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BILL.

An Act to amend the laws in force respecting the Sale of Intoxicating Liquors, and the issue of Licenses therefor, and otherwise for repression of abuses resulting from such sale.

Reprinted by order of the Legislative Assembly.

Mr. DUNKIN.

QUEBEC

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An Act to amend the laws in force respecting the Sale of Intoxicating Liquors and the issue of Licenses therefor, and otherwise for repression of abuses resulting from such sale.

Reprinted by order of the Legislative Assembly.

WHEREAS it is expedient to amend the laws in force in this Province, respecting the sale of intoxicating Liquors and the issue of Licenses therefor, and otherwise to provide for the repression of abuses resulting from such sale, the whole as hereinafter is set forth: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows: Preamble.

PROVISIONS AS TO LOCAL PROHIBITION.

1. The Municipal Council of every county, city, town, township, parish or incorporated village in this Province, besides the powers presently conferred on them by law, shall have power at any time to pass Every County or local Council may prohibit the sale of intoxicating liquors.

10 a by-law for prohibiting the sale of intoxicating liquors and the issue of licenses therefor, within such county, city, town, township, parish or incorporated village, in terms of this Act, and subject to the provisions and limitations hereby enacted.
2. Such by-law shall be drawn up and passed, and in Lower Canada Form of By-law.

15 shall be published, in ordinary form; and shall not have embodied therein any other provision than the simple declaration, that the sale of intoxicating liquors and the issue of licenses therefor, is by such by-law prohibited within such county, city, town, township, parish or incorporated village, under authority of this Act.
3. After the publication thereof as by law required in Lower To be communicated to Collector of Inland Revenue,

20 Canada, or the passing thereof in Upper Canada, every such by-law shall be communicated as soon as conveniently may be, by delivery of a certified copy thereof, to the Collector of Inland Revenue, whose official district such county, city, town, township, parish or incor-

25 porated village is situate.
4. As regards the prohibition of issue of licenses, every such by-law shall take effect from the day of the delivery of such certified copy to such Collector of Inland Revenue; and as regards the prohibition of such sale, and otherwise, every such by-law,—if on the day of such When the By-law shall come into force.

30 delivery there be in force within the municipality any other by-law for prohibiting or preventing such sale, under authority of the Lower Canada Consolidated Municipal Act, or of the Consolidated Statutes for Upper Canada, chapter fifty-four, as the case may be, shall take effect so as to become substituted for, and to repeal, such other by-law from

35 such day,—or if on such day there be no such other by-law in force, shall take effect in Lower Canada from the first day of May, and in

its duration. Upper Canada from the first day of March, next after such day; and every such by-law shall continue in force, in Lower Canada until the first day of May, and in Upper Canada until the first day of March, next after the repeal thereof.

If there be a By-law of a local municipality in force.

2. If at the time of the coming into force of any by-law of a County Council passed under authority of this Act, there be in force within any municipality forming part of such county, any other by-law passed under authority of this Act, the operation of such last mentioned by-law shall be and remain suspended for so long as the by-law of the County Council continues in force,—but shall revive, in default of express repeal thereof, should the by-law of the County Council be repealed.

3. No such by-law shall be repealed within the full term of one year from the date of the passing thereof.

No license to be issued while it remains in force.

5. In Lower Canada, from the day of delivery to him of such copy, and for so long thereafter as such by-law continues in force, no Collector of Inland Revenue shall issue any license to take effect within the county, city, town, township, parish or incorporated village, affected by such by-law,—either for keeping an inn, tavern, or other house or place of public entertainment, and for retailing whisky or any spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors,—or for keeping an inn, tavern, or other house or place of public entertainment, and for retailing wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whisky, or other spirituous liquors,—or for vending or retailing in any store or shop, brandy, rum, whisky, or other spirituous liquors, and wine, ale, beer, porter, cider, or other vinous or fermented liquors, in a quantity not less than three half-pints at any one time; and no person shall be liable by reason of his not having therein any license of such description, to the penalty of fifty dollars, imposed by the twenty-second section of the Act chaptered six of the Consolidated Statutes for Lower Canada, intituled "An Act respecting tavern keepers and the sale of intoxicating liquors".

Nor any penalty for want of a license, under Con. Stat. L. C., c. 6.

The same in U.C.

2. In Upper Canada, from the like day and for the like period, no Collector of Inland Revenue shall issue, to take effect within the like limits,—either any tavern license, that is license for the retail of spirituous, fermented or other manufactured liquors to be drunk in the inn, ale-house, beer-house or other house of public entertainment in which the same is sold,—or any shop license, that is license for the retail of such liquors in shops, stores or places other than inns, ale-houses, beer-houses or places of public entertainment.

