

MAINE STATE LEGISLATURE

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ACTS AND RESOLVES

PASSED BY THE

THIRTY-SEVENTH LEGISLATURE

OF THE

STATE OF MAINE,

1858.

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Published by the Secretary of State, agreeably to Resolves of June 28, 1820, February  
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1858.

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PUBLIC LAWS

OF THE

STATE OF MAINE.

1858.

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**Chapter 32.**

**CHAP. 32.**

An act amending chapter sixty-six of the revised statutes relating to insolvent estates.

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

SECT. 1. Section two of chapter sixty-six of the revised statutes, is hereby amended by striking out the word "class," in the second line as printed, and inserting in its place, the words "four classes"; also by substituting the word "the," for the word "a," in the third line as printed, so that said section as amended, shall read—

Ch. 66, sect. 2,  
R. S. amended.

"SECT. 2. When an estate is not sufficient to pay more than such expenses and claims of the first four classes, the administrator is exonerated from payment of any claim of the subsequent class, without making a representation of insolvency."

When representation of insolvency need not be made.

SECT. 2. Section three of the same chapter is hereby amended, by inserting the words "of the fifth class," after the word "debts," in the second line as printed, so that said section as amended, shall read as follows :

Ch. 66, sect. 3,  
R. S. amended.

"SECT. 3. When an estate appears to be insufficient to pay the debts of the fifth class, on representation thereof by the administrator to him, the judge of probate is to appoint two or more commissioners, to receive and decide upon all claims against the estate, except those of the administrator. They are to be first sworn, and are to make report to the court of all claims presented, and of their disposition, with the sum allowed on each claim."

When representation is to be made.

Commissioners sworn; report.

SECT. 3. This act shall take effect and be in force from and after its approval by the governor.

[Approved March 25, 1858.]

**Chapter 33.**

An act for the suppression of drinking houses and tippling shops.

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

SECT. 1. No person shall be allowed, at any time, to sell, by himself, his clerk, servant or agent, directly or indirectly, any intoxicating liquors, except as hereafter provided.

Sale of intoxicating liquors.

SECT. 2. No person shall manufacture any intoxicating liquor, for unlawful sale. Any manufacturer of intoxicating liquors shall be allowed to sell intoxicating liquors manufactured by him within

Manufacture restricted. Manufacturer may sell in certain cases.

**CHAP. 33.** this state, to municipal officers authorized by this act to purchase  
 —to give bond. the same; *provided*, he shall first give a bond in the sum of five  
 thousand dollars, with good and sufficient sureties, resident in this  
 state, payable to the treasurer of the city or town, within which the  
 manufactory shall be established, or his successors, and shall file the  
 same with such treasurer, and to the satisfaction and approval of the  
 aldermen of such city, or the selectmen of such town, conditioned  
 that he will not sell any intoxicating liquors except of his own man-  
 ufacture; that he will not by himself or another, in any mode adul-  
 terate such liquors, either by coloring matter, or any other drug or  
 ingredient; nor mix the same with other liquor of a different kind  
 or quality, nor with liquor of any kind not manufactured by himself,  
 nor with water; that all casks and vessels containing liquors sold by  
 him shall at the time of sale be plainly and conspicuously marked  
 with the name of the manufacturer, the place of manufacture, and  
 the name, quality and strength of the liquor; that he will not sell  
 any intoxicating liquors in quantities less than thirty gallons deliv-  
 ered in a single vessel, and carried away at one time, and that he  
 will not sell any intoxicating liquors to any person except to such  
 persons as are authorized by this act to purchase the same.

Bond, how filed  
and approved.

Condition of  
bond.

—not to adul-  
terate nor mix  
liquors.

casks, &c. to  
be marked.

—not to sell  
less than 30  
gallons.

—to persons  
not authorized.

Penalty for  
selling without  
giving bond.

Duty of alder-  
men and select-  
men on breach  
of bond.

Cider and wine.

