

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

DOCUMENTS

PRINTED BY ORDER OF

THE LEGISLATURE

OF THE

STATE OF MAINE,

DURING ITS SESSION

A. D. 1853.

Augusta:
WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1853.

L A W S

FOR THE SUPPRESSION OF

DRINKING HOUSES AND TIPLING SHOPS.

Published by order of the Legislature.

Augusta:
WILLIAM T. JOHNSON, PRINTER TO THE STATE.

1853.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, }
March 31, 1853. }

ORDERED, That the Clerk of the House be directed to cause to be printed, and put up in pamphlet form, sections ten to twenty-two inclusive of the statute chapter two hundred and five of the year 1846; sections one to ten inclusive, and sections sixteen, seventeen, and eighteen, of the statute chapter two hundred and eleven of the year 1851; and the act entitled "An act in addition to chapter two hundred and eleven of the statutes of 1851," passed by the present Legislature, and that one thousand five hundred copies be furnished and sent to the members of this Legislature, and the usual number of copies be deposited in the Library, and that five hundred copies be sent to the clerks of the several cities, towns and plantations, postage paid.

A. B. FARWELL, *Clerk.*

L A W S

FOR THE SUPPRESSION OF DRINKING HOUSES AND TIPLING SHOPS.

EXTRACT

OF

AN ACT to restrict the sale of Intoxicating Drinks,

APPROVED AUGUST 7, 1846.

SECTION 10. No action shall be maintained, upon any claim or demand, whether it be note, account, bond, order, draft, acceptance, or other security or evidence whatever, made, had or given, in whole or in part, for any wine, brandy, rum or other strong or spirituous liquors, or mixed liquors, a part of which is spirituous, sold in violation of the provisions of this act; *provided however*, that this section, shall not extend to negotiable paper, in the hands of holders bona fide, and for a valuable consideration, without notice, expressed or implied, of the illegality of the consideration.

SECT. 11. If any payment, or compensation, for any such liquor hereafter sold in violation of law, shall be received by the seller, his clerk, servant, agent or attorney, whether in money, labor, or other property, real or personal, the amount so received, shall be held, and considered to have been received, in violation of law, and without consideration; and held against law, and equity and good conscience, and may be recovered

back, any time within six years from the receiving thereof, by the purchaser, his guardian, executors or administrators, or by any of his creditors, such money, in an action for money had and received, and such labor, goods or other property, in an action of trover, or in a special action on the case, for the value thereof, in any court proper to try the same; and the plaintiff in such action, shall within three days after the commencement of such suit, give notice thereof, by filing an abstract of the declaration, with the date of his writ, in the office of the clerk of the town where the defendant resides. And when such suit shall be commenced by a creditor, the purchaser may be a witness for the plaintiff, at the trial of the action, and such actions, and cause of action, shall survive.

SECT. 12. All payments, received within the six years, may be embraced in one general count, and shall alledge, that the money, or other thing, was received by the defendant, for liquor sold in violation of law, and amendments may be made to the writ and declaration, as matter of right and without terms, in any stage of the proceedings. And when the defendant shall rely upon having had the legal license, or upon the liquor sold having been imported, the burden of proof shall be and continue upon him. The custom house certificates of importation, and proofs of marks on the cask corresponding thereto, may be received as evidence that the liquor specified in said certificate was once imported in said cask, but shall not be evidence that the liquor sold in, or from such cask, was the same liquor once imported therein. And it shall be no objection to the suit, that the payment was received, for the joint use of the defendant, and any other person or persons, or that the defendant was under the age of twenty-one years, or a married woman.

SECT. 13. When the money or other thing, shall have been received by any clerk, servant, agent or attorney, the action may be maintained against him, if he had knowledge or previous notice, that it was for liquor sold in violation of law. And if any action which is authorized by this act, be brought in the

district court, and the plaintiff prevail therein, full costs shall be allowed, though the amount of damages recovered, be less than twenty dollars.

SECT. 14. The defendant shall not be allowed, on the trial of any action against him, under any of the provisions of this act, any claims or demands, he may have against the plaintiff, or person to whom the liquor was sold or furnished, either in set off, payment or otherwise; nor shall the action of any creditor be defeated, by any assignment of the claim by the purchaser.

SECT. 15. No discharge, release, receipt, settlement or admission, made by a purchaser, shall defeat or hinder the suit, if it appear that the claim allowed to the purchaser by this act, has not been actually paid in good faith, to its full value and amount; and the giving a negotiable note or other obligation, shall not be deemed a payment.

SECT. 16. Any plaintiff suing under the eleventh section of this act, may, at the trial, tender his oath in writing, which shall be received as evidence, unless the defendant shall in writing, make oath that he did not, within six years before the commencement of the suit receive any payment or compensation, for any such wine or strong liquor sold to the plaintiff, or to any person whom the plaintiff represents, contrary to the provisions of the law, as alledged in the declaration.

