

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.

THIRTY-SECOND LEGISLATURE.

HOUSE.]

[No. 23.

DRINKING HOUSES AND TIPPLING SHOPS.

THE Joint Select Committee, to which was referred so much of the address of the governor, as relates to the act for the suppression of drinking houses and tippling shops, have had that subject under consideration and ask leave to

REPORT:

That they fully respond to the declaration in the address, "that the people of the State demand a law sufficiently stringent to close effectually every haunt of intemperance within its borders, is undeniably true;" they also feel that it is justly a subject of congratulation that the State of Maine should be the *first community* "to erect by legislative enactments, which, in the hope and faith of those who framed them, could be neither avoided nor evaded, a barrier beyond which intemperance was not to pass." It has been the object of the committee, in preparing the act which they now submit, fully to sustain the honor of the State in being the first of the sister States, to enact an efficient law for the purposes so indicated. They have not intentionally taken a single step backward. *Nulla vestigia retrorsum*, in dragging of the giant from his den, has been their maxim, in adopting the changes by them proposed. The great principle of the act of 1851, which they regard as a

discovery in legislation, as applied to this subject, that will redound to the lasting honor of its author—that is, the seizing by the strong hand of the law, and destroying by the order of the court, the great agent of the mischief—they have designed sedulously to preserve. It may truly be said to be a discovery in legislation, on this subject. Legislation has been at war with intemperance in drinks for a very long period of time, and has been thus far constantly foiled and defeated. For the earliest enactments in England, upon this subject, we must go back to the days of black-letter law, so far certainly as the reign of Edward VI. At a parliament entitled, of the 5th and 6th years of his reign, an act was passed of which the preamble is as follows: “Forasmuch as intolerable hurts and troubles to the commonwealth of this realm, daily do grow and increase through such abuses and disorders as are had and used in common ale-houses and tippling houses, it is therefore enacted,” &c. From that time to this the same complaint has been renewed almost every year, and the statutes of England, and those of our pilgrim fathers, of our colonial governments, and of our States, down to this day, are full of enactments upon this subject, constantly defeated, evaded and rendered of no effect; showing, on the one side, a strong, inflexible Anglo-Saxon resolution to do something to restrain and check the evil, and, on the other, an equally unyielding determination to render every thing so attempted nugatory and useless. The attempt in all this legislation heretofore, has been to restrain and keep within bounds the evil, and the result has been that all these attempts have been successfully met and resisted; and the lesson of experience to be learned from these facts is, that the principle upon which such legislation is based, is wrong. The idea of this legislation is to regulate and restrain. It has had its day, and failed to answer its end. The idea of the act to which we refer, is to destroy and remove out of the way totally, the cause of the evil. It was first reduced to practical application by the United States in their enactments regulating the trade with the Indian tribes. By these enactments, the United States officers are directed and commanded to seize all intoxicating liquors introduced for sale into the Indian territories, and without

judge or jury, immediately to destroy them; and your committee are not aware that the right to enact and enforce such laws has ever been called in question by any body. This course was found perfectly effective in the accomplishment of its object. But the idea was too valuable to be confined to such limited application. Its introduction into the legislation of States upon this subject, is an era from which will be dated a revolution in the history of the human race.

Without further preface, the committee will proceed to indicate the objects they have had in view, in preparing the bill herewith submitted. It is not at all a matter of surprise, that a first effort in legislation, upon so momentous a subject, affecting such a variety of interests, and upon a principle so novel in its use and application, should be found to be defective. On the contrary, your committee are ready to declare that with them the surprise is rather that there should be found so little that needs amendment. The object of the committee has been to maintain in the fullest degree, the integrity of the principle of the original law, that is, the destruction of the liquors, and the certainty of the penalties, and to remove so far as is practicable, all causes of doubt and uncertainty in the application of these principles in the law in question. They do not propose to add intensity to the enactments, being fully satisfied that if the enactments of the original law can be honestly and fully carried out, they are all that is or can be required on this subject. In accomplishing that object they have not found it necessary to make any change in the first ten sections of the original act, except a repeal of so much of the sixth section as requires the appellate court to inflict a double penalty upon an appellant on final conviction. The five succeeding sections they recommend should be repealed, and in the bill herewith submitted they have embodied every principal feature of these sections, with such additions and modifications as in their opinion will render their application certain, plain and direct, and remove all reasonable objections to their enforcement. They have also endeavored to guard against any abuse or ill practices of agents appointed to sell under said act, and to provide a remedy for the very general and common abuse

