

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1840.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1840.

3 Victoria – Chapter 47

**An Act to repeal all the Acts regulating Tavern Keepers and Retailers, and to make other provisions in lieu thereof. Passed 25th March 1840.**

I. Be it enacted the Lieutenant Governor, Legislative Council and Assembly, That an Act made and passed in the fifth year of the Reign of His late Majesty King William the Fourth, intituled "An Act to regulate Tavern Keepers and Retailers," and also an Act made and passed in the first year of the Reign of Her present Majesty Queen Victoria, intituled "An Act in addition to and in amendment of an Act, intituled, 'An Act to regulate Tavern Keepers and Retailers,'" and also an Act made and passed in the second year of the Reign of Her said Majesty, intituled "An Act in further amendment of the Law relating to Tavern Keepers and Retailers," and also another Act made and passed in the second year of the Reign of Her said Majesty, intituled "An Act in addition to an Act, intituled 'An Act to prevent Desertion from His Majesty's Forces, and to punish unlawful dealings with Soldiers or Deserters'" be and the same are hereby repealed; Provided always, That all licences granted under the authority of the said first mentioned Act shall continue and remain in the like force and effect as if the said Act had not been repealed, and that all rules and regulations made under and by virtue of the said Acts or either of them, shall continue and remain in full force and effect until the said licences shall have expired: and provided also, that no Inn Keeper, Tavern Keeper or Retailer, who since the passing of the first mentioned Act, hath sold upon trust or credit any wine, brandy, rum, strong beer, ale, or any other strong or spirituous liquors, 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, the repeal of the first mentioned Act notwithstanding.

II. And be it further enacted, That from and after the passing of this Act no person whosoever shall directly or indirectly barter or sell any wine, spirits, strong beer, or other distilled or fermented liquors under the quantity of five gallons without licence for that purpose first had and obtained as is hereinafter provided.

III. And be it further enacted, That the Courts of General Sessions of the Peace for the several Counties in this Province, are hereby authorized and empowered to grant Retail or Tavern Licences to such and so many persons of good name, fame and character, as they in their discretion shall think fit, to keep a Tavern, or to sell wine, spirits, strong beer or other distilled or fermented liquors by retail, within their respective Counties, demanding and receiving for every such licence a sum not exceeding ten pounds nor less than three pounds; which sum shall be paid into the hands of the Clerk of the Peace of the County in which the same shall be granted, together with the sum of two shillings and six pence as a fee to the said Clerk for his trouble in issuing such licence: Provided always, That no Tavern or Retail Licence shall continue or be in force for a longer period than one year: Provided always, That nothing in this Section contained shall extend to prevent any such Court in their discretion from granting Tavern Licences for the sum of

twenty shillings to any person residing in remote situations, when the same shall appear to such Court absolutely necessary for the accommodation of travellers.

IV. And be it further enacted, That the Clerks of the Peace of the several Counties in this Province, within one week after the end of the term of the General Sessions of the Peace during which any Retail or Tavern Licences may have been granted, shall pay over to the respective County Treasurers all such monies as had been received by such Clerks respectively, for Retail and Tavern Licences, in their several and respective Counties, towards defraying such necessary contingent expenses of the County as such Court of Sessions shall from time to time direct and order.

V. And be it further enacted, That no Licence to keep a Tavern or Inn shall be granted to any person or persons unless he, she or they shall be of orderly, decent and sober habits, and possessing the means of comfortably entertaining travellers; and no person or persons licenced to retail wine, spirits, strong beer or other distilled or fermented liquors under the provisions of this Act, shall sell any such liquor in any quantity less than one pint, nor shall such Retailer allow or permit any such liquor so sold to be drank on the premises of such Retailer.