SECT. 17. When a plaintiff suing under any of the provisions of this act, in order to prove the facts which he has alledged, shall wish to avail himself of the defendant's knowledge, relating to the subject matter of the suit, he may, in his declaration, ask for a disclosure of the same, upon the oath of the defendant, in writing, and the disclosure, if made at the first term of the court, or day appointed for the trial, may be submitted to the court or jury, with the other evidence in the case; but if the defendant neglects or refuses to make such disclosures, or if when made, it does not absolutely, and without qualification, deny that he did sell the liquor and receive the money or other property, therefor, as alledged in the decla-

ration, and prevails in the action, he shall not receive any costs.

SECT. 18. No answers or disclosures, made by a defendant, under the provisions of this act, shall ever be used against him, in any penal action or criminal prosecution.

SECT. 19. Moneys, which are by this act, to be recovered back, may when recovered by a guardian, executor or administrator, be applied at the discretion of the guardian, executor or administrator, in whole or in part, to meet the debts of the purchaser, or to relieve his wife or widow and children, and parents, in such proportions, as the guardian, executors or administrators may deem suitable, and when recovered by a creditor, it shall be appropriated to the payment of his debt against the purchaser and his costs; and if any balance remains, it shall be paid to the purchaser, his guardian, executor or administrator, to be appropriated by them, in the same manner, as moneys recovered under this act by them. And if any guardian, executor or administrator, neglect to pay all said moneys, he and his sureties shall be liable for the same on his official bond.

SECT. 20. Whenever a judgment shall be recovered against any person, on account of a violation of this act, the execution which shall be issued thereon, shall run against the body of the execution debtor, whether the amount recovered, exclusive of costs, be more or less than ten dollars; and the justice or clerk issuing said execution, shall note on its margin, that it was issued on a judgment obtained on account of intoxicating liquors sold in violation of law.

SECT. 21. If such execution debtor shall be arrested on such execution, he shall be committed to prison, and shall not be permitted to give any of the bonds, provided in the one hundred and forty-eighth chapter of the revised statutes, for the liberation of his person. And in case he shall apply to take the oath described in the twenty-eighth section of said chapter, no notice to the creditor shall be issued, until fifteen days after the commitment. *Provided, however,* that no person shall be

imprisoned on more than one warrant issued upon any judgment, recovered on account of a violation of the provisions of this act, at the same time.

SECT. 22. The keepers of the prisons shall be entitled to receive the same compensation, now allowed by law for the support of poor debtors imprisoned, for the support of persons committed on execution recovered under the provisions of this act, to be allowed and paid, out of the treasury of the county where such person stands committed, under the direction of the county commissioners.

EXTRACT

OF

AN ACT for the suppression of Drinking Houses and Tippling Shops,

APPROVED JUNE 2, 1851.

SECTION 1. No person shall be allowed at any time, to manufacture or sell, by himself, his clerk, servant or agent, directly or indirectly, any spirituous or intoxicating liquors, or any mixed liquors a part of which is spirituous or intoxicating, except as hereafter provided.

SECT. 2. The selectmen of any town, and mayor and aldermen of any city, on the first Monday of May annually, or as soon thereafter as may be convenient, may appoint some suitable person, as the agent of said town or city, to sell at some central and convenient place within said town or city, spirits, wines or other intoxicating liquors, to be used for medicinal and mechanical purposes and no other; 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 selectmen or mayor and aldermen 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.

SECT. 3. Such agent shall receive a certificate from the mayor and aldermen or selectmen by whom he has been ap-

pointed, authorizing him as the agent of such town or city, to sell intoxicating liquors for medicinal and mechanical purposes only; but such certificate shall not be delivered to the person so appointed, until he shall have executed and delivered to said board, a bond with two good and sufficient sureties, in the sum of six hundred dollars, in substance as follows:

Know all men that we, —— as principal, and —— and —— as sureties, are holden and stand firmly bound to the inhabitants of the town of ——, (or city, as the case may be,) in the sum of six hundred dollars, to be paid them, to which payment we bind ourselves, our heirs, executors and administrators, firmly by these presents. Sealed with our seals, and dated this —— day of ——, A. D. —.

The condition of this obligation is such, that whereas the above bounden —— has been duly appointed an agent for the town (or city) of —— to sell within, and for and on account of said town (or city,) intoxicating liquors for medicinal and mechanical purposes and no other, until the —— of ——, A. D. —, unless sooner removed from said agency.

Now if the said —— shall in all respects conform to the provisions of the law relating to the business for which he is appointed, and to such rules and regulations as now are or shall be from time to time established by the board making the appointment, then this obligation to be void; otherwise to remain in full force.

