning a step

ings in cases where a previous conviction charged.

committing an offence against any of the provisions of this Act, in case of a previous conviction or convictions being charged, shall be as follows:

(1) The Justices or Police Magistrate (*y*) shall in the first instance (*z*) inquire concerning such subsequent offence only, and if the accused be found guilty thereof, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and if he answers that he was so previously convicted, he may be sentenced accordingly; but if he denies (*a*) that he was so previously convicted, or stands mute of malice, (*b*) or does not answer

---

in an action, *i. e.*, a step "towards" and not "after judgment:" Houlston *v.* Woodward, Law Notes, 1885, p. 15, cited Stroud's Dict., 617.

An "action" or suit is also "proceeding:" Pryor *v.* City Offices Co., 10 Q. B. D., 504; Dodd *v.* Middleton, 63 Ga., 635.

It was said in the latter case that "the very origin of the term imports a procession. I believe it is derived from a French word which means to follow; and in olden time the suitor was followed by his suit or those who backed, and thus instituted the suit with the procession which followed him:" Browne on the Judicial Interpretation of Words, etc., 339. The "proceedings" here meant are the different steps to be taken in the prosecution.

The section applies to cases in which previous convictions have been obtained and are charged in the information. See notes to sec. 70.

(*y*) "The Justices or Police Magistrate." See notes to secs. 97, 98, 99.

(*z*) "In the first instance" means in the first place, but it applies only to the proceedings at the hearing. It is expected that the prosecutor and his witnesses will, at all events, be present at the time and place appointed, and the offence of which the accused is then particularly charged and of which he has not yet been convicted will be tried first. The object of this is manifest, for if he is not convicted of the subsequent offence, the charge of being previously convicted must also fail. Similar procedure is provided for in criminal cases under the Criminal Procedure Act, R. S. C. c. 174, s. 207.

In case the accused is found guilty of the last offence charged, the Justices or Magistrate should inform him that the information alleges that he has been previously convicted, and shall ask him whether he has been previously convicted as alleged in the information, and proceed as the section directs.

As to proof of previous conviction, see sub-sec. 2.

(*a*) "If he denies," etc., *i. e.*, pleads not guilty to the charge of being previously convicted.

(*b*) "Stands mute of malice" means that he declines to plead. The term is used of one who abstains from pleading when he is able to do so. Formerly when a prisoner on his trial for felony refused to plead he was subjected to a process called "*peine forte et dure*" (the strong and hard pain). It consisted in placing the prisoner in a low, dark chamber, and there laid on his back on the bare floor naked, unless where decency forbade; a weight of iron as great he could bear was placed upon his body, and he was kept thus with very little food until he died or consented to plead. "Mute of malice" is used to distinguish accused persons of this class from those who, being deaf and dumb, or otherwise unable to plead, were said to be "mute by the visitation of God."

directly to such question, the Justice or Police Magistrate shall then inquire (*c*) concerning such previous conviction or convictions.

(2) The number (*d*) of such previous convictions (*e*) shall be provable by the production of a certificate under the hand of the convicting Justices or Police Magistrate, or of the Clerk of the Peace, without proof of his signature or official character, or by other satisfactory evidence. (*f*)

Number of previous convictions, how proved.

See Russell on Crimes, 6 (*f*); 4 Step. Com.; 3 Bl. Com., 327; 2 Reeves, c. ix., 134, cited Wharton, 546.

Stands mute means, then, simply refusing to plead or answer to an indictment. The plea of not guilty is entered and the trial proceeds; see cases cited in Anderson's Dict., 693.

(*c*) An "inquiry" is not limited to what a man can see with his own eyes; it signifies a judicial inquiry with witnesses, and it is usual on an inquiry to hear counsel and witnesses: Wenlock *v.* River Dee Co., 19 Q. B. D., 155.

In another case it was held that a "due inquiry" means to give its subject matter a fair hearing: Allbutt *v.* General Medical Council, 23 Q. B. D., 400.

"This means that he shall inquire by means of competent legal evidence, that is, that he shall have before him legal evidence of the previous conviction or convictions:" per O'Connor, J., R. *v.* Kennedy, 10 O. R., 396, at p. 402. But see R. *v.* Kennedy, 17 O. R., 159, cited *infra*.

(*d*) "The number." The expression used here is in the singular, and in this respect differs from the expression "conviction or convictions" at the end of sub-sec. 1. O'Connor, J., in R. *v.* Kennedy, 10 O. R., 396, says: "I think the two expressions" (*i. e.*, that at the end of the last sub-sec. and the one here used) "are essentially different and are intentionally so formed to express different things, as they appear in juxta-position. The certificate is not evidence of a previous conviction, but of the number of such previous convictions," and therefore it was held that "where there is no other evidence of such previous conviction, a conviction for a second or third offence cannot stand." But this decision was not followed in R. *v.* Kennedy, 17 O. R., 159, in which it was held by Rose, J., (Galt, C. J., and MacMahon, J., concurring) that the certificate referred to in the section "means a certificate shewing whether the conviction therein referred to is a first, second, or third, and if the certificate contains a sufficient statement of fact of the conviction, and if the identity of the defendant with the person named in the certificate is established," it is sufficient.

(*e*) A conviction for selling liquor on Sunday, "the same being the third offence," etc., was held bad because the information did not charge the two previous offences: R. *v.* French, 34 U. C. R., 408. Convictions imposing the increased penalties for second and third offences are bad unless proceedings have been taken for the first offence: R. *v.* Rodwell, 5 O. R., 186. And where the information did not shew what the nature of the previous conviction was, or that it was one of a similar nature to the one charged, the conviction upon it could not stand: R. *v.* Kennedy, 10 O. R., 396.

(*f*) It was held that the Justices are not warranted in adjudicating a forfeiture without *legal proof* of a former conviction: Cross *v.* Watts, 13 C. B. N. S., 239; also that there must be proof of the identity of the person convicted: R. *v.* Crofts, 9 C. & P., 219. On both these points, see judgt. of O'Connor, J., *v.* Kennedy, 10 O. R., 396, at p. 403.

Previous convictions need not be charged.

(3) A conviction may in any case be had as for a first offence notwithstanding that there may have been a prior conviction or convictions for the same or any other offence. (*g*)

Offences on same day.

(4) Convictions for several offences may be made under this Act, although such offences may have been committed on the same day; (*h*) but the increased penalty or punishment hereinbefore imposed shall only be recoverable in the case of offences committed on different days, and after information laid for a first offence.

The previous offence need not be against the same license, but may be against a license for a previous year: R. *v.* Black, 43 U. C. R., 180.

The adjudication on a second offence for selling liquor during prohibited hours, without providing for distress, directed immediate imprisonment in default of the payment of the fine and costs; and the conviction drawn up under it was in similar terms. After the issue of a writ of *certiorari*, but before its return, an amended conviction was returned providing for distress being first made: *Held*, that the adjudication and conviction made under it were void for not providing distress; and that the amended conviction could not be supported because it did not follow the adjudication. *Semble*, that had the amended conviction been in other respects good it would not have been void for including the costs of conveying to gaol: R. *v.* Cantillon: 19 O. R., 197. See R. *v.* Brady, 12 O. R., 358, at pp. 360-361; R. *v.* Higgins, 18 O. R., 148.

"Satisfactory evidence," means that amount of proof which ordinarily satisfies an unprejudiced mind beyond reasonable doubt: see Taylor on Evi., 2.

(*g*) This applies to all cases whether previous convictions are charged or not. Even where previous convictions are charged, the Justices may convict as for a first offence under this section. But where the increased penalty is imposed, the provisions of the Statute as to arraigning the accused are material and must not be neglected: R. *v.* Fox, 10 Cox, C. C. 502. The Court is not bound to take notice of previous convictions unless they are both charged and proved: R. *v.* Summers, 1 L. R. C. C., 182; 11 Cox C. C., 248; 2 Mew's Dig., 2397; R. *v.* Willis, 26 L. T., 485; 2 Mew's Dig., 2398.

"For the same or any other offence." Generally in such cases where increased punishment is imposed for a subsequent offence, the first one should be of the same character: see Attorney-Gen. of Hong Kong *v.* Kwok-a-Sing, L. R. 5 P. C., 179; See also R. *v.* Garland, 11 Cox, C. C. 224. But see sec. 70 and notes thereto.

(*h*) The meaning of this sub-section is that although convictions may take place for several offences committed on the same day, yet the increased penalty or punishment inflicted for the repetition of offences shall only be imposed when the previous offences charged have been committed on separate days.

See sec. 91 and notes thereto.

"And after information laid for a first offence." See R. *v.* Rodwell, 5 O. R., 186, cited in note (*s*) *supra*. "It is not the conviction which subjects the accused to the increased penalty, but the offences themselves. The whole scope of the Statute is, that if a party after being convicted again offends, then there may be cumulative punishment, but where the last conviction was made on 12th Feb. for an offence committed on 26th Jan., whilst a second conviction was said to have been made on the 5th Feb. for an offence committed on 31st

In case of a second or subsequent conviction becoming irregular by quashing of a first or previous conviction,

Justices or Police Magistrate may amend;

(5) In the event (*i*) of a conviction for any second or subsequent offence becoming void or defective, after the making thereof, by reason of any previous conviction being set aside, quashed, or otherwise rendered void, (*j*) the Justices or Police Magistrate by whom such second or subsequent conviction (*k*) was made, may by warrant (*l*) under his or their hand summon the person convicted to appear at a time and place to be named in such warrant, and may thereupon, upon proof of the due service of such warrant, (*m*) if such person fails to appear, or on his appearance, amend such second or subsequent conviction, (*n*) and adjudge such penalty or punishment as might have been adjudged had

---

Jan., so that the second conviction was for the last offence and the last conviction for the second offence," (per Cameron, Q. C., R. *v.* French, 34 U. C. R., 403, at p. 409) the conviction was held bad. See also R. *v.* Hoggard, 30 U. C. R., 152; R. *v.* White, 21 C. P., 354; R. *v.* Strachan, 20 C. P., 182.

(*i*) "In the event." See sec. 99, note (*t*).

(*j*) This provision is intended to prevent the escape of an offender, charged with a second or subsequent offence, from the consequences of his infraction of the law, in case the previous conviction charged is quashed or rendered void by reason of any defect. In order to convict of a second or subsequent offence the prior convictions must be valid and subsisting convictions. See R. *v.* Ackroyd, 1 C. & K., 158; R. *v.* Stonnell, 1 Cox, C. C. 142.

See also notes to sub-sec. 4, *supra*.

"Set aside, quashed or otherwise rendered void." These three terms are nearly synonymous. To "set aside," is "to annul, to make void:" Worcester, 1315. To "quash," is defined by Wharton as "to overthrow or annul;" and to render "void," means that the subject-matter is so "nugatory and ineffectual that nothing can cure it:" Wharton, 763.

(*k*) "Second or subsequent conviction." See notes to sec. 70.

(*l*) A "warrant" is a precept (under hand and seal) to some officer to arrest an offender to be dealt with according to due course of law. It may also mean a citation or summons. The latter meaning is intended to be conveyed here. Although it has been held that an offender under this Act may be arrested under a warrant, and that it was not improper to arrest a defendant charged with selling liquor without a license, instead of summoning him: R. *v.* Menary, 19 O. R., 691.

(*m*) "Upon proof of the due service" means upon evidence of service according to law. In a case under the C. T. Act, in which the expression used is similar to this (sec. 7), it was held that a summons not served personally, but left at the defendant's place of abode, was not "duly" served upon him, and a conviction made in his absence was quashed: R. *v.* Ryan, 10 O. R., 254. By R. S. O., c. 178, secs. 14, 15, "every summons shall be served by a constable or other peace officer, or other person to whom it is delivered, upon the person to whom it is directed, by delivering the same to such person personally, or by leaving it with some person for him at his last or most usual place of abode. And the service shall be proved by the constable, peace officer, or other person attending before the Justice, to depose, if necessary, to the service thereof."

(*n*) "Amend such subsequent conviction." See sec. 105 and notes thereto.

And amended conviction valid.

such previous conviction never existed, and such amended conviction shall thereupon be held valid to all intents and purposes, as if it had been made in the first instance. (*o*)

Second offence; meaning of.

(6) In case any person who has been convicted of a contravention of any provision of any of the sections of this Act, numbered 49, 50, 51, 52 or 59, or any section for the contravention of which a penalty or punishment is prescribed by section 70 or 85, is afterwards convicted of an offence against any provision of any of the said sections, such conviction shall be deemed a conviction for a second offence, within the meaning of section 70 [or 85], as the case may be, and may be dealt with and punished accordingly, although the two convictions may have been under different sections; and in case any such person is afterwards again convicted of a contravention of any provision of any of the said sections, whether similar or not to the previous offences, such conviction shall in like manner be deemed a conviction

Third offence.

for a third offence, within the meaning of section 70 [or 85], as the case may be, and may be dealt with and punished accordingly. (*p*) R. S. O. 1877, c. 181, s. 73, amended 53 Vic., c. 56, s. 12.

FORM OF INFORMATIONS AND OTHER PROCEEDINGS—AMENDMENTS.

Description in

102. In describing offences (*q*) respecting the sale

(o) The effect of this sub-section is that in the event mentioned in note (*j*), *supra*, the Magistrate or Justices acting in the case and by whom the second conviction was made, are empowered, after the first conviction has been set aside or quashed, to summon the accused before him or them, and then, in his presence if he appears, or in his absence if he has been duly served with a warrant and fails to appear, draw up a new or amended conviction, imposing such penalty as the law allows for a first offence, in lieu of the conviction for a second offence which has been set aside, quashed or annulled. There is no time specified within which this is to be done. See sec. 94, as to time of commencement of prosecutions.

(p) This sub-section applies only to prosecution for offences punishable under those sections particularly mentioned. The notes to those sections will be found to give the authorities relating to the offences covered. Its provisions have been extended by 52 Vic. c. 41, s. 7, to those offences for which no other penalty is prescribed, except by sec. 85.

See also cases referred to in the notes *supra*.

(q) In describing offences it was formerly necessary that an exact and a legal description should be given, and that an information and conviction should contain the same certainty as an indictment. This section and those which

informations.

or other disposal of liquor, (*r*) or the keeping, or the consumption of liquor (*s*) in any information, (*t*) summons, conviction, (*u*) warrant, or proceeding under this Act, it shall be sufficient to state the sale, disposal, keeping, or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or any person to whom it was sold or disposed of, or by whom it was consumed; and it shall not be necessary to state the quantity of liquor so sold, disposed of, kept, or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. R. S. O. 1877, c. 181, s. 74.

---

immediately follow it are intended to simplify proceedings under the Act, in order that there may be less danger of offenders escaping or evading the consequences of their acts by reason of mere defects in form. Still, there are certain rules to be followed, the observance of which is absolutely requisite to the validity of the proceedings. Some of these will be found in the cases hereafter cited, but in a work such as this it is impossible that the whole subject should be treated in detail.

This section applies only to prosecutions in which the illegal sale or disposal of liquor, or the illegal keeping or the consumption of liquor, is charged.

(*r*) As to "sale or other disposal," see sec. 49; note (*d*), p. 5, note (*j*), p. 120, note (*o*), p. 125; and as to evidence of sale, see secs. 108, 109.

(*s*) As to "keeping or consumption of liquor," see secs. 60, 61, 67 and notes on pages 24, 62, 112, 118 and 130. As to evidence of, see secs. 50 and 108 and notes thereto.

(*t*) "Any information." See note (*b*) to sec. 94.

In an information facts should be stated in a direct and positive manner; the description of the charge should include in express terms every ingredient required by the Statute to constitute the offence, nothing being left to inference, intendment or argument. Where the gist of the offence is guilty knowledge, as in secs. 16, 25, 54 (ss. 3), 67, 68, 69, &c., there should be a direct averment of its existence; and it should not state legal results of facts, but the facts themselves. It is said that the rule is, that where a Statute does not fully describe the offence, it should nevertheless be described fully. But it is now only necessary to follow the words of the Act, or of any by-law, regulation, or other document which creates the offence. The exact words of a Statute are not necessary, however, provided those used are equivalent. See Saunders' Prac., 42-52, and cases there cited. But see also secs. 94 and 105, and notes thereto.

And the information may be amended at any time before judgment; see sec. 104 and notes thereto.

The form of information is given in Schedule C; see also sec. 103 and notes thereto.

(*u*) "The conviction." See sec. 100, note (*v*). Forms of conviction are prescribed by sec. 103. See that sec. and notes thereto.

A conviction that "the defendant was in the habit of selling liquor without license," without charging any special offence or shewing time or place, or that liquors were sold by retail, and directing defendant to pay the costs of execution

without stating the amount, was held bad: R. *v.* Ferguson, 8 O. S., 220. See also R. *v.* Young, 5 O. R., 184*a*.

It was held sufficient to describe the offence as selling "a certain spirituous liquor called whiskey," though the clause creating the offence says "intoxicating liquor of any kind," for intoxicating liquor and spirituous liquor are used in the Act as convertible terms: Reid *v.* McWhinnie, 27 U. C. R., 289.

A conviction for that one H, on, etc., "did keep his bar-room open and allow parties to frequent and remain in the same, contrary to law:" Held, clearly bad as shewing no offence: R. *v.* Hoggard, 30 U. C. R., 152.

It is not necessary to mention the Statute under which the conviction is made, nor that the prosecution commenced within twenty days, nor to specify that it is a first or second offence, nor to whom the liquor was sold: R. *v.* Strachan, 20 C. P., 182.

A conviction that defendant sold spirituous liquors by retail without license, stating time and place, held sufficient, and that it is not necessary to specify kind and quantity: R. *v.* King, 20 C. P., 246.

Held, that a conviction against defendant "for that he did on Sunday, the 19th January, sell and receive pay for intoxicating liquor at his hotel," was bad as it did not shew whether it was selling without a license, or having license, for selling on Sunday: R. *v.* French, 34 U. C. R., 403, See same case cited in note (*e*) sec. 101.

A conviction that one G P of, etc., innkeeper, after the hour of seven in the evening, in and at his tavern, etc., being a place where intoxicating liquors are allowed to be sold by retail, did unlawfully sell, etc., one glass of beer, etc., was held bad, as not sufficiently shewing that defendant was the occupier: R. *v.* Parlee, 23 C. P., 359.

But the clause under which this conviction was made has been since amended. See sec. 71, note (*a*), p. 167.

A conviction for unlawfully having spirituous, &c., liquors without being first duly licensed thereto, need not negative the exceptions: R. *v.* Breen, 36 U. C. R., 84.

A conviction of S. & D. for that they, trading under the name and firm of S. & D., in their house of public entertainment, did unlawfully keep liquor for the purpose of sale, barter and traffic therein, without the license by law required: held bad, for that they could not be jointly convicted nor one penalty awarded against them jointly. Held, also that such conviction could not be amended: R. *v.* Sutton, 42 U. C. R., 220; see also R. *v.* Justices of Middlesex, 2 Q. B. D., 520, as to power of amendment. A conviction against a firm, "Kidd & Co.," was held to be invalid: R. *v.* Kidd, C. P. Div., reported in Toronto *Mail*, 29th Nov., 1890. *Query*, per Gwynne, J., whether a conviction imposing an unauthorized sentence could be amended on motion to quash: R. *v.* Lawrence, 43 U. C. R., 164. Held, that it could not: R. *v.* Allbright, 9 P. R., 25.

After a first conviction has been returned to the Clerk of the Peace, the Justices, if they think it defective, may make out and file a more formal conviction: See R. *v.* Cavanagh, 27 C. P., 537, cited in note (*a*), sec. 71, p. 167; Wilson *v.* Graybiel, 5 U. C. R., 227; R. *v.* Smith, 46 U. C. R., 442; R. *v.* Menary, 19 O. R., 691; R. *v.* Hartley, 20 O. R., 481; R. *v.* Richardson, *Ib.*, 514. See also cases cited in secs. 104, 105.

The Court refused to grant a *mandamus* to compel two Justices of the Peace to issue execution upon a conviction for selling spirituous liquors without license, there being some doubt as to the sufficiency or legality of the conviction: R. *v.* McConnell, 6 O. S., 629.

The Court refused to quash a conviction affirmed on appeal, on the ground

among others, that the general verdict of guilty was inconsistent with the answers of the jury to specific questions: R. *v.* Grainger, 46 U. C. R., 382.

Where a conviction purporting to be made by three Magistrates, but signed by two only, was returned with a *certiorari*, it was held that if an objection at all it was a ground for sending back the writ that the third might sign, but not a ground for quashing the conviction: R. *v.* Young, 7 O. R., 88.

A conviction for carrying on a noxious and offensive trade contrary to R. S. O., c. 205, The Public Health Act, imposed, in default of sufficient distress to satisfy the fine and costs, imprisonment for 14 days, unless the fine and costs, including the costs of commitment and conveying to gaol, were sooner paid. *Held*, that the commitment and conveying to gaol were unauthorized, and that sec. 1 of R. S. O., c. 74, did not affect the question: R. *v.* Rowlin, 19 O. R., 199: R. *v.* Wright, 14 O. R., 668. But see sec. 88 and notes thereto.

The defendant being present in court on a charge which was disposed of, was, without any summons having been issued, charged with another offence, namely, of selling liquor without a license. The information was read over to him, to which he pleaded not guilty, and evidence for the prosecution having been given, he thereupon asked for and obtained an enlargement till the next day, when, on his not appearing, he was convicted in his absence and fined $50 and costs, and in default of payment forthwith, without any distress having been directed, imprisonment was awarded: Held, that under the circumstances issuing the summons was waived. Held, also, that the conviction in awarding imprisonment in default of payment was properly drawn, for by sec. 70, under which the conviction was made, there was no power to direct distress: R. *v.* Clarke, 19 O. R., 601; see R. *v.* Lynch, 12 O. R., 372; R. *v.* Higgins, 18 O. R., 148; R. *v.* Menary, 19 O. R., 691; R. *v.* Brady, 12 O. R., 358; and cases cited in notes to sec. 70. See also R. *v.* Hartley, 20 O. R., 481, cited in notes to sec. 105.

Upon a motion to quash a conviction and warrant of commitment, it was held:

1, That the mode of bringing defendant before the Justices, by arrest instead of by summons, was not improper.

2, That the fact that he was remanded by only one Justice could not affect the conviction.

3, That sec. 70 gave no power to the Justices to issue a distress warrant or to make the imprisonment imposed dependent on the payment of the fine and costs; but as this objection was not taken by the defendant, no effect was given to it. (See R. *v.* Hartley, 20 O. R., 481).

4, That the Justices had the right to draw up and return an amended conviction in a proper case. See notes to sec. 104.

5, That where it appeared by the admission of the defendant that he had no goods whereon to levy the sums imposed by distress, the insertion in the conviction of the words relating to the admission was proper, if the Justices were bound to issue a distress warrant, and if they had no power to issue such warrant, these words were mere surplusage and did not vitiate the conviction.

6, That if the Justice had no power to require the costs of conveying him to gaol to be paid by the defendant, the conviction was amendable by the omission of the parts relating to the distress, for the amendment was not of the adjudication of punishment.

7, That having regard to sec. 105 and to the evidence before the Justices, the convictions and warrant could not be quashed: R. *v.* Menary, 19 O. R., 691.

The cases cited in support of this judgment were R. *v.* Ferris, 18 O. R., 476; R. *v.* Mead. C. P. Div., 20th Nov., 1890, (not yet reported); R. *v.* Grant, 18 O. R., 169; R. *v.* Higgins, 18 O. R., 148; R. *v.* Elliott, 12 O. R., 524; R.

v. Lynch, 12 O. R., 372; R. *v.* Cantillon, 19 O. R., 137; R. *v.* Flory, 17 O. R., 715; and as to the question of amendment, McLellan *v.* McKinnon, 1 O. R., 219; R. *v.* Bennett, 3 O. R., 45; R. *v.* Sutton, 42 U. C. R., 220; R. *v.* Elwell, 2 Ld. Raym., 1514.

Where defendant was not served personally and conviction made in his absence it was quashed: R. *v.* Ryan, 10 O. R., 254. See R. S. C., c. 178, secs. 14, 15, cited in note (*m*) sec. 101, ss. 5.

The defendant was summoned and appeared at the hearing and pleaded not guilty, when evidence was given for the prosecution justifying a conviction; but at defendant's request an adjournment was granted. At the adjourned hearing neither the defendant nor his Counsel appeared, evidence was given of the service of the summons and the facts that transpired at the prior hearing, and certificates of two prior convictions were put in, and the identity of the defendant proved. The defendant was found guilty and convicted of a third offence: Held, that having once had the opportunity to defend, defendant could not by his failure to appear at the adjourned hearing, defeat the administration of Justice: Held also that proof of the former convictions by certificate was sufficient: R. *v.* Kennedy, 17 O. R., 159; R. *v.* Kennedy, 10 O. R., 396, at p. 402, was not followed. See note (*d*) sec. 101.

A conviction which includes more than one offence is bad: Newman *v.* Bendyshe, 10 A. & E., 11; R. *v.* Young, 5 O. R., 184*a*; R. *v.* Clennan, 8 P. R., 418; R. *v.* Salomons, 1 T. R., 251; R. *v.* Chandler, 14 East, 267; R. *v.* Mabey, 37 U. C. R., 248.

A conviction was made under The Temperance Act, 1864, simply for selling liquors without a license, and a *certiorari* was refused on the ground that even if it should have been made under The Temperance Act, 1864, and not under The Liquor License Act, it was amendable: *In re* Watts and Emery, 5 P. R., 267.

The Justices have power to impose hard labor where it is authorized by the Act: R. *v.* Hodge, R. *v.* Frawley, 7 App. R., 246; S. C., *nom.* Hodge *v.* The Queen, 9 App. Cas., 117.

It is no objection to a conviction for selling liquor without a license that it did not shew that the defendant was not licensed: R. *v.* Young, 7 O. R., 88; see same case cited, note (*g*), sec. 70, p. 159.

It was held that an amended conviction cannot be put in after the return of a writ of *certiorari*: R. *v.* MacKenzie, 6 O. R., 165.

But it was held that the Justices had a right to return an amended conviction, and that such an amended conviction was not objectionable: R. *v.* Hartley, 20 O. R., 481; R. *v.* Richardson, 20 O. R., 514.

It was held that Justices were not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty or the amount proper to be imposed, or taking advice as to the law applicable to the case: R. *v.* Hall, 23 L. J. N. S., 193; affirmed on appeal, *Ib.* 217.

A conviction for selling liquor to Indians, made by an Indian agent, was held bad, as it did not appear that the Indians to whom the liquor was sold were Indians over whom the agent had jurisdiction: R. *v.* McAuley, 14 O. R., 643.

Held that a conviction which was good on its face was a justification for respondents (the convicting Justices) for anything done under it: Byrne *v.* Arnold, 22 L. J. N. S., 12; Cassels Dig. Sp. Ct,, 52.

Where a defendant submits to an examination before a Magistrate, it is too late afterwards to object to its propriety: R. *v.* Ramsay, 22 L. J. N. S., 125; 11 O. R,, 270.

103. The forms given in the schedules to this Act, (*v*) or any forms to the like effect, shall be sufficient in the cases thereby respectively provided for, and where no forms are prescribed by the schedules new ones may be framed according to those appended to the Act of Canada entitled *An Act respecting Summary Proceedings before Justices of the Peace*, or *The Act respecting the Procedure on Appeals to the Judge of the County Court from Summary Convictions*, or any Acts amending the same respectively—such forms being made short and concise in the mode indicated in the schedules to this Act which shall serve as guides so far as the particular case will allow. R. S. O. 1877, c. 181, s. 75. Forms. R. S. C. c. 178. Rev. Stat. c. 74.

As to where case was tried same day as the warrant served, see R. *v.* Eli, 10 O. R., 727, cited in note (*g*) sec. 95.

It was held that one of the Justices, who was a chemist and druggist, and as such a vendor of spirituous liquors, was not disqualified by reason of interest: R. *v.* Richardson, 20 O. R., 514.

A conviction for having a communiction between a liquor shop and another shop was quashed on the ground that there was no evidence that the defendant was freeholder of a shop license, that no locality was shewn by the evidence, and on other grounds: R. *v.* Kidd, C. P. Div., 29, Nov., 1890 (not yet reported).

A conviction was quashed on the ground that the evidence of the defendant on his own behalf was rejected by the convicting Magistrates, such evidence being made competent by sec. 9 of the Witnesses and Evidence Act and by secs. 114 and 120 of the Canada Temperance Act: R. *v.* Charlton, C. P. Div., 2 Dec., 1890 (not yet reported).

A conviction under the "Scott Act" was made for "selling intoxicating liquor and having hotel appliances in the bar-room and premises," while the information was simply for selling liquor. Held that even if a double offence had been charged in the information the Magistrate had power to drop one and proceed with the other, but that in this case a second offence under sec. 118 of the C. T. Act was not embraced in the words used: R. *v.* Klemp, 10 O. R., 143.

Held that there was no variance because the information used the expression "disposal" and the conviction "sale," and if there had been, an amendment would have been made: R. *v.* Hodgins, 12 O. R., 367.

Where imprisonment is directed on non-payment of a penalty, the award of distress of the goods to levy it, and then imprisonment in case the distress prove insufficient, is invalid in law and an excess of jurisdiction, and that in such case the defect cannot be cured by secs. 2 and 3 of 49 Vic., c. 49 (D): R. *v.* Lynch, 12 O. R., 372; R. *v.* Brady, *Ib.* 358.

The cases which relate to convictions for the different offences under this Act, will generally be found in the notes to those sections in which penalties are imposed for such offences.

See notes to sec. 103, for cases relating to the forms of conviction.

(*v*) Formerly forms of proceedings upon a prosecution before Justices of the Peace, and especially convictions and orders, were subject to rules of construction and interpretation of so exact and critical a character as to make their preparation a matter of extreme difficulty, and Justices were not infrequently mulcted in damages as the result of formal defects which they had made. But

latterly all the forms of proceedings are so simplified that the drawing up of a conviction is no longer the difficult and hazardous task it once was, in fact, it has become a matter of comparatively little trouble or risk. Still, as has been shewn previouly (note (*q*), sec. 102), there are certain rules to be followed in order that the conviction may not be rendered inoperative, and although protection is, in general, extended to Justices and Magistrates acting in the *bona fide* execution of a duty, care should be taken not only to follow the Statutory forms, but also in the preparation of the description of the offence, which is invariably left blank.

"It might be supposed that when a Statute gives a form of conviction, that form, when adopted, must necessarily be good; but the Court has found itself bound to impose some restrictions upon that general proposition; for if an Act contains a description of an offence, and the circumstances which are required to constitute it; and if the form given in the Statute does not contain all the particulars which, by the provisions of the Statute, go to make out the offence, it becomes impossible for the Court to say that the offence has been committed:" per Denman, C. J., R. *v.* Johnson, 8 Q. B., 102.

It was therefore held that where a Statute gives a form of conviction, not fully describing the offence, the conviction, nevertheless, must fully describe it; but in the part which awards the penalty it is sufficient to follow the Statute form; although the enacting part of the Statute gives part of the penalty to the informer, and the form is not so drawn as to shew who he is. And in Fletcher *v.* Calthrop, 6 Q. B., 880, it was held that even a form given by an Act of Parliament is no protection where it does not itself shew some ingredient necessary to make up the offence. The statement that, *generally speaking*, a conviction which follows the words of the Act will be good (per Littledale, J., R. *v.* Marsh, 2 B. & C., 717) is undoubtedly true, but imports that there are cases in which it would not be.

But although it is sometimes necessary, as these cases shew, to alter the form so as to bring the description of the offence within the language of the Statute creating it, yet it is usually a great deal safer to follow the form given by the Statute when applicable, than to attempt to make any improvement in it. See R. *v.* Hazzell, 13 East, 139; R. *v.* Ridaway, 5 B. & Ald., 527; *in re* Turner, 9 Q. B. 80; Nixon *v.* Nanney, 1 Q. B., 747; R. *v.* Jones, 12 A. & E., 684; R. *v.* Recorder of King's Lynn, 3 D. & L., 725.

In drawing up a formal conviction, or in fact any other instrument required on prosecutions under the Act, it is submitted that it would be well if the Justices in all cases should refer particularly to clause in the Act upon which such prosecutions are founded, as a thorough knowledge of the requirements of the Statute upon the subject is uniformly the first essential to an intelligent adjudication upon the case, as well as to the proper mode of setting out the offence and the preparation of the information, conviction, warrants, and other process.

For obvious reasons the Justices will find it best in the majority of cases to follow as nearly as possible the forms given in the Statute, whenever they apply, but they are not compelled to do so. By the Interpretation Act, R. S. O. c. 1, s. 8, ss. 35, it is provided that where forms are prescribed, slight deviations therefrom, not affecting the substance or calculated to mislead, shall not vitiate them.

In the following cases a similar principle has been laid down.

Where there was a discrepancy, more in form than in substance, between the Act and the form given in the schedule to it, the form was held to be sufficient: *in re* Wilson and The Quarter Sessions of Huron, 23 U. C. R., 301, and cases cited therein. See Reid *v.* McWhinnie, 27 U. C. R., 289, cited note (*u*), sec. 102; Cornwall *v.* The Queen, 33 U. C. R., 106, in which it was held that it

104. At any time before judgment, (*w*) the Justice, Justices, or Police Magistrate may amend or alter any information, (*x*) and may substitute for the offence charged

Amending information.

---

was no objection that the jurisdiction conferred by the Act was not shewn when the record and judgment were in the form prescribed by the Act.

See also R. *v.* Hartley, 20 O. R., 481; R. *v.* Richardson, *Ib.*, 514, in which it was held that a conviction was good, although it did not follow the minute of adjudication; also R. *v.* Inhabitants of Hickling, 7 Q. B., 880, at p. 889.

It was also held that forms, though literally prescribed by the Legislature, may be varied according to reason and common sense, so long as the material matters provided for are correctly given: Gemmell *v.* Garland, 12 O. R., at p. 142; Mountcashell *v.* O'Neill, 5 H. L., Cas. 937; *ex parte* Stamford, *in re* Barber, 17 Q. B. D., 259. The same principle was laid down by Patterson, J. A., in Northcote *v.* Brunker, 14 App. R., 364, at p. 378, in which he said: "The case of Mountcashell *v.* O'Neill, 5 H. L., Cas. 937; 2 Jur., N. S. 1030, cited by the Chancellor in Gemmell *v.* Garland, 12 O. R., 139, is strong authority against holding a variance from a Statutory form fatal so long as the document really conveys the proper information." "The Courts, however, will always endeavour to uphold the proceedings of Justices where it is obvious that they have been actuated by a desire to follow the directions of the Legislature:" Saunders' Prac., 169. See also remarks by Pollock, C. B., *re* Allison, 10 Ex., 561, at p. 565; and of Parke, B., in the same case, who said: "If Justices substantially adopt the forms given they do all that is required of them."

The necessity which formerly existed in cases where discretion was given to the Justices as to the amount of the penalty or the person to whom it was to be paid, that these facts should be specifically set out (see cases cited, Saunders' Prac., 163,) does not now exist, or rather is obviated to a very great extent, and it has been held that a conviction is sufficient although it did not in terms distribute the penalty nor name the informer or the person to whom it was to be paid: R. *v.* Hyde, 21 L. J. M. C., 94, cited R. *v.* Cridland, 7 E. & B., 853, at p. 860; *re* Allison, 10 Ex., 561, cited *re* Wilson and the Quarter Sessions of Huron, 28 U. C. R., 301.

The amount of costs should, in all cases, be ascertained by the Justices at the time of the conviction, and the sum be inserted in that document: Selwood *v.* Mount, 1 Q. B., 726; Lock *v.* Selwood, 1 Q. B., 736; R. *v.* Clark, 5 Q. B., 887. See sec. 100 and notes thereto. See also Summary Convictions Act, R. S. C., c. 178, s. 60, and R. S. O., c. 74.

As to amendment, see sec. 104.

As to variance between information and conviction, and amendment, see sec. 105.

(*w*) "At any time before judgment." The powers given by this section are very extensive. At any time before conviction, the Justice or Justices before whom the case is being heard, if any objection be taken to the form of information, or if it is found that the offence proved is not the same as that charged in the information, or if for any other reason it is considered necessary, may either amend the information, or substitute any other offence for the one charged therein, and the only objection that can be made to such amendment, alteration or substitution is, that the defendant is thereby prejudiced, and if it appears that the objection is reasonable, the Justice or Justices may, in his or their discretion, adjourn the Court in order that the defendant may prepare his defence to the new charge brought against him.

See cases cited *infra*.

(*x*) Informations before Magistrates must be taken as nearly as possible in

therein any other offence against the provisions of this Act; but if it appears that the defendant has been prejudiced by such amendment, the said Justice, Justices or Police Magistrate shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. 41 V., c. 14, s. 9.

---

the language used by the party complaining: Cohen *v.* Morgan, 6 D. & R., 8; McNellis *v.* Gartshore, 2 C. P., 464, cited in Crawford *v.* Beattie, 39 U. C. R., 13, at p. 27.

The Justice, however, cannot summons a person on an information for one offence requiring a particular punishment, and without a fresh information convict him of a different offence, requiring a different punishment: Martin *v.* Pridgeon, 1 E. & E., 748; Soden *v.* Cray, 7 L. T. N. S., 324: R. *v.* Brickhall, 10 L. T. N. S., 385, cited Crawford *v.* Beattie, *supra*, at p. 28. See also The Queen *v.* Hughes, 4 Q. B. D., 614, at p. 624. But, "it is competent for the accused by his conduct to waive the necessity for the information, so as to give jurisdiction to convict without the information being first laid:" per Harrison, C. J., Stoness *v.* Lake, 40 U. C. R., 320, at p. 328. See R. *v.* Clarke, 19 O. R., 601.

An objection that a defendant had pleaded guilty to a defective information, is not admissable: R. *v.* McCarthy, 11 O. R., 657.

It was held that when there was no variances between the information and the evidence to warrant an amendment of the former, but that the evidence disclosed a new offence, and the amendment made in the information by the Justices amounted in fact to a new information, the defendant, by his presence and by entering on his defence, had waived the service of a summons upon him: R. *v.* Bennett, 3 O. R., 45.

The defendant, if he intends to take advantage of the information "for defect of substance or of form," should urge the objection when before the Magistrate. If he does so the information may be amended. Not having done so, the objection cannot be successfully raised afterwards: Crawford *v.* Beattie, 39 U. C. R., 13, at pp. 29, 30, and cases cited therein.

See also Parkis *v.* Huxtable, 1 E. & E., 780, cited in notes to sec. 118.

There can be no reason if the indictment in the highest criminal Court and for the gravest offences can be amended why the information before a Magistrate on a charge of selling liquor during prohibited hours may not also be amended: per Wilson, J., R. *v.* Cavanagh, 27 C. P., 537, at p. 540, and was held in that case that the defendant should have taken the objection to the information when he was before the Magistrate. Such objection should be taken before the defendant has pleaded, or, at all events, at as early a stage in the proceedings as possible: see R. *v.* Roe, 16 O. R., 1.

"Where a defendant appears and cross-examines witnesses on a charge over which the Justice has jurisdiction, whether there be an information or not for the charge, and whether required in writing or not, he thereby waives the information:" per Harrison, C. J., Stoness *v.* Lake, 40 U. C. R., 320, at p. 327; Turner *v.* Postmaster-General, 5 B. & S., 756; R. *v.* Shaw, 1 L. & C., 579; 12 L. T. N. S., 473; R. *v.* Fletcher, L. R. 1 C. C., 320. "But where, instead of doing so, he insists upon the want of an information, or defective information, and does nothing to waive it, he is entitled to the benefit of the objection:" Blake *v.* Beech, 1 Ex. D., 320, cited by Harrison, C. J., in Stoness *v.* Lake, *supra*.

In a case in which a defendant was, in the summons, informed that he was to appear before one Justice only, whereas the Act required that he should be

Conviction not void for certain defects.

105. (1) No conviction (*y*) or warrant enforcing the same (*z*) or other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information or conviction, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding that the same was made for an offence against some provision of this Act, within the jurisdiction of the Justice, Justices or Police Magistrate who made or signed the same, and provided there is evidence to prove such offence, and no greater penalty or punishment is imposed

---

charged before two Justices, it was held that his appearance waived the objection to the summons *per se* as it was a mere irregularity: R. *v.* Collins, 14 O. R., 613.

(*y*) "No conviction." See notes to secs. 70, 104, and see also particular offences.

(*z*) "Warrant enforcing the same." The remarks as to the preparation of the conviction apply with equal force to the warrant. The same care is required and similar rules govern in the case of the warrant, as are applicable to the conviction. The warrant of commitment must be the same as the conviction; and where the conviction imposed the punishment of "imprisonment with hard labor," and by the warrant the defendant was to be "imprisoned and corrected," the commitment was held bad: Wood *v.* Fenwick, 10 M. & W., 195. The commitment and conviction must connect themselves together. "A Magistrate cannot justify a commitment for one offence by a conviction for another and different offence: Rogers *v.* Jones, 3 B. & C., 409, at p. 412; Saunders' Prac., 171.

The warrant should state the exact time and manner of imprisonment, and the conditions, if any, upon which the defendant may be discharged; for "the defendant ought to know for what he is in custody and how he may regain his liberty:" Paley on Con., 285; Saunders' Prac., 171, and cases there cited.

If the warrant is not made returnable at a certain time, it will remain in force until executed, and it does not become void or inoperative on the death of the Justice who signed it or upon his ceasing to hold office: Saunders' Prac., 172; Paley on Con., 294.

Wherever it appears that the issuing of a warrant of distress would be ruinous to the defendant or his family, or that he has no goods or chattels whereon to lay such distress, then such Justice may issue a warrant of commitment for the period allowed by Statute. See R. S. C. c. 178, s. 64.

The warrant of commitment or distress cannot be executed on Sunday: Saunders' Prac., 172; Paley on Con., 291.

A warrant can only be executed within the limits of the Justice's Commission, but The Summary Convictions Act, R. S. C. c. 178, s. 63, provides for the backing of warrants of distress and commitment for execution out of the jurisdiction of the Justices granting them. On a fresh pursuit a warrant for the arrest of an offender may be executed at any place in the adjoining County within seven miles of the border without being backed. R. S. C. c. 178, s. 20.

As to warrants of distress and commitment, see R. S. C. c. 178, secs. 62-70, made applicable to proceedings before Justices under the Ontario Statutes by R. S. O. c. 74, s. 1.

than is authorized by this Act (*a*). R. S. O. 1877, c. 181, s. 77 (1); 44 V. c. 27, s. 7.

(*a*) "The Legislature of Ontario have endeavoured to be most liberal in conferring powers of amendment on Courts to whom applications are made to quash conviction under the Liquor License Act:" per Harrison, C. J., R. *v.* Black, 43 U. C. R., 180.

"We infer from reading the section as a whole that the power to amend in the case of a conviction moved against is to be exercised by the Court only when the Court is able to understand from the conviction that the appropriate penalty or punishment for the offence was intended thereby to be adjudged."

"Where there may be fine or imprisonment in the discretion of the convicting Justice, either is *an* appropriate punishment, but the Court cannot decide that either is *the* appropriate punishment. Where, in the discretion of the convicting Justice, the fine or the imprisonment may be less or more within defined limits, we cannot decide that a fine or imprisonment adjudged by the conviction without the limits is an appropriate punishment, nor can we decide that a given sum of money or given term of imprisonment within the prescribed limit is *the* appropriate punishment." "Much in such cases is left to the convicting Justice, who, by reason of his local knowledge, must be more competent to decide as to the 'appropriate' penalty than any Court seized of the case on an application to quash the conviction for illegality. Besides, when that discretion has been exercised and the result of it appears on the face of the conviction, it is impossible for the Court to decide 'from such conviction' that any other punishment was intended. The presumption is that the Justice intends the punishment which he imposes, and this must be assumed to be his idea of the appropriate punishment; and as we are not allowed to look outside of the conviction for what he intended, we must, in the case of the exercise of discretionary powers by a Justice, leave the conviction bad or good, as we find it, and deal with it accordingly:" per Harrison, C. J., R. *v.* Black, 43 U. C. R., 180, at p. 190. But in that case it was held that the Court would not amend the conviction for selling liquor during prohibited hours where the Justice imposed a fine, and in default of sufficient distress imprisonment at hard labor, while the Act only authorized the alternative of fine or imprisonment as a substantive punishment for a second offence, but gave no power to imprison at hard labor for non-payment of the fine.

In another case, a conviction of S. & D., for unlawfully keeping liquor for sale, &c., was held bad for that the defendants could not be convicted jointly, nor one penalty be awarded against them jointly, and that such conviction could not be amended, the judgment of the Court being that the Police Magistrate in making the conviction did precisely what he intended to do—convict the defendants jointly, and imposed a penalty upon them jointly—and that he was clearly wrong in doing either: R. *v.* Sutton, 42 U. C. R., 220. In delivering the judgment of the Court, Mr. Justice Armour said: "Our powers of amendment are extremely wide, as pointed out in R. *v.* Lake, 7 P. R., 215, and we ought to amend if it is possible to do so, but I do not think that they are wide enough to enable us to amend this conviction."

In R. *v.* Lawrence, 43 U. C. R., 164, Gwynne, J., said: "I should have great difficulty in *understanding from the conviction* itself, which awarded an illegal sentence, that *the appropriate* penalty or punishment for the offence was what was intended to be adjudged by the illegal sentence:" See McLellan *v.* McKinnon, 1 O. R., 219; R. *v.* Dunning, 14 O. R., 52.

"It appears to me that the Legislature did not intend to impose upon a Judge the duty, or to confer upon him the power to make any alteration in the sentencing part of the conviction:" per Osler, J., R. *v.* Allbright, 9 P. R., 25, at p. 28.

Under this clause no conviction or other process or proceeding shall be held to be insufficient or invalid by reason of any variance or any other defect in form or substance if it can be understood from the document itself.

(1) That the same was made for an offence against some provision of the Act;

(2) That such offence was within the jurisdiction of the Magistrate or Justices making the same; and

(3) That no greater penalty is imposed than is authorized by the Act.

A Magistrate may amend his conviction at any time before the return of the *certiorari*, and the Court refused to quash a conviction because of the previous return of a bad conviction, especially where the latter had not been filed: R. *v.* McCarthy, 11 O. R., 657. But where the conviction does impose a greater penalty or punishment than the Legislature had power to authorize, it is invalid: R. *v.* Allbright, 9 P. R., 25; R. *v.* Frawley, 45 U. C. R., 227; and cases cited *supra*.

"Up to the time of the return and filing of a *certiorari* the Justices may amend the conviction, but after the filing of the papers no amendment can be made:" per Richards, C. J., R. *v.* Smith, 35 U. C. R., 518 at p. 522; see also R. *v.* Lennon, 44 U. C. R., 456 at p. 461. It was therefore held that an amended conviction cannot be put in after the return of a *certiorari*: R. *v.* Mackenzie, 6 O. R., 165. In a conviction under sec. 70 for selling liquor without a license, the minute of conviction stated that in default of payment of the fine and costs imposed, the same was to be levied by distress, and in default of distress, imprisonment, and a formal conviction was drawn up following the minute:

Held, that under sec. 70 distress was not authorized, but that the fact of the minute containing such provision did not prevent a conviction omitting such provision being drawn up and returned in compliance with a *certiorari* granted (R. *v.* Brady, 14 O. R., 358; R. *v.* Higgins, 18 O. R., 148 considered). Held also, that the conviction was good under sec. 105. The minute of conviction is required by sec. 53 of R. S. C. c. 178, which made imperative what had been the practice of Justices prior to the passing of the Summary Convictions Act, 1848, in England. It was said that the provision of sec. 53 does not give any greater force or validity to that minute or memorandum than it had before, and that it does not occupy any higher position than the conviction drawn therefrom and that it did not prevent the drawing up of a formal conviction, omitting the provision of distress, which the Magistrate had no power to insert. And besides this, the provision of sec. 105 prohibited the Court from holding a conviction insufficient or invalid by reason of a defect in form or substance, and the variation of the conviction from the minute was a defect either of form or substance: R. *v.* Hartley, 20 O. R., 481.

Where the defendant was convicted under sec. 50 for permitting spirituous liquors to be drunk in his house, being a house of public entertainment, the minute of conviction providing for distress in default of payment of the fine and costs imposed; but the conviction drawn up and returned with the *certiorari* omitted the provision for distress. Neither under secs. 50 nor 70 is distress authorized. Held, that the conviction was valid, as being in accordance with sec. 50, and that under the circumstances it need not follow the minute: held also that the conviction would have been good under sec. 70, as the giving and being paid for temperance drinks was a mere subterfuge for disposing and selling spirituous liquors; and further, the conviction could be supported under sec. 105. Held, also, that the fact of one of the Magistrates being a chemist and druggist did not incapacitate him from acting and adjudicating upon the case: R. *v.* Richardson, 20 O. R., 514.

A conviction must be under seal: *In re* Ryer and Plows, 46 U. C. R., 206; Bond *v.* Conmee, 16 App. R., 398.

Held, that it was no objection to the conviction that it was for keeping and selling while the information charged the keeping only: R. *v.* Bennett, 3 O. R., 45.

Where a conviction did not shew on its face that the C. T. Act, 1878, was in force, the Court on the merits allowed the return to be amended so as to shew jurisdiction, and for this purpose allowed a further return of the "Gazette" produced as an exhibit, but not filed: R. *v.* Elliott, 12 O. R., 524.

Where the Justices thought the first conviction drawn up and returned to the Clerk of the Peace erroneous, they had the right, provided the facts before them justified it, to draw up and return an amended one afterwards: R. *v.* Clarke, 19 O. R., 601; R. *v.* Bennett, 3 O. R., 45.

Where a defendant was convicted of unlawfully selling packages of tea, being the means of disposing of a gold watch, etc., by a mode of chance, the Court said that the case being clearly within the Act prohibiting the sale of "any lot, card or ticket, or other means or device for selling or otherwise disposing of any property, real or personal, by lots, tickets, or any mode of chance whatever," any objection to the form of conviction was cured by sec. 87 of The Summary Convictions Act, c. 178, R. S. C.; R. *v.* Freeman, 18 O. R., 524.

A defendant was summoned to appear before the Police Magistrate on April 14th for unlawfully selling liquor, and he instructed another person to go to the Magistrate and try and arrange the matter by paying such sum as should be demanded by the Magistrate. On April 18th the person went as instructed and settled the case by paying the fine, at the same time without authority and without the paper having been read to him, signed in the defendant's name, as his agent, an endorsement on the information, which stated that the information had been read to the defendant, who pleaded guilty to the same. On April 14th the Magistrate, without holding any Court, or calling any witnesses in support of the charge, and without defendant being present, convicted him of the offence and fined him $50 and costs, drawing up a formal conviction which was returned. Subsequently he returned another conviction for the same offence, reciting that the conviction was made at the place where the defendant lived, by defendant admitting the charge. Held, that the conviction could not be supported and must be quashed: R. *v.* Edgar, 17 O. R., 188.

A conviction purporting to be made by three Magistrates, but signed by only two, was returned with a *certiorari*: Held, if an objection at all, a ground for sending it back that the third Magistrate might sign it, but not a ground for quashing it: R. *v.* Young, 7 O. R., 88.

Where it did not appear by the information on which a conviction was founded what the nature of the previous offence was, or where it was committed, or that it was of a similar nature to the fresh offence charged by the information, it was held that the conviction could not stand: R. *v.* Kennedy, 10 O. R., 396; see R. *v.* Kennedy, 17 O. R., 159; cited *ante*, note (*d*), sec. 101.

Where the conviction is regular on its face and does not shew excess of jurisdiction, such an irregularity as the imposition of excessive costs can not be inquired into on application for prisoner's release: R. *v.* Sanderson, 12 O. R., 178.

A summary conviction by the Police Magistrate of the County of Brant for selling intoxicating liquor to an Indian in the Township of Tuscarora, contrary to R. S. C., c. 43, stated that the offence was committed on the 29th Sept., 1887, but the evidence disclosed that the offence was committed on 27th Sept., 1887: Held, that the date was not under the circumstances material, there being no suggestion that any wrong or injustice was caused by the mistake, and that sec. 87 of R. S. C., c. 43, operated to cure this irregularity, as also certain other irregularities complained of, the offence having been clearly proved, the Police Magistrate having express jurisdiction by sec. 96 of the Act,

(2) Upon any application to quash such conviction, (*b*) or warrant enforcing the same, or other process or proceeding whether in appeal (*c*) or upon *habeas corpus*, (*d*) or

---

and the punishment imposed being within the power conferred upon him: R. *v.* Green, 12 P. R., 373.

(*b*) "This part of the section is dependent, to a great extent, for its operation upon the first part and flows from it. The duty is to dispose of the application upon the merits, 'notwithstanding any such variance or defect as aforesaid.' Where it appears that the merits have been tried and that the conviction is valid under this section or otherwise, the Court is authorized to amend the same if necessary. It is not easy to understand the necessity of amending a valid conviction. What is meant is that the conviction may be made valid by amendment where on the facts there ought to be a valid conviction. The power to amend, however, appears to be under the first part of the section and subject to the limitations there provided: per Harrison, C. J., R. *v.* Black, 43 U. C. R., 180, at p. 190.

See also cases cited in notes to secs. 70, 103, 104.

(*c*) "In appeal." See sec. 118 and notes thereto.

(*d*) A writ of *habeas corpus ad subjiciendum* may be awarded at any time by a Judge of the High Court in the case of a person confined or restrained of his liberty (except persons imprisoned for debt or by process in any action, or by the judgment, conviction, or order of a Court of Record, Court of Oyer and Terminer, or General Gaol Delivery, or Court of General Sessions of the Peace) upon complaint made by or on behalf of the person so confined or restrained, if it appears by affidavit (or affirmation where by law affirmation is allowed) that there is probable and reasonable ground for the complaint, directed to the person in whose custody or power the person so confined or restrained is, returnable immediately before such Judge or before the Judge in Chambers for the time being, or before a Divisional Court. And upon the return of such writ the Court may proceed to examine into the truth of the facts set forth in the return by affidavit or other evidence, and may order and determine touching the discharging, bailing or remanding the party. R. S. O. c. 70, secs. 1, 2.

The affidavit upon which an order for a *habeas corpus* is moved should be entitled in one of the Superior Courts. As a general rule it should be made by the prisoner himself, or some reason shewn for his not making it. It is discretionary with the Judge to receive an affidavit of a different kind: *In re* Ross, 8 P. R., 301.

