

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,

A. D. 1858.



AUGUSTA:

STEVENS & SAYWARD, PRINTERS TO THE STATE.

1858.

THIRTY-SEVENTH LEGISLATURE.

SENATE.]

[No. 11.

STATE OF MAINE.

~~~~~

The Joint Select Committee, to whom was referred so much of the Governor's Message as relates to the traffic in intoxicating liquors, and to whom also was referred the petition of Maria Cornelia D. Dow and nineteen-hundred and thirty-seven other women of Maine, and numerous other petitions relating to the same subject, have had that subject under consideration, and ask leave to report that they have, so far as they were able, devoted their attention to the matters with the consideration of which they were charged, with that degree of care and deliberation which the importance of the subject and the public expectation seemed to demand. The conclusion of your committee is that the well-being of society requires the enactment of a law for the restraint and regulation of the sale of intoxication liquors, more efficient than that now in force.

Recognizing and fully appreciating many excellent provisions in that law, yet your committee are of the opinion that it is wanting in the most efficient elements of a law required by present exigencies.

Your committee are also of the opinion that the general and distinctive principles of the statute of eighteen-hundred and fifty-three are the only true and profitable basis of all enactments intended for the suppression of intemperance by a restraint of the promiscuous traffic in ardent spirits.

It has, therefore, been the purpose of your committee to construct a bill upon that basis in such a manner as to provide an efficient law, which shall not be obnoxious to any just cause of complaint.

Your committee have no hope to reconcile the widely different opinions that prevail, upon the cardinal question of legal restraint upon that traffic. We are also aware of the diversity of opinions among those who are in favor of some measure of restraint; but your committee have proceeded upon the conviction that the better argument is in favor of the more summary methods of the suppression of unlawful traffic. We have accordingly endeavored so to construct and adjust the provisions of a bill, that, while it shall give due force to all proceedings instituted for that purpose, the rights of individuals shall be properly guarded, and no one shall be made to feel its severity but he who may be disturbed in his desire to violate the law with impunity.

Your committee do not deem it incumbent on them to argue the propriety of the bill which they have made. It contains no important provisions which have not been discussed most thoroughly, not only by the press, the pulpit and by numerous legislative bodies, but by the people at large; and the greater part of the people are believed already to entertain fixed opinions on the one side or the other.

Neither does the bill contain any distinctive provisions justly chargeable with novelty of principle. The doctrine of search in case of suspicion of crime, is known wherever the common law is known, and was so well recognized as a proper and necessary practice, that those who framed the fundamental law, thought it worthy of them to guard and direct it by constitutional provisions.

