

7. The enactments specified in the schedule to this Ordinance are hereby repealed to the extent mentioned in such schedule: Provided that such repeal shall not affect anything done or any imprisonment awarded or penalty or forfeiture incurred before the passing of this Ordinance. Repeal of certain enactments.

Passed in Council the first day of October, in the year of our Lord one thousand eight hundred and eighty.

A. C. ROSS,
Clerk of the Council.

THE SCHEDULE.

No. of Ordinance.	Title.	Extent of Repeal.
14 of 1871 ...	An Ordinance for limiting Imprisonment for Debt ...	The whole
2 of 1874 ...	An Ordinance to amend the Law of Arrest	The whole.
1 of 1877 ...	The Debtors' Ordinance, 1877	The whole.

No. 17.—1880.

21st October.

AN ORDINANCE to provide against the Adulteration of Food and Drugs.

(L. S.) WILLIAM A. G. YOUNG.
25th October, 1880.

BE it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows:—

1. This Ordinance may be cited as “The Adulteration of Food and Drugs Ordinance, 1880.” Short title.

Interpreta-
tion.

2. In this Ordinance,

The term "food" includes every article used for food or drink by man, other than drugs or water; and

The term "drug" includes medicine for internal or external use.

Prohibition of
adulteration
of food or
drugs.

3. 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.

No person shall, except for the purpose of compounding as in this Ordinance 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 drug so mixed, coloured, stained or powdered.

Any person contravening this section shall be liable for a first offence to a penalty not exceeding fifty pounds, and for a second or other subsequent offence to be imprisoned with or without hard labour for any term not exceeding six months.

This section shall be subject to the following proviso (that is to say): No person shall be liable to be convicted under this section in respect of the sale of any article of food or of any drug, if he shows to the satisfaction of the Stipendiary Justice before whom he is charged that he did not know that the article of food or drug sold by him was mixed, coloured, stained, or powdered contrary to this section, and that he could not with reasonable diligence have obtained such knowledge.

Prohibition of
selling food or
drugs not of
the proper
quality.

4. Subject to the provisions of this Ordinance, no person shall sell to the prejudice of the purchaser any article of food or drug which is either not of the nature or not of the substance or not of the quality 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 any of the following cases:

- (1) Where any matter or ingredient is added to an article of food or drug because the same is required for the production or preparation of such article or drug 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 water only is added to any rum, but not so as to reduce the spirit more than twenty-five degrees under proof, or to any brandy, whiskey or gin, but not so as to reduce the spirit more than thirty-five degrees under proof;
- (3) 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;
- (4) Where the food or drug is compounded as in this Ordinance is mentioned;
- (5) Where the food or drug is unavoidably mixed with some extraneous matter in the process of collection or preparation;
- (6) Where the food or drug was entrusted to some person for sale or delivery, and was or might have been received by such person of the nature, substance and quality demanded by the purchaser, and was after or at the time of reception by such person, and without the knowledge or consent of the person by whom he was entrusted altered or permitted to be altered.

Explanation.—It is no defence to a prosecution under this section for selling to the prejudice of the purchaser, that the purchaser bought for analysis only or not with his own money.

5. Any one, who being entrusted with any article of food or drug alters the same or permits it to be altered

Alteration of quality by bailee.

so as injuriously to affect its nature or its substance or its quality, with intent that the same may be sold without notice in its altered state, shall be liable to a penalty of twenty pounds.

Compounded
articles of
food or drugs.

6. Subject to the provisions of this Ordinance, no person shall sell any compounded 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.

Exception
where notice
is given by a
label.

7. No person shall be guilty of any offence against this Ordinance 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 fraudulently to increase its bulk, weight or measure, or conceal its inferior quality, if at the time of delivering of such article or drug he supplies to the person receiving the same 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.

Alteration by
abstraction.

8. No person shall, with intent that the same may be sold without notice in its altered state, abstract from an article of food any part of it so as to affect injuriously its nature or its substance, or its quality, 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.

Government
analysts.

9. The Governor may from time to time appoint any person or persons possessing competent skill and knowledge to be Government analyst or Government analysts of all articles of food and drugs sold in the Colony, and may at his pleasure remove any Government analyst: Provided that no person shall be appointed a Government analyst who is directly or indirectly engaged or interested in any trade or business connected with the sale in or importation into this Colony of food or drugs.

Power to
obtain
analysis.

10. Any purchaser of an article of food or a drug shall be entitled on payment to a Government analyst of a fee, according to a scale prescribed by the

Governor, to have such article or drug analysed by such analyst, and to receive from him a certificate of the result of the analysis. The Governor may from time to time by proclamation prescribe a scale of fees under this section, and alter or revoke any such proclamation.

11. Any of the following officers, that is to say, any Warden, any Government Medical Officer, any Sanitary Inspector, the Inspector Commandant, or any Inspector of Police, and any police constable may procure any sample of food or drugs, or may procure at the place of delivery any sample of milk in course of delivery to a purchaser or consignee, and if he suspects such sample to have been sold contrary to this Ordinance may procure the same to be analysed by a Government analyst.

