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No. 15.

1st Session, 5th Parliament, 18 Victoria, 1854.

BILL.

An Act to prevent the traffic in Alcoholic and Intoxicating Liquors.

Received and read First time, Tuesday, 19th
September, 1854.

Second reading, Tuesday, 10th Oct. 1854.

MR. FELTON.

QUEBEC:

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(15)

1854.]

BILL.

[No. 15.

An Act to prevent the traffic in Alcoholic and Intoxicating Liquors.

WHEREAS the common traffic in intoxicating Liquors and their use as a beverage is a fruitful cause of crime, poverty, disease and demoralization; And whereas it is the first duty of Government to protect the people against these evils: Be it therefore enacted, &c., that

Preamble.

5 From and after the time limited for the commencement of this Act, it shall not be lawful for any person or persons to manufacture, barter or sell, directly or indirectly, to any other person any alcoholic or intoxicating Liquor or any mixed Liquor a part of which is alcoholic or intoxicating (and every such mixed liquor shall be included in the expression "alcoholic or intoxicating liquor" when used in this Act), except for medicinal, chemical or mechanical purposes as hereinafter provided.

General rule laid down.

15 II. Any person not being a licensed manufacturer or an agent duly appointed under the provisions of this Act, who shall, by himself, his clerk, servant or agent, manufacture, expose or keep for sale or barter, or shall sell, dispose or exchange for any other matter or thing, to any other person any alcoholic or intoxicating Liquor, except according to the provisions of this Act, shall be liable to a fine of £ on the first conviction, £ on the second, and on the third and every subsequent conviction to such last mentioned fine and imprisonment for a period not more than six calendar months, such fine to be paid over to the Chamberlain, Treasurer, Clerk, or Secretary-Treasurer, of the Municipality in which the offence shall be proved to have been committed, for the use of the Municipality, and to be applied to such public purposes as the Council thereof may direct; and in default of payment of any fine imposed under this Act, with the costs of prosecution, at the time of conviction, the offender shall be imprisoned until the same be paid: Provided that nothing contained in this Act shall be construed to prevent any Chemist, Artist or Manufacturer, in whose art or trade they may be necessary, from keeping at his place of business such reasonable and proper quantity of distilled liquors as he may have occasion to use in his art or trade, but not for sale or barter.

Penalty for contravening the General rule aforesaid.

Proviso.

35 III. If any clerk, servant or agent, or other person in the employment or on the premises of another, shall sell or manufacture, or assist in selling or manufacturing, any alcoholic or intoxicating Liquor, (except under the provisions of this Act) for the person in whose service or on whose premises he may be, he shall be held equally guilty with the principal, and shall suffer the like penalty.

Agent liable equally with principal.

IV. Any Justice of the Peace, any Reeve or Mayor of a Township, Village or other Municipality, any Police Magistrate, or Recorder of any

Who may try offenders against this Act.

City or Town, any Judge of a Circuit or Division Court or Commissioner for the Summary Trial of Small Causes, shall and may hear and determine any case arising within his or their jurisdiction under this Act; and every person who shall make complaint against any other person for contravening this Act or any part or portion thereof, before such Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge or Commissioner may be admitted as a witness, and if the Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge or Commissioner before whom the examination or trial is had shall so order, the defendant shall not recover costs, though the prosecution fail. 5

Conditions on which alone appeal, certiorari, &c. shall be allowed.

V. No Appeal, Certiorari, or Orders for removal shall be allowed to any person complained of or convicted under the preceding Sections, or against whom any order shall be made or judgment rendered for an offence against any of the provisions of this Act, unless he shall enter into a recognizance or bond to the Municipality in which the offence is alleged to have been committed, in the sum of £25, jointly and severally with two good and sufficient sureties, to prosecute his appeal, certiorari or order for removal, and pay all costs, fines and penalties that may be awarded against him upon the final determination of the case; and no recognizance or bond shall be taken except by the Justices, Reeve, or Police Magistrate, Recorder, Judge or Commissioner before whom the complaint was made or the offender tried, and if the appeal shall not be successful, the recognizance or bond shall be forfeited, and the amount thereof shall become a debt due to the Municipality within which the offence was committed, recoverable by action by and in the name of the Municipality, and it shall be the duty of the Secretary-Treasurer, Clerk, or Treasurer or Chamberlain of such Municipality to prosecute the same and the money shall be applied in the same manner as the fines hereinbefore mentioned: And if the recognizance or bond mentioned in this Section shall not be given before or within forty-eight hours after conviction, order made or judgment rendered, the appeal, certiorari or removal shall not be allowed. 10 15 20 25 30

Power to search for liquor kept in contravention of this Act.