The writ should be returned with the warrant itself and not merely a copy of it: *In re* Carmichael, 10 L. J. U. C., 325.

When a person is restrained of liberty under a Statute, he should be discharged, unless the Judge is satisfied by unequivocal words in the Statute that the imprisonment is warranted: *In re* Slater and Wells, 9 L. J. U. C., 21.

Held, that in favor of liberty, it is the duty of the Judge on a *habeas corpus*, when doubting the sufficiency of a warrant of commitment, to discharge the prisoner: *In re* Beebe, 3 P. R., 270.

The Judges of the Superior Court are bound when a prisoner is brought before them to examine the proceedings and evidence anterior to the warrant of commitment, and to discharge him if there does not appear sufficient cause for his detention: R. *v.* Mosier, 4 P. R., 64.

A County Court Judges Criminal Court was held to be a Court of Record, and that under the Act above cited there was therefore no right to the writ: R. *v.* St. Denis, 8 P. R., 16.

See R. & J's Dig., 1646-1650.

by way of *certiorari* (*e*) or otherwise, the Court or Judge

---

Held, that a discharge of the plaintiff from custody on *habeas corpus* was not a quashing of his conviction: Hunter *v.* Gilkison, 7 O. R., 735.

The course to be taken by the Court on return of a *habeas corpus* shewing prisoner detained under a defective warrant, in execution of a conviction of a Justice of the Peace, is discussed in Arscott *v.* Lilley, 11 O. R., 153.

See Ont. Dig., 1882-1884, 214, 215; Ont. Dig., 1884-1887, 30, 301.

(*e*) "*Certiorari*" means "to be more fully informed." It was formerly a writ issuing out of the High Court of Justice addressed to the Judges or officers of inferior Courts commanding them to certify or to return records of a cause depending before them to the end that the party may have more sure and speedy justice: Wharton, 121.

R. S. O., c. 70, s. 5, provides: In cases in which a writ of *habeas corpus* is issued the Court or Judge may direct the issuing of a writ of *certiorari* directed to the person by whom or by whose authority any person is confined or restrained of his liberty, or other person having custody or control thereof, requiring him to certify and return to the Court or Judge as by the writ may be provided, all the evidence, depositions, convictions, and all proceedings had or taken touching or concerning such confinement or restraint of liberty to the end that the same may be viewed and considered by the Court or Judge, and to the end that the sufficiency thereof to warrant such confinement or restraint may be determined.

But the procedure on *certiorari* depends to a great extent on Rules of Court, and by the Act above cited the Supreme Court and Court of Appeal are empowered to make such rules of practice in reference to writs of *habeas corpus* as may be necessary.

By Rule 1140 of the Con. Rules of Prac., no writ of *certiorari* shall issue in any case, but an order may be made which shall have the same effect as the writ of *certiorari* formerly had.

The proceedings for the removal of a conviction on *certiorari* are usually begun by an application for a rule *nisi* calling on the Magistrate or Justices to shew cause why a *certiorari* should not issue. (For form of notice see appendix.) The affidavit on which the application is based should be entitled in the Court in which the motion for the rule is made, which is sufficient to indicate into which Court the proceedings are to be removed, and where the rule was entitled "*In the matter of John Barrett*," it was contended that it should have been entitled "The Queen *v.* John Barrett," but it was held "that there was no such cause as 'The Queen *v.* John Barrett' in the Court, and until the rule is ordered that the cause of that style in the Court below shall be transferred into this Court, the proceedings are all properly intituled as they have been here:" *In re* Barrett, 28 U. C. R., 559.

For forms of proceedings, see appendix.

No writ of error lies on summary convictions, and therefore *certiorari* is the only mode by which a revision of such proceedings by the Superior Court can be obtained.

It requires no special law to authorize it, as it is a consequence of all inferior Courts to have their proceedings removed for the purpose of being examined by the superior Court, and the right to *certiorari* cannot be taken away except by express words: Scott *v.* Bye, 2 Bing., 344; Paley on Con., 4th ed.. 278, 351.

When *certiorari* is applied for to remove a conviction, it is either at the instance of the Crown or of the defendant: Paley on Con., 4th ed., 358. In the former case it may be issued on the application of the Attorney-General or the private prosecutor, and it issues, of course, without assigning any grounds. But although it is demandable of right by the prosecutor, it is discretionary

in the Court to grant or refuse it on the application of the defendant. Some special ground must be shewn by affidavit on a moving for the rule: Paley on Con., 4th ed., 358.

But by this section it is provided that no conviction or warrant shall be insufficient or invalid by reason of any variance between the information or conviction, or by reason of any other defect in form or substance, if it can be understood that it was made for an offence against this Act, within the jurisdiction of the Magistrate, etc., and there is evidence to prove such offence, and if the penalty imposed is not in excess of that authorized. How far this enactment may be urged in answer to objections against the form and effect of convictions, warrants and other process will appear by the cases cited below.

There are similar provisions in The Summary Convictions Act, R. S. C. c. 178, s. 28.

An application for writs of *certiorari* to remove convictions for selling liquors in a Township where the Temperance Act, 1864, was in force, was refused on the ground that if the convictions should have been under that Act and not under the License Act, they were amendable: *In re* Watts and Emery, 5 P. R., 267.

Where the Magistrate ordered the defendant to pay for the use of the hall for trying the case; held, that in ordering payment of this sum there was a clear excess of jurisdiction, and in ordering distress, &c., there was a further excess and that the matter was one of principle and not of form, and the conviction was quashed: R. *v.* Elliott, 12 O. R., 524.

Although the Temperance Act, 1864, takes away the right of *certiorari* and appeal, a *certiorari* may be had when there is an absence of jurisdiction in the convicting Justice, or a conviction on its face defective in substance, but not otherwise: *In re* Watts and Emery, 5 P. R., 267. See also R. *v.* Elliott, 12 O. R., 524; R. *v.* Dowling, 17 O. R., 698; R. *v.* Ramsay, 22 L. J. N. S., 125; R. *v.* Wallace, 20 L. J. N. S., 13.

Where a conviction affirmed an appeal to the sessions contrary to a Statute which enacts that no *certiorari* shall issue, held, that the Court could not quash the conviction, (the case being one in which the Magistrate had jurisdiction,) though it was clearly bad, and no motion had been made to quash the *certiorari*: R. *v.* Johnson, 30 U. C. R., 423.

And a conviction having been brought up by *certiorari* under the same Statute it was held that it could not be quashed, but the Court could only discharge the defendant; R. *v.* Levecque, 30 U. C. R., 509. But see R. *v.* Wehlan, 45 U. C. R., 396, cited *post*.

A defendant is not entitled to remove proceedings by *certiorari* to a Superior Court from a Police Magistrate or a Justice of the Peace after conviction, or at any time, for the purpose of moving for a new trial for the rejection of evidence, or because the conviction is against evidence, the conviction not being before the Court and no motion made to quash it: R. *v.* Richardson, 8 O. R., 651.

Held, that though not expressly so enacted, R. S. C. c. 178 is retrospective in its operation, and applies to convictions whether made before or after the passing of the Act, and under section 84, the right to *certiorari* is taken away upon service of notice of appeal to the Sessions, that being the first proceeding on an appeal from the conviction: R. *v.* Lynch, 12 O. R., 872.

Where the Magistrate has jurisdiction over the offence charged, and the right to *certiorari* is taken away, the Court cannot examine the evidence to see if the Magistrate had jurisdiction to convict, and the *certiorari* was refused: R. *v.* Scott, 10 P. R., 517.

Held, that since the passing of 49 Vic., c. 49, s. 8 (D.)—now R. S. C. c. 178

s. 91—there is no longer any necessity for a defendant on removal by *certiorari* of a conviction against him, to enter into the recognizances as to costs formerly required: R. *v.* Swalwell, 12 O. R., 391.

On the return of a writ of *certiorari* a recognizance is unnecessary: R. *v.* Nunn, 10 P. R., 395. See also R. *v.* Mackenzie, 6 O. R., 165; R. *v.* McCarthy 11 O. R., 657, cited *supra*.

Where a defendant has been committed for trial, but afterwards admitted to bail and discharged from custody, a Superior Court of Law has still power to remove the proceedings on *certiorari*, but in its discretion it will not do so where there is no reason to apprehend that he will not be fairly tried: R. *v.* Adams, 8 P. R., 462.

A *certiorari* will not lie to remove a conviction under the Liquor License Act, s. 67, which has been affirmed and amended on appeal to the Sessions for issuing a license contrary to the Act, the procedure being regulated by 32 and 33 Vic., c. 31, s. 71 (D.), as amended by 33 Vic., c. 27, s. 2 (D.), now R. S. C., c. 178, s. 83, which provides that "no conviction or order affirmed, or affirmed and amended in appeal, shall be quashed for want of form or be removed by *certiorari* into any Superior Court, and no warrant of commitment shall be held void by reason of any defect therein, provided it is therein alleged that the defendant has been convicted and there is a good and valid conviction to sustain the same:" R. *v.* Grainger, 46 U. C. R., 196. On an application to quash a conviction brought upon *certiorari* the Court will not notice any facts not appearing in the conviction for the purpose of impeaching it on any ground except want of jurisdiction; nor has the Court any power to review the decision of the Sessions in a matter within their jurisdiction, nor to grant a *mandamus* to compel them to re-hear an appeal: S. C. 46, U. C. R., 382.

When the conviction is for breach of a by-law, the writ of *certiorari* is not taken away: *re* Bates, 40 U. C. R., 284; R. *v.* Washington, 46 U. C. R., 221.

The Divisional Court has power to quash a conviction for an illegal adjudication of a punishment, although it has been appealed against and affirmed in respect to such adjudication; and s. 71 of 32 and 33 Vic., c. 31 (D.), now R. S. C., c. 178, s. 83, does not take away the *certiorari* in such a case: per Armour, J., McLellan *v.* McKinnon, 1 O. R., 219.

A conviction once regularly brought into and put upon the files of the Court is there for all purposes, and a defendant may move to quash it, however or at whosesoever instance it may have been brought there, and where, on an application for a *habeas corpus*, under R. S. O. c. 70, a *certiorari* had issued, and in obedience to it the conviction had been returned, the conviction was quashed on motion though there had been no notice to the Magistrate or recognizance: R. *v.* Levecque, 30 U. C. R., 509, distinguished: R. *v.* Wehlan, 45 U. C. R., 396.

On a motion to quash a conviction by a Justice of the Peace which had been appealed to the County Judge, an objection that the writ was improperly directed to and returned by the Clerk of the Peace and County Attorney instead of the County Judge or Magistrate, was overruled: R. *v.* Frawley, 45 U. C. R., 227.

In shewing cause to a *rule nisi* to quash a conviction, objection may be taken to the regularity of the *certiorari*, and a separate application to supersede it need not be made. Where, therefore, on an application made after notice to the convicting Justices for a rule for a *certiorari*, the rule was refused, and on a subsequent *ex parte* application on the same material the rule was obtained, it was held that the notice of the first application would not enure to the benefit of the defendant on his second application, and that the *certiorari* was irregularly obtained for want of notice to the convicting Justices, and a rule to quash the conviction was therefore discharged: R. *v.* McAllan, 45 U. C. R., 402.

to which such appeal is made or to which such application has been made upon *habeas corpus* or by way of *certiorari* or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid, and in all cases where it appears that the merits have been tried, (*f*) and that the conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be), and such Court or Judge may, in any case, amend the same if necessary, and any conviction, warrant, process or proceeding so affirmed or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. R. S. O. 1877, c. 181, s. 77 (2).

May be amended.

Where the recognizance to prosecute a *certiorari* returned, after the allowance of the latter, by the convicting Justices together with the conviction, is substantially and clearly bad, and the conviction may be possibly upheld, the allowance of the *certiorari* may be quashed on the return of the *rule nisi* to quash the conviction without a substantive motion for that purpose; but otherwise, when the objection is a trivial one, or the conviction is clearly defective and must inevitably be quashed: R. *v.* Cluff, 46 U. C. R., 565.

On a conviction under R. S. O. c. 32, for selling liquors near public works, the defendant was discharged upon a writ of *habeas corpus*, the Justices having returned to the *certiorari* issued in aid of the *habeas corpus*, a paper purporting to be the conviction signed by them, but not under their seal. The conviction was not quashed. Held, that after the return of the *certiorari*, a new conviction could not be returned, and that the conviction returned was a *nullity* and need not be quashed before an action was brought for malicious prosecution: Bond *v.* Conmee, 16 App. R., 398. See Chaney *v.* Payne, 1 Q. B., 712.

For authorities on *certiorari*, see Trotter on Appeals, etc., 64, 84, 135; Paley on Con., 4th Ed.., 350 *et seq.*; 1 Mew's Dig., 2-37; Sinclair's D. C. Act, 1879, 81-84; R. & J.'s Dig., 659-647; Ont. Dig. (1882-1884), 104-106; Ont. Dig. (1884-1887), 73; Dickenson's Guide to Q. S., p. 1064; see also R. *v* Richardson, 8 O. R., 651.

(*f*) "Upon the merits" means "upon the matter charged being an offence within the Act, and the evidence to prove it:" per Wilson, C. J., R. *v.* Brady, 12 O. R., 358 at p. 365. "Under these provisions I am to dispose of the case upon the merits. In what manner am I to do so? Does the Act mean that I am to try the case upon the material returned before me? Or that I am to try the case upon the merits as would be done on an appeal to the General Sessions?" "I think it means that the Court or Judge is to dispose of it. That is what the Act says. It does not say *try* it; and it is to be so disposed of whether the case is brought by way of appeal, *habeas corpus*, *certiorari* or otherwise. Now on *habeas corpus* or *certiorari*, the case is not disposed of as it is on an appeal. I think, therefore, I may dispose of the case upon its merits, by

EVIDENCE, ETC.

License, how proved.

106. In any prosecution or proceeding under this Act, (*g*) in which proof is required respecting any license, (*h*) a certificate under the hand of the inspector of the license district (*i*) shall be *prima facie* proof (*j*) of the existence of a license, and of the person to whom the same was granted or transferred; (*k*) and the production of such certificate

---

trying and adjudicating it upon the proceedings returned before me :" Wilson, C. J., R. *v.* Brady, *supra*, at p. 366.

Where the proceedings before a Magistrate are removed under 29 and 30 Vic., c. 45, s. 5, the Judge is not to sit as a Court of Appeal from the findings of the Magistrate upon the evidence ; if any fact found by the Magistrate is disputed, and he would have no jurisdiction had he not found that fact, then the evidence may be looked at to see whether there was anything to support his findings upon it ; but if the jurisdiction to try the offence charged does not come in question as a part of the evidence, then the jurisdiction having attached, his finding is not reviewable, as a rule, except upon an appeal: R. *v.* Green, 12 P. R., 373.

(*g*) "In any prosecution or proceeding." See sec. 101, note (*x*), also note (*w*), sec. 109. The provisions of this section are applicable in the case not only of any prosecution, but also of any other proceeding in which evidence is required to be taken under the Act. "Any proceeding" includes civil as well as criminal proceedings: Taylor on Evi., 1383.

(*h*) It is a rule of law that "where any one is proceeded against for doing an act which he is not permitted to do, unless he has some special license or qualification in his favour, it is sufficient to charge this want of license or qualification against the party, and it is for him to prove his license or qualification affirmatively:" per Wilson, J., *in re* Barrett, 28 U. C. R., 559 at p. 561.

By sec. 114 the burden of proof is on the defendant where the act or omission complained of is one for which he would be liable to a penalty if he were not duly licensed, and a conviction need not shew that defendant was not licensed: R. *v.* Young, 7 O. R., 88.

In prosecutions for selling liquor on Sundays it must be shewn that the place was one in which liquors were or might be sold by wholesale or retail, and that the defendant had a license: R. *v.* Rodwell, 5 O. R., 186; see R. *v.* Walsh, 2 O. R., 206, cited *post* under Canada Temperance Act.

(*i*) "A certificate under the hand," etc. The certificate required here must be in writing and signed by the License Inspector of the district in which the license, respecting which proof is required, was issued. See Wilson *v.* Wallani, 5 Ex. D., 155, as to effect of the term "under his hand." Such certificate is *prima facie* proof: (1) Of the license; (2) of the person to whom such license was granted or transferred; (3) of all the facts stated in such certificate; (4) of the authority of the Inspector. And the mere production of such a certificate is sufficient without any evidence of the appointment of the Inspector or of his signature to the certificate.

Although this mode of proof is applicable to any proceeding, it does not exclude any other authorized mode, and if a certificate is produced which does not comply with the Statute, or if there is no such certificate produced, then there must be other evidence to prove the existence of the license. See note (*l*), sec. 101.

(*j*) "*Prima facie*." See sec. 52, note (*j*), p. 120.

(*k*) "Granted or transferred," See secs. 8, 11, 12 and 37 and notes thereto.

shall be sufficient *prima facie* evidence of the facts therein stated and of the authority of the inspector, without any proof of his appointment or signature. R. S. O. 1877, c. 181, s, 78.

How each regulation authenticated, etc.

107. Any resolution (*l*) of the board of license commissioners passed under sections 4 and 5 of this Act, shall be sufficiently authenticated (*m*) by being signed (*n*) by the chairman of the board which passes the same; (*o*) and a copy of any such resolution written or printed, and certified to be a true copy by any member of such board, shall be deemed authentic, and be received in evidence in any Court

---

(*l*) "Any resolution." See note (*p*), sec. 4, and note (*x*), p. 55.

(*m*) "Shall be sufficiently authenticated" means that the authority of the resolution shall be sufficiently established, etc.

An authentication is an attestation made by a proper officer by which he certifies that a record is in due form of law, and that the person who certifies it is the officer appointed to do so: Wharton, 70. The authentication is made under this section: (1) In the case of the original resolution, by being signed by the Chairman of the Board which passed the same; and

(2) In the case of a copy of such resolution, by being certified to be a true copy by any member of such Board.

(*n*) "Signed." As to what is necessary with regard to signature, see notes on pages 27 and 73.

(*o*) "By the chairman of the Board which passed the same." The License Commissioners cease to be such on 31st Dec. in each year, but they may be re-appointed (sec. 4). The resolution must be signed by the Chairman of the Board which passed the same, and although the Board which existed at the time of the passing of the resolution may have ceased to exist, and the Chairman of such Board may be dead or absent from the country, it will not meet the requirements of this section if signed by the Chairman of the Board for the time being, or by any other than he who was the Chairman at the time of the passing of the resolution. The proper course seems to be that the resolutions should be printed or written in a book, and each one signed by the Chairman of the Board at the time of the passing of the resolution. A "copy" of the resolution, so signed, certified to be a true copy by any member of *such* Board, shall be deemed authentic and received as evidence, etc. What is probably intended by this section is, that a certified copy of such resolution, in the absence of the original, shall be received in evidence instead of the original. The section is not framed, however, to give this construction literally, though the Courts might so interpret it.

Where the original record can be received in evidence, a copy of any official or public document, purporting to be certified under the hand of the proper officer, or person in whose custody such official or public document is placed, or a copy of a document, by-law, rule, regulation or proceeding, or a copy of any entry in any register or other book of any Corporation created by charter or Statute in this Province, purporting to be under the seal of the Corporation and the hand of the presiding officer or secretary thereof, shall be receivable in evidence without proof of the seal of said Corporation, or of the signature or of the official character of the person or persons appearing to have signed the same and without further proof thereof. R. S. O. c. 61, s. 23.

of Justice without proof of any such signature, (*p*) unless it is specially pleaded or alleged that the signature to any such original resolution has been forged. (*q*) R. S. O. 1877, c. 181, s. 79.

Places in which the sale of liquors is presumed

108. Any house, shop, room or other place (*r*) in which are proved to exist a bar, counter, beer pumps, kegs, jars, decanters, tumblers, glasses or any other appliances or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked in shall be deemed to be a place in which spirituous, fermented or other manufactured liquors are kept or had for the purpose of being sold, bartered or traded in, under section 50 of this Act, unless the contrary is proved by the defendant in any prosecution; (*s*) and the

---

(*p*) "In any Court of Justice," is a very comprehensive term, and includes every description of Court for the trial of causes, civil and criminal. For list of the several species of Courts of Justice, see Wharton, 195.

(*q*) The only objection which can be taken to the admission in evidence of the certified copy here provided for is that the *original* resolution signed as above, of which such certified copy purports to be a copy, is forged, and this objection must be specially pleaded or alleged. The copy is to be received in evidence without proof of signature.

In prosecutions under the regulations of the License Commissioners, the existence of the resolution must be proved. The same rules apply as in the case of prosecutions under by-laws of a Municipality. See sec. 98, note (*p*).

(*r*) "Any house, shop, room, or other place," is a sufficiently wide term to include every place conceivable, at least one would think so, but it was contended—although the contention was not upheld by the Court—that inclosed grounds into which persons were admitted on payment of a fee, and where a pigeon shooting match and other sporting events were carried on, was not a "place" because it was not covered by a roof. The Court did not take that view, however, and held that it was not only a place, but that it was "kept" for betting purposes: Eastwood *v.* Miller, L. R. 9 Q. B., 440.

It was held in another case that a table under a tree in Hyde Park could not be a place used for the purposes of betting: Doggett *v.* Catterns, 19 C. B. N. S., 765. But a betting stand or enclosure at a race-course was held to be a "place" for those purposes: Shaw *v.* Morley, L. R. 3 Ex., 137, and an inclosed ground for cricket, foot races, etc., was also held to be such a place: Haigh *v.* Town Council of Sheffield, L. R. 10 Q. B., 102; and it seems that although the Court held that an umbrella seven or eight feet high and supported by a staff stuck into the ground, and kept up, rain or dry, was a "place," one of the Judges thought that a prize ring or a wagon with an awning would not be a place, and that an umbrella was, properly speaking, an open tent: Bows *v.* Fenwick, L. R. 9 C. P., 339. A movable wooden box was held to be a "place": Gallaway *v.* Maries, 8 Q. B. D., 275; see also note (*k*) to sec. 11, ss. 6, *ante*.

(*s*) In order as far as possible to guard against the evasion of the law and to prevent the illicit sale of intoxicating liquors, extraordinary means have been provided for the conviction of offenders, and this section is one of those enacted with that end in view. The mere fact of a bar, counter, beer pumps, kegs,

occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffick therein. (*t*) R. S. O. 1877, c. 181, s. 80.

Presumption as to occupant.

109. In proving the sale or disposal, gratuitous or otherwise, (*u*) or consumption of liquor for the purpose of any proceeding relative to any offence under this Act, (*v*) it shall not be necessary to shew that any money actually passed, (*w*) or any liquor was actually consumed, if the

Evidence as to sale, etc., of liquor.

---

jars, decanters, tumblers, glasses, or any other appliances or preparations such as are usually found in a bar-room being in existence in a house or place, is to be deemed evidence that spirituous, fermented, or other manufactured liquors are kept or had for the purpose of sale, unless the contrary is proved by the defendant. In other words, if the existence of the appliances mentioned is proved and the defendant does not adduce evidence to satisfactorily account for them and rebut the presumption raised under the section, he may be convicted. The accused must prove himself to be innocent in order to get rid of the presumption implied from his having such appliances in his possession, which is a reversal of the rule which presumes every man to be innocent until proved guilty.

(*t*) The existence of certain appliances implies a violation of the Statute, unless the defendant proves the contrary; and the occupant shall be taken *conclusively* to be the person guilty of the violation mentioned. When anything is described as "*conclusive*" evidence of a fact, it is absolute evidence of such fact, in criminal as well as civil actions, and applies to all purposes for which it is so made evidence: R. *v.* Levi, L. & C., 597; R. *v.* Robinson, 16 L. T.N. S., 605; Stroud's Dict., 145. The word "conclusive" has also been defined as "determinative," decisive; not to be questioned, controverted, or contradicted, nor requiring support: Anderson's Dict., 221. So that it would seem that the existence of such appliances is to be taken as incontrovertible evidence that the occupant is the person who keeps such liquors for sale. See notes to sec. 112.

See sec. 50 and notes thereto.

See also R. *v.* Doyle, 12 O. R., 347; R. *v.* Brady, 12 O. R., 578, cited in notes to sec. 131, and also R. *v.* Hartley, 20 O. R., 481.

(*u*) "Gratuitous or otherwise." The term "disposal" would probably include a gratuitous disposal; but the wording of this section leaves no room for doubt. See notes on pages 120, 125, *ante*.

(*v*) "Any proceeding," etc. The term "proceeding," as used here, includes the term "prosecution or proceeding" as used in sec. 106. "Proceedings," in its more general sense, means all the steps or measures adopted in the prosecution or defence of an action. In ordinary acceptation, when unqualified, it includes the whole of the subject. "Proceedings" in a suit embrace all matters that occur in its progress judicially; and "proceedings" on a trial, all that occur in that part of the litigation: see Morewood *v.* Hollister, 6 N. Y., 319-320; Gordon *v.* State, 4 Kan., 501; cited Anderson's Dict., 816. See also note (*g*), sec. 106.

The provisions of the section apply to all sections relating to the sale and consumption of liquor. The section is taken from the English Licensing Act, 1872, 35 and 36 Vic., c. 94, s. 62.

(*w*) A sale will be presumed although no money actually passed from the purchaser to the seller, and although the evidence does not shew that the liquor

Justices, Police Magistrate or Court hearing the case is or are satisfied that a transaction (*x*) in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor (*y*) on premises under license or in respect to which a license is required under this Act, by some person other than the occupier of said premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carrying away the same, as against the holder of the license or the occupant of the said premises. R. S. O. 1877, c 181, s. 81.

Light in bar *prima facie* evidence of sale.

110. In cities, towns and incorporated villages (*z*) in all cases where gas or other light is seen burning in the bar-room of such tavern or saloon where liquor is trafficked in, at any time during which the sale or other disposal of liquors is prohibited by any provision of this Act, any such fact when proved, shall be deemed and taken as *prima facie* evidence (*a*) that a sale or other disposal of liquor by the

---

was actually consumed, if the facts adduced at the hearing are such as would ordinarily satisfy an unprejudiced mind beyond reasonable doubt that a transaction in the nature of a sale actually *took place*, or that any consumption of liquor was *about to take place*. See note (*p*) sec. 52; title, "*satisfactory evidence*."

(*x*) A "transaction" has been defined as, "whatever may be done by one person which affects another's rights, and out of which a cause of action may arise:" Anderson's Dict., 1047. As used in this section it implies any act which may take place or be performed: See Worcester, 1530; Stroud's Dict., 164; Sinclair's D. C. Act, 1879, 240.

(*y*) "Proof of consumption or intended consumption," is made evidence against the holder of the license or the occupant of the premises. As to illegal consumption of liquor, see secs. 50, 53, 60 and 61, *ante*.

An "intent implies purpose only; refers to the quality of the mind with which an act is done:" Anderson's Dict., 560.

To "intend" means to design; to purpose: See Worcester, 765.

Proof of such consumption, or intended consumption, by some person other than the occupier of the premises, must be given and such proof will be sufficient to guide the Justice in determining whether there has been a sale or disposal of liquor. This evidence, however, will only be *prima facie*, not conclusive evidence, and it will be open for the defendant to rebut it.

For cases under this section, see the notes to those sections regarding the sale of liquor to which it applies. See also Seager *v.* White, 51 L. T. N. S., 261, cited, *ante*.

(*z*) As to "cities, towns and incorporated villages," see note (*j*), p. 7.

This section applies only to infractions of the law requiring the closing of places where liquors are sold at particular times, see secs. 54, 55, 56, 57, 58, and notes thereto. It does not apply to townships and other rural districts.

(*a*) "*Prima facie evidence.*" See sec. 52, note (*j*).

keeper of such tavern or other place has taken place contrary to the provisions of sub-section 1 of section 54, and such keeper may thereupon be convicted of an offence against said section, and shall, upon such conviction, be subject to the punishment prescribed by sections 85 and 86 of this Act. 49 V. c. 39, s. 10.

What shall be deemed evidence of unlawful sale.

111. The fact of any person, not being a licensed person, keeping up any sign, writing, painting or other mark, in or near to his house or premises, or having such house fitted up with a bar or other place containing bottles or casks displayed so as to induce a reasonable belief that such house or premises is or are licensed for the sale of any liquor, or that liquor is sold or served therein, or that there is on such premises more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence (*b*) of the unlawful sale of liquor by such person (*c*). 47 V. c. 34, s. 33.

The provisions of the section are perfectly plain. The mere fact of a light other than the natural light of day being seen burning in a bar-room is sufficient to convict, unless it is rebutted by evidence showing satisfactory reasons for such light being there, and that no violation of the law had taken place.

Also see notes to sections 85, 86 and 108.

(*b*) As to the meaning of *prima facie* evidence, see sec. 52, note (*j*).

(*c*) This section applies only to persons who are not licensed to sell liquors of any kind. Under it a person accused of the unlawful sale of liquor may be convicted if it be shewn: (1) That he is not a licensed person; (2) that (*a*) he keeps up any sign, writing, painting, or other mark in or near his house or premises, or (*b*) has such house fitted up with a bar or other place containing bottles or casks displayed so as to induce a reasonable belief that such house or premises is or are licensed for the sale of liquor, or (*c*) that such liquor is sold or served therein, or (*d*) that there is on such premises more liquor than is reasonably required for the persons residing therein.

The person accused may, however, rebut such presumption by satisfactorily accounting for the existence of the facts from which the unlawful sale is implied, or by evidence proving satisfactorily that no such unlawful sale has taken place.

"Sold or served." As to evidence of sale, see notes to sections prescribing penalties for illegal sale. The term "served" is probably synonymous with "supplied," as used in sec. 76.

The question whether "more liquor than is reasonably required" is found on the premises is one for the Justices to determine upon the evidence before them. "In cases not covered by authority, the verdict of the jury (or the decision of a Judge sitting as a jury) usually determines what is reasonable in each particular case;" but frequently reasonableness "belongeth to the knowledge of the law, and therefore to be decided by the Justices:" Co. Litt. 56*b*, cited Stroud's Dict., 653. "What is reasonable is a question of fact, not law:" Wharton, 617. The same principle will apply to the question of 'reasonable belief." See also notes on pages 25 and 106.

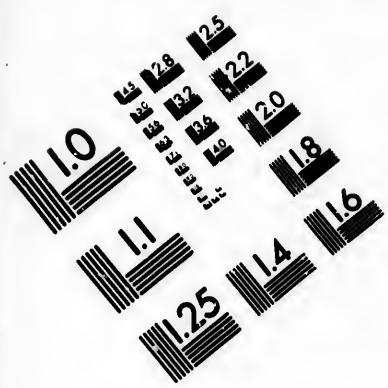
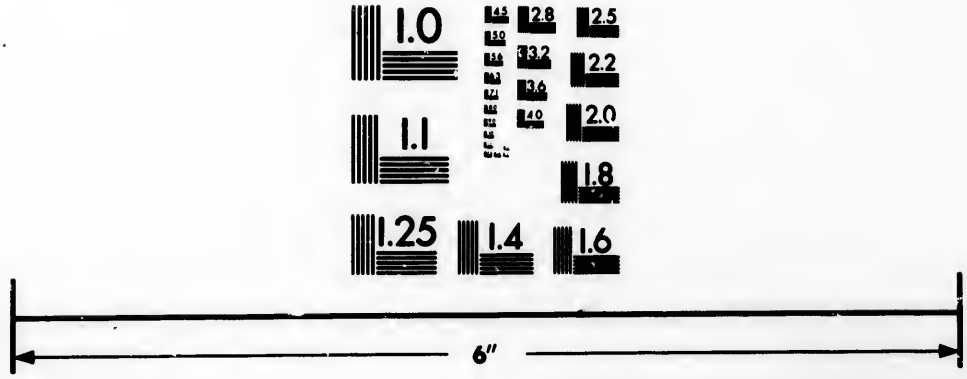
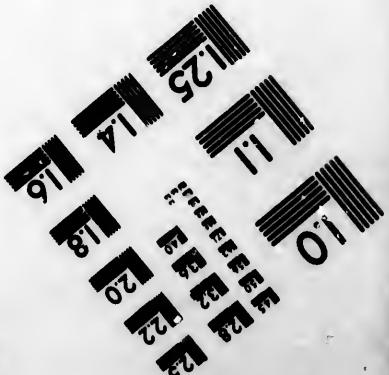


IMAGE EVALUATION TEST TARGET (MT-3)





Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

Liability of occupants.

112. (1) The occupant of any house, (*d*) shop, room or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act or thing in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed in sections 70 and 71 of this Act, as the case may be, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant, and proof of the fact of such sale, barter or traffic, or other act, matter or thing, by any person in the employ of such occupant, or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, (*e*) or other act, matter or thing, took place with the authority and by the direction of such occupant (*f*). R. S. O. 1877, c. 181, s. 83.

(*d*) The "occupant," is the person who has the actual use or possession of a thing: Anderson's Dict., 726. See also note (*i*) to sec. 50, and note (*g*), sec. 16. See also R. *v.* Howard, 45 U. C. R., 346; R. *v.* Williams, 42 U. C. R., 462, cited *ante*, p. 157, and in note (*f*), *infra*.

(*e*) "Sale, barter or traffick." See note (*d*), p. 5.

(*f*) This section applies to all prosecutions for the contravention of the provisions of the Act; under it, the occupant is liable for any unlawful act, matter or thing done on the premises by any agent, clerk, servant or assistant. (See secs. relating to particular offences, and notes thereto.) It is not necessary to prove that in the commission of such unlawful act, the person who actually committed the offence was authorized to do so by such occupant.

It was held that the owner of a shop is criminally liable for any unlawful act done therein, in his absence, by a clerk or assistant, as, for instance, in this case, for the sale of liquor without license by a female attendant: R. *v.* King, 20 C. P., 246.

In commenting on the first part of this section, Mr. Justice Gwynne said: "Now if this section had not been passed, the general rule of law applicable, if the owner of the house where the liquor was sold was the person prosecuted for the offence, would be, that although no one can be made criminally responsible for the acts of third persons, yet, the employment of an agent in the defendants usual course of business is sufficient evidence in such cases, whence the Magistrate might, if he thinks fit, presume that such agent was authorized to do the prohibited act with which it is sought to charge the principal: See Paley on Con., 5th Ed., 72, and cases *tbt*." And so, if the Magistrate was satisfied that the wife or servant of the defendant, in selling liquor contrary to the provisions of the Act, was acting in the discharge of the defendants usual course of business, the defendant would be liable to conviction therefor, "but if the evidence should fall short of satisfying the Magistrate's mind upon that point, the wife or the servant who actually sold, would be liable to conviction

(2) (*g*) The person actually selling, or otherwise contravening any of the provisions of this Act, as in this section mentioned, is for the purposes hereof styled "the actual offender," (*h*) whether acting on behalf of himself or of another or others, and the actual offender, as well as the

Person selling as well as "occupant" to be liable.

---

for the act of sale contrary to law." And that the effect of this section was merely to make *conclusive* evidence, that which would have been *sufficient* evidence without this section, if it satisfied the Magistrate's mind that the sale took place in the usual course of the defendant's business, with this addition, "that the occupant shall be conclusively bound by the acts, not only of all persons in his employment, but even by the wrongful acts of persons upon his premises whom he suffers to be or remain there:" R. *v.* Williams, 42 U. C. R., 462, at p. 464. See also remarks by Cameron, J., R. *v.* Howard, 45 U. C. R., 346, at pp. 347, 348, where it was held that a servant of the keeper of an unlicensed tavern was properly convicted, the case being undistinguishable from R. *v.* Williams, *supra*.

In another case it appeared from the evidence that the wife of the accused was the lessee of the premises, but that the liquor was sold by her husband in her absence. Held that she was liable for selling liquor without a license; that she, as lessee, must be presumed to be cognizant of her husband's conduct and was therefore punishable for the offence under sec. 83 of R. S. O. (1877), c. 181—the original of sub-sec. 1 of this section (112): R. *v.* Campbell, 8 P. R., 55. See also Austin *v.* Davis, 7 App. R., 478; Newman *v.* Jones, 17 Q. B. D., 132; Hugill *v.* Merrifield, 12 C. P., 269; Cooley on Torts, 243; Bayley *v.* Manchester, S. & L. Ry. Co., L. R. 7 C. P., 420; The Queen *v.* Stephens, L. R. 1 Q. B. 702, and other cases cited in notes to secs. 49 and 70. See also cases referred to in notes to sections applicable to the various offences under the Act.

The provisions of this section do not admit of any evidence shewing that the unlawful act done by any person in the employ of the occupant was done without his authority. The mere fact that the sale, barter, traffic or other act, matter or thing was done by a person in his employ, or by a person who was suffered to be or remain in or upon the premises, or to act in any way for the occupant, is conclusive proof that the sale was by his authority. It is the duty of the occupant to keep some one who is responsible upon the premises, and whether he does so or not he is liable for any infraction of the law which may take place in his absence.

"Conclusive, or as they are elsewhere termed imperative or absolute presumptions of law, are rules determining the quantity of evidence requisite for the support of any particular averment, which is not permitted to be overcome by any proof that the fact is otherwise:" Taylor on Evi., 90. See also note (*t*), sec. 108.

(*g*) This sub-section provides for the punishment of the person unlawfully selling liquor or otherwise contravening the provisions of the Act as well as the occupant of the premises in which the unlawful sale or contravention of the Act takes place, but both cannot be convicted of the same offence, and although they may be prosecuted jointly or separately, the conviction of one is a bar to the conviction of the other.

(*h*) The "actual offender" is he who was present and really acted in the commission of the offence. See Anderson's Dict., 28. But see also note (*f*) to sec. 89, *ante*. The term is used simply in order to distinguish between the real and apparent offender. The real offender in this case is the person who commits the offence, and the constructive offender is the responsible occupant of the premises.

occupant, shall be personally liable to the penalties and punishments prescribed by sections 70 and 71 of this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with, or separately from, the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. 44 V. c. 27, s. 8.

[(3) For the purposes of this section, any person being an owner or lessee in actual occupation and possession of the premises, or anyone who, being in actual occupation and possession, leases or sub-lets any part thereof in which liquors are kept for sale, barter or trading therein, or in which they are sold or consumed, shall be deemed to be an occupant, unless such leasing or sub-letting shall have received the consent in writing of the board of license commissioners. (*i*)] 53 V. c. 56, s. 13.

(*i*) This sub-section is added to the Act by 53 Vic., c. 56, s. 13.

It is intended to prevent the evasion of the law by the fraudulent or surreptitious transfer of premises from one person to another in order to shift the responsibility and render detection difficult. In future no transfer can be recognized which is made without the consent in writing of the Board of License Commissioners. This only applies to places in which liquors are kept for sale or in which they are sold or consumed. The sale, barter, or trading, or the sale or consumption of such liquors must be shewn, otherwise there will be no ground for conviction.

The clause applies (1) to an owner or lessee in actual occupation and possession, or (2) to anyone in actual occupation and possession of premises in which liquors are kept for sale, barter or trading, or in which they are sold or consumed. It applies to all places in which liquors are sold, or kept for sale, whether licensed or not, but more particularly to unlicensed places. Sec. 57 provides for the forfeiture of the licenses upon a transfer of the licensed premises without the consent of the Commissioners.

An "owner in actual possession" has been held to mean an occupation and possession in fact, as distinguished from an occupation and possession in law: see Murray *v.* Thorniley, 2 C. B., 217; Hayden *v.* Tiverton, 4 C. B., 1; Webster *v.* Ashton-under-Lyne; Orme's Ease, L. R. 8 C. P., 281. See further Heelis *v.* Blain, 18 C. B. N. N., 90; Webster *v.* Ashton-under-Lyne; Hadfield's Case, L. R. 8 C. P., 306; Hogg *v.* Jones, 32 Beav., 45; Druitt *v.* Christchurch, 12 Q. B. D., 365.

The term "occupation" is thus defined by Wharton, "possession; act of taking possession," and "possession" is defined as "the state of owning or having a thing in one's own hands or power." It is either *actual*, where a person enters into lands or tenements descended or conveyed to him; *apparent*, which is a species of presumptive title where land descended to the heir of an abator, intrudor or disseizor, who died seized; *in law*, when lands, etc., have descended to a man and he has not actually entered into them; or *naked*, that is, mere possession without colour of right. See Wharton, 566; Stroud's Dict., 14, 524, 600. Stripped of all technical terms, the "owner or lessee in actual

113. In any prosecution (*j*) under this Act for the sale or other disposal of liquor (*k*) without the license required by law, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered (*l*) or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation or to his own personal and certain knowledge, but the Justices or Police Magistrate trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish (*m*) the

In prosecutions for sale without license certain presumptions sufficient to put defendant on his defence, and convict him in default of rebuttal.

---

occupation and possession" is he who, as either owner or tenant, is in the use and enjoyment of the premises. See Redfield *v.* Utica, etc., Ry. Co., 25 Barb., 56 (1851); City of Bangor *v.* Rowe, 57 Me., 439 (1869); Lawrence *v.* Fulton, 19 Cal., 690 (1862); Fleming *v.* Maddox, 30 Iowa, 242 (1870); McKenzie *v.* Brandon, 71 Cal., 211 (1886), and other cases cited in Anderson's Dict., 726.

"Kept for sale," etc. See notes on pages 59, 112, 130.

The intention of the clause, evidently, is that the person in possession of the premises, and who is the apparent owner of the business, shall be "deemed" to be the person responsible.

"When by an enactment certain acts are 'deemed' to be a crime of a particular nature, they constitute such crime, and are not a semblance or a fanciful approximation of it: Commonwealth *v.* Pratt, 132 Mass., 247 (1882), and it has also been held that the phrase 'deemed' and 'adjudged' in a penal Statute have the same meaning:" Blaufus *v.* People, 69 N. Y., 111; State *v.* Price, 11 N. J. L., 218; see also De Beauvoir *v.* Welch, 7 B. & C., 278.

(*j*) "In any prosecution." See note (*g*), sec. 106, and note (*w*), sec. 109.

This section applies to all prosecutions in which the sale or disposal of liquor without a license is charged, See secs. 49, 70 and 108.

It does away with the necessity of proving in such cases, (1) the nature or kind of liquor sold; (2) the consideration paid therefor; and (3) the fact that the transaction took place with the knowledge of the defendant. And provides that the defendant shall be put upon his defence by simply shewing, to the satisfaction of the Magistrate or Magistrates, that the infraction of the law charged has taken place, and if the presumption thus established be not rebutted he shall be convicted.

(*k*) As to the "sale or other disposal of liquor," see notes on pages 120, 125.

(*l*) It is a question for the Magistrate to decide whether the liquor sold is such as to require a license. The mere fact of a bar and intoxicating liquors being found, and the usual appliances for the sale of such liquors, is some evidence independently of the Act (sec. 111) upon which the Magistrate could act in forming his opinion of the truth of the charge that the defendant keeps intoxicating liquor for sale. Where the liquor sold was spoken of as whiskey in which some herbs were found, it was held to be a fact upon which the Magistrate had to find, and that the Court had no control of his opinion on a mere matter of fact. There are numerous cases which shew that the decision of the Magistrate upon a matter of fact is final and will not be reviewed: per Wilson, C. J., R. *v.* Brady, 12 O. R., 358 at p. 360.

(*m*) "Sufficiently establish." See note (p), sec. 62.

"Sufficient evidence." What is meant here is evidence sufficient to make

infraction of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence (*n*), shall convict him accordingly. R. S. O. 1877, c. 181, s. 84.

Proof of being licensed to rest on the defendant.

114. (1) In any prosecution under this Act (*o*), whenever it appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed, and that he did the said Act lawfully.

Evidence of license.

(2) The production of a license which on its face purports to be duly issued, and which, were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *prima facie* evidence that the defendant is so entitled, and in all cases the signature to and upon any instrument purporting to be a valid license shall *prima facie* be taken to be genuine (*p*). R. S. O. 1877, c. 181, s. 85.

Witnesses.

Witnesses.

115. In any prosecution under this Act (*q*) the

---

out a *prima facie* case, and then to put the defendant on his defence. The failure of the defendant to rebut such evidence makes it conclusive.

(*n*) "In default of his rebuttal." The term rebuttal is used as a briefer expression than "rebutting evidence," and means the same thing. It comes from a French word, "*Rebouter*," to repell:" see Stroud's Dict., 658. Rebutting evidence is that which is given by one party in a cause—to explain, repel, counteract, or disprove evidence produced by the other party: Wharton, 618. The failure of the accused to bring forward such evidence leaves the Justice or Justices no option but to convict.

(*o*) This section applies to all prosecutions for the sale of liquor, or for the keeping of liquor without having the license required by law therefor.

Under its provisions the onus of proving that he is licensed lies upon the defendant, and it is therefore not necessary to shew in a conviction that the defendant was not licensed: R. *v.* Young, 7 O. R., 88. See also notes to secs. 49 and 70.

(*p*) Here the production of a license is made *prima facie* evidence that the defendant is licensed. Under sec. 106 a certificate of the License Inspector is made *prima facie* evidence of the existence of a license.

When validity is given to anything "purporting" to be done in pursuance of a power, a thing done under it may have validity, though done at a time when the power would not be really exercisable: Dicker *v.* Angerstein, 3 Ch. D., 600.

See notes to sec. 106.

(*q*) This section applies to all prosecutions under the Act.

Justice, Justices, or Police Magistrate trying the case may summon any person represented to him or them as a material witness in relation thereto; (*r*) and if such person refuses or neglects to attend pursuant to such summons, the Justice, Justices, or Police Magistrate may issue his or their warrant for the arrest of such person; and he shall thereupon be brought before the Justice, Justices, or Police

es summoned and not appearing, may be brought up by warrant.

(*r*) The informer is a competent witness: R. *v.* Strachan, 30 C. P., 182.

It was held that an information for selling liquor on Sunday was so far a charge of a criminal character that the defendant could not be compelled to give evidence against himself. A conviction for such offence on the defendant's evidence was therefore quashed: R. *v.* Roddy, 41 U. C. R., 291. And under The Canada Temperance Act, 1878, it was held that although the accused is made a competent and compellable witness, he is not bound to criminate himself: *Re* Connolly, 4 C. L. T., 301; R. *v.* Halpin, R. *v.* Daly, 12 O. R., 330. But in a case under the same Act, an order was made by the Honorable Mr. Justice Ferguson, quashing the conviction, on the ground that the defendant had been compelled to give evidence of his own criminality. The Judge quashed the conviction, following the case of R. *v.* Halpin and *Re* Connolly, *supra*, but was not satisfied that he should have followed those decisions, if his decision was final, and on application to the Divisional Court of the Chancery Division, the order quashing the conviction was reversed, the Court holding that it had jurisdiction to re-hear motions to quash convictions, and that the cases cited should not be followed. R. *v.* Fee, 13 O. R., 590. See also note (*u*), sec. 54, p. 127. The Summary Convictions Act, R. S. C., c. 178, secs. 29 and 30, contained provisions for summoning witnesses similar to those contained in this section, but those sections have been repealed by 51 Vic., c. 45, sec. 1, and new provisions substituted therefor.

A conviction under a by-law of the City of Brantford was quashed on the ground of the refusal of the defendant's evidence contrary to the provisions of sec. 424, R. S. O. c. 184: R. *v.* Grant, 18 O. R., 169.

By R. S. O. c. 61, witnesses are not to be incapacitated from giving evidence by reason of crime or interest, and on the trial of any action, issue, matter or proceeding in any Court in this Province, or before any person having by law or by the consent of the parties, authority to hear, receive and examine evidence, the parties to the proceedings and the persons in whose behalf the action or other proceeding is brought or instituted or opposed or defended shall, except as hereinafter mentioned, be competent and compellable witnesses, etc.

The exceptions are, (1) persons accused of crime are not compellable to answer any questions tending to criminate themselves, or to subject themselves to prosecution for any penalty.

(2) Communications by a husband to his wife, or the wife to her husband. And it is also enacted that on the trial of any proceeding, matter, or question before any Justice of the Peace, Mayor, or Police Magistrate in any matter cognizable by such Justice, Mayor, or Police Magistrate, not being a crime, the party opposing or defending, or the wife or husband of the person opposing or defending, shall be competent and compellable to give evidence therein (sec. 9).

A witness is not bound to answer any questions which may tend to criminate himself or subject him to a criminal charge, penalty or forfeiture: see Taylor on Evi., 1242-1252.

Magistrate, (*s*) and if he refuses to be sworn or to affirm, (*t*) or to answer any question touching the case, he may be committed to the common gaol of the county, there to remain until he consents to be sworn or to affirm and to answer (*u*). R. S. O. 1877, c. 181, s. 86.

Production of books, etc., may be ordered.

116. Any person summoned as a party to, or as a witness in any proceeding under this Act, (*v*) may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts, deeds and other documents in his possession, custody or control, relating to any matter connected with the said proceeding, saving all just exceptions to such production; (*w*)

(*s*) The witness must be summoned in the first instance, and then, if he refuses or neglects to attend upon such summons, a warrant may be issued for the arrest of such person. Upon his being arrested and brought before the Justice, Justices or Magistrate, if he refuses to be sworn or to affirm or to give his evidence, he may be committed to gaol until he consents to do so. A commitment under this provision must follow the words of the Statute in prescribing the term of imprisonment, namely, "until he consents to be sworn or to affirm and to answer:" see *ex parte* Besset, 6 Q. B., 481; *in re* Anderson, 11 C. P., 1.

As to competency of witnesses under the English Licensing Act, 1872, which makes the defendant and his wife competent to give evidence, see Seager *v.* White, 51 L. T. N. S., 261, in which it was held that being competent witnesses they are also compellable witnesses, and are on the same footing as other married witnesses; and that where the wife is the licensed person, and is summoned, she as well as her husband may both give evidence. See also Cattell *v.* Ireson, E., B. & E. 91; Parker *v.* Green, 2 B. & S., 299; R. *v.* Hawkhurst, 26 J. P., 772.

See sec. 98 and notes thereto.

(*t*) "Sworn or affirm." By R. S. O., c. 61, s. 12, 13, Quakers, Menonites, Tunkers, etc., or any person who refuses or is unwilling from alleged conscientious motives to be sworn may make a solemn affirmation or declaration; and by sec. 14 a similar provision is made respecting persons who object or are incompetent to take an oath.

(*u*) The service of the summons on the witness should be proved before the issue of a warrant, and this may be done by taking the depositions of the constable or other person who effected such service. If the witness is within the Magistrate's jurisdiction he may be arrested and brought before the Magistrate; if he be out of the jurisdiction, the warrant may be backed by a Justice having jurisdiction in the place where the witness is found. See note (*m*), sec. 101, p. 229.

(*v*) This section applies to the parties to the prosecution as well as witnesses. Either the prosecutor, defendant, or a witness may be required to produce such books, &c., as there may be in his possession, custody, or control. The summons must be in the form of a *duces tecum* and require the person to whom it is directed to bring with him and produce at the time and place appointed all books and papers, accounts, deeds and other documents in his possession, custody, or control, relating to any matter connected with the said proceeding.

(*w*) "Saving all just exceptions." "Upon principles of reason and equity.

and shall be liable to the same penalties for non-production of such books, papers or documents, as he would incur by refusal or neglect to attend, pursuant to such summons, or to be sworn or to answer any question touching the case (*x*). R. S. O. 1877, c. 181, s. 87.

Inspector's expenses to be allowed for attending court. 27-28 V. c. 18; R.S.C. c. 106.

117. (1) In any prosecution under this Act, or *The Temperance Act of 1864*, or the second part of *The Canada Temperance Act* (*y*), if the inspector attends the Court as prosecutor or witness and travels to attend such Court a distance of more than three miles from his place of residence, it shall be lawful for the Justice or Justices trying the case to tax against the defendant, in cases of conviction, as costs in the cause to cover railway fare or hire of conveyance of the inspector in attending the said prosecution as follows (*z*):

Judges will refuse to compel either a witness or a party to a cause to produce either his title deeds, or any document, the production of which may tend to criminate him, or any document which he holds as mortgagee or pledgee. But a witness will not be allowed to resist a subpœna *deeus tecum* on the ground of any lien he may have on the document called for as evidence, unless the party requiring the production, be himself the person against whom the claim of lien is made. If the witness be a Solicitor, though he will be *permitted*, he certainly will not be *forced*, except in some cases for the purpose of identification, to produce any instrument which he holds confidentially for his client, and which his client has a right to keep back; but in this case, as has just been noticed, it by no means necessarily follows that, in the event of the client himself not being summoned, secondary evidence will be admissable:" Taylor on Evi., 419, 420. A witness cannot be excused from producing a document merely because its production may expose him to a civil action, or be otherwise prejudicial to his pecuniary interests. Neither a witness nor a party in the cause is bound to produce documents which may render him liable to punishment, or expose him to penalty or forfeiture, unless they be of a public nature such as the Statute directs to be kept and produced: *Ib.* 1252.

See R. *v.* Roddy, 41 U. C. R., 291 and other cases cited in notes to sec. 115.

As to privileges in case of official documents, see R. S. O., c. 61, s. 24.

(*x*) The notes to sec. 115 are applicable to the latter part of this section.

(*y*) This section applies to all prosecutions under this Act, The Temperance Act, 1864, and the second part of The Canada Temperance Act, in which the License Inspector is required to attend either as the prosecutor or as a witness.

By sec. 129 the Inspector is required to prosecute on receiving information leading to the suspicion that persons are violating the law, and by sec. 134, it is declared to be his duty to prosecute all offenders. Neglect to do so subjects him to a penalty of $10 for each case of neglect.

(*z*) In a prosecution under the C. T. Act, it was contended that the Magistrate had no power to order payment of a sum for two days' attendance of the Inspector and his mileage, but the Court did not consider the question as the conviction was quashed on other grounds. Reference was made to this section and to R. S. C. c. 178, secs. 58-61, and R. S. O. c. 78: R. *v.* Tucker, 16 O. R.,

Railway or stage fare.

1. In case he travels by railway or stage the fares actually required to be paid by him;

Hired conveyance.

2. If by a hired conveyance, the sums actually required to be paid for a horse, conveyance, and tolls;

His own conveyance.

3. If in his own conveyance, ten cents per mile one way;

Other expenses.

4. And to cover all other expenses, $1 per day;

Adjournments.

5. In cases of adjournment at the instance of the defendant, similar additional allowances to be made, when the inspector is actually in attendance.

