

Laws of Her Majesty's Province of United Canada, passed in the year 1851. Quebec: Stewart Derbishire and George Desbarts, 1852.

16 Victoria – Chapter 164

An Act to prohibit the sale of Intoxicating Liquors on or near the line of Public Works in this Province. Assented to 14th June, 1853.

Whereas it is desirable to restrain the sale and use of Intoxicating Liquors in the neighborhood of Public Works where large bodies of men are necessarily gathered together: 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 from and after the passing of this Act, it shall not be lawful for any person or persons, except only such persons as shall have been legally licensed so to do before the passing of this Act, and only while the licenses they then hold respectively shall remain in force, to barter, sell, exchange or dispose of in any manner whatever, directly or indirectly, to any other person any alcoholic, spirituous, vinous, fermented or other Intoxicating Liquor, or any mixed Liquor a part of which is spirituous, or vinous, fermented or otherwise intoxicating, (and every such Liquor or mixed Liquor shall be included in the expression "Intoxicating Liquor" when used in this Act,) nor to expose, keep or have in his possession for sale, barter or exchange, any Intoxicating Liquor, at any place not included within the limits of any City, incorporated or other Town or Village, and being within three miles of the line of any Railway, Canal, or other Public Work in progress of construction, whether such work be constructed by the Government of this Province, or by any incorporated Company, or by private enterprise; nor shall any person, after the passing of this Act, obtain or receive a license, to sell any Intoxicating Liquor at any such place as aforesaid, and any such license, if granted after the passing of this Act, shall be utterly null and void, and the holder thereof shall be deemed to have no license: Provided always, firstly, That if any doubt shall at any time arise as to whether any work then in progress does or does not come within the scope and meaning of this section, it shall be lawful for the Governor of this Province, if he shall see fit, to declare by Proclamation that such work is within the scope and meaning of this section, and that the prohibition herein contained applies to any place within three miles of the line thereof, which line may be described and defined in such Proclamation, and the declaration contained in such Proclamation shall have the like force as if contained in this Act, and the said prohibition shall apply accordingly: but nothing in such declaration shall be construed as a declaration that such work or any part thereof was not within the scope and meaning of this section before the issuing of such Proclamation, but the question whether it was or was not so shall be decided as if such Proclamation had not issued; And provided secondly, that this Section shall not extend to any person selling Intoxicating Liquors by wholesale, and not retailing the same, if such person be a licensed Distiller or a Brewer, nor shall it extend to prevent the renewal of the license of any House or Shop licensed at the time of the passing of this Act, or of Houses or Shops which have been usually licensed heretofore.

II. Any person who shall, in contravention of this Act, by himself, his clerk, servant or agent, expose or keep for sale or barter, or shall sell, dispose of, give or exchange for any other matter or thing, to any other person any Intoxicating Liquor, shall be liable to a fine of Five Pounds on the first conviction, Ten Pounds on the second, and on the third and every subsequent conviction to such last mentioned fine and imprisonment for a period not more than six calendar months, such fine to be paid over to the Chamberlain, Treasurer, Clerk or Secretary-Treasurer, of the Municipality in which the offence shall be proved to have been committed, for, the use of the Municipality, and to be applied to such public purposes as the Council thereof may direct, and in default of payment of any fine and costs imposed under this Act, with the costs of prosecution, at the time of conviction, the offender shall be imprisoned until the same be paid, under warrant of the Justice, Reeve, Mayor, Police Magistrate, Recorder, or Judge before whom the conviction shall be had: Provided that no person shall be imprisoned for any separate offence under this Act for fine or costs, or both, or for fine and costs, for a period exceeding six calendar months.

III. If any clerk, servant or agent, or other person in the employment or on the premises of another, shall sell, dispose of, or exchange for any other matter or thing, or assist in selling, disposing of, exchanging for any other matter or thing, any Intoxicating Liquor in contravention of this Act, for the person in whose service or on whose premises he may be, he shall be held equally guilty with the principal, and shall suffer the like penalty.

IV. Any Justice of the Peace, any Reeve or Mayor of a Township, Village or other Municipality, any Police Magistrate, a Recorder of any City or Town, any Judge of a Circuit or Division Court, shall and may hear and determine in a summary manner any case arising within his or their jurisdiction under this Act; and every person who shall make complaint against any other person for contravening this Act or any part or portion thereof, before such Justice, Reeve, Mayor, Police Magistrate, Recorder or Judge, may be admitted as a witness, and if the Justice, Reeve, Mayor, Police Magistrate, Recorder, Judge or Commissioner, before whom the examination or trial is had, shall so order (as he may if he shall think there was probable cause for the prosecution) the defendant shall not recover costs though the prosecution fail.

V. No Appeal shall be allowed to any person complained of or convicted under this Act, unless he shall enter into a Recognizance or Bond to the Municipality in which the offence is alleged to have been committed, in the sum of Twenty-Five Pounds, jointly and severally, with two good and sufficient sureties, to prosecute his appeal, and to pay all costs, fines and penalties that may be awarded against him upon the final determination of the case; and no Recognizance or Bond shall be taken except by the Justice, Reeve, or Police Magistrate, Recorder or Judge before whom the complaint was made or the offender tried, and the security shall be to his satisfaction, and if the appeal shall not be successful, the Recognizance or Bond shall be forfeited, and the amount thereof shall become a debt due to the Municipality within which the offence was committed, recoverable by action by and in the name of the Municipality, and it shall be the duty of the Secretary-Treasurer, Clerk, or Treasurer, or Chamberlain of such Municipality to prosecute the same, and the money shall be applied in the same manner as the fines hereinbefore mentioned:

And if the Recognizance or Bond mentioned in this Section shall not be given before or within three days after conviction, order made or judgment rendered, the Appeal shall not be allowed.

