

**Report upon the Sale of Food and Drugs amended Bill, to the Hon. the Commissioners of Sewers of the City of London / by W. Sedgwick Saunders.**

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# REPORT

UPON THE

## SALE OF FOOD AND DRUGS AMENDED BILL,

TO THE

HON. THE COMMISSIONERS OF SEWERS  
OF THE CITY OF LONDON,

BY

W. SEDGWICK SAUNDERS, M.D.,

PRESIDENT OF THE HUNTERIAN SOCIETY,  
MEDICAL OFFICER OF HEALTH AND FOOD ANALYST.

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*13th April, 1875.*

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LONDON:  
CHARLES SKIPPER & EAST, PRINTERS, ST. DUNSTAN'S HILL, E.C.

1875.

REPORT

1871

SALES OF FOOD AND DRUGS  
AMENDED BILL

FOR THE COMMISSIONERS OF HEALTH  
OF THE CITY OF LONDON

W. BENTLEY BARNARD, M.D.

Author of "The Food and Drug Laws of the United Kingdom,"  
"The Food and Drug Laws of the United States,"  
"The Food and Drug Laws of the United States,"

1871

Printed by W. BENTLEY BARNARD, M.D.,  
10, BLOOMSBURY SQUARE, LONDON, W.C.

*At a Meeting of the Commissioners of Sewers  
of the City of London, held at the  
Guildhall of the said City, on Tuesday,  
the 13th day of April, 1875,*

JOHN STAPLES, ESQ., IN THE CHAIR.

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The MEDICAL OFFICER OF HEALTH read a Report which he had prepared in relation to the Sale of Food and Drugs Bill before Parliament.

RESOLVED and ORDERED—

That the said Report be printed and circulated, and it be referred to the Sanitary Committee to petition Parliament for the insertion of Clauses in the said Bill in accordance with the recommendations of the Medical Officer.

HENRY BLAKE,  
*Principal Clerk.*

At a Meeting of the Commissioners of Sewers  
of the City of London, held at the  
Council Chamber of the said City on Thursday  
the 18th day of April 1875.

REPORT OF THE COMMISSIONERS OF SEWERS

IN ANSWER TO A RESOLUTION PASSED BY THE  
COUNCIL OF THE SAID CITY ON THE 17th DAY OF  
MAY 1874, RELATIVE TO THE PROVISIONS OF THE  
ACT OF PARLIAMENT IN THAT BEHALF.  
IN WHICH THE COMMISSIONERS STATE THE  
REASONS FOR THE NON-PROSECUTION OF THE  
SAID ACT, AND THE STEPS TAKEN TO  
PREVENT A REPEAT OF THE SAME.  
AND  
RECOMMENDATIONS FOR THE IMPROVEMENT  
OF THE SEWERAGE OF THE SAID CITY.

THESE REPORTS AND THE PROCEEDINGS OF THE  
COMMISSIONERS IN THIS BEHALF, ARE  
HEREBY LAYED BEFORE THE COUNCIL OF THE  
SAID CITY, IN ACCORDANCE WITH THE  
PROVISIONS OF THE SAID ACT OF PARLIAMENT.

WITNESSED AND PASSED IN PUBLIC  
MEETING OF THE COMMISSIONERS OF SEWERS,  
Held at the Council Chamber of the City of London,  
on the 18th day of April 1875.

TO THE HONOURABLE THE COMMISSIONERS OF SEWERS.

GUILDHALL,

*13th April, 1875.*

GENTLEMEN,

In compliance with your request I carefully considered the provisions of the "Sale of Food and Drugs Bill," as originally introduced into the House of Commons, and should have reported much earlier but for the fact, that the said Bill was so altered and amended in Committee, as to render any observations based upon its first state unintelligible ; and, therefore, the following remarks are confined chiefly to the Bill so amended.