VI. And be it further enacted, That the Courts of General Sessions of the Peace in and for the several Counties in this Province, shall and may from time to time and at all times from and after the passing of this Act, make and ordain such rules and regulations as to them may seem expedient and necessary to be observed by Tavern Keepers and Retailers in their respective Counties, under such penalty or penalties as the said Courts respectively may deem meet; such penalty to be in no case less than ten shillings nor more than five pounds, for each and every breach of such rules and regulations, to be recovered before the Court of General Sessions of the Peace, or any two of Her Majesty's Justices of the Peace of the County in which the offence may be committed, and levied and applied as is directed by the nineteenth and twenty second Sections of this Act.

VII. And be it further enacted, That no Retail or Tavern Licence shall be directly or indirectly granted in any County of this Province, unless at the Court of General Sessions of the Peace for the same; and every person on obtaining a Licence shall enter into recognizance to Her Majesty in the sum of forty pounds, with two sureties, to obey such rules and regulations as the said Court of General Sessions of the Peace shall from time to time make and ordain to be observed by Tavern Keepers and Retailers respectively in such County.

VIII. And be it further enacted, That when and so often as it shall come to the knowledge of the said Courts of General Sessions of the Peace respectively, or of any two of Her Majesty's Justices of the Peace of any County in this Province, by complaint or otherwise, that any Tavern Keeper, Inn Keeper or Retailer within the jurisdiction of the said Court or of the said Justices hath been guilty of a breach of any rule or regulation made and ordained under and by virtue of this Act, it shall and may be lawful for the said Courts of General Sessions of the Peace, or the said two Justices, to cause the offending party to be brought before them at such time as they in their discretion shall respectively appoint; and the said Courts of General Sessions of the Peace, or the said two Justices, shall and may compel the attendance of any witness or witnesses to give evidence on any

proceeding to be had before them respectively against any person or persons for a breach of any rule or regulation made, or for the recovery of any penalty or penalties imposed under the authority of this Act; for which purpose the Clerk of the Peace for the County, in which the said offence shall have been committed, and in which such proceeding is had, shall have full power and authority to issue Subpoenas, and the Subpoenas issuing out of the General Sessions of the Peace shall be in such form as the Court shall from time to time prescribe.

IX. And be it further enacted, That when any person having been legally served with such Subpoena, shall neglect or refuse to attend to testify and give evidence according to the exigency of the same, he or she shall be liable to a penalty not exceeding two pounds for each and every default, to be imposed by the said Court of General Sessions of the Peace, or the said two Justices, as the case may be, unless it shall be made to appear to the satisfaction of the said Court, or of the said Justices, that the party subpoenaed had good and sufficient excuse for non-attendance, which penalty shall be levied, collected and applied as is directed in the nineteenth and twenty second Sections of this Act.

X. And be it further enacted, That if any person shall directly or indirectly sell or barter any wine, spirits, strong beer or other distilled or fermented liquors whatsoever, in any quantity under five gallons without licence for that purpose first had and obtained, or if a licenced Retailer shall sell any such liquor in any quantity less than one pint, or shall allow any such liquor to be drank 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 prosecution in the Court of General Sessions of the Peace for the County in which the offence shall be committed, or before any one of Her Majesty's Justices of the Peace of the same County, on the oath of one or more credible witness or witnesses, and levied, collected and applied as directed by the nineteenth and twenty second Sections of this Act.

XI. And be it further enacted, That no Licence granted by virtue of this Act shall entitle any person to keep a Tavern or Inn, or to sell any wine, spirits, strong beer or other distilled or fermented liquors by retail, in any house or place other than that for which his or her Licence had been first granted; but in case of the death or removal of any person licenced as aforesaid before the expiration of the same, it shall and may be lawful for Her Majesty's Justices of the Peace of the County at any General or Special Sessions (if they, see fit,) to grant to the person succeeding to such Tavern or Retail premises, a Licence to continue and keep on the same during the residue of the term of the said Licence, provided that the person so succeeding shall enter into the like recognizance, as if he or she had originally obtained such Licence under the authority of this Act.

