

*Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1852.* Fredericton, NB: John Simpson, Printer to the Queen's Most Excellent Majesty, 1852.

15 Victoria – Chapter 51

**An Act to prevent the traffic in Intoxicating Liquors. Passed 7th April 1852.**

Whereas experience has proved that the use of Intoxicating Liquors as a beverage is the affect communities in producing crime, poverty, disease and demoralization: And whereas it is the duty of all Governments to legislate for the happiness, comfort and prosperity of the people;

Be it therefore enacted by the Lieutenant Governor, Legislative Council and Assembly, as follows:—

1. No person shall by himself, partner in business, his clerk, servant or agent, manufacture any alcoholic or intoxicating liquors within this Province, except for religious, medicinal, chemical or mechanical purposes, excepting beer, ale, porter and cider, and not in that case without a licence first had and obtained from the Court of Sessions of the County, or the Corporate Body invested with the local government of the City or district in which the same shall be manufactured, (which licence shall only be in force and effect for the term of twelve calendar months from the date thereof, and may be annulled at any intermediate time for any violation of any of the provisions of this Act); and every such person before obtaining such licence shall execute and deliver to the said Court a Bond, with two good and sufficient sureties, in the penal sum of two hundred pounds, in substance as follows:—

Know all men by these presents, that we \_\_\_\_\_ as principal and sureties are held and firmly bound unto Her Majesty the Queen in the penal sum of two hundred pounds of lawful money of the Province of New Brunswick; for which payment we bind ourselves, and each of us binds himself, our and each and every of our heirs, executors and administrators, firmly by these presents. Sealed with our Seals. Dated this \_\_\_\_ day of \_\_\_\_\_ A. D. 18 \_\_\_\_.

The condition of this obligation is such, that whereas the above bounden \_\_\_\_\_ has been duly licenced to manufacture alcoholic liquors within the County (or City or district) of \_\_\_\_\_ for religious, medicinal, chemical and mechanical purposes, and none other, for a period of twelve calendar months from the \_\_\_\_ day of \_\_\_\_\_ :

Now if the said \_\_\_\_\_ shall not violate the provisions, or any of them, of an Act made and passed in the fifteenth year of the Reign of Her Majesty Queen Victoria, intituled *An Act to prevent the traffic in Intoxicating Liquors*, but shall in all respects conform thereto, then this obligation to be void, otherwise to remain in full force.

2. The sale, or gift of any alcoholic or intoxicating liquors, excepting beer, ale, porter and cider, by any manufacturer thereof, to any person other than an agent appointed under Section third of

this Act, shall be prima fade evidence of the manufacture thereof, in contravention of the first Section of this Act.

3. Any general or special Sessions of any County, or any Corporate Body invested with the local government of any City or district, may appoint some suitable person as the agent of said County, City or district, to sell at some central and convenient place within said County, City or district, spirits, wines and other alcoholic or intoxicating liquors, to be used for religious, medicinal, chemical and mechanical purposes, and no other, except as aforesaid; and such agent shall receive such compensation for his services as the Board appointing him shall prescribe; and shall, in the sale of such liquors, conform to such rules and regulations as the Court of Sessions or such Corporate Body as aforesaid shall prescribe for that purpose; and such agent appointed as aforesaid shall hold his situation for one year, unless sooner removed by the Board from which he received his appointment, as he may be at any time at the pleasure of said Board.

4. Such agent shall receive a certificate from the Court of Sessions, or such Corporate Body by whom he shall be appointed, authorizing him as the agent of such County, City or district, to sell intoxicating liquors for religious, medicinal, chemical and mechanical purposes only; but such certificate shall not be delivered to the person so appointed until he shall have executed and delivered to the said Board, a Bond with two good and sufficient sureties, in the sum of two hundred pounds, conditioned as follows:—

Know all men by these presents, that I \_\_\_\_\_ as principal, and \_\_\_\_\_ and \_\_\_\_\_ as sureties, are held and stand firmly bound to Her Majesty the Queen, in the sum of two hundred pounds of lawful money of the Province of New Brunswick, to be paid to Her Majesty or Her Successors, for which payment to be well and truly made, we bind ourselves, and each of us binds himself, our, each and every of our heirs, executors or administrators, firmly by these presents. Sealed with our seals, and dated this day \_\_\_\_ of \_\_\_\_\_ A. D. 18\_\_\_\_. The condition of this obligation is such, that whereas the above bounden \_\_\_\_\_ has been duly appointed agent for the County (or City or district) of \_\_\_\_\_ to sell within and for and on account of said County (or City or district) intoxicating liquors for religious, medicinal, chemical and mechanical purposes, and no other, until the \_\_\_\_ day of \_\_\_\_\_ A. D. 18\_\_\_\_, unless sooner removed from said agency:

Now if the said \_\_\_\_\_ shall in all respects conform to the provisions of an Act made and passed in the fifteenth year of Her Majesty's Reign, intituled *An Act to prevent the traffic in Intoxicating Liquors*, and to such rules and regulation as now are or shall be from time to time established by the Board for making the appointment, then this obligation to be void, otherwise to remain in full force.