Licenses already issued to become void.

Repayment of duty on such licenses

6. If on or before the day of such delivery to the Collector of Inland Revenue, there should have been issued any such license for the year to commence on the first day of May, or first day of March, (as the case may be,) then next to follow, the same shall thereupon, *ipso facto*, become wholly null and void; and the Collector of Inland Revenue shall forthwith notify the person holding the same, to that effect, and shall be held to pay back to him such moneys as he may have paid, by way of duty or otherwise, therefor.

While the by-law is in force no lot or thing sold on any pretence, for any but medical or sacramental purposes.

7. From the day on which such by-law takes effect for other purposes, aforesaid, and for so long thereafter as the same continues in force, no person, unless it be for exclusively medicinal or sacramental purposes, or for *bona fide* use in some art, trade or manufacture, shall, within such county, city, town, township, parish, or incorporated village, by himself, his clerk, servant, or agent, expose or keep for sale, or directly or indirectly, sell or barter, or in consideration of the purchase of any other property give, to any other person, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating.

2. And neither any license issued to any distiller or brewer,—nor yet any license for retailing on board any steamboat or other vessel, brandy, rum, whisky, or other spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors,—nor yet any license for retailing on board any steamboat or other vessel, wine, ale, beer, porter, cider, or other vinous or fermented liquors, but not brandy, rum, whisky, or other spirituous liquors,—nor yet any other description of license whatsoever,—shall in any wise avail to render legal any act done in violation of this section.

Licenses to be of no effect.

10 8. The Municipal Councils of any two or more neighboring municipalities, after having respectively passed such by-law, may also, each of them, by a further by-law, concur in and confirm, mutually, such by-law of the other or others of them; and in that case, such further by-law shall not have embodied therein any other provision than the simple declaration that such by-law or by-laws of the neighboring municipality or municipalities in question are thereby concurred in and confirmed,—and shall be communicated, in like manner, to the Collector of Inland Revenue, or Collectors, as the case maybe; and no by-law so mutually concurred in and confirmed, shall thereafter be repealed, unless with the like concurrence in and confirmation of such repeal, on the part of the municipalities in question.

By-law may be concurred in by neighboring municipalities.

And then shall not be repealed unless by consent of all.

9. Whoever, by himself, his clerk, servant or agent, exposes or keeps for sale, or directly or indirectly, on any pretence or by any device, sells, or barter, or in consideration of the purchase of any other property gives, to any other person, any spirituous or other intoxicating liquor, or any mixed liquor capable of being used as a beverage and part of which is spirituous or otherwise intoxicating, in violation of the seventh section of this Act, shall incur a penalty of not less than *twenty* nor more than *fifty* dollars for each such offence; and whoever, in the employment or on the premises of another, so exposes or keeps for sale, or sells, or barter, or gives, in violation of the said section, shall be held equally guilty with the principal, and shall incur the same penalty.

Selling by the intervention of others for bidden, &c.

Penalty. The agent equally guilty with the principal.

10. Any prosecution for such penalty may be brought by or in the name of the Collector of Inland Revenue within whose official district the offence was committed,—or by or in the name of the corporation or the municipality wherein the offence was committed,—or by or in the name of any person, whether authorized by the Council of such municipality or not; and where the by-law is that of a County Council, either the corporation of the county itself, or that of the municipality comprised therein, and within which the offence was committed, may prosecute.

By whom penalties may be recovered.

2. Such prosecution may be brought before any Stipendiary Magistrate, or before any two or more other Justices of the Peace, for the district in Lower Canada, or for the county or union of counties in Upper Canada, wherein the offence was committed,—or, if the offence was committed in the district either of Montreal or of Quebec, then before the Recorder or Judge of the Sessions of the Peace at Montreal or Quebec, as may be,—or, if the offence was committed in any other district in Lower Canada, then before the Sheriff of such district,—or, if the offence was committed in any city or town in Upper Canada, having a Recorder or Police Magistrate, then before such Recorder or Police Magistrate.

And before what tribunal

3. If such prosecution is brought before a Stipendiary Magistrate, Recorder, Judge of the Sessions of the Peace, Sheriff, or Police Magistrate, no other Justice shall sit or take part therein.

If before a stipendiary magistrate, &c.

Interpretation as to next 22 section.