SECT. 4. If any person, by himself, clerk, servant or agent, shall at any time sell any spirituous or intoxicating liquors, or any mixed liquors, part of which is intoxicating, in violation of the provisions of this act, he shall forfeit and pay on the first conviction, ten dollars and the costs of prosecution, and shall stand committed until the same be paid; on the second conviction he shall pay twenty dollars and the costs of prosecution, and shall stand committed until the same be paid; on the third and every subsequent conviction, he shall pay twenty dollars and the costs of prosecution, and shall be imprisoned in the

common jail, not less than three months, nor more than six months, and in default of the payment of the fines and costs prescribed by this section, for the first and second convictions, the convict shall not be entitled to the benefit of chapter one hundred and seventy-five of the revised statutes, until he shall have been imprisoned two months; and in default of payment of fines and costs provided for the third and every subsequent conviction, he shall not be entitled to the benefit of said chapter one hundred and seventy-five of the revised statutes, until he shall have been imprisoned four months. And if any clerk, servant, agent or other person in the employment or on the premises of another, shall violate the provisions of this section, he shall be held equally guilty with the principal, and on conviction, shall suffer the same penalty.

SECT. 5. Any forfeiture or penalty arising under the above section, may be recovered by an action of debt, or by complaint before any justice of the peace, or judge of any municipal or police court, in the county where the offense was committed. And the forfeiture so recovered shall go to the town where the convicted party resides, for the use of the poor; and the prosecutor or complainant may be admitted as a witness in the trial. And if any one of the selectmen or board of mayor and aldermen shall approve of the commencement of any such suit, by endorsing his name upon the writ, the defendant shall in no event recover any costs; and in all actions of debt arising under this section, the fines and forfeitures suffered by the defendant, shall be the same as if the actions had been by complaint. And it shall be the duty of the mayor and aldermen of any city, and selectmen of any town, to commence an action in behalf of said town or city, against any person guilty of a violation of any of the provisions of this act, on being informed of the same, and being furnished with proof of the fact.

SECT. 6. If any person shall claim an appeal from a judgment rendered against him by any judge or justice, on the trial of such action or complaint, he shall, before the appeal shall be

allowed, recognize in the sum of one hundred dollars, 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 before his appeal shall be allowed, he shall also, in every case, give a bond with two other good and sufficient sureties, running to the town or city where the offense was committed, in the sum of two hundred dollars, that he will not, during the pendency of such appeal, violate any of the provisions of this act. And no recognizance or bond shall be taken in cases arising under this act, except by the justice or judge before whom the trial was had; and the defendant shall be held to advance the jury fees in every case of appeal in an action of debt; and in the event of a final conviction before a jury, the defendant shall pay and suffer double the amount of fines, penalties and imprisonment awarded against him by the justice or judge from whose judgment the appeal was made. The forfeiture for all bonds and recognizances given in pursuance of this act, shall go to the town or city where the offense was committed, for the use of the poor; and if the recognizances and bonds mentioned in this section shall not be given, within twenty-four hours after the judgment, the appeal shall not be allowed; the defendant in the mean time to stand committed.

SECT. 7. The mayor and aldermen of any city, and the selectmen of any town, whenever complaint shall be made to them that a breach of the conditions of the bond given by any person appointed under this act, 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 whenever any breach of any bond given to the inhabitants of any city or town in pursuance of any of the provisions of this act, shall be made known to the mayor and aldermen, or selectmen, or shall in any manner come to their knowledge, they or some

one of them shall, at the expense and for the use of said city or town, cause the bond to be put in suit in any court proper to try the same.

SECT. 8. No person shall be allowed to be a manufacturer of any spirituous or intoxicating liquor, or common seller thereof, without being duly appointed as aforesaid, on pain of forfeiting on the first conviction, the sum of one hundred dollars and costs of prosecution, and in default of the payment thereof, the person so convicted shall be imprisoned sixty days in the common jail; and on the second conviction, the person so convicted shall pay the sum of two hundred dollars and costs of prosecution, and in default of payment, shall be imprisoned four months in the common jail; and on the third and every subsequent conviction, shall pay the sum of two hundred dollars and shall be imprisoned four months in the common jail of the county where the offense was committed; said penalties to be recovered before any court of competent jurisdiction, by indictment, or by action of debt in the name of the city or town where the offense shall be committed. And whenever a default shall be had of any recognizance arising under this act, scire facias shall be issued, returnable at the next term, and the same shall not be continued, unless for good cause satisfactory to the court.

SECT. 9. No person engaged in the unlawful 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 traffic, or that he is believed to be so engaged, the court shall inquire of the juryman 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 state; but he may decline to answer, in which case he shall be discharged by the court from all further attendance as a juryman.

