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No. 51.

1st Session, 4th Parliament, 16 Victoria, 1852.

BILL.

**An Act to provide for the care of
habitual Drunkards, and the cus-
tody and disposal of their effects.**

Received and Read a first time, Tuesday, 7th
September, 1852.

Second Reading, Tuesday, 14th September, 1852.

MR. GAMBLE.

QUEBEC :

PRINTED BY JOHN LOVELL, MOUNTAIN STREET.

(51)

BILL.

An Act to provide for the care of habitual Drunkards,
and the custody and disposal of their effects.

WHEREAS it is expedient to provide by law for the care Preamble.
of habitual drunkards, and for the custody and disposal of
their estates ; Be it enacted, &c.

That whenever the Head and Councillors of any Municipality Municipal
Councils may
forbid the sale
&c., of spirit-
uous liquors
to drunkards.
5 shall discover any person to be an habitual drunkard, it shall
and may be lawful for them, by writing under their Corporate
Seal to designate and describe such drunkard, and by written
notice under their said seal require all merchants and other
dealers in spirituous liquors, and every person within the Muni-
10 cipality where such drunkard shall reside, or in any other Mu-
nicipality near to, or adjoining such first Municipality, upon the
said notice being first endorsed by the head of such adjoining
Municipality, not to give or sell under any pretence, any spirituous
liquors to such drunkard.

15 **II.** And be it enacted, That if after the personal service of such Penalty on
persons selling
liquors to such
drunkards.
notice, any person shall knowingly give or sell in any manner
whatever, spirituous liquors to any such drunkard, except by the
personal direction or on the written certificate of some medical
practitioner, regularly licensed to practice according to the laws
20 of this Province, stating that such liquor is necessary for the pre-
servation or recovery of the health of such drunkard, he or she
shall forfeit for every such offence, upon conviction thereof before
a Justice of the Peace, a sum of not less than twenty shillings, nor
more than five pounds, as in the discretion of the said Justice shall
25 seem meet.

III. And be it enacted, That every person upon whom the notice
mentioned in the first section of this Act shall have been served,
shall be liable to the forfeiture prescribed in the second section
thereof, whenever any agent, clerk or member of the family of
30 such person shall knowingly give or sell in any manner whatever,
spirituous liquors to any person designated as an habitual drunkard Such persons
shall also be
liable to the
penalty if any
member of
their families
sell liquors to
drunkards.

in the manner mentioned in this act, subject, nevertheless, to the exception stated therein.

Tavern-keepers not to sell liquors to apprentices, minors, &c., whose parents or masters are designated as habitual drunkards.

IV. And be it enacted, That whenever the parents or guardian of a minor under sixteen years of age, or the master of an apprentice or servant have been designated by the Municipal authorities aforesaid as habitual drunkards, no tavern keeper grocer or other person licensed to sell spirituous liquors, shall sell any such liquors or wines to any such minor, apprentice or servant, without the consent of the Municipal authorities of the city, town, village or township, where such minor apprentice or servant shall reside, and every person offending against the provisions of this section, shall forfeit the penalty prescribed in the second Section of this act, to be recovered before any Justice of the Peace for the county wherein the said offence shall be committed. 5 10

Persons designated as drunkards may apply for a Jury to try the fact of drunkenness.

V. And be it enacted, That any person so designated by the Municipal authorities aforesaid as an habitual drunkard, may apply to the clerk of the Division Court, of the division in which the person so designated resides, requiring him by notice in writing, to summon a Jury to try and determine such fact of drunkenness, and it shall be the duty of such Clerk upon receiving such notice, immediately to summon the head of the Municipality aforesaid, to appear at the next ensuing session of the Division Court, to be held in and for such division, there to appear for the trial of such fact; provided always, that such summons shall be served at least ten days previous to the sitting of the said Court; and also it shall be the duty of said Clerk, and he is hereby required to summon a Jury in the manner, and subject to the conditions provided in the 13th and 14th Vic., cap. 23, for the summoning of Juries for the Division Courts in certain cases. 15 20 25

Proviso.

Jury to be sworn.

VI. And be it enacted, That at the next ensuing session of the Division Court, held in and for the division in which the person designated as a drunkard shall reside, the Judge of such Court shall swear such Jury, well and truly to try the fact of the alleged drunkenness in the same manner as for the trial of issues in suits brought in the said Court, and witnesses shall be summoned and their attendance and testimony enforced, and they shall be sworn and examined before the said Jury in like manner. 30 35

Jury to proceed as in trials at law.

VII. And be it enacted, That the said Jury shall hear the allegations and proofs offered on both sides, and shall proceed in all respects as in trials at law to render their verdict, which verdict shall be entered by the Clerk of the Court in a book to be provided by him for that purpose. 40

VIII. And be it enacted, That the said verdict or an attested copy thereof, under the hand of the Judge of such Division Court, shall be received and shall be deemed presumptive evidence of the fact thereby found, in any action between the Municipal authorities, and any person prosecuted by them for the penalty herein before imposed.

