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[No. 228.]

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4th Session, 8th Parliament, 29 Victoria, 1865.

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**B I L L .**

**An Act to amend the Act respecting  
Duties of Excise.**

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**Received and read first time, - Thursday, 7th  
September, 1865.**

**Second reading, Friday, 8th. September, 1865.**

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**Hon. Mr. GALT.**

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**Printed by G. E. Desbarats.**

**An Act to amend the Act respecting Duties of Excise.**

**W**HEREAS it is expedient to make better provision for Preamble.  
 the collection of duties of excise, and for that purpose  
 to amend the Act passed in the session held in the twenty-  
 seventh and twenty-eighth years of Her Majesty's Reign, inti-  
 tuled : *An Act to amend and consolidate the Acts respecting* 27, 28 V. c. 3.  
*Duties of Excise, and to impose certain new duties ;* Therefore,  
 Her Majesty, by and with the advice and consent of the Legis-  
 lative Council and Assembly of Canada, enacts as follows :

**1.** After the tenth section of the Act cited in the preamble Section 10  
 to this Act, and hereinafter referred to as the Act hereby amended.  
 amended, the following section shall be held to be inserted  
 and to make part of the said Act :

“ No building or place shall be licensed as a Tobacco Ma-  
 nufactory until after a survey thereof has been made by an As to buildings  
 Officer of Excise duly authorized for that purpose by regula- licensed as To-  
 tion or otherwise, nor until such officer has reported the bacco Manu-  
 result of his survey ; and no license shall issue in any case factories.  
 unless the following conditions are complied with :—

“ 1. All the entrances to such building or place (unless it be Entrances.  
 used as a snuff mill only) shall be directly from some public  
 street or highway ;

“ 2. The building or place shall not form a part of, nor be Not to be join-  
 appurtenant to any shop or premises where tobacco or cigars ed to a shop,  
 are sold by retail, or in which there are kept any broken pack- &c.  
 ages of tobacco or cigars, nor shall there be any communica-  
 tion, passage way, door or window, whereby any person, article  
 or thing can pass between such manufactory and shop other-  
 wise than through a street door of the manufactory as herein  
 provided.”

**2.** The following subsection shall be held to be inserted Section 33  
 after subsection two, of the thirty-third section of the Act amended.  
 hereby amended and to make part of the said section :—

“ 3. And in case of the seizure of any article or thing in any Certain books  
 Distillery, Brewery or Tobacco Manufactory, for contravention may be taken  
 of this Act, the seizing officer or any Superior Officer of Excise, in case of sei-  
 may take possession of and remove all or any books, papers or sure.  
 accounts kept under the requirements of this Act, and may

retain the same until the seizure shall be declared valid by competent authority, or the article or thing seized or the proceeds thereof shall, by such authority, be directed to be restored."

Section 25  
amended.

3. The following provision shall be held to be inserted at the end of section thirty-five of the Act hereby amended, and to make part of the said section :—

Certain particulars to be entered in Stock Books.

" In which Stock Books, there shall be clearly recorded day by day in the prescribed columns, a full and particular account of all Grain, Malt, Spirits, raw and manufactured Tobacco and other Stock, material or commodity brought into the Distillery, Brewery or Tobacco Manufactory to which such Stock Books relate, and also of all Grain, Malt, Spirits, raw or manufactured Tobacco, or other Stock, material or commodity, sold, removed or transferred from such Distillery, Brewery or Tobacco Manufactory; stating in every case the name of the person from whom the same was bought or obtained, or to whom it was sold or transferred as the case may be, and also the mode of conveyance by which it was brought to the Distillery, Brewery or Tobacco manufactory or by which it was carried therefrom :—and if any such Grain, Malt, Spirits, Beer, manufactured or raw Tobacco has been conveyed by any Vessel or Railway to or from any Port, Wharf or Station, situated within a distance of ten miles from the Distillery, Brewery or Tobacco manufactory, then such Vessel or Railway shall be named as the conveyance by which such Grain, Malt, Spirits, Beer, Tobacco or Stock was conveyed as aforesaid."

If articles have been conveyed by Railway.

Section 23  
amended.

4. The following subsections shall be held to be added to the thirty-sixth section of the Act hereby amended, and to make part thereof :—

Weights, scales and measures to be inspected.