5. No person not being a licenced manufacturer thereof, or an agent appointed under the provision of this Act, shall manufacture, expose, or keep for sale, or shall sell, dispose of, or exchange for any other matter or thing, any alcoholic or intoxicating liquors, except as before excepted, whatsoever, either directly or indirectly, under the penalty of five pounds to be imposed on the first conviction, ten pounds on the second, and imprisonment on the third and every

subsequent conviction, for a period not more than twelve calendar months; such money to be applied to the use of the poor in the County, City or district in which such offence shall be proved to have been committed; the person convicted to stand committed until the same he paid; but nothing contained in this Act shall be construed to prevent any chemist, artist or manufacturer, in whose art or trade they may be necessary, from keeping at his place of business such reasonable and proper quantity of distilled liquors as he may have occasion to use in his art or trade, but not for sale, gift or barter.

6. If any clerk, servant or agent, or outer person in the employment, or on the premises of another, shall sell or manufacture, or assist in selling or manufacturing any alcoholic or intoxicating liquors, except as before excepted, for the person in whose service he, she or they are engaged, in violation of the provisions of this Act, he, she or they shall be held equally guilty, and shall suffer the like penalty of five pounds on the first conviction, ten pounds on the second, and imprisonment for a period not more than twelve calendar months on the third and every subsequent conviction.

7. No appeal or order for removal shall be allowed to the party against whom any judgment shall be rendered for any offence against the provisions of this Act before any two Justices of the Peace or Police Magistrate, unless such party shall recognize in the sum of twenty five pounds, with two good and sufficient sureties, in every case so appealed, to prosecute his appeal and to pay all costs, fines and penalties that may be awarded against him upon a final disposition of such suit or complaint; and no recognizance or bond shall be taken in cases arising under this Act except by the Justices or Judge before whom the trial was had; and the forfeiture for all bonds and recognizances given in pursuance of this Act, shall go to the County, or City or district where the offence was committed, for the use of the poor; and if the recognizance and bond mentioned in this section shall not be given within forty eight hours after the judgment, the appeal shall not be allowed, the defendant in the meantime to stand committed.

8. The Court of Session of any County, or the Corporate Body invested with the local government of the City or district, whenever any complaint shall be made to them that a breach of the condition of any bond given by any person appointed under this Act to manufacture or sell alcoholic or intoxicating liquors, has been committed, shall notify the person complained of, and if upon a hearing of the parties it shall appear that any breach has been committed, they shall revoke and make void his appointment, and shall cause the bond so forfeited to be put in suit before a Court competent to try the same.

9. Any two Justices of the Peace, or any Judge of a Police Court, shall have jurisdiction in all cases arising under the fifth and sixth sections of this Act, and any forfeiture or penalty arising under the same may be recovered by action of debt, on complaint before any such Justices or Judge in the County or district where the offence was committed, and the prosecutor or complainant may be admitted as a witness on the trial; and if such Justices or Judge before whom such trial shall be had shall so order, the defendant shall not recover costs though the prosecution fail.

10. No person engaged in the unlawful manufacture or traffic in intoxicating liquors shall be competent to sit upon any jury in any case arising under this Act; and when information shall be communicated to the Court that any member of any panel is engaged in such manufacture or traffic, or that he is believed to be so engaged, the Court shall inquire of the juror of whom such belief is entertained, and no answer which he shall make, shall be used against him in any case arising under this Act; but if he shall answer falsely, he shall be incapable of serving on any jury in this Province, but he may decline to answer, in which case he shall be discharged by the Court from further attendance as a juror.