The impression conveyed to my mind in perusing this Bill was, that it had been drawn more in favour of the trader than the public, and that the precautions and exemptions which protect the former, render the clauses on behalf of the latter almost nugatory, and lessen the chances of obtaining a conviction of an offender before a Magistrate, who might not unreasonably interpret in various ways the ambiguous wording of several sections of the Bill.

By the amended Bill the "Acts" in force relating to the adulteration of food are repealed, and the

term "Food" is made to include every article used for food or drink by man, except drugs.

In Clause 3 a description of offences under the Act is given as follows, viz.:—

"No person shall knowingly mix, colour, stain, or powder, or order any other person to mix, colour, stain, or powder, any article of food with any ingredient or material of a nature injurious to health, with intent that the same may be sold in that state, and no person shall knowingly sell any such article so mixed, coloured, stained, or powdered, under a penalty in each case of fifty pounds for the first offence ; every offence, after a conviction for a first offence, shall be a misdemeanor, for which the person, on conviction, shall be imprisoned for a period not exceeding six months with hard labour."

This clause alone, if brought into operation at once, would ruin every tea dealer in the Kingdom, and prohibit the further use of substances which have been employed for many generations in special departments of trade, and which, although poisonous in a concentrated form and "*of a nature injurious to health*" in that state,—for example, the essential oil of almonds used for flavouring by every cook and confectioner, &c.,—are never used of a strength which can be fairly considered hurtful to health. I think, therefore, it would be better to substitute these

words, viz., “*in such quantities as in the judgment of the District Analyst would render the article injurious,*” or it would meet the justice of the case as regards tea, if this article was specially exempted from the operation of the Act until the growers in China were allowed sufficient time to prepare and ship the teas in their natural state, and discontinue the practice of colouring the same. In Clause 4 the same prohibition obtains as to mixing, colouring, staining, or powdering *drugs*, except for the purpose of compounding prescriptions, &c.

In various parts of the amended Bill the word “knowingly,” as applied to the sale of adulterated articles, has been very properly eliminated, and the retailer will, in the future, sell the same at his own peril.

Clause 5 directs that—

“No person shall sell to the prejudice of the purchaser any article of food or any drug which is not of the nature, substance, and quality of the article demanded by such purchaser, under a penalty of twenty pounds, except as herein excepted and provided ; that is to say, except—

“Where any harmless matter or ingredient is mixed therewith for the purpose of rendering it portable or palatable, or of preserving it, or of improving its appearance ;

“ Where it is the subject of a patent in force, and  
 “ is supplied in the state required by the specification  
 “ of the patent ;

“ Where a drug is compounded as herein-after  
 “ described ;

“ Where the article is unavoidably mixed with  
 “ some extraneous matter in the process of collection  
 “ or preparation.

“ Provided that no article shall be deemed to be  
 “ within any of the exceptions above set forth, if the  
 “ matter or ingredient mixed exceed what is required  
 “ for the purpose referred to.”

It must be seen at once that this clause presents a singular contrast with the 3rd Clause, and that by the exemptions just enumerated, the mixing of chicory in coffee, starch in cocoa, wheaten-flour in mustard, colouring matter in tea, &c., &c., is directly, and by enactment, justified ; the only qualification suggested being, that such *extraneous* matter shall not exceed “ *what is required for the purpose referred to,*” a point upon which no two persons will be found to agree.

To avoid the inevitable abuse to which this latter provision is liable, a percentage of such *extraneous* matter should be defined as permissible, beyond which the dealer should be open to prosecution, otherwise

the tea dealer may claim the right to sell tea largely adulterated with the soil upon which the plant grows, or the spice dealer may sell pepper loaded with dirt to any extent. In the case of tea, I think 2 per cent. of extraneous matter would be a liberal concession. If some such definition be not made, it is obvious that endless disputes must arise in interpreting this fifth clause.

It has been suggested, and I think rightly, that a direct prohibition should be given to a dealer to use any substance for admixture, and sell the same as a “substitute for the material of which such article professes to be composed.”