" 3. All beams, scales, weights and measures used in or about any Distillery, Brewery or Tobacco manufactory, shall be inspected, tested and verified by an Officer of Excise or by any Inspector of Excise, as often as any Inspector of Excise may direct, and the cost of such inspection shall be borne and defrayed by the Distiller, Brewer, or Tobacco Manufacturer to whom the weights, scales and measures may belong.

Penalty for using them without inspection.

" 4. Any person who shall use or cause or permit the using of any beams, scales, weights or measures in or about any Distillery, Brewery or Tobacco Manufactory, other than such as have been tested and inspected as above provided and approved by the proper Officer of Excise, shall forfeit and pay for every such offence a penalty of five hundred dollars, and a further penalty of fifty dollars for each and every day upon which such offence shall have been committed; and such beams, scales, weights and measures, shall be seized by any Officer of

Forfeiture.

Excise having a knowledge thereof, and shall be and remain forfeited to the Crown and be dealt with accordingly."

5. The following sub-sections shall be held to be inserted at the end of the thirty-seventh section of the Act hereby amended, and to make part thereof:—

"2. But whenever the Commissioner of Customs and Excise shall have cause to believe that the returns of spirits manufactured at any Distillery are incorrect, he may cause the quantity to be estimated and the returns to be amended by either of the following methods of computation:—

Section 37 amended.  
Power of Commissioner believing distillers' returns to be incorrect.

1st. He may cause an enquiry to be made by any inspecting officer, who may swear and examine parties and witnesses under oath, as to the quantity of Grain taken to the Distillery to which such return relates, and as to the quantity of Grain removed therefrom, and who shall also enquire generally into the matters referred to him, and shall determine as nearly as may be the actual quantity of Grain consumed in the Distillery; and the duty may be assessed and levied on the quantity of Grain so determined, in the proportion of one gallon of Proof Spirits to every seventeen pounds of Grain. Or—

Inquiry as to quantity of grain consumed.  
Duty levied accordingly.

2ndly. He may cause an enquiry to be made in the manner above provided as to the capacity of the Fermenting Tuns used in the Distillery, the frequency with which they have been used, and the quantity of Beer or Wash, from time to time fermented therein; and the duty may be assessed and collected in the proportion of one gallon of proof spirits for every fourteen gallons of Beer or Wash determined by such Inspecting Officer, after such enquiry, to have been fermented in the said Fermenting Tuns;—

Or as to capacity of fermenting tuns and frequency of use.  
Duty calculated accordingly.

3rdly. Every such enquiry may be made for any period not exceeding one year previous to its commencement; and the duties may be assessed and any portion thereof remaining unpaid may be collected, in accordance with the determination of the Inspecting Officer, notwithstanding the collection of any part of such duty on returns previously made. And if any contravention of this Act or of the Act hereby amended be proved as to such duties, the penalties or forfeiture, or both, incurred by such contravention, may be enforced as if such returns had not been made or such duty in part paid; and this notwithstanding the payment of the theretofore unpaid portion of such duties;—

Period for such inquiry.  
Collection of duties as to penalties incurred before inquiry.

4thly. Provided that if the determination of the Inspecting Officer under this section be disputed, the proof of the error or wrong shall rest with the party alleging it."

Duty of proof.

New section  
after 56.

6. At the end of the fifty-sixth section of the Act hereby amended, the following sub-section shall be held to be inserted, and to make part of the said section :

Empty pack-  
ages with  
stamps not al-  
lowed in to-  
bacco manu-  
factories.

"2. No empty or partly filled package, box, jar, canister barrel or bag of a description such as is used for packing 5 Tobacco, Cigars or Snuff, and having attached to it any stamp or part of a stamp, shall be brought into, or remain in any Tobacco Manufactory ; and any contravention of this section shall subject the manufacturer to the penalties and forfeitures imposed in section one hundred and six of this Act for any 10 of the offences mentioned in the said section."

Section 62  
amended.

7. The sixty-second section of the said Act shall be amended as follows :

Sub-section to  
come after sub-  
section 1.

After the first sub-section relating to Distilleries, the following sub-section shall be inserted and make part of the said section : 15

"The quantity of grain, malt, spirits, beer or other commodity brought into the Distillery during the preceding half month."

Sub-section 4  
amended.

The sub-section four of the said section, (relating to Distil- 20 leries,) shall be so amended as to read as follows :

As to Distille-  
ries.

"The quantity of grain, malt, or other commodity, removed from the Distillery, or disposed of otherwise than for Distilla- tion, during the preceding half month."