The doctrine of seizure and forfeiture of contraband goods has also the sanctions of antiquity, as well as the further authority of numerous national and state enactments. These have always been deemed measures fit to be applied in all cases where the public exigencies require it.

It would therefore be the height of arrogance in your committee to suppose that they could cast any new light upon these well settled doctrines.

Hence it would seem that the only question would be as to the propriety of the application of those methods to cases of unlawful traffic in ardent spirits. Upon that question every member of the legislature probably has his own views; and it is to be hoped that

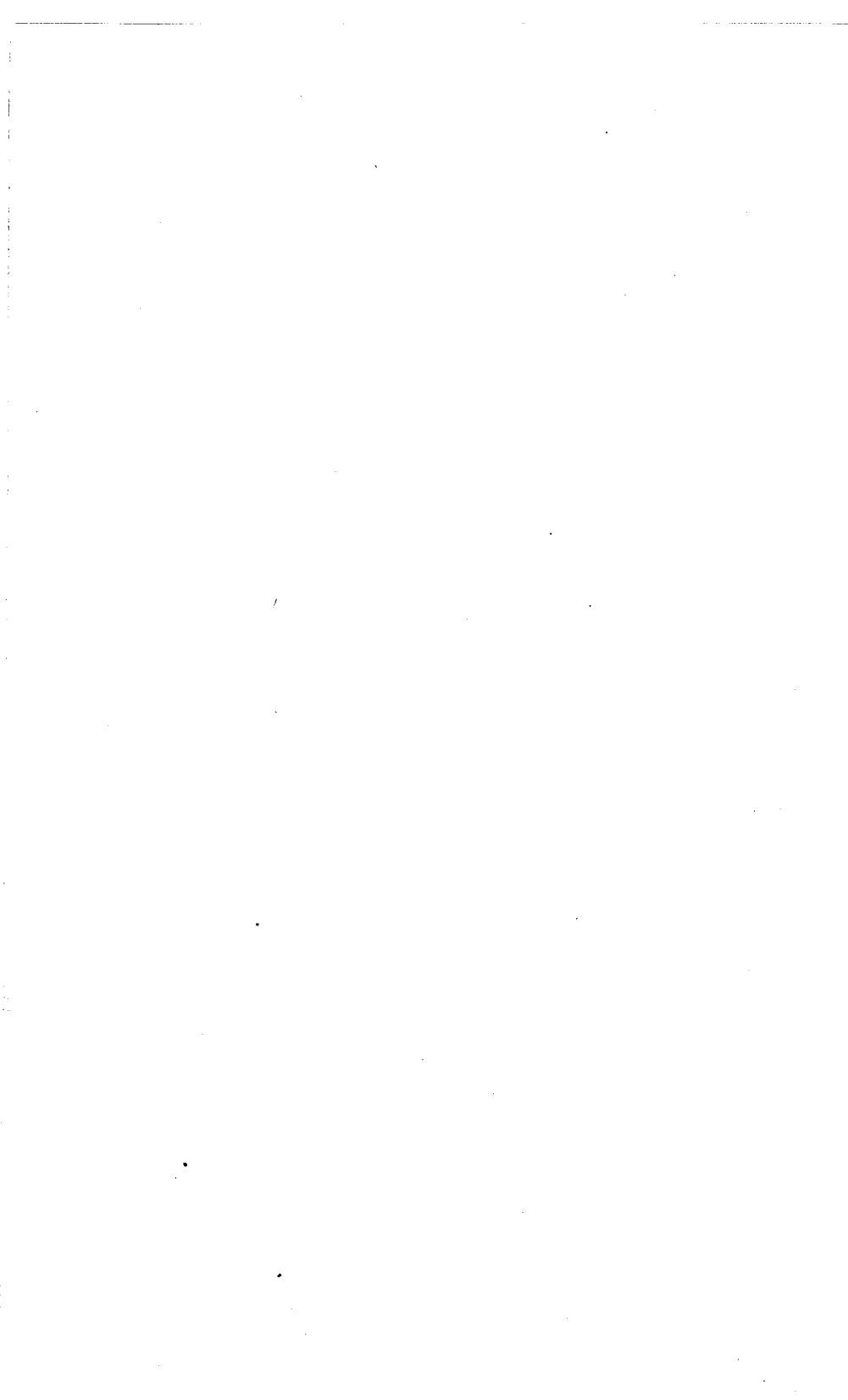
every one will act freely and according to the dictates of his own judgment.

It may however be remarked, that nearly all agree that there should be some degree of prohibition. If there must be prohibition, there must be a penalty for a violation of it, and whether that penalty be imprisonment or a forfeiture of money or of goods, it falls only upon those who might easily avoid it by obedience to the law. Your committee therefore report the Bill herein submitted and entitled "An act to restrain and regulate the sale of intoxicating liquors," and recommend the passage thereof.

Your committee further report that there is, in their opinion, a general desire among the people that such act as may be passed on this subject should be submitted to the people for their suffrages; and considering the immense importance of the subject and the necessity of popular favor, in order that such law may be efficient, your committee think it advisable so to submit it, and ask leave to sit again and to report a bill for that purpose.

By order of the Committee.

W. W. THOMAS, *Chairman.*



# STATE OF MAINE.

---

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

---

AN ACT to restrain and regulate the sale of intoxicating  
liquors.

---

*Be it enacted by the Senate and House of Representa-  
tives in Legislature assembled, as follows:*

SECTION 1. No person shall be allowed, at any time,  
2 to sell, by himself, his clerk, servant or agent, directly  
3 or indirectly, any intoxicating liquors, except as here-  
4 inafter provided.

SECT. 2. No person shall manufacture any intoxi-  
2 cating liquor, for unlawful sale in this state. Any  
3 manufacturer of intoxicating liquors shall be allowed  
4 to sell intoxicating liquors manufactured by him, with-  
5 in this state, to agents authorized by this act to sell  
6 the same; *provided*, he shall first give a bond in the  
7 sum of one thousand dollars, with good and sufficient  
8 sureties, payable to, and to be filed with the treasurer  
9 of the city or town, within which the manufactory

10 shall be established, and to be to the satisfaction and  
11 approval of the aldermen of such city, or the select-  
12 men of such town, conditioned that he will not sell  
13 any intoxicating liquors except of his own manufac-  
14 ture; that he will not by himself or another, in any  
15 mode adulterate such liquors, either by coloring mat-  
16 ter, or any other drug or ingredient; that he will not  
17 sell any intoxicating liquors in quantities less than  
18 thirty gallons delivered in a single vessel, and carried  
19 away at one time, and that he will not sell any intoxi-  
20 cating liquors to any person in this state, except to  
21 such persons as are authorized by this act to sell the  
22 same.