of the sanctity of a dwelling house in making it the store-house and place of deposit of liquors intended for illegal sale. Your committee do not believe, that to search the dwellings into which rum has retreated, relying upon the sacredness of the domestic hearth for its protection from the grasp of the law, will be, if made under due safeguards, any infringement of the right of citizens to be protected in their houses from unreasonable search. If rum, to avoid the strong arm of the law, creeps into a dwelling house, let it be seized and dragged out as a thief would be. In the bill herewith submitted it is provided, that before a warrant shall be issued to search a dwelling house, evidence of witnesses must be given in writing, on oath, filed with the magistrate, sufficient to show that there is good ground to believe that spirituous and intoxicating liquors are kept or deposited therein, intended for unlawful sale therein or elsewhere; and thereupon, on complaint made in due form of law, a warrant may be issued for such search. It is further provided, that if any of the witnesses shall be convicted of giving false testimony knowingly and willfully in such evidence, they shall be punished by imprisonment in the State prison for the term of one year, which the committee think will be a sufficient caution against the indulgence of an undue curiosity on the part of any one in looking into his neighbor's affairs.

Your committee believe that all such liquors found in this State must be considered in law to be in the keeping and possession of somebody in this State, in the character either of owner or keeper, and they have provided a process by which such owner or keeper, if the liquors are not restored to him on his request, on his furnishing, to the magistrate who issued the warrant, satisfactory evidence that they were not intended for unlawful sale, for doing which they have provided, may in all cases be made a party to the proceeding and appear and defend his right, and have an opportunity of trial by jury if he wish it, and be made amenable to the penalties of the law if guilty of a violation thereof. They know no reason why farmers should not be permitted to manufacture the fruits of their orchards into cider, and sell the same, and they have inserted a provision to that effect; but if it be found in "drinking houses and

tippling shops," it must suffer the fate of the poor dog in the fable who fell into bad company.

They have also in the act imposed a penalty on agents for selling to minors or to intemperate persons, and knowingly for purposes other than those allowed by law, and have provided that the liquors kept by such agent shall be of good quality and not adulterated or factitious. There will also be found a provision that certain municipal and police officers may upon view take into custody liquors which they have reason to believe are intended for illegal sale, and detain them till a warrant can be issued on complaint made. Among other changes of minor consequence they have provided that the complaint on which a warrant is to be issued, may be made by any three persons resident in the county, who are competent to be witnesses in civil causes. They are not aware of any good reason for confining the privilege or duty to voters. Thousands of people who are not voters are deeply interested in the execution of the law. They have provided also that all fines and penalties under this act shall go to the cities, towns and plantations in which the offenses were committed.

The object of this law is not to dictate to men "what they shall eat and what they shall drink, or wherewithal they shall be clothed." These are not matters for which in themselves legislation is fitted, although in practice in all ages legislation has been more or less devoted to such objects. They are in themselves better let alone by law makers, who are justified in interfering with them only when from their abuses the public is a sufferer. If men will be so besotted as to be drunk at home, and will not thereby disturb the public peace, nor that of their own families or neighborhood, nor expose the public to the liability to expense for the maintenance of themselves or their families, or for the expense of restraining or punishing the offenses they are liable and often induced to commit against the rights of their fellow citizens or the laws of the land, under the influence of the excitement of intoxication, the law giver should not interfere. It is the province of the moralist, the philanthropist, the preacher, to take up and reform such cases. Here is scope and latitude enough for that *moral*

suasion which is so frequently in the mouths of the opponents of this kind of legislation, to exercise itself upon in its proper province. Here are subjects suitable for its enterprise and worthy of its zealous endeavors. But when the drunkard leaves his filthy den, and staggers out into open daylight, a nuisance to all beholders, disturbing, disgusting and ready to quarrel with every peaceable and industrious man who comes in his way, and terrifying, distressing and insulting every decent woman whom he meets—it is time for the law to lay its restraining hand upon him, and it is time for it to reach a little further, and take into its iron grasp the manufacturer of such nuisances, the man who with a taste little less shocking than that of the ghouls of fiction who feed upon carcasses, draws his living out of such disgusting objects.