VI. If any three persons being voters or entitled to vote at the Municipal election of the Municipality within which the complaint is made shall make oath or affirmation before any Justice, Reeve, Mayor or Police Magistrate, Recorder or Judge of a Circuit Court or Division Court or Commissioner for the summary trial of Small Causes, that they have reason to believe and do believe that alcoholic or intoxicating Liquor intended for sale or barter are kept or deposited in any steamboat or other vessel, or in any carriage, or vehicle, or in any store, shop, warehouse, or other building or place in such Municipality, or on any river, lake or water adjoining the same, by any person not authorised to sell the same under the provisions of this Act, the said Justice, Mayor, Reeve, Police Magistrate, Recorder, Judge or Commissioner shall issue his Warrant of Search to any Sheriff, Police Officer, Bailiff or Constable, who shall forthwith proceed to search the premises or place described in said warrant, and if any alcoholic or intoxicating Liquor be found therein, he shall seize the same and convey them to some proper place of security, and there keep them until final action is had thereon; but no dwelling house in which or in part of which a shop or bar is not kept, shall be searched, unless one at least of the said complainants shall testify on oath to some act of sale of alcoholic or intoxicating Liquor therein or therefrom, within one calendar month of the time of making the said complaint; and the owner or keeper of the Liquor seized as aforesaid, if he shall be known to the Officer seizing the same, shall be summoned forthwith before the Justice or person by whose Warrant the Liquor was 35 40 45 50

Proviso.

Owner summoned.

seized, and if he fail to appear, and it is shown to the satisfaction of the said Justice or person who issued the Warrant that the said Liquor was kept or intended for sale or barter, it shall be declared forfeited, and shall be destroyed by authority of the written order to that effect of said Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge or Commissioner, and in his presence, or in the presence of some person appointed by him to witness the destruction thereof, and who shall join with the Officer by whom the said Liquor shall have been destroyed, in attesting that fact upon the back of the order by authority of which it was done; and the owner or keeper of such Liquor shall pay a fine of ten pounds and costs, or be committed to prison for three calendar months in default thereof.

Forfeiture and destruction of the liquor.

Penalty on offender.

VII. If the owner, keeper or possessor of Liquor seized under the provisions of this Act shall be unknown to the Officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure shall have been advertised, with the number and description of the packages as near as may be, for two weeks, by posting up a written or printed notice and description thereof in at least three public places, and if it shall be proved within such two weeks to the satisfaction of the Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge or Commissioner by whose authority said Liquor was seized, that it is actually the property of any person authorized to sell the same under the provisions of this Act, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor upon the Warrant, which shall be returned to the said Justice or person who issued the same.

Provision if the owner of the liquor be unknown.

VIII. It shall be the duty of every Justice of the Peace, Mayor, Alderman, Councillor, Reeve, Deputy Reeve, Constable, or Policeman who shall have reason to believe, or who shall receive notice that any intoxicating Liquor is illegally kept or sold in any tent, shanty, booth, hut, or place of any kind for selling refreshment, in any public place or near the ground of any cattle show, fair or exhibition, or public meeting, or occasion of any kind, to search such suspected place, and if such Officer shall find upon the premises any intoxicating Liquor, he shall seize the same and arrest the keepers or keeper of such place, and (except he be merely a Constable or Policeman,) the Officer making such seizure may then and there order the Liquor to be destroyed, and it shall be destroyed accordingly; and if such seizure is made by a Constable or Policeman, or if the Officer making the same shall have any doubt as to the fact of the Liquor being alcoholic or intoxicating, and being illegally kept for sale or barter, the Liquor and keeper or keepers thereof shall be taken forthwith, or as soon as may be, before some Justice, Reeve, Mayor, Police Magistrate, Recorder or Judge of a Division or Circuit Court, or Commissioner, for the summary trial for Small Causes, other than the Officer making the seizure, and upon proof that the said Liquor is alcoholic or intoxicating, and that it was found in possession of the accused in a tent, shanty, or other place as aforesaid, he shall be fined five pounds, or sentenced to imprisonment for thirty days, and the Liquor so seized shall be destroyed by order of any Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge, or any such Commissioner as aforesaid.

Search for liquor in booths, &c. at fairs, &c.