As to Brewe-  
ries.

The sub-sections relating to Breweries, shall be amended by inserting the following sub section after the words "Such 25 account shall Exhibit "

Quantity of  
grain brought  
in,

"The quantity of grain, malt, beer or other commodity brought into the Brewery during the preceding half month."

Sub-section three, (relating to Breweries) shall be so amended as to read as follows : 30

Or removed.

"The quantity of malt, grain, or other commodity removed from the Brewery or disposed of otherwise than for Brewing, during the preceding half month."

8. Section seventy-eight of the said Act shall be so amended as to read as follows : 35

"Goods warehoused under this Act may be transferred in bond from one party to another, and may be exported ex-warehouse, or removed from one warehouse, port, place or revenue division, to another, without payment of duty, under such restrictions and regulations as the Governor in Council may 40 deem necessary."

9. After the ninety-first section of the Act hereby amended, the following sections shall be held to be inserted and to make part of the said Act :—

New sections after section 81.

“ Whenever the Inspecting Officer of Excise shall deem it necessary to determine the strength or value of any Beer or Wash, he may take out of any Beer or Wash then in the Distillery, a quantity not exceeding twenty-eight gallons as a sample, which he may distil or cause to be distilled, for the purpose of any computation under this or the Act hereby amended, and he may calculate the value or strength of the Beer or wash used in that distillery according to the result ascertained from the sample so taken :” or—

Power of inspecting officer to determine strength of Beer or Wash.

“ 2. He may at any time test the strength of any Beer or Wash then in the Distillery by running a portion thereof not exceeding the contents of any one fermenting tun, through the Stills, in the ordinary course of working such Distillery, and may require the ordinary operatives of such Distillery to do the work, or may introduce other operatives into the Distillery for that purpose : and for the purpose of any such computation as aforesaid he may calculate the value or strength of the Beer or Wash used in that Distillery according to the result ascertained from the portion of such Beer or Wash so distilled.”

Further powers for the same.

10. After the ninety-third section of the Act hereby amended, the following section shall be held to be inserted, and to make part of the said Act :—

New section after 93.

“ Any Judge of the Court of Queen’s Bench or of the Common Pleas in Upper Canada, or of the Superior Court or of the Court of Vice Admiralty in Lower Canada, having jurisdiction in the place where the application is made, shall grant a Writ of Assistance upon application made to him for that purpose by the Collector of Inland Revenue or any Superior officer of the Excise or by Her Majesty’s Attorney General or Solicitor General,—and such Writ of Assistance, when issued, shall be in force during the whole of the Reign in which the same shall have been granted, and for twelve months from the conclusion of such Reign :”

Writ of Assistance may be granted.

How long to remain in force.

“ 2. Under authority of a Writ of Assistance so granted any officer of the Excise, or any person employed for that purpose with the concurrence of the Governor in Council, expressed either by special order or appointment or by general regulation, taking with him a peace officer, may enter in the day time any building or other place within the jurisdiction of the Court granting such Writ, and may search for and seize and secure any goods or things liable to forfeiture under this Act, and, in case of necessity, may break open any doors and any chests or other packages for that purpose.”

Powers under such writ.

- Section 109 amended.** **11.** The one hundred and ninth section of the Act, hereby amended, shall be amended as hereinafter mentioned : that is to say :
- Sub-sect. 2.** Sub-section two, of the said section shall be so amended as to read as follows : 5
- Amendment.** " To keep Stock, Books and all such other books as are required to be kept by this Act, or by any regulation made under the provisions of this Act, or by any regulation approved by the Governor in Council, or by the Minister of Finance."—
- Paragraph after sub-sect. 9.** The last paragraph after Sub-section nine of the said Section 10 shall be so amended as to read as follows :
- Amount of penalty and forfeiture of apparatus.** " Shall forfeit and pay for every such offence a penalty of two hundred dollars together with a further penalty equal to three times the amount of license fees, duty or other impost payable under this Act on any Spirits, Beer, manufactured 15 Tobacco, Stock, fermenting tun, Mash tub, machinery, utensil, tool, apparatus, article or commodity in respect of which any fraudulent, false, incorrect or imperfect information, entry, return, account or statement has been made or given, or in respect of which any entry, return, account, statement or information has 20 been in whole or in part neglected or refused to be made or given :—and all Spirits, Beer, raw and manufactured Tobacco, Grain, Malt, Hops, Stock, utensils, tools, apparatus, article or commodity, in respect of which any such fraudulent false or imperfect entry, return, account or information has been made 25 or given, or in respect of which any information, return, entry or account may have been in whole or in part neglected or omitted, or refused to be made or given, or which may be found in the Distillery, Brewery or Tobacco manufactory at the time when such false, fraudulent or imperfect information, entry, 30 return, account or statement shall be discovered to have been made or given, or at the time when it shall be discovered that the giving of any information or the making of any return, entry, statement or account has been in whole or in part neglected, shall be seized by any officer of Excise having a 35 knowledge thereof and shall be and remain forfeited to the Crown."
- And of stock, &c., in respect of which false return is made or information refused.**
- New section after sect. 113.** **12.** After the one hundred and thirteenth section of the Act hereby amended, the following section shall be held to be inserted and to make part of the said Act : 40
- Punishment for taking away goods seized or detained.** " If any person whatever, whether pretending to be the owner or not, either secretly or openly, and whether with or without force or violence, takes or carries away any goods, vessel, carriage or other thing which has been seized or detained on suspicion, as forfeited under this Act, before the 45 same has been declared by competent authority to have been



