

Laws of Her Majesty's Province of United Canada, passed in the year 1846. Montreal:
Stewart Derbishire & George Desbarats, 1846.

9 Victoria – Chapter 2

An Act to repeal certain Acts therein mentioned, and to impose a Duly on Distillers and on the Spirituous Liquors made by them, and to provide for the Collection of such Duties. 18th May, 1846.

Whereas it is expedient to repeal the Laws in force in this Province, imposing duties on Distillers and on Stills, and providing for the collection of such, duties,, and to; make other provisions in that behalf, by one law applicable, to the whole Province of Canada: Be it therefore enacted by the Queen's Most Excellent. Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the Act of the Legislature of this Province, passed in the Session held in the fourth and fifth years of Her Majesty's Reign, and intituled, *An Act to impose a duty upon Distilleries in that part of the Province heretofore called Lower Canada*,—and the Act of the said Legislature, passed in the eighth year of Her Majesty's Reign, and intituled, *An Act to repeal an Act of the present Session relative to the duties on Stills, and to make further provision on the same subject*, —and the Act of the Legislature of Upper Canada, passed in the thirty-fourth year of the Reign of King George the Third, and intituled, *An Act to levy and collect a duty upon Stills*,—and the Act of the said Legislature passed in the forty-third year of the Reign last aforesaid, and intituled, *An Act for the better securing to His Majesty, His Heirs and Successors, the due collection and receipt of certain duties therein mention*,—and the Act of the said Legislature, passed in the forty-fourth year of the Reign last aforesaid, and intituled, *An Act to explain and amend an Act passed in the forty-third year of His Majesty's Reign, and intituled, 'An Act for the better securing to His Majesty, His Heirs and Successors, the due collection and receipt of certain duties therein mentioned,'*—and the Act of the said Legislature, passed in the fourth year of the Reign of King George the Fourth, and intituled, *An Act prescribing the mode of measuring the contents of Wooden Stills*; also, fixing the duty to be paid on all Stills used for the distillation of Spirituous Liquors within this Province;—and the Act of the said Legislature, passed in the third year of Her Majesty's Reign, and intituled, *An Act to authorize certain duties to be imposed and collected on Wooden Stills within this Province, and for other purposes therein mentioned*,—and so much of any other Act or provision of law as imposes any duty on Distillers or Stills, or makes any provision for the levying of such duty, or as may be in any wise repugnant to or inconsistent with the provisions of this Act, (except only such parts of the said Acts as repeal any prior Act or law,) shall be and are hereby repealed upon, from and after the day when this Act shall come into force and effect; save and except that all duties accrued or to accrue before the day last mentioned under any of the Acts or laws so to be repealed, shall be paid and may be recovered, and bonds given under the same for any such duties or for any other purpose, shall remain in force, and all penalties and forfeitures incurred under the same may be sued for, recovered and levied, as if this Act had not been passed.

II. And be it enacted, That no person other than a person licensed in the manner hereinafter provided, shall act as a Distiller in this Province, or shall distil, brew, manufacture, rectify, or make therein any spirits or strong waters, or other spirituous liquors, from malt, grain, potatoes, mangel-wurzel, or other vegetable, or from molasses, sugar, or other saccharine matter, under a penalty of Ten Pounds, currency, for each day on which any such offence shall be committed, and on pain also of forfeiting over and above the penalty aforesaid, all spirits, strong waters, or spirituous liquors, distilled, brewed, manufactured or made, in contravention to this Act, and each and every still, mash-tub, fermenting-tub, or other vessel, machinery, or utensil of any kind used by him, or being in his possession or on his premises.

III. And be it enacted, That it shall be the duty of the District Inspector for any Revenue District, to issue a License to act as a Distiller, in some certain premises, situate at some certain place within such Revenue District, and to be described in the License, to any person or partnership of persons, who being a subject or subjects of Her Majesty resident or having his or their place of business in such Revenue District, and having previously complied with the requirements of this Act in that behalf, shall require the same; and each such License shall remain in force until the fifth day of January, inclusive, next after the date thereof, and no longer; and the party in whose favor the same shall be granted shall, on requiring such License, pay to the District Inspector issuing the same, the sum of Ten Pounds, currency, as a duty to Her Majesty upon such License.