Selectmen and  
mayor and al-  
dermen to pur-  
chase.

Agents to be  
appointed to  
sell for certain  
purposes.

—compensa-  
tion and duty,

**SECT. 3.** Any person who shall sell within this state any intoxi-  
 cating liquors manufactured by him within this state, without first  
 giving the bond provided in the preceding section, shall be punished  
 by imprisonment two months in the county jail, and by fine of one  
 thousand dollars; and if any person who has given such bond, shall  
 commit any breach of the conditions thereof, it shall be the duty of  
 the aldermen and selectmen, respectively, of the city or town within  
 which such manufactory shall be established, to cause the same to  
 be put in suit and prosecuted to final judgment and satisfaction.

**SECT. 4.** The provisions of this act respecting the sale of intoxi-  
 cating liquors, shall not extend to the manufacture of cider or of  
 wine made from fruit grown within this state, and the sale thereof  
 by the manufacturer, nor to the sale by agents appointed under this  
 act of pure wine for sacramental uses.

**SECT. 5.** The selectmen of any town, and mayor and aldermen  
 of any city, shall immediately after this act shall go into effect, and  
 on the first Monday of May annually thereafter, or as soon there-  
 after as may be convenient, purchase such quantity of intoxicating  
 liquors as may be necessary to be sold under the provisions of this  
 act, and shall appoint some suitable person, as the agent of said town  
 or city, to sell the same at some convenient place within said town or  
 city, to be used for medicinal, mechanical and manufacturing pur-  
 poses, and no other; and such agent shall receive such compensation

for his services and in the sale of such liquors, shall conform to such regulations, not inconsistent with this act, as the board appointing him shall prescribe, and he shall hold his situation one year unless sooner removed by them or their successors in office. Vacancies occurring during the year are to be filled in the same manner as original appointments are made. No such agent shall have any interest in such liquors, or in the profits of the sale thereof. Such agents may sell to such municipal officers intoxicating liquors, to be by said officers disposed of in accordance with the provisions of this act.

—term of office.  
 —vacancy, how filled.  
 —not to be interested.  
 —may sell to municipal officers.

SECT. 6. Such agent shall receive a certificate from the board by which he is appointed, authorizing him as the agent of such town or city to sell intoxicating liquors for medicinal, mechanical and manufacturing 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:

—shall have a certificate.  
 —shall give bond, amount.

Know all men, that we, —, as principal 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.

Form of bond.

Scaled 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) to sell intoxicating liquors for medicinal, mechanical and manufacturing 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 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.

Condition of bond.

SECT. 7. If any person, by himself, clerk, servant or agent, shall at any time sell any intoxicating liquors 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 county jail three months, and in default of the payment of the fines and costs prescribed by this section, for the first

Penalty for selling liquors in violation.  
 —first conviction.  
 —second conviction.  
 —third conviction.  
 Fine not paid, effect.

## CHAP. 33.

and second convictions, the convict shall not be entitled to the benefit of chapter one hundred thirty-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 of said 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, or aid and assist therein, he shall be held equally guilty with the principal, and on conviction, shall suffer like penalty.

Clerks and others, liable.

Common sellers, punishment of.

SECT. 8. No person shall be a common seller of intoxicating liquors. Any person convicted of a violation of this section, shall be punished by fine of one hundred dollars and costs of prosecution, and in default of the payment thereof, he shall be imprisoned sixty days in the county jail.

—second conviction.

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

—third conviction.

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

Who are not common sellers.

SECT. 9. Persons selling by authority and according to the provisions of the second and fifth sections of this act, are not common sellers.

Drinking houses prohibited.

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

—who deemed guilty of keeping.

If any person shall sell any intoxicating liquors, in any building, vessel or boat, in this state contrary to the provisions of this act, and the same are there drank, he shall be deemed and held to be guilty of keeping a drinking house and tipping shop.

Penalty.

