

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1835. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1835.

5 William IV – Chapter 3 (Session 1)

An Act to regulate Tavern Keeper and Retailer. Passed 17th March 1835.

I. Be it enacted by the Lieutenant-Governor, Council and Assembly, That an Act made and passed in the first year of the Reign of King William the Fourth, intituled An Act to regulate Inns, Taverns and Houses for selling strong or spirituous Liquors, and to repeal all the Laws now in force relating to the same, excepting the repealing part thereof, be and the same is hereby repealed: provided always, that all Licenses granted under the aforesaid Act shall continue and be of the same, force and effect as if the said Act had not been repealed; and all Rules and Regulations made under and by virtue of the said Act shall continue and be in full force and effect until the said Licences shall have expired.

II. And be it enacted, That the Courts of General Session of the Peace for the several and respective Counties in this Province are hereby authorised and empowered, to grant Licenses to such and so many persons as they in their discretion shall think fit, being of good name, fame and character, and of sober habits, and (in case the License be granted to keep aa Inn or Tavern) having the means of decently and comfortably entertaining Travellers, to keep a Tavern or Inn or to sell Wine, Brandy Rum, Beer, Ale or strong Liquors of any kind whatsoever, within their respective Counties, by retail in any quantity under five gallons, and not less than one pint, demanding and receiving for every such License such sum as they in their discretion shall think fit, not exceeding ten pounds nor less than forty shillings, which License so granted shall in no case be in force, for a longer period than one year; which sum so to be received shall be paid over by the Clerk of the Peace into, the hands of. the County Treasurer towards defraying such necessary contingent expenses of the County as such Court of General Sessions shall from time to time direct, such Clerk retaining for his trouble two shillings and sixpence: Provided always, nevertheless, that nothing in this Section contained shall extend or be construed to extend to prevent the Justices at their General Sessions in the respective Counties, in their discretion, from granting Tavern Licenses for the sum of twenty shillings to any person or persons residing in remote situations, where the same shall appear to such Justices absolutely necessary for the accommodation of travellers.

III. And be it enacted, That every person on taking out any such License, shall enter into recognizance with two good and sufficient sureties to His Majesty in the sum of forty pounds, to obey such Rules and Regulations as the said Court of General Sessions shall from time to time make and ordain to be observed by Tavern; Keepers and Retailers respectively in such County; which Rules and Regulations the said Court of General Sessions as aforesaid are hereby authorised and empowered to make and ordain.

IV. And be it enacted, That if any person shall directly or indirectly sell or barter any Wine, Brandy, Rum, Beer, Ale or any strong or spirituous Liquor whatsoever, to any quantity under five gallons,

without License for that purpose first had and obtained, or if a licensed Retailer shall sell any such Liquor in any quantity less than one pint; or shall allow any such Liquor to be drunk on the premises of such Retailer, every person so offending shall for each and every offence forfeit and pay a sum not exceeding ten pounds nor less than forty shillings, to be recovered with costs of complaint being made to any one of His Majesty's Justices of the Peace in the County where such offence had been committed, on the oath of one or more witness or witnesses, and levied, collected and applied as hereinafter directed.

V. And be it enacted, That no License granted by virtue of this Act shall entitle any person to keep a Tavern or Inn, or to sell any strong spirituous Liquor by retail in any other home or place than that in which first kept and sold by virtue of said License; but in case of the death or removal of any person who has taken out License as aforesaid before the expiration of the same, it shall and may be lawful for the said Justices at any general or special Sessions of the Peace; to grant to the person succeeding to; each Tavern or retail premises a License to keep on and continue the same during the residue of the term of the said License; the person so succeeding entering into the like recognizance as if the same had been originally granted to such person under the authority of This Act.

VI. And be it enacted, That no Inn-keeper, Tavern-keeper or Retailer who shall sell upon trust or credit any Wine, Brandy, Rum, strong Beer, Ale or any other strong or spirituous Liquor; mixed or unmixed, to any person whomsoever, to the amount of any sum exceeding five shillings, shall have, any remedy against the said person, his executors or administrators, either in law or equity for the recovery of the same; and in case any servant, apprentice, bound servant, or other person whatsoever, shall leave any pawn or pledge as a security for the payment of any sum exceeding five shillings contracted in such manner, such servant, apprentice, bound servant, or other person or the master or mistress of such servant, apprentice or bound servant, may complain to any Justice of the Peace where such Retailer, Tavern-keeper or Inn-keeper receiving such pawn or pledge usually resides, that such pawn or pledge is detained from him or her by such Tavern-keeper or Innkeeper, and having made proof thereof upon oath, such Justice of the Peace is hereby authorised and required by Warrant under his hand and seal to compel such Retailer, Inn-keeper or Tavern-keeper, by distress and sale of The offender's goods, to restore the said pawn or pledge to the party complaining or to make him or her satisfaction for the loss or abuse thereof, and shall further be subject to a fine not exceeding five pounds, to be recovered and applied as is hereinafter provided.

