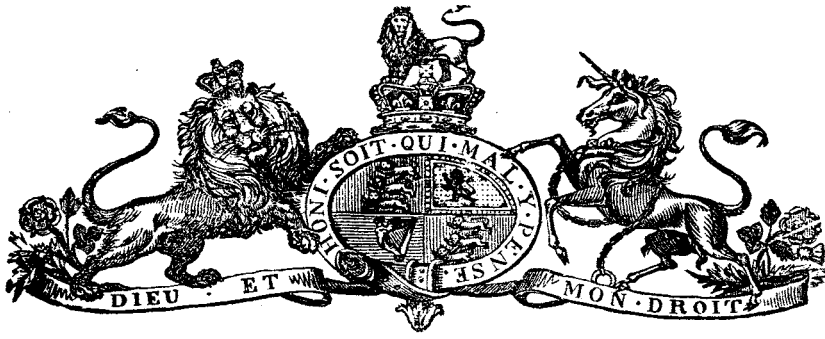


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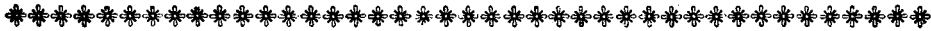


1880.

ANNO QUADRAGESIMO-QUARTO

VICTORIÆ REGINÆ,

No. 23.



AN ACT to make provision for the Sale of A.D. 1880.
Food and Drugs in a pure state.
[1 November, 1880.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 In this Act, unless the context otherwise requires—

Interpretation.

“Food” shall include every article used for food or drink by man, other than drugs or water :

“Drug” shall include medicine for internal or external use :

“District” includes the City of *Hobart Town*, the Town of *Launceston*, every Rural Municipality, and every Municipal District not being a Rural Municipality :

“Municipality” includes the City of *Hobart Town*, the Town of *Launceston*, and every Rural Municipality.

Description of Offences.

2 No person shall mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any article of food with any ingredient or material so as to render the article injurious to health, with intent that the same may be sold in that state, and no person shall sell any such article so mixed, coloured, stained, or powdered, under

Prohibition of the mixing of injurious ingredients, and of selling the same.

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a penalty in each case not exceeding Fifty Pounds for the first offence; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding Six Months with hard labour.

Prohibition of the mixing of drugs with injurious ingredients, and of selling the same.

3 No person shall, except for the purpose of compounding as hereinafter described, mix, colour, stain, or powder, or order or permit any other person to mix, colour, stain, or powder, any drug with any ingredient or material so as to affect injuriously the quality or potency of such drug, with intent that the same may be sold in that state, and no person shall sell any such drug so mixed, coloured, stained, or powdered, under the same penalty in each case respectively as in the preceding section for a first and subsequent offence.

Exemption in case of proof of absence of knowledge.

4 Provided that no person shall be liable to be convicted under either of the two last foregoing sections of this Act, in respect of the sale of any article of food, or of any drug, if he shows to the satisfaction of the Justices or Court before whom he is charged that he did not know of the article of food or drug sold by him being so mixed, coloured, stained, or powdered as in either of those sections mentioned, and that he could not with reasonable diligence have obtained that knowledge.

Prohibition of the sale of articles of food and of drugs not of the proper nature, substance, and quality.

5 No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty not exceeding Twenty Pounds: Provided that an offence shall not be deemed to be committed under this section in the following cases; that is to say,—

1. Where any matter or ingredient not injurious to health has been added to the food or drug because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight, or measure of the food or drug, or conceal the inferior quality thereof:
2. Where the drug or food is a proprietary medicine or is the subject of a patent in force, and is supplied in the state required by the specification of the patent:
3. Where the food or drug is compounded as in this Act mentioned:
4. Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation.

Reduction allowed to the extent of 25 degrees under proof for brandy, whisky, or rum, and 35 degrees for gin.

6 In determining whether an offence has been committed under the last preceding section of this Act by selling, to the prejudice of the purchaser, spirits not adulterated otherwise than by the admixture of water, it shall be a good defence to prove that such admixture has not reduced the spirit more than Twenty-five degrees under proof for brandy, whisky, or rum, or Thirty-five degrees under proof for gin.

Provision for the sale of compounded articles of food and compounded drugs.

7 No person shall sell any compound article of food, or compounded drug, which is not composed of ingredients in accordance with the demand of the purchaser, under a penalty not exceeding Twenty Pounds

Protection from offences by giving of label.