IX. Any payment or compensation for Liquor sold or bartered in violation of this Act, whether in money or securities for money, labor or property of any kind shall be held and considered to have been received

Payment or compensation, &c. for liquor, to be void.

without consideration, and against law, equity, and good conscience, and the amount or value thereof may be recovered from the receiver by the party making, paying or furnishing the same, and all sales, transfers, conveyances, liens and securities of every kind, which, either in whole or in part shall have been given for or on account of alcoholic or intoxicating Liquors, shall be utterly null and void against all persons and in all cases, and no right of any kind shall be acquired thereby, and no action of any kind shall be maintained either in whole or in part for or on account of alcoholic or intoxicating Liquors sold or bartered in contravention of this Act.

Recital.

License for making and selling alcoholic liquors.

X. And whereas it is expedient under proper restrictions to allow the manufacture of alcoholic and intoxicating Liquors for medical, chemical, and mechanical purposes, but for no other,—Be it therefore enacted as follows: The Municipal Council of any County, City, or Town may grant a license to any person to manufacture alcoholic or intoxicating Liquors therein, for medical, chemical, and mechanical purposes only, which license shall be in force for the term of twelve calendar months only from the date thereof, and may be annulled at any intermediate time on proof to the satisfaction of the Council that such person has violated the conditions of his bond or any of the provisions of this Act, and every such person, before obtaining such license shall execute and deliver to such Council a bond, executed by him jointly and severally, with two good and sufficient sureties, in the penal sum of £250, in substance as follows:

Bond.

“ Know all men by these presents that we A. B. (*the principal*) and C. D. and E. F. (*the sureties*) are jointly and severally held and firmly bound unto Her Majesty in the penal sum of £250, currency, for payment whereof we bind ourselves and each of us binds himself, our and each and every of our heirs, executors and administrators firmly by these presents, sealed with our seals, dated this one thousand eight hundred and fifty

“ Whereas the above bounden A. B. has been duly licensed to manufacture alcoholic and intoxicating Liquors within the County (*or City or Town*) of for medicinal, chemical and mechanical purposes, and none other, for a period of twelve calendar months from the day of Now the condition of said bond is such that if the said A. B. shall not during the said period of twelve months, sell, barter or in any way dispose of any alcoholic or intoxicating Liquor to any person or persons except the Agent of a Municipality appointed under the authority of Section of the Act passed in year of the reign of Her Majesty Queen Victoria, intituled, ‘ *An Act &c. (the title of this ‘ Act’)* or a person having the written permission of such Agent to purchase a specified quantity of alcoholic or intoxicating Liquor for some chemical, medicinal or mechanical purpose, and shall not contravene any of the provisions of the said Act but shall in all respects conform thereto, then this obligation shall be void, otherwise it shall remain in full force.”

In what cases only such licensed person may sell liquor.

XI. Any person who shall obtain a license and deliver a bond as mentioned in the preceding Section may, during the continuance of such license manufacture alcoholic or intoxicating Liquors at the place specified in such license only, for chemical, medicinal and mechanical purposes but for no other purpose, and may sell such Liquors to any law-

fully appointed Agent of a Municipality, or to any person having the written permission of such Agent to purchase a specified quantity of alcoholic or intoxicating Liquor for a specified chemical, medicinal or mechanical purpose, and the manufacturer shall, before delivering any
 5 Liquor to any person exhibiting a written permission purporting to be signed by the Agent of a Municipality, satisfy himself that such signature is genuine and that the purchase is *bonâ fide*, and he shall keep the writing so produced to him.

XII. The Municipal Council of any City, Town, Township or incor-
 10 porated Village may appoint some suitable person as the agent of the said County, City, Town, Township or Village, or the Municipal Council of any County in Lower Canada only, to sell, at some central and convenient place within the Municipality, spirits, wines and other alcoholic and intoxicating Liquors for the purpose of being used medicinally or in
 15 some chemical or mechanical process or manufacture and no other, and such Agent shall receive such compensation for his service as the Council appointing him may allow, and shall in the sale of such Liquors conform to such rules and regulations as the Council shall prescribe for his guidance, and such Agent shall hold his appointment for one year,
 20 unless sooner removed by the Council which appointed him.

Municipal Agent for the sale of liquors for certain purposes.

XIII. Such Agent before he enters upon his duties shall receive a
 Certificate from the Council appointing him, under the Seal of such
 Council (if the Council have a Corporate Seal) authorizing him as the
 Agent of the Municipality to sell alcoholic and intoxicating Liquors for
 25 medicinal, chemical and mechanical purposes only, but such Certificate shall not be delivered until the Agent shall have executed and delivered to the Council a bond with two good and sufficient sureties in the sum of £200 conditioned as follows :

Agent to give security.

