

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

TWENTY-SIXTH LEGISLATURE

OF THE

STATE OF MAINE,

A. D. 1846.

Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February 26, 1840,
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PUBLIC LAWS

OF THE

STATE OF MAINE,

1846.

of health, selectmen or overseers of the poor, of any town, or the mayor or aldermen of any city, or other legal authority, shall willfully dig up, disinter, remove or carry away any human body or the remains thereof, from its place of interment, or aid or assist in so doing, or shall willfully receive, conceal or dispose of any such human body or the remains thereof, or if any person shall willfully and unnecessarily, and in an improper manner, indecently expose, throw away or abandon any human body, or the remains thereof, in any public place, or in any river, stream or other place, every such offender shall be punished by imprisonment in the state prison for a term not exceeding five years, or by fine not exceeding three thousand dollars, according to the aggravation of the offence.

Unauthorized disinterment or improper exposure, or abandonment of dead bodies.

[Approved August 7, 1846.]

Chapter 205.

An Act to restrict the sale of intoxicating drinks.

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

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

Sale of intoxicating liquors prohibited.

SECT. 2. The provisions of this act shall not extend to wine or spirituous liquors, which shall have been imported into the United States from any foreign port or place, when not sold in less quantities than the revenue laws of the United States prescribe, for the importation into this country, and delivered and carried away at one time.

Not to extend to imported liquors when not sold in less quantities than 28 gallons.

SECT. 3. The selectmen, clerk and treasurer of every town, shall annually meet on the first Monday of May, or on the succeeding day, or both, and at such place in said town as they may appoint, by posting up notices, in two or more public places therein, at least seven days previously, stating the purposes of the meeting, and at such meeting shall license, under their hands, and under such rules and regulations, as they may deem necessary, one person of good moral character, if any such shall appear and request it, for every town having less than one thousand inhabitants, two for every town having over one thousand, and less than three thousand, and not less than three, nor more than five, for every town having more than three thousand inhabitants, to be sellers of wine, brandy, rum or other strong liquors, in said town, to be used for medical and

Licenses when and by whom granted.

CHAP. 205.

Licensed persons
to give bond.

mechanical purposes, and no other: *Provided, however,* that no such license shall be granted, until the person to be licensed, shall have executed and delivered to said treasurer, 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 — as sureties, are holden and stand firmly bound to the inhabitants of the town of — in the sum of six hundred dollars, to be paid them, to which payment well and truly to be made, 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 the foregoing obligation is such, that whereas the above bounden — has been duly licensed, to sell within the said town, wine, brandy, rum, and other strong liquors, to be used for medical and mechanical purposes, in quantities of twenty-eight gallons and under (or over, as the case may be,) until the first Monday of May next; now if the said — shall in all respects, conform to the provisions of the law relating to the business for which he is licensed, and to such rules and regulations, as shall be from time to time established by the board granting the license, in reference thereto, then this obligation to be void; otherwise, to remain in full force.

Licenses for part
of a year, in cer-
tain cases.

SECT. 4. The said licensing board, may at any other time, at a meeting called and notified as aforesaid, grant such licenses, but in no case shall they license a greater number, than is allowed by the foregoing section; and all such licenses shall expire on the said first Monday of May, annually, and the clerk shall make a record of all the licenses granted.

Penalty for sell-
ing liquors in vi-
olation of the
provisions of this
act.

SECT. 5. If any person by himself, clerk, servant or agent, shall at any time, sell any wine or spirituous liquors, or any mixed liquors, a part of which is spirituous, in violation of the provisions of this act, he shall forfeit and pay for each offense, not less than one, nor more than twenty dollars.

How recovered.

SECT. 6. 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 action may be brought in the name of the person prosecuting, or the town where the offense was committed. One half the forfeiture so recovered, shall enure to the prosecutor or complainant, and the other half to the town; and the prosecutor or complainant, shall be admitted as a witness at the trial. And if any two of the licensing board, shall approve of the commencement of any such suit, by

endorsing their names upon the writ, the defendant shall in no event CHAP. 205.
recover any cost.