Expenses verified by oath.

(2) The mileage or other expenses shall be verified by the oath of the inspector.

Inspector to make quarterly returns.

(3) The inspector shall make quarterly returns in detail under oath to the department of the Provincial Secretary, of all sums received by him for mileage, and other expenses, in this section provided for. 47 V. c. 34, s. 20.

APPEALS.

Conviction of Justices final except as

118. (1) In all cases of prosecution (*a*) for any offence (*b*) against any provisions of this Act for which any penalty or punishment is prescribed, (*c*) a conviction or

---

127. See also note (*w*), sec. 100, p. 125, and schedule of fees receivable by Justice of the Peace in appendix. In R. *v.* Elliott, 12 O. R., 524, at p. 530, Mr. Justice Rose in delivering judgment says: "c. 77, R. S. O."—now c. 78, R. S. O. (1887)—"provides a table of costs which the Justices are authorized to direct payment of, and payment of no other costs can be ordered," and therefore a charge of $1 for the use of the hall in which the case was tried was held to be an excess of the Magistrate's jurisdiction. From these cases it appears that some doubt exists as to the Magistrate's power to award any other costs than those provided for in R. S. O. c. 78.

(*a*) Under this section as it is now framed, the decision of the Justices or Police Magistrate is final and conclusive in all cases except those in which the offence charged is alleged to be committed by a licensee, or is committed upon or in respect of licensed premises. There is no appeal in cases against unlicensed offenders, unless the offence is alleged to have been committed on or in respect of licensed premises. See R. *v.* Gordon, cited below.

Formerly an appeal was allowed against a conviction for selling liquors without a license: R. *v.* Firmin, 33 U. C. R., 523. See R. *v.* Lake, 7 P. R., 215.

But by 53 Vic. c. 56, s. 14, the right of appeal, except as above, is taken away.

(*b*) "Any offence." See note (*c*), p. 29.

(*c*) "Penalty or punishment." See sec. 46, note (*s*).

order (*d*) of the said Justices or Police Magistrate, as the case may be, except as hereinafter mentioned, shall be final and conclusive, and except as hereinafter mentioned, against such conviction or order there shall be no appeal. (*e*) otherwise provided.

[(2) Subject to the provisions contained in the following sub-sections hereof, an appeal shall lie to the Judge of the County Court of the County in which the conviction is made, sitting in chambers without a jury in all cases where the person convicted is a licensee, or the conviction is for any offence committed on or with respect to premises licensed under this Act, provided a notice of such appeal is given to the prosecutor or the complainant within five days after the date of the said conviction.] (*f*) 53 Vic., c. 56, s. 14. Procedure on appeals.

(*d*) "Conviction or order." See sec. 100, note (*v*).

(*e*) When a decision is "final and conclusive," an appeal is taken away: Waterhouse *v.* Gilbert, 15 Q. B. D., 569; Bryant *v.* Reading, 17 Q. B. D., 128; Lyon *v.* Morris, 19 Q. B. D., 189.

Where an appeal is not taken away and the matter is capable of being amended on appeal, a *certiorari* should not issue: per Gwynne, J., *in re* Watts and Emery, 5 P. R., 267, at p. 269. See also R. *v.* Strachan, 20 C. P., 182, at p. 191.

A *mandamus* to the sessions to try an appeal against a conviction was refused on the ground, amongst others, that the Act constituted the County Judge sitting in Chambers without a jury a Court of Appeal in such cases: R. *v.* Clarke, 44 U. C. R., 385.

C. P. Division—The Divisional Court. Before Rose, J., MacMahon, J. R. *v.* Gordon.—The defendant appealed from an order of Galt, C. J., in Chambers, refusing to consider the validity of a summary conviction made by the Police Magistrate for the city of Toronto, upon a case stated by the Magistrate under 53 Vic., c. 37, sec. 28 (Ont.), on the ground that the Magistrate had no power to state a case with regard to this particular conviction, which was under the Liquor License Act for selling without a license, and not, as the Chief Justice held, within the provisions of the Summary Convictions Act. Appeal dismissed on the ground that a case cannot be stated with respect to a conviction such as this, which cannot be appealed to the Sessions. No costs (not reported).

It was held that it was irregular for the Judge who tries the case to call a jury, or to receive depositions of witnesses as evidence, but that this is not a ground for prohibition: *In re* Brown and Wallace, 6 P. R., 1.

(*f*) This sub-sec. has been substituted by 55 Vic., c. 56, s. 14, for sub-sec. 2 of sec. 118 of R. S. O., c. 194. By it the Judge of the County Court of the County in which the conviction is made, sitting in Chambers without a jury is constituted a Court of Appeal: see R. *v.* Clarke, 44 U. C. R., 385; *in re* Brown and Wallace, 6 P. R., 1, cited above.

The "Notice" is a condition precedent to the right to appeal, see R. *v.* The Justices of Cheshire, 11 A. & E., 139. The notice must comply with the provisions of the Act: *ex parte* Curtis, 3 Q. B. D., 19. See also R. *v.* Justices of

Appellant to enter into a recognizance,

(3) The person convicted, in case he is in custody, shall either remain in custody until the hearing of such appeal before the said Judge, or (where the penalty of imprisonment with or without hard labor is adjudged) shall enter into a recognizance with two sufficient sureties, in the sum of $200 each, before the convicting Justices or Police Magistrate, conditioned personally to appear before the said Judge, and to try such appeal and abide his judgment thereupon, and to pay such costs as he may order, and in case the appeal is against a conviction whereby only a penalty or sum of money is adjudged to be paid, the appellant may (although the order directs imprisonment in default of payment) instead of remaining in custody as aforesaid, give such recognizance as aforesaid, or may deposit, with the said Justices or Police Magistrate convicting, the amount of the penalty and costs, and a further sum of $25 to answer the respondent's cost of appeal. (g)

or deposit amount of penalty and costs.

Bedfordshire, 11 A. & E., 134; R. v. Eaves L. R. 5 Ex., 75; R. v. Goodall, L. R. 9 Q. B., 557; R. v. Justices of Berkshire 4 Q. B. D., 469.

(g) The provisions of this clause apply,

1st, To cases where the defendant is in custody, or is adjudged to undergo the penalty of imprisonment with or without hard labor; and

2nd, To cases where the penalty adjudged is merely a sum of money and imprisonment in default of payment. In the first case the defendant must either remain in custody until the appeal is tried, or enter into a recognizance in the terms of the Act with two sufficient sureties in the sum of $200. In the second case, he may either remain in custody or enter into recognizance as in the first case, or he may deposit with the Magistrate or Justices the amount of the fine and costs *and* $25 to provide for the respondent's costs of appeal. As to such costs, see sec. 120.

"Two sufficient sureties." See note (c), sec. 30.

"Conditioned personally." The defendant must appear personally before the Judge. The conditions of the recognizance must comply with all the conditions imposed by the Statute, and where this was not done the appeal was dismissed: Kent v. Olds, 7 L. J., 21. See Jackson v. Kassel, 26 U. C. R., 341.

But where in the form of recognizance to try an appeal given in the Schedule to the Statute the condition differed from that provided by the enactment, it was held that the form was sufficient, as the Act giving it would be a snare to entrap persons if it were held that to follow it was to act contrary to the enactment, and so to lose the appeal: per Draper, C. J., re Wilson and the Quarter Sessions of Huron, 23 U. C. R., 301, and this principle has been followed in numerous cases: see Reid v. McWhinnie, 27 U. C. R., 289; Cornwall v. The Queen, 33 U. C. R., 106; Gemmill v. Garland, 12 O. R., 142; Northcote v. Brunker, 14 App. R., 378.

A recognizance conditioned to appeal to the "General Quarter Sessions or General Sessions" when it should have been to the "Court of General Sessions of the Peace," was held a sufficient compliance with the Statute: R. v. Essery, R. & J. Dig., 3485.

(4) Upon such recognizance being given or deposit made, the said Justices or Police Magistrate shall liberate such person, if in custody, and shall forthwith deliver or transmit by registered letter post-paid, the depositions and papers in the case, with the recognizance or deposit, as the case may be, to the clerk of the County Court of the county wherein such conviction was had. (*h*) Justices to transmit depositions to Clerk of County Court.

(5) The appellant shall pay to the clerk of the County Court, for his attendance and services in connection with such appeal, the sum of $1, and the same may be taxed as costs in the cause. (*i*) Clerk's fees.

(6) The practice and procedure upon such appeal, and all the proceedings thereon, shall thenceforth (*j*) be gov- Rev. Stat. c. 75, to apply.

A recognizance which omitted the words "to owe" was held invalid, and that an action would not lie upon it as a recognizance: R. *v.* Hoodless, 45 U. C. R., 556.

A recognizance is not necessary on the removal by *certiorari* of a conviction: R. *v.* Nunn, 10 P. R., 395; R. *v.* Swalwell, 12 O. R., 391.

(*h*) The Justices or Police Magistrate must comply with the requirements of this sub-section, and such compliance may be enforced by the Courts. It is the duty of Justices to carry out the provisions of the Act, and they cannot properly refuse to do so. Upon such refusal the High Court would probably issue a *mandamus* or grant a rule to compel them to comply: see Paley on Con., tit. *mandamus*.

"Forthwith," where the act to be done is judicial, it is synonymous with "immediately." The words "forthwith" and "immediately" have the same meaning. They are stronger than the expression "within a reasonable time," and imply prompt, vigorous action without any delay, and whether there has been such action is a question of fact, having regard to the circumstances of the particular case:" Cockburn, C. J., in R. *v.* Justices of Berkshire, 4 Q. B. D., 469, at p. 471; and "where an act is required to be done 'forthwith' can be done without delay, it ought to be so done:" Jessel, M. R., *Ex parte* Lamb, *in re* Southam, 19 Ch. D. 169, at p. 173.

But in earlier cases it has been held that the words "forthwith" and "immediately" mean within a reasonable time: R. *v.* Justices of Worcester, 7 Dowl., 789; Toms *v.* Wilson, 4 B. & S., 455; Costar *v.* Hetherington, 1 E. & E., 802; R. *v.* Price, 8 Moore P. C., 203; Roberts *v.* Brett, 6 C. B. N. S., p. 631; *in re* Lake and the Cor. of Prince Edward, 26 C. P., 173; Thomas *v.* Nokes, L. R. 7 Eq., 521.

The words "forthwith" and "immediate" occurring in a Statute are not construed in their strictest sense, "on the instant," but mean with a reasonable promptness, having regard to all the circumstances of the particular case: Paley on Con., 4th Ed., 45; Massey *v.* Sladen, L. R. 4 Ex., 13.

(*i*) The sum to be paid is a disbursement in the cause, and may be taxed as such against the respondent if the appellant succeeds in the appeal.

(*j*) "Shall from thenceforth" refers to the delivery or transmission of the papers to the Clerk of the County Court. After that the practice and procedure will be governed by the Act mentioned, which is to be found at page 802 of the R. S. O., 1887.

erned by *The Act respecting the Procedure on Appeals to the Judge of a County Court from Summary Convictions*, so far as the same is not inconsistent with this Act. (*k*) 47 V., c. 34, s. 18.

Appeal to Court of Appeal.

119. An appeal by the inspector, or other prosecutor, shall lie to the Court of Appeal from the decision, judgment, or order of any Judge of a County Court upon an appeal from any conviction or order made in a case arising out of or under this Act in which a conviction or order has been quashed, or set aside, upon the ground, directly or indirectly, of the invalidity of any Act or Acts of the Legislature of this Province, or of any part thereof, or from the decision, judgment or order of the Judge of a County Court in any other case arising out of or under this Act in which the Attorney-General of the Province shall certify that he is of opinion that the matters in dispute are of sufficient importance to justify an appeal; such appeal shall be had upon notice thereof to be given to the opposite party of the intention to appeal within eight days, or where the certificate of the Attorney-General is necessary and is obtained, within fifteen days after such judgment, decision or order shall have been made, and, in the case of such appeal, the clerk of the County Court shall certify the judgment, conviction, orders and all other proceedings, to the registrar of the Court of Appeal, Toronto, for use upon the appeal. The said Court shall thereupon hear and determine the said appeal, and shall make such order for carrying into effect the judgment of the Court as the Court shall think fit (*l*). 47 V. c. 34, s. 19.

(*k*) On an appeal no effect will be given to an objection to the evidence which was not taken on the hearing before the convicting Justices. Where appellant was convicted of knowingly permitting persons of bad character to assemble in his public house, and the only objection taken at the hearing was that such persons assembled only for the purposes of refreshment, and the Justices being of the opinion that there was no evidence to that effect, convicted him. On appeal it was contended that there was no evidence on the facts stated, that appellant "*knowingly*" permitted the said persons to assemble: Held, that this objection not having been raised before the Justices, could not be raised on appeal: Purkis *v.* Huxtable, 1 E. & E., 780.

As to appeals from Summary Convictions see R. S. O., c. 75; R. S. C., c. 178, s. 76, amended by 51 Vic., c. 45, secs. 7, 8, 9 (D.), which has been further amended by 53 Vic., c. 37, secs. 24-28 (D.).

(*l*) An appeal to the Court of Appeal from the County Court Judge's decision

120. On an appeal (*m*) to the County Judge or General Sessions from a conviction or order under this Act or under *The Temperance Act of 1864*, or *The Canada Temperance Act*, when costs are directed to be paid by either party, no greater costs shall be taxable by or against either party as between party and party than the sum of $10, and the actual and necessary disbursements in procuring the attendance of witnesses and the fees to which the clerk of the peace shall be lawfully entitled; the fees chargeable by the clerk of the peace upon any appeal under this Act, shall not exceed the sum of $2 (*n*). 41 V. c. 14, s. 8; 44 V. c. 27, s. 12; 50 V. c. 33, s. 6.

Costs on appeal from conviction. 27-28 V. c. 18; R.S.C. c. 106.

---

lies: (1) In cases in which a conviction or order has been quashed or set aside on the ground of the invalidity of any Act or Acts of the Legislature of Ontario, or any part thereof; (2) in all cases in which the Attorney-General of the Province shall certify that he is of the opinion that the matters in dispute are of sufficient importance to justify an appeal.

The appeal lies only at the instance of the Inspector or prosecutor. No provision is made for an appeal in any case by the defendant.

See R. *v.* Hodge, 7 App. R., 246; R. *v.* Sloan, 27th May, 1891, (not reported) cited in notes to sec. 130.

See sec. 121 as to appeal from the High Court. See also 53 Vic., c. 13, in which provision is made for the reference, by the Lieutenant-Governor-in Council, to the High Court or a Divisional Court, or to the Court of Appeal, for hearing or consideration of any matter which he thinks fit to refer; and also the Act of 54 Vic., given in notes to sec. 42*a*, p. 94.

(*m*) "On an appeal," means after the appeal—contemporaneous with or immediatey after. See Stroud's Dict., 529; Anderson's Dict., 733. The whole clause may be read as: when in the case of any appeal to the Judge, &c., costs are directed to be paid by either party, no greater sum than $10 in addition to the actual and necessary disbursements to witnesses and the fees of the Clerk of the Peace, shall be taxed in favor of or against either party, and the fees of the Clerk of the Peace in any such case shall not exceed $2.

(*n*) This section applies to appeals under this Act, The Temperance Act, 1864, and The Canada Temperance Act, 1868.

Where an excise officer appealed on behalf of Her Majesty to the Quarter Sessions, and the Sessions dismissed his appeal with costs, the Court quashed the order of the Sessions on the ground that the officer represented the Sovereign and that there was no jurisdiction to award costs against the Crown: R. *v.* Beadle, 7 E. & B., 492.

On an appeal against a conviction under the Alehouse Licensing Act, 9 Geo. 4, c. 61, the Sessions affirmed the conviction and ordered that the appellant should *forthwith* pay to the *respondent* Justices their costs, and in default should be imprisoned until *such sum should be paid:* Held, that the order was bad since the Statute enacted that if an appeal against "such conviction or order" as is there mentioned, the Sessions shall award costs, their order shall direct the costs to be paid "*to the Clerk of the Peace*," to be by him paid over to the party entitled, and shall state *within what time* payment shall be made, and that on non-payment within that time and in *default of distress* the party may be committed for any time *not exceeding three months, unless the costs, etc., be sooner paid:* R. *v.* Hellier, 17 Q. B., 229.

Appeal allowed in certain cases.

121. An appeal to the Court of Appeal shall lie from any judgment or decision of the High Court or a Judge thereof, upon any application to quash a conviction made under this Act, or to discharge a prisoner who is held in custody under any such conviction, whether such conviction is quashed or the prisoner discharged, or the application is refused; but no such appeal shall lie from the judgment of a single Judge, or from the judgment of the Court, if the Court is unanimous, unless in either case the Attorney-General for Ontario shall certify that he is of opinion that the point in dispute is of sufficient importance to justify the case being appealed; upon such certificate being produced to the clerk of the Court in which the judgment or decision proposed to be appealed from has been given, the said clerk shall certify, under the seal of the Court the proceedings returned to or had before or in the said Court, unto the Court of Appeal, and the said Court shall thereupon hear and determine the said appeal, without any formal pleadings, and shall give such order for carrying into effect the judgment of the said Court as the circumstances of the case may require (*o*). 44 V. c. 27, s. 17.

CIVIL REMEDIES AGAINST TAVERN KEEPERS, ETC.

Liability of inn-keepers

122. Where in any inn, tavern, or other house or place of public entertainment (*p*) wherein refreshments are

---

Under this Act the costs of appeal are provided for in sec. 118, so that no order for the defendant's imprisonment for default in payment of such costs can be made. The maximum costs allowable in any case is $10 in addition to witness fees and the fees of the Clerk of the Peace, and by sec. 118 the defendant is required either to give security or to deposit $25 with the Magistrate to answer the respondent's costs of appeal.

(*o*) Provision is made here for an appeal from the High Court or a Judge thereof, upon applications to quash a conviction, or to discharge a prisoner held in custody under any such conviction. Such appeal lies at the instance of either prosecutor or defendant. But if the judgment or decision is that of a single Judge, or if the Court is unanimous, the certificate of the Attorney-General, that he is of the opinion that the point in dispute is of sufficient importance to justify such appeal, must be obtained and be produced and filed as required by this section. See notes to sec. 119.

No formal pleadings are necessary, the proceedings in the Court below being certified to the Court of Appeal in the manner provided.

Applications to quash convictions, or for the discharge of a prisoner are made upon *habeas corpus* or by way of *certiorari*. See sec. 105 and notes thereto.

(*p*) "Where in any inn," etc. See sec. 2, note (*g*).

sold, or in any place wherein intoxicating liquor of any kind is sold, whether legally or illegally, any person has drunk to excess (*q*) of intoxicating liquor of any kind, (*r*) therein furnished to him, (*s*) and while in a state of intoxication from such drinking has come to his death by suicide, (*t*) or

or persons in their employ, etc., who give liquor to persons who

This section applies not only to licensed places, but to places where refreshments are sold, and where intoxicating liquor of any kind is sold legally or illegally.

(*q*) "Drunk to excess." A person has been said to be drunk when he is "so far under the influence of intoxicating liquor of any kind that the passions are visibly affected or the judgment impaired:" State *v.* Pierce, 65 Iowa, 85 (1886). A person may therefore be said to have drunk to excess if he be in the condition here described.

The offence of selling intoxicants to a "drunken person" is committed by a sale to a person who is drunk, although he show no indication of insobriety, and neither the license holder nor his servant notice that he is drunk: Cundy *v.* Le Cocq, 13 Q. B. D., 207, cited note (*q*) sec. 73, p. 175.

(*r*) "Intoxicating liquors of any kind" are defined as "liquors which will intoxicate and which are commonly used as beverages for such purpose; also any mixture of such liquors, as retaining their intoxicating qualities, it may fairly be presumed may be used as a beverage and become a substitute for the ordinary intoxicating drinks: Anderson's Dict., 565, citing intoxicating liquor cases, 25 Kan., 767; State *v.* McGinnis, 30 Minn., 52; see also note (*b*), sec. 2.

(*s*) "Therein furnished to him." The Statute says, where, *in* any inn, etc. Therefore, the liquor must, 1st, be drunk *in* the inn; 2nd, it must be drunk to *excess*; 3rd, it must be furnished to him *therein*, and 4th, that while in a state of such intoxication from such drinking has come to his death, etc. The furnishing and giving to a person in the inn is not the same as the person having *drunk in the inn to excess of intoxicating liquor.*

"It is quite plain that the Act requires not only that the liquor shall be *furnished* in the inn, but that it shall be *drunk* in the inn, and drunk there to *excess*, to constitute responsibility in the inn-keeper. It is the drinking to *excess in the inn* that is the culpable act of the inn-keeper; an act which, it is presumed, he sees and knows of, and against which he may and ought to guard, while he cannot prevent the excessive drinking beyond his own precincts." Therefore, a declaration "that the defendant by his servant *wrongfully and in violation of the Temperance Act of 1864, in the Township of A., then and there being fully in force,* furnished and gave one W., while in the defendant's inn, intoxicating liquors whereby he became and was intoxicated, and while so intoxicated did," etc., was held to be defective in not showing that W. *drank to excess in the inn;* as, "for anything that appears, W. may have been furnished in the inn with the liquor on one day, and have drank it to excess 50 miles off on another day," or, "for anything to the contrary, the defendant may have sold to W. five gallons of liquor at one time, who may have taken it wholly away to his own house, and have there become intoxicated, for which the defendant would not be answerable under the Statute:" per Wilson, J., McCurdy *v.* Swift, 17 C. P., 127-135.

(*t*) "Suicide" does not necessarily involve the idea of *felonious* self-destruction. To "commit suicide" is for a person voluntarily to do an act (or, as it is submitted, refrain from taking bodily sustenance), for the purpose of destroying his own life, being conscious of that probable consequence, and having, at the time, sufficient mind to will the destruction of life: Clift *v.* Schwabe, 3 C. B., 437. In that case the meaning of the word is elaborately discussed, and its history is very learnedly treated by Pollock, C. B., who, however, was in the

become intoxicated.

drowning, (*u*) or perishing from cold or other accident caused by such intoxication, (*v*) the keeper of such inn,

---

minority of the Ex. Cham. in upholding the direction of Creswell, J., at the trial that "suicide" meant the voluntary self-destruction of a man who at the time was "able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent." The opposite view, and the one which received the sanction of a majority of the Court is thus expressed by Patteson, J.: "Now the words themselves are large enough to embrace all self-destruction as well as self-murder; not, indeed as was admitted in Borrodaile *v.* Hunter (5 M. & G., 639), to embrace cases of mere accident or of insanity extending to unconsciousness of the act done, or of its physical consequences; because such cases, although comprehended in the very words themselves, cannot be considered to have been in contemplation of the contracting parties, but clearly embracing an act of self destruction committed by a person who was aware of the probable consequence of the act and intended that consequence to follow:" Stroud's Dict., 775. In American cases it has also been held that "suicide" does not necessarily imply criminal self-murder, and a condition in an insurance policy providing for forfeiture in case of suicide will not be construed to apply to an act of self-destruction not involving evil will. Death by one's own hand in the case of a person *non compos* is the result of disease. To provide for death by disease is the very object of life insurance: Hancock Mut. Life Ins. Co. *v.* Moore, 34 Mich., 45 (1876). Death by accident or mistake, as from drinking a mixture not known to be poison, is, literally, self-killing, but not suicide; nor is death caused by an insane person. Death which is the result of insanity is death by disease: Eastabrook *v.* Union Mut. Life Ins. Co., 54 Me., 227, reference being made particularly to the English case of Clift *v.* Schwabe, *supra*. See also Bigelow *v.* Berkshire Life Ins. Co., 93 U. S., 286; Connecticut Mut. Life Ins. Co. *v.* Groom, 86 Pa., 97 (1878) cases; Manhattan Life Ins. Co. *v.* Broughton, 109 U. S., 121, 127, 182 (1883) cases; Accident Ins. Co. *v.* Crandel, 120 U. S., 530 (1887) cases; Travellers' Ins. Co. *v.* McConkey, 127 U. S., 661 (1888).

(*u*) "Drowning." In a case in which it was shewn that deceased, who was in bad health, was last seen going towards the shore at Brighton, saying he was going to bathe, and his clothes were found by the beach but he was not seen by any one alive again. A naked body washed ashore some weeks after was partly identified as his. The Court held that the evidence was that he had died whilst bathing. But this decision was reversed in error, and the Court held, that there was evidence to go to the jury that he came to his death by drowning. Cockburn, C. J., said: "If they found that he died in the water, they might reasonably presume that he died from drowning. It is true that death occurs in the water in some instances from natural causes, as apoplexy or cramp in the heart, but such cases are rare and bear a small proportion to the number of deaths which take place from the action of the water: Trew *v.* The Ry. Passengers' Ass. Co., 5 H. & N., 211; S. C. 6 H. & N., 839.

(*v*) "Or other accident caused by such intoxication." Where the deceased, being intoxicated, fell off a bench in the bar-room and was placed upon the floor in a small room adjoining with nothing under his head, and while there died from apoplexy or congestion of the brain, brought on, as the plaintiff alleged, by placing him in an improper position while intoxicated, it was held not a case of death by "accident" within the Statute, but of death from natural causes induced by intoxication. The Honorable Mr. Justice Hagarty, in delivering the judgment of the Court said: "The death in this case did not result from suicide, drowning, or perishing from cold. We have, therefore, to enquire whether it was from any "*other accident caused by intoxication.*" "The doubt at once suggested whether it was in any sense an accident, or an accidental

tavern, or other house or place of public entertainment, or wherein refreshments are sold, or of such place wherein intoxicating liquor is sold, and also any other person or persons who for him or in his employ delivered to such person the liquor whereby such intoxication was caused, shall be jointly and severally liable to an action as for personal wrong, (if brought within three months thereafter, but not otherwise,) by the legal representatives of the deceased person, (*w*) and such legal representatives may bring either

---

death, and not merely a death from natural causes induced by constant and excessive drinking. The action is not given in a case of death arising from the want of judicious or skilful treatment, or for not attending to a person in a state in which attention may be requisite; it is only for an accident caused by intoxication." "Had our Statute declared that if the person shall die from excessive drinking, the person furnishing the liquor so drank shall be responsible, in this action the case would be wholly different. We must be careful not to extend the words used, creating as they do certain new liabilities, beyond their natural sense. If the deceased, having previously been drinking to excess, took in his tavern a tumbler of brandy and drank it off at a draught, and thereby produced an immediate apoplectic seizure or asphyxia, and fell back insensible and died at once or in a few hours, could we hold that to be death from accident caused by intoxication? We think not—that it would be death from natural causes produced by the intoxicating liquor, just as sun-stroke might strike him down, as in the case cited:" Bobier *v.* Clay, 27 U. C. R., 438-443.

One definition of "death by accident," is: "Death from any unexpected event which happens as by chance, or which does not take place according to the usual course of things:" North Am. Life Ins. Co. *v.* Burroughs, 68 Pa., 51; approved, Bacon *v.* Accident Association, 44 Hun., 607. And it has been held that "within the rules of a beneficial society an 'accident' has its usual signification of an event that takes place without one's foresight or expectation:" Supreme Council of Chosen Friends *v.* Garrigus, 104 Ind., 140.

"An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it:" Stephen's Crim., 143, cited Stroud's Dict., 6.

Death by drowning, even if the deceased were drowned in shallow water whilst in a state of insensibility, is an accident within a policy against accidents: Trew *v.* Royal Ins. Co., 6 H. & N., 839; Reynolds *v.* Accidental Ins. Co., 22 L. T., 820. But sun-stroke is not: Sinclair *v*, Maritime Ins. Co., 3 E. & E. 478.

(*w*) The legal representative is expressly authorized to sue, and may bring either a joint and several action against the keeper of such inn, etc., and also any other person or persons who for him or in his employ delivered the liquor whereby such intoxication was caused, or a separate action against either or any of them.

This section gives the representative the right of action when death has been caused by suicide, etc., the 123rd sec. when life has been taken by another. See notes to that section. As to meaning of "keeper of such inn," see note (*d*) to sec. 55.

The action must be brought within three months (see notes on pages 14, 20,

a joint and several action against them or a separate action against either or any of them, and by such action or actions, may recover such sum not less than $100 nor more than $1,000, in the aggregate, of any such actions, as may therein be assessed by the Court or jury as damages. (x) R. S. O. 1877, c. 181, s. 88.

RESTRICTION ON SALE TO INEBRIATES.

Persons who furnish the

123. If a person in a state of intoxication (y) assaults (z) any person, or injures any property (a), the person who

24, 28, 35, as to computation of time) after the happening of the event, and no further time will be allowed. If the right of action is given by the Statute, then the remedy can only be obtained by complying with its provisions: Turner *v.* Corporation of Brantford, 13 C. P., 109.

Where by the Municipal Act it was provided that an action must be brought "within three months after the damages have been sustained," it was held that the Statute began to run from the occurrence of the accident, not from the death: Miller *v.* Corporation of Fredericksburgh, 25 U. C. R., 31.

(x) The amount of damages which may be recovered is limited by the Statute, the maximum being $1000 and the minimum $100. It was held that under the Statute no proof of actual damage is necessary to the maintenance of the action: Gleason *v.* Williams, 27 C. P., 93. See also Bobier *v.* Clay, 27 U. C. R., 438.

(y) "In a state of intoxication." A person "intoxicated" is drunk from the use of spirituous liquor; whenever any other idea is intended, other words are used, as in saying that a person is intoxicated or drunk with opium, ether, etc.: State *v.* Kelly, 47 Vt., 296 (1875), cited Anderson's Dict., 565. See also note (q), sec. 122.

See Cundy *v.* Le Cocq, 13 Q. B. D., 207, cited note (q) to sec. 122, and note (q), sec. 73.

"An assault is described in Termes de la Ley, 56, to be a violent kind of injury offered to a man's person of a more large extent than battery, for it may be committed by offering a blow."

In *re* Thompson, 6 H. & N., 198, Pollock, C. B., said: "An assault may be accompanied by violence from which death ensues, and then the offence would be either murder or manslaughter; or the assault may be accompanied with the violation of the person of a woman against her will, in which case it would be rape; or though the purpose was not effected, the circumstances might be such as to leave no doubt of an assault, with intent to commit rape. Therefore an assault may amount to a capital felony, or a felony, or a misdemeanor, according to the circumstances with which it is accompanied:" quoted by Wilson, J., McCurdy *v.* Swift, 17 C. P., 126, at p. 139.

(z) "An assault is, (a) an attempt unlawfully to apply any the least actual force to the person of another, directly or indirectly; (b) the act of using a gesture towards another, giving him reasonable grounds to believe that the person using that gesture meant to apply such actual force to his person as aforesaid; (c) the act of depriving another of his liberty; in either case without the consent of the person assaulted, or with such consent if it is obtained by fraud:" Stephen's Crim., 177; Stroud's Dict., 54.

(a) "Injury to property," means "a substantial physical injury to property:" per Fry, J., Goodhand *v.* Ayscough, 10 Q. B. D., 71.

furnished him with the liquor which occasioned his intoxication (*b*)—if such furnishing was in violation of this Act, or otherwise in violation of law (*c*)—shall be jointly and severally liable (*d*) to the same action (*e*) by the party injured

liquor liable for assault committed by a person thereby

"An 'injury' is the wrongful act or tort which causes harm or injury to another." Damages are allowed as an indemnity to the person who suffers loss or harm from injury. 'Injury' denotes the illegal act, 'damages' the sum recoverable for the wrong:" per Elliott, *J.*, North Vernon *v.* Voegler, 103 Ind., 319 (1885); 25 Am. Law Reg., 101, 112-115 (1886).

There are two classes of wrongs for which a remedy is provided by this section. 1st. Personal wrongs which are, generally speaking, of a wilful and wanton character; and 2nd, wrongs to property which may be done wilfully or may be the result of accident or negligence: see Pollock on Con., 7, 9, 12, 15.

(*b*) "The person who furnished him with the liquor which occasioned his intoxication" is equally liable with the person who actually commits the wrong. "The Legislature must have considered, as many persons do, that the person who intoxicates, or suffers or encourages another to become intoxicated when it is the interest of such person to make as large a sale of liquor as the other will or can be made to buy, is far more to blame than the unfortunate inebriate, and should therefore be answerable for the acts and conduct of the person who has been deprived of his senses and rendered really a dangerous being." A person who makes and turns out a drunken man may be thought to be quite as bad as the person who lets loose a dangerous animal or exposes a dangerous substance or machine: per Wilson, J., McCurdy *v.* Swift, 17 C. P., 138. It was held in that case that the section gives the civil remedy, at any rate against the inn-keeper, notwithstanding a felony may have been committed which has not been prosecuted for, although it does not, like the Imperial Act, contain any express provision to that effect.

(*c*) "If such furnishing was in violation of this Act, or otherwise in violation of law." The facts must be shewn from which it could be ascertained that the furnishing of liquor was in violation of the Act or in violation of law, and where the plaintiff did not shew a state of intoxication brought about by a violation of the Act, it was held that his declaration was defective, "The words that the defendant did what it is said he did wrongfully and in *violation* of the Temperance Act mean nothing without shewing how and in what manner it was wrongful and in violation of the Act to do so:" McCurdy *v.* Swift, *supra*. The violation of sec. 40 of the Temperance Act, 1864, was intended to be charged in that case, and the action was brought under sec. 41 of that Act. These sections are the same as secs. 122 and 123 of this Act. See notes to sec. 122.

(*d*) "Shall be jointly and severally liable," means that the person who actually commits the wrong, and he who furnishes the liquor shall be held liable, either collectively or as individuals. It is expressly provided by this section that either a joint and several action against both, or a separate action against either of them may be brought.

(*e*) "To the same action," means the same *kind* of action. It was objected that only such an action as the person injured could have brought against the person intoxicated, the legal representative might also bring against the inn-keeper, and although the legal representatives may sue, yet, they must bring one of the same kind of actions the deceased could have brought if he had been living; and that they could not sue for damages for the death of the deceased, because this is not the kind of action the deceased manifestly enough could have brought. But it was held that "as the legal representative is expressly authorized to sue for an assault committed upon the deceased, he or she may

Intoxicated. as the person intoxicated may be liable to; and such party injured, or his legal representatives, may bring either a joint and several action against the person intoxicated and the person or persons who furnished such liquor, or a separate action against either or any of them (*f*) R. S. O. 1877, c. 181, s. 89.

Power of Justices to forbid **124.** (1) When it shall be made to appear (*g*) in open Court (*h*) sitting in the county in which he resides, (*i*) that

---

do so under the construction of this Statute, although that assault has resulted in death:" McCurdy *v.* Swift, *supra*.

(*f*) There is no limitation to the amount of damages under this section. Damages must result from the wrongful act complained of, otherwise no action will lie. "It is the act or omission of the party that is wrongful, and is always so described without regard to the result or consequences which flow or may flow from it. These results or consequences may or may not result in a liability to suit; that depends whether damage or injury has ensued; but although there can be no recovery and there is no damage in fact, there may nevertheless be the wrongful act; for instance, in Wylie *v.* Birch, 4 Q. B., 566, the plaintiff was held not to be entitled to recover for a false return to a *fi. fa.*, it was shewn that he had sustained no damage by it: Williams *v.* Mastyn, 4 M. & W., 145; And in Godefroy *v.* Jay, 9 Bing., 403, it is laid down that an attorney would not be liable for allowing a judgment to go by default against his client if he could shew the client had sustained no damage by it; and in Boulton *v.* Webster, 11 L. T. N. S., 598, where it was held that in a suit under Lord Campbell's Act no action lies if the damages be only nominal:" per Wilson, J., McCurdy *v.* Swift, 17 C. P., 126 at p. 133.

It was held that although voluntary drunkenness cannot excuse crime, yet where as upon a charge of murder, the question is whether an act is premeditated or not, or done only from sudden heat or impulse, the fact of the party being intoxicated was a circumstance proper to be taken into consideration: per Holroyd, J., R. *v.* Grindley, 1 Russ. Cri., 5th ed., 114. But this is not law: per Park and Littledale, J. J., R. *v.* Carroll, 7 C. & P., 145.

It would seem that where the very essence of the crime is the intention with which the act is done, it may be left to the jury to say whether the prisoner was so drunk as not to be capable of forming any intention whatever, and if so they may acquit him of the intent: R. *v.* Cruse, 8 C. & P., 541; R. *v.* Monkhouse, 4 Cox, C. C. 55, and other cases cited in Roscoe's Crim. Evi., 735.

A contract made by a man too drunk to know what he is about is not void, but voidable only and may be ratified when he becomes sober: Matthews *v.* Baxter, L. R. 8 Ex., 132.

See also cases cited in notes to secs. 122, 124 and 125.

(*g*) "When it shall be made to appear." "When," like "if," is ordinarily a word of condition, or of conditional limitation: Anderson's Dict., 1113. See also note (*s*), sec. 38. "When," standing unqualified, is equivalent to "if": *Ib.*

The manner in which the necessary facts are to be "made to appear" is not disclosed in this section, but there should be evidence to satisfy the Police Magistrate or Justices.

(*h*) "In open Court." See note (*q*), p. 37.

(*i*) "In the County in which he resides," refers to the person against whom the charge is made. As to "residence" see note (*k*), pp. 28, 29.

any person, summoned before such Court, (*j*) by excessive drinking of liquor, (*k*) mis-spends, wastes or lessens, (*l*) his estate, or greatly injures his health, or endangers or interrupts the peace and happiness of his family, the Police Magistrate or Justices holding such Court, shall, by writing under the hand of such Police Magistrate, or under the hands of two of such Justices, forbid any licensed person to sell to him any liquor for the space of one year, and such Police Magistrate, Justices, or any other two Justices, of the county in which the said person resides, may, at the same or any other time, (*m*) in like manner, forbid the sell- sale of liquor to habitual drunkards.

(*j*) "Summoned before such Court." The proceedings under this section will be commenced by summons in the usual manner.

(*k*) "Excessive drinking," etc., see notes to sec. 125.

(*l*) Misspends, signifies "to spend or dispose of ill; to waste; to squander; to lavish:" Worcester's Dict.

"Wastes" implies any squandering or misapplication of property or funds. It has a very wide meaning and includes any spoliation of houses, lands, or other property. See Anderson's Dict., 1107; Wharton, 769; Stroud's Dict., 872.

"Lessen" means "to diminish, decrease, or abate:" Worcester's Dict.

(*m*) "His estate." The term "estate" has a variety of meanings. It may mean standing, condition, position, rank in life, degree, etc. Wharton's definition is, "The condition and circumstance in which an owner stands with regard to his property," and "it is used in two senses; (1) technically as the quantity of interest in reality owned by a person; and (2) popularly, as the reality itself."

Evidence should be given to shew that the person either (1) wastes, misspends, or lessens his estate; or (2) injures his health; or (3) endangers or interrupts the peace and happiness of his family.

"The Police Magistrate or Justices." See notes to secs. 96, 97. Jurisdiction is given to one Police Magistrate or two Justices of the Peace.

If such Magistrate or Justices are satisfied that the person summoned is one who comes within the terms of the section, he or they *shall* forbid any licensed person to sell him any liquor for the space of one year.

The expression "by writing under the hands," etc., denotes that the instrument or document conveying such prohibition must be in writing and be signed by the Magistrate or Justice. As to "writing," see note (*a*), sec. 12, p. 40, and note (*d*), p. 13.

The Magistrate or Justices are given jurisdiction in this particular case outside of the usual scope of their commissions, and may extend their prohibition to any other city, town or district to which the person to whom the prohibition refers resorts, or may be likely to resort, for the purpose of drinking to excess.

"At the same or any other time." The inhibition to other places need not be given at the same time as that to the holders of licenses in the county in which the person lives. If it is found that he resorts to other places steps may be taken at any time to prevent the sale of liquor to him at such places. But the whole period of prohibition is limited to, and cannot extend beyond, one year from the date of the original finding of the Magistrate or Justices. As the

ing of any such liquor to the said person by any licensed person of any other city, town or district, to which he resorts or may be likely to resort for the same.

Effect of such prohibition.

(2) Whenever the sale of liquor to any such drunkard shall have been so prohibited, if any other person, with a knowledge of such prohibition, gives, sells, purchases or procures for or on behalf of such prohibited person, or for his or her use, any liquor, such other person shall, upon conviction, incur for every such offence, a penalty of not less than $10 and not exceeding $20. (*n*)

Penalty for violation of this section.

(3) Any person so prohibited or notified, his servants or agents, who shall violate this section, shall for a first offence be liable to a penalty not exceeding $20, and for a second, and any subsequent offence, shall be liable to a penalty of not less than $20 and not exceeding $50. (*o*)

Application to set aside prohibition or notice.

(4) The person in respect of whom any such notice shall be given, may, at any time while the same is in force, apply to the Judge of the County Court, of the county in which he resides, after having given seven days' notice of his intention so to do to the Police Magistrate or Justices who signed the said prohibition, or notice, and the County Crown Attorney for the county in which such person resides, to set aside such prohibition or notice. The Judge may, upon hearing the said party and any witnesses, either *viva voce* or upon affidavit, set aside the said prohibition or notice, or dismiss the said application, as in his discretion may seem best: Provided, nevertheless, that before any such prohibition or notice shall be set aside by the Judge, it shall be made to appear that the wife or husband (if married and residing with such wife or husband), as the

Judge may set aside prohibition or notice, or dismiss application.

---

powers conferred are of an extraordinary character, care should be taken not to exceed the jurisdiction given.

(*n*) This section makes it an offence for any other person to supply the person prohibited with liquor, but knowledge of the prohibition is a condition precedent to the offence and must be proved. See note (*t*), sec. 102, p. 231. The conviction must shew, (1) the prohibition; (2) knowledge of such prohibition; (3) the gift, sale, purchase or procuring of liquor for or on behalf of such person prohibited, etc. Each of these latter are separate offences.

(*o*) This clause applies to the person prohibited from obtaining liquor, as well as to the persons prohibited from selling it to him.

case may be, of the person applying, has knowledge of such application and consents thereto. (*p*) 47 V., c. 34, s. 21.

Husband, wife, etc., may notify sellers of liquor not to furnish

125. The husband, wife, parent, child of twenty-one years or upwards, brother, sister, master, guardian or employer, of any person who has the habit of drinking intoxicating liquor to excess (*q*)—or the parent, brother or sister,

---

(*p*) This sub-section confers power upon the County Judge to remove the prohibition with the consent of the wife or husband of the person to whom it applies, if such person be married and living with such wife or husband.

(*q*) A "husband" is a man *legally* bound in wedlock to a wife: see Wharton, 355, Stroud's Dict., 362; Anderson's Dict., 517. And a "wife" is one who is legally bound in wedlock to a "husband."

The "parent" is the lawful father or mother of another person. It signifies the relation existing between father or mother and offspring.

"Child" is generally used to designate a person of tender years; a young person or youth. When it is used to denote a son or daughter, it means a legitimate descendant in the first degree. "The word 'child,' in an Act of Parliament always applies exclusively to a legitimate child:" per Pollock, C. B., Dickinson *v.* North Eastern Ry. Co., 33 L. J. Ex., 91, cited Stroud's Dict., 125. See also R. *v.* Maude, 2 Dowl. N. S., 58; R. *v.* Hodnett, 1 T. R., 96; Northwick *v.* St. Pancras, 22 Q. B. D., 164. And "brother" and "sister" means the legitimate children of a common parent.

A "master" "is a person authorized to control another or others in some relation:" Anderson's Dict., 644.

"Master and servant," the relation whereby a person calls in the assistance of others, where his own skill and labor are not sufficient to carry out his own business or purpose: Wharton, 463. There are several descriptions of servants, as, menials or domestics, apprentices, laborers, stewards, factors, bailiffs, &c. See Smith on Master and Servant, Blackstone Ed., 1886, p. 1.

The master is liable for refusal by servant to receive a guest: see R. *v.* Ivens, 7 C. & P., 213; Fell *v.* Knight, 8 M. & W., 269. See also notes on pages 76, 143, 159.

A "Guardian" is the temporary parent of an infant under 21 years of age and unmarried. In England there are six kinds of "guardians": (1) *testamentary*—appointed by will; (2) *maternal*—the mother who on the death of the father becomes guardian; (3) *customary*—this guardianship is entirely local, and depends altogether upon the law of the particular place where it exists. It is found in copyhold manors, ancient corporations, and gavelkind lands; (4) *ad litem*—appointed by the Court for the purpose of protecting an infant's interests in any proceedings instituted to which the infant is a party; (5) *by the appointment of Chancery*—appointed by the Court to protect the interest of an infant ward where there is no guardian already; (6) *guardian in tort or by intrusion* (*tutor alienus*)—an indirect guardianship, arising from a person intruding into an infant's property; if he receive the profits belonging to the infant he must account for them, being regarded as the infant's trustee: Wharton, 335.

Generally, a "guardian" is one that legally has the care and management of the person or estate, or both, during minority of a child whose father has died: Bass *v.* Cook, 4 Port., Ala., 392. See Anderson's Dict., 498.

"Employer" is not a term restricted to any particular employment or service. It applies to one who "engages or uses another as an agent or substitute in transacting business or the performance of some service, it may be

skilled labor or the service of the scientist or professional man as well as servile or unskilled manual labor:" Gurney *v.* Atlantic, etc., Ry. Co., 58 N. Y., 371 (1874); Krauser *v.* Ruckel, 17 Hun., 465 (1879), cited Anderson's Dict., 400. A contract "to employ" does not generally mean to find actual employment; it rather means to retain and pay a person, whether employed or not, but if employed, then to be employed only in the work in respect of which the contract is made. Medical advisors may be employed, at a salary, to be ready in case of illness; members of theatrical establishments in case their labors should be needed; household servants in performance of their duty when their masters wish; in these and other cases the requirement of actual service is distinct from the employment by the party employing:" per Parke, B., Elderton *v.* Emmens, 17 L. J. C. P., 309, affirmed, 4 H. L. Cas., 624; see Whittle *v.* Frankland, 2 B. & S., 49; Stroud's Dict., 243.

"The habit of drinking intoxicating liquors to excess." There are serveral phrases in use to convey the same meaning. The terms "habitual drunkard, and person of intemperate habits," are correlative, and the phrase "excessive drinking of liquor," is used to convey a like meaning in the last section. Habit is defined to be "fixed or established custom; ordinary course of conduct:" Webster's Dict. Also, as "customary state of the mind; disposition or manners resulting from the frequent repetition of the same acts; aptitude or facility acquired by doing frequently the same thing; habitual practice; habitude; usage; custom:" Worcester's Dict. The term "habitual drunkard," is defined in the Habitual Drunkard's Act, 1879, 42 and 43 Vic., c. 19, (Imp.,) as a "person, who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor, at times dangerous to himself, or herself, or others, or incapable of managing himself, or herself, or his or her affairs: Wharton, 888. "Drunkenness" is defined as "intoxication with strong liquor; habitual inebriety:" Wharton, 255.

What is meant by "intemperate habits" is discussed in Tatum *v.* State, 63 Ala., 147. The Court said: "It need not be the uniform or unvarying rule, but to be a habit it must be the ordinary course of conduct, the general rule or custom. It may have exceptions. Exceptions do not destroy the rule. But unless, when occasion offers, there is a disposition or probable inclination to drink to excess, intemperate habits cannot be predicated. If sobriety be the rule, and occasional intoxication the exception, then the case is not brought within the Statute. On the other hand, if the rule or habit is to drink to intoxication when occasion offers, and sobriety or abstinence is the exception, then the charge of intemperate habits is established. Now, to make out this charge it is not necessary that this custom shall be an every day rule. There are persons whose custom is to remain sober while at home, and who, when in company, or visiting the town or village, generally drink to excess, although occasionally they abstain and remain sober. In this case drunkenness is the rule or ordinary course of conduct; and to sell or give to such person, knowing him to be such, spirituous, vinous, or malt liquors is a violation of the Statute."

In another case it was held that if there be a "fixed habit of drinking to excess to such a degree as to disqualify a person from attending to business during the principal portion of the time usually devoted to business, it is habitual intemperance:" Wheeler *v.* Wheeler, 53 Iowa, 511; see also Mahone *v.* Mahone, 19 Cal., 527.

The words "sober and temperate" do not imply total abstinence from intoxicating liquors. The moderate use of intoxicating liquors is consistent with sobriety. But if a man use spirituous liquors to such an extent as to produce frequent intoxication, he is not sober and temperate within the meaning of his contract of insurance: Brockaway *v.* Mutual Benefit Life Ins. Co., 9 Fed. Rep., 249.

An occasional excess does not constitute a habit, but if a habit has been

of the husband or wife of such person—or the guardian of any child or children of such person—may give notice in writing, signed by him or her (*r*), or may require the

It to any person addicted to drinking.

formed and is indulged in of becoming intoxicated, whether daily and continuously, or periodically with sober intervals of greater or less length, the person addicted to such habit cannot be said to be of temperate habits. "The habit of using intoxicating liquors to excess is the result of indulging a natural or acquired appetite by continual use until it becomes a customary practice. This habit may manifest itself in practice by daily or periodical intoxication or drunkenness:" Union Mut. Life Ins. Co. *v.* Reif, 36 Ohio, 596.

Those who acquire a constant appetite for the use of intoxicating liquors, and a regular habit of using them, so that the whole system is kept under the immediate influence of alcoholic stimulants, are known as *habitual drunkards*. Another class acquire a constitutionally nervous appetite for alcoholic liquors. "It really amounts to a disease. A case is easily recognized by all who know the person. They may remain sober for a month, three or six months or even a year at a time, and refuse to taste any intoxicating drinks (they must refuse if they would not get drunk) and then go upon what is called a "spree" of great intensity and lasting for a longer or shorter period, usually until prostration and sickness, and often delirium, compel a cessation and terminate the "spree." And there are two varieties of "sprees." The one boisterous and talkative; the other conscious of his disgrace, seeks to hide himself and to conceal his habit and condition: Mutual Benefit Life Ins. Co. *v.* Holterhoff, 2 Cin., 379.

"When we speak of the habits of a person, we refer to his customary conduct, to pursue which he has acquired a tendency from frequent repetitions of the same acts:" Knickerbocker Life Ins. Co. *v.* Foley, U. S. Sup. Ct. Oct., 1881. See also Van Valkenburg *v.* American Popular Life Ins. Co., 70 N. Y., 605; Mowry *v.* Home Life Ins. Co., 9 R. I., 346; Hutton *v.* Waterloo Life Ins. Co., 1 F. & F., 735; Browne on the Judicial Interpretation of Words, etc., 197-203.

A precise definition of the expression "habitual drunkard" applicable to every case cannot well be given, but where a person indulges in the practice of becoming intoxicated whenever the temptation is presented and the opportunity afforded him, it may safely be said that he is an habitual drunkard; Ludwick *v.* Commonwealth, 18 Penn. St., 172; State *v.* Pratt, 34 Vt., 223, and other cases cited 33 Alb. L. J., 346. It is not necessary that he should be constantly under the influence of intoxicating liquor; he may be an habitual drunkard, though there be intervals when he entirely refrains from its use; but before he can be regarded as such, it must appear that he drinks to excess so frequently as to become a fixed practice or habit with him: Walton *v.* Walton, 34 Kan., 195; 34 Alb. L. J., 105.

When a person for a period of two years was frequently and customarily or habitually given to the excessive use of intoxicating drink, and had during that period or more lost the power or the will, by frequent indulgence, to control his appetite for it, then he was guilty of habitual drunkenness: Richards *v.* Richards, 19 Bradw., 465; 35 Alb. L. J., 66.

The words "who has the habit of drinking intoxicating liquors to excess," are the foundation of an action under the provisions of the section, and must be set out in the notice: Austin *v.* Davis, 7 App. R., 478, *infra*. Any notice under this section should give the reason of its existence: Hagarty, C. J. O., Northcote *v.* Brunker, 14 App. R., 364.

(*r*) The notice must be signed by the person giving it. Where there was no evidence to shew that she, in fact, signed the notice, but merely signed a notice a copy of which was served, it was held insufficient and the plaintiff non-suited: Gleason *v.* Williams, 27 C. P., 93.

inspector to give notice (*s*) to any person licensed to sell, or who sells or is reputed to sell, intoxicating liquor of any kind (*t*), not to deliver intoxicating liquor to the person

---

In an action by a married woman against an inn-keeper for having supplied liquor to her husband as follows: "I hereby forbid you, or any one in your house, giving my husband, William Northcote, any liquor of any kind from this day." * * * The jury found that the husband was an habitual drunkard, and that intoxicating liquor had been furnished to him after such notice by the defendant, who knew the husband well, as also the reason for giving the notice, and rendered a verdict in favor of the plaintiff for $20. It was held that the notice was insufficient in omitting to state that the plaintiff's husband was in the habit of drinking to excess: Burton, J. A., and Patterson, J. A., being of opinion that it was sufficient, and Hagarty, C. J. O., and Osler, J. A., that it was insufficient. It was also held that it was not necessary to forbid the supplying of "intoxicating liquor," the words used "liquor of any kind" being sufficient: Northcote *v.* Brunker, 14 App. R., 364; see also Thornley *v.* Reilly, 17 App. R., 204, *infra*.

(*s*) "Or may require the Inspector to give notice." On an appeal by the defendant from the judgment of the County Court of York, reported 26 L. J. N. S., 26, it appeared that the plaintiff, a married woman, brought the action to recover from the defendant, an hotel-keeper, damages because of the sale by him to her husband of intoxicating liquor, after notice not to sell. The notice was signed by the plaintiff and served by her agent. On the trial of the action before the County Judge and a jury, the damages were assessed at $100. The defendant contended that notice signed and served as aforesaid were insufficient, and that notice by the Inspector was necessary. The learned Judge decided against this contention and judgment was entered for the plaintiff.

The Judges of the Court of Appeal were evenly divided in opinion, and the appeal was dismissed with costs, Hagarty, C. J. O., and Burton, J. A., being of opinion that the right of action for damages depends on the notice being given by the person filling the public position of Inspector, though the liability as far as the penalties are concerned will be incurred upon notice being given by a private individual, while Osler and Maclennan, J. J. A., thought the whole scope and effect of the section must be looked at and a liberal construction given to it. The notice must in all cases be signed by the private individual and whether served by the Inspector or not, the private individual gives the notice, so that the words may fairly be construed to mean "a person requiring to give the notice," and there is a right of action, whether the notice is served one way or the other: Thornley *v.* Reilly, 17 App. R., 204. This latter opinion has been followed in another case in which it was held, overruling the opinion of Street, J., at the trial, that the notice given by the wife was sufficient: per Armour, C. J., and Falconbridge, J., Blackburn *v.* Garland, Q. B. Div., 4th Dec., 1890 (not reported).

