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No. 121

4th Session, 8th Parliament, 29th Vict., 1866.

BILL.

An Act respecting the Inspection of Pot
and Pearl Ashes.

[No. 228 of 1866—1st Session.]

Hon. Mr. Atty. Genl. CARTER.

OPINION:

PRINTED BY HUNTER, ROSE & CO., SALLY ST.

An Act respecting the Inspection of Pot and Pearl Ashes.

WHEREAS it is expedient to alter and amend the laws at present in force in regard to the inspection of pot and pearl ashes in this Province; Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

1. On and after the day on which this Act shall come into operation, and enacted for the regulation of the inspection of pot and pearl ashes in this province, and the subjects, matters and things enacted and provided for in this Act, shall be and the same are hereby repealed, save and except that such Acts shall continue in full force for the recovery of any penalty sought to be recovered for infraction of any provisions thereof, and this Act is substituted in lieu thereof.

2. Every person who, at the date at which this Act shall come into operation, shall hold the office of a pot and pearl ash inspector, shall be considered as if he had been appointed by virtue of this Act, and shall immediately take and subscribe the oath hereinafter required to be taken by inspectors appointed by virtue of this Act, and shall be in all respects governed by and subject to the provisions of this Act, save and except that every such person then holding such office shall not be required to undergo the examination before the Board of Examiners hereinafter in that behalf provided.

BOARD OF EXAMINERS OF INSPECTORS.

3. The Council of the Board of Trade in each of the cities of Quebec, Montreal, Toronto and Kingston, and the municipal authorities in other places where inspectors may be required for the purposes of this Act, may appoint a Board of Examiners of applicants for the office of inspector of pot and pearl ashes, and from time to time remove such examiners, and appoint others, in their stead, and such Board of Examiners shall, in each of the cities of Quebec and Montreal, consist of five, and in other places of three fit and proper and skilful persons, resident in the place, or in the immediate vicinity of the place for which they are respectively to act, and each examiner shall, before acting as such, take and subscribe the following oath before any Justice of the Peace for the place in which such examiner resides, and such Justice shall administer the same in the words following:

“I, A. B., do swear that I will not, directly or indirectly, personally or by means of any person or persons in my behalf, receive any fee, reward or gratuity whatever by reason of any function of my office of examiner of applicants for the office of inspector of pot and pearl ashes, and that I will therein well and truly in all things act without partiality, favor or affection, and to the best of my knowledge and understanding. So help me, God.”

Which oath shall remain in the custody of the Board of Trade, or chief municipal officer.

Examiners may associate skillful persons with them on examinations, &c.

4. The Board of Examiners to be constituted as aforesaid shall, before proceeding to the examination of any such person, require the attendance of two or more persons of great experience and practice in the manufacture or inspection of pot and pearl ashes; and the said Board, in their discretion, may permit any other persons to be also present at such examination; and every person so required or permitted to attend, may in the presence of the said Board, propose questions to the person then under examination, touching his knowledge as to the properties and qualities of pot and pearl ashes.

APPOINTMENT OF INSPECTORS.

The Mayor and chief municipal officers to appoint Inspectors.

5. The mayor of each of the said cities of Quebec, Montreal, Toronto and Kingston, and the chief municipal officer of any other place, as aforesaid, shall from time to time, by an instrument under his hand, and the seal of the corporation, nominate and appoint an inspector, or inspectors, of pot and pearl ashes for such city and other place as aforesaid, where an inspector may be required; and from time to time on a representation to the said mayor or chief municipal officer, by the Council of the Board of Trade of such city or place, or of three or more municipal officers, where there is not then a Board of Trade (but not otherwise), remove any such inspector, and appoint another in his stead; but no person shall be appointed as an inspector who has not previously to his appointment, undergone an examination before the Board of Examiners for the same place, as to fitness, character and capacity, in the manner hereinbefore provided; nor shall any person be appointed an inspector of pot and pearl ashes, unless recommended as such by the Board of Examiners, or a majority of them, pursuant to such an examination, nor shall an inspector be appointed in any place in which there shall be a Board of Trade except on the requisition of the Council of such Board, with which the mayor or chief municipal officer shall be bound to comply.

None but persons having undergone examinations to be appointed.

What requisition.

Inspectors to give security.