IV. And be it enacted, That no License to act as a Distiller shall be granted to any party, under the authority of this Act, except on a written requisition addressed to the District Inspector, and signed by the party requiring such License, or if it be required by a partnership, then by one of the partners.

V. And whereas it is right that the further duty paid by each Distiller should be proportionate to the quantity of spirits manufactured by him, as nearly as it can be made so without the introduction of inconvenient restrictions and regulations: Be it therefore enacted, That all such spirits, strong waters, and spirituous liquors as aforesaid, lawfully distilled, manufactured or made within this Province after this Act shall come into force, shall be and are hereby declared to be respectively subject to the duty to Her Majesty hereinafter mentioned, that is to say:—On every gallon, Imperial measure, of spirits or strong waters, or spirituous liquors of any kind, not exceeding the strength of proof by Sykes' Hydrometer, and so in proportion for any greater or less strength than the strength of proof, and for any greater or less quantity than a gallon, two pence; and such duties shall be paid by the party distilling, manufacturing or making such spirits, strong waters or spirituous liquors, to the District Inspector, in the manner hereinafter mentioned: Provided always, that such duty shall not be again payable on any spirits or strong waters which, having paid duty in this Province, or having been made therein before this Act shall be in force, shall be re-distilled by a licensed Distiller, for the purpose of rectification or otherwise.

VI. And be it enacted, That no License shall be granted to any party under the authority of this Act, until such party shall jointly and severally, with two good and sufficient sureties, to the satisfaction of the District Inspector issuing the same, have entered into a bond to Her Majesty,

Her Heirs and Successors, in a sum equal to double the amount at which the said District Inspector shall estimate the duties to be paid by the party to whom the License is granted, during three-fourths of the time it is to remain in force; and such bond shall be taken before the said District Inspector, and shall be conditioned for the rendering, of all accounts, and the payment of all duties and penalties, which the party to whom the License shall be granted shall become liable to render or pay, under the provisions of this Act, and that such party will faithfully comply with the enactments and requirements thereof, according to their true intent and meaning, as well with regard to such accounts, duties and penalties, as to all other matters and things whatsoever; and the said bond shall be kept by the District Inspector.

VII. And be it enacted, That the bond aforesaid shall remain in force so long as any duties imposed by this Act upon any spirits or strong waters or spirituous liquors, distilled, manufactured or made, while the License to which the bond relates shall be in force, or any penalty incurred during the said time by any breach of the conditions of the bond, shall remain due and unpaid by the party to whom such License shall have been granted; but whenever any new License shall be granted to any party, a new bond shall be likewise entered into with reference to such new License; and a new bond shall also be given, whenever, during the period for which the License to which it relates shall be in force, either of the sureties shall die, become insolvent, or remove permanently out of the Province, in any of which cases the License shall be void from the time the party shall be required by the District Inspector to enter into a new bond until the time when such new bond shall be given, during which time the party neglecting to enter into such new bond shall be held to be without License.

VIII. And be it enacted, That every party licensed as a Distiller shall have his name and calling as such inscribed in legible characters, and exposed on some conspicuous part of the front of the building or premises in which such calling shall be exercised, under a penalty of Five Pounds, currency, for each day on which he shall exercise such calling without complying with the requirements of this section.

IX. And be it enacted, That each and every person, licensed as a Distiller under this Act, shall keep a book or books in a form to be furnished from time to time by the District Inspector, and to be open at all seasonable hours to his inspection, wherein such Distiller shall enter, from day to day, the quantities of grain or other vegetable production, or other substance, put by him into the mash-tub, or otherwise used by him for the purpose of producing beer or wash, or consumed by him in any way for the purpose of producing spirits, strong waters or spirituous liquors, or otherwise disposed of, and also the quantity of spirits, spirituous liquors or strong waters by him distilled, manufactured or made, shewing the quantity produced at each separate time, if there shall have been any distinct set or sets of operations by reason of which duties shall have become payable; and for any wilful false entry, or any wilful neglect to make any entry hereby required, the Distiller shall incur a penalty of Fifty Pounds, currency; and it shall at all times be lawful for the District Inspector to demand to be shown all the stock of such grain, vegetable production, or other substance aforesaid, then on the premises, mentioned in the License.