4. In the next following twenty two sections, the word "Justice" includes any such Stipendiary Magistrate, Recorder, Judge of the Sessions of the Peace, Sheriff, or Police Magistrate, or any such two or more other Justices of the Peace, as the case may be.

Limitation and form of suit.

11. Every such prosecution shall be commenced within six months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant, or upon the evidence of one or more witnesses. 5

What only it shall be necessary to insert in the declaration.

12. It shall not be necessary, in any such prosecution, to set forth or mention on the face of the complaint, summons, conviction, warrant of distress, or warrant of commitment, the by-law bringing the municipality within the special purview of this Act; but such complaint, summons, conviction and warrants may be in the forms A, B, C, D and E, respectively, hereto appended, or to the like effect; and unless the defendant specially puts in issue the fact of such by-law being in force, such fact shall be presumed by the Justice; and if such fact be so put in issue, the production of a copy of such by-law, certified under the hand of the Clerk or Secretary-Treasurer of the municipality, having thereon written a certificate under the hand of the same officer, of the due publication and communication to the Collector of Inland Revenue, of such by-law, if in Lower Canada,—or of such communication only, if in Upper Canada,—shall be conclusive proof of the passing and of the tenor thereof, and also of such publication and communication thereof, the whole as so certified; and no fact so certified touching such by-law, shall be incidentally put in issue or questioned in the course of any such prosecution. 15 20 25

As to allegation and proof of by-law.

Several counts or several offences may be included.

13. Two or more offences by the same party, may be included in any such complaint, provided the time and place of each offence is stated; and in that case, the forms aforesaid shall be altered, so far as need may be, accordingly. 30

Proviso—total penalty limited

2. But, whatever may be the number of the offences so included in one complaint, the maximum of penalty imposable for them all shall in no case exceed *one hundred and fifty* dollars.

Ex parte if defendant does not appear.

14. If in any such case the Defendant fails to appear as required by the summons, the Justice may proceed *ex parte* to the consideration and hearing thereof, and may adjudicate therein, as fully and effectually to all intents as though the Defendant had duly appeared in obedience to the summons. 35

Amendment of declaration

15. Any such complaint may be amended before final hearing, in any matter of form or substance, upon motion made to that effect, by or for the prosecutor,—and without costs, unless otherwise specially ordered by the justice; and on such amendment being made, the defendant (should he require it) may have a further delay to plead to the merits, or for plea and proof, as may be ordered; and if the complaint, in the opinion of the Justice, be so defective that a legal conviction cannot be based upon it, and it be not amended, the Justice may dismiss the case, with or without costs in his discretion. 40 45

If adjudged defective.

Not to be dismissed for informality, &c.—but adjourned in certain cases.

16. No such prosecution shall otherwise be dismissed for any defect, informality, error or omission; but if it appear that the defendant has been or may have been, materially misled thereby, the Justice may, on such terms as he thinks fit, adjourn the further proceedings in the case to a future day. 50

17. If any such prosecution is dismissed, the Justice, should he be of opinion that there was probable cause for the complaint, shall not award costs against the prosecutor.

If there was probable cause.

18. Every summons or other process, proceeding, or paper, in any such case, may be served, and the service thereof certified, under his oath of office, by any bailiff, or by any constable or peace officer duly appointed for the locality wherein the same is pending.

Service of process, &c.

19. In every such case, if the Justice so order, or if either party so require, the depositions of the witnesses shall be reduced to writing by the Justice, or by such clerk as the Justice may appoint to that end, and shall be filed of record in the cause. Such clerk shall be entitled to charge and receive at the rate of *ten cents* for each hundred words of evidence so reduced to writing, or of *two dollars per diem*, in the discretion of the Justice,—to be entered in taxation, and paid by either party, or partly by each party, as the conviction or judgment in the case may ordain; and if no conviction or judgment be rendered therein within two months after the taking of such evidence, then the fees of such clerk shall be paid in equal shares by each party.

Depositions may be reduced to writing and filed.

Fees to clerk employed and how paid.

20. It shall not be necessary in any such case, to prove that an offence was committed on the precise day specified, in order to obtain a conviction; provided it be proved that the same was committed on or about such day, and before the date of the complaint.

Proof of precise date of offences dispensed with.