6. Before any inspector shall act as such, he shall furnish two good and sufficient securities, or if preferred by the Council of the Board of Trade, or the chief municipal authorities in places where no Board of Trade exists, a guarantee policy by the company doing a guarantee business in this province, and approved by the said Council, which surety or sureties shall be bound with himself for the due performance of the duties of his office, in the sum of five thousand dollars each, if such inspector be appointed for Montreal, and in the sum of one thousand dollars each if such inspector be appointed for the city of Quebec, Toronto or Kingston, or for any other place for which an inspector may be appointed; and such sureties shall be subject to approval by the Council of the Board of Trade, where such Board exists, or by the chief municipal authority by whom such inspector is appointed, and a bond shall be executed to Her Majesty, in the form used with regard to the sureties of two persons appointed to offices of trust in this province, and such bond shall avail to the Crown, and to all persons aggrieved by any breach of the conditions thereof.

Approval of such securities.

Bond.

Bond, where kept; shall be open to inspection.

7. The said bond shall be made and kept at the office of the clerk of the corporation of the city or place for which such inspector is appointed, and every person shall be entitled to have communication and copy of such bond, at such clerk's office, upon payment of twenty cents for each communication, and of fifty cents for each copy.

Persons appointed.

8. Every inspector of pot and pearl ashes shall, before he enters upon the duties of his office, take and subscribe an oath before the

mayor or chief municipal officer of the place for which he is appointed, who shall administer the same in the words following :

Inspectors to take oath of office. Oath.

"I, A. B., do hereby solemnly swear that I will faithfully, truly, and impartially, to the best of my judgment, skill and understanding, execute and perform the duties devolving upon me as an inspector of pot and pearl ashes; and that I will not, directly or indirectly, by myself or by any other person or persons whomsoever, manufacture, buy or sell any pot or pearl ashes, on my account or upon the account of any other person or persons whomsoever, while I continue such inspector.

10 So help me, God."

Which oath shall be recorded in the office of the clerk of the corporation of the city or place where the same shall be taken; and for recording such oath and for a certificate thereof, the clerk shall be entitled to the sum of fifty cents and no more, and shall give communication or copy of the original to any person applying for the same on payment of twenty-five cents for each communication, and fifty cents for each copy.

Recording oath. Fee for oath.

9. The inspector or inspectors of pot and pearl ashes, as aforesaid, wherever they may be appointed in this province, shall keep such a number of clerks and other employes as shall ensure a prompt and efficient discharge of the duties appertaining to their respective departments, and shall increase, or may diminish, such number from time to time, with the permission, or on the request in writing of the Council of the Board of Trade where such exists, or of the chief municipal officer in other places.

Inspectors bound to keep a sufficient staff of employes. Shall increase or diminish the same.

10. Whenever a vacancy occurs by death, resignation, or removal of an inspector of pot and pearl ashes for any place in this province where an inspector may be required for the purposes of this Act, or whenever it shall become necessary in the opinion of the Council of the Board of Trade (where such Board exists), or in other places, of the chief municipal officer, to appoint an additional inspector or inspectors, such vacancy shall be filled, and such additional appointment shall be made in manner and form as hereinafter provided.

Vacancy in office and additional appointments to be supplied or made as the case requires.

MODE OF INSPECTION AND CLASSIFICATION.

11. Every inspector, on proceeding to inspect any barrel of pot or pearl ashes, shall empty out the whole of the contents of the barrel, and shall correctly weigh the empty barrel, and mark on its head the tare thereof; he shall then carefully examine, try, and inspect, and sort the ashes into grades, qualities, or denominations, to be known as First, Second and Third sorts, determining the several sorts as follows:

Mode of Inspection.

40 First sort pot ash to contain seventy-five per cent. of pure alkali, at the least.

Qualities defined.

Second sort pot ash to contain sixty-five per cent. of pure alkali, at the least.

45 Third sort pot ash to contain fifty-five per cent. of pure alkali, at the least.

First sort pearl ash to contain sixty-five per cent. of pure alkali, at the least.

Second sort pearl ash to contain fifty-five per cent. of pure alkali, at the least.

50 Third sort pearl ash to contain forty-five per cent. of pure alkali, at the least.

12. Should the inspector discover that a small portion of the inferior quality ash had been packed in a barrel (which would otherwise have been first quality), he shall remove the inferior portion, and brand the

Inspectors not to condemn a barrel of ashes to 2nd or 3rd

quality, because of a small portion of inferior ash but shall remove the small portion.

barrel first sort; and in like manner with regard to lower grades, and the portion so removed shall be weighed, and a bill of the same given to the owner or agent, or he shall pack the same into a barrel of the same quality (if there be one) belonging to the same lot or owner.

How the portion removed is to be disposed of.

How barrels containing mixed qualities are to be inspected.