11. If any three persons, voters in the County, City or district where the complaint shall be made, shall before any two Justices of the Peace or Judge of any Inferior Court of Common Pleas, or Judge of any Police Court, make complaint under oath or affirmation that they have reason to believe, and do believe, that alcoholic or intoxicating liquors, intended for sale by some person or persons not authorized to sell the same, are kept or deposited in any steamboat or other vessel, or in any carriage of any description, or in any store, shop, warehouse or other building or place in such County, city or district, by any person not authorized to sell the same in said County, City or district, under the provisions of this Act, said Justices or Judge shall issue their or his warrant of search to any sheriff, marshal or constable, who shall proceed to search the premises described in said warrant, and if any alcoholic or intoxicating liquors, except as before excepted, are found therein, he shall seize the same and convey them to some proper place of security where he shall keep them until final action is had thereon; but no dwelling house in which, or in part of which, a shop is not kept, shall be searched, unless one at least of said complainants shall testify on oath to some act of sale of alcoholic or intoxicating liquors therein or therefrom, within at least one calendar month of the time of making said complaint; and the owner or keeper of said liquors seized as aforesaid, if he shall be known to the officer seizing the Same, shall be summoned forthwith before the Justices or Judge by whose warrant the liquors were seized, and if he fail to appear, and it is shewn to the satisfaction of the said Justices or Judge that the said liquors were intended for sale, they shall be declared forfeited, and shall be destroyed by authority of the written order to that effect of said Justices or Judge, and in his presence or in the presence of some person appointed by him to witness the destruction thereof, and who shall join with the officer by whom they shall have been destroyed, in attesting that fact upon the back of the order by authority of which it was done; and the owner or keeper of such liquors shall pay a fine of ten pounds, and costs, or stand committed for three calendar months in default of payment.

12. If the owner, keeper or possessor of liquors seized under the provisions of this Act shall be unknown to the officer seizing the same, they shall not be condemned and destroyed until they shall have been advertised, with the number and description of the packages as near as may be, for two weeks, by posting up a written or printed description of the same in three public places; that if such liquors are actually the property of any person authorized to sell the same agreeably to the provisions of this Act, they may not be destroyed, but upon satisfactory proof of such ownership within said two weeks before the Justices or Judge by whose authority said liquors were seized, said Justices or Judge shall deliver them to the owner, taking his receipt therefor upon the back of said order, which shall be returned to said Justices or Judge.

13. It shall be the duty of any Justice of the Peace, Mayor, Alderman, Assessor, City Marshal, Constable or Policeman, if he shall have information that any intoxicating liquors, except as before excepted, are kept or sold in any tent, shanty, hut or place of any kind for selling refreshment in any public place, on or near the ground of any cattle show, agricultural exhibition, military muster, or public occasion of any kind, to smirch such suspected place, and if such officer shall find upon the premises any intoxicating liquors, he shall seize them and arrest the keeper or keepers of such place, and take them forthwith or as soon as may be before some Justice or Judge of a Police Court, with liquors so found and seized, and upon the proof that said liquors are intoxicating, that they were found in possession of the accused in a tent, shanty or other place as aforesaid, be or they shall be fined in the sum of five pounds or be sentenced to imprisonment for thirty days, and the liquors so seized shall be destroyed by order of said Justice or Judge.

14. All payments or compensations for liquors sold in violation of law, whether in labour, money or other property, either real or personal, shall be held and considered to have been received in violation of law and without consideration, and against law, equity and good conscience; and all sales, transfers and conveyances, mortgages, liens, pledges and securities of every kind, which either in whole or in part shall have been for or on account of alcoholic or intoxicating liquors, shall be utterly null and void against all persons and in all cases; and no rights of any kind shall be acquired hereby, and no action of any kind shall be maintained either in whole or in part for alcoholic or intoxicating liquors sold in contravention of this Act.

15. All Acts and parts of Acts now in force relating to the sale of intoxicating liquors, or for granting licences, &c., be and the same are hereby repealed; provided that all licences granted under the authority of any of said Acts or parts of Acts shall continue in like force and effect as if the said Acts or parts of Acts had not been repealed, and that all rules and regulations made under and by virtue of any such Acts or parts of Acts shall continue of force during the term of such licences; provided also, that no inn keeper, tavern keeper or retailer, who, since the passing of any such Acts or parts of Acts, hath sold upon trust or credit any wine, brandy, rum, strong beer, ale, or any other strong or spirituous liquors, to any person whomsoever, shall have any remedy against said person, his executors or administrators, either in law or equity for the recovery of the same.

16. Whenever in any of the aforesaid provisions words importing the singular number or masculine gender are used, the said provision shall be understood to include several matters or things as well as one matter or thing, several persons as well as one person, and females as well as males, unless there be something in the subject or context repugnant to such a construction.

17. This Act shall not come into operation or be in force until the first day of June in the year one thousand eight hundred and fifty three.