The Legislature has also given effect to this decision by the introduction of an amendment empowering the person "giving or requiring" the notice to bring the action. 53 Vic. c. 56, s. 15. See note (*d*), *infra*.

(*t*) "To any licensed person to sell," etc. The provisions of this section apply to all persons (1) licensed to sell; (2) who sell; and (3) who are reputed to sell intoxicating liquors.

This, at all events, covers every place in which liquors are sold, whether licensed or not. Sec. 122 is made applicable to all places where liquors are sold, whether legally or illegally. "Clearly the person to be notified is the master or owner of the business, and not the mere clerk or servant employed:" Austin *v.* Davis, 7 App. R., 478, at p. 484.

having such habit (*u*); and if the person so notified, at any time within twelve months after such notice (*v*), either himself, or by his clerk, servant or agent (*w*), otherwise than in terms of a special requisition for medicinal purposes (*x*), signed by a licensed medical practitioner (*y*), delivers (*z*), or in or from any building, booth or place occupied by him (*a*),

---

(*u*) "The person having such habit." Refer particularly to Austin *v.* Davis, 7 App. R., 478; Northcote *v.* Brunker, 14 App. R., 864, cited in notes *supra*.

(*v*) "At any time within twelve months." The cause of action must arise within twelve months from the date of giving the notice.

Where an Act provided that an action should be brought within six weeks after the fact was committed, it was held that in computing the time in which the action must be brought, the day on which the fact was committed must be excluded, so that an action commenced on 5th June for an act committed on 5th Dec. was in time: Hanns *v.* Johnston, 3 O. R., 100.

(*w*) "Either himself, or by his clerk, servant or agent." See notes on pages 76, 143, 159.

The question of whether liquor was sold or not is one for the Judge or Jury to find, and "that finding is conclusive so long as it is not moved against, and the mere fact that the plaintiff moves against the verdict upon other grounds does not authorize the defendant to dispute the correctness of the finding:" per Wilson, C. J., Austin *v.* Davis, 7 App. R., 478 at p. 480.

The sale by the bar-keeper of the defendant, made against the express order of the defendant, is an act for which the defendant is liable: *Ib.* Hugill *v.* Merrifield, 12 C. P., 269, cited *ante*, was overruled in this case.

"The mere forbidding of the clerk, agent or servant, by the master, does not lessen the master's responsibility for the act so long as that subordinate is in the service of the master, and the act is one which is done in the service and for the purposes and benefit of the master:" per Wilson, C. J., *Ib.* at p. 481.

See notes to sec. 112; see also Commonwealth *v.* Briant, Mass. Sup. Jud. Ct., Nov. 27, reported, 23 L. J. N. S., 195; Cundy, *v.* Le Cocq, 13 Q. B. D., 207, cited *ante*.

(*x*) "Special requisition for medicinal purposes," means a requisition for one particular purpose. See Wharton, 691; Stroud's Dict., 751; see also R. *v.* Powell, L. R. 8 Q. B., 403; Rand *v.* Green, 9 C. B. N. S., 470; Smith *v.* Deighton, 8 Moore, P. C., 179.

(*y*) "Signed by a licensed medical examiner." See notes to sec. 54.

The requisition must comply with the requirements of the Statute, and must be signed, &c., by the person giving it.

(*z*) "Delivers." To "deliver," means to give or transfer anything to another person: Anderson's Dict. See also note (*i*), sec. 62.

A law against "selling or delivering intoxicating liquor to a minor" was held not to include a delivery to a minor for his father: State *v.* McMahon, 53 Conn., 415 (1885); Commonwealth *v.* Latinville, 120 Mass. 386 (1876).

(*a*) "In or from any building, booth or place occupied by him." See notes on pages 78, 125.

The restriction is confined to the place where the liquor seller carries on his usual business, and "wherein or wherefrom such liquor is sold."

In an action under the section it should be shewn that the liquor was

and wherein or wherefrom any such liquor is sold, suffers to be delivered (*b*), any such liquor to the person having such habit, he shall incur upon conviction (*c*) a penalty not exceeding $50, and the person [giving] or requiring the notice to be given may (*d*), in action as for personal wrong (*e*) (if brought within six months thereafter, but not otherwise) (*f*) recover from the person notified such sum, not less than $20 nor more than $500, as may be assessed by the Court or jury as damages (*g*); and any married woman may bring such action in her own name, without authorization by her husband; and all damages recovered by her shall in that case go to her separate use; and in case of the death of either party, the action and right of action given by this section shall survive to or against his legal representatives, but the defendant shall not be liable for both penalties for the same offence. 47 V. c. 34, s. 22. Amended by 53 V. c. 56, s. 15.

Married woman may bring action for damages.

---

delivered or suffered to be delivered "in and from the building, etc., occupied by him," following the exact words of the Statute.

(*b*) "Suffers to be delivered." See note (*j*), sec. 50, and also notes on pages 72, 114, 174, 182.

"The defendant does *suffer* the liquor to be delivered by his bar-keeper just as much as he suffers him to deliver it. He is put in a place, position and office for the express purpose of selling such liquor, and that in my opinion is a suffering by the defendant of his bar-keeper to sell." It is said "we suffer and tolerate what we object to, but do not think proper to prevent. We suffer things for want of ability to remove them:" Wilson, C. J., Austin *v.* Davis, 7 App. R., 483.

(*c*) "Shall incur upon conviction." By this provision the delivery of liquor after notice is made an offence against the Act, which is punishable by a penalty of not more than $50, besides incurring the liabily to an action by the person giving or requiring the notice to be given.

(*d*) "And the person [giving or] requiring," etc. The words "giving or" are inserted by 53 Vic. c. 56, s. 15, and are intended to remove the doubt previously existing as to the right of the person requiring the notice to be given to bring the action. See note (*c*), *supra*. As the section reads now the person giving or the person requiring the notice to be given may, etc. This it seems will give the right of action to the Inspector, if the notice is given by him, as well as to the person requiring the notice to be given.

(*e*) "As for a personal wrong." See notes to sec. 122.

(*f*) "If brought within six months." The cause of action is limited to offences committed within twelve months from the giving of the notice, and the time for bringing the action to within six months after the commission of the offence. See note (*v*), *supra*.

(*g*) "Such sum not less than $20," etc. No evidence of pecuniary damage is necessary to the maintenance of the action. But it is discretionary with the Court or jury to assess the damages anywhere within the limit; see note (*x*),

PAYMENT FOR LIQUOR ILLEGALLY SOLD NOT RECOVERABLE.

126. Any payment or compensation (*h*) for liquor Money

to sec. 122. Where the action was tried by a Judge without a jury who ordered judgment to be entered for the defendant on the ground that the defendant was not liable for the act of his bar-keeper, the Court of Appeal set aside the judgment and directed a verdict to be entered for the plaintiff, but referred it back to the Judge of the County Court to assess the damages. Wilson, C. J., said: "The learned Judge below has not assessed the damages to the plaintiff under the Statute, which are to be not less than $20 nor more than $500, and the case must be remitted to him for that purpose. I have no doubt he may still assess them. In many cases damages omitted to be assessed by one jury may be assessed by another jury. In some cases if a jury omit to assess damages another jury cannot assess them. Here the Judge is the person who gave the verdict. I do not feel disposed to follow the case of Denny *v.* The Montreal Telegraph Co., 3 App. R., 628.

The damages are discretionary, and this Court cannot exercise the discretion which the Judge who tried the action is alone to exercise. As well might the Court upon the removal of a conviction by a Magistrate impose a discretionary fine which the Magistrate alone can determine. I do not know what discretion the learned Judge may exercise, and our discretion may not be his discretion. We cannot, therefore, govern him:" Austin *v.* Davis, 7 App. R., 478 at pp. 483 and 488.

It was held that where no loss was proved the sum to be recovered will be the minimum: Sauvage *v.* Trouillet, M. L. R. 3 S. C., 276.

It was held that the License Commissioners had no power to pass a resolution that no intoxicating liquors shall under any pretense be sold in any tavern, etc., to any person who has the habit of drinking intoxicating liquors to excess, or the wife, etc., of such person, or any person concerning whom notice had been given to the landlord by the husband, etc., of such person, or any Justice of the Peace or Inspector that such person is in the habit of drinking to excess, etc., and therefore that such resolution was no defence to an action against the Inspector for falsely and maliciously publishing a circular that certain persons were in the habit of drinking intoxicating liquors to excess, etc.: Roberts *v.* Climie, Murphy *v.* Climie, 46 U. C. R., 264.

(*h*) "'Payment' is not a technical word; it has been imported into law proceedings from the Exchange and not from law treatises. It does not necessarily mean payment in satisfaction and discharge, but may be used in a popular sense:" Dwar, 675, citing Maillard *v.* Argyle, 6 M. & G., 40. A payment may be made by the mere transfer of figures in an account without any money passing; or by payment to a third person, or by acceptance of goods; or by bill or note; or by sending a cheque by post in compliance with a request for a cheque: Stroud's Dict., 574, and cases there cited. "It may be made in something else than money:" Huffmans *v.* Walker, 26 Gratt., 316 (1875), cited Anderson's Dict., 759. "If a commodity, like wood, is accepted upon a note for money, in pursuance of a subsequent agreement, the transaction constitutes accord and satisfaction:" Ulsch *v.* Muller, 143 Mass., 379 (1887), per Field, J.

"Compensation" has been defined as: "That return which is given for something else—a consideration—as, the compensation for an office:" Searcy *v.* Grow, 15 Cal., 123, cited Anderson's Dict., 216. The definition given by Wharton is, "making things equivalent, satisfying or making amends, a reward for the apprehension of criminals; also that equivalent in money which is paid to the owners and occupiers of lands taken or injuriously affected." It also means satisfaction, and to "make satisfaction" to a creditor is to pay his debt: Kitching *v.* Croft, 12 A. & E., 586. The term "payment or compensation" is

paid for liquor sold contrary to this Act may not be recovered.

furnished in contravention of this Act, (*i*) or otherwise in violation of law, (*j*) whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, (*k*) and against justice and good conscience (*l*)—and the amount

---

here defined to include payment in money, or securities for money, or in labor or property of any kind.

(*i*) "In contravention of this Act," means in opposition to or in conflict with the provisions of the Act. See Anderson's Dict. See note (*k*), sec. 52. "Or otherwise in violation of law." See note (*h*), sec. 62. The section applies to any illegal sale of liquor.

(*j*) "Shall be held," means, shall be decided, adjudged decreed. See note page 257, "deemed."

(*k*) "Without any consideration." The consideration is the very life of a simple contract or parole agreement, and the law not only requires a consideration in case of a simple contract (under which term is included all contracts not under seal, whether written or oral) but that it should be valuable, *i. e.*, legal consideration emanating from some injury or inconvenience to one party, or from some benefit to the other party: Wharton, 166.

(*l*) "And against justice and good conscience." The general rule is established that a contract which is contrary to morality, positive law or public policy, will not be enforced by the Courts. See Add. on Con. II., 714, *et seq.*

"When a contract which the plaintiff seeks to enforce, be it express or implied, is expressly or by implication forbidden by the common or Statute law, no Court will lend its assistance to give it effect. It is equally clear that a contract is void if prohibited by a Statute, though the Statute inflicts a penalty only, because such a penalty implies a prohibition:" See Pollock on Con., 280. Therefore no debt could be created for the sale of liquors drunk anywhere, without there being a license to sell: Ritchie *v.* Smith, 6 C. B., 462; and it has been laid down that a man cannot recover the price of that which he is by law prohibited from selling, because the consideration would be illegal: McGlinchy *v.* Winchell, 63 Maine, 31. See Pollock on Con., 277 *et seq*; Hamilton *v.* Grainger, 5 H. & N., 40; Benjamin on Sales, 521; Sinclair's D. C. Act, 1879, 49, 265; Sinclair's Con. D. C. Act, 1888, 69.

Leases of premises to be used in contravention of the excise laws or Licensing Acts are illegal and void if the lessors knew that the premises were to be used for the forbidden purpose; and whenever a license is required for the exercise of a trade on grounds of public policy, any agreement made with the view of enabling a party to trade without the license is null and void: Add. on Con. II., 728.

Every person who sells wines, spirits, etc., without being duly licensed so to do has no remedy for the recovery of the price thereof. But it was held that a brewer who sells beer to be consumed in a public house is not bound to ascertain whether the party who orders the beer is duly licensed before he supplies the article: Brooker *v.* Wood, 5 B. & Ad., 1052; mere knowledge, moreover, on the part of the vendor that the buyer will make an illegal use of the goods sold to him has been held not sufficient to deprive the vendor of his right to payment of the price, but that it was necessary that the vendor should be a sharer in the illegal transaction, and should render some aid beyond that of mere selling the goods: Hodgson *v.* Temple, 5 Taunt., 181; Add. on Con. II., 753.

It was held that the sale of an excisable article was not avoided by an omis-

or value thereof (*m*) may be recovered from the receiver by the party who made the same (*n*); and all sales, transfers, conveyances, liens and securities of every kind, in whole or part, made, granted or given, for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law, shall be wholly null and void, (*o*) save only as regards subsequent purchasers or assignees for value, without notice; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this Act, or otherwise in violation of law. R. S. O. 1877, c. 181, s. 91.

Securities, etc., for payment to be void.

OFFICERS TO ENFORCE THE LAW, THEIR DUTIES AND POWERS.

127. (1) The Lieutenant-Governor (*p*) may appoint (*q*) one or more Provincial officers (*r*), whose duty it shall

Lieut.-Governor

---

sion of the seller to paint his name on the licensed premises as required by Statute: Smith *v.* Mawhood, 14 M. & W., 452. See also Smith *v.* Benton, 20 O. R., 344, and other cases cited *ante* p. 110.

(*m*) "And the amount or value thereof," etc. This refers to the payment or compensation. If paid in money, the amount will be recoverable; if in securities for money, labor or property of any kind, the value will be recoverable. This is a remedy created by the Statute and would not exist if not expressly provided.

The prohibition here created is on a line with that under section 65. See notes to that section.

(*n*) "By the party who made the same." The action will be maintainable only by the person who made the payment against the person who received the same.

(*o*) "Null and void." See note (*m*), sec. 37, *ante* p. 80.

"Subsequent purchasers or assignees for value without notice." For "value" means for valuable consideration: Stroud's Dict., 857. "A purchaser for a valuable consideration is one who pays a fair value or something approaching a fair value:" Clark *v.* Troy, 20 Cal., 223 (1862).

A "purchaser" includes "a lessee or mortgagee, or an intending purchaser, lessee or mortgagee, or other person who for valuable consideration, takes or deals for property: Stroud's Dict., 637.

By the Division Court Act, R. S. O. c. 51, s. 69. ss. 2, the Division Courts are declared not to have jurisdiction for spirituous or malt liquors drunk in a tavern or alehouse. See Sinclair's Con. D. C. Act, 1888, 38.

(*p*) The Lieutenant-Governor. See note (*i*), sec. 19.

(*q*) "May appoint." See note (*o*), sec. 4.

(*r*) "Provincial officers," as used here, is evidently intended to mean officers whose jurisdiction and authority shall be Provincial. All of the officers appointed under this Act are in one sense "Provincial officers," as they hold their positions under and subject to the control of the Provincial Government.

may appoint officers to enforce this Act.

be to enforce the provisions of this Act, and especially those for the prevention of traffic in liquor by unlicensed houses (*s*). R. S. O. 1877, c. 181, s. 92.

Provincial Inspector may be appointed

(2) Two of such officers may be designated "Provincial Inspectors," and it shall be their duty (*t*)—

(*a*) To make a personal inspection of each license district;

(*b*) To see that the books of each inspector of licenses are properly kept, and that all entries are properly made; and to examine into his accounts and into his mode of inspection, and to ascertain that the duties of the office are faithfully and efficiently performed;

(*c*) To hold investigations into the conduct of inspectors of licenses and license commissioners when required so to do by the head of the Department;

(*d*) To report upon all such matters as expeditiously as may be to the Lieutenant-Governor for his information and decision;

(*e*) When either of (*u*) the said provincial inspectors shall inquire or cause an inquiry to be made into the conduct of any inspector of licenses, or into the manner in which the law is enforced by the inspector of licenses, or into the accounts of the inspector of licenses, it shall be lawful

---

(*s*) "For the prevention of traffic in liquor," etc. See notes to sec. 128.

In a case in the United States it was held to be a conspiracy for two or more parties to act in concert in unlawful measures to enforce the Liquor Law, as by inducing a tavern keeper to furnish beer on Sunday, by artifice or persuasion: Commonwealth *ex rel*, Shea *v.* Leeds, 8 L. J. N. S., 216.

It was urged that the parties were engaged in a lawful object, to wit, the enforcement of the Sunday Liquor Law. The Court said: "If this was in truth their object, it was certainly a lawful one, and worthy of all commendation. Assuming such to have been their purpose, did they resort to any unlawful means to accomplish it? If they did, and if they acted in concert in the pursuance of a common design, there was a conspiracy. It was never intended that a man should violate the law in order to vindicate the law."

(*t*) This sub-section as it now reads was substituted in lieu of the former one, which read as follows: "One of such officers may be designated "Provincial Inspector," and it shall be his duty:—"

(*u*) "Either of." Inserted by 53 Vic. c. 56, s. 16.

for him to require that the evidence shall be given under oath, which oath he is hereby empowered to administer. He shall also have power to summon witnesses, and to enforce their attendance and to compel the production of books and documents, in the same manner and to the same extent as the inspector of Division Courts. 49 V. c. 39, s. 6. Amended by 53 Vic. c. 56, s. 16.

Appointment of officers by License Commissioners.

128. The license commissioners, (*v*) with the sanction of the Lieutenant-Governor in Council, (*w*) may appoint one or more officers to enforce the provisions of this Act, and especially those for the prevention of traffic in liquor by unlicensed houses (*x*), and shall fix the security (*y*) to be given by such officers for the efficient discharge of the duties of their office, and every such officer shall, within the license district for which he is appointed, possess and discharge all the powers and duties of Provincial officers appointed under the next preceding section other than those of the Provincial Inspector (*z*). R. S. O. 1877, c. 181, s. 93.

(*v*) "The License Commissioners." See sec. 4.

(*w*) "With the sanction of the Lieutenant-Governor-in-Council." Any appointment by the Commissioners under this section would be inoperative unless ratified by the Government. The Lieutenant-Governor-in-Council signifies the Lieutenant-Governor or person administering the Government, acting by and with the advice of the Executive Council. See R. S. O., c. 1, s. 8, ss. 7.

(*x*) "May appoint." This is, of course, merely permissive. See note (o), sec. 4.

(*y*) The chief aim of this section seems to be to enable the Commissioners to make better provision for enforcing the law against unlicensed houses. In large cities, where the number of unlicensed groggeries is considerable, and the ordinary means provided for their suppression are inadequate, this provision may be found useful.

Under sections 129 and 134 all Constables and Inspectors are also charged with the duty of seeing that the law is observed.

See sec. 89 as to the payment of penalties to officers appointed under this section.

"Security." The security to be given by the ordinary License Inspectors appointed by the Government is fixed by the Act, see sec. 6; that to be given by officers appointed under this section will be fixed by the License Commissioners.

(*z*) "Provincial Inspector." Though sec. 127 has been amended, this section remains the same as it was before. See note (*r*), sec. 127.

Officers within this Act.

129. Every officer so appointed under this Act, (*a*) every policeman, or constable, or inspector, shall be deemed to be within the provisions of this Act (*b*); and when any information is given (*c*) to any such officer, policeman, con-

---

(*a*) "Every officer." See note (*t*), sec. 58.

The officers "so appointed under this Act" are those who receive their appointment from the Government under sec. 127 and those who are appointed by the License Commissioners under sec. 128.

An "officer" is defined to be "one invested by a superior authority, particularly by Government, with the duty of transacting affairs of a certain class; an incumbent of an office; a person designated to execute some function of Government:" Anderson's Dict. He who receives no certificate of appointment, takes no oath of office, has no term or tenure of office, discharges no duties, and exercises no powers, dependent directly on the authority of the law, but simply performs such duties as are required of him, and whose responsibility is limited to them, is not an "officer." Office implies authority to exercise some portion of the Sovereign power of the State: Olmstead *v.* Mayor of New York, 42 N. Y. Super., 487-488 (1887).

(*b*) "Shall be deemed," etc. See note on page 257.

The officers so appointed, as well as the other officers designated, are clothed with all the authority, are subject to all the requirements and to the performance of the duties imposed by the Act, and are entitled to receive all the protection afforded by its provisions. They are liable also to the penalties prescribed for any dereliction of duty.

See sec. 134 and notes thereto.

It was held that an officer of police, appointed under 2 & 3 Vic. c. 93, s. 8—"County and District Constables Act"—who is sued for anything done in intended pursuance of the duties imposed and powers conferred upon him by the Contagious Diseases Act, 1878, s. 50, is not entitled to notice of action and to have the action tried in the County where the alleged grievance has been committed: Bryson *v.* Russell, 14 Q. B. D., 720. But see R. S. O., c. 73, cited *ante*, in which protection is provided in respect of any officer or persons fulfilling any public duty. See note (*b*), sec. 19, and note (*g*), *infra*.

(*c*) "Information is given." "Information" is knowledge imparted or obtained: Anderson's Dict., 542; and "communicated knowledge" is Wharton's definition of the word.

In a Statute intended to prevent physicians from disclosing "information" acquired from patients, it comprehends knowledge acquired in any way while attending a patient, whether by the physician's own insight, or by verbal statement from the patient, from members of his household, or from nurses or strangers, given to aid the physician in the performance of his duty. "Knowledge, however communicated, is information:" Edington *v.* Mut. Life Ins. Co., 5 Hun., 8 (1875) 2 N. Y. R. S., 406.

Under the Act of Congress prohibiting the mailing of obscene matter, the defendant was indicted for depositing in the Post Office a letter giving "information" where, how, and of whom to procure an article to prevent conception. The letter was in answer to a decoy letter of a detective written in an assumed and fictitious name. It was held that the sealed letter written by the defendant addressed to a person who had no existence, and which on its face, gave no information of the prohibited character, and which is brought within the Statute only by the fictitious letter of inquiry written by the detective, was not the giving of information within the meaning of the Statute: United States *v.* Whittier, 5 Dill., 42 (1878).

stable or inspector that there is cause to suspect (*d*) that some person is violating any of the provisions of this Act, it shall be his duty (*e*) to make diligent inquiry (*f*) into the truth of such information, and enter complaint of such violation before the proper Court, without communicating the name of the person giving such information; and it shall be the duty of the Crown Attorney (*g*) within the

Duties of officers and County Attorneys on receiving information of infringement of this Act.

(*d*) "Cause" means "motive; reason:" Wharton.

"Suspicion" is defined as "the act of suspecting, or the state of being suspected; imagination of something ill; distrust, mistrust, doubt:" per Spear, J., McCalla *v.* State, 66 Ga., 348 (1881).

The term "suspicious" is "frequently applied to an act, thing, or occurrence, which, from its nature, or from some circumstance attending it, may well put a man of ordinary caution on his guard against deception:" Anderson's Dict., 1000. Very slight circumstances would, in some cases, be sufficient ground for suspicion. The phrase is a vague one, and it would not be reasonable to expect a definition of it. What might be considered good ground for suspicion in the mind of one person might produce no effect upon that of another. Indeed, under this section it is not necessary that there should be any substantial ground for suspicion. See Howard *v.* Clarke, 20 Q. B. D., 558.

(*e*) "When the law casts a duty upon a person he is generally answerable for any damage consequent upon its non-performance:" See Broom's Com. Law, 109. "Laws designed to enforce moral and social duties stand on the best and broadest basis, though it is not every such duty the neglect of which is the ground for an action; for there are what are called in the civil law duties of 'imperfect obligation,' for the enforcement of which no action lies:" per Kenyon, C. J., Pasley *v.* Freeman, 3 T. R., 51, at p. 63. Under this section it is not the duty of the officer, in the first instance, to act upon the information by entering a prosecution against the person suspected, but "to make diligent enquiry into the truth of such information." See note (*y*), sec. 54.

(*f*) "Diligence" implies care, "of which there are infinite shades, from the slightest momentary thought to the most vigilant anxiety, but the law only recognizes three degrees of diligence: (1) common or ordinary, which men in general exert in respect of their own concerns; the standard is necessarily variable with respect to the facts, although it may be uniform with respect to the principle; (2) high or great, which is extraordinary diligence, or that which very prudent persons take of their own concerns: (3) low or slight, which is that which persons of less than common prudence or indeed of no prudence at all, take of their own concerns:" Wharton, 235. An "inquiry" in an action is not limited to that which a man can see with his own eyes; it signifies a judicial inquiry with witnesses: Wenlock *v.* River Dee Co., 19 Q. B. D., 155: see also Leeson *v.* Gen. Medical Council, Times, 23 Dec., 1889.

In the oath of grand jurors "diligently inquire" means diligently inquire into the circumstances of the charges, the credibility of the witnesses, and from the whole judge whether the accused ought to be put upon trial: Respublica *v.* Shaffer, 1 Dall., 237 (1788).

(*g*) "It shall be the duty of the Crown Attorney." See note (*e*), *supra*. "Where the prescriptions of an Act relate to the performance of a public duty, they are merely instructions for the guidance and government of those on whom the duty is imposed. The neglect of them may be punishable, but it does not affect the validity of the act done in disregard of them. To give them that effect would often lead to serious inconvenience and absurdity: Maxwell, 337. See note (*w*), sec. 66.

county in which the offence is committed, to attend to the prosecution of all cases committed to him by an inspector or officer appointed under this Act by the Lieutenant-Governor (*h*). R. S. O. 1877, c. 181, s. 94.

Right of search.

130. (1) Any officer (*i*), policeman, constable, or inspector may, for the purpose of preventing or detecting the violation of any of the provisions of this Act which it is his duty to enforce (*j*), at any time (*k*) enter into any and every part of any inn, tavern, or other house or place of public entertainment, shop, warehouse or other place (*l*) wherein refreshments (*m*) or liquors are sold, or reputed to

---

(*h*) "Inspector or officer," see secs. 6, 127, and notes thereto. The officers and Inspectors referred to here are those appointed by the Lieutenant-Governor under secs. 6 and 127, and not those appointed by the License Commissioners under sec. 128. Nor is there any obligation on the part of the County Attorney to attend on the prosecution of any case brought by a private informer nor by any other persons than the Government officers and Inspectors referred to.

When cases are prosecuted by an Inspector, the fines resulting from such prosecution are paid to him and are contributed towards the license fund of the district; but where such officer or Inspector is not the prosecutor, the fines are paid to the Treasurer of the Municipality. See secs. 46 and 89, also sec. 134 and notes thereto.

(*i*) "Any officer," etc. See note (*a*), sec. 129, and note (*m*), sec. 75, p. 183.

This section covers all officers appointed under the Act, including the Inspectors appointed by the Government under secs. 6 and 127, and those appointed by the License Commissioners under sec. 128, as well as all policemen and constables (see sec. 134 and notes thereto).

(*j*) "For the purpose of preventing," etc. The object of the provision is not only to detect violations of the law when they actually occur, but to prevent such violations. It is the duty of every such officer to enforce all of the provisions of the Act. See sec. 134.

(*k*) "At any time." As to meaning of "any," see note (o), sec. 11, p. 29. Any is a word which excludes limitation or qualification, and, therefore, "at any time" would include "any" day as well as "any" hour, either at night or in the daylight, Sunday as well as every other day. See also note (*k*), p. 75.

The officers and Inspectors are here empowered to enter at *any* time, into *any* and *every part* of *any inn*, tavern or other house or place of public entertainment, shop, warehouse or other place wherein refreshments or liquors *are sold* or *reputed to be* sold, whether under license or not, and to make searches in *every part* thereof, and of the premises connected therewith as they may think necessary. The power of entry and search could scarcely be more ample, and it may be exercised without any warrant or other authority than that conferred upon the officials under this Act, and particularly by this section. No force can be used in effecting an entrance, but if admittance is denied the person so refusing is liable to the penalties under sec. 70. But see cases cited *infra*.

(*l*) "Inn, tavern, or other house or place," etc. See note (*g*), sec. 2.

(*m*) "Refreshments." See note (*f*), pages 182, 183. A house of "public entertainment" was defined by McMahon, J., in R. *v.* Richardson, 20 O. R., 514, as a place "where people called to be refreshed, and where temperance

be sold (*n*), whether under license or not, and may make searches in every part thereof, and of the premises connected therewith, as he may think necessary (*o*) for the purpose aforesaid (*p*)

Penalty for refusing to admit officer.

(2) Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, or constable, or inspector demanding to enter in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such officer, policeman, constable, or inspector, or any such searches as aforesaid, shall be liable to the penalties and punishments prescribed by section 70 of this Act (*q*). R. S. O. 1877, c. 181, s. 95.

---

drinks were for sale, and the necessary provision was made for their disposal when called for."

(*n*) "Reputed" means "commonly reported; generally believed:" Anderson's Dict., 885; as the "reputed owner" is one who has, to all appearances, the right and actual possession of property. "Reputation is common opinion where there is not truth, and common opinion is of two kinds; to wit, common reputation arising among grave and sensible men and which has the appearance of truth; and mere opinion arising among foolish and ignorant men without any appearance of truth:" Wharton, 636.

(*o*) "Think necessary." See sec. 19, note (*d*).

(*p*) A. was licensed to sell beer to be consumed in his dwelling house and in the premises thereunto belonging. Next to his house was a yard, and at one side of the yard adjoining to, but not under the same roof, was an outhouse used as a cellar. He refused to admit a constable into this outhouse when required so to do. Held, that an offence had been committed: R. *v.* Tott, 4 L. T. N. S., 306; 4 Mews' Dig., 1121.

See sec. 70 and notes thereto.

(*q*) Under the English Licensing Act, 1874, 37 & 38 Vic. c. 49, s. 16, from which this is taken, but which only applies to licensed premises, it has been said that although the constable seems not bound to give special reasons to the licensed person before entering a licensed house, yet in case of dispute as to the right of entry, he will not be justified without being able to shew some reasonable ground for thinking that the Statute was about to be or had been violated, and on proving the offence in sub-sec. 2, the constable must shew some reasonable ground for entering. If, however, the constable says he wants to see if there was anything wrong in the house, as he was going a round of visiting all the licensed houses, this will be deemed a sufficient reason for demanding entry: R. *v.* Dobbins, 48 J. P., 182. The English Act authorizes the constable "at all times" to enter, etc., and it has been said that there is no limit as to the hour of demanding admission, but Justices will always consider whether the time was reasonable: Paterson's L. A., 141.

This question has been raised in the Court of Appeal, before Hagarty, C. J. O., Burton, Osler, Maclennan, JJ.A., R. *v.* Sloan. The Crown appealed under sec. 119 of the Liquor License Act, R. S. O., c. 194, from the decision of the County Judge of Frontenac, quashing the conviction of the defendant by the Police Magistrate for Kingston under sec. 130, sub-sec. 2 of the Act for refusing to admit the License Inspector to his premises, where he carried on business as a licensed hotelkeeper. The question raised is whether under

Search warrant may be granted.

131. Any Justice of the Peace (*r*) upon information (*s*) by any such officer, policeman, constable or inspector, that there is reasonable ground for belief (*t*) that any spirituous or fermented liquor (*u*) is being kept for sale, or disposal (*v*) contrary to the provisions of this Act in any

---

sec. 130 the Inspector has the right to enter licensed premises without stating some reason for wishing to enter. Reserved.

(*r*) "Any Justice of the Peace." This applies to any Justice of the Peace having jurisdiction in the locality in which the premises affected are situated. See note (*d*), sec. 79; notes to sec. 96, *ante*, p. 218.

(*s*) "Upon information," it is submitted, means upon information in the nature of a formal complaint or charge that there is reasonable ground for believing, &c. In this respect the wording of the section differs from that of the corresponding sections of the C. T. Act and the English Licensing Acts, although much the same in some other respects. In the C. T. Act the provision is "that in case a credible witness proves upon oath before a Police Magistrate," &c. In the English Licensing Act, 87 and 88 Vic., c. 49, s. 17, it is that "any Justice of the Peace, if satisfied by information on oath," &c. In this section it is simply provided that "any Justice of the Peace upon information," &c. The information on a charge under this Act need not be on oath: see sec. 94. As in the case of a search warrant for the recovery of stolen goods, it might be said that the provision is made "for the discovery of offenders who unlawfully keep intoxicating liquor for sale, and for obtaining evidence against such offenders." "But the offence of unlawfully keeping intoxicating liquor for sale contrary to the Act, is not a felony, and it does not help any person to his property as in the case of stolen goods. There is not, therefore, a similarity between the warrants which are granted in these two cases." And so, under the C. T. Act, it was held that a search warrant, issued without any charge being laid, was illegal: R. *v.* Doyle, 12 O. R., 347. "In the administration of justice, at all events, above and outside of the province of the detective, there should be no resort to experimental expedients or subterfuges. Every proceeding should be had honestly and openly and with the sole end and aim of administering the law faithfully and justly, and of bringing offenders against the law, by legitimate and proper evidence, within the penalties awarded for their offence;" per Cameron, C. J., R. *v.* Walker, 13 O. R., 83, at p. 94, and it was there held that the provision in the C. T. Act was intended to provide process *in rem* for the confiscation and destruction of liquor, in respect of which a use prohibited by the Statute was being made, and not to provide a means of obtaining evidence on which to found a prosecution or support one already begun. The same may be said in respect of this section, for although there is a marked difference in the wording of the provisions of the two enactments, yet the intention of the Legislature is probably the same in both cases, viz.: to provide means for the confiscation and destruction of liquor kept for illegal purposes, and that the process provided for should not be issued except upon proper information in the terms of the section. In another case under the C. T. Act, it was held that before a search warrant can issue, some offence against the provisions of the Act must be shewn to have been committed: R. *v.* Heffernan, 13 O. R., 616.

(*t*) "Reasonable ground for belief." See notes on page 145.

(*u*) "Spirituous or fermented liquor." See note (*b*), sec. 2.

(*v*) "For sale or disposal." See notes on pages 120, 125, *ante*, also notes on pages 148, 157, *ante*, title, "sale or barter."

unlicensed house or place (*w*) within the jurisdiction of such Justice, (*x*) may grant (*y*) a warrant (*z*) under his hand, by virtue whereof it shall be lawful (*a*) for the person named in such warrant at any time or times (*b*) within ten days (*c*) from the date thereof to enter, (*d*) and, if need be, by force, the place named in the warrant, and every part thereof, or of the premises connected therewith (*e*), and examine the same and search for liquor therein (*f*); and for this purpose may, with such assistance as he deems expedient, break open any door, lock, or fastening of such premises, or any part thereof, or of any closet, cupboard,

---

(*w*) "In any unlicensed house or place." See notes to secs. 49 and 70.

(*x*) "Jurisdiction of such Justice." See note (*d*), sec. 79.

(*y*) "May grant." See note (*g*), sec. 12, *ante*, p. 41.

(*z*) "A warrant." The warrant to be issued under this section is a search warrant, bearing some similarity in form to that issued in the case of stolen goods, although the object of the search is different. "A search warrant which is granted in the case of stolen goods is founded upon a complaint under oath that the complainant has reason to suspect or believe that certain goods have been stolen and that such goods are suspected to be in the house or upon the premises of such a person, and that they are concealed there, and that the complainant suspects so for certain causes which he must set out in the complaint: Elsee *v.* Smith, 1 D. & R., 97. That warrant is not only for the discovery of felons and the obtaining of evidence against them, but also for "the helping of persons robbed to their goods: 2 Hale P. C., 149." But the offence of unlawfully keeping intoxicating liquor for sale contrary to the Act is not a felony, and it does not help any person to his property as in the case of stolen goods. There is not, therefore, a similarity between the two warrants: per Wilson, C. J., R. *v.* Doyle, 12 O. R., 347. See note (*s*) *supra*. See also R. *v.* Walker, 13 O. R., 83; R. *v.* Hefferman, 13 O. R., 616, cited *supra*.

For form of warrant see appendix.

(*a*) "It shall be lawful." See note (*g*) sec. 42*b*.

(*b*) "At any time or times." See note (*k*), sec. 130, also note (*k*), sec. 130.

(*c*) "Within ten days" means ten clear days excluding the day of the date of the warrant: Williams *v.* Burgess, 12 A. & E., 635; Robinson *v.* Waddington, 13 Q. B., 753; Mitchell *v.* Foster, 12 A. & E., 472; R. *v.* Shropshire, 8 A. & E., 173, and other cases cited in notes on pages 14, 20, 24, 28 and 35.

(*d*) "To enter." The right of entry given here authorizes force if need be. The person to whom the warrant is directed is empowered to take such assistance as he deems expedient, and to break open any door, lock or fastening of the place named in the warrant, or of any closet, cupboard, box or other article likely to contain intoxicating liquor. It is the duty of the person executing a search warrant to demand admittance, and to disclose his authority and the object of his visit before resorting to force: Saunders' Prac., 198.

(*e*) "Premises connected therewith." See R. *v.* Tott, 4 L. T. N. S., 306, cited in note (*p*), sec. 130.

(*f*) "Examine the same and search for liquors therein." A "search" is "a careful examination; and examination or inspection authorized by law:" Anderson's Dict., 928.

box or other article likely to contain any such liquor; and in the event of any liquor being so found unlawfully kept on the said premises (*g*), the occupant (*h*) thereof shall, until the contrary is proved (*i*), be deemed to have kept such liquor for the purpose of sale contrary to the provisions of section 50 of this Act (*j*). R. S. O. 1877, c. 181, s. 96; 49 V. c. 39, s. 7.

Unlawful keeping of liquor to be evidence of illegal dealings therein.

Seizure of liquor found on unlicensed premises.

132. When any inspector, policeman, constable or officer in making or attempting to make any search under or in pursuauce of the authority conferred by the preceding two sections of this Act or under the warrant mentioned in the last preceding section, finds in an unlicensed house or place any spirituous or fermented liquor which in his opinion is unlawfully kept for sale or disposal contrary to this Act, (*k*)

(*g*) "Unlawfully kept on the said premises." See sec. 108 and notes thereto.

The existence of the usual appliances of a bar-room or preparations similar to those found in taverns or shops where liquors are kept is *prima facie* evidence that liquors are kept or had for the purpose of being sold or bartered or traded in under sec. 50 of this Act. See also sec. 111, in which further provision is made as to evidence of the unlawful keeping of liquor. Although the search warrant was illegally issued, the evidence obtained under it was held admissible against the defendant: R. *v.* Doyle, 12 O. R., 347; R. *v.* Hughes, 4 Q. S. D., 614; R. *v.* Heffernan, 13 O. R., 616, and cases cited therein.

Where evidence was given of the finding of certain appliances mentioned in sec. 119 of the C. T. Act, held that apart from the presumption created by that section upon the finding of such appliances, such finding was evidence of a keeping for sale, of the weight of which the Magistrate was the proper judge: R. *v.* Brady, 12 O. R., 358. The finding of such intoxicating liquor will be *prima facie* evidence of the keeping of such liquor for sale, not that the defendant had sold such intoxicating liquor: see R. *v.* Walker, 13 O. R., 83 at p. 96; R. *v.* Heffernan, 13 O. R., 616.

(*h*) "The occupant." See note (*i*), sec. 50; and note (*d*), sec. 112.

(*i*) "Until the contrary is proved." The finding of liquor as in this section provided is only *prima facie* evidence that such liquor is kept for sale. See note (*g*), *supra*; see also notes to sec. 111.

(*j*) The keeping of intoxicating liquor without a license is a violation of sec. 50; see notes to that section.

(*k*) The last preceding section provides for the search for liquors unlawfully kept for sale, while this one makes provision for the seizure, removal and destruction of any such liquor found. The forfeiture of the liquor can only take place on the conviction of the owner or occupier of the premises in which it was found.

Under the English Act it was held that the Justices could not order the liquors to be confiscated without giving the person upon whose premises it was found an opportunity of being heard, and of shewing that the seizure was wrong: Gill *v.* Bright, 25 L. T. N. S, 591; 4 Mews' Dig., 1125.

The proceedings under this section are dependent upon those under the two last preceding sections, and the notes thereto will apply to this section.

he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such house or place, or of any other person, for keeping spirituous or fermented liquor for sale in such house or place without license, the Justices making such conviction, may in and by the said conviction, (*l*) or by a separate or subsequent order, declare the said liquor and vessels, or any part thereof, to be forfeited to Her Majesty, and may order and direct that the said inspector, policeman, constable, or officer shall destroy the same or any part thereof, and the inspector or other person as aforesaid shall thereupon forthwith destroy the same or part thereof as directed by such conviction or order. 44 V. c. 27, s. 9.

Officer may demand names and addresses of frequenters of unlicensed premises.

[(2) Any inspector, policeman, constable, or officer having in pursuance of the two preceding sections or either of them entered any unlicensed premises in which he seizes or from which he removes any such liquor as aforesaid, may demand the name and addresss of any person found in such premises, and if such person refuses to give his name and address, or if the inspector, policeman, constable or officer, has reasonable ground to suppose that the name or address given is false, may examine such person further as to the correctness of such name or address, and may if such person fail upon such demand to give his name or address or to answer satisfactorily the questions put to him by the inspector,

Where the information, in the first instance, was for *selling* liquor contrary to the provisions of the C. T. Act, instead of for *keeping* such liquor for sale, and was afterwards amended to the latter charge, it was contended on behalf of the defendant that the liquor ordered to be forfeited and destroyed was not the liquor mentioned in or covered by the search warrant, in respect of which the offence charged in the first information was committed; but it was held that the objection was not well founded, as the information as amended must be read as if it were the original information laid, and as if the offence stated in the information for a search was for "keeping for sale" instead of for "selling;" in fact, the original information ceased to exist when the amended information was substituted for it: R. *v.* Heffernan, 13 O. R., 616 at p. 624.

(*l*) The English Licensing Act provides that "the Court may, if it think expedient to do so, declare all intoxicating liquor found, &c., to be forfeited." It was held that the forfeiture of the liquor was discretionary in the Justices under that provision, and that the Justices need not decide anything: Paterson's L. A., 4.

The order for the destruction of the liquor may be included in the conviction or may be made in a separate order. For form of declaration of forfeiture and order to destroy the liquor seized, see Sch. K.

policeman, constable or officer, apprehend him without warrant and carry him, as soon as practicable, before a Justice of the Peace.

Penalty for giving false information.

Any person found on the premises as aforesaid who in answer to the inspector, policeman, constable or officer, refuses to give his name and address or gives a false name or address, or gives false information with respect to such name or address, or fails to answer satisfactorily the questions put to him by the inspector, policeman, constable or officer, shall be liable to a penalty of not less than $10 nor more than $20 besides costs, and in default of payment shall be imprisoned for a period of not less than twenty and not more than forty days.] (*m*)

(*m*) This sub-section is added by 53 Vic., c. 56, s. 17, and is taken from The English Licensing Act, 1874, 37 and 38 Vic., c. 49, s. 17, and The English Licensing Act, 1872, 35 and 36 Vic., c. 94, s. 25, which is a re-enactment in different language of the repealed sections of the English Acts, 32 and 33 Vic., c. 27, s. 16, and 33 and 34 Vic., c. 29, s. 6.

A person found on the premises upon which liquors are seized or from which they are removed is bound to give his correct name and address on being requested to do so, to an Inspector, Policeman, Constable or Officer, entering such premises under sec. 130, or acting on a warrant issued in pursuance of sec. 131, but he is not bound to give it to any other person.

On a person being brought before a Justice of the Peace, he may be convicted if it be proved (1) That he was found upon unlicensed premises in which intoxicating liquors have been seized, or from which such liquors have been removed under the authority of sub-section 1; (2) That his name and address were demanded by the proper officer; (3) That he either refused to give his name or address, *or* he gave a false one, *or* gave false information with respect to such name or address, *or* failed to satisfactorily answer the questions put to him with respect thereto.

Statutes which encroach on the rights of the subject, whether as regards person or property, receive strict construction: Maxwell, 257, and in a case of doubt the construction most beneficial to the subject is to be adopted: *Ib.* 259, and although such enactments as these are not to be construed so as to furnish means of evasion, yet it would be well for the officer acting in pursuance of the power here conferred to act strictly within such power.

In discussing similar powers under the English Licensing Act, it has been said: "The person found cannot be expected to do more than assert his correct name and residence; at the same time, if the name and address given turns out to be false, the constable, acting at his peril, will be able to justify the apprehension if made. The more prudent course for the constable will be to proceed against the visitor if the name and address be refused or is false, and not to apprehend on the last ground, namely, 'giving false evidence with respect to such name or address,' which must be a very vague and uncertain ground to proceed upon, and will require great judgment to work out within the limits of the law." "No power is given to the constable to turn out the visitor found on the premises, or detain him until enquiries are made; and though he may, in the circumstances stated, apprehend the visitor, and carry him before a Justice, this will be at the risk of the constable:" Paterson's L. A., 34.

133. If the occupant or other person (*n*) as aforesaid be not convicted of keeping the said liquor or any part thereof for sale as aforesaid, the inspector or other person so seizing the liquor as aforesaid, shall return the same to the place where such seizure was made; the inspector, or other person acting with him, or by or under his directions, and the policeman, constable or other officer acting under this Act shall be a public officer within the meaning of *The Act to protect Justices of the Peace and others from vexatious actions*, for the purposes of this Act (*o*). 44 V. c. 27, s. 16. If no conviction liquor shall be returned. Rev. Stat. c. 73.

134. (1) It shall be the duty (*p*) of every officer, policeman, constable or inspector in each municipality, (*q*) to see that the several provisions of this Act are duly observed, (*r*) and to proceed by information and otherwise prosecute for the punishment of any offence against the provisions of this Act; (*s*) and in case of wilful neglect or Duty of constables and others to prosecute offenders.

(*n*) "If the occupant or other person." See note (*h*), sec. 131.

"Other person" refers to any person charged with keeping intoxicating liquor for the purposes of sale contrary to the provisions of section 50. The latter sec. provides that "*no person* shall keep or have in any house," etc., "any spirituous, fermented, or manufactured liquors," etc. But the presumption arising from the existence of appliances for dealing in liquor, as in sec. 108, and the finding of liquor, as in sec. 132, is evidence against the occupant only. If the person charged is not the occupant, then there must be some evidence of sale as provided in secs. 109, 111, 113, in order to convict.

(*o*) This section provides for the return of the liquor in case a conviction is not made, and for the protection in such case of the officers seizing the liquor.

The direction as to the return is peremptory and will be enforced by the High Court. Failure on the part of the proper officer to make such return would subject him to an action for conversion.

The provision for the protection of the officers acting in such case is governed by "The Act to protect Justices of the Peace and others from vexatious actions." R. S. O. c. 73. See also R. & J's. Dig., 1993-2001; Ont. Dig., 1882-1884, 404; Ont. Dig., 1884-1887, 389; 4 Mews' Dig., 1284-1293; Bond *v.* Conmee, 16 App. R., 398, cited *ante*; Mechiam *v.* Horne, 20 O. R., 267; cited *post*. See also cases cited in note (*b*), sec. 129.

(*p*) "It shall be the duty." This section makes it the imperative duty of every officer, policeman, constable or Inspector in each Municipality, not only to see that the several provisions of this Act are observed, but to prosecute all offences against the Act. See notes to sec. 129.

(*q*) "Officer" probably refers to the officers appointed under sec. 128, although from the context it may be construed as having reference to officers of each Municipality. The officers of a Municipality are enumerated in notes on page 155.

(*r*) "Duly observed," means that they are observed in compliance with the requirements of the law: See Anderson's Dict., 386.

(*s*) "And to proceed by information," etc. See note (*p*) *supra*, and note (*s*), sec. 131.

Penalty for neglect.

default (*t*) in so doing in any case, such officer, policeman, constable or inspector shall incur a penalty of $10 for each and every such neglect and default. R. S. O. 1877, c. 181, s. 97.

Commissioners of police and chief of police to enforce this section.

(2) It shall be the duty of the board of commissioners of police, and of the chief of police, to enforce the provisions of this section, and any officer or policeman convicted of violating the provisions thereof may be summarily dismissed. 44 V. c. 27, s. 25.

UNORGANIZED DISTRICTS.

This Act to apply to the ter-

135. Subject to the provisions hereinafter contained, (*u*) the preceding provisions of this Act shall apply

(*t*) "Wilful neglect or default." The word "wilful" does not, as is often supposed, imply anything blameable. As used here it simply means that the person whose duty it is to do a thing which he is able to do, if willing, fails to do it. "It amounts to nothing more than this, that he knows what he is doing and intends to do what he is doing, and is a free agent." See note (*d*), sec. 47, and note (*u*), sec. 83.

To "wilfully neglect" to do a thing is intentionally to omit to do it, and it was held, therefore, that to pray instead of sending for a doctor is to "wilfully neglect" to provide medical aid as required by the Statute: R. *v.* Downes, 1 Q. B. D., 25; R. *v.* Morby, 8 Q. B. D., 571.

In our own Court a similar construction has been given: see Miles *v.* Roe, 10 P. R., 218, in which it was held that "wilful delay" is the not doing of a thing within a reasonable time to do it. See also *re* Young and Harston, 31 Ch. D., 174; *in re* Riley to Streatfield, 34 Ch. D., 386.

Wilful default of the person in charge of a ship was held to mean simply "by the default" of such person whether intentional or negligent: Grill *v.* General Screw Collier Co., L. R. 1 C. P., 600. The English authorities give this construction where the phrase "wilful neglect" or "wilful default" is used. But the word "wilfully" has been held in some cases to denote evil intention, and when a person is acting under an honest mistake in doing what he did, the act was held not to be done wilfully: Smith *v.* Barnham, 1 Ex. D., 419.

In the United States it has been held that in an act forbidden by law the act must be done knowingly and intentionally—that with knowledge the will consented to, designed and directed the act: Woodhouse *v.* Rio Grande Ry. Co., 67 Texas, 419; Highway Commissioners *v.* Ely, 54 Mich., 180-181.

Any officer or policeman named in the section who knows of an offence against the provisions of the Act and fails to prosecute, it is submitted, is guilty of a violation of the section and liable (1) to a penalty of $10 "for every such neglect and default," and (2) to be dismissed on conviction for the offence; and the Board of Police Commissioners and the Chief of Police are empowered and directed to enforce this provision.

(*u*) "Subject to the provisions hereinafter contained," refers to the provisions in secs. 136-140.

The effect of this section is to extend the Act to judicial, territorial and unorganized districts; to give Stipendiary Magistrates in such districts the powers of Police Magistrates and other Justices of the Peace under the Act; to consti-

to all portions of Judicial, Territorial and other Unorganized Districts of this Province; and in any prosecution or proceeding thereunder the Stipendiary Magistrate in any such district shall possess and exercise all the powers and jurisdictions of the Police Magistrate, or other convicting Justice or Justices of the Peace, under this Act; and the lock-up of such district shall be deemed to be a gaol for the purpose of imprisonment under this Act; and any money penalty imposed and recovered shall, where the inspector is not the prosecutor, or the offence was not committed within any municipality, be paid to the Treasurer of Ontario; and the provisions of this Act applicable to township municipalities shall apply to all municipalities organized under *The Act respecting the Establishment of Municipal Institutions in the Districts of Algoma, Muskoka, Parry Sound, Nipissing, Thunder Bay and Rainy River.* R. S. O. 1877, c. 181, s. 98. ritorial and unorganized districts. Rev. Stat. c. 185.

136. The Lieutenant-Governor in Council (*v*) may declare (*w*) any portion of a Judicial or Territorial District (*x*) which is not within the jurisdiction of a municipal county, a license district, for the purposes of this Act, and the Lieutenant-Governor may appoint therefor a board of license commissioners and one or more inspectors. R. S. O. 1877, c. 181, s. 99. License districts in Judicial or Territorial Districts.

137. In any license district so formed an appeal shall lie from any decision of the Stipendiary Magistrate in any prosecution or proceeding under this Act, to the Judge of such district, or to any County Judge to whom an appeal Appeal from Stipendiary Magistrates.

---

tute the lock up of such district a gaol for the purposes of the Act; and to provide for the application of penalties recovered.

Algoma and the other districts named are subject to the same provisions of the Act as the Township Municipalities of organized Counties.

(*v*) "The Lieutenant-Governor-in-Council." See sec. 19, note (*i*).

(*w*) "May declare." See notes on pages 8, 41, 75, 90.

(*x*) "Judicial or Territorial District." See "The Unorganized Territory Act," R. S. O. c. 91, s. 1.

The effect of this is to practically extend the provisions of sections 45 and 46, to Judicial and Territorial Districts not within the jurisdiction of a Municipal County. See notes to those sections.

lies in other matters in such district (*y*). R. S. O. 1877, c. 181, s. 100.

Appointment of Commissioners, etc., in districts not within the jurisdiction of municipal councils or a license district.

138. (1) In such portions of Judicial or Territorial Districts as are not within the jurisdiction of any municipal county, and have not been included in any license district, under the provisions of section 136, the Lieutenant-Governor may appoint one or more persons as license commissioners and inspectors respectively for the granting of such number of tavern and shop licenses to such persons, for such places and periods, and upon such conditions as may be prescribed by Order in Council, such licenses to take effect from the 1st day of June in each year (*z*).

Duties payable.

(2) For any such tavern or shop license, the duty payable shall be the sum of $60 (*a*). R. S. O., 1877, c. 181, s, 101.

Issue of licenses for places not within license district.

139. The licenses to be issued for the sale of spirituous, fermented or other manufactured liquors, in any place not within a license district, may be issued on such conditions and under such regulations as the Lieutenant-Governor in Council from time to time directs, subject to the provisions of this Act; and any bond which the Lieutenant-Governor in Council may direct to be taken from any person obtaining a license under this Act for any such place, conditioned for the observance of the law and of all regulations to be made under this section, shall be valid, and may be enforced according to its tenor (*b*). R. S. O. 1877, c. 181, s. 102.

(*y*) This section gives the right of appeal in all cases from the Stipendiary Magistrate to the County or District Judge. See sec. 118 and notes thereto.

