

III. And be it enacted, that for each and every offence, for which by any of the said Acts, the offender may on conviction be punished by imprisonment for such term as the Court shall award, or for any term exceeding two years, such imprisonment, if awarded for a longer term than two years, shall be in the Provincial Penitentiary. Other cases in which offenders may be so committed.

IV. And be it enacted, that for each and every offence for which by any of the said Acts or by any other Act or Law, the offender might, if this Act had not been passed, have been punished by transportation beyond Seas, such offender may, if convicted after the passing of this Act, be punished by imprisonment in the Provincial Penitentiary for any term for which he might have been transported beyond Seas if this Act had not been passed, or by imprisonment for life, if without this Act he might have been punished by transportation for life. Instead of being punished by transportation, offenders may be imprisoned for a like term in the Penitentiary.

V. And whereas it is necessary to determine the punishment to be inflicted upon certain offenders, not provided for by the said before recited Act, intituled *An Act for consolidating and amending the Statutes in this province relating to offences against the person*, be it enacted that where any person shall be charged with and convicted of any assault, with intent to commit rape, or of any assault with intent to commit the abominable crime of buggery, either with mankind or with any animal, the Court in any such case may sentence the offender to be imprisoned at hard labour in the Provincial Penitentiary for any term not exceeding three years, or to be imprisoned in any other Prison or place of confinement for any term not exceeding two years. Assault with intent to commit rape or abominable crimes, how punished.

C A P. V I.

An Act to regulate the Inspection of Pot and Pearl Ashes.

[12th October, 1842.]

WHEREAS by the Laws now in force in this Province, the Inspection of Pot and Pearl Ashes intended for Exportation is compulsory, and it is expedient that it should cease to be so and become optional with the parties interested, and that the Laws relative to such inspection should be consolidated and made common to the whole Province; Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled *An Act* Preamble.

D

Certain Acts
repealed.

Act to Re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada, and it is hereby enacted by the authority of the same, that upon, from and after the day on which this Act shall come into force, the Act made and passed by the Legislature of the late Province of Lower Canada, in the ninth year of the Reign of His late Majesty King George the Fourth, intituled *An Act to suspend for a limited time, certain Acts therein mentioned, and to regulate in a better manner the Inspection of Pot and Pearl Ashes*, and the Ordinance of the Legislature of the late Province of Lower Canada, made and passed in the second year of Her Majesty's Reign, and intituled *An Ordinance to revive a certain Act therein mentioned, and to make better provision with regard to the Inspection of Pot and Pearl Ashes*, by which the said Act was revived, amended and continued, shall be and are hereby repealed; but nothing herein contained shall revive any Act or Law repealed or suspended by the said Act or Ordinance, but such Acts and Laws, and all other Acts or Ordinances or Laws, in force in either section of the Province when this Act shall come into operation, relating to the Inspection, storing and branding of Pot or Pearl Ashes, and the appointment and compensation of Inspectors, shall be, and are hereby repealed.

Description
of Barrels.

II. And be it enacted, that from and after the coming into force of this Act, no Pot or Pearl Ashes shall be inspected in barrels of any other size or description than the following, that is to say: in water-tight barrels of not more than thirty-two inches in length, by twenty-two inches in diameter on either head, nor less than thirty inches in length by twenty inches in diameter on either head, and the chime whereof shall not exceed one inch—which barrels shall be made of the best seasoned white oak or ash timber, and well and completely hooped, with at least fourteen good white ash, hickory or oak hoops; the staves to be of such thickness as to tare as nearly as possible fourteen pounds to every one hundred, and twelve pounds of the gross weight of such barrel when filled, for which tare a corresponding allowance, in no instance less than fourteen pounds for every one hundred and twelve pounds, shall in all cases be made by the seller of Pot and Pearl Ashes, to the purchaser thereof.

Tare.

Former Com-
missions re-
voked.

III. And be it enacted, that from and after the coming into force of this Act, all Licences or Commissions heretofore issued for the appointment of any Inspector or Inspectors of Pot or Pearl Ashes, in this Province, shall be and the same are hereby revoked and rendered null and void.

Board of Ex-
aminers. how
appointed, &c.

IV. And be it enacted, that from and after the coming into force of this Act, it shall be lawful for the Board of Trade in the Cities of Quebec, Montreal and Toronto, and in the Town of Kingston, respectively, and for the Municipal Authorities in other places where Inspectors may be required for the purposes of this Act,

Act to appoint a Board of Examiners of applicants for the office of Inspector of Pot and Pearl Ashes, and from time to time to remove such Examiners and appoint others in their stead ; and such Board of Examiners shall in the Cities of Quebec and Montreal, respectively, consist of five, and in other places of three, fit, proper and skilful persons, resident in the place or in the immediate vicinity of the place for which they are respectively to act ; and such Examiners shall, before acting as such, severally take and subscribe the following oath, before any one of Her Majesty's Justices assigned to keep the peace within the District in which such Examiners shall respectively reside, and such Justice is hereby required and authorized to administer the same : " I, A. B. do swear that I will not, directly or indirectly, personally or by means of any person or persons on my behalf, receive any fee, reward or gratuity whatever, by reason of any function of my office of Examiner, and that I will therein well and truly, in all things, act without partiality, favour or affection, and to the best of my knowledge and understanding :—So help me God ! "

Oath of Office.

V. And be it enacted, that the Mayor of the said City of Quebec, Montreal or Toronto, or of the Town of Kingston, respectively, for the time being, and the Warden or Chief Municipal Officer of any other place as aforesaid, for the time being, shall and may, from time to time, by an instrument under his hand and the seal of the Corporation, nominate and appoint an Inspector of Pot and Pearl Ashes for each of the said Cities, Towns and other places as aforesaid, and may, from time to time, remove any such Inspector, and appoint another in his stead : and no person shall be appointed as such Inspector, who shall not previously to his appointment as such undergo an examination before the Board of Examiners for the same place, as to fitness, character and capacity, in the manner hereinafter provided ; nor shall any person be so appointed as Inspector of Pot and Pearl Ashes unless approved of and recommended as such by the Board of Examiners or a majority of them, pursuant to such examination ; nor in any place in which there shall be a Board of Trade, except on the requisition of such Board, with which the Mayor or Chief Municipal Officer shall be bound to comply ; and before any Inspector shall act as such, he shall furnish two good and sufficient sureties, jointly and severally with himself, for the due performance of the duties of his office, in the sum of three thousand pounds currency, if such Inspector be appointed for Montreal, and in the sum of two hundred and fifty pounds currency, if such Inspector be appointed for the City of Quebec or Toronto, or for any other place for which an Inspector may be appointed ; and such sureties shall be approved by the Mayor or Warden, or other Chief Municipal Authority by whom such Inspector shall have been appointed, and a Bond shall be executed to Her Majesty, Her Heirs and Successors in the form used with regard to the sureties of persons appointed to offices of trust in this Province ; and such Board shall avail

Inspectors how appointed.

Inspectors to give security.

to

to the Crown and to all persons whomsoever who shall or may be aggrieved by any breach of the conditions thereof, and no such Inspector shall allow any person whomsoever to act for him about the duties of his office, excepting only his sworn assistant or assistants to be appointed in the manner hereinafter provided.

Bond where kept.

VI. And be it enacted, that the Bond or Suretyship which shall be made or executed by such Inspector and his Sureties, by virtue of this Act, shall be made and shall be kept at the office of the Clerk of the Corporation of the City or Town, or place for which such Inspector shall be appointed ; and every person shall be entitled to have communication and copy of any such Bond or Suretyship at such Clerk's office upon payment of one shilling currency, for each communication, and of two shillings and six pence currency, for each copy.

Board of Examiners may authorise competent persons to sit with them.

VII. Provided always, and be it enacted, that the Board of Examiners to be constituted as aforesaid shall be, and they are hereby authorised and required before proceeding to the examination of any person or persons who may hereafter be desirous of being appointed an Inspector of Pot and Pearl Ashes as aforesaid, to require the attendance of two or more persons of the greatest experience and practice in the manufacture or inspection of Pot and Pearl Ashes ; and the said Board in their discretion are also hereby further authorised to permit any other person or persons to be also present at the said examination ; and each and every of the said persons so required or permitted to attend may in the presence of the said Board, propose questions to the person or persons then under examination, touching and respecting his or their knowledge as to the properties and qualities of Pot and Pearl Ashes.

Inspectors to take an Oath of Office.

VIII. And be it enacted, that each person examined, approved and recommended as aforesaid, shall, if appointed an Inspector of Pot and Pearl Ashes, before he shall act as such, take and subscribe an oath before the Mayor, Warden or Chief Municipal Officer of the place for which he shall be appointed (which Mayor, Warden or Chief Municipal Officer is hereby required and authorised to administer the same,) in the words following, to wit : " I, A. B. do solemnly swear, that I will " faithfully, truly and impartially, to the best of my judgment, skill and understand- " ing, do and perform the office of an Inspector of Pot and Pearl Ashes, according " to the true intent and meaning of an Act of the Legislature of this Province, inti- " tuled *An Act to regulate the Inspection 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 ac- " count of any other person or persons whomsoever, during the time I shall continue " such Inspector :—So help me God." Which oath shall be recorded in the Office of the Clerk of the Corporation of the City, Town, or place where the same shall be

The Oath.

Oath how recorded.

be taken : and for recording such oath, and for a certificate thereof the Clerk shall be entitled to demand and have the sum of two shillings and six pence currency, and no more, and shall give communication of the original to any person who shall apply for the same, on payment of one shilling currency, for each such communication, and two shillings and six pence currency for each copy.

IX. Provided always, and be it enacted, that any person who at the time this Act shall come into force shall hold the office of Inspector of Pot and Pearl Ashes for any place within this Province, shall on his application to that effect immediately after the said time, be re-appointed as Inspector under this Act by the Mayor or Chief Municipal Officer of the place in which he shall have acted as Inspector, without any new examination or any intervention of the Board of Trade ; and any person who at the said time shall hold the office of Assistant Inspector in the City of Montreal, shall on his application to the Inspector, immediately after the said time, be re-appointed Assistant Inspector for the said City without any new examination or any intervention of the said Board : any thing in this Act to the contrary notwithstanding ; but such Inspectors and Assistant Inspectors shall after such re-appointment be removeable, and shall give security, and shall be bound by all the other provisions of this Act, in the same manner as other Inspectors or Assistant Inspectors appointed under the authority thereof.

Present Inspectors to be re-appointed on their application.

Present Assistant Inspectors to be re-appointed on their application.

X. And be it enacted, that it shall be the duty of every such Inspector, on proceeding to inspect any Pot or Pearl Ashes, to empty the whole of the Pot and Pearl Ashes out of the barrels, and if necessary to scrape the barrels and the cakes of ashes, and carefully to examine, try and inspect and sort the same into three different sorts or qualities, to be denominated *First Sort*, *Second Sort*, and *Third Sort* ; and he shall repack the same, putting the ashes of each quality into a separate water-tight barrel of the size and description already specified, to be properly coopered and nailed, and shall weigh each barrel and mark with a marking iron on the branded head, the weight thereof, including tare, and the weight of the tare under the same ; and he shall brand in plain letters and figures on each and every barrel by him inspected containing Ashes of the first quality, the words *First Sort* ; of the second quality the words *Second Sort*, and of the third quality the words *Third Sort*, together with the words *Potash* or *Pearl ash*, as the case may be, with his own name and that of the place where the Ashes are inspected, and the year when such inspection is made : he shall collect the crustings or scrapings of the barrels and cakes of Pot and Pearl Ashes of each separate mark, and weigh and put the same into suitable barrels and deliver the same to the order of the proprietor or his agent : he shall brand the word *Condemned* on every barrel which he shall discover to contain Ashes fraudulent-

Mode of Inspecting, sorting and packing Pot and Pearl Ashes.

ly

ly adulterated with stone, sand, lime, or any other improper substance ; he shall make and deliver to the owner or his agent an Invoice or Weigh-note under his hand, of the Ashes by him so inspected, containing the original mark and number of each barrel, the weight thereof, and tare, and distinguishing each separate quality thereof as aforesaid, which invoice or weigh-note shall be dated on the day when such Ashes are ready for delivery or shipment ;—the weight of the crustings or scrapings obtained from each separate mark to be given at the foot or on the back of such invoice or weigh-note ; and he shall enter all these particulars in a book to be by him kept for that purpose ; and further he shall put all barrels of Pot and Pearl Ashes by him inspected into proper shipping order and condition when called upon to deliver the same.

Storage of Pot
and Pearl
Ashes by the
Inspector.

XI. And be it enacted, that it shall be further the duty of each of the said Inspectors, to provide himself with suitable and convenient premises for the storage and inspection of Ashes, and to keep all barrels of Ashes delivered to him for inspection, whilst they remain in his or their possession, in some dry place, safe from the injuries of the weather or of floods, and under a tight roof, and if in sheds the same shall be good and sufficient and inclosed on every side ;—and any Inspector violating this provision, shall forfeit and pay to the owner the sum of ten shillings currency for every barrel not stored as aforesaid, besides the actual damages that may be sustained by such owner.

Fees to be
paid to the In-
spector.

XII. And be it enacted, that for all the services to be performed as aforesaid, each Inspector shall be entitled to receive five pence, currency, of this Province, for every hundred weight of Pot or Pearl Ashes by him inspected as aforesaid, together with the actual cost or charge of any barrel by him furnished, or for coo- perage or repairs done to barrels containing Pot or Pearl Ashes by him or them inspected, and no more ; the charge for which said cooperage and repairs shall not in any case exceed nine pence per barrel, and in consideration of which all barrels shall be delivered in good shipping order ; and such charges shall be paid by the person or persons offering such Pot or Pearl Ashes for inspection, or his or their agents ; and each Inspector shall further be entitled to receive five pence, currency, per barrel, for the storage of each barrel of Ashes, which shall remain stored with him as aforesaid more than ten days after the date of the Invoice, Weigh-Note or Inspection Bill, and three pence, currency, per barrel, for each subsequent month they shall remain so stored, (reckoning the second month to commence forty days from the date of the Invoice, Weigh-Note or Inspection Bill,) and such storage shall be paid by the person or persons receiving or shipping the said Ashes, his or their agent, but in no case shall any storage be paid or required when the Ashes shall not have remained stored as aforesaid during ten days from the date of the Invoice or Weigh-Note.

Storage Fees.

XIII.

XIII. And be it enacted, that the Inspector of Pot and Pearl Ashes, for the Cities of Montreal and Quebec, respectively, may appoint such number of Assistants as he shall, from time to time be required to appoint by the Board of Trade of the City for which he is appointed, for the acts of which Assistants he shall be and is hereby declared to be responsible, and shall be bound to increase the number of such Assistants from time to time, on a requisition in writing to that effect, from the Board of Trade, and may diminish the same with the permission of the said Board; and each such Assistant shall be subject to the approval of the said Board of Examiners, and skilful persons sitting with them, in the manner hereinbefore provided for the examination of Inspectors, and before entering upon the duties of his office, shall furnish two good and sufficient sureties to Her Majesty, in the sum of five hundred pounds, currency, if for the City of Montreal, and in the sum of one hundred pounds, currency, if for the City of Quebec, for the due performance of his duties, by a Bond to be taken, made, recorded, kept and delivered in the manner provided with regard to the Bonds given by Inspectors; and shall take and subscribe the following Oath, before the Mayor of the City, for which he shall be appointed, who is hereby required and authorised to administer the same: "I, A. B. do swear, that I will diligently, faithfully and impartially execute the office of Assistant to the Inspector of Pot and Pearl Ashes for according to the true intent and meaning of an Act of the Legislature of this Province, intituled *An Act to regulate the Inspection of Pot and Pearl Ashes*, and 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 my office of Assistant to the said Inspector (except my salary from the said Inspector,) and that I will not, directly or indirectly, trade in the articles of Pot and Pearl Ashes, or be in any manner concerned in the purchase or sale of Pot and Pearl Ashes: So help me God:" and such Bond shall be in duplicate, and one part thereof shall be delivered to the Inspector, and the other part thereof, as also the Oath, shall remain in the office of the Corporation of the City in which the same shall be taken, for the same purposes and in all cases subject to the same regulations as to communication and copy, as are provided with regard to the Bond and Oath of the Inspector.

Assistant Inspectors to be appointed in Quebec and Montreal.

To be examined and give security.

Oath of an Assistant Inspector.

Bond and Oath where kept.

XIV. And be it enacted, that the said Assistants shall respectively be paid by, and shall hold their offices at the pleasure of the Inspector, and may be removed or re-instated, or others may be appointed in their stead by such Inspector.

Assistants to hold office at the pleasure of the Inspectors.

XV. And be it enacted, that whensoever a vacancy shall occur in the office of Inspector of Pot and Pearl Ashes for the City of Montreal, by the death, resignation or removal of such Inspector, an Inspector of Pot and Pearl Ashes shall by the Mayor of the said City be appointed in his room, from among the Assistant Inspectors:

Vacancy in the office of Inspector how to be filled.

Inspectors: Provided that no such Assistant Inspector shall be so appointed Inspector, until he shall have undergone an examination before the Board of Examiners, and by them have been deemed competent to the duties required of such Inspector, and shall not enter upon the duties of his office until he shall have given the security and taken the Oath of office required by this Act, and complied with the other requirements thereof.

Penalty on Inspectors contravening this Act.

XVI. And be it enacted, that any Inspector or his Assistant who during his continuance in office, shall directly or indirectly be concerned in the buying or selling of any Pot or Pearl Ashes, or the scrapings or crustings thereof, or participate in any transaction or profit arising therefrom (further than the fees or emoluments granted by this Act for Inspection and Storage) or who shall permit any Cooper or other person by such Inspector employed, to retain or keep any Pot or Pearl Ashes, or the scrapings or crustings thereof, or who shall brand any barrel or barrels of Ashes of any description or size other than is prescribed by this Act; or who shall date any Weigh-note or bill of Inspection differently from the time when the Ashes were actually inspected,—or shall deliver out of his possession any such Weigh-note or bill of Inspection without any date, or who shall not conform to the provisions of this Act,—shall, upon being legally convicted thereof, for every such offence, incur a forfeiture and penalty not exceeding one hundred pounds, currency, and be for ever thereafter disqualified and disabled from holding and exercising the duty or office of Inspector of Pot and Pearl Ashes in this Province, or of Assistant to such Inspector.

Penalty on inspectors refusing to act.

XVII. And be it enacted, that if any Inspector of Pot and Pearl Ashes, or his Assistant, not then employed in the Inspection of any Pot or Pearl Ashes (according to the duties prescribed by this Act) shall, on application on lawful days between sunrise and sunset to him made, refuse, neglect or delay to proceed to such examination and inspection for the space of two hours after such application so made to him, the Inspector or his Assistant so refusing, neglecting or delaying to make such examination and inspection, shall for each such offence forfeit the sum of five pounds, current money, to the use of the person or persons so delayed.

Penalty on persons forging Brandmarks or offending in any like manner.

XVIII. And be it enacted, that if any person or persons shall counterfeit any of the aforesaid Brandmarks of the Inspector, or shall impress or brand the same knowing the same to be counterfeit, on any barrel or barrels of Pot or Pearl Ashes, or any other mark or marks purporting to be the mark or marks of the Inspector or of any manufacturer of Pot and Pearl Ashes, either with the proper marking tools of such Inspector or Manufacturer, or with counterfeit representations thereof, or who shall empty any barrel or barrels of Pot or Pearl Ashes
branded

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 Brandmarks, or shall fraudulently pack therein any other substance than the Pot or Pearl Ashes packed in the same by the Inspector or Manufacturer; and if any person in the employ of any Inspector or Manufacturer of Pot and Pearl Ashes, shall hire or loan out the marks of his employer to any person whatsoever, or shall connive at or be privy to any fraudulent evasion of the provisions of this Act, such person or persons shall for every such offence forfeit and incur a penalty of fifty pounds current money of this Province.

XIX. And be it enacted, that if any dispute shall arise between any Inspector or Assistant Inspector and the proprietor or possessor of any Pot or Pearl Ashes with regard to the quality thereof, then, upon application to any one of Her Majesty's Justices of the Peace for the District in which such Inspector or his Assistant shall act, the said Justice of the Peace shall issue a summons to three persons of skill and integrity, one whereof to be named by the Inspector or his Assistant, another by the proprietor or possessor of the Pot or Pearl Ashes, and the third by the said Justice of the Peace, requiring the said three persons immediately to examine and inspect the same according to the provisions of this Act, and report their opinion of the quality and condition thereof under oath, (which oath the said Justice of the Peace is hereby authorised and required to administer,) 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 or his Assistant, who shall immediately attend thereto, and brand or cause to be branded each and every barrel of the qualities directed by such determination according to the provisions of this Act; and if the opinion of the Inspector or his Assistant be thereby confirmed, the reasonable costs and charges of re-examination, to be ascertained and awarded by the said Justice, shall be paid by the proprietor or possessor of the Pot or Pearl Ashes, if otherwise, by the Inspector.

Disputes between Inspectors and proprietors how settled.

XX. And be it enacted, that nothing herein contained shall be construed to prevent any person from exporting Pot and Pearl Ashes without inspection, provided that on one end of the barrel containing the same, there shall be neatly and legibly branded or marked, the name and address of the Manufacturer, the weight and tare of the cask, and the quality of the ashes contained in it; but any person who shall export any Pot or Pearl Ashes, not so marked as aforesaid, or shall wilfully mark any such barrel falsely, shall thereby incur a penalty of five pounds currency.

How Pot and Pearl Ashes for exportation shall be marked.

XXI. And be it enacted, that all fines, penalties and forfeitures imposed by this Act, not exceeding ten pounds currency, shall be recoverable by the Inspectors

Fines, &c. how recovered and applied.

tors, their Assistants or any other person suing for the same, in a summary way before any two of Her Majesty's Justices of the Peace of the District, and shall on failure of payment be levied by warrant of distress to be issued by such Justices against the goods and chattels of the offender; and when the same shall exceed the sum of ten pounds currency, they shall be sued for and recovered by bill, plaint or information, or action before any Court of competent jurisdiction, and levied by execution as in the case of debt; and one moiety of all such fines and forfeitures when recovered, shall (except when herein otherwise provided) be immediately paid into the hands of the Treasurer of the City, Town or place wherein the said action or prosecution shall have been instituted, and shall remain at the disposal of the Corporation thereof for the public use of the said City, Town or place respectively, and the other moiety shall belong to the person who shall sue for the same, unless the action be brought by an Officer of such Corporation, in which case the whole shall belong to the Corporation for the use aforesaid.

Limitation
of actions.

XXII. And be it enacted, that if any action or suit be brought or commenced against any person or persons for any thing done in pursuance of this Act, such action or suit shall be commenced within six months next after the matter and thing done, and not afterwards:—And the defendant or defendants in such suit or action may plead the general issue and give this Act and the special matter in evidence at any trial to be had thereon, and if afterwards judgment shall be given for the defendant or defendants, or the plaintiff or plaintiffs shall be nonsuit or discontinue his or their action or actions after the defendant or defendants shall have appeared, then such defendant or defendants shall have treble costs awarded against such plaintiff or plaintiffs, and have the like remedy for the same as any defendant or defendants hath or have in other cases to recover costs at law.

Treble costs.

When this
Act shall have
force.

XXIII. And be it enacted that the foregoing provision of this Act shall have force and effect upon, from and after the first day of January, in the year of our Lord one thousand eight hundred and forty-three, and not before.