Verdict to be presumptive evidence of the fact.

IX. And be it enacted, That if by the verdict of the Jury it shall be found, that the person demanding such trial is an habitual drunkard, the Judge shall enter judgment against such person, and award execution for the costs of the Municipal authorities in attending such trial, in the same manner as in the suits between individuals, which Judges of the Division Courts are authorised to try and determine; and if it be found that such person is not an habitual drunkard, such Judge shall in like manner enter judgment and award execution for the costs of such person, against the said Municipal authorities, unless it shall appear to such Judge that said authorities acted in good faith and had reasonable cause to believe such person an habitual drunkard, in which case no costs shall be awarded against them, but each party shall pay his own costs.

Judgment against party found by verdict to be an habitual drunkard, or against the Municipality if such fact be not found.

X. And be it enacted, That if at any time the Municipal authorities aforesaid shall be satisfied that such drunkard has reformed and become temperate, they may revoke and annul any such notice given by them or any of their predecessors in office.

Drunkards reformed.

XI. And be it enacted, That the Judges of the County Courts within their respective counties shall have the care and custody of all persons who shall be designated in the manner before prescribed in this Act, as habitual drunkards, and incapable on that account of conducting their own affairs, and of their real and personal estates, so that the same shall not be wasted or destroyed; and shall provide for their safe keeping and maintenance and for the maintenance of their families, and the education of their children out of their personal estates, and the rents and profits of their real estates respectively.

Who shall have the care and custody of drunkards.

XII. And be it enacted, That whenever any person shall be designated as an habitual drunkard as aforesaid, being possessed of real or personal property which may be endangered by means of such drunkenness, it shall be the duty of the head of the Municipality in which such person shall reside, to make application to the Judge of the County Court, having jurisdiction within such Municipality, for the exercise of his powers and jurisdiction.

As to property of drunkards, which may be endangered.

County
Judges to have
same powers
in relation to
drunkards as
vested in
Court of
Chancery in
case of luna-
tics.

XIII. And be it enacted, That the Judges of the several County Courts within their counties respectively, are hereby vested with the same powers in relation to the person, and the personal and real estate of such drunkard as aforesaid, as are now vested in and exercised by the Court of Chancery in the case of lunatics and 5 persons of unsound mind; and save and except in granting a commission to inquire into the fact of the alleged drunkenness, which fact shall be determined in the manner before provided by this Act and by no other inquisition whatever, shall in all respects proceed in the like manner, subject to an appeal to the said Court of Chan- 10 cery.

Appeals from
judgments,
&c., of County
Judges.

XIV. And be it enacted, That in all cases of appeal from any order, judgment or decree of the Judge of the County Court, made pursuant to the provisions of this Act, the same shall be filed and entered within three months after the making of such order, judg- 15 ment or decree, and shall be accompanied by a bond with good and sufficient sureties, to be approved by the court, to the opposite party, in such penalty as the court may determine, conditioned for the payment of such costs as shall be awarded against the appellant in case of the order, judgment or decree being affirmed. 20

Actions by
Committees of
habitual
drunkards.

XV. And be it enacted, that the Receiver or Committee of habitual drunkards, appointed by order or decree of the Judge of any County Court in this Province, for the county within which such drunkard shall reside, may sue in their own names for any debt, claim or demand transferred to them or to the possession 25 and control of which they are entitled, as such receiver or committee; and when ordered or authorized to sell such demands, the purchaser thereof may sue and recover therefor in his own name, but shall give such security for costs to the defendant as the court, in which such suit is brought, may direct. 30

Committees to
file inventory
of Estate of
drunkard.

XVI. And be it enacted, that any committee of the estate of any habitual drunkard specified in the first section of this Act, shall within six months after their appointment, file in the office of the Clerk of the County Court, which appointed such committee, a just and true inventory of the whole real and personal estate of such 35 drunkard, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such committee; and whenever any property belonging to such estate shall be discovered after the filing of any inventory, it shall be the duty of such Committee to file as afore- 40 said, a just and true account of the same, from time to time, as the same shall be discovered.

XVII. And be it enacted, That such inventories shall be verified by the oath of the committee, to be taken before a Judge of any Court of Record in this Province.

Inventory to be on oath.

XVIII. And be it enacted, That the filing of such inventory shall be compelled by the order and process usual in such cases of the court which appointed the Committee.

Filing of inventory compellible by usual process.