(*z*) This applies to portions of Judicial and Territorial Districts in which no license district has been formed and no License Commissioners or Inspector appointed by the Lieutenant-Governor-in-Council under sec. 136. In such places the Lieutenant-Governor (see sec. 19, note (*i*)) is empowered to appoint *one or more* persons as License Commissioners and Inspector, respectively, with power to grant licenses upon conditions to be prescribed by Order-in-Council, These licenses are to take effect from 1st June in each year. See sec. 8 *et seq.*

(*a*) See sec. 41 and notes thereto.

(*b*) The Lieutenant-Governor-in-Council is hereby empowered to make conditions and regulations (see sec. 4, note (*p*)) from time to time, respecting the issue of licenses in places not within a license district, and also to issue directions as to the bond to be taken from a licensee in such places. See sec. 80 and notes thereto.

140. Any municipal corporation within any Judicial or Territorial District shall have the like authority in respect of taverns and shops therein, and the licenses therefor, as the like corporations in municipal counties possess under the provisions of this Act (*c*). R. S. O. 1877, c. 181, s. 103. Powers of municipal corporations.

MUNICIPALITIES UNDER THE TEMPERANCE ACTS.

141. Nothing in the foregoing provisions of this Act shall be construed to affect or impair (*d*) any of the provisions of *The Temperance Act of 1864* of the late Province of Canada, or the second part of *The Canada Temperance Act*, and no tavern or shop license shall be issued or take effect within any county, city, town, incorporated village, or township in Ontario within which any by-law for prohibiting the sale of liquor under the said Act is in force (*e*). R. S. O. 1877, c. 181, s. 104; 44 V. c. 27, s. 13. 27-8 V. c. 18, and R. S. C. c. 106, not affected by this Act.

142. [The Lieutenant-Governor in Council may, notwithstanding that any such by-law affects the whole or part of any county, or that the second part of *The Canada Temperance Act* is in force in the whole or part of any county, nominate a board of license commissioners of the number and for the period mentioned in section 3 of this Act, and also an inspector; and the said board and inspector shall have, discharge and exercise all such powers and duties respectively for preventing the sale, traffic or dis- Commissioners and inspectors may be appointed where Temperance Acts in force.

(*c*) The provisions of secs. 20, 32 and 42 are extended to Municipal Corporations within any Judicial or Territorial district. See notes to those sections. See also sec. 54, note (*v*).

(*d*) "To affect or impair." "Shall not affect," means "shall not validate or invalidate:" 1 Jarm. 41, citing Sharp *v.* St. Sauveur, 7 Ch., 343. To "impair" is to make worse; to diminish in quantity, value, excellence, strength; to lessen in power; to deteriorate; to relax, weaken, injure:" Anderson's Dict., 523.

(*e*) "No tavern or shop license shall issue," etc. The Ontario Legislature cannot make the sale of liquor contrary to the Temperance Act, 1864, an offence against the provisions of this Act so as to subject the offender to penalties imposed by the License Act instead of those prescribed by the Temperance Act. It was therefore held that the only conviction that could be valid for keeping liquors for sale in a hotel in a Municipality where the latter Act was in force, was under sec. 12 of the Temperance Act of 1864, which forbade its being kept, and while that Act was in force no license to keep liquors in a hotel could issue: R. *v.* Prittie, 42 U. C. R., 612. See also *in re* Watts and *in re* Emery, 5 P. R., 267; R. *v.* Lake, 43 U. C. R., 515.

posal of liquor contrary to the said Acts or this Act as they respectively have or should perform under this Act] (*f*). 51 V. c. 30, s. 1.

Duties in such case.

27-8 V. c. 18; R.S.C. c. 106.

143. The board of license commissioners and the inspector so appointed under this Act shall exercise and discharge all their respective powers and duties for the enforcement of the provisions of *The Temperance Act of 1864*, and the second part of *The Canada Temperance Act* (*g*), as well as of this Act, so far as the same apply, within the limits of any county, city, incorporated village or town-

---

(*f*) This and the following sections provide ways and means for the enforcement of The Canada Temperance Act by the application of local funds raised by local taxation or otherwise in the County. "As stated by Sir Montague E. Smith, in Russell *v.* The Queen, 7 App. Cas., at p. 835, the effect of the Canada Temperance Act, when brought into force in any County, is to prohibit the sale of intoxicating liquor except in wholesale quantities or for certain specific purposes, to regulate the traffic in the excepted cases, and to make sales of liquor in violation of the prohibitions and regulations contained in the Act criminal offences punishable by fine, and for third or subsequent offences by imprisonment. Now the Act is brought into force in any Municipality by a majority of the votes of the therein qualified electors, and when so introduced it becomes a part of the Municipal law, relating to public order, safety and good government in that locality. The general law as to prohibition respecting all Canada, which can only be enacted by the Dominion, being localized by Municipal suffrages, its enforcement becomes also a matter of local importance within the meaning of the British North America Act, sec. 92, item 16."

"The enforcement of the Act in the adopting Municipalities involves questions of local police regulations. For the purpose of ensuring uniformity and efficiency of action, the prosecution of offenders may be properly relegated to the hands of Provincial officers for the appointment and payment and governance of whom laws may be made under The British North America Act, sec. 92, item 4. The expense of carrying the Act into effect within the adopting County is a burden to be borne by the ratepayers of that locality, so that the legislation now questioned may also fall within the scope of the B. N. A. Act, sec. 92, item 8, as pertaining to Municipal institutions of the Province. This body of Ontario legislation is not in conflict with the provisions of the general law enacted by the Dominion, but in furtherance of it as to its local application and details."

"My conclusion then in brief is, that the general prohibitory law, being localized by Municipal option, may be enforced through the medium of Provincial officers, to be appointed and paid for according to Provincial legislation (Richardson *v.* Ransom, 10 O. R. at p. 387):" per Boyd, C., License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741 at p. 746, *et seq.*

See sec. 3 and notes thereto.

(*g*) "The Temperance Act." See digest of cases under the *Canada Temperance Act, post.* The Canada Temperance Act may be enforced through the medium of Provincial officers, to be appointed and paid for according to Provincial legislation: see License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741, cited *supra.* See also the judgment of Armour, J., in License Com. North Riding of Norfolk *v.* Co. of Norfolk (Nov. 1, 1887), quoted 14 O. R., p. 749.

ship in which any by-law under the said Acts is in force. R. S. O. 1877, c. 181, s. 106; 44 V. c. 27, s. 13.

Wholesale licenses.

144. A wholesale license (*h*), to be obtained under and subject to the provisions of this Act, shall be necessary, in order to authorize or make lawful any sale of liquor in the quantities allowed under the provisions of *The Temperance Act of 1864*, and the second part of *The Canada Temperance Act*. R. S. O. 1877, c. 181, s. 107; 44 V. c. 27, s. 13.

27-8 V. c. 18; R.S.C. c. 106.

Application of ss. 127, 128, and 141-144.

145. All the provisions of sections 127, 128, 141, 142, 143 and 144 of this Act shall be applicable to municipalities in which the second part of *The Canada Temperance Act* is in force (*i*). 44 V. c. 27, s. 13; 47 V. c. 34, s. 34.

Municipal councils may aid in enforcing the Canada Temperance Act.

146. (1) The council of any county, city, town, township, or village (*j*) in which the second part of *The Canada Temperance Act* is in force, may, from time to time, set apart any sum or sums of money for the purpose of paying any officer or officers, person or persons, for enforcing, or assisting to enforce *The Canada Temperance Act* within their respective jurisdictions, and for the payment of any costs or expenses incurred in and about enforcing, or attempting to enforce the same; and such councils are hereby authorized and empowered to appoint one or more officers or persons to enforce, or assist in enforcing, the provisions of the said Act, and to pass by-laws for the government and control of such officers or persons, and defining their duties and mode and amount of payment. 44 V. c. 27, s. 14.

(*h*) "A wholesale license." See sub-sec. 4 of sec. 2 and notes thereto.

(*i*) The general law as to prohibition respecting all Canada, which can only be enacted by the Dominion, being localized by Municipal suffrages, its enforcement becomes a matter of local importance in the Province, within the meaning of the B. N. A. Act, sec. 92, item 16, and may also fall within the scope of the B. N. A. Act, sec. 92, item 8, as pertaining to Municipal institutions in the Province. This body of Ontario legislation is not in conflict or competition with the provisions of the general law enacted by the Dominion, but in furtherance of it as to its local application and details: License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741 at pp. 747, 748, cited *ante*, p. 302.

(*j*) "The Council of any county, city, town, township, or village," see note (*j*), p. 7 *ante*. See also notes to secs. 42, 42*b*, 43 and 44.

Statements of receipts and expenses.

(2) Where the second part of *The Canada Temperance Act* is in force, and when the council has been called upon to pay a proportion of the expenses of its enforcement, the inspector shall, at the close of each year, send to the council a statement in detail of the receipts and expenses of the year. 50 V. c. 33, s. 7.

Prosecutions where Temperance Acts in force.

147. The sale of liquor without license in any municipality where *The Temperance Act of 1864*, is in force shall nevertheless be a contravention of sections 49 and 50 of this Act, and the several provisions of this Act shall have full force and effect in every such municipality except in so far as such provisions relate to granting licenses for the sale of liquor by retail (*k*). R. S. O. 1877, c. 181, s. 108.

Expense of enforcing Liquor License Act in municipalities under the Temperance Acts.

148. [(1) (*l*) The expenses (*m*) of carrying into effect such of the provisions of this Act, or of the Acts or by-law hereinafter mentioned, as may be in force in municipalities where a by-law prohibiting the sale of intoxicating liquors under *The Temperance Act of 1864*, or where the second part of *The Canada Temperance Act* is in force, except as is hereinafter by this Act provided, shall be borne and paid by the county within which any by-law for prohibiting the sale of liquor under *The Temperance Act of 1864*, or within which the second part of *The Canada Temperance Act* is in force; and where the by-law is that of a minor municipality, such expenses shall be paid by the minor municipality.

Proportion payable by the Province or Municipality, how and

(2) (*n*) The expenses payable under this section by a county, or by a minor municipality, shall be by them paid into the bank in which the license fund is kept to the credit of the license fund account for the license district, and shall

---

(*k*) It was held that the Legislature had no power to make the sale of intoxicating liquor contrary to the provisions of the Temperance Act, 1864, an offence against the License Acts: see R. *v.* Prittie, 42 U. C. R., 612, and other cases, cited *ante*, p.109.

(*l*) Section 148 in the R. S. O. c. 194, was repealed and the present section substituted by 51 Vic. c. 30.

(*m*) "The expenses." It was held that the Board of License Commissioners was entitled to recover from the defendants the expenses of carrying out the provisions of the Canada Temperance Act in the license district of Frontenac, formed out of part of the County of Frontenac: License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741.

(*n*) See sec. 45 and notes thereto.

become due and payable within one month (*o*) after an estimate of the amount of the expenses for the current license year shall be made by the board of license commissioners for the license district, and approved by the Provincial Secretary (*p*) (which approval shall be final and conclusive (*q*)) and after a copy or duplicate of such estimate and approval, together with a notice in writing by the board of license commissioners requesting payment of the amount payable by the municipality, shall be served upon the clerk of the county, or minor municipality, or on such days and times as by the said request or notice are named for that purpose; and should any estimate prove insufficient for the payment of the expenses of the license year any deficiency may be provided for in the estimate for the succeeding year; and should any sums remain unexpended in any year, the same may be applied on account of the expenses of the succeeding year (*r*). when to be paid.

(3) Payment may be enforced against any county, or minor municipality, by the board of license commissioners in any Court of competent jurisdiction in the name and by the title of "The Board of License Commissioners for the License District of ," and it shall not be necessary Payment of proportion, how enforced.

(*o*) "Within one month." See note (*r*), p. 24.

(*p*) "Approved by the Provincial Secretary." It was contended that the estimates were not approved of by the proper officer but only by his deputy, but the estimates bore the signature of the Provincial Secretary, and of Mr. Totten acting for the Provincial Treasurer. "The approval or audit of the estimates was regarded as an administrative act that might be delegated: per Spragge, C., License Com. of Prince Edward *v.* Co. of Prince Edward, 26 Grant, at p. 457, and if so, there is no doubt the sanction of the deputy was sufficient (see Interpretation Act, R. S. O. c. 4, s. 8, ss. 26, p. 8). But without this there is the proper signature of the Provincial Secretary, which concludes the matter, and there is no evidence to contradict its finality:" per Boyd, C., License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741.

(*q*) "Final and conclusive." See note (*g*), p. 34.

(*r*) "Any sums remain unexpended in any year," etc. In the case of License Com. of Frontenac *v.* Co. of Frontenac, *supra*, there was an argument as to the arrears brought forward from the former year as "a deficiency." It appeared that it was the whole sum estimated for that year, and that it was not diminished by any receipts for any sum, so as to reduce it to a deficit in the usual sense. It was held that after all it was but a matter of form, as it could be sued for as a substantive debt upon the estimates of the former year. The provision here made is intended to dispose of any question of that kind for the future by making provision for the payment of any deficiency in one year in the estimates of the succeeding year, and by providing further that any sums unexpended in one year may be applied on account of the expenses of the next year.

to mention or include the names of the license commissioners in the proceedings (*s*); and the said action or proceedings may be carried on in the name of such board as fully and effectually as though such board were incorporated under the aforesaid name or title. In the event of the death or resignation of any of the license commissioners, or of the expiry of their commission and of the re-appointment of the same, or of the appointment of other license commissioners, the proceedings, or action, shall not cease, abate or determine, but shall proceed as though no change had been made in the commission or license commissioners, and in the event of said board being condemned in costs, the same may be payable out of the license fund (*t*).

Minor Municipality, meaning of.

(4) The words "Minor Municipality" in this section shall be held to mean any municipality, other than a county or union of counties.

Expenses of enforcing C. T. Act in cities.

(5) In cities, which are separate license districts in which the second part of *The Canada Temperance Act* is in force, the expenses of enforcing or carrying into effect the provisions of the said Act shall be borne by the city, as in the case of counties in which the said second part of the said Act is in force, and such expenses of the city shall be estimated and ascertained, and become due and payable, and payment may be enforced against the city in the same manner or under like circumstances as are provided in the case of county municipalities, and all of the provisions of this Act having reference to the said expenses and the mode of ascertaining, fixing and collecting the same, which are applicable to counties in which the said second part of *The Canada Temperance Act* is in force shall also apply to cities in which the same is in force (*u*).]

(*s*) This provision places the Board of License Commissioners on the same footing in respect of suits brought by them against any municipality for the recovery of their share of the expenses of enforcing the Act, as if such Board were incorporated under the name and title of "The Board of License Commissioners for the License District of ." But there is no provision made as to the suits brought against such Board. The rule would probably work both ways, however.

As to the re-appointment of Commissioners, see sec. 3 and notes thereto.

(*t*) As to payment of costs out of license fund, see sec. 45.

(*u*) The provisions in respect to the enforcement of the C. T. Act in other

Payment of expenses of license district where C. T. Act is in force in part only of district.

149. [In any license district in which the second part of *The Canada Temperance Act* is in force and the license district, in addition to other portions of the county, embraces a city or town withdrawn from the county for municipal purposes wherein the said Act is not in force, the license fund of such city or town withdrawn from the county for municipal purposes, shall be kept as a separate license fund for such city or town; and such city or town shall pay a just share of the expenses of such license district; and the same shall be determined by the board of license commissioners; and shall after approval by the Provincial Secretary be paid out of the license fund for such city or town; and in determining such share of expenses the board shall take into account with other circumstances, as far as may be, the proportion of the expenses incurred in said city or town (*v*)]. 51 Vic. c. 30, s. 1.

Duties payable for licenses issued under sec. 99, sub-ss. 4 & 8, of R. S. C. c. 106.

150. The following license duties for licenses issued under and in pursuance of sub-sections 4 and 8, of section 99, of *The Canada Temperance Act* shall hereafter be payable: (*w*)

For each druggist's or shop license in cities -	$ 75 00
" " " towns -	50 00
" " " other municipalities -	30 00
For each wholesale license in cities - -	150 00
" " " towns - -	100 00
" " " other municipalities.	60 00

49 V. c. 39, s. 8.

Municipalities are by this clause extended to cities in which the second part of that Act is in force. See sub-sec. 2.

(*v*) This is a new section substituted by 51 Vic., c. 30, s. 1, in lieu of R. S. O., c. 194, s. 149, by which it is intended to make provision for the payment of the expenses in case there happens to be a city or town in which the C. T. Act is not in force within the boundaries of a license district in which it is in force. The license district under the Liquor License Act may embrace such city or town, but at the same time it may not be subject to the provisions of the C. T. Act, as a city or town withdrawn from the county for Municipal purposes would not be affected by the by-law bringing the C. T. Act into force in the county. And so while one part of the license district is subject to the C. T. Act, another portion of it may be under the License Act.

(*w*) See secs. 41, 42 and 44, and notes thereto. See also sec. 12, ss. 2.

Application of duties for licenses under preceding sections.

151. [All sums received from duties on druggists' or shop licenses and for wholesale licenses, issued in municipalities in which the second part of *The Canada Temperance Act* is in force, and any sum paid by a municipality for or on account of such expenses, as aforesaid, or by the Province, shall form the license fund of the city, county or license district respectively in which the said second part of *The Canada Temperance Act* shall be in force, and shall be applied, under regulations of the Lieutenant-Governor in Council, towards payment of the salary and expenses of the inspector, and for the expenses of the office of the board of license commissioners and of officers, and otherwise in carrying the provisions of the second part of *The Canada Temperance Act* into effect, and the residue (if any) on the 30th day of June in each year, and at such other times as may be prescribed by the regulations of the Lieutenant-Governor in Council, may be applied on account of the expenses of the succeeding year. (*x*).]

Provision for payment by municipalities of expenses of license district in which R. S. C. c. 106 is in force.

152. (1) In order to remove doubts it is hereby declared that the share of the expenses of any license district to be paid by any county council, and heretofore estimated by the boards of license commissioners, and which have been approved by the Provincial Treasurer or Secretary, after deducting any sum payable by any city or separated town, as hereinafter provided, shall be due and payable by the county council, notwithstanding the use of the words "whereby a by-law prohibiting the sale of intoxicating liquors is in force" under *The Canada Temperance Act*, or words of similar purport or meaning in any section of this Act, are made to apply to the said *Canada Temperance Act*, and as fully as though the same had read in lieu thereof in each and every case "where the second part of *The Canada Temperance Act* is in force," and it shall not be necessary to make or approve another estimate or serve a new copy or duplicate or demand, and the appointment of commissioners and inspectors by the Lieutenant-Governor

(*x*) This section was substituted by 51 Vic., c. 30, in lieu of R. S. O., c. 194, s. 151, which was thereby repealed.

See sec. 45 and notes thereto.

or the Lieutenant-Governor in Council heretofore made in or for any county or district in which the said second part of *The Canada Temperance Act* was at the time in force, shall be as valid and effectual as though the statutes in this section mentioned or referred to had read as herein is provided. 50 V. c. 33, s. 1.

Share of expenses of license district to be paid by city or town in district in which R. S. C. c. 106 is in force.

(2) Where a city in which the second part of *The Canada Temperance Act* is in force and which is not a separate license district but forms part of a license district in which the said second part of *The Canada Temperance Act* is also in force as to the whole or part of the said license district, and where a town is separated from the county and forms part of a district in which the said second part of *The Canada Temperance Act* is in force, as to the whole or part thereof, the council of said city and of said town, respectively, shall pay a just share of the expenses of the license district of which it forms a part and such share shall be separately estimated and determined by the board of license commissioners, and shall, after approval by the Provincial Secretary, be paid into the license fund of the license district of which said city or town forms part; and in determining such share of expenses the commissioners shall take into account with other circumstances as far as may be the proportion of the expenses of the district incurred in said city or town. 50 V. c. 33, s. 4.

[(3) When a license district is formed of part of a county in which the second part of *The Canada Temperance Act* is in force, or of part of two counties in which the second part of the said Act is in force, or of part of a county in which the same is in force and of a county or part of a county in which it is not in force, the commissioners for the district shall estimate the amount of the expenses for the license year required for any such district or portion of district in which the second part of the said Act is in force as aforesaid, and after approval thereof by the Provincial Secretary and the service of a copy or a duplicate thereof and of a notice in writing requesting payment of the same, upon the clerk of the municipality, the amount so estimated and approved shall become due and payable

into the license fund by the county at the time or times and in the same manner as is provided for payment of the amount of the estimates in other cases, and the same may be recovered by the board of commissioners for the license district as in other cases.

(4) Where a county has not paid an estimate made before the passing of this Act in respect of any part of a county which forms part of a license district, and which estimate has been approved and where a duplicate or copy thereof has been served as in this section mentioned, the board of commissioners for the license district of which said part of a county forms part may recover the amount of such estimate from the county as in other cases.] 51 V. c. 30, s. 2.

Payment of portion of expenses out of consolidated revenue.

[**3.** (1) Should the fines and penalties imposed under or by virtue of the said *Temperance Act of 1864*, or the by-law bringing the same into force, or the said *Canada Temperance Act*, and which shall be collected or recovered be insufficient to meet the expenses aforesaid after the payment of the salary and travelling expenses of any Police Magistrate appointed under the Act passed in the 48th year of Her Majesty's Reign, chapter 17, and the Act passed in the 50th year of Her Majesty's Reign, chapter 11, or either of them or under chapter 72 of the Revised Statutes of Ontario, 1887, the Treasurer of the Province may pay into the license fund, out of the consolidated revenue, a sum not exceeding one-third of the amount which the municipality shall be required to pay for or on account of such expenses, as aforesaid, over and above the fines collected or recovered.

(2) The treasurer of the County or other municipality to which the fines are payable shall keep a Separate account of the fines received, and also, of the amount paid or contributed by the municipality towards the expenses of enforcing the Act, and the payment of the salary and expenses of any Police Magistrate appointed under and by virtue of any of the Acts in this section hereinbefore mentioned; and the province shall not be called upon to pay any proportion of the expenses so long as there is a balance at the credit of the said account] 51 V. c. 30, s. 3.

[4. Nothing in this Act contained shall invalidate any estimate, approval thereof, or demand of payment, which shall have been made before the passing hereof, but the amount demanded shall be paid over by the municipality, and payment thereof may be enforced as though this Act had not passed; nor shall anything in this Act contained affect any action or suit or other legal proceedings now pending but the same may proceed as though this Act had not been passed.] (a) 51 V. c. 30, s. 4.

Pending proceedings not affected.

153. And it is further declared that the Lieutenant-Governor in Council shall have the same power and authority to create license districts when and where the second part of *The Canada Temperance Act* is in force, as under this Act, and where license districts are not or have not heretofore been created or provided by the Lieutenant-Governor in Council after the coming into force in any county or city of the second part of the said *Canada Temperance Act*, the license districts have been since the Act passed in the forty-fourth year of Her Majesty's reign, chapter 27, and are and shall be the same as under this Act, immediately prior to the coming into force of the said second part of *The Canada Temperance Act*, unless, or where the same have been, or shall have been, or shall be altered or changed by order in council or otherwise, and then as they have been so altered or changed, and until further order in that behalf. 50 V. c. 33, s. 2.

License district in places where the R. S. C. c. 106 is in force.

(a) These clauses numbered 3 and 4 are new provisions introduced by 51 Vic. c. 30, secs. 3 and 4.

THE CANADA TEMPERANCE ACT, 1878, AND AMENDMENTS THERETO.

R. S. C., c. 106, amended by 51 Vic., c. 34 (D.); 53 Vic., c. 27 (D).

SUBMISSION OF ACT TO ELECTORS.

Generally.

Held that the word "County" as used in the Act means County for Municipal purposes and not for electoral purposes: R. *v.* Shavelear, 11 O. R., 727.

Where a part of the County consisted of Indian lands: Held that as it did not appear that the votes of the electors on such lands were taken upon the petition for the Act, or that proper means were taken to enable them to exercise their franchise, or that they were permitted to exercise it, the present proceedings did not properly bring the matter before the Court: *Ib.*

The adoption of the Act is on the polling day: R. *v.* Daly, 12 O. R., 330.

Held, that Indian electors resident in the Township of Tuscarora, in the County of Brant, being an Indian reserve, had no right to vote upon the question of the repeal of the Act in that County.

Semble, that as R. S. O., c. 5, s. 1, is to be interpreted as meaning that the Townships named shall be Townships for Municipal purposes when it becomes possible to make them such, as *e. g.*, in such a case as the present, when Indians become enfranchised.

The C. T. Act can have no operation where the Indian Act is in force.

R. S. C., c. 106, s. 12 refers to white men but not to Indians: *re* Metcalfe, 17 O. R., 357.

Held that the notice and petition required by sec. 5 of the C. T. Act, 1878, must be deposited for public examination, as required by the Act, in the office of the sheriff or registrar of deeds of or in the County, and that where there are two registry offices in the County, it must be deposited either in the sheriff's office or in both registry offices: *in re* Can. Tem. Act, 1878, and Co. Perth, 20 L. J. N. S., 375; Sup. Ct. Dig., 51.

It was held that signatories to a notice and petition bringing into force the second part of the Act had not, under the circumstances set forth, the right to withdraw their acknowledged and deliberate signatures, or to have the same withdrawn from the said petition: *in re* Can. Tem. Act, 1878, and the Co. of Kent, Sup. Ct. Dig., 52.

Scrutiny of Votes.

The County Judge, on a scrutiny, has only to determine the majority of votes cast, on the one side or the other, by the inspection of the ballots, and has no power to inquire into offences against the Act, and allow or reject ballots as a result of such inquiry, (Henry, J., dubitante): Chapman *v.* Rand, 11 S. C. R., 312.

A County Court Judge will not be compelled by *mandamus* to inquire, on a scrutiny, as to personation, bribery, the status on the Voters' List of persons voting: *Re* Canada Temperance Act, 9 O. R., 154; S. C. 12 App. R., 677.

Informations and Convictions.

An information which includes the three distinct offences, of keeping for sale, selling and bartering intoxicating liquors which are prohibited by sec. 99

of The C. T. Act, contravenes 32-33 Vic., c. 31, s. 25, which provides that every information shall be for one offence only; but such information may be amended by striking out all of the offences except one, and such amendment may be made after the case is closed and reserved for decision: R. *v.* Bennett, 1 O. R., 445; followed in R. *v.* Lee, 15 O. R., 353; see R. *v.* Richardson, 8 O. R., 351.

Where the defendant swore that he did not sell any intoxicating liquor on the day charged, but the recipient of some liquor on that day named it in his evidence for the defence, but there was no evidence that it was an intoxicating drink, the evidence for the Crown only shewing that it resembled intoxicating liquor: Held that there was no reasonable evidence on which to found a conviction for selling intoxicating liquor: *Ib.*

The defendant was convicted of selling intoxicating liquor contrary to the C. T. Act upon an information charging him with keeping, selling, bartering and otherwise unlawfully disposing of liquor. He was adjudged to pay a fine of $50 and $5.20 costs, and in default of payment and of sufficient distress he was adjudged to be imprisoned in the common gaol at hard labor.

A second record of the conviction, bearing the same date as the first, was filed, differing in some minor points from the first, and omitting the adjudication as to hard labor, and adjudging the payment of $5.27 costs. The proceedings having been removed on *certiorari*: Held that the first conviction was bad for want of jurisdiction to impose hard labour, which was not authorized by the Act, and that the second was bad in not following the actual adjudication as to costs, which were, as shewn by the Magistrate's minute, $5.20 and not $5.27. Held also that the conviction was bad for not shewing that the Act was in force and not proved otherwise, and, therefore, as the jurisdiction of the Magistrate did not appear, the writ of *certiorari* was not taken away by sec. 111 of the Act. But see R. *v.* Ambrose, 16 O. R., 251 *post*, p. 318.

Quære, whether the conviction was not also open to objection on the ground that the information embraced more than one offence, and whether the Magistrate, having in this respect disregarded the express directions of the Act, 32-33 Vic., c. 31, s. 25, made applicable by the C. T. Act, he might not be said to have acted without jurisdiction: R. *v.* Walsh, 2 O. R., 206.

An information was laid against defendant on 28th Dec., for having, on 25th Dec. sold intoxicating liquor in violation of the C. T. Act. Intoxicating liquors were found on a search being made on 1st January in the bar of the hotel. On this evidence the information was amended at the hearing on 5th January, so as to charge the keeping and not the selling. The defendant was present at the amendment and objected to it, but waived an adjournment and entered upon his defence. He was found guilty, and a conviction was drawn up for keeping intoxicating liquor and returned to the Clerk of the Peace and filed on 17th January. On 27th January a second conviction was drawn up, the same in all respects as the first, except that it was for keeping for sale intoxicating liquor. This was also returned and filed: Held that the Magistrate had power to draw up and return the second conviction, which was warranted by the evidence set out in the report of the case: Held also that there was no variance between the evidence and the information to warrant an amendment, but that the evidence disclosed a new offence, and the amended information became, in fact, a new one, and the defendant, by his presence and by entering on his defence, waived the service of a summons upon him: Held also that it was no objection to the conviction that it was for keeping and selling, while the information charged the keeping only: R. *v.* Bennett, 3 O. R., 45.

Held, Cameron, J., dissenting, that sec. 111 of The C. T. Act, taking away the right to *certiorari*, applies to convictions for all offences against the preceding sections of the Act: R. *v.* Wallace, 4 O. R., 127. See R. *v.* Walker, 13 O. R., 83, cited *post*, p. 316.

Per Hagarty, C. J. and Armour, J., an erroneous finding on the evidence, by

the Magistrate, which was all that was shewn here, is not such a want of jurisdiction as warrants the issue of a *certiorari*: *Ib.*

Per Cameron, J., where there was on the facts set out no evidence of the commission of the offence charged, the Magistrate acted without jurisdiction and a *certiorari* would lie: *Ib.*

Per Armour, J., the omission of the Magistrate to ask accused whether he had been previously convicted did not deprive him of jurisdiction to receive proof of the prior conviction: *Ib.*

The allegation in the conviction that the offence was committed between 30th June and 31st July, was sufficiently certain as to time: *Ib.*

If a double offence is charged in an information, the Magistrate has power to drop one and proceed with the other. But where the information was "for selling liquor," and the conviction for "selling intoxicating liquor and having hotel appliances in the bar-room and premises:" Held that a second offence under section 118 of The C. T. Act, was not embraced in the words used: R. *v.* Klemp, 10 O. R., 143.

An information under the "Scott Act" can be laid before one Justice, although two must try the case: *Ib.* But see next case.

It is imperative under sec. 105, that an information thereunder be laid before two Justices, and that they both be named in the summons. Where, therefore, a summons stated that an information had been laid only before the Justice who signed it, and yet called upon the defendant to appear before another named Justice as well: Held, that the Justices had no jurisdiction, and that the defendants appearing before them did not confer it. The conviction was therefore quashed: R. *v.* Ramsay, 11 O. R., 210, followed in R. *v.* Johnson, 18 O. R., 1. But not followed in R. *v.* Durnion, 14 O. R., 672, in which it was held that the name of the Justice who was not a party to the summons need not be inserted in it.

Where the expression used in the information was "disposal," and in the conviction "sale," there was held to be no variance between them, and if there had been, an amendment of the information would have been made under secs. 116, 117, 118 of the C. T. Act, 1878: R. *v.* Hodgins, 12 O. R., 367.

Held that sec. 122, ss. 2, of the C. T. Act, 1878, does not dispense with strict proof by production of the original record or otherwise of previous convictions where it is sought to impose the increased penalty under sec. 100, and that the certificate mentioned in the section can only be admitted as proof of the number of such convictions.

The defendant was charged with selling liquor contrary to the provisions of the C. T. Act, 1878; the information charged a previous conviction for an offence under the said Act, as follows: "The informant says that the said James Kennedy was previously convicted of an offence against the said Act." A certificate by the convicting Magistrate of a prior conviction was put in at the trial under sec. 122, ss. 2, for the purpose of proving such previous conviction. Held that the proof the fact set out in the report constituted no evidence of any offence, and that the Police Magistrate had therefore no jurisdiction, and the right of *certiorari* was not taken away: R. *v.* Kennedy, 10 O. R., 396. But see next case.

The defendant having been summoned for selling liquor contrary to the second part of the C. T. Act, appeared with his counsel at the hearing and pleaded not guilty, when evidence was given for the prosecution justifying a conviction; but at the defendant's request an adjournment was granted. At the adjourned hearing, at which neither defendant nor his counsel appeared, evidence was given of the service of the summons and of the facts that transpired at the prior hearing, and certificates of two prior convictions were put in and the identity of the defendant proved. The defendant was found guilty and convicted of a third offence against the Act: Held, that the defendant, having

once had the opportunity to defend, could not by his failure to appear at the adjourned hearing defeat the administration of justice, and therefore he was properly found guilty in his absence.

Held, also, that proof of the former convictions by the certificates was sufficient, and upon this question the last case was not followed: R. *v.* Kennedy, 17 O. R., 159.

Held that under sec. 128 of the C. T. Act, 1878, by which the accused is made a competent and compellable witness, he is not bound to criminate himself: R. *v.* Halpin, R. *v.* Daly, 12 O. R., 630. But see cases following:

Held, that under sec. 128 of the C. T. Act, 1878, a defendant is compellable, when called as a witness, to answer questions, even though tending to criminate himself. Where an order quashing a conviction is made upon default of any one appearing to support it, the effect of quashing it, not only involving the restoration of the fine paid by the defendant, but exposing the convicting Magistrate to an action, there is inherent jurisdiction in the Court to open up such order so made.

The jurisdiction of the Court to rehear motions to quash convictions has not been taken away by the Judicature Act, but still exists in the Divisional Courts: R. *v.* Halpin, 12 O. R., 630, not followed: R. *v.* Fee, 18 O. R., 590.

The defendant was convicted before the Police Magistrate of the town of S, for unlawfully keeping for sale intoxicating liquor, etc., at the said town contrary to the C. T. Act, 1878. The depositions were to the effect that the liquor was found upon the premises of the defendant in the said town: Held, that the local jurisdiction of the Police Magistrate sufficiently appeared: R. *v.* Doyle, 12 O. R., 647.

Held, that a search warrant is a proceeding to sustain a charge made for an offence committed against the Act, and not a proceeding taken upon which to found a charge to be made in case liquor is found on the premises (but see next case). Held, however, that although the search warrant was illegally issued, the evidence obtained under it was admissible against the defendant: *Ib.*

An information charging defendant with having sold intoxicating liquor was laid before two Justices of the Peace, and immediately afterwards a further information to obtain a seach warrant was sworn by the same complainant before the same two Justices. Thereupon a warrant to search the premises of the defendant was issued under the hand and seal of one only of the two Justices. Upon search being made, three bottles were found, each containing intoxicating liquor, and it was shewn that there were also found in defendant's house other bottles, some decanters and glasses, and a bar and counter.

On the day following the search the complainant laid a new information before the same two Justices of the Peace, charging the defendant with keeping intoxicating liquor for sale. Upon the hearing, the constables who executed the search warrant were the only witnesses examined, and on their evidence the defendant was convicted.

Upon motion to quash the search warrant and conviction:

Held, that sections 108 and 109 of the Act, were intended to provide process *in rem*, for the confiscation and destruction of liquor, in respect of which a use prohibited by the Statute was being made and not to provide a means of obtaining evidence on which to found a prosecution or support one already begun.

Held, also, that the warrant in this case was illegal because issued by one Justice only.

Held, also, that the operation of sec. 111 of the Act, in taking away the right to *certiorari*, is confined to the case of convictions made by the special officials named in the section.

Held, also, that the presumption of keeping liquor for sale created by sec. 119 of the Act arises only where the appliances for the sale of liquor, mentioned

in the section, together with the liquor, are found in Municipalities in which a prohibitory by-law passed under the provisions of the C. T. Act is in force.

As it appeared that in this case the search warrant had been issued and the defendant's premises searched for the mere purpose of possibly securing evidence upon which to bring a prosecution, the Justices of the Peace and the informant were ordered to pay the defendant's costs: R. *v.* Walker, 18 O. R., 83.

Held that before a search warrant can issue under sec. 108 of the Act, some offence against the provisions of the Act must be shewn to have been committed and that the information for a search warrant and the evidence in this case shewed such a previous offence to have taken place.

Held also that the finding of a barrel of beer connected with a beer pump and all the usual appliances for sale of liquor on defendant's premises was evidence of a keeping for sale, without reference to the special provisions of sec. 119 of the Act (see next case). The fact that the search warrant was executed by the informer, who was also chief constable, was held not to be a ground for quashing the conviction: R. *v.* Heffernan, 13 O. R., 616.

The defendant was charged with the offence of keeping liquor for sale contrary to the provisions of the second part of the C. T. Act. Evidence was given of the finding of certain appliances mentioned in sec. 119.

Held, that apart from the presumption created by that section upon the finding of such appliances, such finding was evidence of a keeping for sale, of the weight of which the Magistrate was the proper judge.

The Magistrate at the close of the case made a minute of adjudication, in which he stated that he found the defendant guilty and imposed a fine of $50 and costs, to be paid by a date named, and awarded imprisonment for 30 days in default of payment. Afterwards when drawing up the formal conviction, the Magistrate adopted the form I 1 in the Schedule to the Summary Convictions Act, directing that in default of payment by the day named the penalty should be levied by distress and sale, and awarding imprisonment for 30 days in default of sufficient distress.

Held (1) that the conviction in the form I 1, was the proper conviction to be made under the combined provisions of sec. 107 of the C. T. Act and secs. 42 and 57 of the Summary Convictions Act, and not form I 2, to which form the minute of adjudication apparently pointed. (2) That the conviction was open to the objection that it did not correspond to the minute of actual adjudication, and therefore could not be supported for want of jurisdiction in the Magistrate to make it. See R. *v.* Higgins, 16 O. R. 148, *post* p. 319. (3) That under secs 117, 118, the Court, upon motion to quash might dispose of the case upon the merits, upon the material returned with the *certiorari*, and that in this case the conviction, being warranted by the evidence, ought to be affirmed and the minute of adjudication amended so as to conform to it: R. *v.* Brady, 12 O. R., 358.

The fact that the second part of the C. T. Act is in force in any County must be proved like any other fact necessary to give jurisdiction: R. *v.* Elliott, 12 O. R., 524. But see R. *v.* Ambrose, 16 O. R., 251, *post* p. 325.

Held, that it was not necessary, in case of conviction, to serve the defendant with a minute of the conviction, as sec. 52 of 31 and 32 Vic., c. 31, (D), only requires such services in case of an order, and that defendant must take notice of the conviction at her peril: R. *v.* Sanderson, 12 O. R., 178.

Where it was alleged that too large a sum had been charged for costs, it was held that the conviction being regular on its face, and not shewing any excess of jurisdiction, such an irregularity (even if it existed), could not be enquired into on an application for prisoner's release: *Ib.*

The Court refused to quash a conviction on the ground that one of the convicting Magistrates had not the necessary property qualification, the defendant

not having negatived the Magistrate's being a person within the terms of the exception or proviso of sec. 7, c. 71, R. S. O.: R. *v.* Hodgins, 12 O. R., 367.

A buyer of liquor cannot in respect of a sale thereof made to him, be regarded as an aider, abettor, counsellor, or procurer, so as to come within sec. 15 of 32-33 Vic., c. 31, (D), and render that section applicable to an offence under the C. T. Act: R. *v.* Heath, 13 O. R., 471.

The omission of the names of the Justices from the summons was held to be no objection where the complaint was tried before the Justices before whom the information was laid: R. *v.* Ramsay, 11 O. R., 210, distinguished; R. *v.* Sproule, 14 O. R., 375.

The Justices properly refused to allow the disclosure of the source of information on which the complaint was founded, but by their refusal to allow a Magistrate sitting on the case, who was called as a witness to be sworn, and to allow the cross examination of the Inspector, in reference to his communication with one of the Magistrates (who was said to be a member of a "Scott Act" Association) and other members of the Association, the defendant was deprived of the right of making a full defence as authorized by sec. 30 of 32-33 Vic., c. 31, (D), and the conviction therefore must be quashed: *Ib.* But this decision was not followed in R. *v.* Brown, 16 O. R., 41, cited p. 320, *post*.

Where the information was laid before two Justices and the summons issued by one of them: Held, that the defendant, by appearing upon the summons, waived the irregularity: Held, also, that an objection that the conviction did not shew upon its face the absence of either of the Justices before whom the information was laid, nor the assent of the other that another Justice should act or take part in the prosecution, was one of form merely, against which secs. 117, 118 sufficiently provided; and even without the aid of such sections it was doubtful whether the objection could prevail: R. *v.* Collins; R. *v.* Goulais, 14 O. R., 613.

A summons recited the information which was taken before two Justices, to have been "laid before the undersigned," who was one of the Justices only, and required the defendant to appear before him, or before the Justices who should be at the time and place named to hear the complaint: Held, that the name of the Justice who was not a party to the summons need not be stated in it (R. *v.* Ramsay, 11 O. R., 210 *ante*, p. 314, not followed on this point), and that although the summons did not conform to the facts, yet as the two Justices who took the information were both present at the hearing, and the defendant was convicted on the merits, the objection to the summons was not entitled to prevail under R. S. C., c. 178, s. 28: R. *v.* Durnion, 14 O. R., 672.

The defendant was convicted of having sold intoxicating liquor contrary to the provisions of the C. T. Act, the conviction stating that he was formerly convicted of a first and second offence and that this was the third offence. The certificate produced to prove the prior convictions, simply stated that Elias Clark was convicted as for a first and second offence against the Canada Temperance Act, 1878, setting forth the dates of the convictions, but not stating the nature of the offences, or whether against the first or second part of the Act: Held, that there was no power to punish as for a third offence unless there have been two prior convictions for offences of the same nature, and as neither the record of conviction nor the evidence shewed this, the conviction must be quashed.

Semble, that if the conviction were well drawn, the similarity of name of the person mentioned in the certificate and the defendant would afford proof of identity: R. *v.* Clark, 15 O. R., 49.

The language of sec. 115 requiring that the Magistrate "shall in the first instance enquire concerning such subsequent offence only, and if the accused is found guilty thereof he shall then, and not before, be asked whether he was so previously convicted," is peremptory; and to give a Magistrate jurisdiction thereunder to enquire as to a previous conviction he must first find the accused

guilty of the alleged subsequent offence. When this was not done the conviction was quashed:

Quære, whether a certificate of a previous conviction is sufficient *prima facie* evidence of identity of the accused with the person of the same name so previously convicted.

Informations and convictions should be drawn with care so as to specify that the offence is against the *second part* of the Statute: R. *v.* Edgar, 15 O. R., 142. But see next case.

It was held that the fees to be paid witnesses in prosecutions such as this are not established by any law, and such are allowed, under sec. 58 of the Summary Convictions Act, as to the Justice seems reasonable; and that the Magistrate did not exceed his jurisdiction by ordering the defendant to pay $3 as Inspector's fee, and $2 for an interpreter (as an interpreter may properly be treated as a witness), and $1 Justice's costs. In any case, however, the award of costs was within the jurisdiction of the Magistrate, and *certiorari* would not, therefore, lie; and the erroneous allowance of certain items of costs would not warrant the quashing of the conviction.

Held, also, that the provisions of sec. 115 are directory only, and when the information specifically charged that the defendant had been previously convicted under the Act, and the affidavit filed by the defendant did not deny the fact, but only the evidence of it, it was held that the question whether the defendant had been previously convicted or not was a matter within the jurisdiction of the Magistrate, and his finding as to it was conclusive: R. *v.* Brown, 16 O. R., 41.

Under the C. T. Act there is no power to order imprisonment at hard labor; and,

Quære, whether there was power to order defendant to pay a sum for two days' attendance of the Inspector and his mileage: R. *v.* Tucker, 16 O. R., 127.

Held that a conviction was bad and must be quashed, because in the award of punishment it was directed that each of the defendants should pay half the fine and costs and that in default of distress the defendants should be imprisoned, and under such award one of the defendants, having paid his half of the fine and costs, might be imprisoned for the other's default; and this defect was not cured by secs. 87 and 88 of the Summary Convictions Act: R. *v.* Ambrose, 16 O. R., 251.

Where the defendant did not appear on the day appointed in the summons, but the day before sent another person to the Magistrate to try and arrange the matter, and the latter pleaded guilty to the information without authority, upon which the Magistrate convicted the defendant in his absence, and without holding any Court or calling any witnesses, the conviction was quashed: R. *v.* Edgar, 17 O. R., 188, cited fully in note (*a*) to sec. 242, *ante*, p. 105.

A summons was served by leaving it with defendant's wife at his hotel. The defendant did not appear, but on the constable proving on oath the manner in which the summons had been served, the P. M. proceeded *ex parte* to hear and determine the case, and convicted the defendant and imposed a fine. The defendant at the time of the service of the summons, was in the States as a witness at a trial there, and there was no evidence that his wife was informed by the constable of the purport of the summons, while the defendant stated that he knew nothing of the matter until four or five days after the conviction had been made, when he received a letter from his wife stating that some Magistrate's papers had been left for him at the hotel.

Held, that under sec. 89 of the Summary Convictions Act, there must in such cases be evidence before the Magistrate, that a reasonable time has elapsed between the service of the summons and the day appointed for the hearing, and there being no such evidence here, the Magistrate acted without jurisdiction

and the conviction must be quashed: R. *v.* Ryan, 10 O. R., 254, overruled; R. *v.* Mabee, 17 O. R., 194.

It is not necessary to charge that the offence was committed through the instrumentality of a clerk, servant, or agent, as the defendant is guilty under sec. 100 and liable to the penalties imposed if the offence is committed by himself or anyone within the class of persons mentioned.

At the trial a lease from defendant to one J. was put in, and the execution proved by a witness, of two rooms in defendant's hotel being where the bar was kept and liquor sold, but neither defendant nor J. appeared as a witness at the trial and there was no evidence as to its *bona fides*. Held, that this was a matter for the Magistrate, and as he found against it the Court could not interfere: R. *v*, Alexander, 17 O. R., 458.

Where the adjudication and minute of conviction did not award distress, but provided that in default of payment forthwith of fine and costs, imprisonment, while the conviction ordered in default of payment forthwith, distress, and in default of sufficient distress, imprisonment: Held, following R. *v.* Brady, 12 O. R., 358, 360, 361, that the conviction was bad: R. *v.* Higgins, 18 O. R., 148.

Held that there was no power under the Act to include the costs of commitment and conveying to gaol, and a conviction imposing a fine of $100 and directing distress on non-payment of the fine, and in default of sufficient distress imprisonment for two months unless the fine and costs including the costs of commitment, &c., were sooner paid was quashed: R. *v.* Tucker, 16 O. R., 127; and R. *v.* Good, 17 O. R., 725, followed; R. *v.* Ferris, 18 O. R., 476.

A prosecution under the Act was commenced by two Justices of the Peace and a summons issued. On the return of the summons, on the application of the defendant, the two Justices were served with a subpœna to give evidence for the defendant on the hearing; whereupon two other Justices (the respondents), at the request of the Justices who began the proceedings, under the provisions of sec. 105 of the Act, heard the case and convicted the appellant. The first Justices, though present in the Court-room as witnesses, took no part in the proceedings, but they issued a warrant of commitment under which the appellant was imprisoned: Held, that as the conviction was good on its face, until set aside, it was a justification for the Justices for anything done under it. Held, also, that upon the facts disclosed the two Justices who issued the summons were "absent" within the meaning of sec. 105 of the Act: Byrne *v.* Arnold, Sup. Ct. Dig., 53.

Amendment.

An amended conviction cannot be put in after the return of the writ of *certiorari*: R. *v.* Mackenzie, 6 O. R., 165.

Where a conviction did not on its face shew that the Act was in force, the Court, on the merits, allowed the return to be amended so as to shew jurisdiction, and for this purpose allowed a further return of the "Gazette" produced as an exhibit but not filed: R. *v.* Elliott, 12 O. R., 524.

An amendment of the original information by changing the date of the offence from the 10th to the 23rd of February, where the parties agreed that the evidence taken should stand for the purposes of the amended charge, instead of having a needless repetition of it, was held to be unobjectionable, and the defendant's application was refused with costs: R. *v.* Hall, 12 P. R., 142.

Disqualifying Interest in Magistrate.

See R. *v.* Klemp, 10 O. R., 143, cited in note (*g*) to sec. 95; followed in R. *v.* Eli, 10 O. R., 727.

The calling of a Magistrate sitting on a case as a witness, does not itself disqualify him from further acting in the case: R. *v.* Sproule, 14 O. R., 375. But see next case.

1. It was contended that the Magistrate had a disqualifying interest, because he had employed and paid agents to secure convictions under the Act, and because he was a strong temperance advocate with an alleged bias in favor of the prosecution in cases under the Act. It was not shewn that he was interested or engaged in promoting or directing the prosecution of this offence, or defraying the expenses of it, or paying agents for evidence to be given upon it: Held, that the statements were of too loose and vague a character to support a finding that the Magistrate was disqualified from sitting.

2. At the hearing the defendant attempted to shew by witnesses that the Magistrate had a disqualifying interest in the case, but the Magistrate refused to admit such evidence: Held, that the evidence was inadmissible, and even if admissible, the rejection of it would not afford ground for quashing the conviction: R. *v.* Sproule, 14 O. R., 375, not followed; R. *v.* Brown, 16 O. R., 41.

Penalty and Punishment.

Notwithstanding Fitzgerald *v.* McKinlay, 21 L. J. N. S., 299, the informer may be entitled to half of the fine: R. *v.* Klemp, 10 O. R., 143.

Secs. 57 and 62 of the Summary Convictions Act, which form part of the C. T. Act, authorize imprisonment not exceeding three months in default of sufficient distress: R. *v.* Doyle, 12 O. R., 347.

Quære, whether for a third offence under the C. T. Act, a fine of $100 cannot also be imposed in addition to imprisonment: *Ib.*

The Magistrate ordered the defendant to pay $1 for the use of the hall for trying the case, and also condemned him, in default of distress, to imprisonment: Held, that in ordering payment of this sum there was a clear excess of jurisdiction, and that ordering distress, etc., was a further excess, and that the matter was one of principle and not of form, and the conviction was quashed: R. *v.* Wallace, 4 O. R., 127, and R. *v.* Walsh, 2 O. R., 206, commented on; R. *v.* Elliott, 12 O. R., 524.

Under the C. T. Act, sec. 100, convicting Justices may inflict a reasonable penalty in excess of $50. Remarks as to their discretion in so doing. A penalty of $60 allowed to stand: R. *v.* Cameron, 15 O. R., 115. But see next case.

The words "not less than $50" and "not less than $100," in sec. 100, should be construed as "$50 and no less" and "$100 and no less," and a summary conviction by a P. M. for a first offence against the Act was quashed because the penalty imposed ($75) was beyond the jurisdiction of the Magistrate (Falconbridge, J., dissenting): R. *v.* Cameron, *supra*, not followed; Simpson *qui tam v.* Pond, 2 Curtis, 502, referred to and approved: R. *v.* Smith, 16 O. R., 454.

The effect of sec 107 of the C. T. Act was to incorporate into it the present secs. 62 and 66 of R. S. C., c. 178: R. *v.* Doyle, 12 O. R., 347. The present secs. 64 and 67 must also be treated as incorporated into it. The result is to enable the Magistrate to order the levy by distress of the penalty and costs, to dispense with such levy, where he thinks it would be useless or ruinous, and to order the defendant to be imprisoned for a term not exceeding three months, unless the penalty and costs, and also the costs and charges of the commitment and conveying the defendant to prison, are sooner paid: Mechiam *v.* Horne, 20 O. R., 267.

Jurisdiction and Authority of Police Magistrate.

A Police Magistrate appointed for a County, as constituted for the purposes of representation in the Ontario Legislature, is not a Police Magistrate for a town situated wholly within such county, (Armour, J., dissenting): R. *v.* Young, 13 O. R., 198; followed in R. *v.* Bradford, 13 O. R., 735; not followed in R. *v.* Roe, 16 O. R., 1, cited *post*, pp. 321, 322.

A Police Magistrate had a commission for the County of Halton, and an

independent and subsequent commission for the town of Oakville; he took the information, and part of the evidence at Georgetown, and then adjourned to Oakville, and subsequently back to Georgetown, where he adjudicated upon the evidence and made the conviction: Held, following R. *v.* Riley, 12 P. R., 98, that the Magistrate had jurisdiction to sit in Oakville under his commission as Police Magistrate for the county, and he consequently had jurisdiction to adjourn as he did: R. *v.* Clark, 15 O. R., 49.

K's commission was issued on 12th January and appointed him P. M. in and for the County of Oxford. It was contended that W. and I., two towns in the County, each had a pop. of more than 5,000 inhabitants, so as to have, by law, each a P. M., which, it must be presumed, was the case; and, therefore, K. could not be P. M. for the county which included these towns, as there could not be more than one P. M. for the same County: Held, that there was no judicial knowledge of the fact of such towns containing such population, and no knowledge of it by affidavit or otherwise; that even if there was more than one P. M. the other might have been appointed subsequently to K., and the appointment of such other and not K. would be void: R. *v.* Atkinson, 15 O. R., 110.

Defendant was, in the village of Parry Sound, convicted by the Stipendiary Magistrate for the district of Parry Sound for a sale in the Township of Humphrey of intoxicating liquor contrary to the C. T. Act, 1878: Held, that the Township of Humphrey was within the territorial limits of the County of Simcoe, and that the Act being in force in that County was in force in the Township of Humphrey.

Judgment of Armour, J., in R. *v.* Shavelear, 11 O. R., 727, qualified: Held, also, that the Township of Humphrey formed also part of the district of Parry Sound for certain judicial purposes, and the Stipendiary Magistrate for the district had jurisdiction to try offences against the C. T. Act in that Township: R. *v.* Monteith, 15 O. R., 290.

On 17th Nov., 1886, G. was appointed P. M. for the County of Brant, exclusive of the City of Brantford, during pleasure: Held, by Robertson, J., that he had authority to hear and determine a complaint charging an offence in the Township of South Dumfries, in the Co. of Brant, at the city of Brantford. Held, also, that the commission was properly issued during pleasure, and that it was not necessary under sub-sec. (*b*), sec. 103, that the town of Paris should be excluded from the operation of the commission; but *quære*, whether the P. M. could try an offence arising within such town. Held, also, that the P. M. was not required to exercise the functions of his office at a Police Court set apart and appointed by law therefor, and under 48 Vic., c. 17, s. 4 (O.), he had the right to occupy the Court room.