The committee do not feel that it is necessary for them to argue the question of the right of the legislature to make such enactments. That question, they think, has already been decided by an almost unanimous public voice, which is fully sustained by the most eminent jurists and judges of our land, including, it is believed, every judge of our own supreme judicial court, and every judge of the supreme court of the United States ; but they think they may be pardoned a few suggestions on this topic if for no other reason than to show that it has by no means been kept out of sight or intentionally avoided. They declare that, in their opinion, the first article of the bill of rights in our constitution is the basis upon which this legislation is rightfully built. Among the rights therein declared to be inalienable, which can never be parted with, are those of “enjoying and defending life and liberty, acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.” Which one of these rights is not endangered by the furious drunkard? what enjoyment of life can be had in his presence? So far as the effects of poverty and crime, with their attendant expenses of support of paupers and of prisons, abridge the right of acquiring and possessing property, that right is invaded by the drunkard, and may reasonably ask protection at the hands of the legislature. So far as the enjoyment of life and liberty is impaired by the ferocious and maniacal madness of in-

toxication, they may also ask for protection. So far as the pursuing and obtaining of safety and happiness is marred, by the sympathy that must be felt for the unfortunate families of the inebriates, the brutalization of the victims, and the destruction of the peace and quiet of domestic life, incident to all these evils, they may also ask for protection. This evil attacks the constitution and bill of rights in the very threshold of the temple of liberty, and there it should be met, resisted and overthrown, and not be suffered to enter the pure and sublime edifice and shelter its hideous deformity in any dark corner or nook of the building, in which should dwell nothing but peace and happiness, undisturbed by the filthy breathings of the demon of intoxication.

They ask leave to present the accompanying bill.

J. B. HILL,
Per Order.

House of Representatives, March 18, 1853.

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 1. If three persons who are competent to
2 be witnesses in civil suits, resident within the county
3 within which the complaint shall be made, shall make
4 complaint upon oath or affirmation before any judge
5 of a municipal or police court or justice of the peace,
6 that they have reason to believe and do believe, that
7 spirituous and intoxicating liquors are kept or depos-
8 ited in any building or place, other than a dwelling

DRINKING HOUSES AND TIPLING SHOPS. 9

9 house, no part of which is used as a shop, or for pur-
10 poses of traffic or for sale of such liquors, by a person
11 or persons named in said complaint, or by a person
12 or persons unknown, not authorized by law to sell the
13 same, within the city, town or plantation where they
14 are alleged to be so kept or deposited, and that said
15 liquors are intended for sale within this state in
16 violation of law, such magistrate shall issue his
17 warrant, directed to any sheriff, deputy sheriff,
18 marshal, deputy marshal, constable or police offi-
19 cer, having power to serve such process, commanding
20 such officer to search the premises described in said
21 complaint, which premises shall also be described in
22 said warrant; also to search any yard or building,
23 other than such dwelling house, adjoining the prem-
24 ises described in said warrant, if occupied by the same
25 person occupying the premises described in said war-
26 rant; and if any spirituous or intoxicating liquors are
27 there found, to seize the same, with the vessels in
28 which they may be contained, and to convey them to
29 some proper place of security to be there kept until
30 final action upon such complaint. And the officer
31 having such warrant shall be authorized by virtue
32 thereof to make the search directed by such warrant

33 to be made, and to seize and dispose of any such
34 liquors as hereinbefore is provided. And such officer
35 shall in his return on such warrant, designate and de-
36 scribe the liquors by him so seized, and the vessels in
37 which they are contained, with reasonable certainty,
38 and his return shall be evidence of the facts therein
39 set forth. And if the name of the person or persons
40 by whom such liquors are alledged to be so kept or
41 deposited, shall be stated in said complaint, the officer
42 shall be commanded in and by said warrant, to arrest
43 such person or persons, and have them forthwith
44 before the judge or justice by whom such warrant
45 was issued, to answer to said complaint, and shew
46 cause why said liquors should not be forfeited. And
47 such person so arrested and brought before such
48 judge or justice may plead not guilty to such com-
49 plaint, and may shew in defense thereto that said
50 liquors were not intended for sale contrary to law, or
51 that they were imported under the laws of the United
52 States, and in accordance therewith; that they are
53 contained in the original packages in which they
54 were imported, and in quantities not less than the
55 laws of the United States prescribe. But custom
56 house certificates of importation, and proofs of marks

57 on the casks and packages corresponding thereto.
58 shall not be received as evidence that the identical
59 liquors contained in said packages and casks were
60 actually imported therein. And if upon the trial
61 neither of the said grounds of defense shall be estab-
62 lished, and if in the opinion of the court said liquors
63 were kept or deposited by such person or persons for
64 purposes of sale contrary to law, such person or per-
65 sons, being found guilty, shall each be punished by a
66 fine of twenty dollars and costs, and shall be impris-
67 oned thirty days in default of payment thereof. And
68 the liquors so seized, with the vessels in which they
69 are contained, shall be declared forfeited, and such
70 adjudication shall be a bar to any claim for the recov-
71 ery of the same, or the value thereof, and they shall,
72 on the written order of said judge or justice, be de-
73 stroyed. And the officer to whom such order is
74 directed, shall make return thereon of his doings in
75 the premises. If, however, upon trial the judge or
76 justice shall find the person or persons so charged in
77 the complaint not guilty, he shall, if satisfied that the
78 liquors so seized were so as aforesaid kept and de-
79 posited for unlawful sale by some person or persons
80 not named in the complaint, decline to order them to

31 be restored, and shall proceed therewith as is herein-
32 after provided.