XIX. And be it enacted, That whenever the personal estate of such drunkard above specified, shall not be sufficient for the discharge of his debts, it shall be the duty of the committee of his estate to apply by petition to the court by which they were appointed, praying for authority to mortgage, lease or sell so much of the real estate of such drunkard as shall be necessary for the payment of such debts; the said petition shall set forth the particulars and amount of the estate, real and personal, of such drunkard, the application which may have been made of any personal estate, and an account of the debts and demands existing against such estate.

Provision when personal Estate of drunkard is not sufficient for discharge of debts.

XX. And be it enacted, That on the presenting of such petitions, it shall be the duty of the Judge of such County Court to enquire into the matters therein contained, to examine into the truth of the representations made, and to hear all parties interested in such real estate with all convenient speed.

Duty of Judge on Presentation of Petition in such cases.

XXI. And be it enacted, That if it shall appear to such Judge upon examination of the matter, that the personal estate of such drunkard before specified is not sufficient for the payment of his debts, and that the same has been applied to that purpose, so far as the circumstances of the case rendered proper, an order shall be entered directing the mortgage, leasing, or sale of the whole, or such part of the said real estate as may be necessary to discharge the said debts.

Order by Judge in such cases.

XXII. And be it enacted, That the Court may require sufficient security to be given by any such committee, for the faithful application and accounting for the proceeds of such mortgage, lease or sale, and may require an account thereof to be rendered from time to time.

Security may be required of Committee.

XXIII. And be it enacted, That in the application of any monies raised by any such mortgage, lease or sale, the committee shall pay all debts in an equal proportion, without giving any preference whatsoever.

Debts to be paid in equal proportion.

Provisions in case of insufficiency of Estate for maintenance of drunkards family, &c.

XXIV. And be it enacted, That when the personal property, and the rents, profits and income of the real estate of such drunkard before specified, shall be insufficient for his maintenance, or that of his family, or for the education of his children, a similar application may be made by the committee to the Judge of the Court having jurisdiction, for authority to mortgage or sell the whole, or so much of the real estate as shall be necessary for that purpose upon which the same proceedings shall be had, and a like order shall be entered as hereinbefore directed. 5

In such case Court to direct manner of appropriating proceeds.

XXV. And be it enacted, That in the case last mentioned the court shall direct the manner in which the proceeds of such sale shall be secured, and the income or produce thereof appropriated. 10

And give orders directing time of sale.

XXVI. And be it enacted, That the court shall give such orders directing the time and manner of any sale herein authorised as shall be deemed proper; and no conveyance in pursuance of any such sale shall be executed, until the sale shall have been reported on the oath of the committee, and confirmed by the court directing the same. 15

Committee may apply for authority to convey Estate of drunkard.

XXVII. And be it enacted, That whenever such drunkard before specified, shall be seized or possessed of any real estate by way of mortgage, or as trustee for others in any manner, his committee may apply to the Judge of the County Court by whom they have been appointed, for authority to convey and assure such real estate to any other person or persons entitled to such conveyance or assurance, in such manner as the said court shall direct, upon which the like proceedings shall be had, as in the application to sell real estate as aforesaid, and the court upon hearing all the parties interested, may order such conveyance or assurance to be made. 20 25 30

Committee may be compelled to execute conveyance.

XXVIII. And be it enacted, That upon the application of any person entitled to such conveyance or assurance by petition, the Committee may be compelled by the Judge of the County Court, on hearing of all parties interested to execute such conveyance or assurance. 35

Conveyance by Committee valid and effectual.

XXIX. And be it enacted, That every conveyance, mortgage, lease and assurance made under the order of the County Court, pursuant to the provisions of this Act, shall be as valid and effectual as if the same had been executed by such drunkard above specified when of sound memory and understanding. 40

XXX. And be it enacted, That the County Court shall have authority to decree and compel the specific performance of any bargain, contract or agreement, which may have been made by any drunkard as before specified in this Act, while such drunkard was capable to contract, and to direct the committee of such person to do and execute all necessary conveyances and acts for that purpose.

Court may compel performance of agreement made by drunkard while capable.

XXXI. And be it enacted, That the real estate of any drunkard as before specified shall not be leased for more than five years, or mortgaged, or alienated, or disposed of otherwise than is herein directed.

Limitation of Lease of Estate of drunkard.

XXXII. And be it enacted, That in case any drunkard as aforesaid shall reform and become temperate, and the Municipal authorities shall revoke the notice designating him in the manner prescribed in the tenth section of this Act, then in such case his real and personal estate shall be restored to him.

Estate to be returned to reformed drunkard.

XXXIII. And be it enacted, That in case of the death of any drunkard as aforesaid, during his state of incapacity, the power of any trustees appointed under this Act shall cease, and his real and personal estate shall be distributed in the manner provided by law for the division of the real and personal estates of persons dying intestate, in the same manner as if he had been of sound mind and memory.

As to death of drunkard.