X. And be it enacted, That every party licensed to act as a Distiller, and acting as such, shall, within ten days after the first day, and within ten days after the fifteenth day of each of the months in each year, render to the District Inspector a just and true account, in writing, extracted from the books to be kept for such purpose as aforesaid, and signed by such party, or his agent, or chief clerk, showing the total quantity, in gallons, of each kind of spirits, strong waters or spirituous liquors, (with the strength thereof,) on which a duty shall be payable under this Act, by him distilled, manufactured or made, during the period for which no account shall have been previously rendered, and shewing also the quantity produced at each separate time, if there shall have been any distinct set or sets of operations by reason of each of which duty shall have become payable; and shewing also the quantities of each kind of grain, or other vegetable production or substance, used by such party in his business as a Distiller; and such account shall be attested by the person signing the same by an affidavit in the following form:

“I, ___ do solemnly swear, that the account above written, to which I have also subscribed my name, contains a true account of the total quantity of every kind of spirits or strong waters or spirituous liquors, distilled, manufactured or made by me (or by ___ as the case may be) within the time mentioned in the same account, and on which duty is payable, and Of the quantities of each kind respectively, and the strength thereof, and also of the quantities produced at each separate time therein mentioned by a distinct set of operations; and also of the quantities of all grain or other vegetable production or substance, consumed by me, (or by the said ___) during the said time: So help me God.”

And such affidavit shall be made before some Justice of the Peace, and shall be delivered with such account to the Districts Inspector, who may put to the person making it such questions as may be necessary to the elucidation and full understanding of the account, and for ascertaining whether such person has had the means of knowing the same to be correct, and may require his answers to be sworn to before some Justice of the Peace, and may reject the account if such account or the answers so given shall be insufficient, according to the true intent and meaning of this Act.

XI. And be it enacted, That any wilfully false statement in any affidavit required by this Act, shall be deemed to be wilful and corrupt perjury, and any person convicted thereof shall be liable to be punished accordingly.

XII. And be it enacted, That each licensed Distiller shall, on being thereunto required by the District Inspector, produce to that Officer at any seasonable time and hour, and shall allow him to take copies and extracts from such books and accounts as may be requisite to enable him to verify any account rendered as aforesaid, and shall, at all times and hours, allow the District Inspector, or any person employed by him, free access to the buildings and premises in which such Distiller shall exercise his calling as such, and more especially at all times when he shall be performing any operation therein by reason of which duty may become payable, under a penalty of Twenty Pounds, currency, for each neglect or refusal to comply with the requirements of this section: Provided always, that no District Inspector shall require any such book or account to be produced to him elsewhere than at the place where such Distiller or Brewer shall carry on his business as

such, or require admittance between the hours of sunset and sunrise, except when the Distiller is at work, or he be accompanied by a Peace Officer.

XIII. And be it enacted, That each licensed Distiller shall, at the time of rendering such account as aforesaid to the District Inspector, pay over to that Officer the amount of duties which shall by such account appear to be payable; and if any licensed Distiller shall refuse or neglect to render such account or to pay over such duties as aforesaid, according to the true intent and meaning of this Act, he shall, by such refusal or neglect in either case, incur a penalty of Twenty Pounds, currency; and the District Inspector may also, at his discretion, cause a notice to be inserted in the Public Gazette of this Province, declaring the party so refusing or neglecting to have forfeited his License as a Distiller, and such License shall be forfeited accordingly, and shall be null and void from and after the date of such notice, nor shall any new License be granted to the defaulter until after the debt and penalty aforesaid shall have been paid and satisfied.