21. In all such cases, the delivery of intoxicating liquor of any kind in or from any building or place, other than a private dwelling house or its dependencies, or in or from any dwelling house or its dependencies, if any part thereof is used as a tavern, eating house, grocery, shop, or other place of common resort,—such delivery in either case being to any one not *bona fide* a resident therein,—shall *prima facie* be deemed evidence of and punishable as a sale in violation of the seventh and ninth sections of this Act; and any such delivery in or from a private dwelling house or its dependencies, or in or from any other building or place whatever, to any one whether resident therein or not, with payment or promise of payment, either express or implied, before, on or after such delivery, shall *prima facie* be deemed evidence of and punishable as a sale in violation of the said sections.

Delivery of liquor in other than private houses to be deemed evidence of a sale.

What shall be so deemed in private houses

22. In any such case, the Justice may summon any person represented to him as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the Justice may issue his warrant for the arrest of such person; and he shall thereupon be brought before the Justice, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol, there to remain until he consents to be sworn, or to affirm, and to answer.

Summoning witnesses; punishment of those refusing to answer.

23. No person shall be incompetent on account of interest in the event of any such case, to give evidence therein.

As to interest of witnesses.

24. Any person examined or called as a witness in any such case, shall be bound to answer all questions put to him, and which the Justice deems relevant, notwithstanding his answers may disclose facts subverting or tending to subject him to any penalty or other criminal proceeding; but his answers shall not be used against himself in any prosecution or criminal proceeding.

Witnesses bound to answer all relevant questions.

Penalty for tampering with witnesses.

25. Any person who, either before or after the summons of any witness in any such case, tampers with such witness, or by any offer of money, or by threat or otherwise, directly or indirectly, induces or attempts to induce any such person to absent himself or herself, or to swear falsely, shall be liable to a penalty of *fifty dollars* for each such offence. 5

Defendant may be examined as to his means of satisfying the judgment.

26. Whenever judgment is rendered under the said seventh and ninth sections of this Act, for the amount of any penalty and costs, the Justice, if he sees fit, may call on the Defendant to declare whether or not he possesses sufficient goods and chattels to satisfy the same, and if the answer be affirmative, may further examine him as to the sufficiency of such goods and chattels, and as to their being or not being readily available for seizure under a warrant of distress; and if the Defendant either answers in the negative, or refuses to answer, or fails to answer to the satisfaction of the Justice, he may be forthwith imprisoned 15 under the warrant of the Justice, in the common gaol of the district, or county, or union of counties, for a period of not less than *one* nor more than *six months*, counting from the day of his arrival as a prisoner at such gaol; and such imprisonment, when fully undergone, shall be taken as a satisfaction and discharge of such judgment. 20

Imprisonment if his answers are not satisfactory.

Imprisonment if defendant is absent and does not appear to have goods to satisfy judgment.

27. If the Defendant be not present at the time of the rendering of such judgment, and it be made to appear to the satisfaction of the Justice, by affidavit, that the issue of a warrant of distress would be likely to fail of realizing the full amount thereof, in penalty and costs, the Defendant may be forthwith imprisoned in such common gaol under 25 warrant of the Justice, for a period of not less than *two* nor more than *six months*, counting from the day of his arrival as a prisoner at such gaol: but the Defendant, in that case, may at any time obtain his liberation from such imprisonment, by making full payment of such amount and of all subsequent costs. 30

Execution if defendant has sufficient goods.

28. If the Justice do not so interrogate the Defendant, being present,—or if the Defendant being interrogated shows that he possesses a sufficiency of available goods and chattels to satisfy the amount of the judgment, in penalty and costs,—or if in the absence of the Defendant it be not shown to the satisfaction of the Justice that the issue of a war- 35 rant of distress would be likely to fail of realizing the full amount of the judgment, in penalty and costs,—then in default of immediate payment, such amount shall be levied by warrant of distress out of the goods and chattels of the Defendant; and in default of such goods and chattels, or in case of their being insufficient, the Defendant shall be 40 imprisoned in such common gaol, under warrant of the Justice, for a period of not less than *two* nor more than *six months*, counting from the day of his arrival as a prisoner at such gaol; and the Defendant, in that case, may at any time obtain his liberation from such imprisonment, by making full payment of such amount and of all subsequent 45 costs.

In default of goods, imprisonment.

Liberation on payment in full.

Application of penalties.

If prosecuted by Collector of Revenue.

29. All such penalties shall be disposed of in the following manner, that is to say:—

1. If the prosecution was brought by or in the name of a Collector of Inland Revenue, and not under authorization from the Council of a 50 municipality, two-third parts shall belong to and be retained by such Collector,—but subject to the obligation of paying over one of such two-third parts to any person on whose information he may have instituted the prosecution; and the remaining third part shall by him be paid over to the Receiver General, for the public uses of the Province. 55

2. If the prosecution was brought by or in the name of the corporation of a municipality, or by or in the name of any person authorized by the Council thereof, the whole shall belong to such corporation; and the Council of the municipality may pay over not more than one-half thereof, either to such person, or to any other person upon whose information the prosecution may have been instituted.