Any person convicted of keeping a drinking house and tipping shop within this state, shall be punished by a fine of one hundred dollars and costs of prosecution, and in default of payment thereof, by imprisonment in the county jail three months.

Persons selling liable for injuries.

SECT. 11. If any person not authorized as aforesaid, shall sell any intoxicating liquors to any person, he shall be liable for all the injuries which such person may commit while in a state of intoxication arising therefrom, in an action on the case in favor of the person injured.

Possession or deposit with intent to sell, prohibited.

SECT. 12. No person shall deposit or have in his possession any intoxicating liquors with intent to sell the same in this state in

violation of law, or with intent that the same shall be so sold by any person, or to aid or assist any person in such sale thereof.

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

Liquors kept for unlawful sale forfeited.

SECT. 14. If three persons competent to be witnesses in civil suits, shall make complaint upon oath or affirmation before any judge of any municipal or police court or justice of the peace, that they believe intoxicating liquors are unlawfully kept or deposited in any place in this state by any person or persons, and that said liquors are intended for sale within this state in violation of law, such magistrate shall issue his warrant directed to any officer having power to serve criminal process, commanding such officer to search the premises described and specially designated in such complaint and warrant, and if said intoxicating liquors are there found, to seize the same with the vessels in which they are contained, and them safely keep until final action on the same, and make immediate return of said warrant.

Warrants of search and seizure may be granted on complaint.

The name of the person so as aforesaid keeping said liquors, shall be stated in such complaint, and the officer shall be commanded by said warrant, if he shall find said liquors, to arrest such person or persons, and have him or them forthwith before such magistrate for trial.

Name to be stated in complaint.  
Arrest of person.

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

Penalty, if found guilty,

If upon trial such magistrate shall find such person not guilty he shall be discharged.

Discharge.

SECT. 15. When liquors and vessels are seized as provided in the preceding section, it shall be the duty of the officer who made such seizure, immediately to libel the liquors and vessels so seized by him by filing with the magistrate before whom such warrant is returnable, a libel against such liquors and vessels, setting forth their seizure by him, describing the liquors and their place of seizure, and that they were deposited, kept and intended for sale within the state in violation of law, and pray for a decree of forfeiture of said liquors and vessels, and such magistrate shall thereupon fix a time for the

Duty of officer on seizure.

Libel to be filed.  
—what to set forth.