XIV. Provided always, and be it enacted, That any duties payable under this Act, shall be recoverable at any time after the same out to have been accounted for and paid, whether an account of the quantity of spirits, strong waters or spirituous liquors as aforesaid, on which they shall be payable, shall or shall not have been rendered as aforesaid; but in the case last mentioned, the party by whom such duties shall be payable, shall incur a penalty equal to three times the amount of such duties, for his neglect to render the accounts relative to the same as hereinbefore required, in addition to any other penalty he may have incurred by such neglect; and all such duties shall be recoverable with full costs of suit in favour of Her Majesty; any law, usage or custom to the contrary notwithstanding.

XV. And be it enacted, That it shall not be lawful for any Distiller to work his distillery at any time unless he shall have given at least ten days previous notice in writing to the District Inspector, of his intention to work the same at such time; and such notice shall not extend to a longer period than thirty days from the delivery thereof to the District Inspector; and any use made of any still, mash-tub or fermenting-tub, for the purpose of distillation, mashing, or fermentation shall be deemed to be a working of the distillery and an acting as a Distiller within the meaning of this Act; and if any Distiller shall work his distillery at any time for which he shall not give notice of his intention to work the same, he shall, for each day on which he shall so work such distillery, incur the same penalty and forfeiture as if he had worked the same without a License.

XVI. Provided always, and be it enacted, That the payment of any penalty imposed by this Act, shall not be construed to discharge the party paying the same or his sureties from the obligation to pay all duties due by such party, and the same shall be paid and may be recovered as if such penalty had not been paid or incurred: and all such duties shall be recoverable, with full costs of suit, as a debt due to Her Majesty, in any Court of competent civil jurisdiction; any law, usage or custom to the contrary notwithstanding; and (without any prejudice to the liability of any other property of the debtor or his sureties,) the stock in trade, stills, mash-tubs, fermenting-tubs, and other machinery and utensils, whether so fixed as to form part of the real or immoveable property or not, which shall be on the premises mentioned in the License at the time any such duties shall have become due, shall be liable for such duties and for any penalty incurred by the Distiller on

whose premises they shall be, by special privilege and lien in favour of the Crown, and may be seized and sold in satisfaction of the same under any Warrant of Distress or Writ of Execution,, and removed by the purchaser, to whomsoever the same might otherwise belong, or into or in whose hands of possession soever the same may have passed or may be found, and notwithstanding any claim to the same, or privilege or lien thereon in favour of any other person or party whomsoever; and if the same be forfeited under the provisions of this Act for any contravention thereof, they may be seized by the District Inspector, or any person acting by his authority, at any time after the commission of the offence for which they are forfeited, and marked, detained or secured until condemned or released by competent authority, and shall not, while under seizure, be used by the offender, and if condemned they shall be removed or sold, or otherwise dealt with in such manner as the Governor in Council shall direct.

XVII. And be it enacted, That each and every Distiller, licensed under this Act, shall at all times furnish the District Inspector or his Assistant with lights, ladders, measures, and other things requisite to enable him properly to examine, inspect, measure, or guage any still, auxiliary vessel, mash-tub, fermenting-tub, or other vessel, or any grain, vegetable, or other substance or matter as aforesaid, on the premises of such Distiller or Brewer, or any part of such premises, under a penalty of Twenty Pounds, currency, for any refusal or neglect to comply with the requirements of this section.

XVII. And be it enacted, That the District Inspector, and any person or persons acting under him or by his directions, may, at any hour of the day or night, enter any premises referred to in any License granted under this Act, and may make all necessary enquires and searches therein, for the purpose of ensuring the execution of this Act according to its true intent and meaning, subject to the restrictions hereinbefore mentioned.