If prosecution is in the name of a municipality.

3. If the prosecution was brought by or in the name of any person not so authorized, two third parts (unless he declares that he declines the same) shall belong to him, and one third part shall belong to the corporation of the municipality whose by-law is thereby enforced; and if such person so declares, then his two-third parts also shall belong to the corporation; and in that case, the Council may pay over to any other person upon whose information the prosecution may have been instituted, not more than one-half of the whole penalty.

If brought by another person.

30. Any person bringing such prosecution under authorization from a Municipal Council, shall be indemnified by the corporation of the municipality so authorizing him, for all costs therein, whatever may be the result of the prosecution; and any person bringing such prosecution to a successful issue, without having been so authorized, shall be indemnified by the corporation whose by-law is thereby enforced, for any amount of costs which, without default on his part, he may have failed to recover from the Defendant.

Indemnification of prosecutors as to costs.

31. No conviction, judgment or order, in any such case, shall be removed by *certiorari* or otherwise, into any of Her Majesty's Superior Courts of Record; nor shall any appeal whatsoever be allowed from any such conviction, judgment or order, to any Court of General Quarter Sessions, or other Court whatsoever.

No appeal or *certiorari* allowed.

32. No by-law passed under authority of this Act, shall be set aside by any Court, for any defect of procedure, or form whatsoever.

No by-law void for defect of form.

GENERAL PROVISIONS, IRRESPECTIVE OF LOCAL PROHIBITION.

33. In prosecutions for the sale or barter, in any locality where in no by-law passed under authority of this Act is in force, of intoxicating liquor of any kind, without the license therefor by law required, or contrary to the true intent and meaning of the law in that behalf, it shall not be necessary that any witness should depose directly to the fact of such sale or barter as having taken place with his participation, or in his presence and to his absolute knowledge; but the Justice or Justices trying the same, so soon as it may appear to him or them that circumstances raising a reasonably strong presumption of the infraction of law complained of, are sufficiently put in evidence, shall put the Defendant on his defence, and in default of his rebuttal of such presumption, shall convict him accordingly.

In prosecutions for sale without license under present law, certain presumptions sufficient to put defendant on his defence, and convict him in default of rebuttal.

2. In every such prosecution, such Justice or Justices may summon any person represented to him or them as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the Justice or Justices may issue his or their warrant for the arrest of such person; and he shall thereupon be brought before the Justice or Justices, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol, there to remain until he consents to be sworn or to affirm, and to answer.

Witnesses summoned and not appearing may be brought up by warrant.

No costs against prosecutor with probable cause.

3. Whenever any such prosecution is dismissed, the Justice or Justices, if of opinion that there was probable cause therefor, shall not award costs against the prosecutor.

Liability of Innkeepers or persons in their employ, &c., who give liquor to persons who become intoxicated and commit suicide or perish from cold, &c.

34. Whenever any person has drunk to excess of intoxicating liquor of any kind, in any inn, tavern, or other house or place of public entertainment, or in any store or place wherein intoxicating liquor of any kind is sold, whether legally or illegally, and while in a state of intoxication from such drinking has come to his death by suicide, or drowning, or perishing from cold, or other accident caused wholly or in part by such intoxication, the keeper of such inn, tavern, or other house or place of public entertainment, or of such store or place wherein intoxicating liquor is so sold, and also any other person who for him or in his employ delivered to such person any of the liquor whereby such intoxication was caused, shall be liable to be indicted and tried for a misdemeanor,—if in Lower Canada, then before the Court of Queen's Bench, or Court of General or Quarter Sessions of the Peace, sitting in the district,—or, if in Upper Canada, then before any Court either of Oyer and Terminer and General Gaol Delivery, or of General Quarter Sessions of the Peace, sitting in the county or union of counties, or before the Recorder's Court of the city,—wherein such person met his death; and if convicted, such person shall be liable to a penalty of not less than *one hundred* nor more than *one thousand dollars*, payable to the heirs or legal representatives of the deceased person, in such proportions as the Court may direct,—or to be imprisoned for a period of not less than *one month* nor more than *twelve months*.

Penalty

Persons who furnish the liquor liable for assault committed by a person thereby intoxicated.