8 Provided that no person shall be guilty of any such offence as aforesaid in respect of the sale of an article of food or a drug mixed with any matter or ingredient not injurious to health, and not intended

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fraudulently to increase its bulk, weight, or measure, or conceal its inferior quality, if at the time of delivering such article or drug he shall supply to the person receiving the same a notice, by a label distinctly and legibly written or printed on or with the article or drug, to the effect that the same is mixed. A.D. 1880.

9 No person shall, with the intent that the same may be sold in its altered state without notice, abstract from an article of food any part of it so as to affect injuriously its quality, substance, or nature, and no person shall sell any article so altered without making disclosure of the alteration, under a penalty in each case not exceeding Twenty Pounds. Prohibition of the abstraction of any part of an article of food before sale, and selling without notice.

10 The Municipal Council of any Municipality may, as soon as convenient after the passing of this Act, appoint some person possessing competent knowledge, skill, and experience as Analyst of all articles of food and drugs sold within such Municipality, and shall pay to such Analyst such remuneration as shall be mutually agreed upon, and may remove him as such Council shall deem proper; but such appointments and removals shall at all times be subject to the approval of the Governor in Council, who may require satisfactory proof of competency to be supplied to him, and may give such approval absolutely or with modifications as to the period of the appointment, and removal, or otherwise. Appointment of Analysts.

The Governor in Council may as soon as convenient, after the passing of this Act, appoint some person possessing competent knowledge, skill, and experience as Analyst of all articles of food and drugs sold within any District not being a Municipality, and shall pay to such Analyst such remuneration as Parliament may provide for that purpose, and may remove him, as the Governor in Council shall deem proper.

11 The Municipal Council of any Municipality may agree that the Analyst appointed by any neighbouring Municipality, or by the Governor in Council, shall act for their Municipality during such time as the said Council shall think proper, and shall make due provision for the payment of his remuneration, and, if such Analyst shall consent, he shall during such time be the Analyst for such Municipality for the purposes of this Act. Municipal Council of a Municipality may engage the Analyst of another Municipality.

12 Any purchaser of an article of food, or of a drug, in any District where there is any Analyst appointed under this Act shall be entitled, on payment to such Analyst of a sum not exceeding Ten Shillings and Sixpence, or if there be no such Analyst then acting for such District, to the Analyst of another District of such sum as may be agreed upon between such person and the Analyst, to have such article analysed by such Analyst, and to receive from him a certificate of the result of his analysis. Power to purchaser of an article of food to have it analysed.

13 Any Medical Officer of Health, or Inspector of Nuisances, or any Police Constable, under the direction and at the cost of the authority appointing such officer, inspector, or constable, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of this Act, shall submit the same to be analysed by the Analyst of the District for which he acts, or if there be no such Analyst then acting for such District, to the Analyst of another District, and such Analyst shall, upon receiving payment as is provided in Officer named to obtain a sample of food or drug to submit to Analyst.

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the last section, with all convenient speed analyse the same and give a certificate to such officer wherein he shall specify the result of the analysis.

Officer, inspector, or constable, may obtain a sample of milk at the place of delivery to submit to Analyst.

14 Any Medical Officer of Health, or Inspector of Nuisances, or any Police Constable, under the direction and at the cost of the authority appointing such officer, inspector, or constable, may procure at the place of delivery any sample of any milk in course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk; and such officer, inspector, or constable, if he suspect the same to have been sold contrary to any of the provisions of this Act, shall submit the same to be analysed, and the same shall be analysed, and proceedings shall be taken, and penalties on conviction be enforced in like manner in all respects as if such officer, inspector, or constable had purchased the same from the seller or consignor under the last preceding section of this Act.

Penalty for refusal to give milk for analysis.

15 The seller, or consignor, or any person or persons entrusted by him for the time being with the charge of such milk, if he shall refuse to allow such officer, inspector, or constable to take the quantity which such officer, inspector, or constable shall require for the purpose of analysis, shall be liable to a penalty not exceeding Ten Pounds.

Provision for dealing with the sample when purchased.

16 The person purchasing any article with the intention of submitting the same to analysis shall, after the purchase shall have been completed, forthwith notify to the seller or his agent selling the article, his intention to have the same analysed by the public Analyst, and shall offer to divide the article into three parts, to be then and there separated, and each part to be marked and sealed or fastened up in such manner as its nature will permit, and shall, if required to do so, proceed accordingly and shall deliver one of the parts to the seller or his agent.