In the original Bill, a mode of evasion was provided for a dishonest trader to sell adulterated and mixed articles if the same was in accordance with the “*usages of trade*,” but this loop-hole being universally condemned, the words *usages of trade* have been left out of the amended Bill.

Clause 6 provides that—

“ No person shall sell any compound article of food  
 “ which is not composed of ingredients in accordance  
 “ with the demand of the purchaser, under a penalty  
 “ of twenty pounds.

“ No person shall sell any compounded drugs, except  
 “ the same shall be compounded in accordance with

“ the demand of the purchaser, or with the pre-  
 “ scription in writing of a registered medical practi-  
 “ tioner, or with the regulations prescribed by the  
 “ British Pharmacopœia issued by the General Medical  
 “ Council, or with a basis to be laid down by the  
 “ Pharmaceutical Society or the Privy Council, or in  
 “ accordance with the provisions of the Pharmacy  
 “ Act, 1868, under a penalty of twenty pounds.”

Clause 7 provides—

“ That no person shall be guilty of any such  
 “ offence as aforesaid 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,  
 “ if at the time of delivering such article he shall  
 “ supply to the person receiving the same a notice,  
 “ by a label distinctly and legibly written or printed  
 “ on or with the article, to the effect that the  
 “ article is mixed.”

It will be observed that protection is afforded to the trader if he shall display a label stating that the article sold is mixed with other ingredients, but no direction is given that the *proportions* of such other ingredients shall be stated, which should be insisted upon, otherwise the public will have no safe guarantee that such imported adulteration or mixture has not lowered the dietetic and commercial value

of the article beyond a point which can be readily detected by the microscope or by chemical analysis.

The 8th clause prohibits the abstraction of any portion of an article of food which shall injuriously affect its nature or quality, without giving notice of the same to the buyer and disclosing the extent of such abstraction, and the penalty for any infraction of this provision is doubled in the amended Bill.

In Clause 9, Local Authorities have power to appoint public analysts, but this power is *permissive* only, and I would suggest that it would add very much to the value of the Bill if the said appointments be made *compulsory*, by the substitution of the word *shall* for *may* in the eighth line of the clause.

Clause 11 provides that the fee for making an analysis shall in no case exceed ten shillings and sixpence. The absurdity of this remuneration will be apparent when I state an ordinary analysis of milk takes six hours, of tea, six or eight hours, of bread, a whole day, &c., &c.

Clause 16.—The penalty herein for “refusing to sell any article to a sanitary inspector for the purpose of analysis” is too small (£5), and no provision is made for increasing the penalty in subsequent offences, so that a fraudulent dealer, when called upon to

supply a sample of a suspected article to the sanitary inspector, or other person, may defy the law, and free himself from all further exposure and prosecution, by simply paying a fine totally inadequate as a punishment for the offence wilfully committed. The very salutary provision for placarding the names and addresses of persons offending against the Act, which obtained in the Act of 1872, is omitted, and thereby one of the most dreaded and, therefore, deterrent consequences of a conviction for adulteration is removed.

Clause 19 directs the mode of proceeding against offenders, but does not define the time. Some limit of this kind should be settled, and any intended prosecution should be instituted within one month after the purchase of the article; and no summons should be made returnable in less than seven days.

Clause 21 gives power to justices to order a second analysis, in disputed cases, to be made by a neighbouring authorized analyst, but I think this will scarcely satisfy public opinion, and would prefer that the second analysis be made in some Government Laboratory, or by some well-known authority upon this branch of chemical analysis residing in a different county.

It is a fact worthy of note, that although the subject of food analysis ought to have been investi-

gated during the last thirty years in a Government Laboratory, yet, that next to nothing from that source has been added to our knowledge upon the subject, notwithstanding such an institution as a department at Somerset House has been in existence for that period. The newly-elected public analysts are now called upon not only to make analyses, but to discover the method of working them, and under these circumstances it need excite no surprise that there have been cases tried before the magistrates in which the evidence given by contending analysts has differed, or that in the present state of popular knowledge upon the subject, remarks of a damaging and offensive nature have been freely circulated by the press and others.