35. If a person in a state of intoxication assaults any person, or injures any property, whoever furnished him with the liquor which occasioned his intoxication, or with any part thereof,—if such furnishing was in violation of this Act, or otherwise in violation of law,—shall be liable to the same action by the party injured as the person intoxicated would be liable to; and such party injured, or his legal representatives, may bring either a joint action against the person intoxicated and the person who furnished such liquor, or a separate action against either.

Husband, wife, &c., may notify sellers of liquor not to furnish it to any person addicted to drinking.

36. The husband, wife, parent, child, brother, sister, tutor, guardian, or employer, of any person who has the habit of drinking spirituous or other intoxicating liquor to excess,—or the parent, child, brother, or sister, of the husband or wife of such person,—or the tutor or guardian of any child or children of such person,—may give notice in writing, signed by him or her, to any person licensed to sell, or who sells or is reputed to sell, spirituous or other intoxicating liquor of any kind, not to deliver spirituous or other intoxicating liquor to the person having such habit; and if the person so notified do at any time within twelve months after such notice, either himself, or by his clerk, servant or agent, deliver any such liquor to the person having such habit, the person giving the notice may in an action as for personal wrong, if brought within six months thereafter, but not otherwise, recover of the person notified, such sum not less than *twenty* nor more than *five hundred dollars*, as may be assessed by the Court or Jury as damages; 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 heirs or other legal representatives.

Liability of persons so notified.

Married women may bring action for damages.

37. Any payment or compensation for liquor furnished in contravention of this Act, or otherwise in violation of law, whether made in money or securities for money, or in labor or property of any kind, shall be held to have been received without any consideration, and against law, equity and good conscience,—and the amount or value thereof may be recovered from the receiver, by the party who made the same; and all sales, transfers, conveyances, liens and securities of every kind, in whole or part granted or given for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law, shall be null against all persons, and no right shall be acquired thereby; 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.

Money paid for liquor sold contrary to this Act may be recovered back.

Securities, &c for payment to be void.

PROVISIONS, IRRESPECTIVE OF LOCAL PROHIBITION, BUT AFFECTING ONLY LOWER CANADA.

38. The second sub-section of the twenty-second section of the said Act, chaptered six of the Consolidated Statutes for Lower Canada, and also the thirtieth section of the same Act, are hereby repealed.

Part of Sect. 22 of cap. 6, Con. Stat. L. C., repealed.

39. It is hereby declared and enacted, that the several terms of imprisonment set forth in the thirty-eighth, thirty-ninth, and fortieth sections of the said last mentioned Act, are to be reckoned from the day of arrival of the party as a prisoner, at the gaol of the district.

Mode of computing compulsory imprisonment.

40. The fiftieth section of the said last mentioned Act is hereby so amended as to permit the appeal therein provided for, to be made either to the Court of General Quarter Sessions of the Peace as therein ordained,—or to the Circuit Court sitting in the county, or at the *chef-lieu* of the district,—as the Judge allowing such appeal may in his discretion see fit to order; and thereupon the petition and record shall be returned, filed and otherwise dealt with accordingly, in the Court so by him designated.

Sec. 50 of cap. 6, Con. Stat. L. C. amended as to appeals.

41. In all places within Lower Canada, where according to law, intoxicating liquors are or may be allowed to be sold by wholesale or retail, no sale or other disposal of such liquors shall take place therein, or on the premises thereof, or out of or from the same, to any person or persons whomsoever, from or after the hour of seven of the clock on Saturday evening, till the hour of eight of the clock on the Monday morning thereafter,—save and except to travellers *bona fide* lodging at such place or places, or to ordinary boarders, *bona fide* lodging thereat,—and save and except in cases where a requisition for medicinal purposes, signed by a licensed medical practitioner, or by a Justice of the Peace, is produced by the vendee or his agent; nor shall any such liquors be permitted to be drunk in any such places, except as aforesaid, during the time prohibited by this section for the sale of the same.

No liquors to be sold at certain hours or on Sunday

Exception as to travellers or medicinal purposes.

42. For every offence under the last preceding section, a penalty of not less than *ten* nor more than *fifty dollars*, with costs, shall, in case of conviction, be recoverable from, and leviable against the goods and chattels of the person or persons who are the proprietors in occupancy, or tenants and agents in occupancy, of such place or places, and who are found by himself, or herself, or themselves, or his, her or their servants or agents, to have contravened the enactment in the last section hereof, or any part thereof.