He shall afterwards retain one of the said parts for future comparison and submit the third part, if he deems it right to have the article analysed, to the Analyst.

Provision when sample is not divided.

17 If the seller or his agent do not accept the offer of the purchaser to divide the article purchased in his presence, the Analyst receiving the article for analysis shall divide the same into two parts, and shall seal or fasten up one of those parts and shall cause it to be delivered, either upon receipt of the sample or when he supplies his certificate to the purchaser, who shall retain the same for production in case proceedings shall afterwards be taken in the matter.

Provision for sending article to the Analyst through the Post Office.

18 If the Analyst do not reside within two miles of the residence of the person requiring the article to be analysed, such article may be forwarded to the Analyst through the Post Office as a registered letter, subject to any regulations which the Governor in Council may make in reference to the carrying and delivery of such article, and the charge for the postage of such article shall be deemed one of the charges of this Act, or of the prosecution, as the case may be.

Person refusing to sell any article to any officer liable to penalty.

19 If any such officer, inspector, or constable, as above described, shall apply to purchase any article of food or any drug exposed to sale or on sale by retail on any premises or in any shop or stores, and shall tender the price for the quantity which he shall require for the purpose

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of analysis, not being more than shall be reasonably requisite, and the person exposing the same for sale shall refuse to sell the same to such officer, inspector, or constable, such person shall be liable to a penalty not exceeding Ten Pounds. A.D. 1880.

Any street or open place of public resort shall be held to come within the meaning of this Section. As to sale in streets.

20 The certificate of the analysis shall be in the form set forth in the Schedule, or to the like effect. Form of the certificate.

21 Every Analyst appointed under this Act shall report quarterly to the Municipal Council appointing him the number of articles analysed by him under this Act during the foregoing quarter, and shall specify the result of each analysis and the sum paid to him in respect thereof, and such report shall be presented at the next meeting of the Council appointing such Analyst; and every such Council shall annually transmit to the Colonial Secretary at such time and in such form as the Governor in Council shall direct a certified copy of such quarterly report. Quarterly report of the Analyst.

Every Analyst appointed by the Governor in Council under this Act shall make every such quarterly report as is hereinbefore mentioned to the Colonial Secretary.

Proceedings against Offenders.

22 When the Analyst, having analysed any article, shall have given his certificate of the result, from which it may appear that an offence against some one of the provisions of this Act has been committed, the person causing the analysis to be made may take proceedings for the recovery of the penalty herein imposed for such offence before any Two Justices of the Peace in the mode prescribed by *The Magistrates Summary Procedure Act*. Proceedings against offenders.

Every penalty herein imposed may be reduced or mitigated according to the judgment of the Justices.

23 In all prosecutions under this Act, and notwithstanding anything contained in *The Magistrates Summary Procedure Act*, the summons to appear before the Justices shall be served upon the person charged with violating the provisions of this Act within a reasonable time, and in the case of a perishable article not exceeding Twenty-eight days from the time of the purchase from such person for test purposes of the food or drug, for the sale of which in contravention to the terms of this Act the seller is rendered liable to prosecution, and particulars of the offence or offences against this Act of which the seller is accused, and also the name of the prosecutor, shall be stated on the summons, and the summons shall not be made returnable in a less time than Seven days from the day it is served upon the person summoned. Special provision as to time for proceedings.

24 At the hearing of the information in such proceeding the production of the certificate of the Analyst shall be sufficient evidence of the facts therein stated, unless the defendant shall require that the Analyst shall be called as a witness, and the parts of the articles retained by the person who purchased the article shall be produced; and the defendant may, if he think fit, tender himself and his wife to be examined on his behalf, and he or she shall, if he so desire, be examined accordingly. Certificate of Analyst *prima facie* evidence for the prosecution, but Analyst to be called if required. Defendant and his wife may be examined.

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In sale of adulterated articles no defence to allege purchase for analysis.

25 In any prosecution under the provisions of this Act for selling to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, it shall be no defence to any such prosecution to allege that the purchaser, having bought only for analysis, was not prejudiced by such sale. Neither shall it be a good defence to prove that the article of food or drug in question, though defective in nature, or in substance, or in quality, was not defective in all three respects.

Power to Justices to have articles of food or drug analysed.