Quære, whether it was intended that he should hear the complaint, or whether there was power to give alternative jurisdiction to do so; but this was not a ground for prohibition.

Held, also, that the appointment of the P. M. is not *ultra vires* of the Legislature of Ont: R. *v.* Bennett, 1 O. R., 445, followed; on appeal to the Divisional Court the judgment was affirmed: R. *v.* Lee, 15 O. R., 353.

The words "being within the jurisdiction of such Justice" in sec. 18 of the Summary Convictions Act refer to the time when the offence was committed, and not to the time when the information was laid: R. *v.* Bachelor, 15 O. R., 641. See notes on pages 194 and 218, *ante*.

A person having a commission as a P. M. for the County of H., such commission not excluding the town of W., and also having a separate commission for the towns of W., O., G. and S., respectively, all being in the County of H., convicted the defendant at W. of an offence against the Act committed at W., but upon an information taken before him at C.: Held, having regard to the provisions of sec. 103*b* of the C. T. Act, R. S. C. c. 106, and of R. S. O. c. 72, s. 11, that the Magistrate had jurisdiction by virtue of his commission for the

County over the offence committed at W., and had also jurisdiction by virtue thereof to take the information and issue the summons at C., and the fact that he described himself in the information and summons as Police Magistrate for the town of W. did not deprive him of the jurisdiction which he had as P. M. for the County: R. *v.* Young, 18 O. R., 198, not followed.

Quære, whether the defendant could object to the regularity of the information and summons, he having appeared in obedience to the summons, and pleaded not guilty: R. *v.* Roe, 16 O. R., 1.

The defendant was convicted by two Justices of the Peace of the district of M., for selling liquor at the village of B., in the District of M. The Act was in force in the village of B. only by reason of its being for municipal purposes within the County of V., within which County the Act was in force, and there was no evidence to shew that the Act was in force in the district of M., within which B. was situated: Held, that the Justice of the Peace of M. district had no jurisdiction to convict the defendant, for he could only be convicted by Justices of the Peace whose commission ran with V. county: R. *v.* Higgins, 18 O. R., 148.

The defendant was the salaried Police Magistrate for the County of O. in which the Act was in force prior to 11th May, 1889, when it was revoked.

On 11th January, 1889, the plaintiff was convicted of a second offence and adjudged to pay a fine of $100 and $12.05 costs.

On the 20th March, 1889, the defendant issued a warrant of commitment reciting plaintiff's conviction before him and the imposition of the fine and costs, declaring that the plaintiff had no chattels, and directing her committal to gaol for 60 days "unless the said several sums and all the costs and charges of the said distress and of the commitment and conveying the said N. M. to the said common gaol, amounting to the further sum of 75 cents and shall be sooner paid unto you."

At the trial of an action for the arrest and imprisonment of the plaintiff under this commitment, a conviction of the plaintiff was put in dated 11th January, 1889, but which was not drawn up till February, 1889. The conviction adjudged that the plaintiff should pay the penalty and costs according to the adjudication, and if these sums were not paid forthwith, then, inasmuch as it had been made to appear that the plaintiff had no goods or chattels whereon to levy by distress, that she should be imprisoned for 60 days, unless these sums and the costs and charges of conveying to gaol should be sooner paid.

The conviction had not been quashed.

It appeared by the examination of the defendant that the 75 cents in the warrant was charged for the warrant, and that the blank was left for the constable to fill in the costs of conveying to gaol. The constable, however, did not fill in the costs, but indorsed a memorandum of them on the back of the warrant, making them $18.40.

Held, that the Magistrate could order the levy by distress of the penalty and costs, and dispense therewith where he thought it would be useless or ruinous, and order the person convicted to be imprisoned for not more than three months, unless the fine and costs and also costs of the commitment and conveying to gaol were sooner paid.

2. That the warrant of commitment went beyond the conviction by directing a detention for the costs of commitment, as well as of the conveying to gaol, but as the only sum for which the gaolor could have lawfully detained the plaintiff was the sum of 75 cents mentioned in the warrant, and the costs of conveying to gaol greatly exceeded that sum, there was no excess in the warrant.

3. That the only evidence given at the trial with regard to defendant's appointment was quite consistent with his being in office at a salary under an

appointment which did not expire with the C. T. Act, it could not be said that the conviction drawn up in February, 1890, was a nullity.

4. That if the plaintiff was detained on account of the charges of the constable indorsed on the warrant, it was not the act of the defendant, for he never gave any authority to the constable to require the gaoler to detain the plaintiff for any sum not inserted in the warrant.

5. That as the conviction stated that it had been made to appear to the Magistrate that there was no sufficient distress, and the conviction had not been quashed, evidence would not have been admissible to shew that there was sufficient distress.

6. That the commitment having been authorized by a lawful conviction, which had not been quashed, the plaintiff was properly non-suited.

7. That at all events the defendant was entitled to the protection of R. S. O., c. 73: Meehiam *v.* Horne, 20 O. R., 267.

Costs of Application to Quash.

Costs of the application to quash a conviction were adjudged against a private prosecutor where he laid the information without having reasonable grounds for believing the charge would be sustained by proper evidence: R. *v.* Kennedy, 10 O. R., 896; R. *v.* Beard, 13 O. R., 608.

Where personal service of the summons was not effected, the defendant did not appear, and the Magistrate proceeded *ex parte* and convicted him, the conviction was quashed, but as it appeared that the defendant had attempted to tamper with the informant, without costs: R. *v.* Ryan, 10 O. R., 254; overruled in R. *v.* Mabee, 17 O. R., 194, cited *ante*, p. 318.

Appeal from Order quashing Conviction.

The defendant, who was convicted by two Justices under the C. T. Act, removed the conviction by *certiorari*, and the same was quashed. On appeal to the Court of Appeal: Held, that there was no jurisdiction in this Court to hear the appeal, and the same was therefore quashed, with costs to be paid by the informant: R. *v.* Eli, 13 App. R., 526.

It was held that there was no appeal from an order of the Court of Q. B. for Manitoba, quashing a conviction: R. *v.* Nevins, Sup. Ct. Dig., 246.

Application of Fines.

The C. T. Act came into force in the united counties of L. & G. on 1st May, 1886. On 2nd June, 1886, the Parliament of Canada passed the Act, 49 Vic., c. 48, s. 2, which provided that the Governor-in-Council might, from time to time, direct that any fine, etc., which would otherwise belong to the Crown for the public uses of Canada, should be paid "to any provincial, municipal or local authority which, wholly or in part, bore the expenses of administering the law under which such fine, etc., was enforced, or that the same should be applied in any other manner deemed best adapted to attain the objects of such law, and to secure its due administration."

On 29th Sept., 1886, an order-in-council was passed, directing that all fines, etc, recovered or enforced under the Act, which would otherwise belong to the Crown for the public uses of Canada, should be paid to the Treasurer of the City or County, as the case might be, for the purposes of the Act.

On 15th Nov., 1886, a second order-in-council was passed, directing that the first should be cancelled, and that all fines, etc., recovered or enforced under the Act within *any City or County, or any incorporated Town separated for municipal purposes from the County*, should be paid to the Treasurer of the City, Incorporated Town, or County, as the case might be, for the purposes of the Act.

The Town of B. was, at the time the Act was brought into force, an incorporated Town, separated from the Counties of L. and G. for municipal purposes; and between the dates of the two orders-in-council, the Police Magistrate of the town paid to the Treasurer of the Counties $750, the amount of fines recovered and enforced by him for violations of the C. T. Act within the Town:

Held, (Street, J., dissenting), that in the absence of any application by the Treasurer of the Counties of the money so paid to him, the Town of B. was entitled to recover it from the Counties. The passing of the second order-in council was a complete revocation of the first, and the second was retroactive, in the sense that it provided for the application of all fines, etc., theretofore recovered or enforced. Per Street, J.; the first order-in-council operated as a gift from the Crown to the Municipality, with an intimation added as to the purpose to which it was expected the gift would be applied, but carrying with it no legal obligation that it should be applied in any particular manner. It was a complete gift; the money was finally at home, so far as the Crown was concerned, when the Municipality received it, and the revocation of the order could not revoke a completed transaction, nor retract that which had been actually done under it: United Counties of Leeds and Grenville *v.* Town of Brockville, 17 O. R., 261.

See Fitzgerald *v.* McKinlay, Sup. Ct. Dig., 52.

Adjournment.

Where an adjournment of the proceedings before the Magistrate for more than a week had been made at the request of the defendant, who afterwards attended on the resumed proceedings, taking his chances of securing a dismissal of the prosecution, and urging that on the evidence it ought to be dismissed, defendant had estopped himself from objecting afterwards that such proceedings on the prosecution were on this ground illegal:

Semble, that the provisions of sec. 46 of 32, 33 Vic., c. 31 (D.), that no such adjournment shall be "for more than one week" are directory merely: R. *v.* Heffernan, 13 O. R., 616.

It was held, in a case decided previous to the case of R. *v.* Heffernan, *supra*, that where a Magistrate adjourned a case for more than a week, contrary to 32, 33 Vic., c. 31, s. 46 (D.), the conviction was bad and that the consent of the defendant to the adjournment, if proved, would not have given jurisdiction. The conviction was therefore quashed: R. *v.* French, R. *v.* Robertson, 13 O. R., 80. But this does not appear to be in accord with the majority of decisions upon the question, and was not followed by Robertson, J., in R. *v.* Heffernan, *supra*, nor by Boyd, C., in R. *v.* Hall, 12 P. R., 142. See also R. *v.* Hughes, 4 Q. B. D., 618, at pp. 628, 633; R. *v.* Shaw, 10 Cox. C. C., 66; Queen *v.* Smith, L. R. 2 C. C., 110; Queen *v.* Widdop, L. R. 1 C. C., 3; R. *v.* Stone, 1 East, 639, 648; Blake *v.* Beech, 1 Ex. D., 320; 12 L. T. N. S., 470.

Sec. 46 provides that the hearing may be adjourned to a certain time and place, but no such adjournment shall be for more than a week: Held, that the week must be computed as seven days, exclusive of the day of adjournment: R. *v.* Collins, R. *v.* Goulais, 14 O. R., 618.

Where at the conclusion of the evidence, the Magistrate reserves his judgment for the purpose of reaching a decision or of considering the amount of the penalty, he is not restricted to one week mentioned in sec. 48, R. S. C., c. 178: R. *v.* Alexander, 17 O. R., 458.

In another case it was held that 32, 33 Vic. c. 31, s. 46, (D), which is to be read into the C. T. Act by virtue of sec. 107, applies only to an adjournment of the hearing or the further hearing of the information or complaint, which is quite a distinct thing from the adjudication or determination of the charge after the hearing is completed. Justices are not obliged to fix the fine or punishment at the instant of conviction, but may take time either for the purpose of informing themselves as to the legal penalty, or the amount proper to be

imposed, or of taking advice as to the law applicable to the case. An adjournment after the case had closed for fourteen days in order to consider and give judgment was held to be regular: R. *v.* Hall, 12 P. R., 142.

Certiorari.

Held, that the conviction not having been made by a Stipendiary Magistrate, etc., under sec. 111, was appealable or removable by *certiorari*: R. *v.* Klemp, 10 O. R., 143.

In cases where the Magistrate has jurisdiction *certiorari* is absolutely taken away, but an appeal to the sessions still exists, which, however, is itself taken away by sec. 111 when the conviction is before a Stipendiary Magistrate: R. *v.* Ramsay, 11 O. R., 210.

A prisoner having been convicted of an offence, an application for her release was made under *habeas corpus*, and a writ of *certiorari* also issued: Held, that the writ of *certiorari* must be superseded, and following R. *v.* Wallace, 4 O. R., 127, that such writ cannot issue merely for the purpose of examining and weighing the evidence taken before the Magistrate, though it no doubt lies where the Magistrate is proceeding without any jurisdiction: R. *v.* Sanderson, 12 O. R., 178.

Held that the operation of sec. 111 of the Act in taking away the right to *certiorari* is confined to the case of convictions made by the special officials named in the sec.: R. *v.* Walker, 13 O. R., 83.

Where there is no evidence that any beverage of an intoxicating character has been sold and therefore no evidence to support a conviction, the Magistrates have no jurisdiction, and the conviction was therefore quashed with costs against the prosecutor: R. *v.* Beard, 13 O. R., 608.

Held, (Cameron, J., dissenting) that sec. 111 taking away the right to *certiorari* applies to convictions for all offences against the preceding secs. of the Act: R. *v.* Wallace, 4 O. R., 127.

Held, that the defendants were not entitled to *certiorari* to remove the conviction on the ground that the Act was not proved to be in force, because on their application for the *certiorari* they did not shew affirmatively that the Act was not in force then: R. *v.* Ambrose, 16 O. R., 251. See also cases cited in notes on pages 242-247 and in appendix of forms, *post*.

Revision of Dominion Statutes.

Where the information and conviction were drawn up for an offence against the C. T. Act, 1878, while the Revised Statutes of Canada were in force before and at the time of the information and proceedings had thereon, an offence was proved to have been committed both before and after the Revised Statutes came into force: Held, that the charge as laid and proved must be treated as if under the original Act, which by the Act respecting the Revised Statutes of Canada, 49 Vic. c. 4, s. 7 (D.), was not absolutely repealed so as to affect any penalty, etc., incurred before the time of such repeal: R. *v.* Durnion, 14 O. R., 672.

The effect of the revision of the Statutes brought into force by Royal Proclamation, March 1st, 1887, though in form repealing the Acts consolidated is really to preserve them in unbroken continuity, and the adoption of the C. T. Act by Municipalities prior to that revision has not been changed or interfered with by it. The alterations made in the phraseology of the Act by the revision are not vital and do not materially change its character or effect: License Com. of Prince Edward *v.* Co. of Prince Edward, 26 Gr., 452; License Com. of N. R. of Norfolk *v.* Co. of Norfolk; License Com. of Frontenac *v.* Co. of Frontenac, 14 O. R., 741.

TEMPERANCE ACT, 1864.

BY-LAWS.

Publication of.—Held, that publication of by-law on 12th January, appointing 7th February for the poll, was not a compliance with the provision requiring four weeks publication: *In re* Coe and The Cor. of Pickering, 24 U. C. R., 439.

Nor was a notice published on 2nd, 9th, 16th and 23rd for a meeting of electors to be held on 4th Nov. at 2 p. m., as the Statute requires the meeting to be at 10 a. m., and to be held within the next week next after the fourth week of publication: *In re* Miles and The Cor. of Richmond, 28 U. C. R., 333.

An omission to publish the requisition, as well as the by-law, as required by the Act, was held a ground for quashing the by-law: Day and The Cor. of Storrington, 38 U. C. R., 528.

Where an application to quash a by-law did not allege an irregularity in the publication which prejudiced the voting, the application was refused: Wycott and The Cor. of Ernestown, 38 U. C. R., 535. The notice of taking the poll need not state the number of days the poll will be kept open: Hamilton and The County of Brant, 41 U. C. R., 253; Malone and The County of Grey, 41 U. C. R., 159.

Where the notice was not put up in several Municipalities in time, and was not put up in four public places, and it appeared but for these irregularities the result might have been different, the by-law was quashed: Mace and The County of Frontenac, 42 U. C. R., 70.

It was held that the withdrawal of a by-law after it had been published once did not prevent its being published again and voted upon, where there was no charge of bad faith, and it was not shewn that the result was affected, or that the ratepayers were misled: Lake and The County of Prince Edward, 26 C. P., 178.

A by-law was quashed on the ground that the requisition was not published for four consecutive weeks, although there was no reason to suppose that any one had been prejudiced by the omission and three-fourths of the electors had voted; a misnomer of the Corporation in the rule was held immaterial: Brophy and The Cor. of Gananoque, 26 C. P., 290.

Taking the Poll.—Held, that the provision of sec. 3, sub-sec. 3, was imperative, and in the absence of the proper person appointed to preside no poll could be taken: Hartley and The Cor. of Emily, 25 U. C. R., 12.

Where the poll was opened and closed by the proper person, and the affidavits on which the application was made to quash the by-law were contradictory as to the length of and reason for his absence in the meantime, an application to quash a by-law was refused: McLean and The Cor. of Bruce, 25 U. C. R., 619.

See also Miles and the Cor. of Richmond, 28 U. C. R., 333; Malone and the County of Grey, 41 U. C. R., 159.

Voters' Lists.—Held that an irregularity in the verification of the Assessment Rolls was not a ground for quashing the by-law, neither the correctness of the Roll nor the right of any person to vote being impugned: Lake and the County of Prince Edward, 26 C. P., 178. The by-law may be passed and vote taken as prescribed in the Act. The machinery provided in the Municipal Act, 1873, sec. 231, need not be resorted to: Lake and the County of Prince Edward, 26 C. P., 178.

As to question of the use of Assessment Rolls instead of Voters' Lists and the use of the rolls of 1877 instead of those of 1876, see Reubottom and the United Counties of Northumberland and Durham, 42 U. C. R., 359.

Held also that an applicant to quash a by-law is confined to the specific illegality pointed out in the rule: *Ib.*

Time of Polling.—See Johnson and the County of Lambton, 40 U. C. R., 297; Malone and the County of Grey, 41 U. C. R., 159; Hamilton and the County of Brant, 41 U. C. R., 253; Lake and the County of Prince Edward, 26 C. P., 173.

Other Cases.—Where a defect in a by-law was one of "procedure or form" only, the Court refused to quash the by-law: Boon and the County of Halton, 24 U. C. R., 361.

The Court would not quash a by-law although no one appeared in support of it, without seeing that the objections were fatal: Hartley and the Cor. of Emily, 25 U. C. R., 12.

Semble, that any of the electors might be heard to support a by-law if the Council should fail to appear: Mace and the Cor. of Frontenac, 42 U. C. R., 70. Where there was no seal to the by-law, it was held that there being no by-law it could not be quashed, but the rule to quash it was discharged without costs: Mottashed and the County of Prince Edward, 30 U. C. R., 74.

A by-law which provided that it should come into force on a day different from that on which the Statute declares it is to come into force, was held illegal. It should contain only the simple declaration of prohibition: O'Neil and the County of Oxford, 41 U. C. R., 170.

As to description of the Corporation and certificate of returning officer, see Lake and the County of Prince Edward, 26 C. P. 173.

Illegal Sale of Liquor.—As to application of penalties where the Collector of Inland Revenue prosecutes under the Temperance Act, 1864, see *re* McCall, 2 L. J. N. S., 16. The conviction must adjudge that the penalty shall be paid to the party entitled according to one of the provisions of the Act to receive it: *Ib.*

This Act, and 28 Vic., c. 22, for the punishment of persons selling liquor without license are intended to stand together. The first is limited to Municipalities where a temperance by-law is in force and suspends the second there during the continuance of such by-law, leaving it to apply elsewhere in Upper Canada. Where the Act gives jurisdictions only to two Justices and a conviction was made by one sitting alone, the latter was liable in trespass, but that the conviction, though void, must be quashed before such action would lie: Held, also, that where the plaintiff was committed to prison to be kept at hard labor, the evidence of the turnkey that he "did no hard work in the gaol," was not sufficient to negative that he was put to some compulsory work so as to protect the Magistrate: Graham *v.* McArthur, 25. U. C. R., 478.

See also *in re* Watts and *in re* Emery, 5 P. R., 267, cited *ante*, p. 245; R. *v.* Prittie, 42 U. C. R., 612; R. *v.* Lake, 43 U. C. R., 515; 7 P. R., 215, cited in note (*e*), sec. 141, *ante*.

Liability of Inn-keepers.—See McCurdy *v.* Swift, 17 C. P., 126; Bobier *v.* Clay, 27 U. C. R., 438; Gleason *v.* Williams, 27 C. P., 93, cited in notes to secs. 123-125.

See also R. *v.* Ray, 44 U. C. R., 17, in which the Court refused a *mandamus* to a Magistrate to issue a distress warrant on a conviction made by him where the by-law and conviction were open to grave objections which had been taken on the trial before him.

The issuers of licenses under 37 Vic., c. 32 (O.), were held to supersede the Collector of Inland Revenue under The Temperance Act, 1864; and under that Act and 39 Vic., c. 26 (O.), it was held unnecessary to deliver a copy of a by-law to the Collector of Inland Revenue: *Re* Lake and Blakeley, 40 U. C. R., 102.

See also cases cited in sections applicable to particular offence under the Liquor License Act.

The Quebec License Act and its amendments were held to be *intra vires* of the Provincial Legislature, and a conviction of a drayman employed by a firm of licensed brewers for having sold beer outside the business premises of the firm in contravention of the License Act, was sustained on the ground that the Court of Special Sessions of the Peace at Montreal, having jurisdiction to try the alleged offence and being the proper tribunal to decide the question of facts and of law involved, a writ of prohibition would not lie: per Taschereau and Gwynne, J. J., that the case was one which it was proper for the Superior Court to deal with by proceedings on prohibition.

Per Gwynne, J., The Quebec License Act of 1878, imposes no obligation upon brewers to take out a Provincial License to enable them to sell their beer, and therefore the Court of Special Sessions of the Peace had no jurisdiction and prohibition should issue absolutely: Molson *v.* Lambe, 15 S. C. R., 253.

FORMS.

SCHEDULE A.

(Section 30.)

FORM OF BOND BY APPLICANT FOR A TAVERN LICENSE.

Know all men by these presents, that we *T. U.*, , *V. W.*, of and *X. Y.*, of , are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in the penal sum of $400 of good and lawful money of Canada—that is to say, the said *T. U.*, in the sum of $200, the said *V. W.*, in the sum of $100, and the said *X. Y.*, in the sum of $100 of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, firmly by these presents.

Whereas the above bounden *T. U.* is about to obtain a license to keep a tavern or house of entertainment in the of ; the condition of this obligation is such, that if the said *T. U.*, pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereafter to be in force, relative to any tavern or house of public entertainment, and does, performs and observes all the requirements thereof, and conforms to all rules and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands, and sealed them with our seals, this day of , A. D. 18 .

T. U. [L. S.]
V. W. [L. S.]
X. Y. [L. S.]

Signed, sealed and delivered in the presence of us.

R. S. O. 1877, c. 181, *Sched.* A.

SCHEDULE B.

(Section 31.)

FORM OF BOND BY APPLICANT FOR A SHOP LICENSE.

Know all men by these presents, that we, *T. U.*, of *V. W.* of and *X. Y.*, of , are held and firmly bound unto Her Majesty Queen Victoria, Her Heirs and Successors, in the penal sum of $400 of good and lawful money of Canada—that is to say, the said *T. U.* in the sum of $200, the said *V. W.* in the sum of $100, and the said *X. Y.* in the sum of $100 of like good and lawful money, for payment of which well and truly to be made, we bind ourselves and each of us, our heirs, executors and administrators, firmly by these presents.

Whereas the above bounden *T. U.* is about to obtain a license to keep a shop wherein liquor may be sold by retail in the of ; the condition of this obligation is such, that if the said *T. U.* pays all fines and penalties which he may be condemned to pay for any offence against any statute or other provision having the force of law, now or hereinafter to be in force, relative to any shop wherein liquor may be sold by retail, and does, performs and observes all the requirements thereof, and conforms to all rules

and regulations that are or may be established by competent authority in such behalf; then this obligation shall be null and void, otherwise to remain in full force, virtue and effect.

In witness whereof, we have signed these presents with our hands, and sealed them with our seals, this day of , A. D. 18 .

T. U. [L. S.]
V. W. [L. S.]
X. Y. [L. S.]

Signed, sealed and delivered in the presence of us.

R. S. O. 1877, c. 181, *Sched.* B.

SCHEDULE C.

(*Sections 94 and 103.*)

GENERAL FORM OF INFORMATION.

ONTARIO, County of York, To Wit: } THE INFORMATION of *A. B.* of the Township of York, in the County of York, License Inspector laid before me *C. D.*, Police Magistrate, in and for the City of Toronto [*or* one of Her Majesty's Justices of the Peace, in and for the County of York], the day of A. D. 18 .

The said informant says, he is informed and believes that *X. Y.* on the day of A. D. 18 , at the Township of York, in the County of York, unlawfully did sell liquor without the license therefor by law required [*or as the case may be—see forms in Schedule D.*]

A. B.

Laid and signed before me the day and year, and at the place first above mentioned.
C. D.
P. M. or J. P.

R. S. O. 1877, c. 181, *Sched.* C.

SCHEDULE D.

(*Section 103.*)

FORMS FOR DESCRIBING OFFENCES.

1. *Neglecting to keep license exposed.* (Section 47.)

"That *X. Y.* having a license by wholesale [*or* a shop, *or* a tavern, *or* a vessel license] on at unlawfully and wilfully (*or* negligently) omitted to expose the said license in his warehouse [*or* shop, *or* in the bar-room of his tavern, *or* in the bar-saloon, *or* bar-cabin of his vessel," *as the case may be.*]

2. *Neglecting to exhibit notice of license.* (Section 48.)

"That *X. Y.*, being the keeper of a tavern [*or* inn *or* house *or* place of public entertainment] in respect of which a tavern license has duly issued and is in force, on at unlawfully did not exhibit over the door of such tavern [or inn, etc.,] in large letters the words, 'Licensed to sell wine, beer, and other spirituous or fermented liquors,' as required by *The Liquor License Act.*"

3. *Sale without license.* (Section 49.)

"That *X. Y.*, on the day of A. D. 18 at

in the County of unlawfully did sell liquor without the license therefor by law required."

4. *Keeping liquor without license.* (Section 50.)

"That *X. Y.*, on at unlawfully did keep liquor for the purpose of sale, barter and traffic therein, without the license therefor by law required."

5. *Sale of liquor on licensed premises during prohibited hours.* (Sections 54 and 71.)

"That *X. Y.*, on at in his premises [*or* on, *or* out of, *or* from, his premises] being a place where liquor may be sold, unlawfully did sell [*or* dispose of] liquor during the time prohibited by *The Liquor License Act* (*or* by by-law of the Municipal Council of *or* of the License Commissioners for the District of *or as the case may be*), for the sale of the same, without any requisition for medical purposes as required by said Act being produced by the vendee or his agent."

6. *Allowing liquor to be drunk on licensed premises during prohibited hours.* (Sections 54 and 71.)

"That *X. Y.*, on at in his premises, being a place where liquor may be [*or* is] sold, by retail [*or* wholesale] unlawfully did allow [*or* permit] liquor to be drunk in such place during the time prohibited by *The Liquor License Act* for the sale of the same, by a person other than the occupant, or some member of his family, or a lodger in his house."

7. *Sale of less than three half-pints under shop license.* (Section 2 (3).)

"That *X. Y.*, having a shop license on at unlawfully did sell liquor in less quantity than three half-pints."

8. *Sale under wholesale license in less than wholesale quantities.* (Sections 2 (4), and 51.)

"That *X. Y.*, having a license to sell by wholesale on at unlawfully did sell liquor in less quantity than five gallons [*or*, than one dozen bottles of three half-pints each, *or* than two dozen bottles of three-fourths of a pint each]."

9. *Allowing liquor to be consumed in shop.* (Section 60.)

"That *X. Y.*, having a shop license on at unlawfully did allow liquor sold by him (*or* in his possession), and for the sale of which a license is required, to be consumed within his shop [*or* within the building of which his shop forms part, *or*, within a building which communicates by an entrance with his shop], by a purchaser of such liquor [*or*, by a person not usually resident within the building of which such shop forms a part.]"

10. *Allowing liquor to be consumed on premises under wholesale license.* (Section 61.)

"That *X. Y.*, having a license by wholesale, on at unlawfully did allow liquor sold by him [*or* in his possession for sale] and for the sale of which such license is required, to be consumed within his warehouse [*or* shop, *or* within a building which forms part of, (*or* is appurtenant to *or* which communicates by an entrance with a warehouse *or* shop, *or* premises) wherein an article to be sold (*or* disposed of) under such license, is sold by retail (*or* wherein there is kept a broken package of an article for sale under such license)]."

11. *Illegal sale by druggists.* (Section 52.)

"That *X. Y.*, being a chemist [*or* druggist] on at did unlawfully sell liquor for other than strictly medicinal purposes [*or* sell liquor in packages of more than six ounces at one time without a certificate from any registered medical practitioner, *or* sell liquor without recording the same], as required by *The Liquor License Act.*

12. *Illegal sale under vessel license.* (Section 59.)

"That *X.* Y., being authorized to sell liquor on a vessel called the *Spartan*, on at unlawfully did sell [*or* dispose of] liquor to be consumed by a person other than a passenger on such vessel while in port [*or* unlawfully did allow liquor to be consumed on such vessel during the time prohibited by *The Liquor License Act* for the sale of the same, without any requisition for medical purposes, as required by said Act]."

13. *Keeping a disorderly house.* (Section 79.)

"That *X. Y.*, being the keeper of a tavern [*or* ale-house, *or* beer-house, *or* house of public entertainment], situate in the City [*or* Town, *or* Village, *or* Township], of in the County of on in his said tavern [*or* house] unlawfully did sanction [*or* allow] gambling, [*or* riotous, *or* disorderly conduct] in his said tavern [*or* house].

14. *Harbouring constables on duty.* (Section 80.)

"That *X. Y.*, being licensed to sell liquor at on unlawfully and knowingly did harbour [*or* entertain *or* suffer to abide and remain on his premises] *O. P.*, a constable belonging to a police force, during a part of the time appointed for his being on duty, and not for the purpose of quelling a disturbance or restoring order, or executing his duty."

15. *Compromising or compounding a prosecution.* (Section 81.)

"That *X. Y.*, having violated a provision of *The Liquor License Act*, on at unlawfully did compromise [*or* compound, *or* settle, *or* offer, *or* attempt to compromise, compound *or* settle], the offence with *A. B.*, with the view of preventing any complaint being made in respect thereof [*or* with the view of getting rid of *or* of stopping, *or* of having the complaint made in respect thereof dismissed, *as the case may be*]."

16. *Being concerned in compromising a prosecution.* (Section 82.)

"That *X. Y.*, on at unlawfully was concerned in [*or* a party to] a compromise [*or* a composition, *or* a settlement] of an offence committed by *O. P.*, against a provision of *The Liquor License Act*."

17. *Tampering with a witness.* (Section 84.)

"That *X. Y.*, on a certain prosecution under *The Liquor License Act*, on at unlawfully did tamper with *O. P.*, a witness in such prosecution before [*or* after] he was summoned [*or* appeared] as such witness on a trial [*or* proceeding] under the said Act, [*or* unlawfully did induce, *or* attempt to induce *O. P.*, a witness in such prosecution, to absent himself, *or* to swear falsely]."

18. *Refusing to admit policeman.* (Section 130.)

"That *X. Y.*, on the at being in (*or* having charge of) the premises of *O. P.*, being a place where liquor is sold [*or* reputed to be sold], unlawfully did refuse [*or* fail] to admit [*or* did obstruct *or* attempt to obstruct] *E. F.*, an officer demanding to enter in the execution of his duty [*or* did obstruct *or* attempt to obstruct *E. F.*, an officer making searches in said premises, and in the premises connected with such place]."

19. *Officer refusing to prosecute.* (Sections 129 and 134.)

"That *X. Y.*, being a police officer [*or* constable, *or* Inspector of Licenses] in and for the Township of York, in the County of York, knowing that *O. P.* had on at committed an offence against a provision of *The Liquor License Act*, unlawfully and wilfully did and still does neglect to prosecute the said *O. P.*, for his said offence."

R. S. O. 1877, c. 181, *Sched. D.*

SCHEDULE E.

(Section 103.)

FORM OF INFORMATION FOR SECOND, THIRD, OR FOURTH OFFENCE.

ONTARIO, County of York, To Wit: } THE INFORMATION of *A. B.*, of etc., License Inspector, laid before me *C. D.*, Police Magistrate in and for the City of Toronto [*or* one of Her Majesty's Justices of the Peace in and for the County of York], the day of , A. D. 18 .

The said Informant says he is informed and believes that *X. Y.* on at [*describe last offence*].

And further that the said *X. Y.* was previously, to wit: on the 15th day of December, A. D. 1886, at the City of Toronto, before *C. D.*, Police Magistrate in and for the City of Toronto, [*or* at the Township of York, in the County of York, before *E. F.* and *G. H.*, two of Her Majesty's Justices of the Peace for the County of York], duly convicted of having on the 30th day of November, 1886, at the Village of Aurora in the County of York, unlawfully sold liquor without the license therefor required by law [*or as the case may be*].

And further that the said *X. Y.* was previously, to wit: on the 28th day of November, A. D. 1886, at the Township of Vaughan, in the County of York, before, etc., [*as in preceding paragraph*], again duly convicted of having on the 10th day of November, A. D. 1886, at the Township of Etobicoke, in the County of York, having a shop license, unlawfully allowed liquor to be consumed within a building which communicates by an entrance with his shop, by a person not usually resident within the building of which such shop forms a part [*or as the case may be*].

And further, that the said *X. Y.* was previously, to wit: on the 30th day of October, A. D. 1886, at the Town of Newmarket, in the County of York, before, etc. (*see above*,) again duly convicted of having, on the 25th day of September, A. D. 1886, at the Village of Aurora, in the County of York (being in charge of the premises of *O. P.*, a place where liquor was reputed to be sold), unlawfully failed to admit *E. F.*, an officer demanding to enter in the execution of his duty.

And the Informant says the offence hereinbefore firstly charged against the said *X. Y.* is his fourth offence against *The Liquor License Act*.

A. B.

Laid and signed before me the day and year, and at the place first above mentioned,

C. D.,
J. P.

R. S. O. 1877, c. 181, *Sched. E.*

SCHEDULE F.

(Section 103.)

SUMMONS TO WITNESS.

ONTARIO, County of York, To Wit: } To *J. K.*, of the City of Toronto, in the County of York,

Whereas, information has been laid before me, *C. D.*, one of Her Majesty's Justices of the Peace in and for the County of York (*or* Police Magistrate for the City of Toronto), that *X. Y.*, being a druggist, on the 10th day of January, A. D. 18 , at the Township of Vaughan, in the County of York, unlawfully did sell liquor for other than strictly medicinal purposes, and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecutor in this behalf.

These are to require you, under pain of imprisonment in the Common Gaol, personally to be and appear on Tuesday, the 16th day of January, A. D. 18 , at ten o'clock in the forenoon, at the Town Hall, in the Village of Richmond Hill, before me or such Justice or Justices of the Peace as may then be there, to testify what you shall know in the premises [and also to bring with you and there and then to produce all and every invoices, cash books, day books, or ledgers and receipts, promissory notes, or other security relating to the purchase or sale of liquor by the said *X. Y.*, and all other books and papers, accounts, deeds, and other documents in your possession, custody or control, relating to any matter connected with the said prosecution].

Given under my hand and seal this 12th day of January, A. D. 18 , at the Village of Richmond Hill, in the County of York.

C. D.,
J. P. (L. S.)

R. S. O. .. , c. 181, *Sched.* F.

SCHEDULE G.

(*Section 103.*)

Form of Conviction for First Offence.

Ontario, County of York, To Wit: } Be it remembered that on the 6th day of January, A. D. 18 , at the City of Toronto, in the said County of York, *X. Y.* is convicted before me, *C. D.*, Police Magistrate in and for the City of Toronto (*or* before us, *E. F.* and *G. H.*, two of Her Majesty's Justices of the Peace, in and for the said County), for that he, the said *X. Y.*, on the 2nd day of January, A. D. 18 , at the Township of York, in the said County, in his premises, being a place where liquor may be sold, unlawfully did sell liquor during the time prohibited by *The Liquor License Act* for the sale of the same, without any requisition for medicinal purposes as required by said Act, being produced by the vendee or his agent (*or as the case may be*), *A. B.* being the informant, and I (*or* we) adjudge the said *X. Y.*, for his said offence, to forfeit and pay the sum of $20, to be paid and applied according to law, and also to pay to the said *A. B.* the sum of $6 for his costs in this behalf, and if the said several sums be not paid forthwith, then* I (*or* we) order the said sums to be levied by distress and sale of the goods and chattels of the said *X. Y.*, and in default of sufficient distress in that behalf* [*or where the issuing of a distress warrant would be ruinous to the defendant and his family, or it appears that he has no goods whereon to levy a distress, then instead of the words between the asterisks** say* "inasmuch as it has now been made to appear to me (*or* us) that the issuing of a warrant of distress in this behalf would be ruinous to the said *X. Y.* and his family," *or* "that the said *X. Y.* has no goods or chattels whereon to levy the said several sums by distress"], I (*or* we) adjudge the said *X. Y.* to be imprisoned without hard labour [*or* with hard labour *as the case may be*] in the Common Gaol for the County of York, at Toronto, in the said County, and there to be kept for the space of *fifteen days*, unless the said sums and the costs and charges of conveying the said *X. Y.* to the said Common Gaol shall be sooner paid.

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at the City of Toronto, in the County aforesaid.

C. D., (L. S.)
Police Magistrate.

or E. F.,
J. P. (L. S.)

G. H.,
J. P. (L. S.)

R. S. O. 1877, c. 181, *Sched.* G; 44 V. c. 27, s. 26.

SCHEDULE H.

(*Section 103.*)

FORM OF CONVICTION FOR A THIRD OFFENCE.

ONTARIO, County of York, To wit: } BE IT REMEMBERED that on the 22nd day of January, A. D, 1887, in the City of Toronto, in the said County, *X. Y.* is convicted before the undersigned *C. D.*, Police Magistrate in and for the City of Toronto, in the said County [*or C. D.* and *E. F.*, two of Her Majesty's Justices of the Peace in and for the said County], for that he, the said *X. Y.*, on the 30th day of December, A. D. 1886, at the City of Toronto [*or* Township of Scarboro], in said County (*as the case may be*), having violated a provision of *The Liquor License Act*, unlawfully did attempt to settle the offence with *A. B.*, with the view of having the complaint made in respect thereof dismissed. And it appearing to me [*or* us] that the said *X. Y.* was previously, to wit: on the 15th day of December, A. D. 1886, at the City of Toronto, before, etc., duly convicted of having, on the 30th day of November, A. D. 1886, at the Village of Aurora, unlawfully sold liquor without the license therefor by law required. And it also appearing to me [*or* us] that the said *X. Y.* was previously, to wit: on the 28th day of November, A. D. 1886, at the Township of Vaughan, before, etc., (*see above*) again duly convicted of having, on the 2nd day of November, A. D. 1886, at the Village of Markham, being the keeper of a tavern situate in the said village of Markham, unlawfully allowed gambling in his said tavern (*or as the case may be*).

I [*or* we], adjudged the offence of said *X. Y.*, hereinbefore firstly mentioned, to be his third offence against *The Liquor License Act*, (*A. B.* being the informant) and I [*or* we], adjudged the said *X. Y.* for his said third offence to be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, there to be kept without hard labour [or with hard labour, *as the case may be*] for the space of three calendar months (*as the case may be.*)

Given under my hand and seal [*or* our hands and seals] the day and year first above mentioned, at Toronto, in the County of York.

C. D. (L. S.)

or

C. D. (L. S.)
E. L. (L. S.)

R. S. O. 1877, c. 181, *Sched.* H; 44 V. c. 27, s. 26.

SCHEDULE I.

(*Section 103.*)

WARRANT OF COMMITMENT FOR FIRST OFFENCE WHERE A PENALTY IS IMPOSED.

ONTARIO, County of York, To wit: } TO ALL or any of the Constables or other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County at Toronto, in the County of York.

Whereas, *X. Y.*, late of the City of Toronto, in the said County, was on this day convicted before the undersigned, *C. D.*, Police Magistrate in and for the City of Toronto [*or C. D.* and *E. F.*, two of Her Majesty's Justices of the Peace in and for the City of Toronto *or* County of York, (*as the case may be*) for that he, the said *X. Y.*, on at unlawfully did sell liquor without the license therefor by law required (*state offence as in the conviction*), (*A. B.* being the informant), and it was thereby adjudged that the said *X. Y.*, for his said offence, should forfeit and pay the sum of (*as in conviction*), and should pay to the said *A. B.* the sum of for his costs in that behalf.

And it was thereby further adjudged that if the said several sums should not be paid forthwith, the said *X. Y.* should be imprisoned in the Common Gaol of the said County at Toronto, in the said County of York, there to be kept at hard labour (or without hard labour *as the case may be*) for the space of , unless the said several sums and the costs and charges of conveying the said *X. Y.* to the said Common Gaol should be sooner paid.

And whereas the said *X. Y.* has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed.

[*If a distress warrant issued and was returned no goods, or not sufficient goods, say*, "And whereas, afterwards on the 15th day of January, A. D. 1887, I, the said Police Magistrate (*or* we, the said Justices), issued a warrant to the said Constables or Peace Officers, or any of them, to levy the said several sums of and by distress and sale of the goods and chattels of the said *X. Y.*:

"And whereas it appears to me (*or* us) as well, by the return of the said warrant of distress by the Constable who had the execution of the same as otherwise, that the said Constable has made diligent search for the goods and chattels of the said *X. Y.*, but that no sufficient distress whereon to levy the said sums could be found."]

[*Or where the issuing of a distress warrant would be ruinous to the defendant and his family, or if it appears that he has no goods whereon to levy a distress, then, instead of the foregoing recitals of the issue and return of the distress warrant, etc., say:*

"And whereas it has been made to appear to me (*or* us), that the issuing of a warrant by distress in this behalf would be ruinous to the said *X. Y.* and his family," *or* "that the said *X. Y.* has no goods or chattels whereon to levy the said sums by distress" *as the case may be*].

These are therefore to command you, the said Constables or Peace Officers, or any one of you, to take the said *X. Y.*, and him safely convey to the Common Gaol aforesaid, at Toronto, in the County of York, and there deliver him to the said Keeper thereof, together with this precept.

And I (*or* we) do hereby command you the said Keeper of the said Common Gaol to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and keep him for the space of (without hard labor *or* with hard labor *as the case may be*), unless the said several sums and all the costs and charges of the said distress, amounting to the sum of , and of the commitment and conveying of the said *X. Y.* to the said Common Gaol, amounting to the further sum of shall be sooner paid unto you the said Keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal (*or* our hands and seals) this day of A. D. 18 , at Toronto, in the said County of York.

C. D. (L.S.)
or C. D. (L.S.)
E. F. (L.S.)

R. S. O. 1977, *Sched.* I; 44 V. c. 27, s. 26.

SCHEDULE J.

(Section 103.)

WARRANT OF COMMITMENT FOR SECOND (*or* THIRD) OFFENCE, WHERE PUNISHMENT IS BY IMPRISONMENT ONLY.

ONTARIO, County of York, To Wit: } To ALL or any of the Constables and other Peace Officers in the said County of York, and to the Keeper of the Common Gaol of the said County, at Toronto, in the County of York.

Whereas *X. Y.*, late of the of in the said County, was on this day convicted before the undersigned *C. D.*, etc., (*or C. D.* and *E. F.*, etc., *as in preceding form*; for that he, the said *X. Y.* on at (*state offence with previous convictions as set forth in the conviction for the second or third offence, or as the case may be, and then proceed thus*): "And it was thereby adjudged that the offence of the said *X. Y.*, hereinbefore firstly mentioned, was his second (*or* third) offence against *The Liquor License Act*, (*A. B.*, being the informant). And it was thereby further adjudged that the said *X. Y.*, for his said second (*or* third) offence should be imprisoned in the Common Gaol of the said County of York, at Toronto, in the said County of York, and there to be kept without hard labor (*or* with hard labor *as the case may be*) for the space of three calendar months.

These are therefore to command you the said Constables, or any one of you, to take the said *X. Y.* and him safely convey to the said Common Gaol at Toronto, aforesaid, and there deliver him to the Keeper thereof, with this precept. And I (*or* we) do hereby command you, the said Keeper of the said Common Gaol, to receive the said *X. Y.* into your custody in the said Common Gaol, there to imprison him and to keep him without hard labor (*or* with hard labor *as the case may be*), for the space of three calendar months.

Given under my hand and seal, (*or* our hands and seals), this day of A. D. 188 , at Toronto, in the said County of York.

C. D. (L.S.)

or

C. D. (L.S.)
E. F. (L.S.)

R. S. O. 1877, c. 181, *Sched.* J; 44 V. c. 27, s. 26.

SCHEDULE K.

(Section 132.)

FORM OF DECLARATION OF FORFEITURE AND OF ORDER TO DESTROY LIQUOR SEIZED.

If in conviction, after adjudging penalty or imprisonment, as in Schedule G, proceed thus:

"And I [*or* we] declare the said liquor and vessels in which the same is kept, to wit: two barrels containing beer, three jars containing whiskey, two bottles containing gin, four kegs containing lager beer, and five bottles containing native wine [*or as the case may be*], to be forfeited to Her Majesty, and I [*or* we] do hereby order and direct that *T. D.*, License Inspector of the City of Toronto, [*or* J. P. W., License Inspector of the *East Riding of the County of York*], do forthwith destroy the said liquor and vessels."

Given under my hand and seal the day and year first above mentioned, at, etc.

If by separate or subsequent Order:

"County of York, To Wit: } We, *E. F.* and *G. H.*, two of Her Majesty's Justices of the Peace for the County of York [*or C. D.*, Police Magistrate of the City of Toronto], having on the 15th day of March, 1887, at the Township of Scarboro' in said County, duly convicted *X. Y.* of having unlawfully kept liquor for sale without license, do hereby declare the said liquor and vessels in which the same is kept, to wit:—[*describe the same as above*], to be forfeited to Her Majesty, and we [*or* I] do hereby order and direct that *J. P. W.*, License Inspector of the East Riding of the said County, do forthwith destroy the said liquor and vessels."

Given under our [*or* my] hands and seals, this 17th day of March, A. D. 18 , at the Township of Scarboro' in the said County.

E. F. [L.S.]

or

G. H. [L.S.]

C. D. [L.S.]

44 V. c. 27, *Sched.* K.

SCHEDULE L.

(*Sections 23 and 24.*)

FORM FOR DESCRIBING OFFENCES FOR SELLING, GIVING, OR KEEPING OTHER LIQUORS BY HOLDER OF BEER AND WINE LICENSE.

"That *X. Y.* being the holder of a Beer and Wine License, on at did unlawfully sell [*or* give, *or* keep for sale] other liquor than is authorized by his license, in the house and upon the premises for which such license has been granted."

44 V. c. 27, *Sched.* L.

SCHEDULE M.

(*Section 37.*)

PROVISIONAL CONSENT TO TRANSFER OF LICENSE BY THE INSPECTOR, PENDING THE DECISION OF THE BOARD OF COMMISSIONERS.

In pursuance of section 37, sub-section 2, of chapter 194 of the Revised Statutes of Ontario, I hereby consent that the Licensee named in the annexed license, his assigns or legal representatives, may provisionally transfer the hereunto annexed license, and all his and their interests therein to to be held by him subject to all of the provisions of the said Revised Statute: the written consent to such transfer by the Board of Commissioners, to be hereafter obtained within the time prescribed by law.

Dated this day of A. D. 188 .

Inspector.

N. B.—This provisional consent shall remain in force for days from the date thereof, and no longer.

Countersigned,

Commissioners.

44 V. c. 27, *Sched.* M.

SCHEDULE N.

To the Board of License Commissioners of the License District of

We the undersigned electors of polling sub-division number of the , wherein are situate the premises in respect of which *X. Y.* is applying for a license for the ensuing license year, do hereby certify that *X. Y.*, the applicant for the said license, is a fit and proper person to be licensed to sell liquors and to keep a , and that the premises in which the said *X. Y.* proposes to carry on the business for which he seeks a license, are in our opinion suitable therefor, and that the same are situate in a place where the carrying on of the said business will not be an annoyance to the public generally. And we have hereto appended our names and the distances approximately at which we respectively reside or own property, from the said premises for which license is sought.

Signatures.	} Distance of premises from premises sought to be licensed.

53 Vic. c. 56.

OTHER FORMS.

APPLICATION FOR LICENSE.

(*See sec. 11, ss. 1, p. 17.*)

To the Board of License Commissioners for the of

Gentlemen—I wish to obtain a TAVERN License for the House and premises situate at which House and premises contain four separate and distinct bed-rooms at least, and possesses all other accommodations required by law, including the appliances requisite for daily serving meals to travellers, and for constituting the said Premises a well appointed and sufficient eating house. The sureties I tender for the proper observance of all requirements of the Law as a Licensed Tavern-Keeper, are of and of

In the event of my application being granted, I will pay into the License Fund Account, in the Bank, all duty imposed for such License, and will present the Bank's receipt therefor when applying to the Inspector for the issue of my License.

Dated at this day of 18

A form of application for transfer of licenses may be adapted from this.

BOND OF INSPECTOR.

The bond to be given by the Inspector of every license district may be framed from the form to be given by the applicant for a tavern license (see p. 329 *ante*). It should be conditioned for the due performance of his duties and for payment over of all sums of money received by him according to the provisions of *The Liquor License Act*. The security to be given is to be approved of by the Provincial Secretary, who will furnish the required form together with affidavits of justification if required. See page 12, *ante*.

OBJECTIONS TO THE GRANTING OF A LICENSE.

(*See sec. 11, ss. 7, p. 22, ante, and sec. 11, ss. 14, pages 31-35, ante.*)

To the Board of License Commissioners for the License District of

The petition of the undersigned, being duly qualified electors of polling sub-division No. of the of in the Electoral District of in the Province of Ontario,

Shews:

1. That one *A. B.* of in the said License District of has applied for a license to keep a tavern or house of entertainment [*or* to keep a shop wherein liquor may be sold by retail, *as the case may be*] in respect of premises occupied by him in the said of being (*here describe the premises as set out in the notice of application*) within the said polling sub-division of which we are electors.

2. That the issue of such license to the said within the said polling sub-division is objectionable, and we, the said electors thereof, do hereby object thereto on the following grounds, namely:

(*a*) That the said *A. B.* (*the applicant*) is of bad fame and character [*or* is of drunken habits, *or* has previously forfeited a license, *or* has been convicted of selling liquor without a license within a period of one year, *or* has kept within

a period of two years a place in which the illicit sale of liquors was frequent and notorious, *as the case may be; the particular objection or objections taken being stated clearly and definitely in the language of the Statute and not generally.*]

(*b*) That the premises in question, and in respect of which such license is applied for, are out of repair [*or* have not the accommodation required by law, *or* have not reasonable accommodation, *if the premises be not subject to the said requirements*].

(*c*) That the licensing thereof is not required in the neighborhood [*or* that the premises are in the immediate vicinity of a place of public worship, *or* of a hospital, *or* of a school, *or* that the quiet of the place in which such premises are situate will be disturbed if a license is granted]. [*All, or any of the above grounds may be stated in the petition, but such grounds as are alleged must be stated specifically and not generally*].

We therefore respectfully ask that the application of the said *A. B.* for such license be not granted or allowed.

Here follow the signatures of the petitioners.

FORM OF WARRANT OF RESTITUTION.

(*Under Section 68. See pages 147-150.*)

ONTARIO, County of To Wit: } BE IT REMEMBERED that on the day of A. D. 18 , in the of in the said County, complaint was made before the undersigned (*here fill in the particulars of complaint as in the warrant of distress below*), and now at this day, to wit, on the day of the parties aforesaid appear before me, the said Police Magistrate [*or* Stipendiary Magistrate, *or* before us the said Justices of the Peace (*as the case may be*) *or* the said (*the complainant*) appears before me, the said Police Magistrate (*or as the case may be*), but the said *E. F.* (*the offender*), although duly called, does not appear by himself, his counsel or attorney], and it is now sufficiently proved on oath before me that the said *E. F.* was duly served with the summons in this behalf which required him to be and appear here on this day before me (*or* before us) to answer the said complaint, and to be further dealt with according to law, and that he, the said *E. F.*, is, and was at the date of the said offence complained of, the holder of a license under *The Liquor License Act* of Ontario, and that he did on the said date in the said complaint mentioned at in the of purchase from the said *G. H.* certain wearing apparel (*or other property, as the case may be*) to wit: (*here describe the property purchased*), the consideration for which, in whole or in part, was intoxicating liquor, or the price thereof [*or if the goods were taken in pawn*, receive from *G. H.*, of etc., certain goods in pawn, to wit: (*describe the goods*) of the value of $], contrary to the said Statute in that behalf, and that the value of the said wearing apparel (*or other property*) is the sum of . I (or we) do therefore order and adjudge the said *E. F.* to make restitution of the said wearing apparel (*or other property*) to the said *G. H.* forthwith, and also to pay to the said *G. H.* the sum of for his costs in this behalf; and if the wearing apparel (or other goods) are not restored and the said sum paid forthwith, then I (or we) hereby order that the value of the said wearing apparel (*or other property*) together with the said sum of be levied by distress and sale of the goods and chattels of the said *E. F.*

Given under my hand and seal this day of in the year at the in the County of aforesaid.

A. B., (L. S.)
Police Magistrate.

If the order is made before two Justices of the Peace it should be under the hands and seals of both of them.

WARRANT OF DISTRESS UPON AN ORDER FOR RESTITUTION.

(Under sec. 65. See pages 147-150.)

ONTARIO, County of To Wit: } To all or any of the Constables or other Peace Officers of the said County of

Whereas on the day of last past, complaint was made before the undersigned *A. B.*, Police Magistrate [*or* Stipendiary Magistrate, *or A. B.* and *C. D.*, two of Her Majesty's Justices of the Peace] in and for the said County of that *E. F.*, of the of in the County of , (hotel keeper), a person holding a license under *The Liquor License Act* of Ontario, did, on the day of at in the County of purchase from one *G. H.*, of the of in the County of certain wearing apparel [*or* tools, *or* implements of trade or husbandry, *or* fishing gear, *or* household goods, *or* provisions], (*as the case may be*), to wit: (*here insert a particular description of the property purchased,*) of the value of $ the consideration for which, in whole or in part, was intoxicating liquor, or the price thereof.

[*Or if the goods were taken in pawn*, did receive from *G. H.*, of, &c., certain goods in pawn, to wit: (*describing the property received*), of the value of $] and afterwards on the day of the said parties appeared before me (*or* us) and thereupon sufficient proof on oath being made before me of the facts, and it appearing that the said *E. F.* is and was on the day of the holder of a license under the said Act, and that he did at the of aforesaid, on the said last mentioned day, purchase from the said *G. H.*, the said wearing apparel (*or other goods*), and that the consideration therefor in whole or in part was intoxicating liquor or the price thereof [*or* did receive the said goods in pawn], and that the value of such wearing apparel (*or other goods*) is the sum of as in the said complaint was alleged, contrary to the provisions of the said Statute in that behalf, it was adjudged that the said *E. F.* should forthwith make restitution of the said wearing apparel (*or other goods*) to the said *G. H.*, and that he should pay to the said *G. H.* the sum of for his costs in that behalf.