Penalty for offence against sec. 41

- Who may be informants.** **43.** Any person or persons may be the informant or informants, complainant or complainants, in prosecuting under the last preceding two sections of this Act; all proceedings shall be begun within twenty days from the date of the offence; all informations, complaints, or other necessary proceedings may be brought and heard before any one or more Justices of the Peace for the district wherein the offence or offences were committed or done; and the mode of procedure in, and the forms appended to, the Consolidated Statutes of Canada, respecting the duties of Justices of the Peace out of Sessions, in relation to summary convictions and orders, may be followed as regards all cases and proceedings under the said two sections of this Act.
- Before whom to prosecute.**
- Procedure**
- Application of penalties.** **44.** All penalties which may be recovered under the forty-second section of this Act, shall belong, one half to the informant or complainant, and the other half to the corporation of the municipality wherein the place or places referred to are immediately situated.
- "Liquors"—what shall be.** **45.** The word "liquors" in the forty-first section of this Act mentioned, shall be understood to mean and comprehend all spirituous and malt liquors, and all combinations of liquors or drinks which are intoxicating.

SHORT TITLE OF ACT, &c.

- Short title.** **46.** This Act may be cited as "*The Temperance Act of 1863.*"
- Distribution of Act.** **47.** The Provincial Secretary shall cause a reasonable supply of copies of this Act to be furnished at the public charge, with all convenient despatch, to the Council of every Municipality in this Province.

(A.)

FORM OF COMPLAINT.

PROVINCE OF CANADA, } A. B. [designate duly and sufficiently the
District, [or as case may } Corporation, or other Prosecutor, as the case
be,] of } may require,] in behalf of our Sovereign Lady
the Queen, prosecutes, C. D. of, [designate duly and sufficiently the
Defendant) and complains: That the said C. D. at [designate duly the
Municipality,] on [designate the time or times] and at sundry
times before or since, did, [here state succinctly the offence charged]
contrary to the Temperance Act of 1863, then and there being fully
in force; whereby and by force of the said Act, the said C. D. hath
become liable to pay the sum of
Wherefore the said prosecutor prays that the said C. D. be condemned
to pay the said sum of
with costs.

(B.)

FORM OF SUMMONS.

PROVINCE OF CANADA, } To C. D. of [designate duly and sufficiently
District, [or as case may } the Defendant.] You are hereby commanded
be,] of } to be and appear before us [or me, as the case
may be] the undersigned Justices of the Peace for the said District, [or
as the case may be,] at [name the place], on the day of

at the hour of _____ in the _____ noon, [if the summons be issued by two Justices, and not by a Stipendiary Magistrate, Recorder, Judge of the Sessions of the Peace, Sheriff, or Police Magistrate, add here the words, or before such other Justices of the Peace for the said district, [or as the case may be,] as may then be there] to answer to the matters charged against you by [designate the Prosecutor] who prosecutes you in Her Majesty's behalf, as the same are set forth in the complaint hereto annexed,—otherwise judgement will be given against you by default.

Given under our [or my] hand and seal, this _____ day of _____ in the year of Our Lord, one thousand eight hundred and _____ in the District [or as case may be] aforesaid.

[Signatures and Seals.]

CERTIFICATE OF SERVICE.

I, the undersigned, E. F. of [designate duly the bailiff or other party certifying] do hereby certify, upon my oath of office, that on the _____ day of _____ I did serve the within summons, and the declaration thereto annexed, on the within named defendant, at the hour of _____ of the clock, in the _____ noon, by leaving a true and certified copy of the said summons and of the said declaration at the domicile of the said defendant, in the _____ speaking to _____ [or if the service was personal, by speaking to him and leaving with him a true and certified copy of the said summons and of the said declaration at _____]

[To be dated and signed in the ordinary manner.]

(C.)

FORM OF CONVICTION.

PROVINCE OF CANADA, } Be it remembered that on the _____ day of _____ in the year of Our }
District [or as case may be] } Lord one thousand eight hundred and _____ }
at [designate the place where conviction rendered] in the said District, }
[or as case may be] C. D., of [designate the Defendant] is convicted }
before the undersigned, G. H., Esquire, of _____ [designating }
the official function of the party convicting, as the case may be] for }
that he the said C. D. did [state succinctly the offence,] and I [or we] }
adjudge the said C. D. for his said offence, to forfeit and pay to }
[designate the Prosecutor] the sum of _____, and also the }
further sum of _____ for costs, in this behalf. }
Given under my [or our] hand and seal, the day and year first above }
mentioned. }
_____ }
[Signature and Seal.]