SECT. 7. And if any person shall claim an appeal from a judgment rendered against him, by any such judge or justice, on the trial of such action or complaint, he shall, before the appeal shall be allowed, recognize in a sum not less than fifty dollars, with two good and sufficient sureties, to prosecute his appeal and to pay all costs, fines, or forfeitures, that may be recovered against him, upon a final disposition of such suit or complaint. And if such appellant, shall not within forty-eight hours (Sunday excepted) after such judgment is rendered, so recognize, the appeal shall not be allowed, and the said judge or justice, shall enter up judgment in the same manner, as though no such appeal had been claimed; and the appellant shall be held to advance the jury fees, and all other fees that may arise after the appeal.

Before an appeal is allowed, appellant shall recognize to prosecute his appeal, and pay all fines and costs.

SECT. 8. If any person, after having been once convicted, of a violation of the provisions of this act, shall be guilty, and upon complaint convicted, of a like offense, he shall be punished, by a fine of not less than five dollars, nor more than twenty dollars, and shall give a bond to the inhabitants of the town, where the offense was committed, with two good and sufficient sureties, to the acceptance of the judge or justice, before whom the complaint may be tried, in a sum not less than fifty dollars, conditioned, that he will not, during the term of six months, then next following, violate the provisions of this act, and shall stand committed until the sentence shall be complied with. And the thirty days, named in the one hundred and seventy-fifth chapter of the revised statutes, shall not begin to run, till thirty days after the commitment.

Penalty for violation of the provisions of this act after having been once convicted.

SECT. 9. The licensing board of said town, whenever complaint shall be made to them, that a breach of the condition of the bond given by any person licensed by them, 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 license. And whenever a breach of any bond given to the inhabitants of any town, in pursuance of any of the provisions of this act, shall be made known to said licensing board, or the town agent, or in any manner, come to their knowledge, they, or some one of them, shall, at the expense, and for the use of the town, cause the bond to be put in suit, in any court proper to try the same.

Selectmen to revoke licenses of offenders and to prosecute for breach of bond.

SECT. 10. No action shall be maintained, upon any claim or demand, whether it be note, account, bond, order, draft, acceptance, or other security or evidence whatever, made, had or given,

No action shall be maintained on any security given for spirituous liquors.

CHAP. 205.

Not to extend to negotiable paper in the hands of holders *bona fide*.

Money paid for liquor, sold in violation of law, may be recovered back.

Purchaser may be a witness for plaintiff.

Burden of proof of the importation shall be upon the defendant.

When action may be maintained against the clerk, servant, agent, or attorney.

in whole or in part, for any wine, brandy, rum or other strong or spirituous liquors, or mixed liquors, a part of which is spirituous, sold in violation of the provisions of this act ; *provided however*, that this section, shall not extend to negotiable paper, in the hands of holders *bona fide*, and for a valuable consideration, without notice, expressed or implied, of the illegality of the consideration.

SECT. 11. If any payment, or compensation, for any such liquor hereafter sold in violation of law, shall be received by the seller, his clerk, servant, agent or attorney, whether in money, labor, or other property, real or personal, the amount so received, shall be held, and considered to have been received, in violation of law, and without consideration ; and held against law, and equity and good conscience, and may be recovered back, any time within six years from the receiving thereof, by the purchaser, his guardian, executors or administrators, or by any of his creditors, such money, in an action for money had and received, and such labor, goods or other property, in an action of trover, or in a special action on the case, for the value thereof, in any court proper to try the same ; and the plaintiff in such action, shall within three days after the commencement of such suit, give notice thereof, by filing an abstract of the declaration, with the date of his writ, in the office of the clerk of the town where the defendant resides. And when such suit shall be commenced by a creditor, the purchaser may be a witness for the plaintiff, at the trial of the action, and such actions, and cause of action, shall survive.