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| <p>CHAP. 33.</p> <p>Proceedings of magistrate in case of libel.</p> <p>—notice of hearing.</p> <p>—in case no claimant appear.</p> <p>Claimant, how to proceed.</p> <p>What shall be stated in claim.</p> <p>Declaration.</p> <p>Oath.</p> <p>Claimant to be admitted as a party.</p> <p>Trial.</p> <p>Duty of magistrate if claimant entitled.</p> <p>—if claimant not entitled, judgment for costs, liquors forfeited.</p> <p>Appeal.</p> <p>Dwellinghouse not to be searched except in certain cases.</p> | <p>hearing of such libel, and shall issue his monition and notice of such libel, to all persons interested, citing them to appear at the time and place appointed, and shew cause why said liquors and the vessels in which they are contained, should not be declared forfeited, by causing a true and attested copy of said libel and monition, to be posted in two public and conspicuous places in the town or place where said liquors were seized, ten days at least before the day to which said libel is returnable.</p> <p>SECT. 16. If no claimant shall appear, such magistrate shall, on proof of notice as aforesaid, declare the same forfeited to the city, town or plantation in which they were seized.</p> <p>If any person shall appear and claim such liquors, or any part thereof, as having a right to the possession thereof at the time when the same were seized, he shall file with such magistrate such claim in writing, stating specifically the right so claimed, and the foundation thereof, the items so claimed, and the time and place of the seizure, and the name of the officer by whom the same were seized, and in it declare that they were not so kept or deposited for unlawful sale, as alleged in said libel and monition, and also state his business and place of residence, and shall sign and make oath or affirmation to the truth of the same before said magistrate.</p> <p>If any person shall so make claim, he shall be admitted as a party to the process; and the said magistrate shall proceed to determine the truth of the allegations in said claim and libel, and may hear any pertinent evidence offered by the libellants or claimants.</p> <p>If the magistrate shall, upon the hearing, be satisfied that the said liquors were not so kept or deposited for unlawful sale, and that the claimant is entitled to the custody of any part of the same, he shall give to such claimant an order in writing, directed to the officer having the same in custody, commanding him to deliver to said claimant the liquors to which he is so found to be entitled, within forty-eight hours after demand.</p> <p>If the magistrate shall find the claimant entitled to no part of said liquors, he shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such magistrate, and issue execution thereon, and shall declare said liquors forfeited to the city, town or plantation where seized. The claimants may appeal and shall be required to recognize with sureties as on appeals in civil causes from said magistrate.</p> <p>SECT. 17. No warrant shall be issued to search a dwelling-house actually occupied as such, unless it, or some part of it, is used as an inn or shop, or for purposes of traffic, or unless the magistrate shall first be satisfied, by the testimony of at least two witnesses, that</p> |
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intoxicating liquor is deposited or kept in such house or its appurtenances, with intent to sell the same in violation of law. Before a warrant shall be issued upon such testimony, the magistrate shall take the testimony of the witnesses under oath or affirmation in writing, and cause the same to be signed and verified by the oath or affirmation of the witnesses before himself; and if satisfied upon such evidence, that intoxicating liquor is so as aforesaid deposited or kept in the house described in the complaint or its appurtenances, if also described in the complaint, he shall so adjudge, and thereupon he shall issue a warrant for the search of such house and its appurtenances if described in the complaint, in the manner provided in the fourteenth section of this act, reciting in said warrant that upon the testimony of the witnesses named in the warrant which was taken under oath, signed and verified by the witnesses as above required, he has adjudged that he is satisfied that intoxicating liquor is so kept as aforesaid in the premises described.

Magistrate to take testimony before issuing warrant.

Warrant how to be issued.

What must be recited.

All the subsequent proceedings shall be the same as those to be had by virtue of a warrant issued under the provisions of the fourteenth section aforesaid. When any justice of the peace shall issue any warrant for the search of any premises under the provisions of this act, the warrant shall be made returnable before any justice of the peace in the county, except in those cities and towns wherein a municipal or police court is established, having exclusive jurisdiction of all offences cognizable by justices of the peace committed within such city or town, in which case such warrant shall be made returnable to said court.

Proceedings subsequent.

Warrant issued by justice, how returnable.

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

Liquors, &c. forfeited, how disposed of by court.

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

—how disposed of by municipal officers.

If they shall find any portion of the same unfit for such uses, they shall destroy the same by pouring them out upon the ground.

Liquors to be destroyed in certain cases, vessels may be sold.

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

SECT. 19. If complaint shall by any person be made upon oath

Warrant to be

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issued against claimant under oath.

Arrest.

Trial.

Punishment if found guilty.

Officer having warrant, duty of when prevented.

—to arrest alleged owner.  
—how to make return in such case.

Trial of owner.

Penalty if found guilty.

Deputy sheriff dying, &c.

Other officer dying, duty of magistrate.

Liquors, &c. seized, not repleviable pending proceedings.

to any magistrate against any person, who is a claimant under the provisions of this act, alleging that the liquors so claimed by him were, prior to, and at the time when the same were seized, kept or deposited by said claimant, or by some person by his authority, and intended for unlawful sale in this state, either by such person, or the said claimant, the magistrate shall issue his warrant against such claimant so charged, and he shall be arrested thereon, and brought before such magistrate, and if found guilty of the offence therein charged, he shall be punished by a fine of twenty dollars and costs of prosecution, and stand committed until the same be paid or he be otherwise discharged by due course of law.