XIX. And be it enacted, That the District Inspector, or any person or persons acting under him or by his directions, having first obtained a Search Warrant for that purpose from some Justice of the Peace, who may grant the same on affidavit made before him, and to his satisfaction, and stating reasonable grounds for the issuing thereof, may, at any hour between sunrise and sunset, enter into and search any house, building or place, mentioned in such Search Warrant as being those in which affidavit has been made of reasonable cause to suppose that any unlicensed still, auxiliary vessel, mash-tub, fermenting-tub, or other vessel, is illegally in use, or the provisions of this Act otherwise contravened.

XX. And be it enacted, That any penalty or forfeiture incurred for any offence against the provisions of this Act, may be sued for and recovered before any two or more Justices of the Peace, (such Justice or Justices having jurisdiction in the place where the offence was committed,) on the oath of two credible witnesses; and any such penalty may, if not forthwith paid, be levied by distress and sale of the goods and chattels of the offender, under the warrant of such Justice or Justices; or the said Justice or Justices may, in his or their discretion, commit the offender to the Common Gaol, until the penalty, with the costs of the prosecution, shall be paid; and one moiety of such penalty or forfeiture shall belong to Her Majesty, and shall be paid, and applied in the

manner hereinafter provided with regard to other pecuniary penalties, and the other moiety shall belong to the person suing for the same.

XXI. Provided always, and be it enacted, That any pecuniary penalty or any forfeiture imposed by this Act, whatever be the amount thereof, may be sued for and recovered with costs, on the oath of any one competent fitness in any Court having civil jurisdiction to the amount of such penalty or forfeiture, by Her Majesty's Attorney General, or by any other person or officer thereunto authorized by the proper authority; and one moiety of such penalty or forfeiture shall belong to the District Inspector, or other person or officer suing for the same, and the other moiety shall belong to Her Majesty, and shall be paid over to the District Inspector of the Revenue District where the offence shall have been committed, and by him accounted for and paid over as other public monies coming into his hands: Provided that if any such penalty or forfeiture be sued for in the name of the Crown only, in such case (as also in the like cases in prosecutions under the next proceeding section) the whole of the penalty or forfeiture shall belong to the Crown.

XXII. And be it enacted, That any District Inspector, Officer of the Customs, or other person employed in the collection of the Revenue, shall be deemed a competent witness in any prosecution or suit under this Act, provided he be not himself the prosecutor or a party to such suit, although he may have or may believe himself to have some expectation of advantage to himself from the successful termination of such prosecution or suit; but the credibility of his testimony shall be left to the Court, Jury, Justice or Justices before whom the prosecution or suit shall be brought: nor shall any person making any seizure, under this Act be liable to damages if such seizure be declared not valid, provided the Court, Justice or Justices declaring it not valid shall certify that there was probable cause for making it.

XXIII. And be it enacted, That any person who shall refuse or neglect to appear before any Justice or Justices or any Court, to give evidence, when summoned concerning any alleged offence against the provisions of this Act, shall for such refusal or neglect incur a penalty off Five Pounds, currency, to be recovered in the manner hereinbefore provided for the recovery of other penalties of like amount.

XXIV. And be it enacted, That the duties hereby imposed shall be deemed to be duties within the meaning of an Act passed in the eighth year off Her Majesty's Reign, and intituled, *An Act to provide for the Management of the Customs and of matters relative to the collection of the Provincial Revenue*; and that all sums of money paid or recovered either for such duties or for any penalty or forfeiture under this Act, and belonging to Her Majesty, shall be paid to the Receiver General, and shall form part of the Consolidated Revenue Fund of this Province, and shall be accounted for to Her Majesty, Her Heirs and Successors, through the Lords Commissioners of Her Majesty's Treasury for the time being, in such manner and form as Her Majesty, Her Heirs and Successors shall direct, and nothing in this Act contained shall be construed to repeal any part or provision of the said Act.

XXV. And be it enacted, That this Act shall commence and have force and effect upon, from, and after the fifth day of January, one thousand eight hundred and forty-seven.

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XXVI. And be it enacted, That this Act shall remain and continue in force until the first day of January, one thousand eight hundred and forty-eight, and from thence until the end of the then next ensuing Session of Parliament.