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

SECT. 13. When the money or other thing, shall have been received by any clerk, servant, agent or attorney, the action may be

maintained against him, if he had knowledge or previous notice, that it was for liquor sold in violation of law. And if any action which is authorized by this act, be brought in the district court, and the plaintiff prevail therein, full costs shall be allowed, though the amount of damages recovered, be less than twenty dollars.

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

Defendant not allowed, on trial, any claim against plaintiff.

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

No discharge or admission made by the purchaser shall defeat the suit.

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

Oath of plaintiff in writing to be received as evidence, in certain cases.

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

When the plaintiff wishes to avail himself of defendants' knowledge of the facts alleged,

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

Disclosure not to be used against him in any penal action.

SECT. 19. Moneys, which are by this act, to be recovered back, may when recovered by a guardian, executor or administrator, be

Moneys recovered back, how disposed of.

CHAP. 205.

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

Judgment to run against the body of the execution debtor.

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

If arrested on said execution, shall be committed to prison.

SECT. 21. If such execution debtor shall be arrested on such execution, he shall be committed to prison, and shall not be permitted to give any of the bonds, provided in the one hundred and forty-eighth chapter of the revised statutes, for the liberation of his person. And in case he shall apply to take the oath described in the twenty-eighth section of said chapter, no notice to the creditor shall be issued, until fifteen days after the commitment. *Provided, however,* that no person shall be imprisoned on more than one warrant, issued upon any judgment, recovered on account of a violation of the provisions of this act, at the same time.

Compensation of jailers.

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

Provisions of this act applicable to cities and plantations.

SECT. 23. All the provisions of this act, relating to towns and their treasurers and clerks, shall be applicable to cities and plantations, and the treasurers and clerks thereof; and those relating to selectmen, shall also be applied to aldermen of cities and assessors of plantations.

Liquors not to be furnished Indians, persons non compos, or any person named in the 7th sect., 110th chap. R. S.

SECT. 24. If any person shall sell, give, or in any manner, directly or indirectly, furnish, any person *non compos*, or any Indi-

an, or any person named in the seventh section of the one hundred and tenth chapter of the revised statutes, any wine, brandy, rum or other spirituous liquors, or any mixed liquors, a part of which is spirituous, for any purpose whatever, unless in case of sickness, under the direction of a regular practising physician, he shall be subject to all the liabilities, forfeitures and penalties, provided by this act. CHAP. 206.

SECT. 25. So much of the seventeenth section of the thirty-sixth chapter of the revised statutes, as affixes a penalty for being a common seller of liquors by retail, and all other parts of said thirty-sixth chapter, and all other acts and parts of acts, so far as they are inconsistent with the provisions of this act, are hereby repealed, saving and reserving, all indictments, prosecutions and suits which have been already commenced.

Inconsistent acts repealed.

SECT. 26. This act shall not take effect until the expiration of sixty days after its approval by the governor.

When to take effect.

[Approved August 7, 1846.]

Chapter 206.

An Act to amend the second section of the nineteenth chapter of the revised statutes.

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

SECTION 1. The second section of the nineteenth chapter of the revised statutes, shall be amended by inserting after the words, "the owners of any meeting house," the following words: or a majority of owners in interest in the same; so that said section as amended will be as follows:

R. S. § 2, chap. 19.

"SECT. 2. The owners of any meeting house, or a majority of owners in interest in the same, not constituting a parish, shall have power to incorporate themselves for the purpose of repairing, enlarging and removing the same, in the same manner as parishes may incorporate themselves; and may choose officers, raise and assess taxes for the sole purposes aforesaid, and may do all those things which a parish can, in virtue of the authority legally vested in it."

Owners of meeting houses may incorporate themselves for the purpose of repairing them.

[Approved August 8, 1846.]