This, however, is most unjust, for in practical chemistry, as in every other branch of scientific investigation, in all cases in which new processes have to be invented, the work must be to a great extent tentative, and, therefore, liable to error until time and experience have led to uniformity of practice.

Clause 22 provides for the payment of costs in those cases in which a trader proves that he has been unjustly accused, but the order is *permissive*, whilst in common fairness it should be made *compulsory*, by the substitution of the word *shall* for "may," in line 29, page 7, and the words "as they or he shall think

proper," in lines 30 and 31, should be expunged. Reasonable costs should be allowed, with power of appeal as to amount to a government legal official, whose decision should be final.

Clause 24 provides a loop-hole for every kind of evasion, and protects the retailer from all consequences if he proves that he sold the article in the same state in which he received it, and provides a warranty of the same. No means, however, are suggested in any part of the Bill for prosecuting the wholesale dealer or manufacturer, whereas it appears to me that the act of giving a "warranty" ought, *ipso facto*, to inculcate the wholesale dealer in the prosecution, and involve him equally in its penal consequences.

Clause 28 provides that the expenses of executing the Act shall be borne in the City of London by the consolidated rates raised by the Commissioners of Sewers.

Clause 29 makes a special provision as to the article tea, directing that—

“ From and after the first day of January one  
 “ thousand eight hundred and seventy-six, all tea  
 “ imported as merchandise into and landed at any  
 “ port in Great Britain or Ireland shall be subject to  
 “ examination by persons to be appointed by the  
 “ Commissioners of Customs for the inspection and

“ analysis thereof, for which purpose samples may,  
 “ when deemed necessary by such inspectors, be  
 “ taken and with all convenient speed be examined by  
 “ the analysts to be so appointed ; and if upon such  
 “ analysis the same shall be found to be mixed with  
 “ other substances or exhausted tea, the same shall  
 “ not be delivered unless with the sanction of the  
 “ said Commissioners, and on such terms and con-  
 “ ditions as they shall see fit to direct, either for  
 “ home consumption, or for use as ship’s stores, or for  
 “ exportation ; but if on such inspection and analysis  
 “ it shall appear that such tea is, in the opinion of the  
 “ analyst, unfit for human food, the same shall be  
 “ forfeited and destroyed or otherwise disposed of  
 “ in such manner as the said Commissioners may  
 “ direct.”

The “ Customs ” may thus sanction the sale of tea adulterated with the leaves of other plants, mixed with lie tea, sand, quartz, magnetic oxide of iron [from the ferruginous earth upon which many of the tea plantations in China are cultivated], &c., or painted (*i.e.* coloured) with plumbago, indigo, turmeric, China clay, or other substances. It must be obvious that the power so given is liable to gross abuse, and I cannot believe the legislature will sanction it.

Under any circumstances all the words after “ destroyed ” should be omitted from this clause,

and under no conditions should the "Customs" be allowed to return any *exhausted* tea into bond, especially as the 30th Clause defines that it "shall mean  
 " and include any tea which has been deprived of its  
 " proper quality, strength, or virtue, by steeping,  
 " infusion, decoction, or other means."

It should be known that large quantities, probably more than ten millions (10,000,000) of pounds, of grossly adulterated and unwholesome teas are still lying in the bonded warehouses, the accumulations of many years past; indeed, I have been informed by a large dealer in this article that much more of such rubbish is deposited there at the present time than is likely to be imported for a long period to come.

That this disgraceful state of things is well known to Her Majesty's Government may be inferred from a communication received by your Honourable Court from the Secretary of the Commissioners of Customs, who, in a letter dated 25th May, 1871, stated—in reply to an inquiry made by your directions as to  
 " whether the Customs Officers are empowered, on  
 " due information given them, to seize and destroy  
 " such (*i.e.* unsound and spurious tea), on certificate  
 " that the same is unfit for human food,"—that:  
 " The officers of this Revenue are not empowered,  
 " either on information given to them, or on cer-  
 " tificate that the same is unfit for human food, to  
 " seize and destroy tea, whether spurious or not."