And whereas it was further ordered and adjudged that if the said wearing apparel (*or other goods*) should not be returned and restored and the said sum be paid forthwith [*or* within days] the value of the said wearing apparel (*or other goods*) being the said sum of $ together with the said sum of for costs should be levied by distress and sale of the goods and chattels of the said *E. F.*

And whereas the time in and by the said order appointed for the restitution of the said goods and the payment of the said costs has elapsed, but the said *E. F.* has not restored the said goods and has not paid the said sum or any part thereof, but therein has made default: These are therefore to command you in Her Majesty's name forthwith to make distress of the goods and chattels of the said *E. F.*, and if within the space of days after the making of such distress restitution of the said wearing apparel be not made, or the said last mentioned sum , being the value of the said wearing apparel (*or other goods*), and the said costs, together with the reasonable charges of taking and keeping the said distress, are not paid, then to sell the said goods and chattels so by you distrained, and to pay the money arising from such sale unto me [*or* unto us] that I [*or* we] may pay and apply the same as by law directed, and may render the overplus, if any, on demand to the said *E. F.*; and if no

such distress can be found, then to certify the same unto me [*or* us], to the end that proceedings may be had therein as to law appertain.

Given under my hand and seal this day of in the year in the County of aforesaid.

A. B. [L. S.]

If made by two Justices of the Peace, the warrant should be under the hands and seals of both.

PETITION FOR THE REVOCATION OF A LICENSE.

(*Under secs. 91, 92. See pages 208-211.*)

In the County Court of the County of

In the matter of the License granted to (*naming the defendant.*)

To His Honor the Judge of the County Court of the County of (*the County in which the license granted is intended to take effect*).

The Petition of *A. B.* of the of in the County of Inspector of Licenses for the License District of

(*or*) [of the Board of License Commissioners for the License District of]

(*or*) [of *A. B.*, of, etc., the County Attorney for the County of in the License District of]

Sheweth as follows:

1. A license to keep a tavern or house of entertainment [*or* to keep a shop wherein liquor might be sold by retail] (*as the case may be*) was granted under the provisions of *The Liquor License Act* to the above named for the license year 1891-1892 in respect of certain premises therein mentioned, situate in the of in the said County of and in the License District of being (*here describe the premises licensed*) which said license is now in full force and effect.

2. That the said license has been issued contrary to a certain provision of *The Liquor License Act* [*or* contrary to the provisions of a certain by-law in force in the said Municipality of within which the license granted is intended to take effect], that is to say: (*here set out specifically the provision or provisions of the Act, or of the by-law, in contravention of which the license was issued*).

Or,

That the said license has been obtained by fraud (*setting out the facts or circumstances of the alleged fraud*).

Or,

That the said the person so licensed as aforesaid, has been convicted on more than one occasion of the violation of the provisions of section 79 of *The Liquor License Act*, that is to say: On the day of A. D. 18 , at the of in the said County of before *C. D.* and *E. F.*, two of Her Majesty's Justices of the Peace (*or as the case may be*) for the said County of the said was duly convicted of (*here set out the offence as in the conviction*). And further, on the day of , etc. (*giving the particulars of each conviction alleged to have been made under the provisions of sec. 79.*

Or,

That the said the person so licensed as aforesaid, has been convicted on three several occasions of the violation of certain provisions of *The*

Liquor License Act, that is to say: (*here insert particulars of the several convictions alleged to have been made*).

8. For the reason aforesaid the said license should be revoked under the provisions of sections 91 and 92 of *The Liquor License Act*.

Your petitioner therefore prays:

(1) That the said may be summoned to appear before your Honor;

(2) That your Honor may be pleased to hear and determine the matters alleged in this petition in a summary manner;

(3) That the said license may be revoked;

(4) That the said may be ordered to pay the costs of this petition and the proceedings had thereupon; and

(5) That such further and other order may be made as your Honor may deem just.

A. B. (*signature of petitioner.*)

CONVICTION FOR INFRACTIONS OF THE RESOLUTIONS OF A BOARD OF LICENSE COMMISSIONERS.

(*See sec. 98, ante, pages 220-223.*)

Province of Ontario, County of To wit: } Be it remembered that on the day of A. D. 18 , at in the County of *A. B.* is convicted before the undersigned, one of Her Majesty's Justices of the Peace (*or as the case may be*) in and for the said County of for that the said *A. B.* (*stating the offence and the time and place, and when and where committed*), contrary to a certain resolution of the Board of License Commissioners for the License District of , passed on the day of , A. D. 18 , (*reciting particulars of the resolution*) and I adjudge the said *A. B.* for his said offence to forfeit and pay the sum of , to be paid and applied according to law, and also to pay *C. D.*, the complainant, the sum of for his costs in this behalf. And if the said sums are not paid forthwith [*or* on or before the day of *as the case may be*], I order that the same be levied by distress and sale of the goods and chattels of the said *A. B.*, and in default of sufficient distress I adjudge the said *A. B.* to be imprisoned in the Common Gaol of the said County of [*or* in the lock-up at] for the space of days, unless the said several sums, and all costs and charges of conveying the said *A. B.* to such goal [*or* lock-up] are sooner paid.

Given under my hand and seal, the day and year first above written, at in the County of

J. M.,
J. P. [L. S.]

PROCEEDINGS ON MOTION FOR WRIT OF CERTIORARI.

(*See sec. 105, pp. 244-247.*)

Notice of Motion.

To Esquire, Police Magistrate in and for the of [*or* Justice of the Peace for the County of , *as the case may be*].

Whereas, you did, on the day of in the year of our Lord, 18 , at the of in the County of convict (*name of person convicted*), for that he did (*here describe the offence as set out in the conviction*).

And, whereas (*here set out the grounds on which certiorari is asked, as, for instance*), the punishment imposed is in excess of that allowed by law; that the said Police Magistrate [*or* Justice *or* Justices] had no jurisdiction over the said offence, and therefore, as well as on other grounds, the said conviction is irregular and illegal.

Wherefore, the aforesaid (*person convicted*) being resolved to seek a remedy for the injury he has received and sustained by means of said conviction, we [*or* I] do, on behalf of the aforesaid (*person convicted*), give you notice that motion will be made before the presiding Judge in Chambers in the Queen's Bench and Common Pleas Divisions of the High Court of Justice at Osgoode Hall, Toronto, on the day of A. D. 18 , at the hour of o'clock in the forenoon, or so soon thereafter as the motion can be made for a writ of *certiorari*, to issue out of the Common Pleas Division of the High Court of Justice, to be directed to you, the said (Police Magistrate *or* Justice) for the removal of the record of such conviction to the said Division of the said Court.

Dated

Yours, etc.,
A., B. & C., of the
of in the County of
Solicitors for
the said

RECOGNIZANCE.

County of } BE IT REMEMBERED that on the day of
To Wit: } in the year of our Lord one thousand eight hundred and
the year of the reign of our Sovereign Lady Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, (*person convicted*) of the
of in the County of and of the
of in the County of and of the
of in the County of came before me, one of Her Majesty's Justices of the Peace in and for the said County of (*or Police Magistrate*), in and for the of (*as the case may be*), and acknowledged to owe to our Sovereign Lady the Queen the sum of of lawful money of Canada to be levied upon their goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said should prosecute with effect, without any wilful or affected delay at his own proper costs and charges, a writ of *certiorari* issued out of the High Court of Justice of Ontario, Common Pleas Division, to remove into the said Court all and singular the record of a conviction of the said dated on or about the day of A. D. 189 , whereby the said was convicted by the said (*naming the P. M. or Justice or Justices, as the case may be*) of (*here state the offence as set out in the conviction*), and shall pay to the prosecutor, within one month next after the said record of conviction shall be confirmed in the said Court, all his said full costs and charges, to be taxed according to the course of the said Court, then this recognizance to be void, otherwise to remain in full force.

Taken and acknowledged the day and year aforesaid at the said of before me

Justice of the Peace in and for the County of (*or as the case may be*).

NOTE.—The party prosecuting the *certiorari* must himself enter into the recognizance with two sureties in addition.

The recognizances are returned by the Justices along with the *certiorari* to the Crown officer, and filed. It is the duty of the Magistrate to return all proceedings, not only previous to date of the writ, but also after the date.

The recognizance should be accompanied by affidavits of justification of the sureties in the usual form.

In the following case objection was taken to the writ of *certiorari* being filed, as no recognizance had been entered into, and Paley on Con., 6th ed., 441, was cited in support of it; but the objection was overruled, and it was held that on the return of the writ a recognizance is unnecessary: per Rose, J., R. *v.* Nunn, 10 P. R., 895; see also cases cited *ante*, p. 246.

WRIT.

ONTARIO,

In the High Court of Justice,
Common Pleas Division. }

In the matter of (*name of person convicted*).

Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith.

To (*convicting P. M., Justice or Justices, as the case may be*) Police Magistrate for the of and Justice of the Peace for the County of (*or as the case may be*), and to the Clerk of the Peace for the County of Greeting:

We, being willing for certain causes, to be certified of certain conviction and proceedings had before you the said as such Police Magistrate (*or such Justice or Justices of the Peace, as the case may be*) in and for the said of against (*person convicted*) whereby the said (*person convicted*) was on the day of 18 , convicted and adjudged to pay a fine of $ and costs for (*here insert the offence as stated in the conviction*), command you that you send to us in our High Court of Justice, Common Pleas Division, at Toronto, forthwith on the receipt hereof, all and singular, the information, depositions, evidence, conviction, orders and proceedings aforesaid, with all things touching the same as fully and entirely as they remain in the custody or keeping of you or either of you by whatsoever names the papers may be called therein, together with this writ, that we may further cause to be done therefrom what of right and according to law we shall see fit to be done.

Witness the Honorable John Alexander Boyd, President of our said Court at Toronto, this day of in the year of our Lord one thousand eight hundred and

"Wm. B. Heward."

Issued from the office of the Registrar of the Common Pleas Division of the High Court of Justice, in the County of York, under and pursuant to the order of the Honorable Mr. Justice and bearing date, the day of 18 .

"M. B. Jackson."

ORDER NISI.

In the High Court of Justice, Common Pleas Division, Michaelmas Sitting, 55 Victoriæ (*or as the case may be*).

Monday, the day of June, 1891 (*or as the case may be*).

The Queen
against
C. D.

Upon reading the writ of *certiorari* herein and the return thereto, and the

papers therewith filed, the recognizance entered into by the defendant and his sureties, and the affidavits of filed the day of 1891.

It is ordered that Police Magistrate in and for the of (*or other convicting Justice or Justices, as the case may be*) and of the of in the County of (*the complainant or prosecutor*) upon the first day of next sittings, do shew cause why a certain conviction now on file in this Court, whereby the above named (*person convicted*) is convicted before the said (*Police Magistrate or Justice or Justices, as the case may be*) on the complaint of the said for that the said (*person convicted*) did (*here describe the offence as stated in the conviction*) should not be quashed on the following, among other grounds:

(Here set out the grounds on which the application is based, as for instance):

1. That the said *(naming the Police Magistaate, or Justice or Justices, as the case may be)*, had no jurisdiction to try the offence set out in the said conviction.

2. That the evidence on which the said conviction is based does not establish any offence to support the conviction, but on the contrary negatives the offence in the conviction set out.

3. That the said *(naming the P. M., Justice or Justices)*, exceeded any jurisdiction, he (*or* they) had to try the offence set out in said conviction.

4. That the conviction was alleged to be for a third offence, and the punishment awarded was the same as for a second offence, and no punishment was provided by the Statute for a third offence.

5. That the conviction was alleged to be for a second offence and the penalty or punishment awarded was for a second offence, and that the said conviction was illegal, inasmuch as it appeared from the evidence and conviction that the said had not been convicted of a prior offence before he committed the alleged offence of which, by the said conviction, he was adjudged to be guilty.

6. That no information was laid authorizing the said *(P. M., or Justice or Justices, as the case may be)*, to deal with the matter of the said complaint as a second or subsequent offence.

7. That the said *(P. M., or Justice or Justices, as the case may be)*, had no power to award costs of the commitment and conveyance to gaol of the said *(person convicted)*.

8. That the said conviction states numerous offences, and it does not appear thereby of what particular offence therein mentioned the said *(person convicted)* was convicted.

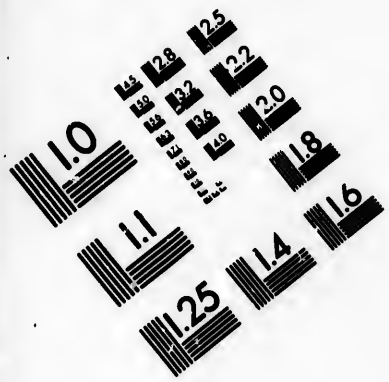
9. That the offence proved, as appears by the evidence, is not within the provisions of the said Act.

10. That the conviction does not follow the minute of adjudication made by the said *(Magistrate, or Justice or Justices, as the case may be)*, when the defendant was before him.

On motion of Mr. of Counsel for the said

By the Court,

M. B. Jackson.



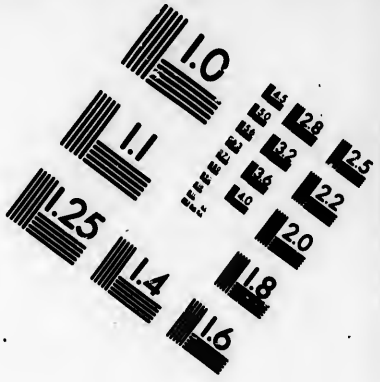
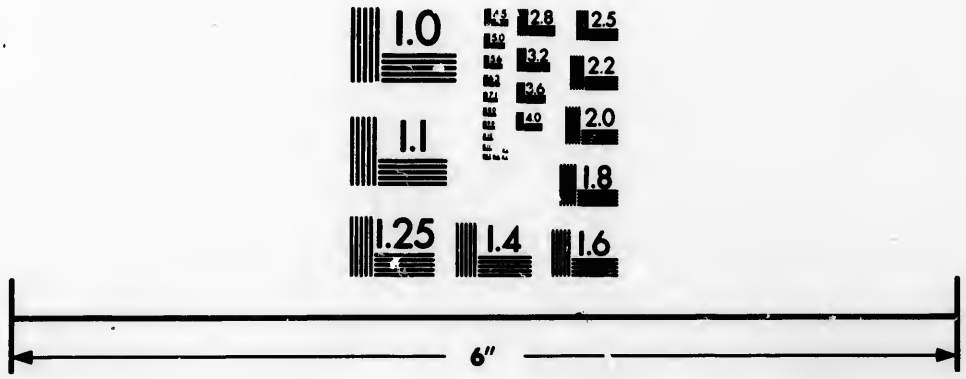


IMAGE EVALUATION TEST TARGET (MT-3)



Photographic Sciences Corporation

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

AFFIDAVITS.

The affidavits upon which the application for *certiorari* is based should be entitled in the Court into which the proceedings are to be removed as follows:

"In the High Court of Justice, Common Pleas Division.

In the matter of John Barrett (see *in re* Barrett, 28 U. C. R., 559, cited *ante* p. 244).

The affidavits required are:

1. Affidavit of service of duplicate of the notice of motion for *certiorari*. Six days' notice is required, and the affidavit of service should identify the Magistrate served as the convicting Magistrate. But an affidavit was amended in one case.

2. Affidavit of service of the original writ of *certiorari*. The original writ must be served on the Magistrate. It is not necessary to serve a copy of it on the complainant.

3. Affidavits setting out the proceedings had before the convicting P. M., Justice or Justices, the objections taken at the hearing, the objections to the conviction, and the facts and circumstances bearing upon the case.

It is discretionary in the Court either to grant or refuse the prayer of the defendant.

Some special ground must be laid before the Court by affidavit on moving for the rule, for where it was moved for on the ground of the jurisdiction not appearing on the conviction, and there was no affidavit shewing the want of jurisdiction, the application for the *certiorari* was refused.

A slight ground, however, will be sufficient for applying for the writ, but there must be some. Where the application for a writ of *certiorari* rests on the grounds of defective jurisdiction, matters in which the defect depends may be apparent on the face of the proceedings, or may be brought before the Superior Court by affidavit, but they must be extrinsic to the jurisdiction impeached.

Objections of this kind may be founded on the character and constitution of the inferior Court, the nature of the subject-matter of the inquiry, or the absence of some preliminary proceeding, which was necessary to give jurisdiction to the inferior Court.

Even express words taking away the *certiorari* are inapplicable where there is a want of excess of jurisdiction, which may be shewn by affidavit. *Certiorari* must be moved for in six months after conviction. It must be duly proved on oath that six days' notice thereof, in writing, was given to the Justices.

Affidavits may be used to shew a want of jurisdiction, although they contradict, for this purpose, the finding of the Justices: R. *v.* Bolton, 1 Q. B., 66.

The Magistrate may set forth grounds of decision and facts bearing on the question by affidavit. See Paley on Con., 422-452.

The Court must be satisfied on affidavits that there is sufficient ground for issuing the writ, and it must, in every case, be a question for the Court to decide whether, in fact, sufficient grounds do exist; and it seems doubtful whether the applicant should not produce a copy of the proceedings before the Justice, or account for not doing so, and their substance should in all cases be before the Court: Clarke's Crim. Law, 456.

Certiorari may be granted to remove proceedings which are void. It can only be taken away by express words, and even when expressly taken away by Statute, the writ may be granted (R. *v.* Hoggard, 30 U. C. R., 156) where there is ground for the belief that the conviction was had without proof: *ex parte* Morrison, 18 L. C. J., 295: *ex parte* Church, L. C. R., 318; *ex parte* Lalonde, 15 L. C. J., 251, and generally where there is a plain excess of jurisdiction: Hespeler and Shaw, 16 U. C. R., 104; *ex parte* Matthews, 1 Q. L. R., 355. So it lies where the conviction on its face is defective in substance, as omitting to

state the reasons on which it is based. And a *prima facie* case shewing want or excess of jurisdiction, or that the Court was illegally convened or illegaly constituted will be sufficient to obtain the writ.

Where judgment has been pronounced in open Court and afterwards changed in such a manner as to increase the amount which the defendant was ordered to pay, the judgment will be set aside on *certiorari*.

After the return of a *certiorari*, affidavits may be used to shew want of jurisdiction in the Justice, when the fact does not appear in the return.

But affidavits on which the writ is obtained cannot be used to contradict the return: Clarke's Crim. Law, 456-468. See also cases cited *ante*, pages 239-247.

COSTS.

As to costs of the application to quash a conviction, see R. *v.* Kennedy, 10 O. R., 396; R. *v.* Ramsay, 11 O. R., 210; R. *v.* Elliott, 12 O. R, 527; R. *v.* Wallace, 4 O. R., 188; R. *v.* Newton, 11 P. R., 98; R. *v.* Wallace, 13 O. R., 83; R. *v.* Young, 13 O. R., 198; R. *v.* Beard, 13 O. R., 613; R. *v.* Bradford, 13 O. R., 735; R. *v.* Roe, 16 O. R., 1; R. *v.* Ambrose, 16 O. R., 251; R. *v.* Brady, 12 O. R., 358; Graham *v.* McArthur, 25 U. C. R., 478; R. *v.* Dowling, 17 O. R., 698; R. *v.* Rowlin, 19 O. R., 199. See also cases cited *ante*, pages 225, 323.

TABLE OF FEES TO BE TAKEN BY JUSTICES OF THE PEACE, OR THEIR CLERKS.

(*See page 225 ante; R. S. O., c. 78.*)

1. For an Information and Warrant for apprehension, or for an Information and Summons for assault, trespass, or other misdemeanor..	$0 50
2. For each copy of Summons to be served on defendant or defendants.	10
3. For every Subpœna, (*only one Subpœna on each side to be charged for in each case, which may contain any number of names.*)..... (*If the justice of the case requires it, additional Subpœnas shall be issued without charge.*) R. S. O. 1877, c. 77, Sched. A, items 1-3; Sched. B, items 1-3.	10
4. For every Recognizance (*only one to be charged in each case*).....	25
5. For Information and Warrant for surety of the peace for good behaviour, (*to be paid by Complainant*).....	50
6. For Warrant of Commitment for default of surety to keep peace or good behaviour (*to be paid by Complainant*)..... ..... R. S. O. 1877, c. 77, Schedule A.	50
7. For hearing and determining the case. 41 V. c. 4, s. 6.....	50
8. Where one Justice alone cannot lawfully hear and determine the case, an additional fee for hearing and determining to be allowed to the associate Justice..... In case more Justices hear the case, the Justice by whom the information was taken, if he hears the case, shall be entitled to one fee of fifty cents for hearing and determining, and the Justice who sat at his request shall be entitled as associate to the said additional fee, when one is chargeable; if a case occurs which is not covered by this provision, the Justices shall be entitled to the fees according to their seniority as Justices. 48 V. c. 18, s. 84.	50
9. For Warrant to levy penalty.....	25
10. For making up every Record of Conviction where the same is ordered to be returned to the Sessions, or on *certiorari*.....	1 00

11. But in all cases which admit of a summary proceeding before a single Justice of the Peace, and wherein no higher penalty than $20 can be imposed, there only shall be charged for the conviction not more than..... 50

And for the Warrant to levy the penalty..... 25

12. For copy of any other paper connected with any trial, and the minutes of the same if demanded—per folio of one hundred words 10

13. For every Bill of Costs, (*when demanded to be made out in detail*)..... 10

[*Items 12 and 13 to be only chargeable when there has been a conviction.*]

R. S. O. 1877, c. 77, Sched. B, items 5-9.

Provision is made for security for Costs in certain actions against Justices of the Peace by 53 V. c. 23 (O).

LIST OF LICENSE DISTRICTS IN THE PROVINCE OF ONTARIO.

Addington,
Algoma,
Brant, North,
Brant, South,
Brantford, City,
Brockville and Leeds,
Bruce, Centre,
Bruce, North,
Bruce, South,
Cardwell,
Carleton,
Cornwall,
Dufferin,
Dundas,
Durham, East,
Durham, West,
Elgin, East,
Elgin, West,
Essex, North,
Essex, South,
Frontenac,
Glengarry,
Grenville,
Grey, Centre,
Grey, North,
Grey, South,
Haldimand,
Haliburton,
Halton,
Hamilton,
Hastings, East,
Hastings, North,
Hastings, West,
Huron, East,
Huron, South,
Huron, West,
Kent, East,
Kent, West,
Kingston,
Lambton, East,
Lambton, West,
Lanark, North,
Lanark, South,
Lennox,
Lincoln,
London,
Manitoulin,
Middlesex, East,
Middlesex, North,
Middlesex, West,
Monck,
Muskoka,
Nipissing,
Norfolk, North,
Norfolk, South,
Northumberland, East,
Northumberland, West,
Ontario, North,
Ontario, South,
Ottawa,
Oxford, North,
Oxford, South,
Parry Sound,
Peel,
Perth, North,
Perth, South,
Peterborough, East,
Peterborough, West,
Prescott,
Prince Edward,
Rainy River,
Renfrew, North,
Renfrew, South,
Russell,
St. Catharines,
Simcoe, Centre,
Simcoe, East,
Simcoe, West,
Stormont,
Thunder Bay,
Toronto,
Victoria, East,
Victoria, West,
Waterloo, North,
Waterloo, South,
Welland,
Wellington, East,
Wellington, South,
Wellington, West,
Wentworth, North,
Wentworth, South,
York, East,
York, North,
York, West.

INDEX.

A

ACCIDENT.
Liability of innkeeper in certain cases of, 268.
Authorities respecting, 270.

ACCOMMODATION.
Defined, 25 (*v*).
Commissioners may exempt certain taverns from having, 11, 62.
Required by every tavern or inn, 61.
Every tavern must be an eating house, 65.
Council of city or town may prescribe requirements, 63.
Penalty for refusing accommodation to travellers, 169.

ACT RESPECTING LOCAL OPTION BY-LAWS.—94.

ACTION.
Notice of, 11.
Against officers, 288.

ACTUAL OFFENDERS.
Liability of, 255.

ADDRESS.
Person found in unlicensed place must give, 295.
Penalty for refusing or giving false information, 296.

ADJOURNMENT.
Of meeting of Board, 30, 37.
Of proceedings before Justices, 324.

AGENT (see MASTER AND SERVANT).
May appear for objector, 27.
Defined, 31.

AGRICULTURAL EXHIBITIONS (see FAIR GROUNDS).
No license to issue on days of, etc., 41.

ALEHOUSE (see BEER AND WINE).
Defined, 6 (*e*).

AGREEMENT (see CONTRACT).
To enable unlicensed persons to sell liquor unlawful, 147.

AMENDMENTS (see INFORMATION, CONVICTION, ETC.)
Of information, 230-235, 237-239.
Of conviction, 240-243. 247.
In case of subsequent conviction quashed, 229.

APPAREL (see WEARING APPAREL).

APPEALS.
Convictions of Justices final, except as otherwise provided, 262.
Proceedings on, 263.
Appellant to enter into recognizance or deposit penalty and costs, 264.
Justices to transmit papers to Clerk of County Court, 265.
Clerk's fees thereon, 265.
Practice and procedure thereon, 265.
To the Court of Appeal, 266.

APPEALS—*Continued.*
From Justices, 262.
From County Court or Judge, 266.
Costs in appeal from conviction, 267.
Authorities as to, 262-268.
Appeals from a High Court or Judge thereof, etc., to the Court of Appeal, 268.
From Stipendiary Magistrates, 299.
From order quashing conviction, 323.
APPLICATION OF PENALTIES (see PENALTIES).—206-208.
Under the C. T. Act, 323.
APPLICATIONS (see PETITION).
For tavern and shop licenses, 17.
Conditions to be complied with on, 18 (*y*).
Must be accompanied by report of Inspector, 17
Must be made by true owner of business, 19.
Notice of to be given by Inspector, 21.
List of to be kept, 21.
Objections to, 22-27.
Notice of objection, 28, 30, 31.
Re-hearing of application, 31.
For new license must be accompanied with certificate of a majority of electors, 31.
Decision of the Board as to, final, 30.
List of to be posted up by Inspector, 35.
"Application" and "petition" defined, 36.
Applicant to be heard, 36.
must be true owner of business, 38.
must comply with requirements of Statute, etc., 39.
Commissioners may grant or refuse at their discretion, 39.
For shop licenses, 66.
For wholesale license, 72.
APPLIANCES.
Existence of *prima facie* evidence, 250.
APPROVAL OF BY-LAWS (see BY-LAW).
ASSAULT.
By intoxicated person, liability of person furnishing the liquor, 272.
ASSIGNEE.
In insolvency, sale by, 108.
ASSOCIATIONS (see CLUBS).—122.
AUTHORITY (see LEGISLATIVE AUTHORITY).
Things done under authority of Statute, 47.
AUTHORITIES.
As to convictions for selling without license, 108-111, 157-164.

B

BANK.
License duty to be paid into, 40.
BAR-ROOM.
Refreshment bar, not an inn, 6.
To be kept closed on Saturday night and Sunday, 125-133.
One only to be kept, 147.
Existence of to be evidence, etc., 250.
BEER AND WINE LICENSE.
Issue of, 56.

BEER AND WINE LICENSE—*Continued.*
Definition of, 57.
Holder of, subject to conditions of tavern license, 58.
Not to sell or keep spirits, 59.
May be cancelled by Commissioners, 60.
May be revoked by County Judge, 60.
Not to sell madeira, port or sherry, 60.
Inspector may test liquors kept by licensee, 61.
Duties payable on, 89, 101.
Licensee may be disqualified from holding, 201.

BOARD OF LICENSE COMMISSIONERS (see COMMISSIONERS).

BOND (see SECURITY).
Of Inspector, 12.
Of tavern licensee, 64.
Conditions of, 65.
Form of, 329.
Of shop licensee, 66.

BOOKS (see PRODUCTION OF DOCUMENTS).

BREWERS.
Provincial Legislature cannot tax and regulate trade of, 72 (*tt*).
Secs. 49 and 50 not to apply to, 115.
Definition of, 115 (*p*).

BUSINESS (see INTERPRETATION).
What is, 145, 146.

BY-LAWS.
Power of License Commissioners to make, 9 (*p*) 126.
Requisites of, 10.
Limiting number of tavern licenses, 51.
Authorities on, 51, 54, 126.
As to tavern accommodation, 63.
Copy of to be sent to Commissioners, 68.
Of Municipality imposing duties, 90.
Refusal to quash on account of delay in moving, 90.
As to repeal of, 91.
Approval of, 91.
Electors entitled to vote on, 91.
Authorities as to, 52, 92-96.
Prohibiting sale of liquor in Municipalities, 92.
Act respecting local option by-laws, 94
Authorities as to, 92-97.
Power to pass, pending repeal of C. T. Act, 97.
When duties exceed statutory figure they are not affected until altered by, 99.
Amount of duty imposed by, may include Government duty, 101.
Prohibiting sale of liquor on Saturday night and Sunday, 126.

C

CANADA TEMPERANCE ACT.
Meaning of expression, 7.
Issue of licenses where C. T. Act has been in force and repealed, 15.
Power of Municipalities to pass by-laws pending repeal of, 97.
Not affected by the Liquor License Act, 301.
Commissioners and Inspectors may be appointed where in force, 301.
Duties in such case, 302.
Wholesale licenses under, 303.
Sections as to duties of officers under Liquor License Act to apply, 303.

CANADA TEMPERANCE ACT—*Continued.*
Municipal Councils may aid in enforcing, 303.
to furnish statements of receipts and expenses, 304.
Prosecutions under, 304.
Expense of enforcing the Liquor License Act in Municipalities under, 304.
Proportion payable by the Province or Municipality, how and when to be paid, 304, 305.
Payment of proportion, how enforced, 305.
Expenses of enforcing in cities, 306.
Payment of expenses of license district where C. T. Act in force in part only of district, 307.
Duties for licenses issued under, 307.
Application of duties, 308.
Payment of expenses of license district when in force, 308.
Share of expenses of district to be paid by city or town where in force, 309.
Payment of portion of expenses out of consolidated revenue, 310.
Pending proceedings not affected, 311.
Lieutenant-Governor may create license district where in force, 311.
Decisions and authorities respecting, 312.

CARRYING ON BUSINESS (see INTERPRETATION).
defined 145, 146.

CENSUS.
Number of population to be determined by, 48, 101.
Manner of taking new census, 50.
Meaning of "last preceding census," 48.
How population determined for purposes of sec. 44, 101,

CHARACTER.
Report of Inspector as to, 17.
Meaning of good character and repute, 18 (*y*).
Objections to, 28.
notice must be given of, 28, 29.
form of notice, 340.
Penalty for allowing persons of bad character to assemble, 177.
Definition of "notoriously bad character," 177.

CERTIFICATE.
Of good character, 18 (*y*).
Of majority of electors required with application for new license, 31.
Required in unorganized districts, 34
Form of certificate, 35.
Time for presenting, 35.
Time for filing, 35.
List of, to be posted by Inspector, 35.
Of payment of license duty, 40.
In contravention of the Act void, 42 (*q*).
Of Inspector *prima facie* proof of license, 248.

CERTIORARI.
To quash a conviction, 244.
Authorities respecting, 244-247, 325.
Forms and proceedings thereon, 344.

CHEMISTS.
Exceptions in favor of, 118.
Duties of, with respect to sale of liquor, 119.

CHEQUES.
Upon license fund account, 104.

CHIEF INSPECTOR (see INSPECTOR).

CHIEF OF POLICE (see POLICE).
To enforce provisions as to duty of constables, 298.
CITIES.
Definition of, 7.
Number of tavern licenses to be issued in, 46.
CIVIL REMEDIES AGAINST INN-KEEPERS.
Liability of inn-keepers or persons in their employ who give liquor to persons who become intoxicated, 268.
Restrictions on sale to inebriates, 272.
CLERK OR SERVANT (see MASTER AND SERVANT).
Liability of principal for acts of, 224.
CLERK OF COUNTY COURT.
Fees to, in appeal cases, 265.
CLERK OF MUNICIPALITY.
To certify in case of dispute as to qualification of electors, 33.
Must send copy of by-law to License Commissioners, 68.
CLOSING LICENSED PREMISES.
On Saturday night and Sunday, 125.
When persons other than keeper of house guilty, 133.
CLUBS.
Not to sell liquor, 122.
Keeping of liquor by, a violation of sec. 50, 123.
Consumption of liquor by, evidence of sale, 124.
COMMISSIONERS, LICENSE.
Appointment of, 7.
Powers of Legislature as to, 7 (*k*).
Powers of, 8, 126.
May define conditions and qualifications for tavern licenses, 9.
May limit number of tavern and shop licenses, 10.
May exempt certain taverns from having required accommodation, 11.
May regulate taverns and shops to be licensed, 11.
May regulate duties of Inspector, 11.
Not intended to have concurrent powers with Municipal Councils, 10, 126.
Entitled to notice of action, 11.
To be re-appointed each year, 11.
May, by regulations, create offences and impose penalties, 12.
Mandamus will not be granted to compel issue of license, 18.
May notice matters not mentioned by objectors, 29.
Notice to applicant in such cases, 30.
Decision of Board final, 30.
May adjourn meeting, 30.
May examine witnesses on oath at hearing of objections, 36.
May sit with closed doors while considering decision, 36.
May adjourn meeting, 37.
To conduct proceedings in same manner as Justices of the Peace, 36.
Must observe conditions of the Statute, 38.
May, at their option, grant or refuse application, 39.
Remedy if Commissioners act corruptly, 40.
Two members of Board must sign certificate, 40.
No license to issue for benefit of, 42.
Nor for premises of which they are owners, 43.
But this provision not to apply to Joint Stock Co., 44.
Not to vote if mortgagee or agent for collection of rent, 44.
Discretionary powers of, discussed, 48 (*d*).
May grant extension of license, 54.
May grant additional licenses in places of summer resort, 56.

COMMISSIONERS, LICENSE—*Continued.*
May cancel beer and wine license, 60.
Consent of must be obtained to transfer of license, 80.
Cheques to be drawn by Inspector and countersigned by Chairman of Board, 104.
Powers as to closing licensed places on Saturday night and Sunday, 126.
Not to take money for licenses, certificates, etc., 151.
Liability for issuing license contrary to Act, 153.
May apply for revocation of license, 208.
Who are Justices of the Peace, disqualified to try certain cases, 215.
Prosecutions under resolutions of, 220.
May appoint officers to enforce the law, 287.
In unorganized districts, 299-301.
Appointment under the C. T. Act, 301.
Duties of in such case, 302.

COMMISSIONERS, POLICE (see POLICE).
To enforce provision as to duties of constables, etc., 298.

COMMITMENT.
Costs of, etc., 205.

COMMUNICATION.
Penalty for allowing, with unlicensed premises, 182.
premises where other goods sold, 183.

COMPLAINTS.
Penalty for compounding or settling, 198.
How and when laid, 212-217.

COMPROMISING.
Offences, penalty for, 198.
Penalty for being concerned in, 200.

COMPULSORY.
When Statutory provisions are, 68.

COMPUTATION OF TIME (see TIME).

CONDITIONS.
To be complied with by applicant, 18.
Must be observed by Commissioners, 38.

CONFISCATION.
Of liquor found on search, 294.
Authorities as to, 294, 295.
If no conviction liquor to be returned, 297.

CONSENT.
Of Commissioners to transfer of license, 81.
Provisional consent, 83.
Effect of, 85.

CONSOLIDATED REVENUE.
Certain duties to form part of, 100.

CONSUMPTION.
Of liquor by clubs evidence of sale, 124.
Of liquor in premises of chemists, etc., not allowed, 142.
Shop license not to authorize liquor sold to be consumed on premises, 142.
Nor in premises of persons holding wholesale license, 142.
Penalty for allowing, by drunken person, 177.
Unlawful, on licensed premises, 188.
What proof of offence sufficient, 189.
Of liquor by purchaser on premises where same is bought, 190.
To be proof of sale, 250.

CONSTABLES.
Penalty for harboring, 196.
To make enquiry on receiving information as to violation of law, 288.
Right of, to enter and make search, 290.
Right of entry and search under warrant, 292.
May seize liquor found, 294.
May demand names and addresses of persons found in unlicensed place, 295.
Must prosecute offenders, 297.

CONTRACTS.
For liquor illegally sold not enforceable, 283.
Money paid for, may be recovered, 284.
Against justice and good conscience, 284.

CONVICTIONS (see FORMS).
Indemnity of Inspector where conviction not obtained, 106.
For sale of liquor without license, 108-111, 157-168.
For selling liquor during prohibited hours, 127.
Inspector's duty where prior conviction had, 128.
Cases on conviction for second offence, 129, 225-230.
Charge in must be certain, 159.
What conviction should contain, 159-161.
Should correspond with adjudication, 160, 225.
Need not negative exceptions, 160.
Imposing fine and imprisonment, 165.
For second and subsequent offences, 166, 228.
For violation of Sunday closing provisions, 167, 228.
Imprisonment under separate, consecutive, 204.
Costs of commitment and conveying to gaol in case of, 205.
Under resolutions of License Commissioners, 220-222.
Form of, 222, 344.
What constitutes a "conviction" as distinguished from an "order," 224.
Procedure in cases where previous conviction charged, 225.
Authorities respecting, 225-230, 231-235, 240-243, 312-319.
Minute of, 160, 225.
Must contain order for payment of costs, etc., 225.
Costs of quashing, 225, 323.
For previous offences, how proved, 227.
Amendment of subsequent conviction where first conviction quashed, 229.
Description of offences, 230-235, 330-332.
Not void for certain defects, 239.
Amendment of, 240-243.
Certiorari to quash, 244-248, 344-348.
Appeals from, 262.
proceeding on, 263.
Costs in appeal from, 267.
Appeal to Court of Appeal, 265.
And informations under the C. T. Act, 312.

COSTS.
Where not recovered, 105.
Authorities as to imposition of, 161, 206, 225, 323.
Of commitment and conveying to gaol, 205.
to be stated in warrant of commitment, 206.
To be stated in conviction, 225.
Of quashing conviction, 225, 323.
In appeal from conviction, 267.

COUNCIL (see MUNICIPAL COUNCIL).

COUNCILLORS (see MUNICIPAL COUNCILS).

COUNTY JUDGE (see POWERS OF COUNTY JUDGE).
Revocation of licenses by, 208-211.
Jurisdiction of, 210.
Appeal from judgment of, in respect of convictions, etc., 266.
COUNTY ATTORNEY.
May apply for revocation of license, 208.
Must attend all prosecutions committed to him by Inspector or officer, 289.
Remarks as to duty of, 289, 290.

D

DAMAGES.
In case of death, etc., of inebriate, 268.
In case of assault or injury to property by person drunk, 272.
In case of sale to inebriates after notice, 282, 283.
DECISION.
Of License Commissioners final, 80.
DEFAULT.
Of payment of fine, etc., 162.
DEFENDANT.
Onus of proving license to be on, 258.
DESCRIPTION OF PREMISES TO BE CERTAIN.—21, 22.
DEFINITIONS (see INTERPRETATION).
DESCRIPTION.
Of offences, 280, 330.
DESTRUCTION OF LIQUORS.
Found on search of unlicensed house, 294.
If no conviction liquor to be returned, 297.
DISCRETIONARY POWERS.—8 (*o*).
Of Commissioners and others empowered by Statute 48.
DISORDERLY HOUSE.
Enactments against, 175, 176.
Keeper of, subject to certain penalties, 193.
DISORDERLY CONDUCT.
Penalty for permitting, 174.
Defined, 176.
DISPUTE.
As to certificate required with application for new license, 33.
DISQUALIFICATION.
Of licensee to be Municipal Councillor, 19 (*a*).
From holding license, 201.
Of Justice of the Peace to try cases, 215.
DISTANCE.
Mode of measuring, 41.
DISTILLERS.
Secs. 49 and 50 not to apply to, 114, 115.
Definition of, 115 (*q*).
Dominion License to, 115.
Powers of Dominion Government with respect to 116.
DISTRICTS (see LICENSE DISTRICT).
DISTRESS (see CONVICTIONS).
Recovery of penalties by, 168.
In case of conviction under resolutions of License Commissioners, 221.
DOCTORS (see MEDICAL PRACTITIONER).

DOCUMENTS (see PRODUCTION).
DOMINION LICENSES (see LICENSES).
Authority of Dominion Parliament, 115-117.
DROWNING.
Liability of inn-keeper in case of, 268.
Authorities as to, 270.
DRUGGISTS (see CHEMISTS).
Exceptions in favor of, 118.
Definition of, 118.
DRUNKENNESS (see INEBRIATES).
Penalty for permitting, 174.
Penalty for selling liquor to drunken person, etc., 177.
Civil remedies respecting, 268.
Authorities as to, 174, 177, 268, 272, 278, 279.
Contracts made by person drunk, 274.
Power of Justices to forbid sale to habitual drunkard, 274.
Notice forbidding sale to persons of intemperate habits, 277.
DUTIES OF OFFICERS (see PARTICULAR TITLES).
Of Provincial officers, 285.
DUTIES, LICENSE.
How paid, 40.
Must be paid before issue of license, 40, 99 (*q*).
What duties payable, 89, 100.
Municipal Council may impose, 90.
When they exceed statutory figure they are not affected, 99.
In case license lapses, 88.
Payable for use of Government, 100.
Municipal Council may impose duties wholly for use of Municipality, 101.
Duties, fines, and penalties to form license fund, 101.
How to be applied, 102, 103.
In unorganized districts, 300.
Payable for wholesale licenses where C. T. Act in force, 304.

E

EATING-HOUSE (see TAVERN-KEEPER).
Every tavern to be, 63.
EJUSDAN GENERIS.
Principle not applicable in certain cases, 203.
ELECTORS.
May object to license, 22.
Majority of, must sign certificate in case of application for new license, 32.
Dispute as to qualification of, 33.
Entitled to vote, 32, 91.
ELECTIONS.
Sale of liquor on polling days prohibited, 134.
Obtaining liquor at prohibited time an offence, 135.
Authorities as to selling liquor at, 134.
Provisions of election law as to, 134.
ENABLING WORDS.—8 (*o*).
ENACTMENTS RELATING TO LICENSES.—1.
ENFORCEMENT OF THE ACT (see INSPECTORS, PROVINCIAL INSPECTORS, OFFICERS).
Officers to enforce the law, their duties and powers, 285.
What may be illegal, 286.

ENFORCEMENT OF THE ACT—*Continued.*
Notes as to 288, 289, 291.
Where C. T. Act in force, 304.

ENTRANCES.
Tavern not to communicate by any entrance with grocery, etc., 62.
To hotel to be separate from bar, 147.

ENTRY.
Rights of officers as to, 290-292.
Rights of officers under search warrant, 292-294.

EVIDENCE (see WITNESSES, PROOF, ETC.).
As to sale of liquor in Clubs, 124.
Generally, 248.
Satisfactory, defined, 144, 150.
Sufficient, 257.
Proof made upon oath, 150.
What is meant by "sufficient proof," 150.
Of unlawful consumption of liquor, 189.
Cases in which person charged incompetent to give, 195, 221.
To be taken in writing, 219.
Who are competent witnesses, 195, 221.
Of previous convictions, 227.
License, how proved, 248, 258.
How regulations authenticated, etc., 249.
Places in which sale of liquors presumed, 250.
Presumption as to occupant, 251.
Evidence as to sale, etc., of liquor, 251.
Lights in bar, 252.
What shall be deemed evidence of unlawful sale, 253.
Liability of occupants, 254.
Person selling as well as occupant to be liable, 255.
Certain presumptions to be conclusive unless rebutted, 257.
Proof of being licensed to rest on defendant, 258.
Production of license to be evidence of, 258.
Finding of liquor to be evidence that it is unlawfully kept for sale, 294.
Obtained on making such search, admissibility of, 294.

EXCEPTIONS.
Methylated alcohol and oil of whiskey, 121.
In favor of brewers and distillers, 115.
chemists and druggists, 118.
For medicinal purposes on Saturday night, etc., 127.

EXHIBITION.
Grounds not to be licensed at certain times, 41.

EXPENSES.
Of Inspector on examination of premises, 85, 86, 90.
Of Inspector attending prosecution, 261.

EXPOSURE OF LICENSE.—106.

EXTENSION.
Of licenses in cases where they cannot be renewed, 54.

F

FAIR GROUNDS.
No license to issue for at certain times or places, 41.

FALLS OF NIAGARA.
Number of licenses to be issued in, 47.

FEES (see MILEAGE).
Allowed to Justices of the Peace, 225.

FEES—*Continued.*
Table of, 349.
To Inspector attending prosecution, 261.
To Clerk of County Court in appeal cases, 265.

FERRY BOATS.
No license to issue to, 41.

FINES (see PENALTIES).
To form part of license fund, 101.
How paid, 102.
Of not less than $50, what is meant by, 153.
For first offence, 161.
When default in payment occurs, 162.
Application of, 206-208, 323.

FIRST OFFENCE (see PENALTIES)
Penalties for, 161, 166.

FORMS.
Of information and other proceedings, 230.
Of certificate with application for new license, 35.
Of bond of Inspector, 12, 340.
Of warrant of restitution, 150, 341.
Of notice forbidding sale of liquor to minors, 187.
Of convictions under resolutions of License Commissioners, 222, 344.
Provisions of Statutes as to, 235.
Of bond by applicant for a tavern license, 329.
The same in case of shop license, 329.
Of information (general), 330.
Describing offences, 330.
Of information for second, third or fourth offence, 333.
Of summons to witness, 333.
Of conviction for first offence, 334.
Of conviction for a third offence, 335.
Warrant of commitment for first offence where a penalty is imposed, 335.
Warrant of commitment for second, or third offence, where punishment is by imprisonment only, 337.
Declaration of forfeiture and of order to destroy liquor seized, 337.
Description of offences for selling, giving or keeping other liquors by holder of beer and wine license, 338.
Provisional consent to transfer of license, 338.
Certificate of electors with application for new license, 339.
Application for license, 340.
Bond of Inspector, 340.
Objections to the granting of a license, 340.
Warrant of distress upon an order for restitution of property, 342.
Petition for revocation of license, 343.
Proceedings on *certiorari*, 344.
Notice of motion, 344.
Recognizance, 345.
Writ of *certiorari*, 346.
Order *nisi*, 346.
Affidavits, 348.
Costs, 349.
Table of fees to Justices of the Peace, 349.
List of license districts, 350.

FORFEITURE.
Of license in case of death, assignment, etc., 79.
How new license may be issued on, 87.
Of office by Municipal officer if convicted, 155.

FORFEITURE—*Continued.*
Of office by member of Municipal Council if convicted, 156.
Of beer and wine license, 201.
And revocation of license on application to County Judge, 208.
What evidence required, 209, 227 (*f*).
FRAUD.
License obtained by, 18 (*y*).
may be revoked, 209.
FREQUENTERS.
In bars on Saturday nights, 132, 133.
FRONT ENTRANCES.
To be separate from bar, 147.
FUND LICENSE (see LICENSE FUND).

G

GAMBLING.
Power of Municipal Council to pass by-laws as to, 126.
Penalty for allowing on licensed premises, 174.
Authorities as to, 175-182.
GAME.
Permitting unlawful, 174-182.
GAMING.
Unlawful houses, 181.
"GOOD CHARACTER AND REPUTE."—17.
GUESTS AND TRAVELLERS.
Who are, 171.
Authorities as to, 171-173.
Rights and liabilities of, *Ib.*
Who is a *bona fide* guest, 187.

H

HABEAS CORPUS.
Writ of, and proceedings thereon, 243.
HABITUAL DRUNKARDS (see INEBRIATES).
What is meant by, 278.
HARBOURING.
Constables on duty, 196.
HEARING (see OBJECTIONS).
Of objections to license, 27.
Meaning of "to hear," 27 (*c*).
And determining objections, 36.
"To hear," "hear and determine," defined 36.
HUSBAND AND WIFE.
Wife of occupant liable to conviction, 157.
Married woman liable where sale took place in her absence, 159.
Principle that married woman exempt from liability does not apply, 160.
Admission of evidence by, 259.
May notify sellers not to furnish liquor to persons addicted to drinking, 277.

I

ILLEGAL MEASURES.
To enforce the law, 286.
ILLEGAL SALE (see SALE, SELLING).
Payment for liquor illegally sold, 283.
Securities for, void, 285.

IMPERIAL MEASURE.—7.

IMPRISONMENT (see PENALTIES).
What the punishment consists of, 163.
Authorities as to, 163-165.
At hard labor, 164.
Terms of, to be consecutive, 164, 205.
Under different convictions, 204.

INCORPORATED CLUBS, ETC.—122.

INDIAN ELECTORS.
Right to vote on C. T. Act, 312.

INEBRIATES (see DRUNKENNESS).
Restriction of sale to, 272.
Liability of person in cases of assault or injury to property by, 272.
Power of Justices to forbid sale to, 274.
Effect of such prohibition, 276.
Application to set aside prohibition or notice, 276.
Penalty for violation of prohibition, 276.
County Judge may set aside prohibition or notice, 276.
What is meant by "intemperate habits" discussed, 278.

INFORMATION.
For violation of Saturday night and Sunday closing provisions, 167.
When to be laid, 194, 212.
Manner in which information or complaints laid, 212.
Description of offences in, 230, 235, 330-332.
Amendment of, 237-239.
Upon receiving, every officer, policeman, constable or inspector, to enquire into, 288.
And conviction under the C. T. Act, 312.
Forms of (general), 330.
for second, third or fourth offence, 333.

INJURY TO PROPERTY.
By intoxicated person, liability of person furnishing him with liquor, 272.

INN.
Defined, 6.

INN-KEEPERS (see TAVERN-KEEPERS).
Person may be, though license taken out in another's name, 19.
Refusing lodgings, meals, etc., 169.
Authorities as to rights and liabilities, 170-173.
Lien of, 172.
Liability for death or accident in case of person becoming drunk on premises, 268.
Liability in case of notice not to furnish liquor to persons addicted to drinking, 281.

INQUIRY.
Into conduct, etc., of Inspector, 285-287,
By officers, policeman, inspectors, etc., on information as to violation of law, 289.

INSPECTOR (see PROVINCIAL INSPECTOR).
Defined, 7.
Duties of, may be fixed, etc., by Commissioners, 11.
Appointment of, 12.
Security to be given by, 12.
Chief Inspector may be appointed, 13.
Salary of Inspector, 13.
Lieutenant-Governor to fix salary, 13.
Duties and powers of chief Inspector, 13.

INSPECTOR—*Continued.*
Report of, on application for tavern and shop licenses, 17.
not to be conclusive, 19.
may be dispensed with, 20.
Must publish date of meeting of License Commissioners, 20.
Must give notice of applications, 21.
Petitions against license to be filed with, 35.
Must keep lists of petitions, etc., posted in his office, 35.
Office of, 37.
Must see that duty paid before issue of license, 40, 41.
No license to issue for benefit of, 42.
Not to issue for premises owned by, 43.
Report in case of shop license, 67.
New report necessary on transfer, 83.
Provisional consent may be granted on transfer, 83.
Report may be dispensed with, 84.
Mileage to, on removals and transfers of licenses, 85, 86, 90.
Payment of salary and expenses, 103.
Penalties where Inspector is prosecutor, 105.
Indemnity of where conviction not obtained, 106.
Duty of, to prosecute for second or subsequent offence, 128.
Not to be convicted of alleged violation of law committed in detecting offences, 140.
Not to take money for licenses, certificates, reports, etc., 151.
Liability for issuing license contrary to Act, 153.
May apply for revocation of license, 208.
Who is Justice of the Peace disqualified to try certain cases, 215.
Expenses of, on attending prosecution, 261.
May be required to give notice to sellers not to furnish liquor to persons drinking to excess, 277, 280.
Conduct of, to be subject to investigation by Provincial Inspector, 286.
To make inquiry on receiving information as to violations of law, 289.
Right of, to enter and make search, 290.
Authorities as to such right, 290-292.
Rights of, under search warrant, 292-294.
May seize liquor found on search, 294.
May demand names and addresses of persons found in unlicensed premises, 295.
Penalty for refusing or giving false information, 296.
Must prosecute offenders, 297.
Remarks as to duty in this respect, 298.
In unorganized districts, 299-301.
Appointment of, where C. T. Act in force, 301.
Duties of, in such case, 302-305.

ISSUE OF LICENSES.—13.
Where C. T. Act has been in force, 15.

INTERPRETATION OF WORDS AND PHRASES.
Abandons, 87.
Abide or remain, 197.
Absconds, 87.
Absolutely null and void, 80.
Accident, 270.
Accommodation, 25, 63.
Actual cost, 86.
Actual offender, 255.
Adjoining or near, 192.
Aerated water, 70.
Affect or impair, 301.

INTERPRETATION, ETC.—*Continued.*
Affected, 31.
Affecting the granting, 45.
Agent, 31, 76.
Against justice and good conscience, 284.
Alehouse, 6.
All, 102, 125.
All licenses, 106.
All the provisions, 71.
All places, 125.
All places where intoxicating liquors are or may be sold, 125.
All sums received, 102.
Allows, allows to be made or used, 182, 185, 194.
Allowed to be consumed, 72.
An association, 122.
Any, 29, 37.
Any applicant, 73.
Any cause, 87.
Any description of liquor whatever, 185.
Any house, shop, room or other place, 250.
Any internal communication, 182.
Any licensed shop, 71.
Any member, 153.
Any money whatsoever, 152.
Any offence, 155.
Any one time, 119.
Any other commodity, 70, 71.
Any other provisions of this Act, 203.
Any person, 157, 183.
Any other person, 122.
Any person not entitled to sell liquor, 144.
Application, 36.
Appropriated otherwise, 102.
Approved, 91.
Assault, 272.
Assignee, Assigns, 70, 80.
As aforesaid, as before, etc., 92.
At any time, 75, 290.
At any time after, 98.
At any one time, 119.
At least four days, 35.
At least fourteen days, 20.
At least two issues, 20.
At least one of the petitioners, 31.
At least six horses, 62.
At the hotel, 167.
At the same or any other time, 275.
At the time of the purchase thereof, 139.
Attempts to buy or obtain, 137.
Authority, 140.
Bad fame and character, 23, 177.
Bar-room, 106, 131.
Bartering, 5, 157.
Beer, 2, 58.
Beer and wine license, 57.
Belief, 145.
Belonging to, 192.
Between, 14.

