

FOOD AND DRUGS.

11 GEO. VI. No. 57.

AN ACT to amend the *Food and Drugs Act* 1910. [11 November, 1947.]

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

Short title and citation.

1—(1) This Act may be cited as the *Food and Drugs Act* 1947.

(2) The *Food and Drugs Act* 1910*, as subsequently amended, is in this Act referred to as the Principal Act.

Interpretation.
Cf. Vic., No. 3697, s. 3.

2 Section four of the Principal Act is amended by omitting the definition of "Sale" and substituting therefor the following definition:—

"'Sale' means any sale or agreement for sale, whether by wholesale or retail, for human consumption or use, or for analysis, and includes offering or exposing for sale, and keeping or having in possession for sale, and sending, forwarding, delivering, or receiving for or on sale, and authorising, directing, causing, suffering, or permitting any of such acts, and also includes barter and exchange; and 'sell' has a corresponding meaning:"

Purchase of samples for analysis.

3 Section thirty of the Principal Act is amended—

- (a) by inserting after the word "person" (first occurring) in subsection (1) the words "(in this section referred to as 'the said person')"; and
- (b) by inserting after subsection (2) the following subsection:—

"(2A) The procuring by an inspector of any sample of a food or drug pursuant to this section and the payment or tender of the current market value thereof or at the rate prescribed, as the case may be, shall, for all the purposes of this Act, be deemed to be a sale by the said person or his agent or servant, or, as the case may be, by the person in charge of the food or drug, to the inspector of the food or drug contained in the sample."

* 1 Geo. V. No. 22. For this Act, as amended to 1936, see Reprint of Statutes, Vol. VI, p. 208. Subsequently amended by 5 Geo. VI. No. 19.

4 After section fifty-four of the Principal Act the following sections are inserted in Part V. :—

“55.—(1) A person against whom proceedings are brought in respect of any offence against this Act shall, upon complaint laid by him and upon giving to the person by whom the proceedings were instituted (in this section called “the prosecutor”) not less than three clear days’ notice of his intention, be entitled to have any person to whose act or default he alleges that the commission of the offence was due brought before the court in those proceedings, and, if, after the offence is proved, the original defendant proves that the commission of that offence was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure compliance with the provisions of this Act in respect of the contravention of which the proceedings were brought, he shall be acquitted of the offence.

Defence available to defendant where some other person is responsible for commission of offence.
Cf. 1 & 2 Geo. V., c. 56, s. 88.

(2) Where a defendant seeks to avail himself of the provisions of subsection (1) —

I. The prosecutor, and the person to whose act or default the defendant alleges the commission of the offence is due, shall be entitled to cross-examine him, if he gives evidence, and to cross-examine any witness called by him in support of his evidence, and to call rebutting evidence: and

II. The magistrate before whom the proceedings are brought may make such order as he thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(3) In any case where it appears to an inspector that an offence has been committed in respect of which proceedings might be taken against some person and the inspector is reasonably satisfied that the offence was due to an act or default of some other person and that the first-mentioned person could have such other person brought before the court in accordance with subsection (1), the inspector may cause proceedings to be brought against that other person without first causing proceedings to be brought against the first-mentioned person, and in any proceedings so brought that other person may be charged with, and, on proof that the commission of the offence was due to his act or default, may be convicted of, the offence with which the first-mentioned person might have been charged.

“55A.—(1) Subject to this section, in the case of any proceedings in respect of the sale of any food or drug which was not of a nature, substance, or quality entitling a person to sell or otherwise deal with it under the description or in the manner

Conditions under which a warranty may be pleaded as a defence.
Ibid., s. 84.

under or in which the defendant dealt with it, it shall be a defence for the defendant to prove that—

- I. He purchased such food or drug as being an article of such a nature, substance, and quality as would have so entitled him, and with a written warranty to that effect:
- II. He had no reason to believe at the time of the commission of the alleged offence that such food or drug was not of such a nature, substance, or quality as would have entitled him to deal with it in the manner under or in which he dealt with it: and
- III. The food or drug was, at the time of the commission of the alleged offence, in the same state as when he purchased it.

(2) A warranty shall be a defence to proceedings under this Act only if—

- I. The defendant has, within seven days of the service of the summons on him, served on the person by whom the proceedings were instituted a copy of the warranty and a notice stating that he intends to rely on the warranty and specifying the name and address of the person from whom he received the same, and has forwarded a like notice of his intention to that person: and
- II. In the case of a warranty given by a person residing outside this State, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.

(3) Where the defendant is an agent or a servant of the person who purchased any food or drug under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his principal or employer would have been entitled to do if he had been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the magistrate may, if he thinks fit, adjourn the hearing to enable him so to do.

(5) For the purposes of this section and of section fifty-five B, a name or description entered in an invoice shall be deemed to be a written warranty that the food or drug to which the entry refers is of such a nature, substance, and quality that a person can sell or otherwise deal with it under that name or description without contravening any of the provisions of this Act.

“55B.—(1) Any defendant who, in any proceedings under this Act, wilfully applies to any food or drug a warranty or certificate of analysis given in relation to any other food or drug shall be guilty of an offence.

Offences in relation to warranties and certificates of analysis.
Ibid., s. 85.

(2) Any person who, in respect of any food or drug sold by him, gives to the purchaser a false warranty in writing, shall be guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statement or description therein was accurate.”.

MILK.

11 GEO. VI. No. 58.

AN ACT to provide for the Regulation and Control of the production, treatment, and distribution of Milk; for the encouragement of the consumption and use of Milk; for the constitution of a Milk Board; and for matters incidental thereto.

[18 November, 1947.]

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

PART I.

PRELIMINARY.

1—(1) This Act may be cited as the *Milk Act* 1947.

Short title and commencement.

(2) This Act shall come into operation on a date to be fixed by proclamation.