The Bond.

“ Know all men by these presents that A. B. (*the principal*,) and C. D.
 30 “ and E. F. (*the sureties*), are jointly and severally held and firmly bound “ unto Her Majesty in the penal sum of £200 of lawful money, for payment whereof we bind ourselves and each of us binds himself our “ and each and every of our heirs, executors and administrators firmly “ by these presents, sealed with our seals, dated this day of ,
 35 “ A.D. one thousand eight hundred and fifty : Whereas the above “ bounden A. B. has been duly appointed Agent for the Municipality of “ , to sell within and for on and account of such Municipality, “ alcoholic and intoxicating Liquors for medicinal, chemical and me-
 40 “ chanical purposes, and no other, until day of , A.D. “ one thousand eight hundred and fifty : unless sooner removed “ from such Agency. Now the condition of this bond is such, that if “ said A. B. shall in all respects conform to the provisions of an Act “ passed in the year of the Reign of Her Majesty Queen Victoria, “ and intituled, ‘ *An Act, &c.*,’ (*title of this Act*,) and to such rules and
 45 “ regulations as now are or shall be from time to time established by “ the Council of the Municipality of , then this obligation shall “ be void, otherwise it shall remain in full force.”

XIV. No action shall be maintained by any person to recover the value
 or possession of any intoxicating Liquor sold, taken, detained, injured
 50 or destroyed, unless the plaintiff shall prove that such liquor was sold according to the provisions of this Act, or was kept and owned by him for lawful purposes.

No action for liquor, unless sold, &c., under this Act.

Persons selling, &c. liquor to another, liable for all damages done in consequence thereof by such other person.

XV. Every person who shall sell or deliver to any other person any alcoholic or intoxicating Liquor, contrary to any provision of this Act, shall be liable for all damages which may happen or result to any other person from any act, negligence, carelessness, inadvertence or default committed, suffered or done by the person to whom such Liquor was sold or given, or by any person who drank the same, or any part thereof, if such person was in a state of intoxication, produced by the Liquor so sold, or delivered at the time he committed the said act, or was guilty of such negligence, carelessness, inadvertence, or default. 5

Action by husbands, parents, &c. against persons furnishing liquor to their wives, children, &c.

XVI. Any person may maintain an action in any Court in this Province against any other person who shall sell or deliver any Liquor, contrary to any provision of this Act, to the husband, wife, parent, child, guardian, ward, apprentice or servant of the plaintiff, and it shall not be necessary in any such action, to aver, or prove any special damage resulting to the plaintiff by such sale, or delivery, but the Court or Jury, before which such action is tried shall, on proof of such sale, or delivery, as aforesaid, assess the damages of the plaintiff therein at not less than one shilling, and if any special damage be shown, for such higher sum as may be just, and judgment shall be given accordingly: any married woman may prosecute and maintain such action in her own name, with or without the consent of her husband, and upon the trial of any action under this Section, the defendant, plaintiff, wife or husband of the plaintiff, may be examined as a witness, any law or rule of Court to the contrary notwithstanding. And the plaintiff in any such action shall be entitled to full costs upon obtaining a verdict or judgment for any sum whatever. 10 15 20 25

Onus of proof on Defendant.

XVII. Upon the trial of any complaint or civil action under any provision of this Act, proof of the manufacture, sale, barter or keeping of alcoholic or intoxicating Liquor by the defendant, shall be sufficient to sustain an allegation that the same was unlawful, and unless he proves the contrary, judgment shall be rendered against him. It shall be the duty of every Constable, Policeman or Watchman, whenever he shall see any person grossly intoxicated in any public street or place, to apprehend such person and to keep him in some safe and convenient place, until he shall become sober, and thereupon, forthwith to take him before a Justice of the Peace, Reeve, Police Magistrate, Commissioner for Small Causes in Lower Canada, or Judge of a Circuit or Division Court, and it shall be the duty of such Justice, or other functionary, to administer to such person an oath or affirmation, and to examine him for the purpose of ascertaining whether any offence has been committed against any provision of this Act, and if such person shall refuse to be sworn or to affirm or to answer any question pertinent to such examination, he shall be committed to the common gaol, there to remain until he shall consent to be so sworn or to affirm or answer; and if, upon such examination, it shall appear that an offence has been committed against any provision of this Act, it shall be the duty of such Justice or other functionary to issue his Warrant for the arrest of the offender and search his premises, and to convict him if found guilty. 30 35 40 45

Arrest of intoxicated persons and their examination.