SECT. 2. If the name of the person, so keeping or
2 depositing the liquors described in any such complaint,
3 is not known and stated therein, and any such liquors
4 shall be seized upon the warrant issued upon such
5 complaint, or if the person named in such complaint
6 shall not be found and arrested, or if any liquors
7 shall not be restored in the case specified in the
8 preceding section, the judge or justice shall cause a
9 notice of such seizure, describing such liquors with
10 reasonable certainty, and the place where the same
11 were seized, and of the time and place appointed for
12 a hearing thereon, to be posted up in some public and
13 conspicuous place in the town or place where the seizure
14 was made, for two weeks successively before the day
15 of said hearing, for all persons interested to appear
16 and shew cause why said liquors and the vessels in
17 which they are contained should not be forfeited.
18 And if no claimant shall then appear, such judge or
19 justice shall, on proof of notice as aforesaid, adjudicate
20 on the same; and the like proceedings shall be had as
21 is provided in the preceding section in cases of
22 forfeiture, and such adjudication shall be a bar, as

23 is therein provided. And if any person shall then
24 appear and claim such liquors, or any part thereof, as
25 his own property, or as having a right to the possess-
26 ion or keeping thereof, he shall file such claim, in
27 writing signed by him, with such judge or justice,
28 stating specifically the items so claimed, and the time
29 and place of the seizure, and the name of the officer
30 by whom the same were seized, and in it declare that
31 they were not so kept or deposited for unlawful sale,
32 and also state his place of residence or business in such
33 town or place, and shall sign, and if by the said judge
34 or justice required so to do, shall verify the same by
35 oath or affirmation; and if the quantity so claimed
36 shall not be more than five gallons, and the judge or
37 justice shall be satisfied that the same was not so kept
38 or deposited for unlawful sale, he shall give such
39 owner or keeper an order in writing, directed to the
40 officer having the same in custody, for the delivery of
41 the same; and if the judge or justice shall not be
42 satisfied that the same was not kept or deposited for
43 unlawful sale, or if the quantity so claimed shall
44 exceed five gallons, he shall forthwith notify one or
45 more of the said complainants of the said claim, and
46 if within twenty-four hours after such notice is given,

47 a complaint shall be made in manner aforesaid by
48 three persons who are competent to be witnesses in
49 civil suits, who are resident in the county, against
50 such owner or keeper, the judge or justice shall issue
51 his warrant, upon which such owner or keeper shall
52 be arrested and brought before him, and such pro-
53 ceedings shall be had on such arrest as on arrest on a
54 warrant issued as is before provided; and if such
55 owner or keeper shall avoid so that he cannot be
56 arrested, the officer shall make return upon the war-
57 rant according to the fact, and the judge or justice
58 shall thereupon proceed to declare the said liquors
59 forfeited; and if no such complaint shall be made in
60 either case, the liquors shall be restored to such owner
61 or claimant upon the written order of the judge or
62 justice in manner aforesaid, and these proceedings
63 shall be a bar to any claim of damages on the part of
64 any person for the said liquors and the vessels in
65 which they are contained, or for the taking and
66 detention of the same. And if the said owner or
67 keeper, when arrested upon such warrant and tried
68 for the offense charged in said complaint, shall not
69 establish either of the grounds of defense stated in the
70 preceding section, and shall be found guilty of having

71 said liquors, or any part thereof, kept or deposited as
72 aforesaid for unlawful sale on the day aforesaid, or
73 prior thereto, he shall be punished by a fine of twenty
74 dollars and costs, and at the discretion of the judge or
75 justice with the costs of the original proceedings in
76 which said liquors were seized, and be imprisoned
77 thirty days in default of the payment thereof, and the
78 liquors, so as aforesaid seized and claimed, shall be
79 adjudicated upon and disposed of, together with the
80 vessels in which the same are contained, as is pro-
81 vided in the preceding sections of this act; and such
82 adjudication shall be a bar as is therein provided.

83 If any officer having a warrant issued under this
84 act, committed to him directing him to seize any such
85 liquors and to arrest the owner or keeper thereof,
86 shall be prevented from seizing the liquors by their
87 being poured out or otherwise destroyed, he shall
88 arrest the owner or keeper and bring him before the
89 magistrate, and he shall make return upon the war-
90 rant that he was prevented from seizing the liquors by
91 their being poured out or otherwise destroyed, as the
92 case may be, and in his return he shall state the quan-
93 tity so poured out or destroyed as nearly as may be,
94 and the magistrate shall put the owner or keeper so

95 arrested upon trial ; and if on the trial it shall appear
96 by competent testimony that such liquors were so
97 poured out or destroyed, and that the liquors so
98 poured out or destroyed were such as were described
99 in the warrant, and that they were so kept or depos-
100 ited intended for unlawful sale, and if the person so
101 arrested shall be found to be the owner or keeper
102 thereof, he shall be fined and sentenced in the same
103 manner he would be if the liquors described in the
104 warrant and in the return had been seized on the
105 warrant and brought before the magistrate by the
106 officer.

107 If any person shall appeal from the sentence of
108 such judge or justice, the judge or justice shall grant
109 his appeal, and order him to recognize in the sum of
110 two hundred dollars with sufficient sureties for his
111 appearance and for prosecuting his appeal, and he
112 shall stand committed till the order is complied with.
113 And the judge or justice whose judgment is appealed
114 from shall furnish a full copy of all the papers and
115 proceedings in the case at the expense of the appel-
116 lant. And if judgment is rendered against the
117 appellant in the appellate court, both he and the
118 liquors seized, with the vessels in which they are con-

119 tained, shall be punished, dealt with, and disposed of,
120 as before is provided. And if said appellant shall fail
121 to appear and prosecute his appeal, or to abide and
122 perform the order and judgment of the appellate
123 court, the recognizance shall be prosecuted and
124 enforced in full, without any deduction whatever,
125 and the liquor shall be disposed of as aforesaid by
126 order of said court.

SECT. 3. It shall be the duty of any mayor, alder-
2 man, selectman, assessor, city marshal, or deputy, or
3 constable, or police officer, if he shall have informa-
4 tion that any intoxicating liquors are kept or sold in
5 any tent, shanty, hut, or place of any kind for selling
6 refreshments in any public place, or near the ground
7 of any camp-meeting, cattle-show, agricultural exhi-
8 bition, military muster, or public occasion of any
9 kind, to search such suspected places, and if any such
10 officer shall find upon the premises any intoxicating
11 liquors, he shall seize them, and the vessels in which
12 they are contained, and arrest the keeper or keep-
13 ers of such liquors, and take them forthwith, or as
14 soon as may be, before some such judge or justice,
15 with the liquor so found and seized, and shall then
16 and there, forthwith, enter a complaint, against said

17 keeper or keepers, for keeping such liquors for sale
18 as aforesaid ; and said judge or justice shall issue his
19 warrant thereon, and said keeper or keepers shall be
20 arrested and tried thereon, in due course of law, and
21 upon proof that said liquors are intoxicating, that
22 they were found in the possession of the accused, in
23 a tent, shanty, hut, or other place, as aforesaid, he or
24 they shall be found guilty, and sentenced to be pun-
25 ished by imprisonment in the county jail for thirty
26 days, and to pay all costs of such proceedings, and
27 the liquors and vessels so seized shall be destroyed by
28 order of the court, in the manner before provided in
29 this act.

30 Any mayor or alderman, selectman, assessor, city
31 marshal or his deputy, constable, police officer, or
32 watchman, in his city or town, may take into his
33 custody any such liquors, and the vessels in which
34 they are contained, which he shall find at any
35 place, by day or night, if he have reason to believe
36 they are kept or deposited and intended for unlawful
37 sale, at the place of seizure, and detain the same,
38 until a warrant can be procured under which pro-
39 ceedings shall be had against such liquors, and the
40 owner or keeper, in like manner as is provided in

41 case of such liquors taken in a tent, shanty, hut, or
42 other place. If any person arrested, tried, and sen-
43 tenced, as aforesaid, shall appeal from the sentence
44 of such judge or justice, as set forth in this or the pre-
45 ceding section, the judge or justice shall grant the
46 appeal, and order him to recognize in the sum of one
47 hundred dollars, with sufficient sureties for his appear-
48 ance, and for prosecuting his appeal, and he shall
49 stand committed till the order is complied with ;
50 and the judge or justice, whose judgment is
51 appealed from, shall furnish full copies of all the
52 proceedings in the case, at the expense of the appel-
53 lant. And if judgment is rendered against the ap-
54 pellant, in the appellate court, he shall be punished
55 and the liquors seized and vessels dealt with as is
56 above provided in this section ; and if said appellant
57 shall fail to appear and prosecute his appeal, or to
58 abide and perform the judgment of the appellate
59 court, the recognizance shall be prosecuted and en-
60 forced in full, without any deduction whatever, and the
61 liquors and vessels shall be disposed of as aforesaid by
62 order of the court.

