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24 Victoria – Chapter 23

**An Act to regulate the sale of Spirituous Liquors in the City and County of Saint John. Passed 12th April 1861.**

Section.

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

1. No person shall directly or indirectly barter or sell any Liquors without Licence for that purpose first obtained as hereinafter provided.
2. The General Sessions of the Peace for the City and County of Saint John are hereby empowered to grant Wholesale and Tavern Licences to such and so many persons of good character as they in their discretion shall think proper, to sell Liquors by wholesale or keep a Tavern within the said County, demanding and receiving for every such licence a sum not exceeding twenty five pounds nor less than five pounds, which shall be paid to the Clerk of the

Peace for the said County, together with five shillings for his trouble in issuing such licence; but no wholesale or Tavern licence shall be in force for a longer period than one year; but the said Sessions may in their discretion grant Tavern licences for the sum of forty shillings to persons residing in remote situations, when the same shall appear to such Court absolutely necessary for the accommodation of travellers.

3. The Clerk of the Peace may at any time issue a licence out of Sessions to any person who may bring a recommendation (A) for the same in writing, under the hands of any three of the Justices of the Peace for the City and County of Saint John, living nearest to the house where the Tavern is to be kept, or continued in case of death or removal of the original licensee, taking from the person so recommended the sum authorized in Sessions for such licence, with his fees, and also a recognizance in the same manner as if done in Sessions, which shall have like force as if done there; such licence to continue only to the March Sessions following the issuing thereof, and in no case to be longer than for one year: If the party applying lives in a remote situation, the said Justices shall state what sum is to be taken in their recommendation; the Clerk shall make a return to the next Sessions of the parties so licensed, and pay over the moneys to the County Treasurer as if the same had been received at the Sessions, together with any other moneys received at the Sessions for licences, towards defraying the contingent expenses of the County.

4. Every person receiving a wholesale or Tavern licence by the authority aforesaid, shall enter into a recognizance to Her Majesty in the sum of forty pounds, with two good sureties, conditioned to obey the provisions of this Act, and of all such regulations as may be made respecting the same in General Sessions; such regulations to be made under such penalties not exceeding for any one offence the sum of five pounds, nor to be less than twenty shillings.

5. No licence to keep a Tavern or Inn shall be granted to any person unless he shall be of sober and orderly habits, and shall, if residing without the City of Saint John, have the means of comfortably entertaining travellers; and no person licensed to sell by wholesale any liquors under the provisions of this Act, shall sell any such liquors in any quantity less than one pint, nor shall any wholesale dealer permit any such liquors to be drunk on his premises.

6. If any person shall, directly or indirectly, sell or barter any liquors without licence, or if a licensed wholesale dealer shall sell any liquor in any quantity less than one pint, or shall allow any liquor to be drunk on his premises, such person so offending shall for each offence forfeit a sum not exceeding ten pounds, nor less than two pounds: Keeping a shop with liquors therein, or keeping such liquors in any part of any house or building apparently for sale, or any person being found drinking therein, or coming therefrom intoxicated, shall be evidence on any prosecution for any offence of selling or bartering any liquors without licence, and shall be sufficient proof of such offence, unless the party complained against shall prove to the satisfaction of the officer before whom the prosecution shall be conducted, either that he had a licence or that there was no sale or barter of liquors as complained of.

7. No licence granted under this Act shall entitle any person to keep any Tavern or Inn, or to sell liquor by wholesale in any other house or place than that for which his licence may have been

granted; but in case of the death or removal of the person licensed, before the expiration of his term, a licence may be obtained by any other person for the remainder of the said term, on his entering into the like recognizance as aforesaid.

8. No Inn Keeper or Tavern Keeper who shall sell upon trust or credit any liquors, mixed or unmixed, to any person, shall have any remedy therefor in law or equity; and if any bill, bond, note, mortgage, or other security or conveyance, shall be made and delivered, the consideration or any part of which shall be proved to be liquors sold, the same shall be deemed to be fraudulent and void in all Courts of justice; and if any pawn or pledge shall be left by any person with any Tavern Keeper or Inn Keeper for liquors sold, any Justice of the Peace of the City and County of Saint John, on complaint and proof of the same, shall order the said pawn or pledge to be restored, and shall further convict the Tavern Keeper or Inn Keeper who may have received the same, in a penalty not exceeding five pounds for each offence.