SECT. 20. If any officer having a warrant, issued under this act, committed to him, directing him to seize any liquors and to arrest the owner or keeper thereof, shall be prevented from seizing the liquors by their being poured out or otherwise destroyed, he shall arrest the alleged owner or keeper named in the warrant, and bring him before the magistrate, and make return upon the warrant that he was prevented from seizing said liquors by their being poured out or otherwise destroyed, as the case may be, and in his return he shall state the quantity so poured out or destroyed, as nearly as may be, and the magistrate shall put the owner or keeper so arrested upon trial; and if on the trial it shall appear by competent testimony that such liquors were so poured out or destroyed, and that the liquors so poured out or destroyed were such as were described in the warrant, and they were so kept or deposited and intended for unlawful sale, and if the person so arrested shall be found to be owner or keeper thereof, he shall be fined and sentenced in the same manner as he would have been, if the liquors described in the warrant and in the return had been seized on the warrant and brought before the magistrate by the officer.

SECT. 21. If any deputy sheriff, after having executed such a warrant by a seizure shall die or go out of office before final execution in the proceedings be done, the liquors shall be held in the custody of the sheriff or another deputy. If any other officer shall die or go out of office under like circumstances, it shall be the duty of the magistrate before whom the proceedings were commenced, to designate in writing some officer lawfully authorized to execute such a warrant, who shall hold such liquors in his custody until final judgment and order of the court thereon.

SECT. 22. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officer by a writ of replevin or other process while the proceedings herein provided are pending; and final judgment in the proceedings

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herein provided, shall in all cases be a bar to all suits for the recovery of any liquors seized or the value of the same, or for damages alleged to arise by reason of the seizure and detention thereof.

Final judgment bar to all suits.

SECT. 23. In matters not otherwise provided for, except prosecutions against common sellers and those for offences described in the third and tenth sections of this act, judges of municipal courts and police courts, and justices of the peace, having jurisdiction in other criminal matters in the places where they reside, shall have jurisdiction by complaint, original and concurrent with the supreme judicial court, of all prosecutions under this act.

Jurisdiction of municipal and police judges and justices.

In cases in which the supreme judicial court has concurrent jurisdiction with such magistrates, and in cases not within the jurisdiction of such magistrates, prosecutions shall be by indictment. Magistrates aforesaid shall have power by complaint, in cases not within their jurisdiction, to examine and hold to bail, as in case of other offences, which are subject to indictment.

When prosecution shall be by indictment.

Magistrates may hold to bail.

SECT. 24. If any party shall appeal, the proceedings in all matters shall be the same in the appellate court as they would be upon the same matters in the court of the magistrate, and said proceedings shall be conducted in said court by the attorney for the state in the county where the proceedings are pending. The jury shall find specially, under the direction of the court, on all facts necessary to determine the adjudication of the court; and if a claimant or other respondent shall fail to appear for trial in the appellate court, the judgment of the court below, if against him shall be affirmed.

Appeal, proceedings in case of.

—jury find specially.

—respondent failing to appear, judgment affirmed.

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

—from sentence, penal sum of recognizance.

No portion of the penalty of any recognizance taken by virtue of the provisions of this act, shall be remitted by any court within this state in any suit thereon, nor shall any surety in any such recognizance be discharged from his liability therein by a surrender of his principal in court, after he has been defaulted upon his recognizance. The appeals of claimants provided for in the sixteenth section of this act, shall be entered as all other appeals in criminal cases, and subject to the same requirements of law appertaining to them.

—penalty not to be remitted.

—surety not discharged by surrender of principal.

—of claimants, how to be entered.

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

Custom house certificates, &c. not evidence.

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Persons found intoxicated and disturbing the peace may be taken into custody.

—arrest and trial on complaint.

Punishment.

—may be remitted in certain cases.

Action not maintainable for liquors sold or kept in violation.

Exception.

Liquors owned by towns or kept by agents, casks and vessels to be marked.

—seized bearing marks.

—false marks conclusive evidence, liquors forfeited.