SECT. 10. All cases arising under this act, whether by action, indictment or complaint, which shall come before a superior court, either by appeal or original entry, shall take precedence in said court of all other business, except those criminal cases in which the parties are actually under arrest, awaiting a trial; and the court and prosecuting officer shall not have authority to enter a nolle prosequi, or to grant a continuance in any case arising under this act, either before or after the verdict, except where the purposes of justice shall require it.

SECT. 16. All payments or compensations for liquors sold in violation of law, whether in money, labor 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 a good conscience, and all sales, transfers and conveyances, mortgages, liens, attachments, pledges and securities of every kind, which either in whole or in part, shall have been for or on account of spirituous 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 thereby; and in any action either at law or equity, touching such real or personal estate, the purchaser of such liquors may be a witness for either party. And no action of any kind shall be maintained in any court in this state, either in whole or in part for intoxicating or spirituous liquors sold in any other state or country whatever, nor shall any action of any kind be had or maintained in any court in this state, for the recovery or possession of intoxicating or spirituous liquors or the value thereof.

SECT. 17. All the provisions of this act relating to towns shall be applicable to cities and plantations; and those relating to selectmen shall also be applied to the mayor and aldermen of cities and assessors of plantations.

SECT. 18. The act entitled "an act to restrict the sale of intoxicating drinks," approved August sixth, one thousand eight hundred and forty-six, is hereby repealed, except the thirteen

sections from section ten to section twenty-two, inclusive, saving and reserving all actions or other proceedings, which are already commenced by authority of the same; and all other acts and parts of acts inconsistent with this act are hereby repealed. This act to take effect from and after its approval by the governor.

STATE OF MAINE.

IN THE YEAR OF OUR LORD ONE THOUSAND EIGHT HUNDRED AND FIFTY-THREE.

AN ACT in addition to chapter two hundred and eleven of the statutes of eighteen hundred and fifty-one.

Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows :

SECTION I. If three persons who are competent to be witnesses in civil suits, resident within the county within which the complaint shall be made, shall make complaint upon oath or affirmation before any judge of a municipal or police court or justice of the peace, that they have reason to believe and do believe, that spirituous and intoxicating liquors are kept or deposited in any building or place, other than a dwelling house no part of which is used as a shop, or for purposes of traffic, by a person or persons named in said complaint, or by a person or persons unknown, not authorized by law to sell the same, within the city, town or plantation where they are alledged to be so kept or deposited, and that said liquors are intended for sale within this state in violation of law, such magistrate shall issue his warrant, directed to any sheriff, deputy sheriff, marshal, deputy marshal, constable or police officer, having power to serve such process, commanding such officer to search the premises described in said complaint, which premises shall also be described in said warrant ; also to search any yard or build-

ing, other than such dwelling house, adjoining the premises described in said warrant, if occupied by the same person occupying the premises described in said warrant; and if any spirituous or intoxicating liquors are there found, to seize the same, with the vessels in which they may be contained, and to convey them to some proper place of security to be there kept until final action upon such complaint. And the officer having such warrant shall be authorized by virtue thereof to make the search directed by such warrant to be made, and to seize and dispose of any such liquors as hereinbefore is provided. And such officer shall in his return on such warrant, designate and describe the liquors by him so seized, and the vessels in which they are contained, with reasonable certainty. And if the name of the person or persons by whom such liquors are alleged to be so kept or deposited, shall be stated in said complaint, the officer shall be commanded in and by said warrant, if he find such liquors, to arrest such person or persons, and have them forthwith before the judge or justice by whom such warrant was issued, to answer to said complaint, and show cause why said liquors should not be forfeited. And such person so arrested and brought before such judge or justice may plead not guilty to such complaint, and may shew in defense thereto that said liquors were not intended for sale contrary to law, or that they were imported under the laws of the United States, and in accordance therewith; that they are contained in the original packages in which they were imported, and in quantities not less than the laws of the United States prescribe. But custom house certificates of importation, and proofs of marks on the casks and packages corresponding thereto, shall not be received as evidence that the identical liquors contained in said packages and casks were actually imported therein. And if upon the trial neither of the said grounds of defense shall be established, and if in the opinion of the court, upon the evidence produced, said liquors were kept or deposited by such person or persons for purpose of sale contrary to law, such person or persons being found guilty shall each be punished by a

fine of twenty dollars and costs, and shall be imprisoned thirty days in default of payment thereof. And the liquors so seized with the vessels in which they are contained, shall be declared forfeited, and such adjudication shall be a bar to any claim for the recovery of the same, or the value thereof, and they shall on the written order of said judge or justice be destroyed. And the officer to whom such order is directed, shall make return thereon of his doings in the premises. If, however, upon trial the judge or justice shall find the person or persons so charged in the complaint not guilty, he shall, if satisfied that the liquors so seized were so as aforesaid kept and deposited for unlawful sale by some person or persons not named in the complaint, decline to order them to be restored, and shall proceed therewith as is hereinafter provided.