13. If a barrel be found to contain equal parts of first and second sorts, or second and third sorts, and the whole broken into small fragments, the inspector may brand the whole either second or third, as the particular case may be; but where it is at all practicable, he shall separate the qualities into barrels of corresponding grades belonging to the same lot and owner. If a barrel be found to contain equal parts of first, second and third qualities, he may brand the whole second sort.

Fraud in packing.

14. Should the inspector find packed in a barrel of ashes, or imbedded in a coaler or cake of ashes, any stone, brick, wood, iron or glass, or any other substance, apparently placed there with intent to defraud, he shall notify a Justice of the Peace in the place where such inspection is held, who shall cause the said barrel and its contents to be seized and confiscated to the public uses of the city or place wherein the same is found, and to be delivered over to the treasurer of such city or place for such uses.

The barrel to be seized and confiscated.

Packing.

15. The inspector shall repack the ashes into good and sufficient barrels, of the size and description hereinafter specified, and shall weigh each barrel, and mark on the head, with black, the weight and tare thereof.

Branding.

2. He shall brand in plain legible figures and letters, on each and every barrel of ashes by him inspected, the words "First sort," "Second sort," or "Third sort" pot or pearl ash, as the case may be, together with the year of such inspection, and also with his or their names, where more than one inspector is in office jointly.

What are unbrandable.

3. He shall mark the word "Unbrandable," numbers one, two, three, four and five, according to its strength, on every barrel which may be found to be so much adulterated with lime, salt, sand, &c., as not to admit of it being classed as first, second or third sort ash.

Crustings.

16. The inspector shall cause all the crustings or scrapings of pot and pearl ash (if any) to be collected, and deliver the same to the owner, or his agent (if he be present and demand it at the time of inspection); otherwise the inspector shall deduct the value of the same from his inspection charges against the ashes from which the crustings or scrapings were collected.

Public annual sale to be made of all pot and pearl ash crustings and scrapings

2. The inspector shall, by public advertisement of at least two weeks beforehand, call a public sale on the first Monday of every month of May, of all pot and pearl ash scrapings or crustings which may be collected during the ensuing year, and not delivered up to the owners; and the purchaser thereof shall be entitled to all the scrapings collected for one year from the date of such sale, and not delivered as aforesaid, at so much per hundred pounds as he may be adjudged to pay at the time of sale, and all credit given to owners of scrapings as aforesaid shall be at the price obtained at the public sale.

Inspectors to keep a book in which to enter the amount of all scrapings collected and credited. Inspection bills. Inspectors to deliver the

3. The inspector shall, in a book to be kept for that purpose, enter the amount of scrapings or crustings collected during each year, and also the amount credited to the owners on their inspection bills, and the quantity delivered to owners as aforesaid, and shall, when called upon by the Council of the Board of Trade or chief municipal officer aforesaid, where there is no such Council, furnish a statement of the same.

17. He shall also make and deliver a separate weigh note or bill of each quality of ashes, and shall deliver the barrels of ashes represented

by such weigh note or inspection bill, or any number of them, when whole or any portion of the bbls. on an inspection bill.

18. No pot or pearl ash shall be passed and inspected in barrels of any size or description other than the following:

Pot and pearl ashes in barrels constructed of oak, white ash, black ash, or elm timber; the said timber to be of the best description, and thoroughly seasoned, and the said barrels to be made perfectly tight, and at least two-thirds of the barrel to be covered with sound

10 oak, ash, hickory, blue beech, or elm hoops, and the whole to be of ample strength to sustain the wear and tear and usage required. All barrels supplied by the inspector shall be in strict conformity with the foregoing and succeeding description, and shall weigh at least eighty pounds if for pot ash, and at the least sixty-five pounds if for pearl ash.

15 All barrels for pot ash or pearl ash shall measure not less than thirty inches in length by twenty inches in diameter on either head, and not more than than thirty-two inches in length by twenty inches in diameter, on either head, and the chime thereof shall not exceed one inch; and the inspector shall reject all barrels not constructed according to the foregoing directions.