Power to certain officers to obtain samples for analysis.

Upon any such officer or constable as aforesaid applying to purchase any article of food or drug exposed or offered for sale by retail in any shop or store or other premises or in any street or place of public resort or any milk in course of delivery, and tendering a reasonable price for the quantity which he requires for the purpose of analysis, if the person exposing or offering for sale or having power to sell, or having the charge of any such food, drug or milk as aforesaid, refuses to sell the quantity required to such officer or constable, such person shall be liable to a penalty not exceeding ten pounds.

In exercising the powers given by this section a police constable shall comply with the directions of the inspector under whose immediate command he is, and any other of the officers aforesaid shall comply with the directions of the Colonial Secretary, but non-compliance with such directions shall not affect the validity of any act or afford any defence to proceedings under this section.

12. The person purchasing any article of food or drug with the intention of submitting the same to analysis shall, after the purchase is completed, forthwith notify to the seller or his agent selling the article his intention to have the same analysed, and shall offer

Mode of dealing with article purchased for analysis.

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then and there to divide the article or drug in the presence of such seller or agent into three parts, each part to be marked and sealed or fastened up in such manner as its nature will permit, and if such offer is accepted, shall proceed accordingly and 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 a Government analyst.

If such offer is not accepted 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.

Form of the
certificate.

13. A Government analyst after completing an analysis under this Ordinance shall give a certificate of the result of such analysis, which shall be in the form in the schedule hereto, with such variations as circumstances may require.

Procedure.

14. Every act or default in respect whereof a penalty or imprisonment is imposed by this Ordinance not expressly made by this Ordinance a misdemeanour shall be an offence against this Ordinance, and punishable on summary conviction before a Stipendiary Justice of the Peace.

At the hearing of any information or complaint of an offence against this Ordinance the production of a certificate signed by the analyst shall be sufficient evidence of the facts therein stated, unless the defendant requires that the analyst be called as a witness, and no proof need be given of the signature or official character of the analyst. The parts retained by the purchaser shall be produced.

The defendant may, if he or she thinks fit, tender himself and his wife, or herself and her husband to be examined on his or her behalf, and either or both of them shall, if he or she so desire, be examined accordingly.

Where the fact of an article of food or drug having been sold in a mixed state is proved, if the defendant desires to rely upon any exception or provision contained in this Ordinance, it shall be incumbent upon him to prove the same.

15. If the defendant in any proceedings for selling contrary to this Ordinance proves that he purchased the article in question as the same in nature, substance and quality as that demanded of him by the complainant, 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 state in which he purchased it, he shall be liable to pay the costs incurred by the complainant unless he gave him reasonable notice that he would rely on this defence but except as to such costs shall be discharged from the proceedings.

Discharge of defendant in certain cases.

16. Any person who forges or utters knowing it to be forged any certificate of the result of an analysis under this Ordinance or with intent that the same shall be used for the purposes of this Ordinance any written warranty shall be guilty of a misdemeanour and be punishable on conviction by imprisonment, with or without hard labour, for any term not exceeding two years.

Forgery of certificate or warranty.

17. Every person who wilfully applies to an article of food or a drug, in any proceedings under this Ordinance, a certificate or warranty given in relation to any other article or drug shall be liable to a penalty not exceeding twenty pounds.

Misapplication of certificate or warranty.

18. Every person who gives a false warranty in writing as to the nature or substance or quality of any article of food or drug sold by him as principal or agent shall be liable to a penalty not exceeding twenty pounds.

False warranty.

19. Every person who wilfully gives a label with any article of food or drug sold by him which falsely describes the articles sold shall be liable to a penalty not exceeding twenty pounds.

False label.

Saving.

20. Nothing in this Ordinance shall affect the power of proceeding by indictment, or take away any other remedy against any offender under this Ordinance, or in any way interfere with contracts or bargains or the rights and remedies belonging thereto :

Provided that in any action brought by any person for a breach of contract on the sale of any article of food or drug such person may recover either alone or in addition to any other damages recoverable by him the amount of any penalty which he may have been compelled to pay under this Ordinance, together with the costs paid in consequence of the conviction or incurred in and about his defence, if he prove that the article or drug, the subject of such conviction was sold to him as and 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 incurred was unreasonable.

Passed in Council this twenty-first day of October, in the year of our Lord one thousand eight hundred and eighty.

A. C. ROSS,
Clerk of the Council.

SCHEDULE.

FORM OF CERTIFICATE.

To*

I, the undersigned Government analyst do hereby certify that I received on the _____ day of _____ 18____ from † _____ a sample of _____ for analysis (which then weighed ‡ _____) and have analysed the same, and declare the result of my analysis to be as follows :—

I am of opinion that the same is a sample of genuine _____