SECT. 3. Any person, who shall sell within this  
2 State, any intoxicating liquors manufactured by him  
3 within this state, without first giving the bond provided  
4 in the foregoing section, shall forfeit the sum of one  
5 thousand dollars, to be recovered by indictment, to  
6 the use of the state; and if any person who has given  
7 such bond, shall commit any breach of the conditions  
8 thereof, it shall be the duty of the aldermen and select-  
9 men, respectively, of the city or town within which  
10 such manufactory shall be established, to cause the  
11 same to be put in suit and prosecuted to final judg-  
12 ment and satisfaction.



13 No person shall be allowed to export or in anywise  
14 to carry, send or transport out of the state any intoxi-  
15 cating liquors manufactured in this state with intent  
16 to sell the same in any other state.

17 If any person shall so carry, send or transport out  
18 of the state any such liquor in violation of this act, he  
19 shall forfeit not less than one hundred, nor more than  
20 one thousand dollars, to be recovered by indictment  
21 to the use of the state.

SECT. 4. The provisions of this act respecting the  
2 sale of intoxicating liquors shall not extend to wine  
3 or spirituous liquors which shall have been imported  
4 into the United States from any foreign port or place,  
5 when sold by the importers in quantities not less than  
6 are prescribed by the revenue laws of the United  
7 States for importation, and delivered and carried away  
8 at one time, in the packages in which the same were  
9 imported; nor to the manufacture and sale of cider,  
10 or of wine, made from fruit grown within this state,  
11 nor to the sale of pure wine for sacramental uses.

SECT. 5. The selectmen of any town, and mayor  
2 and aldermen of any city, shall immediately after this  
3 act shall go into effect, and on the first Monday of  
4 May annually thereafter, or as soon thereafter as may  
5 be convenient, purchase such quantity of intoxicating

6 liquors as may be necessary to be sold under the pro-  
7 visions of this act, and shall appoint some suitable  
8 person, as the agent of said town or city, to sell the  
9 same at some convenient place within said town or  
10 city, to be used for medicinal, mechanical and manu-  
11 facturing purposes, and no other; and such agent  
12 shall receive such compensation for his services and  
13 in the sale of such liquors, shall conform to such  
14 regulations, not inconsistent with this act, as the board  
15 appointing him shall prescribe, and he shall hold his  
16 situation one year, unless sooner removed by them or  
17 their successors in office. Vacancies occurring during  
18 the year are to be filled in the same manner as original  
19 appointments are made. No such agent shall have  
20 any interest in such liquors, or in the profits of the  
21 sale thereof.

SECT. 6. Such agent shall receive a certificate from  
[ 2 the board by which he is appointed, authorizing him  
3 as the agent of such town or city to sell intoxicating  
4 liquors for medicinal, mechanical and manufacturing  
5 purposes only; but such certificate shall not be de-  
6 livered to the person so appointed until he shall have  
7 executed and delivered to said board a bond, with two  
8 good and sufficient sureties, in the sum of six hund-  
9 red dollars, in substance as follows :

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

18 The condition of this obligation is such, that whereas  
19 the above bounden — has been duly appointed an  
20 agent for the town (or city) to sell intoxicating liquors  
21 for medicinal, mechanical and manufacturing pur-  
22 poses and no other, until the — of — A. D.  
23 —, unless sooner removed from said agency. Now  
24 if the said — shall in all respects conform to the  
25 provisions of the law relating to the business for  
26 which he is appointed, and to such regulations as now  
27 are or shall be from time to time established by the  
28 board making the appointment, then this obligation  
29 to be void ; otherwise to remain in full force.

SECT. 7. If any person, by himself, clerk, servant  
2 or agent, shall at any time sell any intoxicating liquors  
3 in violation of the provisions of this act, he shall for-  
4 feit and pay on the first conviction, ten dollars and  
5 the costs of prosecution, and shall stand committed

6 until the same be paid ; on the second conviction he  
7 shall pay twenty dollars and the costs of prosecution,  
8 and shall stand committed until the same be paid ; on  
9 the third and every subsequent conviction, he shall  
10 pay twenty dollars and the costs of prosecution, and  
11 shall be imprisoned in the county jail three months,  
12 and in default of the payment of the fines and costs  
13 prescribed by this section, for the first and second  
14 convictions, the convict shall not be entitled to the  
15 benefit of chapter one hundred twenty-five of the  
16 revised statutes until he shall have been imprisoned  
17 two months ; and in default of payment of fines and  
18 costs provided for the third and every subsequent  
19 conviction, he shall not be entitled to the benefit of  
20 said chapter of said statutes until he shall have been  
21 imprisoned four months. And if any clerk, servant,  
22 agent or other person in the employment or on the  
23 premises of another, shall violate the provisions of  
24 this section, or aid and assist therein, he shall be held  
25 equally guilty with the principal, and on conviction,  
26 shall suffer the same penalty.