XII. And be it further enacted, That no Inn Keeper or Tavern Keeper who shall sell upon trust or credit any wine, spirits, strong beer or other distilled or fermented liquors, mixed or unmixed, to any person whosoever to any amount whatsoever 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 bill, bond, note, mortgages or other securities or conveyances whatsoever shall be made or executed, the consideration or any part of the consideration of which shall be proved to be for liquors sold upon trust or credit by any Inn Keeper or Tavern Keeper, the same shall be deemed

and taken to be fraudulent and void in all Courts of Justice within this Province; and in case any pawn or pledge shall be left by any person or persons with any Tavern Keeper or Inn Keeper directly or indirectly as security for the payment of any sum or debt contracted in such manner, such pawn or pledge shall be deemed to be unlawfully taken and converted by such Tavern Keeper or Inn Keeper, and it shall and may be lawful for any of Her Majesty's Justices of the Peace of the County in which such pawn or pledge had been given or left, on complaint and proof of the same, to order the said pawn or pledge to be restored, and shall farther convict the Inn Keeper or Tavern Keeper who may have received the same, in a penalty not exceeding five pounds, to be levied, collected and applied as is directed in and by the nineteenth and twenty second Sections of this Act.

XIII. And be it further enacted, That no Tavern Keeper or Inn Keeper shall permit or suffer any apprentice to any profession or trade, or any servant, or any person under the age of sixteen years, to sit or remain drinking in his or her house or premises, nor shall any Tavern Keeper or Inn Keeper sell or give or suffer to be given or sold to any servant or to any person under the age of sixteen years, any wine, spirits, strong beer or other distilled or fermented liquors whatever, without the order or consent of the master or mistress, parent or guardian of such servant or person under the age of sixteen years, under a penalty not exceeding five pounds, to be recovered with costs on the oath of one or more credible witness or witnesses before any one of Her Majesty's Justices of the Peace of the County where the offence had been committed, and levied, collected and applied as directed in and by the nineteenth and twenty second sections of this Act.

XIV. And be it further enacted, That no Tavern Keeper, Inn Keeper or Retailer, shall sell any wine, spirits, strong beer or other distilled or fermented liquors, mixed or unmixed, on the Lord's Day, commonly called Sunday, under a penalty of a sum not exceeding five pounds nor less than forty shillings for each and every offence, to be recovered upon complaint before any Justice of the Peace of the County in which the offence shall be committed, and levied and applied as directed in and by the nineteenth and twenty second sections of this Act; and if any person shall be seen on the Lord's Day, leaving the premises of any Tavern Keeper, Inn Keeper or Retailer, in a state of intoxication, such Tavern Keeper, Inn Keeper or Retailer, shall be deemed and taken to be *prima facie* liable to the penalty in this section mentioned, and shall be convicted in the same, unless he or she shall make it appear to the satisfaction of such Justice that no wine, spirits, strong beer or other distilled or fermented liquors, were on that day sold or given to such intoxicated person, directly or indirectly by such Tavern Keeper, Inn Keeper or Retailer, or by any person or persons in his or her employ.

XV. And be it further, enacted, That if any Tavern Keeper, Inn Keeper or Retailer shall sell, offer for sale, or have in his or her possession any wine, spirits, strong beer, brandy, rum, gin, whiskey or any other distilled or fermented liquors, knowing the same to have been illegally imported or smuggled 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 Her Majesty's Justices of the Peace of the City or County in which such offence may be committed, shall forfeit and pay the sum of five pounds with costs of prosecution, to be recovered, levied and applied as directed by the nineteenth and twenty second sections of this Act, and the Licence granted to him or her shall

be revoked and annulled, and he or she shall not be deemed eligible to have or receive a Tavern or Retail Licence for the space of two years thence next ensuing.