It is, therefore, somewhat remarkable, that in the amended Bill now under review, no provision whatever is made for the inspection or analysis of this mass of sophisticated stuff, the consequence of which may be that, after the 1st of January, 1876, the public mind will be lulled into a state of false security, under the impression that all teas then put upon the market will have been examined in bond, and the holders of these bastard teas will belie their antecedents if they do not take advantage of that circumstance, and gradually and furtively remove out of bond and distribute all over the United Kingdom their deleterious wares, to the detriment of the public health, and the serious risk to the commercial reputation of respectable, if ignorant, retail tea dealer.

It is, therefore, highly important that a clause be added to the Bill giving to Sanitary Inspectors the *right of entry and search* into all bonded warehouses, with power to seize samples of suspected tea, and obtain a magistrate's order to destroy the same if the Medical Officer of Health or Food Analyst of the District shall certify that it is unsound or unfit for human food.

At the end of the 30th Clause some provision should be made to exempt the trader from penalties for selling bad tea, if he is able to prove that he sold it in the same condition as when passed by the Customs.

Notice of an Amendment to this 30th Clause has been given by Mr. Alderman Cotton in the following words, viz. :—

“ Provided always, That before such tea be so  
 “ finally forfeited and destroyed or otherwise dis-  
 “ posed of, it shall be competent for the owner or  
 “ owners, if he or they shall think fit, to call in  
 “ and demand the opinion of three experienced  
 “ sworn tea brokers, and, in the event of the  
 “ majority of the three persons so called in agree-  
 “ ing in opinion with the said analyst, then the  
 “ said tea shall be absolutely so forfeited, de-  
 “ stroyed, or otherwise disposed of; but in the  
 “ event of the said tea being held and pronounced,  
 “ by certificate in writing under the hands of the  
 “ majority of such three sworn tea brokers, to be  
 “ of merchantable quality, it shall forthwith be  
 “ delivered to the said owner or owners; and in  
 “ any case the costs shall not be less than three  
 “ guineas, and shall not exceed fifteen guineas in  
 “ the whole, and shall be paid by the owner or  
 “ owners making such appeal.”

This Amendment may be admissible, but only upon condition that the sworn tea brokers be named by the authorities of the Customs and the owner or owners conjointly.

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It is much to be regretted that in drawing this Bill the Government has not fixed certain standards of purity, below which no article of food, or drink, or drugs should be sold; and provided that any adulteration or admixture which was proved on analysis to fall short of such standard should ensure a conviction before a magistrate. Thus, in the article of milk, which means life or death to millions of poor children, no doubt or difficulty ought to arise in determining the amount of water it ought in its unsophisticated condition to contain, and this being estimated by approved methods of analysis, nothing would be easier than to fix such a standard of purity.

With respect to spirits, &c., the same reasoning applies, and the dealer should be compelled to declare the alcoholic strength of the fluid he sells.

I have the honour to be,

GENTLEMEN,

Your obedient Servant,

W. SEDGWICK SAUNDERS.

It is hard to be expected that in doing this I'll  
 the Government has not had certain standards of  
 things which would be good and great. I don't think  
 that an individual who was asked to analyze to  
 the Government should receive a pro-  
 portion of a percentage. I don't think in the article of  
 this which seems to be of such a nature of poor  
 quality as to be of little or no value. I don't see to  
 be depending on the nature of what is said in the an-  
 nouncement which is made, and the thing  
 estimated by the number of copies of analysis which  
 would be made. It is not a standard of quality.

I am not in a position to say how many up-  
 dated and the things which are proposed as being  
 the standard of quality of the things in this.

I have the honor to be

Sincerely,

Your obedient servant

W. BRANTON CAMPBELL