SECT. 8. No person shall be a common seller of  
2 intoxicating liquors. Any person convicted of a vio-  
3 lation of this section, shall be punished by fine of one  
4 hundred dollars and costs of prosecution, and in de-

5 fault of the payment thereof, he shall be imprisoned  
6 sixty days in the county jail.

7 On a second conviction, he shall be punished by a  
8 fine of two hundred dollars and costs of prosecution,  
9 and in default of payment thereof, shall be imprisoned  
10 four months in the county jail.

11 On a third and every subsequent conviction, he  
12 shall be punished by a fine of two hundred dollars and  
13 costs of prosecution and imprisonment four months  
14 in the county jail; and in default of payment of the  
15 fine and costs, he shall be punished by four months  
16 additional imprisonment.

SECT. 9. Persons selling by authority and accord-  
2 ing to the provisions of the second and fifth sections  
3 of this act, are not common sellers.

SECT. 10. No person shall keep a drinking house  
2 and tippling shop within this state.

3 If any person shall sell any intoxicating liquors, in  
4 any building in this state, contrary to the provisions  
5 of this act, and allow the same to be there drank, he  
6 shall be deemed and held to be guilty of keeping a  
7 drinking house and tippling shop.

8 Any person convicted of keeping a drinking house  
9 and tippling shop within this state, shall be punished  
10 by a fine of one hundred dollars and costs of prose-

11 tion, and in default of payment thereof by imprison-  
12 ment in the county jail three months.

SECT. 11. If any person not authorized as afore-  
2 said, shall sell any intoxicating liquors to any person,  
3 he shall be liable for all the injuries which such per-  
4 son may commit while in a state of intoxication, in an  
5 action on the case in favor of the person injured.

SECT. 12. No person shall deposit or have in his  
2 possession any intoxicating liquors with intent to sell  
3 the same in this state in violation of law, or with  
4 intent that the same shall be so sold by any person, or  
5 to aid or assist any person in such sale thereof.

SECT. 13. All intoxicating liquors kept and depos-  
2 ited in this state, intended for unlawful sale in this  
3 state, and the vessels in which they are contained, are  
4 hereby declared contraband and forfeited to the cities,  
5 towns and plantations in which they are so kept at  
6 the time when they are seized by virtue of any of the  
7 provisions of this act.

SECT. 14. If three persons, competent to be wit-  
2 nesses in civil suits, shall make complaint upon oath  
3 or affirmation before any judge of any municipal or  
4 police court or justice of the peace, that they believe  
5 intoxicating liquors are unlawfully kept or deposited  
6 in any place in this state by any person or persons,

7 and that said liquors are intended for sale within this  
8 state in violation of law, such magistrate shall issue  
9 his warrant directed to any officer having power to  
10 serve criminal process, commanding such officer to  
11 search the premises described and specially designated  
12 in such complaint and warrant, and if said intoxicating  
13 liquors are there found, to seize the same with the  
14 vessels in which they are contained, and them safely  
15 keep until final action on said complaint, and make  
16 immediate return thereof.

17 The name of the person so as aforesaid keeping  
18 said liquors, shall be stated in such complaint, and the  
19 officer shall be commanded by said warrant, if he shall  
20 find said liquors, to arrest such person or persons, and  
21 have him or them forthwith before such magistrate  
22 for trial, and to shew cause why such liquors and  
23 vessels are not forfeited.

24 If upon trial the court upon the evidence adduced  
25 shall be of opinion that the liquors were so as afore-  
26 said kept, deposited and intended for unlawful sale  
27 by the person or persons named in said complaint, he  
28 or they shall be found guilty thereof and sentenced to  
29 pay a fine of twenty dollars and costs of prosecution,  
30 and in default of payment thereof, to be imprisoned  
31 thirty days in the county jail, and the liquors so seized,

32 with the vessels in which they are contained, shall be  
33 declared forfeited to the city, town or plantation in  
34 in which they are so seized.

35 If upon trial such magistrate shall find such person  
36 not guilty he shall be discharged, and the magistrate  
37 if satisfied that said liquors were not so as aforesaid  
38 kept, deposited and intended for unlawful sale, and  
39 that the person charged is entitled to the possession  
40 of the whole or any part thereof, shall issue an order  
41 to the officer holding such liquors, commanding him  
42 to deliver the same or such part to such person so  
43 found entitled to receive them within forty-eight hours  
44 after demand thereof by such person. Nothing in  
45 this act shall be construed to authorize the seizure of  
46 liquors in transitu.