XVI. And be it further enacted, That if any Tavern Keeper, Inn Keeper or Retailer shall directly or indirectly persuade or seduce or attempt to persuade or seduce any Soldier to desert from Her Majesty's service, or shall assist any such deserter in deserting or in concealing himself from such service, or shall buy, exchange or detain, or otherwise receive any arms, clothing, caps, or other furniture or accoutrements belonging to the Queen, or any articles belonging to any Soldier or deserter, which are generally deemed Regimental necessaries according to the custom of the Army, or shall exchange, buy, or receive from any Soldier any provisions, unless by consent of the Officer commanding the Regiment or Detachment to which such Soldier may belong, it shall and may be lawful for His Excellency the Lieutenant Governor or Commander in Chief for the time being, by and with the advice and consent of Her Majesty's Executive Council to annul, abrogate and declare void, the licence of such Tavern Keeper, Inn Keeper or Retailer; and immediately on receiving notice of such annulment or abrogation, the said Tavern Keeper, Inn Keeper or Retailer, shall thenceforth be deemed and taken to be an unlicensed person to all intents, purposes, and constructions, and shall further be disqualified from having, holding, or obtaining a Tavern or Retail Licence for the space of two years from the time of such annulment, any law or usage to the contrary thereof in any wise notwithstanding.

XVII. And be it further enacted, That any Tavern Keeper, Inn Keeper or Retailer who shall be convicted of enticing, seducing, harbouring or concealing any articed Seaman or apprentice, shall, not only forfeit his or her licence, but shall be disqualified from holding a Retail or Tavern Licence for the space of one year from the time of such conviction.

XVIII. And be it further enacted, That it shall be the duty of the several Clerks of the Peace, in their respective Counties, and they are hereby required, as soon as may be after the end of every General Sessions of the Peace at which Tavern or Retail Licences may have been granted, to transmit to the Town Clerks of the several Parishes, a nominal list of the persons licensed to keep an Inn or Tavern, or to sell wine, spirits, strong beer, or other distilled or fermented liquors by retail, in their several and respective Parishes, and it shall be the duty of such Town Clerks to make diligent enquiry in their respective Parishes, and to make Known to the Clerk of the Peace or to the nearest Justice, if any person or persons be guilty, or suspected to be guilty, of any breach of or offence against the provisions of this Act, in order that such offender or offenders shall be prosecuted as this Act directs, and it shall and may be lawful for Her Majesty's Justices of the Peace of the several Counties in this Province, at their respective General Sessions of the Peace, to order such sum of money to be paid to the said Town Clerks respectively, from the funds of the County, as remuneration for the duty imposed upon them by this Section, as such Justices in their discretion may think fit.

XIX. And be it further 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 be 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, it shall and may be lawful for such Constable, to commit such offender to the common Gaol or House of Correction of the said County, there to remain without bail or mainprize, the period to be specified in such warrant, not more than forty days, unless such penalty, costs and charges shall be sooner paid.

XX. And be it further enacted, That whenever the Grand Jury serving at any of the Courts of General Sessions of the Peace in any of the Counties of this Province shall deem it necessary that any person or persons should be brought before such Grand Jury as witness or witnesses, to disclose and make known and discover any offender or offenders against the provisions of this Act, and shall present to the said Court of General Sessions the name or names of such witness or witnesses, it shall and may be lawful for such Court of General Sessions, forthwith to issue their Subpoena or Subpoenas to compel the attendance of such witness or witnesses; and the person or persons so presented, when legally served with Subpoena, on appearing, shall and may be sworn in open Court to make true answers to such questions as shall be put to them or any of them by the said Grand Jury, touching or in any way concerning any offence against the provisions of this Act, and shall immediately attend before such Grand Jury for that purpose; Provided that nothing in this Section contained, shall be construed so as to com- any witness to criminate himself.

XXI. And whereas by the Charter of the City of Saint John, confirmed by Act of the General 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 Licences under the common seal of the said City, to such persons as he shall think fit, to licence them or any 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 excisable or strong liquors whatsoever, within the said 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 Licence by him to be granted as aforesaid, such sum or sums of money as he and the person to whom such Licence shall be given and granted shall agree for, not exceeding the sum of four pounds for each Licence, 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 Licence by him to be given as aforesaid, any such sum or sums 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 Charter to the Mayor of the said City in granting Licences 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 are 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 Saint John, as fully to all

intents and purposes as the same extend and apply to Inn Keepers, Tavern Keepers or Retailers in any other part of this Province, anything in this Act to the contrary notwithstanding.