VI. If any three persons being voters or entitled to vote at any Municipal election of the Municipality within which the complaint is made, shall make oath or affirmation before any Justice, Reeve, Mayor or Police Magistrate, Recorder or Judge of a Circuit Court or Division Court, that they have reason to believe and do believe that any Intoxicating Liquor intended for sale or barter in contravention of this Act, is kept or deposited in any Steamboat or other vessel, or in any carriage or vehicle, or in any store, shop, ware-house, or other building or place in such Municipality, or on any river, lake or water adjoining the same, at any place within which such Intoxicating liquor is by this Act prohibited to be sold or bartered or kept for sale or barter, the said Justice, Mayor, Reeve, Police Magistrate, Recorder, or Judge shall issue his Warrant of Search to any Sheriff, Police Officer, Bailiff or Constable, who shall forthwith proceed to search the premises, steamboat, vessel or place described in such Warrant, and if any intoxicating Liquor be found therein, he shall seize the same and the barrels, casks or other packages in which it may be contained, and convey them to some proper place of security, and there keep them until final action is had thereon; but no dwelling house in which, or in part of which a shop or bar is not kept, shall be searched, unless one at least of the said complainants shall testify on oath to some act of sale of Intoxicating Liquor therein or therefrom in contravention of this Act within one calendar month of the time of making the said complaint; and the owner or keeper of the Liquor seized as aforesaid, if he shall be known to the Officer seizing the same, shall be summoned forthwith before the Justice or person by whose Warrant the Liquor was seized, and if he fail to appear, and it appears to the satisfaction of the said Justice or person who issued the Warrant that, the said Liquor was kept or intended for sale or barter, in contravention of this Act, it shall be declared forfeited with any package in which it is contained, and shall be destroyed by authority of the written Order to that effect of the said Justice, Reeve, Mayor, Police Magistrate, Recorder 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 the said Liquor 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 Liquor shall pay a fine of Ten Pounds and costs, or be committed to prison for three calendar months in default thereof.

VII. If the owner, keeper or possessor of Liquor seized under the provisions of this Act shall be unknown to the Officer seizing the same, it shall not be condemned and destroyed until the fact of such seizure shall have been advertised, with the number and description of the package as near as may be, for two weeks, by posting up a written or printed notice and description thereof in at least three public places, and if it shall be proved within such two weeks to the satisfaction of the Justice, Reeve, Mayor, Police Magistrate, Recorder or Judge by whose authority such Liquor was seized, that it was not intended for sale or barter in contravention of this Act, it shall not be destroyed, but shall be delivered to the owner, who shall give his receipt therefor upon the back of the Warrant, which shall be returned to the said Justice or person who issued the same; but if after such advertisement as aforesaid, it shall appear to such Justice, Reeve, Mayor, Police Magistrate, Recorder or Judge, that such Liquor was intended for sale or barter, in contravention

of this Act, then such Liquor, with any package in which it is contained, shall be forfeited, condemned and destroyed.

VIII. Any payment or compensation for Liquor sold or bartered in contravention of this Act, whether in money or securities for money, labor or property of any kind, shall be held and considered to have been received without consideration, and against law, equity and good conscience, and the amount or value thereof may be recovered from the receiver by the party making, paying or furnishing the same, and all sales, transfers, conveyances, liens and securities of every kind which either in whole or in part shall have been given for or on account of Intoxicating Liquor sold or bartered in contravention of this Act, shall be utterly null and void against all persons and in all cases, and no right of any kind shall be acquired thereby, and no action of any kind shall be maintained either in whole or in part for or on account of Intoxicating Liquor sold or bartered in contravention of this Act.

IX. It shall be lawful for any Justice of the Peace, Reeve, Police Magistrate, Recorder or Judge authorized to hear and determine offences against this Act, to summon any person who may be represented to him as a material witness in relation to any offence against this Act, and if such person shall refuse or neglect to attend, pursuant to such Summons, the Justice, or person authorized to try the offence, may issue his Warrant for the arrest of the person so summoned, and such person shall be brought before the Justice or person issuing the Warrant, and if he shall refuse to be sworn or to affirm, or to answer any question touching the matter under investigation, he may be committed to the common gaol, there to remain until he shall consent to be sworn or to affirm and answer; And all the provisions of any Act or Acts for the protection of Justices of the Peace when acting as such, or to facilitate proceedings by or before them, in matters relating to summary conviction and orders, shall in so far as they may not be inconsistent with this Act, apply to every Functionary mentioned in this Section or empowered to try offenders against this Act, and such Functionary shall be deemed a Justice of the Peace within the meaning of any such Act, whether he be or be not a Justice of the Peace for other purposes.

X. That whenever judgment shall be rendered for costs, there shall be included therein fees for such prospective services as shall be necessary to enforce such judgment.

XI. Upon judgment or affirmance of any appeal, and for any other proceeding under this Act which shall be had before a Justice, Reeve or other Functionary, the costs shall be the same as are now by law allowed for proceedings of a like nature, and in actions such proceedings in any higher Court, the costs shall be the same as are usually allowed in such Court.

XII. No action or other proceeding, Warrant, Judgment, Order or other Instrument or Writing, authorized by or which may be necessary to carry out the provisions of this Act shall be held void, or be allowed to fail for defect of form, but all Justices, Municipal Councils, Judges and Courts, and all Public Functionaries or Officers who may be required to perform any duty under this Act, shall regard the same as a remedial Statute, and shall so construe its provisions as to advance the remedy, and suppress the mischief mentioned in the Preamble thereof.

XIII. And be it enacted, That so much of each and every Act and provision of law now in force in any part of this Province, as shall be inconsistent with any provisions of this Act, shall be and is hereby repealed.