63 In all cases of appeal under this act, and that to
64 which it is additional, from the judgment of such

65 judge or justice, except where the proceeding is by
66 action of debt, they shall be conducted in the appel-
67 late court by the prosecuting officer of the govern-
68 ment ; and said officer shall be entitled to receive all
69 costs taxable to the state, in all criminal proceedings,
70 under this and said act, in addition to the salary
71 allowed to such officer by law, in every case in which
72 a verdict against the defendant is rendered by the
73 jury ; but no costs in such cases shall be remitted or
74 reduced by the prosecuting officer or the court. In
75 any suit, complaint, indictment, or other proceeding
76 against any person for a violation of any of the pro-
77 visions of this act, or that to which it is additional,
78 other than for the first offense, it shall not be requisite
79 to set forth particularly the record of a former con-
80 viction, but it shall be sufficient to allege, briefly, that
81 such person has been convicted of a violation of any
82 particular provision of this or the said act, or as a
83 common seller, as the case may be, and such allega-
84 tion in any civil or criminal process, in any stage of
85 the proceedings, before final judgment, may be
86 amended, without terms, and as a matter of right.
87 Any process, civil or criminal, under this or the said
88 act, may, in any stage of the proceedings, be amended

89 in any matter of form, without costs, on motion at
90 any time before final judgment.

91 Nothing in this act contained shall be construed
92 to prevent any chemist, artist or manufacturer, in
93 whose art or trade they may be necessary, from keep-
94 ing at his place of business such reasonable and
95 proper quantity of such liquors as he may have
96 occasion to use in his art or trade, but not for sale ;
97 nor to prohibit the manufacture and sale of cider, in
98 quantities not less than twenty-eight gallons, to be
99 delivered and taken away at one time.

SECT. 4. No such liquors owned by any city, town
2 or plantation, or kept by any agent of any city, town
3 or plantation, as is provided in the act to which this is
4 additional, or by any such chemist, artist or manu-
5 facturer, shall be protected against seizure and for-
6 feiture under the provisions of this and of said act,
7 by reason of such ownership, unless all the casks and
8 vessels in which they are contained shall be at all
9 times plainly and conspicuously marked with the name
10 of such city, town or plantation, and of its agent, and
11 the name, residence, and business, of every such
12 chemist, artist, and manufacturer. No such agent
13 shall have any interest in such liquors, or in the profits

14 of the sales thereof. He shall not sell any such
15 liquors to any minor, or servant, or apprentice, know-
16 ing them to be such, without the written order of the
17 parent, guardian, or master of such persons, nor to
18 any intemperate person, knowing him to be such,
19 under a penalty of twenty dollars and costs for each
20 offense. And if he knowingly makes sale of any
21 such liquors, for purposes not allowed by this and
22 said act, he shall be liable to a penalty of twenty dollars
23 and costs for each offense, and be removed from office
24 and his bond forfeited. If any such agent shall know-
25 ingly and willfully, with intent to prevent the same being
26 seized on any such warrant, or to cause the same to
27 be released, having been seized on such warrant,
28 make claim to any such liquors as being the property
29 of the city, town or plantation, for which he is such
30 agent, when in fact such liquors were not the prop-
31 erty of such city, town or plantation, he shall on
32 conviction, be sentenced to pay a fine of one hundred
33 dollars and costs, and shall be removed from his
34 office, with forfeiture of his bond. Whenever any
35 such liquors shall be seized, bearing such marks as
36 are by this act required to be put upon liquors owned
37 by cities, towns or plantations, or by chemists, artists
38 or manufacturers, when such liquors are in fact not

39 owned by any such city, town or plantation, or by
40 any such chemist, artist or manufacturer, such false
41 and fraudulent marking shall be conclusive evidence
42 that the same are kept or deposited for unlawful sale,
43 and render them liable to forfeiture under the pro-
44 visions of this act. The liquors kept for sale, by
45 such agent, shall be pure and good of their kinds,
46 and not adulterated or factitious; and if the liquors
47 so kept, are not pure and good of their kinds, or are
48 adulterated or factitious, they shall not be protected
49 from seizure and forfeiture by reason of being kept
50 for sale by such agents.