VII. And be it enacted, That no Retailer, Tavern-keeper, Innkeeper or other person whatsoever, shall permit or suffer any apprentice, servant or minor, to sit or remain drinking in his or her house, nor give or sell nor suffer to be given or sold to such apprentice, servant or minor, any strong Liquor whatever, without the order or allowance of their respective masters or mistresses; parents or guardians, on pain of forfeiting a sum not exceeding five pounds for each and every such offence, together with the charges of prosecution, to be recovered upon conviction on the oath of one credible witness before any one of His Majesty's Justices of the Peace within the County where the offence shall be committed, or by the view of such Justice, or by such other proof as shall be satisfactory to such Justice, and to be levied, collected and applied as hereinafter directed.

VIII. And be it enacted, That no Retailer shall, upon any pretence whatever, sell any strong or spirituous Liquors to any person or persons whomsoever to be by him or them or any other person or persons used or consumed in the house or licensed premise of such Retailer, under the penalty of five pound for each and every offence, to be recovered upon due conviction upon the oath of one or more credible witness or witnesses before any one of His Majesty's Justices of the Peace, or if in the City of Saint John, before the Mayor, Recorder or any Justice of the Peace for the City and County of Saint John, and levied, collected and applied as hereinafter directed.

IX. And be it enacted, That no Tavern-keeper, Inn-keeper or Retailer shall sell any Wine, strong Beer, Ale, Brandy, Rum or other spirituous Liquors mixed or unmixed on The Lord's Day, commonly called 'Sunday,' under the penalty of a sum not exceeding five pounds nor less than forty shillings for each and every offence, to be recovered, levied and applied as is hereinafter provided.

X. And be it enacted, That if any Tavern-keeper, Inn-keeper or Retailer, shall sell, offer for sale or have in his possession, any Wine, Brandy, Rum, Gin, strong Beer, Ale or any other strong or spirituous Liquors, knowing the same to have been illegally imported into this Province, such Tavern-keeper, Inn-keeper or Retailer; on conviction thereof on the oath of one or more credible witness or witnesses before any one of His Majesty's Justices of the Peace of the City or County in which such offence hath been committed, shall forfeit and pay the sum of five pounds with costs of prosecution, to be recovered, levied and applied as is hereinafter directed; and the License granted to him or her shall be revoked and annulled, and he or she shall not be eligible to have or enjoy a Tavern or retail License for the space of two years thence next ensuing.

XI. And be it enacted, That any Tavern-keeper or Retailer who shall be convicted of enticing, seducing, harbouring or concealing any articed seaman or apprentice under the existing Law, shall not only forfeit his License but shall be disqualified from holding a Tavern or retail License for the space of one year after conviction of the offence.

XII. And whereas by the Charter of the City of Saint John, confirmed by Act of Assembly, it is among other things provided, that the Mayor of the said City for the time being, and no other person whatsoever, shall have power to give and grant Licenses, under the Common Seal of the said City, to all such persons as he shall think fit, to license them or every of them to keep a Tavern, an Inn, an Ordinary, a Victualling or a Coffee House, or to sell Wine, Brandy, Rum, strong Waters, Punch, Beer, Ale or any exciseable or strong Liquors whatsoever, within the City of Saint John or the liberties or precincts thereof, by retail or the small measure under the quantity of five gallons, and that it shall and may be lawful to and for the Mayor of the said City for the time being, to ask, demand and receive for every such License by him to be granted as aforesaid, such sum or sums of money as he and the person to whom such License shall be given and granted shall agree for, not exceeding the sum of four pounds for each License, and all which monies as by the said Mayor shall be so received shall be used and applied to the public use of the Mayor, Aldermen and Commonalty of the said City of Saint John: Be it enacted, That it shall and may be lawful to and for the Mayor of the said City for the time being, to ask, demand and receive for every such License by him to be given and granted at aforesaid, any such sum or sum of money as he and the person to

whom such Licence shall be given and granted shall agree for in manner and form aforesaid, not exceeding the sum of ten pounds for such Licence, to be applied for the public use of the Mayor, Aldermen and Commonalty of the said City of Saint John: Provided always, That nothing in this Act contained shall apply or be construed to apply in any manner to affect the rights and powers given by the said Charier to the Mayor of the said City in granting Licenses to Tavern-keepers and Retailers of Spirituous Liquors otherwise than in this Section is expressly mentioned and contained: Provided also, that all the penalties, forfeitures, pains and imprisonments to which Inn keepers and Retailers be liable for any offences against the provisions of this Act shall extend and apply to all and every Inn-keeper, Tavern-keeper, Retailer, keeper of an Ordinary, Coffee House or Victualling House in the City of Saini John, as fully to all intents and purposes as the same extend and apply to Innkeepers, Tavern-keepers or Retailers in any other part of this Province, any thing in this Act contained to the contrary in any way notwithstanding.