26 The Justices before whom any information may be heard, or the Court before whom any appeal may be heard, under this Act may, upon the request of either party, in their discretion, cause any article of food or drug to be sent to some person other than the Analyst who shall have made any analysis of such article of food or drug, and such person shall thereupon make the analysis, and give a certificate to such Justices of the result of the analysis; and the expense of such analysis shall be paid by the complainant or the defendant as the Justices may by order direct.

Appeal.

27 Any person aggrieved by any summary conviction under this Act may appeal therefrom in the manner directed by *The Appeals Regulation Act*.

In any prosecution defendant to prove that he is protected by exemption or provision.

28 In any prosecution under this Act, where the fact of an article having been sold in a mixed state has been proved, if the defendant shall desire to rely upon any exemption or provision contained in this Act, it shall be incumbent on him to prove the same.

Defendant to be discharged if he prove that he bought the article in the same state as sold, and with a warranty. Costs.

29 If the defendant in any prosecution under this Act prove to the satisfaction of the Justices or Court that he had purchased the article in question as the same in nature, substance, and quality as that demanded of him by the prosecutor and with a written warranty to that effect, that he had no reason to believe at the time when he sold it that the article was otherwise, and that he sold it in the same state as when he purchased it, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor, unless he shall have given due notice to him that he will rely on the above defence.

Punishment for forging certificate or warranty.

30 Any person who shall forge or shall utter, knowing it to be forged for the purposes of this Act, any certificate or any writing purporting to contain a warranty, shall be guilty of a misdemeanor and be punishable on conviction by imprisonment for a term of not exceeding Two years :

For wilful mis-application of warranty.

Every person who shall wilfully apply to an article of food or a drug in any proceedings under this Act a certificate or warranty given in relation to any other article or drug shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds :

For false warranty.

Every person who shall give a false warranty in writing to any purchaser in respect of an article of food or a drug sold by him as principal or agent, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds :

False label.

And every person who shall wilfully give a label with any article sold by him which shall falsely describe the article sold, shall be guilty of an offence under this Act, and be liable to a penalty not exceeding Twenty Pounds.

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31 Nothing in this Act contained shall affect the power of the Attorney-General to proceed by information, or take away any other remedy against any offender under this Act, or in any way interfere with contracts and bargains between individuals, and the rights and remedies belonging thereto.

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Proceedings by Attorney-General and contracts not to be affected.

Provided that, in any action brought by any person for a breach of contract on the sale of any article of food, or of any drug, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he may have been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto, if he prove that the article or drug, the subject of such conviction, was sold to him as for an article or drug of the same nature, substance, and quality as that which was demanded of him, and that he purchased it not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased it; the defendant in such action being nevertheless at liberty to prove that the conviction was wrongful, or that the amount of costs awarded or claimed was unreasonable.

In this section the expression "Attorney-General" includes an officer appointed under the Fifth Section of the Act of the Imperial Parliament of the 9th *Geo.* 4, Chapter 83, for the prosecution of crimes, misdemeanors, and offences cognizable in the Supreme Court.

Expenses of executing the Act.

32 The expenses of executing this Act shall be paid in every Municipality out of the Municipal Fund of such Municipality; and in every District not being a Municipality out of such moneys as Parliament provides for that purpose.

Expenses of executing Act.

Special Provision as to Tea.

33 From and after the First day of *January*, One thousand eight hundred and eighty-one, all Tea imported as merchandise into and landed at any Port in this Colony shall be subject to examination by persons to be appointed by the Governor in Council for the inspection and analysis thereof, for which purpose samples may, when deemed necessary by such Inspectors, be taken and with all convenient speed be examined by the Analysts to be so appointed; and if, upon such analysis, the same shall be found to be mixed with other substances, or exhausted tea, the same shall not be delivered unless with the sanction of the Colonial Treasurer, and on such terms and conditions as he shall see fit to direct, either for home consumption, or for use as ships' stores, or for exportation; but if on such inspection and analysis it shall appear that such tea is, in the opinion of the Analyst, unfit for human food, the same shall be forfeited and destroyed, or otherwise disposed of in such manner as the said Treasurer may direct.

Tea to be examined on importation.

Tea to which the term "exhausted" is applied in this section shall mean and include any tea which has been deprived of its proper quality, strength, or virtue, by steeping, infusion, decoction, or other means.

Interpretation of "exhausted."

34 This Act shall commence on the First day of *January*, one thousand eight hundred and eighty-one.

Commencement of the Act.

35 This Act may be cited as "The Sale of Food and Drugs Act, 1881."

Title of the Act.