SECT. 5. Whenever an unlawful sale is alleged,
2 and a delivery proved, it shall not be necessary to
3 prove a payment, but such delivery shall be sufficient
4 evidence of sale. Whenever an unlawful sale is
5 made by one person, a delivery by another, and pay-
6 ment received by a third, each shall be liable to the
7 penalties of this and the said act for the offense. A
8 partner in business shall be liable for the unlawful
9 keeping or selling of his copartner, done in the co-
10 partnership business, or by any other person, in any
11 shop, store, or other place of business, of such co-
12 partnership, with his knowledge and assent. A princi-

13 pal and his agent, clerk and servant, may all be in-
14 cluded in the same complaint and process. The
15 name of the owner and the kind and quantity of liquors
16 to be seized need not be set forth in the complaint and
17 warrant, provided the description is sufficiently cer-
18 tain to show what is intended to be seized ; the pro-
19 cess may be amended in any matter of substance or
20 form at any time before final judgment. Any mayor
21 or alderman, selectman or assessor, may cause a suit
22 to be commenced on any bond or recognizance given
23 under this or said act in which his city, town, or plan-
24 tation is interested, and the same shall be prosecuted
25 to final judgment unless paid in full with costs. No
26 such bond shall be chanced, but the judgment shall
27 be for the penal sum and costs. If any execution or
28 other final process, issued in any civil or criminal suit
29 instituted under this or said act, shall be placed in the
30 hands of any proper officer to be by him executed,
31 and he shall unreasonably neglect or refuse so to do,
32 an action may be commenced against him by any
33 voter in the county for such neglect, and prosecuted
34 to final judgment, which shall be for the full amount
35 of the debt, costs, and interest on such execution ; and
36 if it be a process that requires him to take and commit

37 an offender to prison, the damages shall not be less
38 than fifty dollars nor more than five hundred dollars.
39 Such suit shall be an action on the case, in the name
40 of the city, town or place, in which the original
41 offense, on account of which said process was issued,
42 was committed, or which might be entitled to the pro-
43 ceeds of such original final process.

44 No suit shall be maintained agianst any officer, on
45 account of any defect or want of sufficiency in any
46 warrant, order, or other process, executed by him, un-
47 der the provisions of this or of said act. No writ of
48 error, or other process, shall lie to quash or make
49 void the doings of any such magistrate, under this or
50 said act, by reason of any defect or want of suffi-
51 ciency in any complaint, warrant, or other process,
52 under this or said act, which might before final
53 judgment have been amended on motion. In addi-
54 tion to the fees allowed by law, there shall be paid to
55 such judge or justice, for taking any bond, fifty cents ;
56 for making the order for the destruction of the liquors
57 and vessels, fifty cents ; to the officer for seizing the
58 liquors and vessels, one dollar ; for removing and
59 keeping the same, fifty cents and reasonable expenses :
60 for exccuting and making return of an order to de-

61 stroy the liquors and vessels, one dollar ; all of which
62 fees shall be taxed in the costs to be paid by the de-
63 fendant. All fines, forfeitures, and penalties, under
64 this or said act, shall go to the several cities, towns or
65 plantations, in which the offenses are committed, or
66 the trial had, for the use and benefit of the poor.

SECT. 6. No warrant shall issue for the search of
2 any dwelling-house in which or a part of which a
3 shop is not kept, or other place is not kept for the
4 sale of such liquors, unless it shall first be shewn to
5 the magistrate, before a warrant is issued for such
6 search, by the testimony of witnesses upon oath, that
7 there is reasonable ground for believing that such
8 liquors are kept or deposited in such dwelling-house
9 or its appurtenances, intended for unlawful sale in such
10 dwelling-house or elsewhere, which testimony the
11 magistrate shall reduce to writing, and cause to be
12 signed and verified by oath or affirmation of such
13 witnesses, and upon such testimony so produced and
14 verified, he may, upon complaint of three persons com-
15 petent to be witnesses in civil suits, resident in the
16 county, issue his warrant in like manner and form as
17 is provided in the first section of this act, command-
18 ing the officer to search such dwelling-house and its
19 appurtenances, and if any such liquors are found

20 therèin, to seize the same together with the vessels in
21 which they are contained, and also to arrest the owner
22 or keeper thereof, if named in said complaint, and the
23 subsequent proceedings shall be conformable to the
24 requirements of the first section, or second section of
25 this act, as the case may be. And any of the said
26 witnesses, who shall be convicted of giving false testi-
27 mony, knowingly and willfully, in the statements so sub-
28 scribed and verified, shall be punished therefor by
29 imprisonment in the state prison for the term of one
30 year. The finding of such liquors, upon such search
31 in a dwelling-house, shall not of itself be evidence
32 that they are kept or deposited therein intended for
33 unlawful sale.