XIII. And be it enacted, That this Act shall be publicly read by the Clerk at the opening of every Court of General. Sessions of the Peace in the several Counties in this Province, and the Justices of such Court shall at the same time cause a list of all the Tavern-keepers, Inn-keepers and Retailers respectively to the respective Counties, to whom License has been granted as aforesaid, to be delivered to the Grand Jurors at such Courts respectively; and it shall be particularly given in charge to such Grand Jurors to make diligent enquiry and presentment of all and every such person or persons as shall be guilty of any breach of or offence against this Act, and also of any breach of or offence against the same by any person or persons not licensed as aforesaid; and upon such presentment it shall and may be lawful for the Justices of such Court or any one of them to proceed against such offenders in the manner hereinbefore directed to one Justice to proceed for the recovery of the penalties hereinbefore inflicted, and upon conviction of such offender before the Justices of such Court or any one of them, such penalty and penalties shall upon the recovery thereof be paid to the respective County Treasurer, to be applied to the same uses and purposes and under the same orders and directions as the sums paid for Licenses are hereinbefore directed to be applied and subject to.

XIV. And be it enacted, That all fines or penalties imposed by virtue, of this Act together with costs of prosecution shall be levied by Warrant of Distress and sale of the offender's goods and chattels, directed to any Constable of the County within which the offence may been committed, rendering the overplus (if any) after deducting the costs and charges of such distress and sale to the offender; and if no goods shall be found whereon to levy if shall be lawful for such Constable to commit such offender to the common Gaol of the County where such offence may be committed, there to remain without bail or mainprize the period to be specified in such Warrant, not exceeding forty days, unless such fine, costs and charges are sooner paid.

XV. And be it enacted, That all fines which may be imposed and collected by virtue of this Act shall be paid into the heads of the County Treasurers by the person who may receive or collect the same, to be applied by such Justices for the same purposes as monies received for Licenses.

XVI. And be it enacted, That the costs of prosecutions under this Act had before a single Justice of the Peace shall be regulated by the Table of Fees allowed and established by the Act now in force

to regulate proceedings before Justices of the Peace in Civil Suits, and that the costs of all prosecutions had before the Justices in General Sessions shall be regulated by the ordinance of Fees established in this Province.

XVII. And be it enacted, That the summons, convictions and executions issued and made by any Justice of the Peace for offences against this Act may be agreeably to the forms in the Schedule to this Act, or in any other form of words to the same effect, and when the proceedings are had before the Justices in General Sessions the same forms may be adopted as near as may be; the summons and executions being under the Seal of such Court and signed by the Clerk.

XVIII. And be it enacted, That this Act shall continue and be in force until the first day of April which will be in the year of our Lord one thousand eight hundred and forty.

SCHEDULE.
FORM OF SUMMONS:

_____ ss. To any Constable of the County of _____.
Whereas complaint hath been made before me that A. B., of _____, hath sold spirituous Liquor under the quantity of five gallons without a License first had and obtained for that purpose [or hath sold Liquor on Sunday, as the case may be] contrary to the directions of the Act of Assembly in such case made and provided; These are therefore to require you forthwith to summon the said A.B. to appear before me at my office in _____, on _____, the _____ day of _____, at _____ o'clock in the forenoon, to answer the matter of such complaint, and further to be dealt with according to Law. Given under my Hand this _____ day of _____, 183__ C.D., J.P.

FORM OF CONVICTION:

_____ ss. Be it remembered that on the _____ day of _____, 183__, at _____ in said County, A.B. is convicted before me, one of the Justices of the Peace for said County, for that the said A. B. did on the _____, day of _____, 183__, sell spirituous Liquor contrary to the provisions of the Act of Assembly for regulating Tavern-keepers and Retailers; and I the said Justice adjudge the said A.B. for said offence to pay a fine of _____, and also _____ for costs of prosecution. Given under my Hand the day and year aforesaid. C.D., J.P.

FORM OF EXECUTION:

_____ ss. To any Constable of said County.
Whereas A. B. of _____, was duly convicted before me and adjudged to pay a fine of _____ and _____ shillings, costs of suit, for an offence against the Act of Assembly for regulating Tavern-keepers and Retailers;

These are therefore to require you to levy said fine and costs besides your own fees on the goods and chattels of said A.B. within this County, and for want thereof that you take the said A. B. and him commit to the common Gaol of said County, the Gaoler of which is hereby required to receive the said A. B. into custody and him detain for the period of _____ days, unless such fine and costs be sooner paid. Given under my Hand this _____ day of _____, 183__.