seized without due cause, and without the permission of the officer or person having seized the same, or of some competent authority,—such person shall be deemed to have stolen such goods, being the property of Her Majesty, and to be guilty of felony, and shall be liable to punishment accordingly.”

13. After the one hundred, and fifteenth section of the Act hereby amended the following section shall be held to be inserted and to make part of the said Act :

10 “ All penalties and forfeitures, incurred under this Act, or any other law relating to Excise, may be prosecuted, sued for and recovered in the Superior Courts of Law, or Court of Vice Admiralty having jurisdiction in that section of this Province where the cause of prosecution arises, or wherein the Defendant is served with process :—And if the amount or value of any such penalty or forfeiture does not exceed five hundred dollars, the same may also be prosecuted, sued for and recovered in any County Court or Circuit Court having jurisdiction in the place where the cause of prosecution arises or where the defendant is served with process.”

20 “ In case of the seizure of any perishable article, or of any grain or other commodity liable to damage from heating or otherwise, the Collector of Inland Revenue for the division in which such seizure has been made, or any Superior Officer of Excise may sell the same within such delay as to prevent its becoming deteriorated in value, or a part of the value consumed, by reason of the expense of keeping or the decay of the same, as if it had been condemned,—and may keep in his hands the proceeds of such sale until the same has been condemned, or deemed to be condemned, or ordered to be restored to any claimant, in which last mentioned case, the Court before which the claim is heard shall order the Collector to pay over to the claimant the proceeds of such sale, in lieu of awarding restitution ;”

35 “ 2. Nevertheless the Collector of Inland Revenue or Superior Officer of Excise aforesaid, may deliver up to any claimant any such perishable article or grain liable to damage, so seized as aforesaid, upon such claimant depositing in the hands of the Collector or Superior Officer such sum of money as will represent the full value thereof, or giving security to the satisfaction of such Collector or Superior Officer that the value of such seizure and all costs shall be paid to the use of Her Majesty, if such article be condemned.”

45 “ Any article or commodity seized as forfeited under this Act or the Act hereby amended, may, at the option of the seizing Officer be kept or stored in the building or place where it was seized until it is condemned or ordered to be restored to any claimant ;—and so long as such article or commodity is

under seizure the place or building in which it is so kept or stored shall be held to be in the custody of the Officer of Excise or other person appointed for that purpose by the seizing officer or by any Superior Officer of Excise, or such article or commodity may by direction of such seizing Officer or Superior Officer be removed to and kept in any other place." 5

Burden of proof that duties have been paid, &c. "The burden of proof that the duties of excise have been paid and all the other requirements of this Act complied with, as regards any article of any kind subject to duty under this Act, shall lie upon the parties whose duty it was to pay such duties and to comply with such requirements." 10

New section after sect. 118. § 4. After the one hundred and eighteenth section of the Act hereby amended the following section shall be held to be inserted and to make part of the said Act :

Notice of seizure to be posted up. "So soon as an information has been exhibited in any Court for the condemnation of any goods or thing so seized, notice thereof shall be put up in the office of the Clerk or Prothonotary of the Court, and also in the office of the Collector of Inland Revenue or Chief Officer of Excise, in the Inland Revenue Division wherein the goods or thing has been secured as aforesaid ; 15 20 said ;