(D.)

FORM OF WARRANT OF DISTRESS.

PROVINCE OF CANADA, } G. H., Esquire, of _____ [designating }
District [or as case may be] } nating the official function of the party is }
be] of } using the warrant. }

To any bailiff, constable or other officer of the Peace in and for the said district, [or as case may be]:

Whereas C. D., of [designate the Defendant] hath been convicted before of having, [state the offence] and for such offence adjudged to pay to A. B. [designate the Prosecutor] the sum of , and also the further sum of for costs in that behalf.*

These are therefore to command you, and each of you, to distrain the goods and chattels of the said C. D., wheresoever they may be found within the said district, [or as case may be,] and thereon to levy the said penalty and costs, making together the sum of ; and if, within the space of four days next after such distress made, the said last mentioned sum of , together with the reasonable charges of taking and keeping the said distress, are not paid, that then you do sell the said goods and chattels so by you distrained as aforesaid, and out of the money arising from such sale, that you do pay the said sum of unto the said A. B., refunding to the said C. D. the overplus, the reasonable charges of taking, keeping and selling the said distress being first deducted; and you are to certify to with the return of this warrant what you shall have done in the execution thereof. Herein fail not.

Given under my [or our] hand and seal, this day of in the year of Our Lord one thousand eight hundred and , at in the district, [or as case may be,] aforesaid.

[Signature and Seal.]

(E. 1.)

FORM OF WARRANT OF COMMITMENT, UNDER SECTION TWENTY-SIX.

PROVINCE OF CANADA, } To all or any of the bailiffs, constables
District [or as case may } and other officers of the Peace, in the dis-
be] of } trict [or as case may be] of
and to the keeper of the gaol of the same district [or as the case may be.]

Whereas, &c. [as in the foregoing Form D. to the mark *] and whereas [state circumstances under which, in terms of section twenty-six, the warrant is issued]; these are therefore to command you the said bailiffs, constables or officers of the Peace, or any one of you, to take the said C. D., and him safely convey to the gaol of the said district, [or as case may be,] and there deliver him to the said keeper thereof, together with this warrant; and I [or we] do hereby command you the said keeper of the said gaol to receive the said C. D. into your custody in the said gaol, and to imprison him for the space of , from the day of his arrival as a prisoner thereat; and, for so doing, this shall be your sufficient warrant.

Given, &c. [as in Form D.]

(E. 2.)

FORM OF WARRANT OF COMMITMENT, UNDER SECTION TWENTY-SEVEN.

[As in foregoing Form E. to same mark *] and whereas (state circumstances under which, in terms of Section Twenty-seven, the warrant is

issued]; These are therefore to command you the said bailiffs, constables or officers of the Peace, or any one of you, to take the said C. D., and him safely convey to the gaol of the said district, [or as case may be,] and there deliver him to the said keeper thereof, together with this warrant; and I [or we] do hereby command you the said keeper of the said gaol to receive the said C. D. into your custody in the said gaol, and there imprison him for the space of _____, from the day of his arrival as a prisoner thereat, unless the said mentioned sum of _____ and all the costs of the commitment and conveying of the said C. D. to the said gaol, amounting to the further sum of _____ are sooner paid unto you the said keeper; and for so doing, this shall be your sufficient warrant.

Given, &c. [As in the foregoing Form E. 1.]

(E. 3.)

FORM OF WARRANT OF COMMITMENT, UNDER SECTION TWENTY-EIGHT.

[As in foregoing Form E. 1, to same mark*] And whereas afterwards on the _____ day of _____, in the year _____, I [or as case may be] issued a warrant of distress for the levying of the said amount, together with the reasonable charges of the said distress; and whereas [state circumstances under which, in terms of Section Twenty-eight, the warrant is issued]; These are therefore to command you the said bailiffs, constables or officers of the Peace, or any one of you, to take the said C. D., and him safely convey to the gaol of the said district, [or as case may be,] and there deliver him to the said keeper thereof, together with this warrant; and I [or we] do hereby command you the said keeper of the said gaol to receive the said C. D. into your custody in the said gaol, and there to imprison him for the space of _____ from the day of his arrival as a prisoner thereat, unless the said last mentioned sum of _____ and all the costs of the said distress, and of the commitment and conveying of the said C. D. to the said gaol, amounting to the further sum of _____, are sooner paid unto you the said keeper; and for so doing, this shall be your sufficient warrant.

Given, &c. [As in foregoing Form E. 1.]