—adulterated or factitious, not protected.

SECT. 26. Any person hereafter found intoxicated in any of the streets or highways, or being intoxicated in his own house, or in any other building or place, who shall become quarrelsome, or in any way disturb the public peace, or that of his own or any other family, so as to render it necessary for the police or peace officers to interfere, may be taken into custody by any sheriff, deputy sheriff, constable, marshal, deputy marshal, police officer, or watchman and committed to the watch-house or restrained in some other suitable place, till a complaint can be made and warrant issued in due form, upon which he may be arrested and tried, and if found guilty of being so intoxicated in the streets or highways, or of being intoxicated in his own house or any other building or place, and becoming quarrelsome and disturbing the public peace, or that of his own or any other family, he shall be punished by imprisonment in the common jail, not exceeding thirty days; but said judge or justice may remit any portion of said punishment, and order the prisoner to be discharged, whenever he shall become satisfied that the objects of this law, and the good of the public and of the prisoner would be advanced thereby.

SECT. 27. No action shall be maintained upon any claim or demand, promissory note, or other security contracted or given for intoxicating liquors, sold in violation of the provisions of this act, or for any such liquors purchased out of the state with intention to sell the same or any part thereof in violation of this act; but the provisions of this section shall not extend to negotiable paper in the hands of any holder for a valuable consideration and without notice of the illegality of the contract.

SECT. 28. No such liquors owned by any city, town or plantation, or kept by any agent of any city, town or plantation, as is provided in this act, shall be protected against seizure and forfeiture, under the provisions of this act, by reason of such ownership, unless all the casks and vessels in which they are contained shall be at all times plainly and conspicuously marked with the name of such city, town or plantation, and of its agent. When any such liquors shall be seized, bearing such marks as are by this act required to be put upon liquors owned by cities, towns or plantations, if such liquors are in fact not owned by any such city, town or plantation, such false and fraudulent marking shall be conclusive evidence that the same are kept or deposited for unlawful sale, and render them liable to forfeiture under the provisions of this act. The liquors kept for sale by such agents shall not be adulterated or factitious, and shall not be protected from seizure and forfeiture by reason of being kept for

sale by such agents, if so adulterated or made factitious and they have knowledge of the fact.

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

Agents not to sell to minors or others described.

—notice of selectmen or relatives, sufficient evidence.

SECT. 30. It shall be the duty of the aldermen, selectmen and assessors aforesaid, whenever they shall be informed by the relatives of any person that he is of intemperate habits, and shall be satisfied that such is the fact, forthwith to give notice thereof, to all persons authorized to sell intoxicating liquors within their respective cities, towns and plantations, and in such adjoining places as they may deem expedient.

—selectmen, &c. to give notice to agents on information.

SECT. 31. Any person, authorized as aforesaid, who shall violate any of the provisions of the first section of this act, shall be punished, on conviction thereof, by a fine of twenty dollars for every such offence; and shall also be liable, notwithstanding such conviction and punishment, to a suit upon his bond given as aforesaid; and it shall be the duty of the aldermen, selectmen and assessors, respectively, of the city, town or plantation, to which such bond was given, to cause the same to be put in suit and prosecuted to judgment and satisfaction to the use of the city, town or plantation. The court by which judgment shall be rendered upon any such bond, or upon any bond required to be given by this act, shall have such chancery powers therein, as the supreme judicial court now has in cases of forfeiture of penalties to the state. And whenever any such conviction shall be obtained or judgment recovered as aforesaid, all the authority of such person to sell intoxicating liquors shall be absolutely vacated; and it shall be the duty of the aldermen, selectmen and assessors respectively, to revoke such authority whenever they shall be satisfied of any violation of the conditions of the same.

Persons authorized to sell, violating provisions, how punished.

—liable also on bond.

—duty of selectmen, &c. to put bond in suit.

Chancery powers of court.

Authority to sell to cease on conviction, &c.