9. No Tavern Keeper or Inn Keeper shall permit any apprentice to any profession or trade, or any servant, or any person under the age of sixteen years, or any Indian, or noted vagrant, to sit or remain drinking in his house or on his premises, nor sell or give, or suffer to be sold or given to any such person any liquors, unless in the case of any apprentice, servant, or person under age, as aforesaid, by the order or consent of the master, parent, or guardian of any such apprentice, servant, or person under age, under the penalty of five pounds.

10. No Tavern Keeper, Inn Keeper, or wholesale dealer, shall sell any liquors, mixed or unmixed, on the Lord's Day, commonly called 'Sunday,' under a penalty not exceeding five pounds and not less than two pounds for every offence: Any person being seen on the Lord's Day leaving the premises of any Tavern Keeper, Inn Keeper, or wholesale dealer, in a state of intoxication, shall be deemed sufficient evidence whereon to convict of the offence aforesaid, unless the party charged shall make it appear to the satisfaction of the Magistrate before whom the prosecution shall take place, that no such liquors were on that day sold or given, directly or indirectly, to such intoxicated person by the party charged, or by any one in his employ or under his control.

11. Any Tavern Keeper, Inn Keeper, or wholesale dealer, selling or offering for sale, or having in his possession any liquors, knowing the same to have been illegally imported, shall forfeit the sum of five pounds, and his licence shall be annulled, and he shall not be deemed eligible to receive any other licence whatsoever for two years then next ensuing.

12. If any Tavern Keeper, Inn Keeper, or wholesale dealer shall directly or indirectly persuade or seduce, or attempt to persuade or seduce, any soldier to desert from Her Majesty's service, or sailor or marine from Her Majesty's Navy, or shall assist any such soldier, or sailor, or marine, in deserting or concealing himself from such service in the Army or Navy, or shall buy, exchange, detain, or otherwise receive any arms, clothing, caps, or other furniture or accoutrements belonging to the Queen, or to any such soldier, sailor, marine, or deserter, which are generally deemed regimental necessaries according to the custom of the army, or necessaries according to the custom of the navy, or shall exchange, buy, or receive from any soldier, sailor, or marine, any provisions, unless by consent of the officer in command under whom any such person may be, it

shall be lawful for the Governor in Council to annul the licence of the holder thereof, who shall thenceforth be deemed an unlicensed person, and shall be disqualified from holding or obtaining any licence whatever for one year from such annulment.

13. Any Tavern Keeper or Inn Keeper convicted of enticing, seducing, harbouring, or concealing any artiled seaman or apprentice, shall not only forfeit his licence, but also be disqualified from holding a Tavern licence for the space of one year from the time of conviction.

14. The Clerk of the Peace of the City and County of Saint John, as soon as may be after every General Sessions at which licences may be granted, or returned by him as aforesaid, shall transmit to the Town Clerk of the several Parishes in the County a list of persons licensed as aforesaid; and the Town Clerks shall make diligent enquiry, and make known to the Police Magistrate, when within his jurisdiction, or the nearest Justice to be found, when not, if any person be guilty, or suspected to be guilty, of any breach of the provisions of this Act, or of any regulations made in virtue thereof, in order that the offender may be prosecuted; for which duty the Justices in General Sessions shall make such remuneration out of the contingencies as the nature of the services shall warrant, which services shall be certified by the Magistrate aforesaid.

15. Whenever the Grand Jury shall present any one as selling without licence, or offending against this Act, such presentment shall forthwith be transmitted by the Clerk of the Peace, to the Police Magistrate of the City of Saint John, or of the Parish of Portland, or to some Justice of the Peace, by order of the Court, when not within the Police Magistrate's jurisdiction.

16. The Mayor of the City of Saint John may ask, demand, and receive for every licence by him to be granted under the Charter of the City, any such sum as he and the person petitioning for such licence shall agree upon, not to be less in the case of a wholesale licence than the sum of twelve pounds ten shillings, and in the case of a Tavern licence, of the sum of seven pounds ten shillings; to be applied to the public use of the Corporation of the City of Saint John; but this Act is not in any other respect to interfere with any of the rights already given, in granting licences for the sale of liquors, to the Corporation of the City.

17. At the opening of every General Sessions, it shall be given in charge by the Court to such Grand Jury, to make diligent enquiry and presentment of all persons found or suspected to be guilty of any offence against this Act.

18. All penalties recovered for any offence under this Act, shall be paid to the County Treasurer for the public contingencies of the County, if incurred in the County, and to the Chamberlain of the City, if incurred there; and shall be proceeded for in the name of the County Treasurer if incurred out of the City, and in the name of the Chamberlain if within the City.