How claims to the property seized shall be determined. "If the owner or person claiming the goods or thing exhibits a claim to the same and gives security and complies with all the requirements of this Act in that behalf, then the said Court at its sitting next after the said notice has been so posted during one month, may proceed to hear and determine any claim which has been validly made and filed in the meantime, and to the release or condemnation of such goods or thing as the case requires—otherwise the same shall, after the expiration of such month, be deemed to be condemned as aforesaid, and may be sold without any formal condemnation thereof ; 25 30

Claims to be posted up. "No claim on the behalf of any party who has given notice of his intention to claim before the posting of such notice as aforesaid, shall be admitted, unless validly made within one week after, the posting thereof :—nor shall any claim be admitted, unless notice thereof has been given to the Collector of Inland Revenue or Superior Officer of Excise within one month from the seizure as aforesaid ;" 35

Condemnation if not claimed within a certain time. "All vehicles, goods and other things seized as forfeited under this Act or any other Act relating to Excise, or to trade or navigation, shall be deemed and taken to be condemned, and may be dealt with accordingly, unless the person from whom they were seized, or the owner thereof, do, within one month from the day of seizure, give notice in writing to the Seizing Officer, the Collector of Inland Revenue in the Inland 40 45

Revenue Division in which such goods were seized, or Superior Officer of Excise, that he claims or intends to claim the same ;

“ But any Judge having competent jurisdiction to try and  
 5 determine the seizure, may, with the consent of the Collector of Inland Revenue at the place where the seized articles are secured, or of any Superior Officer of Excise, order the delivery thereof to the owner, on receiving security by bond with two sufficient sureties, to be first approved by such Collector or  
 10 Superior Officer of Excise, to pay double the value in case of condemnation,—which bond shall be taken to Her Majesty’s use in the name of the Collector or of the Superior Officer of Excise, and shall be delivered to and kept by such Collector or Superior Officer of Excise ;—And in case such seized articles  
 15 are condemned, the value thereof shall be forthwith paid to the Collector and the bond cancelled, otherwise the penalty of such bond shall be enforced and recovered.”

Goods seized may be delivered up on security.

15. After the one hundred and twenty-first section of the Act hereby amended, the following section shall be held to be  
 20 inserted and to make part of the said Act :—

New section after sect. 121.

Appropriation and division of penalties and forfeitures.

“ All forfeitures and penalties under this Act, after deducting the expenses of prosecution shall, unless it be otherwise expressly provided, belong to Her Majesty for the public uses of the Province,—but the net proceeds of such penalty or forfeiture, or any  
 25 portion thereof, may be divided between and paid to the Collector of Inland Revenue or Superior Officer of Excise by whom the seizure was made or the information given on which the prosecution was founded, and any person having given information or otherwise aiding in effecting the condemnation of the  
 30 goods or thing seized, or the recovery of the penalty, in such proportions as the Governor in Council may in any case or class of cases direct and appoint ; but nothing herein contained shall be construed to limit or affect any power vested in the Governor in Council with regard to the remission of penalties or  
 35 forfeitures by this Act or any other law.”

This clause is intended to be moved in committee of the whole, and is inserted here for convenience only, and as a notice.

Proviso.

16. So much of the one hundred and twentieth and one hundred and twenty-first sections of the Act hereby amended as makes provision for the application or distribution of penalties and forfeitures under the said Act is hereby repealed.

Part of sects. 120 and 121 repealed.

40 17. And for the removal of doubts, be it declared and enacted, that if any article or thing be voluntarily given up or abandoned by the owner to any Collector of Inland Revenue or Superior Officer of Excise, as forfeited under the Act hereby amended or this Act, or if any sum of money be voluntarily  
 45 paid to any such Collector or Officer as the amount of a penalty incurred under either of the said Acts, such abandonment or payment shall be held lawful, and such article or thing may

Interpretation clause.

be dealt with as if legally condemned, and such sum of money as if legally recovered.

**18.** This Act shall be construed as one Act with the Act  
5 hereby amended, and all words and expressions herein used  
shall have the same meaning as are assigned to them respectively  
in the said Act. The words "this Act" in either of them  
shall include both, and the words "Superior Officer of Excise"  
in either of them shall mean and include the Commissioner and  
10 Assistant Commissioner of Customs and Excise and any  
Inspecting Officer of Excise.