—aldermen, &c. to revoke on violation.

SECT. 32. Whenever an unlawful sale is alleged, and a delivery

Delivery evidence of sale.

- CHAP. 33.** proved, it shall not be necessary to prove a payment, but such delivery shall be sufficient evidence of sale.
- Partner liable.** A partner in business shall be liable for the unlawful keeping or selling of his copartner, done in the copartnership business, or by any other person, in any shop, store, or other place of business, of such copartnership, with his knowledge and assent.
- Who may be included in complaint.** A principal and his agent, clerk and servant, may all be included in the same complaint and process.
- Mayor, aldermen, &c. may commence suit on bond.** The mayor or aldermen, selectmen or assessors, may cause a suit to be commenced on any bond or recognizance given under this act in which his city, town or plantation is interested, and the same shall be prosecuted to final judgment unless paid in full with costs.
- duty to prosecute for violation.** It shall also be the duty of the mayor and aldermen, selectmen and assessors respectively, in every city, town and plantation, to prosecute any violations of the provisions of this act. If any execution or other final process, issued in any civil or criminal suit instituted under this act, shall be placed in the hands of any proper officer to be by him executed, and he shall unreasonably neglect or refuse so to do, an action may be commenced against him by any voter in the county for such neglect, and prosecuted to final judgment, which shall be for the full amount of the judgment and interest on such execution; and if it be a process that requires him to take and commit an offender to prison, the damages shall not be less than fifty dollars nor more than five hundred dollars.
- What the judgment shall be.** Selectmen of towns mentioned in this act shall be construed to include assessors of plantations. The word town shall in all cases used in this act be construed to include plantations.
- Assessors of plantations. "Town," what to include.** In any suit, complaint or indictment, or other proceeding against any person for a violation of any of the provisions of this act, other than for the first offence, it shall not be requisite to set forth particularly the record of a former conviction, but it shall be sufficient to allege briefly, that such person has been convicted of a violation of any particular provision of this act, or as a common seller, as the case may be, and such allegation in any criminal process, legally amendable in any stage of the proceedings, before final judgment, may be amended, without terms, and as a matter of right. Any process, civil or criminal, legally amendable under this act, may, in any stage of the proceedings, be amended in any matter of form, without costs, on motion at any time before final judgment.
- Allegation of previous conviction sufficient.**
- may be amended.**
- Any process may be amended.**
- Persons engaged in unlawful traffic not to sit upon jury.** **SECT. 33.** 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.

CHAP. 34.

—duty of court to enquire.

—false answer, effect of.

—may decline to answer, effect.

SECT. 34. An act entitled an act to restrain and regulate the sale of intoxicating liquors and to prohibit and suppress drinking houses and tipping shops, approved the seventh day of April, one thousand eight hundred and fifty-six, and all other acts and parts of acts inconsistent with this act, are hereby repealed, saving all actions, indictments and other processes pending, and that said act shall be continued in force for the punishment of all offences committed under said act up to the time when this act shall take effect, whether prosecutions therefor shall then have been commenced or not; but this repeal shall not revive any acts or parts of acts which were repealed by that act.

Ch. 255, approved April 7, 1856, repealed.

Acts inconsistent repealed, saving pending actions.

SECT. 35. This act shall take effect on the fifteenth day of July, one thousand eight hundred and fifty-eight.

When to take effect.

[Approved March 25, 1858.]

**Chapter 34.**

An act additional to chapter twelve of the revised statutes relating to parishes and religious societies.

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

SECT. 1. No person shall have the right to vote in the meetings of any territorial parish who is not either the owner or occupant of a pew in its house of worship, or a contributor to its support, according to the provisions of chapter twelve of the revised statutes.

Who may vote in meetings.

SECT. 2. All acts and parts of acts inconsistent with this act are hereby repealed.

Acts inconsistent repealed.

SECT. 3. This act shall take effect from and after its approval by the governor.

[Approved March 26, 1858.]