SECT. 2. If the name of the person so keeping or depositing the liquors described in any such complaint is not known and stated therein, and any such liquors shall be seized upon the warrant issued upon such complaint, or if the person named in such complaint shall not be found and arrested, or if any liquors shall not be restored in the case specified in the preceding section, the judge or justice shall cause a notice of such seizure, describing such liquors with reasonable certainty, and the place where the same were seized, and of the time and place appointed for a hearing thereon, to be posted up in some public and conspicuous place in the town or place where the seizure was made, for two weeks successively before the day of said hearing, for all persons interested to appear and shew cause why said liquors and the vessels in which they are contained should not be forfeited. And if no claimant shall then appear, such judge or justice shall, on proof of notice as aforesaid, adjudicate on the same, and the like proceedings shall be had as is provided in the preceding section in cases of forfeiture, and such adjudication shall be a bar, as is therein provided. And if any person shall then appear and claim such liquors, or any part thereof, as his own property, or as having a right to the possession or keeping thereof, he shall file such claim, in writ-

ing signed by him, with such judge or justice, stating specifically the items so claimed, and the time and place of the seizure, and the name of the officer by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale, and also state his place of residence or business in such town or place, and shall sign the same, and if the quantity so claimed shall not be more than five gallons, and the judge or justice shall be satisfied that the same was not so kept or deposited for unlawful sale, he shall give such owner or keeper an order in writing, directed to the officer having the same in custody, for the delivery of the same; and if the judge or justice shall not be satisfied that the same was not kept or deposited for unlawful sale, or if the quantity so claimed shall exceed five gallons, he shall forthwith notify one or more of the said complainants of the said claim, and if within twenty-four hours after such notice is given, a complaint shall be made in manner aforesaid by three persons who are competent to be witnesses in civil suits, who are resident in the county, against such owner or keeper, that the spirituous or intoxicating liquors claimed as aforesaid were, prior to and on the day when the same were seized, kept or deposited by said owner or keeper, or by some person with his consent, for sale as set forth in the preceding section, the judge or justice shall issue his warrant, upon which such owner or keeper shall be arrested and brought before him, and such proceedings shall be had on such arrest as on arrest on a warrant issued as is before provided; and if such owner or keeper shall avoid so that he cannot be arrested, the officer shall make return upon the warrant according to the fact, and the judge or justice shall thereupon proceed to declare the said liquors forfeited; and if no such complaint shall be made in either case, the liquors shall be restored to such owner or claimant upon the written order of the judge or justice in manner aforesaid, and these proceedings shall be a bar to any claim of damages on the part of any person for the said liquors and the vessels in which they are contained, or for the taking and detention of the same. And if the said owner or keeper,

when arrested upon such warrant and tried for the offense charged in said complaint, shall not establish either of the grounds of defense stated in the preceding section, and shall be found guilty of having said liquors, or any part thereof, kept or deposited as aforesaid for unlawful sale on the day aforesaid, or prior thereto, he shall be punished by a fine of twenty dollars and costs, and at the discretion of the judge or justice with the costs of the original proceedings in which said liquors were seized, and be imprisoned thirty days in default of the payment thereof, and the liquors, so as aforesaid seized and claimed, shall be adjudicated upon and disposed of, together with the vessels in which the same are contained, as is provided in the preceding sections of this act; and such adjudication shall be a bar as is therein provided.

SECT. 3. If any officer having a warrant issued under this act, committed to him directing him to seize any such liquors and to arrest the owner or keeper thereof, shall be prevented from seizing the liquors by their being poured out or otherwise destroyed, he shall arrest the owner or keeper and bring him before the magistrate, and he shall make return upon the warrant that he was prevented from seizing the liquors by their being poured out or otherwise destroyed, as the case may be, and in his return he shall state the quantity so poured out or destroyed as nearly as may be, and the magistrate shall put the owner or keeper so arrested upon trial; and if on the trial it shall appear by competent testimony that such liquors were so poured out or destroyed, and that the liquors so poured out or destroyed were such as were described in the warrant, and that they were so kept or deposited intended for unlawful sale, and if the person so arrested shall be found to be the owner or keeper thereof, he shall be fined and sentenced in the same manner he would be if the liquors described in the warrant and in the return had been seized on the warrant and brought before the magistrate by the officers.