SECT. 15. When the person charged shall be found  
2 not guilty, or when no person shall be found guilty of  
3 the offence charged in the complaint, and the magis-  
4 trate shall not be satisfied that said liquors were not  
5 kept and deposited in this state and intended for un-  
6 lawful sale in this state, he shall order that the case  
7 stand continued to a time fixed by him, and shall  
8 cause notice of such seizure, and of the time and  
9 place to which said case is continued, to be given to  
10 all persons interested to appear and shew cause why



11 said liquors, and the vessels in which they are con-  
12 tained, should not be declared forfeited, by causing a  
13 true and attested copy of said warrant, with the  
14 officer's return, and order of said magistrate thereon,  
15 to be posted in two public and conspicuous places in  
16 the town or place where said liquors were seized, ten  
17 days at least before the day to which said court was  
18 adjourned.

SECT. 16. If no claimant shall appear, such magis-  
2 trate shall, on proof of notice as aforesaid, declare  
3 the same forfeited to the city, town or plantation in  
4 which they were seized.

5 If any person shall appear and claim such liquors,  
6 or any part thereof, as having a right to the posses-  
7 sion thereof at the time when the same were seized,  
8 he shall file with such magistrate such claim in writ-  
9 ing, stating specifically the right so claimed, and the  
10 foundation thereof, the items so claimed, and the  
11 time and place of the seizure, and the name of the  
12 officer by whom the same were seized, and in it de-  
13 clare that they were not so kept or deposited for un-  
14 lawful sale, as alleged in said complaint and warrant,  
15 and also state his business and place of residence, and  
16 shall sign and make oath or affirmation to the truth  
17 of the same before said magistrate.

18 If any person shall so make claim, he shall be ad-  
19 mitted as a party to the process; and the said magis-  
20 trate shall proceed to determine the truth of the alle-  
21 gations in said claim, and may hear any pertinent  
22 evidence offered by the complainants or claimants.

23 If the magistrate shall, upon the hearing, be satis-  
24 fied that the said liquors were not so kept or deposited  
25 for unlawful sale, and that the claimant is entitled to  
26 the custody of any part of the same, he shall give to  
27 such claimant an order in writing, directed to the  
28 officer having the same in custody, commanding him  
29 to deliver to said claimant the liquors to which he is  
30 so found to be entitled within forty-eight hours after  
31 demand.

32 If the magistrate shall find the claimant entitled to  
33 no part of said liquors, he shall render judgment  
34 against him for the complainants for costs, to be taxed  
35 as in civil cases before such magistrate, and issue  
36 execution thereon, and shall declare said liquors for-  
37 feited to the city, town or plantation where seized.  
38 The claimants may appeal and shall be required to  
39 recognize with sureties as on appeals in civil causes  
40 from said magistrate.

41 The complainants may appeal, but shall in no case  
42 be liable for costs or to recognize.

SECT. 17. No warrant shall be issued to search a  
2 dwelling-house actually occupied as such, unless it, or  
3 some part of it, is used as an inn or shop, or for pur-  
4 poses of traffic, or unless the magistrate shall first be  
5 satisfied, by the testimony of at least two witnesses,  
6 that intoxicating liquor is deposited or kept in such  
7 house or its appurtenances, with intent to sell the  
8 same in violation of law. Before a warrant shall be  
9 issued upon such testimony, the magistrate shall take  
10 the testimony of the witnesses under oath or affirma-  
11 tion in writing, and cause the same to be signed and  
12 verified by the oath or affirmation of the witnesses  
13 before himself; and if satisfied upon such evidence,  
14 that intoxicating liquor is so as aforesaid deposited or  
15 kept in the house described in the complaint or its  
16 appurtenances, if also described in the complaint, he  
17 shall so adjudge, and thereupon he shall issue a war-  
18 rant for the search of such house and its appurtenan-  
19 ces if described in the complaint, in the manner pro-  
20 vided in the fourteenth section of this act, reciting in  
21 said warrant that upon the testimony of the witnesses  
22 named in the warrant which was taken under oath,  
23 signed and verified by the witnesses as above required,  
24 he has adjudged that he is satisfied that intoxicating  
25 liquor is so kept as aforesaid in the premises described.

26 All the subsequent proceedings shall be the same as  
27 those to be had by virtue of a warrant issued under  
28 the provisions of the fourteenth section aforesaid.  
29 When any justice of the peace shall issue any warrant  
30 for the search of any premises under the provisions of  
31 this act, the warrant shall be made returnable before  
32 himself, except in those cities and towns wherein a  
33 municipal or police court is established, having exclu-  
34 sive jurisdiction of all offenses cognizable by justices  
35 of the peace committed within such city or town, in  
36 which case such warrant shall be made returnable to  
37 said court.

SECT. 18. All liquors and vessels declared forfeited  
2 by any court by virtue of the provisions of this act,  
3 shall, by order of the court rendering final judgment  
4 thereon, be delivered to the mayor and aldermen of  
5 any city, selectmen of any town, and assessors of any  
6 plantation to which they were forfeited.