19. Whenever any dispute arises between any inspector, which word includes joint inspectors, if any, when used in this Act, and the owner or possessor of any pot or pearl ashes, with regard to the quality or weight thereof, or any other matter which may involve a breach of

25 the provisions of this Act, then, upon application to the Board of Examiners appointed under this Act, the said Board shall (if the dispute arise on the quality of any pot and pearl ash) appoint three persons of skill and integrity to forthwith examine and inspect such pot

and pearl ashes, according to the provisions of this Act, and report their decision as to the quality and condition thereof, under oath (which

30 oath shall be administered by the chairman of the said Board, who is empowered hereby to administer the same), and their determination, or that of a majority of them, shall be final and conclusive, whether approving or disapproving of the judgment of the inspector, who shall

35 immediately attend thereto, and brand every barrel of the quality directed by such determination, according to the provisions of this Act. And if the opinion of the inspector be thereby confirmed, the reasonable cost of re-examination to be ascertained by the said Board,

40 shall be paid by the owner or possessor of the said pot or pearl ash; if otherwise, by the inspector. Should the dispute arise from any other cause than in the quality of the ashes, the said Board shall have power to settle the same.

Disputes between the inspector and owners of ashes-how to be settled.

STORAGE, FEES, RETURNS.

20. In any place where there is an inspector appointed under this Act, the inspector or inspectors as aforesaid shall provide suitable and

45 convenient premises for the storage and inspection of pot and pearl ashes; and shall keep all barrels of ashes delivered to him or them for inspection, as long as they remain in his or their possession, in a dry

place, safe from injuries of weather or floods, and such premises, before they are occupied for such purposes, must be approved of by

50 the Council of the Board of Trade, where such Board exists or by the chief municipal officer where no such Board exists; and every inspector for contravening this section shall forfeit two dollars for every barrel not stored as aforesaid, and shall pay two dollars to the owner for every barrel, besides the actual damage, if any, sustained by the owner.

Inspector for the City of Montreal to keep ashes fully insured.

21. The inspector or inspectors for the city of Montreal, at all times, and at his or their own cost and charges, shall keep the ashes stored in the said premises insured to their full market value, the amount at no time to be less than two hundred thousand dollars, and the policies of insurance to be made in the name of the president of the Board of Trade in trust for the owners of the ashes, and the insurance companies or company to be approved of by the Council of the Board of Trade.

Remuneration for various services performed by inspectors.

22. For all the services to be performed as aforesaid, each inspector shall be entitled to charge the sum of six cents for every hundred pounds weight pot or pearl ashes by him so inspected, and fifteen cents per barrel, as and for cooperage and repairs on each barrel of pot or pearl ashes, (the said cooperage and repairs to include nails, and the chime hoops of the barrels), and the sum of twenty-five cents for every new head by him furnished; and for every new hoop by him furnished, (except the chime hoop) he may charge the sum of three cents, and for every new barrel by him furnished, he shall be entitled to make a charge of only its actual cost, and ten per cent. over and above its actual cost; and when called upon to fill up a barrel (after the same shall have been weighed and a bill issued) he shall be entitled to charge the sum of twenty-five cents for labour and re-cooperage, and the inspector for the city of Montreal shall be entitled to charge a sum not exceeding three cents per barrel as and for insurance on each and every barrel of pot and pearl ash sent to his or their store for inspection, and such insurance shall be considered as chargeable from the day such barrel is received into store, and the said ashes shall be insured from the period of such reception, but such rate shall cover all insurance as long as the said ashes remain stored in the said premises.

New barrels supplied by the inspector filling up barrels.

Fee chargeable by inspectors for insurance.

Storage fees.

23. The inspector shall be entitled to charge the sum of eight cents per barrel for the storage of each barrel of ashes, which remains stored with him as aforesaid more than ten days after the date of the inspection bill or weigh note, and five cents per barrel for each subsequent month they shall remain stored (reckoning the second month to commence forty days from and after the date of the inspection bill), but in no case shall any storage be paid or required, when the ashes shall not have remained stored as aforesaid during ten full days. All charges accruing to the inspector under this Act shall be payable by the owners of the ashes on delivery.

Inspector's duty in return for remuneration.

24. In consideration of such charges as aforesaid, the inspector or inspectors shall deliver all barrels when called for in good order, and shall be bound to have all ashes sent to him or them for inspection, inspected, and the inspection bills prepared for delivery, and the whole well and duly coopered, and ready for shipment within a period not exceeding the *third* day from the time the ashes are delivered to the inspection store (the day on which the ashes are received to be counted); and for any damage that may result to the owner of the ashes by reason of delay in delivery beyond the time specified, the inspector shall be responsible.

Ashes must be ready for delivery when called for.

Inspectors to make returns of the business of their offices.

25. The inspector or inspectors as aforesaid, shall, from time to time, make returns of the business of his or their office, to the Council of the Board of Trade, where such exists, or to the chief municipal officer in other places, whenever called upon in writing to do so.