SECT. 4. If any person shall appeal from any sentence of

such judge or justice, as set forth in the preceding sections, the judge or justice shall grant his appeal and order him to recognize in the sum of two hundred dollars with sufficient sureties for his appearance and for prosecuting his appeal, and he shall stand committed till the order is complied with. And the judge or justice whose judgment is appealed from shall furnish a full copy of all the papers and proceedings in the case at the expense of the appellant. And if judgment is rendered against the appellant in the appellate court, he shall be punished and the liquors seized, with the vessels in which they are contained, shall be dealt with, and disposed of, as before is provided. And if said appellant shall fail to appear and prosecute his appeal, or to abide and perform the order and judgment of the appellate court, the recognizance shall be forfeited, and the liquor shall be disposed of as aforesaid by order of said court.

SECT. 5. It shall be the duty of any mayor, alderman, selectman, assessor, city marshal, or deputy, or constable, or police officer, if he shall have information that any intoxicating liquors are kept or sold in any tent, shanty, hut, or place of any kind for selling refreshments in any public place, or near the ground of any camp-meeting, cattle show, agricultural exhibition, military muster, or public occasion of any kind, and shall believe said information to be true, forthwith to enter a complaint, before some judge of a municipal or police court or justice of the peace, against the keeper or keepers of such place, alledging in said complaint that he has reason to believe, and does believe, that such liquors are so kept in such place (describing the same) by such keeper or keepers, contrary to law. And upon such complaint, the said judge or justice shall issue his warrant, commanding the officer who may serve the same to search the place described in said complaint, and which shall be described in said warrant.

And if he shall find upon said premises any such liquors, to seize the same with the vessels in which they may be contained, and to arrest the keeper or keepers thereof, and have

said keeper or keepers, with the liquors and vessels so seized, as soon as may be, before said judge or justice, to be dealt with according to law.

And the officer to whom said warrant may be committed, shall forthwith execute the same, and said keeper or keepers when arrested shall be tried thereon, in due course of law, and upon proof that said liquors are intoxicating, that they were found in the possession of the accused, in a tent, shanty, hut, or other place, as aforesaid, he or they shall be found guilty, and sentenced to be punished by imprisonment in the county jail for thirty days, and to pay all costs of such proceedings, and the liquors and vessels so seized shall be destroyed by order of the court, in the manner before provided in this act. Any mayor or alderman, selectman, assessor, city marshal or his deputy, constable, police officer, or watchman, in his city or town, may take into his custody any such liquors, and the vessels in which they are contained, which he shall find at any place, by day or night, if he have reason to believe they are kept or deposited and intended for unlawful sale, at the place of seizure, and detain the same until a warrant can be procured under which proceedings shall be had against such liquors, and the owner or keeper, in like manner as is provided in case of such liquors taken in a tent, shanty, hut, or other place. If any person arrested, tried, and sentenced, as set forth in this section, shall appeal from such sentence, the judge or justice shall grant the appeal, and order him to recognize in the sum of one hundred dollars, with sufficient sureties for his appearance, and for prosecuting his appeal, and he shall stand committed till the order is complied with ; and the judge or justice, whose judgment is appealed from, shall furnish full copies of all the proceedings in the case, at the expense of the appellant. And if judgment is rendered against the appellant in the appellate court, he shall be punished and the liquors seized and vessels dealt with as is above provided in this section ; and if said appellant shall fail to appear and prosecute his appeal, or to abide and perform the judgment of the appellate court, the

recognizance shall be forfeited, and the liquors and vessels shall be disposed of as aforesaid by order of the court.

SECT. 6. In all cases of appeal under this act, and that to which it is additional, from the judgment of such judge or justice, except where the proceeding is by action of debt, they shall be conducted in the appellate court by the prosecuting officer of the government; but no costs in such cases shall be remitted or reduced by the prosecuting officer or the court. In any suit, complaint or indictment, or other proceeding against any person for a violation of any of the provisions of this act, or that to which it is additional, other than for the first offense, it shall not be requisite to set forth particularly the record of a former conviction, but it shall be sufficient to alledge, briefly, that such person has been convicted of a violation of any particular provision of this or the said act, or as a common seller, as the case may be, and such allegation in any civil or criminal process, legally amendable in any stage of the proceedings, before final judgment, may be amended, without terms, and as a matter of right. Any process, civil or criminal, legally amendable under this or the said act, may, in any stage of the proceedings, be amended in any matter of form, without costs, on motion at any time before final judgment.

SECT. 7. Nothing in this act contained 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 such liquors as he may have occasion to use in his art or trade, but not for sale; nor to prohibit the manufacture of cider, and sale thereof by the manufacturer.