7 Said officers shall examine the same, and if they  
8 shall determine that any portions are fit to be sold for  
9 medicinal, mechanical or manufacturing purposes,  
10 they shall deliver such portions to the agent of their  
11 city, town or plantation, to be by said agent sold in  
12 accordance with the provisions of this act.

13 If they shall find any portion of the same unfit for

14 such uses, they shall destroy the same by pouring  
15 them out upon the ground.

16 All vessels forfeited under the provisions of this act,  
17 may be sold by said officers at public or private sale,  
18 and the proceeds thereof paid into the treasury of  
19 such city, town or plantation.

SECT. 19. If complaint shall by any person be made  
2 upon oath to any magistrate against any person, who  
3 is a claimant under the provisions of this act, alleging  
4 that the liquors so claimed by him were, prior to, and  
5 at the time when the same were seized, kept or de-  
6 posited by said claimant, or by some person by his  
7 authority, and intended for unlawful sale in this state,  
8 either by such person, or the said claimant, the magis-  
9 trate shall issue his warrant against such claimant so  
10 charged, and he shall be arrested thereon, and brought  
11 before such magistrate, and if found guilty of the  
12 offense therein charged, he shall be punished by a fine  
13 of twenty dollars and costs of prosecution, and stand  
14 committed until the same be paid or he be otherwise  
15 discharged by due course of law.

SECT. 20. If any officer having a warrant, issued  
2 under this act, committed to him, directing him to  
3 seize any liquors and to arrest the owner or keeper  
4 thereof, shall be prevented from seizing the liquors by

5 their being poured out or otherwise destroyed, he shall  
6 arrest the alleged owner or keeper named in the war-  
7 rant, and bring him before the magistrate, and make  
8 return upon the warrant that he was prevented from  
9 seizing said liquors by their being poured out or other-  
10 wise destroyed, as the case may be, and in his return  
11 he shall state the quantity so poured out or destroyed,  
12 as nearly as may be, and the magistrate shall put the  
13 owner or keeper so arrested upon trial; and if on  
14 the trial it shall appear by competent testimony that  
15 such liquors were so poured out or destroyed, and that  
16 the liquors so poured out or destroyed were such as  
17 were described in the warrant, and that they were so  
18 kept or deposited and intended for unlawful sale, and  
19 if the person so arrested shall be found to be owner  
20 or keeper thereof, he shall be fined and sentenced in  
21 the same manner as he would have been, if the liquors  
22 described in the warrant and in the return had been  
23 seized on the warrant and brought before the magis-  
24 trate by the officer.

SECT. 21. If any deputy sheriff, after having exe-  
2 cuted such a warrant by a seizure, shall die or go out  
3 of office before final execution in the proceedings be  
4 done, the liquors shall be held in the custody of the  
5 sheriff or another deputy. If any other officer shall

6 die or go out of office under like circumstances, it  
7 shall be the duty of the magistrate before whom the  
8 proceedings were commenced, to designate in writing  
9 some officer lawfully authorized to execute such a  
10 warrant, who shall hold such liquors in his custody  
11 until final judgment and order of the court thereon.

SECT. 22. Liquors seized as hereinbefore provided,  
2 shall not be taken from the custody of the officer by  
3 a writ of replevin or other process while the proceed-  
4 ings herein provided are pending; and final judgment  
5 in the proceedings herein provided, shall in all cases  
6 be a bar to all suits for the recovery of any liquors  
7 seized or the value of the same, or for damages  
8 alleged to arise by reason of the seizure and deten-  
9 tion thereof.

SECT. 23. In matters not otherwise provided for,  
2 except prosecutions against common sellers and those  
3 for offenses described in the third and tenth sections  
4 of this act, judges of municipal courts and police  
5 courts, and justices of the peace, having jurisdiction  
6 in other criminal matters in the places where they  
7 reside, shall have jurisdiction by complaint, original  
8 and concurrent with the supreme judicial court, of all  
9 prosecutions under this act.  
10 In cases in which the supreme judicial court has

11 concurrent jurisdiction with such magistrates, and in  
12 cases not within the jurisdiction of such magistrates,  
13 prosecutions shall be by indictment, and the magis-  
14 trates aforesaid shall have power by complaint, in  
15 such cases, to examine and hold to bail, as in case of  
16 other offenses, which are subject to indictment.