INTERPRETATION, ETC.—*Continued.*
Beverage, 121.
Bond, 64.
Bond or Security, 85.
Brewer, 115.
Building, 112, 113.
Buys or obtains, 137.
By himself, 143.
By his permission, 192.
By-law, 52.
By resolution, 55.
By wholesale, 73.
By writing under his hand, 275.
By virtue of this Act, 47.
Canada Temperance Act, 7.
Cancel, 60.
Carries on business, 76.
Carrying on business, 145.
Cause, 87, 289.
Causes or procures, 154.
Certain, certain time, 40.
Certificate, 32.
Certificate under the hand, 55, 243.
Certificate or requisition, 120.
Certified copy, 54.
Certify, 119.
Character and repute, 17.
Charged, to be charged, 223.
Chemist and druggist, 118.
Cheques, 104.
Child, 277.
Chief Inspector, 13.
City, town, county, or union of counties, 7.
Clerk, 76.
Clerk or servant, 76, 143.
Clubs, 122.
Colorable certificate, 120.
Commodity, 71.
Complaint, 105.
Compensation, 383.
Compromises, compounds or settles, 199.
Concerned in, 80, 153.
Conclusive, 84.
Conclusive evidence, 71, 108, 254.
Consent, 81.
Consideration, 149.
Constantly and conspicuously, 106.
Consumed upon the premises, 114.
Consumption of liquor, 124.
Constable, 197.
Continue, 14, 61.
Contrary to the provisions of this Act, 154.
Contrary to the terms of his license, 201.
Contravention, 120.
Control, 123.
Convicted, 23, 159.
Convicted of felony, 23.
Convicting Justice, 105.

INTERPRETATION, ETC.—*Continued.*
Conviction, on conviction, 159.
Conviction obtained, 129.
Conviction or order, 224.
Countersign, 84.
County Attorney, 208.
County town, 47.
County gaol of the county, 154.
Credible witness, 221.
Customer, 115.
Days, 28.
Decision, 30.
Deemed, 257.
Default, 150.
Default of appearance, 210.
Default of payment, 162.
Deliver; sell or deliver, 143.
Demeanor of witness, 138.
Determine and adjudge, 211.
Dies, sells, or by operation of law or otherwise assigns, 79.
Different convictions, 205.
Different days, 207.
Diligence, 289.
Directly or indirectly, 76, 148.
Discretionary powers, 48.
Disorderly conduct, 176.
Disorderly house, 195.
Disorderly person, 177.
Disposal, 120.
Dispute, 32.
Distance, 41.
Distiller, 115.
Disturbed, 26.
Domestic occupation, 132.
Drowning, 270.
Druggist, 118.
Drunkenness, 174.
Drunken person, 269.
Drunk to excess, 269.
Drunken habits, 28.
Duly issued, 107.
Duly observed, 297.
Duly licensed, 113.
During the next succeeding year, 202.
Duties (imposts), 89.
Duty (obligation), 129, 289.
Duty of Inspector, 129.
Eating-house, 113.
Electors, 22, 32, 91.
Employee, 115.
Employer, 277.
Endorse, 84.
Entertainment, house or place of, 97.
Entrance, 62.
Enumeration, 50.
Establishes to the satisfaction of, 144.
Event, in the, 204.
Every license, 45.

INTERPRETATION, ETC.—*Continued.*
Every person, 107, 135, 182, 183.
Every person convicted, 23.
Every tavern keeper, 169.
Except for some valid reason, 169.
Exempt, 79.
Exercise, 82.
Exhibit; expose, 108.
Expose for sale, 70.
Failing or refusing, 169.
Family, 61; members of, 132.
Ferry boat, 42.
Final and conclusive, 34.
Final judgment obtained, 129.
Fine, 64.
Fishing gear, 148.
Forfeit, 80.
Forfeiture, 23, 156.
Form, 35.
For the purpose of enabling, 121.
Forthwith, 81, 265.
Fourteen days, 80.
Frequent, 21.
Fraud, 208.
From a person who is not licensed to sell, 190.
From henceforth, 91.
From the passing thereof, 91.
From time to time, 37, 61.
Furniture, 148.
Gallon, 5.
Gaming and Gambling, 180.
Gaming houses, 181.
Getting rid of such complaint, 199.
Give, 59.
Good character and repute, 18.
Goods, wares and merchandise, 69.
Groceries; grocery, 69.
Grown and produced, 78.
Guardian, 277.
Guest, 115, 171.
Guilty of, 152.
Has kept, 21.
Hard labor, 164.
Harbour; harbouring, 196.
Having knowingly committed, 155.
Having regard to the demeanor, 138.
Having regard to the particular circumstances, 55.
Hear, 27.
Hear and determine, 36, 210.
Hereinbefore imposed, 100.
Himself; by himself, 143.
Holding a license, 147.
Hospital, 26.
House, etc., 112, 113, 250.
House of public entertainment, 97.
Household goods, 148.
Husband, 277.
If; when, etc., 85, 201.

INTERPRETATION, ETC.—*Continued.*
If an officer, 155.
If belonging to, 192.
If he denies, 225.
If it shall be made to appear, 189.
Illicit sale, 24.
Immediate, 25.
Immediately, 54.
Implements, 148.
Implements of trade, 148.
Implements of husbandry, 148.
Imprisonment, 163.
Imprisonment at hard labour, 164.
Improper house, 195.
In order that the person affected, 30.
In the nature of a joint stock company, 44.
In pursuance of this Act, 47.
In no other house or place, 82.
In case for any cause, 87.
In lieu of, 89.
In the whole, 90.
In like manner, 92.
In all places, 125.
In addition to any other penalty, 155.
In his licensed premises, 185.
In the hotel, 167.
In the opinion of the Court, etc., 201.
In the event, 204.
In default of appearance, 210.
In the first instance, 226.
In any Court of Justice, 250.
In a state of intoxication, 272.
In contravention of this Act, 284.
In their opinion, 29.
Incorporated village, 47, 224.
Incorporation, 122.
Increase of population, 49.
Ineligible to be elected, 157.
Indecent house, 195.
Information, 288, 292.
Injury to property, 272.
Inn, 6.
Inn-keeper, 19, 169.
Ipso facto, 79, 166.
Inspection, open to, 119.
Inspector, 7.
Inquiry, 227.
Insolvent circumstances, 87.
Instructions, 140.
Insured premises, 25.
Intent to evade the conditions of his license, 190, 252.
Intended consumption, 124.
Internal communication, 182.
Interest, 87.
Intemperate habits, 278.
Intoxicating liquor, 2, 59.
Intoxicating liquor of any kind, 269.
Investigate, investigation, 195.

INTERPRETATION, ETC.—*Continued.*
Is charged, 223.
It shall be lawful, 97.
It shall not be lawful, 151.
Joint Stock Company, 44.
Jointly and severally liable, 278.
Judge of the County Court, 210.
Keep, 24, 62, 112, 113, 147, 250.
Keeper, 180.
Keep in the house, 59.
Keep open, 147.
Keeping, having or selling, 118.
Knowingly, knowingly issues, knowingly commits, 43, 59, 154.
Large increase of population, 49.
Largely resorted to, 56.
Last preceding assessment, 101.
Last preceding census, 48.
Lawfully obtained, 79, 121.
Lessens (diminishes), 275.
Less than, 101.
License, 5.
Licensed premises, 5, 87, 191.
License district, 7.
License obtained by fraud, 208.
Lien, 89.
Liquor or liquors, 2, 116.
Liquors of any kind, 144.
Lieutenant-Governor, 50.
Lieutenant-Governor-in-Council, 50.
Lodger, 136, 170.
Lodgings, 170.
Majority, 32.
Malt liquors, 2.
Manufacturer of native wines, 78.
Master and servant, 277.
Matter or thing, 152.
May, 8.
May investigate, 195.
May issue, 41.
May be issued, 75.
May require, 90.
Meals, 170.
Measure, 5.
Medical practitioner, 119.
Meeting, 36.
Member, 122, 153.
Members of his family, 61, 132.
Merchandise, 69.
Merchant, 107.
Merits, 247.
Methylated alcohol, 121.
Mineral water, 70.
Minor, 186.
Minor municipality, 306.
Misbehaviour, 177.
Misspends, 275.
Money penalty, 104.
More liquor than is reasonably required, 253.

INTERPRETATION, ETC.—*Continued.*
Mortgage, 44.
Mute of malice; mute by the visitation of God, 226.
Native wines, 78.
Near, 47, 192.
Near, or adjoining, 192.
Nearest, 34.
Necessary domestic occupation, 132.
Needed for the convenience, 49.
Neighborhood, 25.
Neglect or refusal, 107.
Next, 92.
Next succeeding year, 92.
No notice given, 30.
Note, 152.
Notice, 28, 112.
Not already licensed, 147.
Not exceeding three months, 155.
Not exceeding $20, 150, 153.
Not less than four bedrooms, 62.
Not less than $40, 69.
Not less than $50, not less than $100, 184.
Not less than one gallon, 78.
Not less than one month, 184.
Not less than one week, 20.
Not more than six ounces, 119.
Not required, 25.
Notoriously bad character, 177.
Notwithstanding anything in this Act contained, 29, 188.
Null and void, 80.
Number, 227.
Oath, 33, 150.
Obtain; obtained, 121, 129.
Obtains or buys, 137.
Occupant, 113, 254, 256.
Occupied, 44.
Offences, 155.
Offers, or attempts, 199.
Office, 33.
Office and Officer, 122, 151, 155.
Officers of Municipal Council, 155.
Of opinion, 29, 48.
Of their own motion, 29.
On an appeal, 267.
On conviction, 159.
On different days, 209.
On summary conviction, 165.
One week, 20.
One year, 14.
On or upon, 83.
On the premises, 78, 125.
Opinion, 202.
Open Court, 37.
Open to the public, 37.
Open to inspection, 119.
Operation, 138.
Oppression, 151.
Orally, 29.

INTERPRETATION, ETC.—*Continued.*
Order or conviction, 224.
Or other person, 76, 153.
Original package, 75.
Other accidents caused by intoxication, 270.
Other licenses (in B. N. A. Act), 73, 117.
Other Municipalities, 89.
Other than, 70, 208.
Other than those mentioned in the license, 59, 208.
Over and above, 100.
Over 20,000, 101.
Over the door, 108.
Owned, 44.
Owner, 138.
Owner in actual possession, 256.
Package, 75.
Passenger, 141.
Pawn, or pledge, 149.
Parent, 277.
Partner, partnership, 76.
Party to, 153, 200.
Payment, 283.
Penalty, 64, 104.
Penalty in money, 104.
Permission, 192.
Permit; suffer, allow, 114, 174.
Person, 28, 108.
Persons affected by such decision, 31.
Persons of notoriously bad character, 179.
Person who is not licensed to sell, 190.
Personal service, 229.
Petition, 36.
Place, 21, 250.
Place of business, 29,
Place of public worship, 26.
Place of public entertainment, 97, 162.
Place of residence, 29.
Polling day, 134.
Polling sub-division, 7, 134.
Posted, 35.
Police officer, 197.
Premises, 5, 24, 45, 191, 291.
Premises, not to be drunk on, 78, 125.
Premises therein described, 45, 191.
Price thereof, 149.
Prima facie, 120.
Privity or consent, 189.
Produce, 83.
Proceedings, 138, 225, 251.
Prohibit, may prohibit, 96.
Proof of due service, 229.
Proof upon oath, 150.
Prosecutor, 105.
Prosecution, 138.
Provided, 97.
Provisional consent, 84.
Provisions (food), 148.

INTERPRETATION, ETC.—*Continued.*
Provincial officer, 285.
Public, 37.
Public house, tavern, etc., 6.
Public entertainment, place of, 97, 182.
Public officer, 151.
Purchaser, 139, 285.
Quarrelsome conduct, 175.
Quart, 5.
Quiet of the place, 26.
Quorum, 8.
Ratepayers, 28.
Reason to believe, etc., 145.
Reasonable accommodation, 25.
Reasonable and probable cause, 106.
Reasonably required, 253.
Rebuttal, 258.
Receive, 151.
Receives from any person goods in pawn, 149.
Record, 119.
Recover, 104,
Refreshments, 290.
Regulation, 10.
Regulating and determining, 9.
Relating to, 152.
Reputable business, 66.
Reputed, 291.
Require, 90.
Requisition, 73.
Resolution, 9, 55.
Resident ; residence, 29.
Resort, 122.
Restitution, 150.
Retail dealer, 5, 77.
Révocation, 98.
Revoke, 60.
Right, 22.
Right or privilege, 22.
Rights, 82.
Riotous or disorderly conduct, 175.
Sale (see seller ; selling), 5, 59, 120, 157.
Sale by sample, 117.
Sale or disposal, 120, 125.
Sale or barter, 148, 157.
Sale in or on the premises, 125.
Saloon, 113.
Same, 37, 145.
Same action, 273.
Same or any other offence, 228.
Sanctions or allows, 194.
Satisfactory evidence, 144, 150, 228.
Save as aforesaid, 71.
School, 26.
Search warrant, 293.
Security, 8.
Security or promise, 152.
Sell or deliver, 143.
Selling by retail, 5.

INTERPRETATION, ETC.—*Continued.*
Selling by wholesale, 5.
Seller, 5.
Servant, 148.
Service of documents, 28, 29.
Set aside, etc., 229.
Several occasions, 209.
Shall, 8, 68.
Shall be binding, 69.
Shall be constantly and conspicuously exposed 106.
Shall be deemed, 257.
Shall be exempt, 79.
Shall be held, 284.
Shall be kept, 147.
Shall be lawful, 97.
Shall conform, 69.
Shall continue to contain, 61.
Shall hereafter, 41.
Shall remain valid, 45.
Shall not, 42.
Shall not be convicted, 140.
Shall not be granted, 66.
Shall not be repealed, 66, 92.
Shall not be lawful, 151.
Shall not invalidate, 88.
Shareholder, 153.
Shop, 74, 113.
Shop license, 6.
Signature, 27, 73.
Signed by him, 73.
Sold by him or in his possession, 142.
Solely and exclusively, 67.
Special grounds, 14.
Specific period, 55.
Spirituous liquors, 2.
Stands mute of malice, 226.
Store, 74.
Strictly limited, 75.
Subject to the provisions of this Act, 45.
Succeeding year, 68.
Suicide, 269.
Suitable complement, 62.
Suffer; permit; allow, 114, 282.
Suffers to be delivered, 282.
Sufficient proof, 150, 257.
Sum recovered, 105.
Summary conviction, 165.
Supply; supplied, 185.
Sureties, 8, 64.
Sufficient sureties, 66.
Suspicion; suspicious, 289.
Tampers with a witness, 202.
Tavern, 6.
Tavern-keeper, 169.
Ten or more, 22.
Term or interest, 37.
The Board shall notify the applicant, 30.
The keeper, 130.

INTERPRETATION, ETC.—*Continued.*
The purchaser, 139.
Then in case, 223.
Therein furnished to him, 269.
Thereafter, 83.
Three half pints, 7.
Three days, 35.
Three hundred yards, 41.
Three several occasions, 209.
Things, the subject of pawn, 149.
Time to time, 37, 61.
To all intents and purposes, 80.
To any person apparently under the age of 18 years, 185.
To be supplied, 185.
To dispose of, 129.
To hear, 36.
To instruct, 140.
To or for the benefit of, 42.
To obtain, 121.
To record, 119.
To resort, 122.
To take place, 175.
Tools, 148.
Township, town, village, 224.
Total prohibition, 96.
Trafficking, 6.
Transfer, 81.
Transaction, 252.
Traveller, 49.
True owner of the business, 19, 38, 39.
Two hundred dollars in the whole, 90.
Unanimous, 31.
Unbroken package, 75.
Under and by virtue of this Act, 47.
Under 18 years, 186.
Under his control, 192.
Under his hand, 40, 55, 248.
Unless; unless and until, 80, 85.
Unlawfully, 145.
Until altered or repealed, 99.
Upon or on, 83, 208.
Upon conviction, 23, 159.
Upon information, 292.
Upon proof of due service, 229.
Upon several warrants, 204.
Upon the complaint, 208.
Upon the merits, 247.
Upon the premises, 78.
Usually, 142.
Usual place of residence, 29.
Valid, 45.
Value; for value, 285.
Vicinity, 25.
Village, town, etc., 224.
Violating, 203, 278.
Violent, quarrelsome, etc., conduct, 175.
Void, 42, 80.
Warehouse, 74, 112.

INTERPRETATION, ETC.—*Continued.*
Warrant (process), 229, 293.
Wearing apparel, 148.
Whatsoever, 152.
When; if, etc., 85.
When aware of the same, 129.
When by this Act, 223.
When it shall be made to appear, 274.
Wholly removed and not to be drunk on the premises, 78.
Wholesale license, 6, 74 (see sale).
Wholesale only, 73.
Wife, 277.
Wilful; wilfully, 107, 202.
Wilful neglect or default, 298.
Will not hold himself out or induce others to believe, 112.
With costs, 107.
With intent to evade the conditions of his license, 190.
With the view, 199.
Within a period of two years, 24.
Within one week, 20.
Within twelve months, 281.
Within six weeks, 281.
Within ten days, 293.
Within the Municipality, 74.
Without consideration, 284.
Without the license required by law, 159.
Writing or written, 13.
Written consent, 81.
Year, 14, 24.

INTEMPERATE HABITS (see DRUNKENNESS).

INTERNAL COMMUNICATION (see TAVERN AND SHOP LICENSES).
Penalty for allowing with unlicensed premises, 182.
with premises in which other goods are sold, 183.

INVESTIGATIONS.
Into conduct, etc., of Inspector, 285-287.

INTOXICATED PERSONS.
Liability of inn-keepers and others who give liquor to persons who become intoxicated, 268.

J

JOINT-STOCK COMPANY.
Defined, 44.
Commissioner holding shares in Hotel Co. not to vote on application to license hotel, 44.

JURISDICTION.
Of Inspector, 12.
Of Chief Inspector, 13.
Of Mayor of city or town, 193.
Of Reeve of township or village, 193.
Of Justice of the Peace, etc., 194.
Of Police Magistrates, 218.
As to sale to habitual drunkards, 274.

JUSTICES OF THE PEACE (see MAGISTRATES).
Certificates by, 119.
Not to give colorable certificate, 120.
Penalty for, 121.
Jurisdiction of, 194, 218.

JUSTICES OF THE PEACE—*Continued.*
Duties of as to payment over of fines recovered, 207.
Should be free from bias, 215.
Who are License Commissioners or Inspectors prohibited from trying certain complaints, 215.
Authorities as to disqualifying interest, 215-217.
Certain prosecutions to be before two or more, 217.
Other prosecutions may be before one or more, 219.
One Justice may hear case in rural municipalities, 223.
Minute of conviction by, 225.
Fees allowed to, 255.
table of, 349.
To transmit papers to Clerk of County Court in cases of appeal, 265.
Power of, to forbid sale of liquor to habitual drunkards, 274.
May issue search warrant, 292.
JUDGMENT.
In the case of Dominion Liquor License Act, 1883, 15.

K

KEEP.
No person to keep liquors for sale without license, 112.
Provisions as to keeping bar-room closed on Saturday night and Sunday, 125-133.
Definition of term keeper, 133.
KEEPER OF HOUSE (see TAVERN-KEEPER).
Liability of, 132.
Meaning of, 133.

L

LAPSED LICENSE.
New license may be granted in case of, 87.
Terms upon which same to issue, 88.
LEGISLATIVE AUTHORITY (see POWER).
Powers of Provincial Legislature in respect of licenses, 1, 15, 72.
Authorities respecting, 2, 7, 15, 72, 102, 116.
LICENSE COMMISSIONERS (see COMMISSIONERS).
LICENSED PREMISES.
Meaning of, 5.
Includes reasonable additions, 45 (*q*).
LICENSES.
Origin of licensing system, 1.
Powers of Legislature as to, 1, 15.
Word "license" defined, 5.
Number of taverns may be limited by Commissioner, 10.
Issue of, 13.
Date of, 14.
When to be issued, 14.
Issue of on special grounds, 14.
How to be issued, 16.
Not to issue to vessels, 16, 17,
Obtained by fraud, 18.
Void for not complying with Statute, 18.
Application for, 17.
Conditions to be complied with by applicant for, 18.
Inspector's report on, 17, 18.
Improper issue of, 18.
Disqualification of person from holding, 18.

LICENSES—*Continued.*
Discretion of License Commissioners in respect of, 19.
Mandamus will not be granted to compel issue of, 18.
When application or petition for to be presented, 19.
Objections to license, 22-37.
Notice of objections to character, 28, 30, 31.
Decision of Board as to final, 30
Certificate required with application for new tavern license, 31.
must be signed by majority of electors, 32.
Transfer of to premises not licensed, 31.
application for must be accompanied by certificate of electors, 32.
from holder to another person for same premises, 33.
Dispute as to certificate to be referred to Clerk of Municipality, 33.
Certificate of electors required in unorganized districts, 34.
Form and requisites of certificate, 35.
Time for presenting certificate, 35.
Time for filing certificate, 35.
Posting lists of application, petition, etc., 35,
Petition against licenses must be filed four days before meetings, 35.
Applicant for must comply with requirements, etc., 39.
Commissisners may grant or refuse at their option, 39.
Mode of issuing tavern and shop licenses, 38.
Duty must be paid into Bank before issue of, 40.
Not to issue on days of Agricultural Exhibitions, etc., 41.
Not to issue to ferry boats.
Not to be granted to License Commissioners or Inspector, 42.
Certificate for granted in contravention of Act void, 42 (*q*).
Not to be issued for premises owned by Commissioners or Inspector, 43.
Include reasonable additions to premises, 45 (*q*).
Limited to person and place therein named, 45.
Limitation of tavern licenses, 46.
Manner of determining population with a view to, 47.
Council may limit number, 51.
May be extended where they cannot be renewed, etc., 54.
Beer and wine license may be issued, 56.
In places largely resorted to in summer by visitors, 56.
Place licensed as tavern not to communicate with grocery, 62.
Every tavern licensed must be an eating-house, 63.
Licensee of tavern must give security, 64.
To shops, 66.
Council may limit, 67.
not to issue to places in which other goods are sold, 69.
void if other goods sold, 71.
provisons of tavern licenses to apply to, 71.
condition for obtaining, 72.
Wholesale, 72-78 (see wholesale licenses).
Transfer of, 79.
Become void on death or alienation of licensed premises unless consent of Commissioners to transfer obtained, 80.
Removal of, 84.
mileage of Inspector on, 85.
Lapse of, 87.
licenses may be issued for premises when license becomes void for any cause, 87.
Duties payable for, 89, 100.
License fund, 101.
To be kept exposed, 106.
Notice of to be exhibited, 107.

LICENSES—*Continued.*
Sale of liquor without, 108, 157.
Person not having a license not to hold himself out as a licensed person, 112.
—Persons not licensed not to keep liquor for sale, 114
To brewers, distillers, etc., 115-117.
Authorities respecting, 116.
To manufacture intoxicating liquors, etc., 116.
Licensees not to purchase certain articles or receive them in pledge, 147.
Commissioners or Inspectors not to take money for, 151.
Penalty for, 153.
Issuing licenses contrary to Act, 153-155.
Irregularly issued protection against penal consequences, 159.
Penalty for selling liquor without, 157.
May be suspended or annulled on conviction of keeping disorderly house, 195.
Persons violating law may be disqualified from holding beer and wine license, 201.
Revocation of by County Judge, 208-211.
How proved, 248.
Production of to be evidence, 258.
In unorganized districts, 300.
Where C. T. Act in force, 304.
May be extended, 54.
Re-issue of lapsed, 87.

LICENSE DISTRICT.
Defined, 7.
Formation of, 7.

LICENSE FUND ACCOUNT.
Duty to be paid to credit of, 40.
Duties, fines and penalties to form part of, 101.
How applied, 102, 103, 104.
Cheques on how drawn, 104.

LIEUTENANT-GOVERNOR.
Defined, 12 (*x*).
May appoint Inspector, 12.

LIGHTS (see PRESUMPTIONS.)
In bar-room evidence of sale, 252.

LIQUORS.
Defined, 2 (*b*).
Not to be sold by holder of beer and wine license, 57.

LISTS.
Of applications to be kept by Inspector, 21.
Of certificates and petitions to be posted in Inspector's office, 21.
Publication of, 21.

LOCAL OPTION.
By-laws may be passed by Municipal Council, 92-97.
Authorities as to, *Ib.*
Act respecting, 94.

LODGERS (see GUESTS).
Rights and liabilities of, 169-173.

LODGING.
Penalty for refusing, 169.
Rights and liabilities of keeper of, 173.

LOTTERY (see GAMBLING).

M

MANUFACTURER.
Definition of, 78.
Of native wines exempt from duty, 78.
MALT LIQUORS.
Meaning of, 2.
MAGISTRATES (see JUSTICES OF THE PEACE AND POLICE MAGISTRATES).
Jurisdiction of, 194.
Disqualification of to try certain cases, 215-217.
MAYOR.
Of city or town, jurisdiction of, 193.
MANDAMUS.
Will not be granted to compel issue of license, 18, 88.
Nor to compel Inspector to examine premises, 18.
To revoke certificate granted in contravention of a municipal by-law, 42.
MARRIED WOMAN (see HUSBAND AND WIFE).
MASTER AND SERVANT (see SERVANT).
Relation of, 76, 143, 153.
MEANING (see INTERPRETATION).
Of particular words in a Statute discussed, 49.
MEASURE.
Standard of, 5, 7.
MEASUREMENT.
Of distances, 41.
MEDICAL PRACTITIONER (see INTERPRETATION).
Certificate of, 119.
May not give colorable certificates, 120.
Penalty for, 121.
MEALS.
Penalty for refusing, 169.
MEETINGS.
To consider applications, 20.
Publication of, 20.
Applications and objections to be heard at a meeting of the Board of License Commissioners, 36.
To be open to the public, 36.
Commissioners may adjourn, 30, 37.
May consider decision with closed doors, 36.
Where meetings must be held, 37 (*q*).
MEMBERS OF MUNICIPAL COUNCIL.
Forfeiture of office by, on conviction, 156.
Licensee not to be, 19 (*a*).
MILEAGE OF INSPECTOR (see INSPECTOR).
On transfer or removal, 85, 86, 90.
METHYLATED ALCOHOL.
Excepted, 121.
MINERAL WATERS.
Provisions as to sale of in shops, 70, 71.
MINORS.
Penalty for allowing liquor to be supplied to, 185.
for supplying liquor to after notice, 186.
Who are, 186.
MINUTE.
Of conviction or adjudication, 225.

MORTGAGE.
Commissioner holding mortgage on hotel not to vote on application to license it, 44.

MUNICIPAL COUNCILS.
Not intended to have concurrent powers with License Commissioners, 10 (*r*), 188 (*f*).
Licensee disqualified to be member of, 19 (*a*).
May authorize person to appear at hearing of objection, 17.
Empowered to take census, 51.
May limit number of tavern licenses, 51.
Powers of, to make by-laws, 52, 53, 91, 92, 97, 99, 100, 101.
Of cities and towns may prescribe tavern accommodation, 63.
May limit number of shop licenses, 67.
And restrict and regulate the sale in shops, 67.
May impose larger duties up to $200, but not more without consent of electors, 91.
In village separated from township after its passing, 92.
By-laws prohibiting sale of liquor in Municipality, 92.
Power to pass by-laws pending repeal of C. T. Act, 97.
By-laws of where duties exceed Statutory figure, 99.
may declare that Government duty is inclusive of amount fixed by by-law, 101.
May impose duty wholly for use of Municipality, 101.
Have power to compel removal of false notice of license, 112.
Powers as to closing licensed places on Saturday night and Sunday, 126.
Officers of, 155.
Liability of officers of for offences under the Act, 155.
Forfeiture and disqualification of such officers, 156.
Liability of members for offences under the Act, 156.
Forfeiture of office on conviction, 156.
Who are members of, 156.
Jurisdiction of Mayor of city or town, 193.
Jurisdiction of Reeve of township or village, 193.
Not to remit penalties, 205.
To set apart certain portion of penalties received for purpose of enforcing the law, 207.
Powers of in unorganized districts, 301.
Powers and liabilities where C. T. Act in force, 303 *et seq*.

MUNICIPALITY.
Maximum number of licenses to be issued in each, 46.
Authorized to take census, 51.
To set apart third part of penalties recovered, 207.

N

NAME.
Person found in unlicensed place must give, 295.
Penalty for refusing, 296.

NATIVE WINE.
License not necessary for sale of, 78.
Definition of, 78.

NEW APPLICANTS (see APPLICANTS).
For tavern license must file certificate signed by majority of electors, 32.
Names of, to be published, 21.

NEW LICENSES (see LICENSES).
Applicant for must file certificate signed by majority of electors, 32.
Electors may object to, 31-35.
May be issued in case of lapsed license, 87.

NIAGARA FALLS.
Number of licenses to be issued in town of, 47.
NOTICE OF ACTION.
License Commissioners entitled to, 11.
In actions against officers, 288.
NOTICE.
Of meeting to consider applications, 20.
Of Inspector as to applications, 21.
Of objections to license, 28.
how served, 28.
Where objection raised by Commissioners, 30.
Of re-hearing of application, 31.
Of license to be exhibited, 107.
Not to be exhibited when person not licensed, 112.
Defined, 112 (u).
Forbidding sale of liquor to minors, 186.
form of, 187.
In case of prohibition of sale to habitual drunkards, 274.
By husband or wife, etc., to sellers not to furnish liquor to person addicted to drinking, 277.
NUMBER.
Limitation of tavern licenses, 46.
How population to be determined, 47-51.

O

OATH.
Commissioners may administer, 36.
OBJECTIONS TO PROCEEDINGS.
Must be taken at hearing,
To information where previous conviction not charged, 162.
OBJECTIONS TO APPLICATION.—21.
Nature of, 22.
As to character of applicant, 23.
As to his premises, 24.
As to neighborhood, 25.
Hearing of, 27.
As to character, 28.
Notice must be given of, 28.
Commissioners may raise objections, 29.
Notice to applicant in such cases, 30.
When to be filed, 35.
Hearing and determining, 36.
Proceedings at hearing, 36.
OBTAINING LIQUOR AT PROHIBITED TIME (see PENALTIES).
An offence, 135.
Penalty for, 168.
OCCUPANT.
Defined, 113, 256.
Not to permit liquors to be consumed on premises, 113.
Presumption as to, 251.
Liability of, 254.
Person selling as well as, to be liable, 255.
Statutory meaning of, 256.
OFFENCES.
May be created by regulations of the License Commissioners, 12.
Description of, 230.

OFFENCES—*Continued.*
Forms for describing, 880.
Defined, 155.
OFFICERS (see INSPECTOR, PROVINCIAL INSPECTOR, ETC.).
Payment of expenses to, 103.
Protection of from alleged violation of the Act when charged with detection of offences, 140.
Of Municipal Councils, 155.
Forfeiture of office on conviction, 156.
To enforce the law, their duties and powers, 285.
License Commissioners may appoint, 287.
Meaning of term "officer," 288.
To be deemed within the Act, 288.
Actions against, 288.
Must make inquiry on receiving information as to violation of law, 289.
Right of to make search, 290.
Rights under authority of search warrant, 292-294.
May demand names and addresses of persons found in unlicensed premises, 295.
OFFICE.
Of Inspector, 37.
OFFICIAL DOCUMENTS.
How proved, 249.
OIL OF WHISKEY.
Excepted, 121.
ORAL PROOF.—29.
ORDERS (see CONVICTIONS).
As distinguished from convictions, 224.
ORIGIN OF LICENSING SYSTEM.—1.

P

PAWN.
Licensee not to receive articles in, 148.
As to what is subject of, 149.
Procedure in such cases, 150.
PAYMENT.
When default in payment of fine occurs, 162.
Of money for liquor illegally sold and recovery of, 283.
PENALTIES (see FINES).
May be imposed by regulations of License Commissioners, 12.
And fines to form part of license fund, 100.
How to be paid and applied, 102.
In money, 104.
Where Inspector is prosecutor, 105.
Where the whole, and costs not recovered, 105.
Where costs are not recovered, 105.
On "every person" concerned in an offence, 107.
"any person" concerned in an offence, 157.
For neglect to expose license, 106.
to exhibit notice of license, 108.
Fine of $50, etc., not excessive, 117.
For giving colorable certificate, 121.
Witnesses may be exempt from, 138.
For selling liquor from ships in port, 141.
For allowing liquor to be consumed in shops, 142.
Against licensee for purchasing or receiving goods in pawn, 150.

PENALTIES—*Continued.*
For taking money for license, certificate, report, etc., 151.
Of not less than $50, what is meant by, 153 (see Interpretation).
For issuing license contrary to the Act, 153.
On conviction of Municipal officer, 155.
On conviction of member of Municipal Council, 157.
For selling without license, 157.
For first offence, 161.
When default in payment occurs, 162.
Of imprisonment, authorities as to, 163, *et seq.*
For selling liquor, etc., during prohibited hours, 165.
Recovery of, by distress, 168.
For obtaining liquor at prohibited time, 168.
For refusing lodging, meals, etc., 169.
For permitting drunkenness, 174.
For permitting violent, quarrelsome or disorderly conduct, 175, 176.
For selling liquor to drunken person, 177.
For permitting consumption of liquor by drunken person, 177.
For permitting persons of bad character to assemble, 177.
For permitting gambling, etc., 181.
For internal communication with unlicensed premises, 182.
For internal communication with premises in which other goods sold, 183.
For allowing liquors to be supplied to minors, 185.
For supplying liquors to minors after notice, 186.
For allowing liquors to be unlawfully consumed on premises, 188.
In case of purchaser drinking liquor on premises where same is bought, 190.
For keeping disorderly house, etc., 195.
For harboring constables on duty, 196.
For compromising or settling a case, 198.
For being concerned in such compromise, 200.
For tampering with witness, 202.
For violating cases not otherwise provided for, 203.
Of imprisonment under different convictions, 204.
Not to be remitted, 205.
In money, how recoverable, 205.
Application of, 206-208.
For violation of provision as to sale to habitual drunkards, 276.
For selling liquors to inebriates after notice, 282.
For refusing to admit officer, 291.
For refusing name or address, or for giving false information, 296.
For neglect by officer to prosecute offenders, 298.
Application of under the C. T. Act, 323.

PETITIONS (see APPLICATION).
For tavern and shop licenses, 17.
Must be accompanied by Inspector's report, 17.
When to be filed, 19.
May be presented by electors objecting to license, 22.
What objections may be taken, 23.
Against license to be filed four days before meeting, 35.
Persons signing may be heard in support of, 27.
Council may authorize any person to appear for ratepayers, 27.
Notice of objection to character must be given, 28.
Board may take notice of objections, 29.
Decision of Board final, 30.
In case of application for new license, 31.
To be presented to Board by Inspector, 35.
"Petition" and "application" defined, 36.

PETITIONS—*Continued.*
For revocation of license, to County Judge, 208.
Form of, 343.

POLICE (see CONSTABLES).
Harboring while on duty, 196.
Constitution and appointment of, 197.
Must make inquiry on receiving information of violations of law, 289.
Right of search by, 290.
under search warrant, 292-294.
May seize liquor found on search, 294.
May demand name, address, etc., of persons found, 295.
Must prosecute offenders, 297.
Remarks as to duty in this respect, 298.
Commissioners of, etc., to see that this provision is enforced, 298.

POLICE MAGISTRATES (see JUSTICES OF THE PEACE).
To have powers of two Justices, 218.

POLLING SUB-DIVISION.
Defined, 7.
Elector of may object to license, 22.

POPULATION.
Manner of determining with a view to the number of licenses, 47, 48, 49.

PORT ARTHUR.
Number of licenses to be issued in, 47.

POWERS (see LEGISLATIVE AUTHORITY).
Discretionary, discussed, 8 (*o*), 48 (*d*), 102 (*f*)
Of License Commissioners, 8, 86.
Of Provincial Legislature, 1, 7.
Delegation of, 102.
Of Dominion Government with respect to brewers, distillers, etc., 115-117.

POWERS OF COUNTY JUDGE.
As to revocation of beer and wine license, 60.
As to revocation of other licenses, 208-211.

POWERS OF JUSTICES OF THE PEACE (see JUSTICES OF THE PEACE).
To forbid sale to habitual drunkards, 274.

PREMISES.
Meaning of, 5 (see Interpretation).
To be described in notice of application, 21.
License limited to premises described, 45.
What is included in expression "premises where same is sold," 191.

PRESUMPTIONS (see EVIDENCE).
Consumption of liquor by clubs, 124.
Unlawful consumption of liquor, 188-190.
Places in which sale of liquor is presumed, 250.
As to occupant, 251.
Light in bar, 252.
Keeping up sign, or having bar, etc., 253.
Certain, conclusive, unless rebutted, 257.
Finding of liquor on premises to be evidence of keeping same for sale, 294.

PREVENTION OF ILLEGAL TRAFFIC.
Officers may be appointed for, 287.

PREVIOUS CONVICTIONS.
Proceedings where charged, 225.
Need not be charged, 228.
Offences on same day, 228.

PREVIOUS CONVICTIONS—*Continued.*
In case of a second or subsequent conviction becoming irregular by quashing of a first or previous conviction, Justices may amend, 229.

PROCEDURE.
At hearing of objections, 86.
On application to revoke license, 211.
In cases where previous conviction charged, 225.
Not void for certain defects, 239.
Amendment of, 240.
In appeal cases, 265.
On an inquiry by Provincial Inspectors, 286.

PRODUCTION OF DOCUMENTS.
May be ordered, 260.

PROHIBITION.
By-laws may be passed by Municipal Councils, 92.
Authorities as to powers of legislature, 92-97.
Of sale to habitual drunkards, 274.
Effect of, 276.
Penalty for violating such provision, 276.
Application to set aside, 276.
Of sale to inebriates after notice, 277.

PROOF (see EVIDENCE).
Oral, 29.
On oath, 150.
Of being licensed rests with defendant, 159.
Production of license *prima facie* evidence, 159.
Of material allegations, 162.
Of unlawful consumption of liquor, 189.
Of previous convictions, 227.
Of license, 248.
Of regulation, 249.

PROSECUTIONS.
Where Inspector prosecutor or complainant, 105, 106.
Penalty for causing case to be dismissed for want of, 199.
Any person may be prosecutor, 212.
To be made within thirty days, 213.
Manner in which complaint to be laid, 212-217.
In certain cases to be before two or more Justices, 217.
Under resolutions of License Commissioners imposing penalties, 220.
Which may be heard before two or more Justices, 217.
before one or more Justices, 219.
In rural Municipalities may be heard before one Justice, 223.
In cases where previous conviction charged, 225.
Fees to Inspector for attending, 261.
Where C. T. Act in force, 304.
Commissioners and Inspectors not to try complaints, 215.

PROTECTION.
Of officers appointed to enforce the Act, 140.

PROVINCIAL INSPECTORS.
Lieutenant-Governor may appoint, 285.
Their duties and powers, 285-287.

PROVINCIAL OFFICERS.
Lieutenant-Governor may appoint, 285.
Their duties and powers, 285-287.

PUBLIC OFFICERS.
License Commissioners are, 11.

PUBLIC OFFICERS—*Continued.*
Liabilities of, 151.
Duties of, 289.
PUBLIC.
Proceedings at hearing to be, 36.
PUBLICATION.
Of meeting for considering applications, 20.
Of notice of application, 21.
Of names of new applicants, 21.
Of total number of licenses, 21.
Of total number of applications, 21.
PURCHASER (see SALE).
Obtaining liquor at prohibited times, 135.
Of liquor for purposes of re-selling, liability of, 144.
Or pledgee of certain articles in exchange for liquor, liable, 147.
Case of purchaser drinking liquor on premises where same is bought, 190.
Liability of, for drinking or causing person to drink liquor where bought, 193.

Q

QUALIFICATIONS AND CONDITIONS FOR OBTAINING TAVERN LICENSES.—9.
QUASHING CONVICTIONS.
Upon *certiorari*, 244-248, 344-349.
QUARRELSOME CONDUCT.
Penalty for permitting, 174.

R

RATEPAYERS.
May authorize person to appear for them at License Commissioners' meeting, 28.
Who are, 28 (*h*).
REASONABLE AND PROBABLE CAUSE.—106.
RECOGNIZANCE.
On application for *certiorari*, 246.
form of, 345.
In appeal cases, 265.
RECOVERY.
Of goods or property taken in pawn or exchange for liquor, etc.
Of money or securities given for liquor illegally sold, 283.
REEVE OF TOWNSHIP OR VILLAGE.
Jurisdiction of, 193.
REGULATIONS (see RESOLUTIONS).
Definition of, 9 (*p*).
Powers of License Commissioners to make, 9.
To remain in force until amended or repealed, 11.
Penalties may be imposed by, 12.
As to issue of shop licenses, 38, 66.
As to issue of wholesale licenses, 75.
And prohibitions, 106.
How enforced, 220.
How authenticated, 249.
License to be kept exposed, 106.
Notice of license to be exhibited, 107.
Liquors not to be sold without license, 108.

REGULATIONS—*Continued.*
Nor kept for sale, 112.
Nor to be drunk on premises, 113, 114, 142, 143.
Not to be sold on Saturday night, etc., 125.
Nor on election days, 134.

RE-HEARING.
Of application, 31.

REMITTED.
Penalties not to be, 205.

REMOVAL.
Inspector may consent to removal to another house, 84.
Effect of such consent, 85.
Mileage of Inspector in such cases, 85.
Duties payable on, 90.
Bond or security to apply, 85.
Fees for to form part of license fund, 102.

REPORT.
Of Inspector on application for tavern and shop license, 17.
To be filed, 17.
To be open to inspection, 18.
Not to be conclusive, 19.
In case of shop licenses, 66.
New report necessary on transfer, 83.
May be dispensed with, 84.

REQUISITES.
For tavern license defined, 9, 18.

RESTITUTION.
Of goods taken in exchange for liquor, 150.
Writ of, 150, 341.

RESTRICTION OF SALE.
To inebriates, 272.

RESOLUTIONS (see REGULATIONS).
Defined, 55.
Powers of Commissioners to make, 9.
Limiting taverns and shops, 10.
Limiting saloons, 11.
Regulating taverns and shops, 11.
Defining duties, etc., of Inspector, 11.
Imposing penalties, 5.
Prosecutions under, 220.
How authenticated, 249.

RETAILER OF SPIRITS.
Who is, 5 (*e*), 77 (*x*).

REVISION OF STATUTES.
Effect of, 325.

REVOCATION OF LICENSES.
By County Judge, 208.
Proceedings on, 211.
Of beer, etc., license, 60.

RIOTOUS CONDUCT.
Penalty for permitting, 174.

RURAL MUNICIPALITIES.
Cases in may be heard before one Justice, 223.

S

SALARY AND EXPENSES.
Of Inspector and officers, 103.

SALE (see SELLING).
Meaning of, 5 (*d*).
Of less quantity than authorized by license, 5 (*c*).
Of liquors by company, 5 (*e*).
Of liquors on vessels abolished, 16, 17.
Of liquor without license, 108.
Under legal process or by assignees in insolvency, 108.
Authorities as to, 108-111, 157-164.
Of liquor by brewers and distillers, 115.
By chemists, etc., 118.
Of liquor during prohibited hours, 125.
Of liquor on polling days prohibited, 134.
Of liquor from ships in port prohibited, 141.
To unlicensed persons prohibited, 143.
Penalty for sale without license, 157.
Convictions for sale without license, 108-111, 157-164.
Places in which presumed, 250.
Evidence as to, 251.
Light in bar, 252.
What shall be deemed evidence of unlawful, 253.
Liability of occupants, 254.
Person selling as well as occupant liable, 255.
Certain presumptions conclusive unless rebutted, 257.
Of liquor to persons becoming drunk, 268.
Restrictions of to inebriates, 272.
Justices may forbid, to habitual drunkards, 274.
Of liquor to habitual drunkards after notice by husband, wife, etc., 277.
Money paid for liquor sold illegally may be recovered, 284.
Where C. T. Act in force, 304.

SALOONS (see TAVERN LICENSES).
Number of limited, 11.

SATISFACTORY EVIDENCE (see EVIDENCE).
Defined, 144.

SATURDAY NIGHT AND SUNDAY.
All places to be closed during, 125.
When keeper of house guilty of violations of provisions as to Sunday closing, 130-133.
When persons other than keeper of house guilty, 133.
Obtaining liquor at prohibited time, 135.
Penalties for contravention of provisions as to, 165.

SCHEDULES OF FORMS (see FORMS).—329.

SEARCH.
Rights of officers, policeman, constable or inspector to make, 290.
Warrant may be granted authorizing, 292.
Rights of officers thereunder, 293.
Officers may seize liquor found on, 294.
Persons found in unlicensed place must give name and address, 295.

SECOND OFFENCES (see CONVICTIONS).
Duty of Inspector to prosecute for, 128.
Duty of Justice in respect of, 128 (*x*).
Authorities as to, 129, 166, 167, 168, 225, 230.
Punishment for, 162, 166.
Authorities as to, 162, 164, 228.

SECOND OFFENCES—*Continued.*
Conviction for bad unless proceedings taken for first offence, 166.
Proceedings where charged, 225, 230.
Meaning of, 230.

SECURITY.
Of Inspector, 12.
To be given by tavern licenses, 64.
To be given by officers appointed by License Commissioners, 287.

SECURITIES.
Given for liquor illegally sold may be recovered, 283.
And to be void, 285.

SEIZURE.
Of liquor found on unlicensed premises, 294.
If no conviction liquor to be returned, 297.

SELLING (see SALE).
Less quantity than license allows, 5 (*c*).
Without license, 108.
Convictions for selling without license, 108-111, 157-164.
From ships in port prohibited, 141.
To unlicensed persons prohibited, 143.
Penalty for selling without license, 157.
Cases as to selling and bartering, 157.
Liquor to drunken person, 177.
Description of offences, 230, 330.
Proof of, 250-258.
Or giving liquor to persons becoming intoxicated, 268.
To person who assaults any person or injures property, 272.
To habitual drunkards may be forbidden, 274.
To habitual drunkard after notice by relatives, 277.

SERVANT (see MASTER AND SERVANT).
Of keeper of unlicensed tavern liable to be convicted, 159.

SERVICE (see SUMMONS, WITNESSES, ETC.).
Of notices, etc., 28, 29.
What constitutes, 229.
Proof of, *Ib.*
Of summons on witness, 260.

SHIPS IN PORT (see VESSELS).
Sale of liquor from prohibited when in port, 141.

SHOP LICENSE (see LICENSES).
Defined, 6.
Mode of procedure in obtaining, 88.
Optional with Commissioners to grant or refuse, 89.
To whom given, 66.
Requirements as to, 66.
License Commissioners may limit, 10.
Municipal Councils may limit, and restrict, and regulate the sale in shops, 67.
Not to issue to places in which other goods are sold, 69.
Sale of mineral waters in shops, 70, 72.
Void, if other goods sold, 71.
Provisions of tavern licenses to apply to, 71.
Conditions for obtaining, 72.
Duties payable for, 89, 100.
Not to authorize liquor sold to be consumed in house, 142.
Penalty for allowing communication between licensed and unlicensed premises, 182.

SHOP LICENSE—*Continued.*
For allowing communication with premises where other goods sold, 183.
Case of purchaser drinking liquor on premises where same bought, 190.
SIGNATURE (see INTERPRETATION).
Requisites of, 27.
SIX MONTHS' LICENSE.
May be granted in certain cases, 54.
SOCIETIES (see CLUBS).—122.
SPIRITUOUS LIQUORS.
Meaning of, 2.
STATUTORY AUTHORITY (see AUTHORITY).
STATUTES.
Relating to licenses, 1.
Things done under authority of, 47.
When provisions of are compulsory, 68 (*a*).
Construction of, 139.
Effect of revision of, 325.
STIPENDIARY MAGISTRATE.
Power of, 149.
Appeal from, 299.
SUICIDE.
Liability of Inn-keeper for, 268.
Authorities respecting, 269.
SUMMONS.
When service of waived, 163, 238.
Service of, 229.
Irregularity in, 238.
To witness, 260.
SUNDAY (see SATURDAY NIGHT).
No sales to be made on, 125.

T

TAVERN-KEEPERS (see INN-KEEPERS).
Defined, 169.
Not to purchase, or receive goods in pawn, 147.
Refusing lodgings, meats, etc., 169.
Rights and liabilities of, 170-173.
Penalty for permitting drunkenness, violent, riotous, disorderly conduct, or selling liquor to drunken person, or permitting such person to consume liquor, or suffering persons of bad character to assemble, or suffering gambling or any unlawful game, 174, 178.
To exhibit notice of license, 107.
Refusing lodgings, meals, etc., 169.
Liability of for giving liquor to persons becoming intoxicated, 268.
Civil remedies against, 268.
Liability of for assault or injury to property by inebriates, 272.
Liability for furnishing liquor to inebriates after notice, 281.
TAVERN LICENSE (see LICENSES).
Defined, 5.
License Commissioners may define conditions and qualifications requisite for, 9.
May limit number, 10.
May exempt from having accommodation, 11.
May regulate, 11.
Mode of procedure in obtaining, 38.
Limitation of number, 46, 47.
Municipal Council may limit number, 51.

TAVERN LICENSE—*Continued.*
Accommodation required, 62.
Place licensed not to communicate with grocery, 62.
must be an eating house, 63.
Municipal Council may prescribe requirements as to accommodation, 63.
Licensee must give security, 64.
Provisions of to apply to shops, 71.
Duties payable for, 89, 100.
Notice of to be exhibited, 107.
Penalty for allowing communication with unlicensed premises, 162.
with premises where other goods sold, 183.
TAMPERING WITH WITNESSES (see WITNESSES).—202.
TEMPERANCE ACT (see CANADA TEMPERANCE ACT).
Provisions as to, 301-311.
Cases under, 312-328.
TERRITORIAL DISTRICTS (see UNORGANIZED DISTRICTS).
THIRD OR SUBSEQUENT OFFENCE.
For selling liquor without license, 162.
Procedure where charged, 225-230.
Meaning of, 230.
TIME.
Computation of, 14, 20, 24, 28, 35, 281, 293.
THREE HALF-PINTS.
Defined, 7.
TOOLS.
Licensee not permitted to purchase or take in pawn, 147.
Penalty for, 150.
TORONTO.
Chief Inspector for, 12.
TOWNS.
Number of tavern license to be issued in, 46.
What constitutes a town, village, etc., 224.
Liability of for enforcing C. T. Act, 307.
May aid in enforcing, 308.
TRANSFER.
To premises not licensed, 31.
Application for must be accompanied by certificate of electors, 32.
But not to apply to transfer to another person of same premises, 33.
Of license, 79.
Consent of Commissioners must be obtained, 80.
in itself does not validate a transfer, 81 (*p*).
Cases as to, 82.
New report necessary on, 83.
Provisional consent to, 83.
Report may be dispensed with, 84.
Mileage to Inspector on, 86.
Duty payable on, 90.
Fees for to be paid to license fund account, 102.
TRAVELLER.
Who is a, 49.

U

UNLAWFUL.
Game, penalty for permitting, 174-182.
Consumption of liquor, 188-193.
Purchaser liable for, 190.

UNLICENSED PERSONS (see SALE, SELLING).
Sale to prohibited, 143.
An agreement enabling such person to sell liquor illegal, 147.
UNLICENSED PLACE.
Persons found in must give name, address, etc., 295.
UNORGANIZED DISTRICTS.
Certificate of electors required for new tavern license in, 34.
Act to apply to the judicial, territorial and other districts of the Province, 298.
Stipendiary Magistrate to try cases, 299.
Lieutenant-Governor-in-Council may appoint Board of Commissioners and Inspectors in, 299-301.
Appeal from Stipendiary Magistrate, 299.
Duties payable in, 300.
Issue of licenses in, 300.
Municipal Corporations in, 301.
Disposition of fines in, 299.

V

VESSELS.
Licenses to abolished, 16 (*n*).
No license to be issued to, 17.
Sale of liquor from when in port prohibited, 141.
VIOLENT, RIOTOUS, OR DISORDERLY CONDUCT.
Penalty for permitting, 174.

W

WARRANT (see PENALTIES).
Of restitution, 150.
When defendant may be arrested on, 163, 229.
Of commitment, authorities as to, 162-165.
Several terms of imprisonment to be consecutive, 164-204.
Imprisonment upon several, 204.
Costs of commitment and conveying to gaol to be stated in, 206.
Enforcing conviction not void for certain defects, 239.
Authorities as to, 239.
For arrest of witnesses failing to attend, 258.
To enter and search premises where liquor kept for sale, 292.
Powers of officers thereunder, 293, 294.
WEARING APPAREL.
Licensee not to purchase, 147-150.
WHOLESALE LICENSES.
Defined, 6, 74.
Issue of, 72.
Power of Legislature as to, 72.
To what premises applicable, 74.
Regulations as to issue of, 75.
Must be confined strictly to persons selling by wholesale, 75.
Becomes void if the holder carries on business of retail dealer in any other goods, etc., 76.
Liquors not to be consumed on premises, 142.
Duties payable on, 89.
Under the C. T. Act, 303.
Duties, payable for, 307.
WIFE (see HUSBAND AND WIFE).
Of occupant liable to be convicted, her husband being in gaol at the time, 157.

WIFE—*Continued.*
A competent and compellable witness in certain cases, 221.
WINE AND BEER LICENSES (see BEER AND WINE LICENSES).
WINE MEASURE.
Its equivalent, 7.
WITNESSES (see EVIDENCE).
Commissioners may summon and examine at hearing of objections to application, 36.
Who are competent and compellable, 127, 221, 259.
May be exempted from penalty, 188.
Where person charged incompetent, 195.
Tampering with, 202.
May be examined on oath or affirmation, 219.
Evidence of to be taken in writing, 219.
Meaning of "credible witness," 221.
Summoned and not appearing may be brought up by warrant, 258.
Production of documents, 260.
WORDS AND PHRASES (see INTERPRETATION).

es, 221.
ICENSES).

ring of objections to

by warrant, 258.