

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 46

An Act to amend the Lower Canada Tavern License Act of 1851. Assented to 10th June, 1857.

Whereas it is necessary to amend the Act of 1851, intituled, *An Act to make better provision for granting Licenses to Keepers of Taverns and Dealers in Spirituous Liquors in Lower Canada, and for the more effectual repression of intemperance*, and to make further provision in relation to prosecutions and appeals from decisions under the same: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Whereas by the forty-second section of the said Act, it is provided that all suits, actions or prosecutions for offences committed against the same, shall be commenced in the name of one of the Revenue Inspectors, and in the County in which the offence has been committed; And whereas it is necessary to amend the said section in this particular: It is therefore enacted, that any prosecution for an offence against the said Act committed within the limits of any County, Parish, Township, Town, or Village Municipality, may be instituted by or in the name of any Revenue Inspector of the District, before any one or more Justices of the Peace, or the Inspector and Superintendent of Police, or a Stipendiary Magistrate, within the District wherein the offence has been committed, — or by or in the name of the Secretary or Treasurer, or Secretary-Treasurer, or the Mayor or any one of the Councillors or Officers of such Municipality, before any Justice of the Peace therein or in the neighbouring Parish or Township, — and in every such latter case the share which would otherwise have accrued to the Revenue Inspector, shall be retained by the said Secretary or other officer and paid over to the Municipality to be appropriated to such purposes as they may deem proper; Provided that the Municipality shall be answerable for all the costs of prosecution.

II. Whenever any judgment shall be rendered under the said Act, for the amount of any penalty and costs, the Justice or Justices trying the case may call upon the Defendant to declare whether or not he possesses sufficient goods and chattels to satisfy the judgment and costs, and in the event; of his refusing to answer to the satisfaction of such Justice or Justices, he may be forthwith imprisoned in the Common Gaol for a period not exceeding three months; but no execution shall, in such case, issue against his goods and chattels.

III. If the Defendant declare that he possesses sufficient goods and chattels to satisfy the judgment and costs, execution in default of immediate payment may issue against them; and if upon the return of the Bailiff or other officer charged with the execution of The writ in that behalf, it appear that there has not been a sufficient levy, and the Justice be satisfied by affidavit or otherwise that there has been misrepresentation, concealment or fraud on the part, of the Defendant, the Justice may imprison such Defendant until the judgment and costs be fully paid, or for a period not exceeding three months.

IV. It shall also be lawful for such Justices, if they shall deem it expedient, in the event of such penalty and costs not being immediately paid, to appoint some future day for the payment thereof, and to

order the offender to be detained in safe custody until the day so appointed, unless such offender shall give security for his or her appearance on such day, to the satisfaction of the said Justices, who are hereby empowered to take such security by way of recognizance or otherwise at their discretion; and if at the time so appointed the penalty shall not be paid, it shall be lawful for the same or any other Justice of the Peace, by Warrant under his hand and seal to commit the offender to any Common Gaol or House of Correction within his jurisdiction, there to remain for any time not exceeding three months, reckoned from the day of such adjudication; such imprisonment to cease on payment of the said penalty and costs.

V. In all prosecutions to be instituted after this Act shall have come into force, for any contraventions of the provisions of the above mentioned Act, and in all cases wherein the proof shall not have been commenced before that day, the depositions of the witnesses shall be reduced to writing by the Clerk of the Peace, or some one appointed by him, or by the Justice trying the case, and shall be filed of record in the cause; in like manner as if the same had been taken in the Superior Court for Lower Canada.

VI. No appeal from any conviction, order or judgment for any offence against the said Act shall be hereafter allowed under the forty-fourth Section thereof, nor under any other Law or Statute whatever, in any case wherein the trial shall be had before, and the conviction made by two Justices of the Peace or by any Inspector and Superintendent of Police, or Stipendiary Magistrate and another Justice of the peace; nor any appeal whatever according to the practice heretofore observed with respect to such appeals; but any party to the cause, whether complainant or defendant, aggrieved by any conviction, order or judgment made or rendered by one Justice of the Peace, may within eight days after the making or rendering thereof, and after two days' notice to the opposite party or his attorney, and after having complied, (if a defendant,) with the conditions of the said section, apply to any Justice of the Superior or Circuit Court, by petition setting forth the grounds of his application, and praying to be permitted to appeal from such-conviction, order or judgment, to the next Court of General Quarter Sessions; and thereupon such Judge, if he see fit, may make an order directing the Justice or public officer having the legal custody of the record in such case, to send the same immediately before him, together with a copy of the conviction according to the form in the said Act; and upon examining the same and hearing the parties, if present, he may allow the said appeal or reject the said petition with costs to be taxed by him and entered in execution against the party failing, by the Justice or Justices who tried the case, or without costs in his discretion; and in the event of the Judge allowing the said appeal, he may order the said petition and record in the said cause to be returned and filed with the Cleric of the Court of Quarter Sessions, to be set down without further formality forbearing on the first day next thereafter of the said Court, when the said appeal shall be heard, and shall be restricted to a mere revision of the proceedings, proof and judgment therein, without the admission of any other evidence or the adoption of any further proceedings whatever.

VII. The said Clerk of the Peace, or other Clerk officiating in this behalf, shall be entitled to charge and receive at the: rate of six pence for each hundred words of the said evidence so reduced to writing, or of ten shillings per diem for the time during which he shall be so occupied, iii the discretion of the Justice trying the case, to be entered in taxation and paid by the party failing on such proceeding, if judgment be rendered therein against either party; and if no judgment be rendered therein within

three months after the return of the Summons or Information, then the fees of such Cleric shall be paid equally between the said parties.

VIII. In all Informations and Complaints for the prosecution of offences against the said Act, several counts for the same offence, and several offences under the same section, similar in their nature and only constituting different categories of the same offence, may be included, provided the time and place of the commission of each offence be alleged; and the form in Schedule D annexed to the said Act shall be altered in this particular; and the Information or Complaint may be amended before pica to the merits in any matter of form or substance, upon motion in writing of the complainant, setting forth the required amendment, but without obliterating or altering the original pleading; and if the amendment be allowed, the Defendant, if he require it, may have a further delay to plead to the merits, or for plea and proof as it may be ordered; and if the pleading, in the opinion of the Justice, be so defective either in form or substance, that a legal conviction cannot be based upon it, and be not amended or reformed, the Justice may dismiss the case, the whole with or without costs in his discretion.

IX. Any person examined or called as a witness on any such prosecution shall be bound to answer all questions put to him which are deemed pertinent to the issue, notwithstanding any declaration on his part that his answers may disclose facts tending to subject him to the penalty imposed by the ninth section of the above mentioned Act: Provided that such evidence shall not be used against him in any prosecution under the said section.

X. This Act shall come into force on, from and after the first day of September next, and not before.