SECT. 8. No such liquors owned by any city, town or plantation, or kept by any agent of any city, town or plantation, as is provided in the act to which this is additional, or by any such chemist, artist or manufacturer, shall be protected against seizure and forfeiture, under the provisions of this and of said act, by reason of such ownership, unless all the casks and vessels in which they are contained shall be at all times

plainly and conspicuously marked with the name of such city, town or plantation, and of its agent, or as the case may be, with the name, residence, and business, of every such chemist, artist, and manufacturer. No such agent shall have any interest in such liquors, or in the profits of the sales thereof. He shall not sell any such liquors to any minor, or servant, or apprentice, knowing them to be such, without the written order of the parent, guardian, or master of such person, nor to any intemperate person, knowing him to be such, under a penalty of twenty dollars and costs for each offense. And if he knowingly makes sale of any such liquors, for purposes not allowed by this and said act, he shall be liable to a penalty of twenty dollars and costs for each offense, and be removed from office and his bond forfeited. If any such agent shall knowingly and willfully, with intent to prevent the same being seized on any such warrant, or to cause to same to be released, having been seized on such warrant, make claim to any such liquors as being the property of the city, town or plantation, for which he is such agent, when in fact such liquors were not the property of such city, town or plantation, he shall on conviction, be sentenced to pay a fine of one hundred dollars and costs, and shall be removed from his office, with forfeiture of his bond. Whenever any such liquors shall be seized, bearing such marks as are by this act required to be put upon liquors owned by cities, towns or plantations, or by chemists, artists or manufacturers, when such liquors are in fact not owned by any such city, town or plantation, or by any such chemist, artist or manufacturer, such false and fraudulent marking shall be conclusive evidence that the same are kept or deposited for unlawful sale, and render them liable to forfeiture under the provisions of this act. The liquors kept for sale, by such agent, shall not be adulterated or factitious; and if the liquors so kept, are adulterated or factitious, they shall not be protected from seizure and forfeiture by reason of being kept for sale by such agents.

SECT. 9. Whenever an unlawful sale is alledged, and a delivery proved, it shall not be necessary to prove a payment, but

such delivery shall be sufficient evidence of sale. Whenever an unlawful sale is made by one person, a delivery by another, and payment received by a third, each shall be liable to the penalties of this and the said act for the offense. A partner in business shall be liable for the unlawful keeping or selling of his copartner, done in the copartnership business, or by any other person, in any shop, store, or other place of business, of such copartnership, with his knowledge and assent. A principal and his agent, clerk and servant, may all be included in the same complaint and process. The name of the owner and the kind and quantity of liquors to be seized need not be set forth in the complaint and warrant, provided the description is sufficiently certain to show what is intended to be seized; the process may be amended in any matter legally amendable at any time before final judgment. Any mayor or alderman, selectman or assessor, may cause a suit to be commenced on any bond or recognizance given under this or said act in which his city, town, or plantation is interested, and the same shall be prosecuted to final judgment unless paid in full with costs. If any execution or other final process, issued in any civil or criminal suit instituted under this or said act, shall be placed in the hands of any proper officer to be by him executed, and he shall unreasonably neglect or refuse so to do, an action may be commenced against him by any voter in the county for such neglect, and prosecuted to final judgment, which shall be for the full amount of the debt, costs, and interest on such execution; and if it be a process that requires him to take and commit an offender to prison, the damages shall not be less than fifty dollars nor more than five hundred dollars. Such suit shall be an action on the case, in the name of the city, town or place, in which the original offense, on account of which said process was issued, was committed, or which might be entitled to the proceeds of such original final process.

SECT. 10. No writ of error, or other process, shall lie to quash or make void the doings of any such magistrate, under this or said act, by reason of any defect or want of sufficiency

in any complaint, warrant, or other process, under this or said act, which might before final judgment have been amended on motion. In addition to the fees allowed by law, there shall be paid to such judge or justice, for taking any bond, fifty cents; for making the order for the destruction of the liquors and vessels, fifty cents; to the officer for seizing the liquors and vessels, one dollar; for removing and keeping the same, fifty cents and reasonable expenses; for executing and making return of an order to destroy the liquors and vessels, one dollar; all of which fees shall be taxed in the costs to be paid by the defendant. All fines, forfeitures, and penalties, under this or said act, shall go to the several cities, towns or plantations, in which the offenses are committed, for the use and benefit of the poor. If the offense is committed, or trial had in a plantation organized for election purposes, the fines, forfeitures and penalties shall go to the plantation for the use of schools.