OFFENCES AND PENALTIES.

Offences and Penalties.

26. Every inspector or joint inspector who during his continuance in office, is directly or indirectly concerned in the buying or selling of

ashes, or participates in any transaction or profit arising therefrom, other than the fees or emoluments or privileges granted by this Act, or who permits any person employed by him to retain or keep any pot or pearl ashes, or who brands knowingly any barrel of ashes otherwise than as directed by this Act, or who does not conform with all the provisions of this Act required of him, shall for every such offence incur a penalty not exceeding four hundred dollars, and be thereafter disqualified from holding the office of inspector or joint inspector; and any inspector or clerk, or other person who makes, or causes to be made a false or fraudulent bill of ashes, shall be guilty of felony, and shall be punishable by imprisonment with hard labour in the provincial penitentiary for any term not exceeding seven years.

27. The inspector or joint inspectors as aforesaid shall keep his or their storehouse open for the reception and delivery of ashes on every lawful day between the hours of six o'clock in the morning and six in the evening, and shall within two hours after the opening of the store, proceed to inspect any pot or pearl ashes when required to do so by the owner, or his agent (unless he be then engaged in inspecting), and for every failure on his part to comply with such requisition, shall forfeit the sum of twenty dollars to the use of the person so delayed.

When the store is to be opened.

Inspector bound to act when called upon.

Every person who counterfeits any of the aforesaid brand marks of any inspector of pot and pearl ashes, or without the authority of such inspector, impresses or brands the same, or any other mark purporting to be the mark of any inspector appointed under this Act, or who brands or marks the name of any other manufacturer of pot or pearl ashes, or any barrel containing pot or pearl ashes, or who empties any barrel of pot or pearl ashes branded as aforesaid by an inspector or manufacturer, in order to put therein other pot or pearl ashes for sale or exportation, without first cutting out the said brands or marks, or who fraudulently packs in a barrel any other substance than the pot or pearl ashes packed in the same by the inspector or manufacturer; or any person in the employ of an inspector or manufacturer of ashes who hires or loans out the brands or marks of his employer to any place whatever, or is privy to any fraudulent evasion of this Act, shall for every such offence incur a penalty of not less than two hundred, or more than four hundred dollars.

Penalty for counterfeiting any brand of any inspector or manufacturer.

28. Nothing in this Act shall prevent any person from exporting pot or pearl ashes without inspection.

Ashes may be exported without inspection.

29. Every penalty and forfeiture imposed by this Act shall be recoverable by any inspector, or any other person suing for the same, and if the same shall not exceed forty dollars, it may be recovered in a summary way, in any court having civil jurisdiction to the amount, or before any one Justice of the Peace, and if the same exceed forty dollars then the same shall be recoverable by any inspector or any other person suing for the same, in any court having civil jurisdiction to the amount, and every penalty or forfeiture imposed by this Act shall on failure of payment be levied by execution, as in the case of debt; and one moiety of every such penalty and forfeiture, when recovered, shall (except when herein otherwise provided) be immediately paid into the hands of the treasurer of the corporation of the city or place wherein the action or prosecution is brought, for the public uses of the said city or place respectively, and the other moiety shall belong to the person suing for the same, unless the action be brought by an officer of such corporation, in which case the whole shall belong to the corporation.

Recovery and application of fines and forfeitures under this Act.

Limitation of actions for things done under this Act.

Defendant may plead the general issue.

Defendant may have double costs.

31. If any suit or action be brought against any person, for any forfeiture or penalty, under the provisions of this Act, such action or suit shall be commenced within six months next after the matter or thing done, and not afterwards, and the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial therein, and if afterwards, judgment is given for the defendant, or the plaintiff be non-suited, or discontinue his action after the defendant shall have appeared, then such defendant shall have double costs against such plaintiff, and the like remedy for the same, as any defendant hath in other cases to recover costs at law.

Board of Trade to examine into complaints against inspectors.

32. The Council of the Board of Trade at any place where an inspector may be appointed under this Act (or in the absence of a Board of Trade, the chief municipal officer) may examine into any complaint made against such inspector or joint inspector of pot and pearl ashes for neglect or improper performance of any of his or their duties; and if the Council of the said Board of Trade decide that such complaints are well founded, and that such inspector or joint inspector ought to be removed from office, they may notify the mayor or other head of the municipality, who shall thereupon, within thirty days after such notification (under penalty of five hundred dollars to be incurred by him for neglect to do so) remove such inspector and appoint another in his stead, upon the requisition of the said Council.