XXII. And be it further enacted, That this Act shall be publicly read by the Clerk of the Peace at the opening of every Court of General Sessions of the Peace in the several Counties in this Province, and the Justices of such Courts shall at the same time cause a list of all the Tavern Keepers, Inn Keepers and Retailers, respectively, in the respective Counties to whom Licence has been granted as aforesaid, to be delivered to the Grand Jury at such Courts respectively; and it shall be particularly given in charge to such Grand Jury to make diligent enquiry and presentment of all and every such person or persons as shall or may 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 licenced as aforesaid; and upon such presentment it shall and may be lawful for the Justices of such Courts to proceed against such offenders in the manner herein before directed to one Justice to proceed for the recovery of the penalties herein before imposed, and upon conviction of such offender before the Justices of such Court, such penalty and penalties, as also all other penalties in and by this Act imposed, shall upon the recovery thereof be paid to the respective County Treasurers, to be applied to the same uses and purposes, and under the same orders and directions as the sums of money paid for Licences are herein before directed to be applied and subject to.

XXIII. And be it further enacted, That the costs of prosecutions under this Act had before a single Justice of the Peace or before two Justices, shall be regulated by the Table of Fees allowed and established by any Law now in force or hereafter to be enacted, regulating proceedings before Justices of the Peace in Civil Suits; and the costs of all prosecutions had before Her Majesty's Justices of the Peace in General Sessions, shall be regulated by the Ordinance of Fees established in this Province.

XXIV. And be it further enacted, That the summons, convictions, executions and subpoenas issued and made by any Justice of the Peace for offences against the provisions of this Act, may be in the forms in the Schedule to this Act, and when the proceedings are had before the Justices in General Sessions the same forms may be adopted, as nearly as may be, the summons, subpoenas and executions being under the seal of such Court and signed by the Clerk.

XXV. And be it further 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 five.

#### SCHEDULE.

Form of Summons.

to wit: To any Constable of the County of

Whereas complaint hath been made before me that A. B. of \_\_\_\_\_ hath sold spirituous liquors under the quantity of five gallons, without a Licence 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 the General 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 the hour of \_\_\_\_\_ 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 \_\_\_\_\_ 184\_\_.

C. D. J. P.

Form of Subpoena.

To \_\_\_\_\_ You are required to appear before me at my office in \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ at the hour of \_\_\_\_\_ o'clock in the forenoon, to give evidence on the part of our Sovereign Lady the Queen, against for [here state the offence] and then and there to be tried, and take notice that in case you neglect or refuse to appear and testify, you will be liable to a penalty of a sum not exceeding forty shillings, according to the form of the Act of the General Assembly in such case made and provided. Dated the \_\_\_\_\_ day of \_\_\_\_\_ 184\_\_.

C. D. J. P.

Form of Conviction.

County of \_\_\_\_\_ to wit: Be it remembered that on this \_\_\_\_\_ day of \_\_\_\_\_ 184\_\_, at \_\_\_\_\_ in the said County of \_\_\_\_\_ A. B. of \_\_\_\_\_ in the County of \_\_\_\_\_ is convicted before me, one of Her Majesty's Justices of the Peace in and for the said County, for that the said A. B. did on the \_\_\_\_\_ day of \_\_\_\_\_ 184\_\_ [here state the offence] contrary to the provisions of the Act of the General Assembly in such case made and provided, 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.

County of \_\_\_\_\_ to wit: To any Constable of the said County of \_\_\_\_\_ Whereas A. B. of \_\_\_\_\_ was duly convicted before me and adjudged to pay a fine of \_\_\_\_\_ together with costs of prosecution for an offence against the Act of the General Assembly regulating Tavern Keepers, Inn Keepers and Retailers; these are therefore to require you to levy the said fine and costs of prosecution, besides your own fees, on the goods, chattels and effects of the said A. B. within this County, and for want of such goods and chattels whereon to levy, you take the said A. B. and him commit to the Common Gaol or the House of Correction of the 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 \_\_\_\_\_ 184\_\_.

C. D. J. P.