19. In this Act, unless there be something in the context to the contrary, the word "Liquor or Liquors," shall mean wine, brandy, gin, whiskey, ale, porter, strong beer, or any other fermented, distilled, alcoholic, or intoxicating liquors, mixed or unmixed in any manner.

20. No liquors shall be sold in any booth or shed, or in any place whatever where any public meeting or gathering of people may take place, or within one mile thereof, unless the same be in the City of Saint John, or some Town of the City and County aforesaid, under the penalty of five pounds for every offence.

21. In all prosecutions for penalties under this Act, proof that any person has been found intoxicated on or coming out of any premises where liquors are permitted to be sold, shall throw the burden of proof on the party prosecuted.

22. All penalties under this Act shall be recovered, with costs, when the offences against this Act, or against the regulations made by virtue of the same, shall happen within the Parish of Portland, before the Police Magistrate there; and if within the City of Saint John, before the Police Magistrate in the City; and if in any of the other Parishes of the said County, before any Justice of the Peace of the Parish where such offences may be committed; and all proceedings therefor shall be according to the form and directions in the Schedule to this Act, B, C, D, E, or to the like effect; and the information or complaint for the same may be verbal or written, and if written, according to Form B; all other proceedings shall be according to Chapter 138, of the Revised Statutes, 'Of Summary Convictions.'

#### SCHEDULE OF FORMS.

##### A.

We, the undermentioned Justices of the Peace, living nearest the place of the residence of \_\_\_\_\_, bearer hereof, being satisfied that he is a person of orderly and sober habits, and has the means of comfortably entertaining travellers, do recommend him as a proper person to keep a Tavern or Inn in the Parish of \_\_\_\_\_, and to have a Licence therefor. [*If in a remote situation, add, And such person living in (describe the place) being a remote situation, he is to pay the sum of \_\_\_\_\_ therefor; and if to continue a house, the said \_\_\_\_\_ is to pay \_\_\_\_\_ or the remainder of the term of the Licence of \_\_\_\_\_.*]

, J. P.

, J. P.

, J. P.

##### B. — *Information, if in writing.*

Saint John, to-wit:—The complaint of \_\_\_\_\_ taken and sworn this \_\_\_\_\_ day of \_\_\_\_\_ A. D. 186\_\_\_\_, before me, who saith that \_\_\_\_\_ is (or he suspects that \_\_\_\_\_ is) selling Liquor without Licence, [*or, as the case may be, in the same general manner.*]

*Police Magistrate, or J. P.*

##### C. — *Warrant to apprehend.*

To any Constable of the City and County of Saint John.

Bring \_\_\_\_\_ before me, charged with selling Liquor without Licence, [*or as the case may be,*] to answer thereto at suit of \_\_\_\_\_, County Treasurer.—Dated the \_\_\_\_ day of \_\_\_\_\_ A. D. 186\_\_.

*Police Magistrate, or J. P.*

D. —*Conviction.*

On this \_\_\_\_ day of \_\_\_\_\_ 186\_\_, A. B. is convicted before me the undersigned, for selling Liquor without Licence, [*or as the case may be,*] and I adjudge him to pay the sum of \_\_\_\_\_ to be paid and applied according to Law, with costs amounting to the sum of \_\_\_\_\_ to be paid to [*the party prosecuting,*] the whole to be levied by distress and sale of the goods and chattels of the said \_\_\_\_\_ with the costs of levying; or for want thereof, the said \_\_\_\_\_ to be imprisoned in the common Gaol of the City and County of Saint John for thirty days, [*or for a less period, but not under ten days, as the Magistrate may here direct.*]—Dated, &c.

*P. M. or J. P.*

E. —*Warrant of Distress.*

To any Constable of the City and County of Saint John.

Make distress of the goods and chattels of \_\_\_\_\_ for the sum of [*penalty and costs,*] ordered to be paid by him on conviction before me, and if the same be not paid, sell the said distress on six days' notice, rendering the proceeds, if any, after deducting costs of such distress and sale, and after paying the sum of [*the penalty*] to the County Treasurer, and the sum of [*the costs*] to me, to the said \_\_\_\_\_, and for want of goods or chattels, take the body of the said \_\_\_\_\_, and commit him to the common Gaol of the City and County of Saint John for thirty days, [*or as in the conviction,*] unless the amount aforesaid be sooner paid.—Dated, &c.

*P. M. or J. P.*