

(2) Upon any application to quash such conviction, or warrant enforcing the same, or other process or proceeding, whether on appeal or upon *habeas corpus*, or by way of *certiorari*, or otherwise, the Court or Judge to which such appeal is made, or to which such application has been made upon *habeas corpus*, or by way of *certiorari*, or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid, and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process or proceeding is sufficient or valid under this section, or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be), and such Court or Judge may, in any case, amend the same, if necessary, and any conviction, warrant, process or proceeding so affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded.

#### PROTECTION OF INSPECTORS AND OTHER OFFICERS.

90. No action, suit or proceeding shall be commenced, no writ shall be sued out against, nor a copy of any process served upon any Inspector of Licenses or other person employed in carrying into effect any of the provisions of this Act, or in enforcing any process issued in pursuance thereof until one month after notice in writing has been delivered to him or left at his usual place of abode, by the solicitor or agent of the party who intends to sue out such writ or process, in which notice shall be clearly and explicitly contained the cause of action, the name and place of abode of the person who is to bring such action, the name and place of abode of the solicitor or agent, and the place where such action is intended to be tried; and no evidence of any cause of such action shall be produced except of such as is contained in such notice, and no verdict or judgment shall be given for the plaintiff unless he proves on the trial that such notice was given, and in default of such proof the defendant shall receive a verdict or judgment and costs.

91. Every such action, suit or proceeding must be brought within three months after the cause thereof, and laid and tried in the place or district where the acts were committed.

92. If the Court or Judge before whom such action is tried certifies that the defendant in such action acted upon reasonable and probable cause in respect to the matter about which such action was brought, then the plaintiff in such action shall not be entitled to more than twenty cents damages, nor to any costs of suit.

#### EVIDENCE, ETC.

93. In any prosecution or proceeding under this Act, in which proof is required respecting any license, a certificate under the hand of the Inspector of the license district shall be *prima facie* proof of the existence of a license, and of the person to whom the same was granted or transferred; and the production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated and of the authority of the Inspector, without any proof of his appointment or signature.

94. Any resolution of the Board of License Commissioners passed under section 22 of this Act, shall be sufficiently authenticated by being signed by the Chairman of the Board which passed the same; and a copy of any such resolution, written or printed, shall be deemed authentic, and be received in evidence in any Court of Justice, without proof of any such signature, unless it is specially pleaded or alleged that the signature to any such original resolution has been forged.

95. Any house, shop, room or other place in which are proved to exist a bar, counter, beer pumps, kegs, jars, decanters, tumblers, glasses or any other appliances or preparations similar to those usually found in taverns and shops where spirituous or fermented liquors are accustomed to be sold or trafficked in, shall be deemed to be a place in which spirituous, fermented or other manufactured liquors are kept or had for the purpose of being sold, bartered or traded in, under section 44 of this Act, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who has, or keeps therein, such liquors for sale, barter or traffic therein.

96. In proving the sale or disposal, gratuitous or otherwise, or consumption of liquor, for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or that any liquor was actually consumed, if the Justices, Police Magistrate or Court hearing the case is or are satisfied that a transaction in the nature of a sale or other disposal actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises under license, or in respect to which license is required under this Act, by some person other than the occupier of such premises, shall be evidence that such liquor was sold to the person consuming or being about to consume or carry away the same, as against the holder of the license or the occupant of the said premises.

97. In all cases where gas or other light is seen burning in the bar-room of such tavern or saloon where liquor is trafficked in, at any time during which

the sale or other disposal of liquor is prohibited by any provisions of this Act, any such fact, when proved, shall be deemed and taken as *prima facie* evidence that a sale or other disposal of liquor by the keeper of such tavern or other place has taken place, contrary to the provisions of sub-section 1 of section 44, and such keeper may thereupon be convicted of an offence against said section, and shall, upon such conviction, be subject to the punishment prescribed by sections 75 and 76 of this Act.

98. The fact of any person, not being a licensed person, keeping up any sign, writing, painting, or other mark, in or near to his house or premises, having such house fitted up with a bar or other place containing bottles or casks displayed, so as to induce a reasonable belief that such house or premises is or are licensed for the sale of any liquor, or that liquor is sold or served therein, or that there is on such premises more liquor than is reasonably required for the person residing therein, shall be deemed *prima facie* evidence of the unlawful sale of liquor by such person.

99.—(1) The occupant of any shop, house, room or other place in which any sale, barter or traffic of spirituous, fermented or manufactured liquors, or any matter, act or thing in contravention of any of the provisions of this Act, has taken place shall be personally liable to the penalty and punishments prescribed in this Act, notwithstanding such sale, barter or traffic be made by some other person, who cannot be proved to have so acted under or by the directions of such occupant, and proof of the fact of such sale, barter or traffic, or other act, matter or thing, by any person in the employ of such occupant, or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be conclusive evidence that such sale, barter or traffic, or other act, matter or thing, took place with the authority and by the direction of such occupant.

(2) The person actually selling, or otherwise contravening any of the provisions of this Act, as in this section mentioned, is for the purpose hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender, as well as the occupant, shall be personally liable to the penalties and punishments prescribed by this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with, or separately from, the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor.

(3) For the purposes of this section any person, being the owner or lessee in actual occupation and possession of the premises, or any other person who, being in actual occupation and possession, leases or sub-lets any part thereof in which liquors are kept for sale, barter or trading therein, or in which they are sold or consumed, shall be deemed to be an occupant, unless such leasing or sub-letting shall have received the consent in writing of the Board of License Commissioners.

100. In any prosecution under this Act for the sale or other disposal of liquor without the license required by law, it shall not be necessary that a witness should depose directly to the precise description of the liquor sold, bartered, or the precise consideration therefor, or to the fact of the sale or other disposal having taken place with his participation, or to his own personal or certain knowledge, but the Justices or Police Magistrate trying the case, soon as it appears to them or him that the circumstances in evidence sufficiently establish the infraction of the law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence shall convict him accordingly.

101.—(1) In any prosecution under this Act, whenever it appears that the defendant has done any act or been guilty of any omission in respect of which he were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed and that he did the said act lawfully.

(2) The production of a license which on its face purports to be duly issued; and which, were it duly issued, would be a lawful authority to the defendant for such act or omission, shall be *prima facie* evidence that the defendant is so entitled, and in all cases the signature to a copy upon any instrument purporting to be a valid license shall, *prima facie*, be taken to be genuine.

#### WITNESSES.

102. In any prosecution under this Act the Justice, Justices or Police Magistrate trying the case may summon any person represented to him or her as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the Justice, Justices or Police Magistrate may issue his or their warrant for the arrest of such person; and he shall thereupon be brought before the Justice, Justices or Police Magistrate, and if he refuses to be sworn, or to affirm, or to answer any question touching the case, he may be committed to the Common Gaol of the County, there to remain until he consents to be sworn, or affirm, and to answer.

103. Any person summoned as a party to, or as a witness in, any proceeding under this Act, may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts