

Laws of Her Majesty's Province of Upper Canada, passed in the year 1848. Montreal: Stewart Derbyshire & George Desbarats, 1848.

11 Victoria – Chapter 7

An Act to provide for the Inspection of Butter in Québec and Montreal. 23d March, 1848.

Whereas it hath become expedient to regulate the packing of Butter and to provide for the inspection of the same at the Ports of Québec and Montreal such inspection being nevertheless optional with the parties interested: 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 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 it shall be lawful for the Board of Trade in the Cities of Québec and Montreal respectively, to appoint a Board of Examiners of Applicants for the office of Inspector of Butter, and from time to time to remove such Examiners and Appoint others in their stead; and such Boards of Examiners shall respectively consist of three fit, proper and skilful persons resident in the city or in the immediate vicinity of the city 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 of Applicants for the office of Inspector of Butter, 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."

II. And be it enacted, That the Mayor of the said City of Québec or Montreal, respectively, 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 Butter for such City, 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 (except as hereinafter provided) 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 Butter, unless approved of and recommended as such by the Board of Examiners or a majority of them, pursuant to such examination; nor except on the requisition of the Board of Trade for the place, with which the Mayor 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 five hundred pounds, currency; and such sureties shall be approved by the Mayor by whom such Inspector shall have been appointed, and a bond shall be executed before him 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 bond shall avail 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.

III. And be it enacted, That the bond or suretyship which shall be made or executed by any such Inspector and his sureties, under this Act, shall be made and shall be kept at the Office of the Clerk of the Corporation of the City 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.

IV. And be it enacted, That each person examined, approved and recommended as aforesaid, shall, if appointed Inspector of Butter, before he shall act as such, take and subscribe an oath before the Mayor of the City for which he shall be appointed, who is hereby required and authorized 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 understanding, do and perform the Office of an Inspector of Butter, according to the true intent and meaning of an Act of the Legislature of this Province, intituled, *An Act to regulate the Inspection of Butter*, and that I will not directly or indirectly, by myself or any other person or persons whomsoever, manufacture, buy or sell any Butter, on my account, or upon the account 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 where the same shall 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.

V. Provided always, And be it enacted, That any person who at the time this Act shall come into force shall he acting as Inspector of Butter under the sanction of the Board of Trade at either of the said Cities, shall, on his application to that effect, immediately after the said time, accompanied by a Certificate of the Board of Trade that he was so acting as aforesaid, be appointed as Inspector under this Act, by the Mayor of the place in which he shall have acted as Inspector, without any examination or any further intervention of the Board of Trade; but any such Inspector shall, after such appointment, be removable, and shall give security, and shall be bound by all the other provisions of this Act, in the same manner as other Inspectors appointed under the authority thereof.

VI. And be it enacted, That upon, from and after the first day of September, one thousand eight hundred and forty-eight, no Inspector of Butter shall brand, mark or certify any Butter as inspected, unless it be packed in the manner hereinafter required; but that upon, from and after the said day, any Butter not so packed, which shall be submitted for inspection, shall, by the Inspector to whom it shall be submitted, be repacked in the manner hereby required, and the Inspector shall receive the actual cost of such new packages as may be required for such re-packing, and the further sum of three pence for each firkin or keg of Butter so re-packed, as compensation for his time and labour; and all butter branded, marked or certified as Inspected shall be packed in firkins or kegs, made of the best seasoned white ash timber, and each bound with at least twelve wooden hoops, and being of the following sizes and dimensions, that is to say: the firkin to contain as nearly as possible fifty-six pounds of Butter, the length of the staves from croe to croe, to be fourteen inches and a half, the diameter of the head to be eleven inches and a half; the thickness of the staves to be, as nearly as may be, three quarters of an inch, and the thickness of the head, as near as may be, half an inch, the package to weigh as nearly as possible, but in no case to exceed ten pounds when dry; the keg to contain, as nearly as possible, eighty-four pounds of Butter, the length of the stave, from croe to croe, to be seventeen inches, the diameter of the head to be thirteen inches, the thickness of the staves to be, as nearly as may be, three quarters of an inch, and of the head, as nearly as may be, half an inch, and the package to weigh; as nearly as possible, but in no case to exceed thirteen pounds when dry; and the Weight of each package shall be branded on the outside of the firkin or keg, at the centre of the stave or bilge, with the name of the maker thereof, under a penalty of five shillings currency per package, upon any cooper who shall contravene the requirements of this Act, as aforesaid: Provided always, that nothing herein contained shall apply to any packages other than those containing Butter submitted for inspection.

VII. And be it enacted, That in inspecting Butter, the Inspector shall take out the head of each firkin or keg, and shall pass the taster through the Butter, from end to end, and shall empty out and throw aside all salt or pickle which, in his judgment, shall not be necessary to the preservation of the Butter, and after he shall have ascertained the quality of the Butter, he shall replace so much thereof as he may have taken out, and if there shall in his judgment be a deficiency of loose salt, so that he shall think the preservation and condition of the Butter would be promoted by an additional quantity of salt, he shall add such quantity: he shall then have the package securely headed and coopered, and shall scribe or brand on the head of the package the gross weight thereof in pounds avoirdupoise, excluding fractional parts of a pound, and the tare which shall include one pound weight for each firkin, and two pounds weight for each keg, for soakage over and above the cooper's tare; and he shall then brand on the head his own name, the month, year and place of inspection, and the quality of the Butter as "First," "Second," "Third" or "Fourth," or as "Grease," according to the quality of the Butter, and adopting the standard of quality and system of classification in use in that portion of the United Kingdom called Ireland; first, removing all such marks (the distinguishing mark of the owner of the Butter excepted) on the package as may interfere with the brands or marks of the Inspector.

VIII. 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 Butter, and to

keep all packages of Butter delivered to him for inspection, while they remain in his possession, in some place safe from the injuries of the weather or of floods, and under a tight roof; and any Inspector contravening this provision, shall forfeit and pay to the owner the sum of five shillings, currency, for every package not stored as aforesaid, besides the actual damages that may be sustained by such owner.

IX. And be it enacted, That for all the services to be performed as aforesaid, including unheading, weighing, salting, heading, tightening hoops, marking and branding, and ten days' storage, each Inspector shall be entitled to receive six pence, currency, of this Province, for every package of Butter by him inspected as aforesaid,—and if re-inspected, four pence, together with the actual cost or charge of any package by him furnished, or for extra cooperage or repairs done to packages containing Butter by him inspected, and no more; the charge for which said extra cooperage and repairs shall not in any case exceed three pence per package; and in consideration of which all packages shall be delivered in good shipping order, and such charges shall be paid by the person or persons offering such Butter for inspection, or his or their Agents; and each Inspector shall further be entitled to receive one penny half-penny currency, per month, per firkin, and one penny per keg, per month, for the storage of each package of Butter, which shall remain stored with him as aforesaid more than ten days after 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 Butter, his or their Agent; but in no case shall any storage be paid or required when the Butter shall not have remained stored as aforesaid during ten days from the date of the Inspection Bill; and all the charges of inspection and storage shall be payable before the Butter shall be re-delivered by the Inspector; and the Inspector shall furnish a Bill of Inspection signed by him, and specifying neatly and legibly the quantity and quality of the Butter, the charges thereon, and the owner's name.

X. And be it enacted, That each Inspector of Butter 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 assistance 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, in the manner hereinbefore provided for the examination of Inspectors, and before entering upon the duties of his office shall take and subscribe the following oath, before the Mayor of the City, for which he shall be appointed, who is hereby required and authorized, 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 Butter 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 Butter*, 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 article of Butter, or be in any manner, concerned in the purchase or sale of Butter: So help me God."

And such 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 Oath of the Inspector.

XI. 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 reinstated, or others may be appointed in their stead by such Inspector.

XII. And be it enacted, That whensoever a vacancy shall occur in the office of any Inspector of Butter by the death, resignation, or removal of such Inspector, an Inspector of Butter shall, upon the requisition of the Board of Trade for the place, be appointed in his stead by the Mayor of the City, who shall appoint such duly qualified person as shall be recommended for that purpose by the Board of Trade: Provided that no such person shall be appointed Inspector, until he shall have undergone an examination before the Board of Examiners, and by them have been certified competent to the duties required of such Inspector, and that he 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.

XIII. 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 Butter, or participate in any transaction or profit arising therefrom, (further than the fees or emoluments granted by the Act for inspection and storage)—or who shall permit any cooper or other person by such Inspector employed, to retain or keep any Butter or the scrapings thereof or who shall mark, brand, or certify as inspected, any package of Butter of any description or size other than is prescribed by this Act,—or who shall date any Bill of Inspection differently from the time the Butter was actually inspected,—or shall deliver out of his possession any such Bill of Inspection without any date,—or who shall not conform to the provisions of, this Act, shall be guilty of a misdemeanor, and shall, upon being legally convicted thereof, for every such offence, be punishable by fine 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 Butter in this Province, or of Assistant to any such Inspector.

XIV. And be it enacted, That if any Inspector of Butter, or his Assistant, not then employed in the Inspection of any Butter, (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 of 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.

XV. And be it enacted, that if any person or persons shall counterfeit any of the aforesaid marks or brands of any Inspector of Butter, or shall impress or brand the same knowing the same to be counterfeit, on any package or packages of Butter, or any other mark or marks purporting to be

the mark or marks of the Inspector or of any Manufacturer of Butter, either with the proper marking tools of such Inspector or Manufacturer, or with counterfeit, representations thereof, or shall empty any package or packages of Butter marked or branded as aforesaid by an Inspector or Manufacturer in order to put therein other Butter for sale or exportation, without first cutting out the said brand-marks, or shall fraudulently pack therein any other substance than the Butter packed in the same by the Inspector or Manufacturer, and if any person in the employ of any Inspector or Manufacturer of Butter, 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, incur a penalty of fifty pounds, current money of this Province.

XVI. And be it enacted, That if any dispute shall arise between any Inspector or Assistant Inspector and the proprietor or possessor of any Butter 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 Butter, 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 authorized 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 package of the quality 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 Justices, shall be paid by the proprietor or possessor of the Butter, if otherwise, by the Inspector.

XVII. And be it enacted, That all fees, fines, penalties and forfeitures imposed by this Act, not exceeding ten pounds, currency, shall be recoverable with costs by the Inspectors, 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 with costs, by bill, plaint or information or action before any Court having jurisdiction, in civil cases, to the amount sued for, 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 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, 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.

XVIII. And be it enacted, That if any action or suit be brought or commenced against any person or persons for anything 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 non suit 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.

XIX. And be it enacted, That the foregoing provisions of this Act shall have force and effect upon, from and after the passing of this Act, and that this Act shall remain in force until the first day of May, one thousand eight hundred and fifty, and thence until the end of the then next session of the Provincial Legislature, and no longer.