SECT. 24. If any party shall appeal, the proceed-  
2 ings in all matters shall be the same in the appellate  
3 court as they would be upon the same matters in the  
4 court of the magistrate, and said proceedings shall be  
5 conducted in said court by the attorney for the state  
6 in the county where the proceedings are pending,  
7 and said attorney shall be entitled to all fees, taxable  
8 for the state, in prosecutions under this act, in addi-  
9 tion to the salaries now provided by law. The jury  
10 shall find specially, under the direction of the court,  
11 on all facts necessary to determine the adjudication  
12 of the court; and if a claimant or other respondent  
13 shall fail to appear for trial in the appellate court, the  
14 judgment of the court below, if against him shall be  
15 affirmed.

16 In case of appeal from a sentence of imprisonment  
17 under the seventh section of this act, the penal sum  
18 of the recognizance shall be two hundred dollars; and  
19 in all other appeals from any judgment or sentence



20 of a magistrate in proceedings under this act, the penal  
21 sum of the recognizance shall be one hundred dollars.  
22 No portion of the penalty of any recognizance  
23 taken by virtue of the provisions of this act, shall be  
24 remitted by any court within this state in any suit  
25 thereon, nor shall any surety in any such recognizance  
26 be discharged from his liability therein by a surrender  
27 of his principal in court, after he has been defaulted  
28 upon his recognizance.

29 The appeals of claimants and complainants pro-  
30 vided for in the sixteenth section of this act, shall be  
31 entered as all other appeals in criminal cases, and  
32 subject to the same requirements of law appertaining  
33 to them.

SECT. 25. Custom-house certificates of importation,  
2 and proofs of marks on the casks and packages cor-  
3 responding thereto, shall not be received as evidence  
4 that the identical liquors contained in said casks and  
5 packages were actually imported in said casks and  
6 packages in any proceedings under this act.

SECT. 26. Any person hereafter found intoxicated  
2 in any of the streets or highways, or being intoxicated  
3 in his own house, or in any other building or place,  
4 who shall become quarrelsome, or in any way disturb  
5 the public peace, or that of his own or any other fam-

6 ily, so as to render it necessary for the police or peace  
7 officers to interfere, may be taken into custody by any  
8 sheriff, deputy sheriff, constable, marshal, deputy mar-  
9 shal, police officer, or watchman, and committed to  
10 the watch-house or restrained in some other suitable  
11 place, till a complaint can be made and warrant issued  
12 in due form, upon which he may be arrested and tried,  
13 and if found guilty of being so intoxicated in the  
14 streets or highways, or of being intoxicated in his own  
15 house or any other building or place, and becoming  
16 quarrelsome and disturbing the public peace, or that  
17 of his own or any other family, he shall be punished  
18 by imprisonment in the common jail, not exceeding  
19 thirty days; but said judge or justice may remit any  
20 portion of said punishment, and order the prisoner to  
21 be discharged, whenever he shall become satisfied  
22 that the objects of this law, and the good of the pub-  
23 lic and of the prisoner would be advanced thereby.

SECT. 27. No action shall be maintained upon any  
2 claim or demand, promissory note, or other security  
3 contracted or given for intoxicating liquors, sold in  
4 violation of the provisions of this act, or for any such  
5 liquors purchased out of the state with intention to  
6 sell the same or any part thereof in violation of this  
7 act; but the provisions of this section shall not ex-

8 tend to negotiable paper in the hands of any holder  
9 for a valuable consideration and without notice of the  
10 illegality of the contract.

SECT. 28. 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 this act, shall be pro-  
4 tected against seizure and forfeiture, under the pro-  
5 visions of this act, by reason of such ownership, un-  
6 less all the casks and vessels in which they are con-  
7 tained shall be at all times plainly and conspicuously  
8 marked with the name of such city, town or planta-  
9 tion, and of its agent. When any such liquors shall  
10 be seized, bearing such marks as are by this act re-  
11 quired to be put upon liquors owned by cities, towns  
12 or plantations, if such liquors are in fact not owned  
13 by any such city, town or plantation, such false and  
14 fraudulent marking shall be conclusive evidence that  
15 the same are kept or deposited for unlawful sale, and  
16 render them liable to forfeiture under the provisions  
17 of this act.

18 The liquors kept for sale by such agent, shall not  
19 be adulterated or factitious; and if the liquors so kept,  
20 are adulterated or factitious, they shall not be pro-  
21 tected from seizure and forfeiture by reason of being  
22 kept for sale by such agents.

SECT. 29. No person, authorized as aforesaid to  
2 sell intoxicating liquors, shall sell such liquors to any  
3 minor without the direction in writing of his parent,  
4 master or guardian, to any Indian, to any soldier in  
5 the army, to any drunkard, to any intoxicated person,  
6 or to any such persons as are described in the fourth  
7 section of the sixty-seventh chapter of the revised  
8 statutes, as being liable to guardianship, knowing them  
9 respectively to be of the condition herein prescribed ;  
10 nor to any intemperate person, of whose intemperate  
11 habits he has been notified by the relatives of such  
12 person, or by the aldermen, selectmen or assessors,  
13 respectively of any city, town or plantation. And  
14 proof of notice so given by aldermen, selectmen or  
15 assessors or by their authority, shall be conclusive of  
16 the fact of the intemperate habits of such person, in  
17 any prosecution or suit under this act ; and notice so  
18 given by the relatives of such person shall be pre-  
19 sumptive evidence of such habits.