34 Any person hereafter found intoxicated in any of
35 the streets or highways, or being intoxicated in his
36 own house, or in any other building or place, who shall
37 become quarrelsome, or in any way disturb the public
38 peace, or that of his own or any other family, so as to
39 render it necessary for the police or peace officers to
40 interfere, may be taken into custody by any sheriff,
41 deputy sheriff, constable, marshal, deputy marshal,
42 police officer or watchman, and committed to the watch-
43 house or restrained in some other suitable place till
44 he is sober, when on complaint made and warrant is-

45 sued in due form, he may be arrested and tried, and
46 if found guilty of being so intoxicated in the streets
47 or highways, or of being intoxicated in his own house
48 or any other building, and becoming quarrelsome and
49 disturbing the public peace, or that of his own or any
50 other family, he shall be punished by imprisonment in
51 the common gaol for thirty days ; but said judge or
52 justice may remit any portion of said punishment,
53 and order the prisoner to be discharged, whenever he
54 shall become satisfied that the objects of this law and
55 the good of the public and of the prisoner would be
56 advanced thereby.

SECT. 7. In all cases under this or said act in which
2 the punishment on the first conviction is a fine of
3 twenty dollars and costs and commitment until paid,
4 for the second conviction it shall be a fine of twenty
5 dollars and costs and thirty days imprisonment, for the
6 third it shall be a fine of twenty dollars and costs and
7 sixty days imprisonment, and for the fourth and every
8 subsequent conviction it shall be a fine of twenty
9 dollars and costs and four months imprisonment. No
10 person who shall be sentenced to pay any such fine
11 and costs, and shall be committed in default of the
12 payment thereof, shall be entitled to the benefit of
13 chapter one hundred and seventy-five of the revised

14 statutes until he shall have been imprisoned under
15 such commitment sixty days. In all cases under this
16 act in which the punishment on the first conviction is
17 thirty days imprisonment, for the second and every
18 subsequent conviction thirty days additional imprison-
19 ment shall be imposed. Any penalties or forfeitures,
20 the recovery of which is not otherwise provided for
21 in this act or that to which it is additional, may be
22 recovered by complaint or indictment in any court
23 proper to try the same. If any mayor, alderman,
24 selectman or assessor, shall endorse his approval of
25 the suit upon any writ issued pursuant to the provis-
26 ions of any section of this act or that to which it is
27 additional, in which his city, town or plantation is in-
28 terested, the defendant, if he prevail in such suit,
29 shall recover no costs. All bonds and recognizances
30 given by appellants shall be to the State of Maine,
31 except as otherwise provided in this and said act.
32 All the provisions of the fifth, seventh, ninth, tenth,
33 sixteenth and seventeenth sections of the act to which
34 this is additional, shall apply to this act. In all
35 cases of appeal from the judgment of a judge of a
36 municipal or police court or justice of the peace, the
37 appellant, if convicted by the jury, shall be sentenced
38 to pay and suffer the same fines, penalties and impris-

39 onment which might be awarded against him by such
40 judge or justice with additional costs. All complaints
41 to be made under this act or that to which it is addi-
42 tional, may be made by three persons, resident in the
43 county, who are competent to be witnesses in civil
44 suits. The word plantation in this and said act shall
45 apply to and include plantations organized for election
46 purposes, as well as other plantations. All that part of
47 the sixth section of the act to which this is additional,
48 which directs a different sentence, is hereby repealed,
49 and sections eleven, twelve, thirteen, fourteen, and
50 fifteen of said act are hereby repealed, saving all
51 rights acquired under the same.

STATE OF MAINE.

HOUSE OF REPRESENTATIVES, March 18, 1853.

ORDERED, That 1,500 copies of the foregoing Report and Bill
be printed for the use of the Legislature.

A. B. FARWELL, *Clerk.*

APPENDIX.

EXTRACT* OF

An act entitled "an act for the suppression of Drinking Houses and Tippling Shops," approved June 2, 1851.

SECT. 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 said 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.

* This Extract embraces all of the act of 1851 which is not proposed to be repealed by the bill reported by the committee.

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

**The words in italics it is proposed to repeal.*

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.

HOUSE OF REPRESENTATIVES, }
March 19, 1853. }

ORDERED, That there be 1,500 copies of the first ten and last three sections of the Maine Law, so called, printed for the use of the Legislature, and that they be stitched with the Report of the Committee on, and amendment of, said law.

A. B. FARWELL, *Clerk.*