SECT. 11. No warrant shall issue for the search of any dwelling house in which or a part of which a shop is not kept, or other place is not kept for the sale of such liquors, unless it shall first be shown to the magistrate, before a warrant is issued for such search, by the testimony of witnesses upon oath, that there is reasonable ground for believing that such liquors are kept or deposited in such dwelling house or its appurtenances, intended for unlawful sale in such dwelling house or elsewhere, which testimony the magistrate shall reduce to writing, and cause to be signed and verified by oath or affirmation of such witnesses, and upon such testimony so produced and verified, he may, upon complaint of three persons competent to be witnesses in civil suits, resident in the county, issue his warrant in like manner and form as is provided in the first section of this act, commanding the officer to search such dwelling house and its appurtenances, and if any such liquors are found therein, to seize the same together with the vessels in which they are contained, and also to arrest the owner or keeper thereof, if named in said complaint, and the subsequent proceedings shall be conformable to the requirements of the

first section, or second section of this act, as the case may be. And any of the said witnesses, who shall be convicted of giving false testimony, knowingly and willfully, in the statements so subscribed and verified, shall be punished therefor by imprisonment in the state prison for the term of two years. The finding of such liquors, upon such search in a dwelling house, shall not of itself be evidence that they are kept or deposited therein intended for unlawful sale.

SECT. 12. Any person hereafter found intoxicated in any of the streets or highways, or being intoxicated in his own house, or in any other building or place, who shall become quarrelsome, or in any way disturb the public peace, or that of his own or any other family, so as to render it necessary for the police or peace officers to interfere, may be taken into custody by any sheriff, deputy sheriff, constable, marshal, deputy marshal, police officer, or watchman, and committed to the watch house or restrained in some other suitable place till a complaint can be made and warrant issued in due form, upon which he may be arrested and tried, and if found guilty of being so intoxicated in the streets or highways, or of being intoxicated in his own house or any other building or place, and becoming quarrelsome and disturbing the public peace, or that of his own or any other family, he shall be punished by imprisonment in the common gaol for thirty days; but said judge or justice may remit any portion of said punishment, and order the prisoner to be discharged, whenever he shall become satisfied that the objects of this law and the good of the public and of the prisoner would be advanced thereby. And in case of appeal from such sentence the same shall be granted as provided in the fifth section of this act, and on recognizance as therein required.

SECT. 13. In all cases under this or said act in which the punishment on the first conviction is a fine of twenty dollars and costs and commitment until paid, for the second conviction it shall be a fine of twenty dollars and costs and thirty days imprisonment, for the third it shall be a fine of twenty dollars

and costs and sixty days imprisonment, and for the fourth and every subsequent conviction it shall be a fine of twenty dollars and costs and four months imprisonment. No person who shall be sentenced to pay any such fine and costs, and shall be committed in default of the payment thereof, shall be entitled to the benefit of chapter one hundred and seventy-five of the revised statutes until he shall have been imprisoned under such commitment sixty days. In all cases under this act in which the punishment on the first conviction is thirty days imprisonment, for the second and every subsequent conviction thirty days additional imprisonment shall be imposed. Any penalties or forfeitures, the recovery of which is not otherwise provided for in this act or that to which it is additional, may be recovered by complaint or indictment in any court proper to try the same. If any mayor, alderman, selectman or assessor, shall endorse his approval of the suit upon any writ issued pursuant to the provisions of any section of this act or that to which it is additional, in which his city, town or plantation is interested, the defendant, if he prevail in such suit, shall recover no costs. All bonds and recognizances given by appellants shall be to the state of Maine, except as otherwise provided in this and said act. All the provisions of the fifth, seventh, ninth, tenth, sixteenth and seventeenth sections of the act to which this is additional, shall apply to this act. In all cases of appeal from the judgment of a judge of a municipal or police court or justice of the peace, the appellant, if convicted by the jury, shall be sentenced to pay and suffer the same fines, penalties, and imprisonment which might be awarded against him by such judge or justice with additional costs. All complaints to be made under this act or that to which it is additional, may be made by three persons, resident in the county, who are competent to be witnesses in civil suits. The word plantation in this and said act shall apply to and include plantations organized for election purposes, as well as other plantations. All that part of the sixth section of the act to which this is additional, which directs a different sentence, in the case of a con-

viction before a jury, from that provided upon conviction before a municipal or police court or justice of the peace for the same offense, and also so much of said sixth section as provides that in cases of an appeal, the appellant shall, before such appeal shall be allowed, recognize in the sum of one hundred dollars with two good and sufficient sureties, to prosecute his appeal, and to pay all costs, fines and penalties that may be awarded against him, is hereby repealed, and if any person shall claim an appeal as specified in said sixth section, the judge or justice shall grant his appeal, and order him to recognize in the sum of one hundred dollars, with sufficient sureties, for his appearance, and for prosecuting his appeal, and he shall stand committed until the order is complied with, and he shall also give a bond as therein provided. Sections eleven, twelve, thirteen, fourteen and fifteen of the act to which this is additional are hereby repealed, saving all suits pending, and all rights acquired under the same, and all acts and parts of acts inconsistent with this act are hereby repealed.

SECT. 14. This act shall take effect on the first day of June, eighteen hundred and fifty-three.

[*Approved March 31, 1853.*]