Arrest of any person offending against this Act.

Witnesses may be summoned and compelled to give evidence.

XIX. It shall be lawful for any Justice of the Peace, Reeve, Police Magistrate, Recorder, Commissioner or Judge, authorized to hear and determine offences against this Act, to summon any person who may be represented to him as a material witness in relation to any offence against this Act, and if such person shall refuse or neglect to attend, 50

pursuant to such summons, the Justice or other person authorized to try the offence, may issue his Warrant for the arrest of the person so summoned, and such person shall be brought before the Justice or person issuing the Warrant, and if he shall refuse to be sworn or to affirm or to answer any question touching the matter under investigation, he may be committed to the common gaol, there to remain until he shall consent to be sworn or to affirm and answer, and all the provisions of any Act or Acts for the protection of Justices of the Peace when acting, or to facilitate proceedings by or before them, in matters relating to summary conviction and orders, shall, in so far as they may not be inconsistent with this Act, apply to every functionary mentioned in this Section or empowered to try offenders against this Act, and such functionary shall be deemed a Justice of the Peace within the meaning of any such Act, whether he be or be not a Justice of the Peace for other purposes.

Acts for the protection of Justices to apply.

XX. Every Justice of the Peace, or other public functionary who shall neglect or refuse to perform any duty required of him by any Section of this Act, shall, upon conviction thereof, in any Court of competent jurisdiction, be adjudged guilty of a misdemeanor, and shall be punished by fine not exceeding *One Hundred Pounds*, and such conviction shall work a forfeiture of Office in all cases.

Penalty on Justices &c refusing to act.

XXI. Every person who shall wilfully and corruptly swear, or affirm falsely, to any material matter, upon any oath or affirmation, taken or administered under any provision of this Act, shall, upon conviction thereof, be adjudged guilty of perjury, and shall be punished by imprisonment not exceeding three years.

False swearing, &c., to be perjury.

XXII. The following fees and no other shall be allowed for services rendered under the provisions of this Act; and whenever judgment shall be rendered for costs, there shall be included therein fees for such prospective services as shall be necessary to enforce such judgments.

Fees.

To any Justice of the Peace, Reeve or other Officer, performing the following services:

	£	s.	d.
For administering every oath.....	0	0	6
For every Warrant of any kind.....	0	1	3
For every Subpœna or Summons for a witness.....	0	1	6
For taking security by Recognizance, Bond or undertaking of any kind.....	0	1	6
For the trial of any complaint or claim.....	0	2	6
For a Certificate of conviction.....	0	1	6

To any Bailiff, Constable, Policeman or other Officer performing the following services:

For executing any Warrant of Arrest or Attachment, or making an arrest without Process, for each person arrested.....	0	2	6
For serving a Subpœna, Summons or Order of any kind.....	0	1	3
For conveying any person to gaol.....	0	2	6
For executing any Warrant of Search.....	0	5	0
For conveying Liquor seized to place of storage, besides expenses.....	0	2	6
For executing Warrant or Order for the destruction of Liquor, besides expenses.....	0	5	0
For every mile more than one necessarily travelled in performing any services under this Act.....	0	0	6

Other fees. Upon judgment of affirmance of any appeal, and for any other proceeding under this Act not specified in this section which shall be had before a Justice, Reeve or other functionary, the costs shall be the same as are now by law allowed for proceedings of a like nature, and in actions and proceedings in any higher Court, the costs shall be the same as are usually allowed in such Court. 5

No proceeding under this Act to be void for want of form. XXIII. No action or other proceeding, Warrant, Judgment, Order or other Instrument or Writing, authorized by or which may be necessary to carry out, the provisions of this Act, shall be held void, or be allowed to fail for defect of form, but all Justices, Municipal Councils, Judges and Courts, and all Public Functionaries or Officers who may be required to perform any duty under this Act, shall regard the same as a remedial Statute, and shall so construe its provisions as to advance their remedy and suppress the mischief mentioned in the preamble. 10 15

Repeal of laws inconsistent with this Act. XXIV. So much of each and every Act and provision of law now in force in any part of this Province, as shall be inconsistent with any provisions of this Act, shall be and is hereby repealed. 15

Commencement of Act. XXV. This Act shall commence and take effect on the 185 , and not before. 20