SECT. 30. It shall be the duty of the aldermen, se-  
2 lectmen and assessors aforesaid, whenever they shall  
3 be informed by the relatives of any person that he is  
4 of intemperate habits, and shall be satisfied that such  
5 is the fact, forthwith to give notice thereof, to all per-  
6 sons authorized to sell intoxicating liquors within

7 their respective cities, towns and plantations, and in  
8 such adjoining places as they may deem expedient.

SECT. 31. Any person, authorized as aforesaid, who  
2 shall violate any of the provisions of the first section  
3 of this act, shall be punished, on conviction therefor,  
4 by a fine of twenty dollars for every such offense ;  
5 and shall also be liable, notwithstanding such convic-  
6 tion and punishment, to a suit upon his bond given as  
7 aforesaid ; and it shall be the duty of the aldermen,  
8 selectmen or assessors, respectively, of the city, town  
9 or plantation to which such bond was given, to cause  
10 the same to be put in suit and prosecuted to judgment  
11 and satisfaction to the use of the city, town or planta-  
12 tion. The court by which judgment shall be rendered  
13 upon any such bond, or upon any bond required to  
14 be given by this act, shall have such chancery powers  
15 therein, as the supreme judicial court now has in  
16 cases of forfeiture of penalties to the state. And  
17 whenever any such conviction shall be obtained or  
18 judgment recovered as aforesaid, all the authority of  
19 such person to sell intoxicating liquors shall be abso-  
20 lutely vacated ; and it shall be the duty of the alder-  
21 men, selectmen and assessors respectively, to revoke  
22 such authority whenever they shall be satisfied of any  
23 violation of the conditions of the same.

SECT. 32. 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.

5 A partner in business shall be liable for the unlaw-  
6 ful keeping or selling of his copartner, done in the  
7 copartnership business, or by any other person, in any  
8 shop, store, or other place of business, of such co-  
9 partnership, with his knowledge and assent.

10 A principal and his agent, clerk and servant, may  
11 all be included in the same complaint and process.

12 The mayor or aldermen, selectmen or assessors,  
13 may cause a suit to be commenced on any bond or  
14 recognizance given under this act in which his city,  
15 town, or plantation is interested, and the same shall  
16 be prosecuted to final judgment unless paid in full  
17 with costs. If any execution or other final process,  
18 issued in any civil or criminal suit instituted under  
19 this act, shall be placed in the hands of any proper  
20 officer to be by him executed, and he shall unreason-  
21 ably neglect or refuse so to do, an action may be  
22 commenced against him by any voter in the county  
23 for such neglect, and prosecuted to final judgment,  
24 which shall be for the full amount of the judgment  
25 and interest on such execution; and if it be a process

26 that requires him to take and commit an offender to  
27 prison, the damages shall not be less than fifty dollars  
28 nor more than five hundred dollars.

29 Selectmen of towns mentioned in this act shall be  
30 construed to include assessors of plantations. The  
31 word town shall in all cases used in this act be con-  
32 strued to include plantations.

SECT. 33. No person engaged in the unlawful  
2 traffic in intoxicating liquors shall be competent to sit  
3 upon any jury in any case arising under this act; and  
4 when information shall be communicated to the court  
5 that any member of any pannel is engaged in such  
6 traffic, or that he is believed to be so engaged, the  
7 court shall inquire of the juryman of whom such be-  
8 lief is entertained; and no answer which he shall  
9 make shall be used against him in any case arising  
10 under this act; but if he shall answer falsely, he shall  
11 be incapable of serving on any jury in this state; but  
12 he may decline to answer, in which case he shall be  
13 discharged by the court from all further attendance as  
14 a juryman.

SECT. 34. An act entitled An act to restrain and  
2 regulate the sale of intoxicating liquors and to pro-  
3 hibit and suppress drinking houses and tippling shops,  
4 approved the seventh day of April, one thousand

5 eight hundred and fifty-six, and all other acts and  
6 parts of acts inconsistent with this act, are hereby  
7 repealed.

SECT. 35. This act shall not take effect until such  
2 time as shall be fixed in some mode provided by the  
3 legislature.



STATE OF MAINE.

---

IN SENATE, Feb. 17, 1858.

ORDERED, That 2,000 copies of the foregoing report and bill accompanying, be printed for the use of the Legislature.

ATTEST:

JOSEPH B. HALL, *Secretary.*