

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

REPORTS
OF
THE COMMISSIONER
AND
THE LEGISLATIVE COMMISSION
SUBMITTING THE FINAL DRAFT OF THE
SIXTH REVISION
OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE
UNDER RESOLVE OF MARCH 25, 1915

AUGUSTA
KENNEBEC JOURNAL, PRINT
1916

TITLE THREE.

Agriculture, Trade and Labor.

-
- CHAP. 34. Agricultural institutions.
35. The prevention of contagious diseases among animals.
 36. Protection against adulterated or misbranded goods. Packing of food. Packing of apples.
 37. Regulation of sale of milk.
 38. Extermination of insect pests. Sale of pressed hay. Marking sheep. Record of stallions.
 39. Principal, factors and agents. Warehousemen. Partnerships.
 40. Board of accountancy. Registration of Dealers in Securities. Notaries Public. Holidays, and Days of Public Observance. Demand on bills and notes. Forged checks. Interest.
 41. Auctions and auctioneers. Itinerant vendors.
 42. Pawnbrokers and intelligence offices.
 43. Pilots and ship owners. Wrecks and shipwrecked goods. Lighters and harbors. Port wardens.
 44. Inspection and sale of manufactured articles. Trade-marks and trade names. Assayers of ores and metals. The mining bureau.
 45. Sea and shore fisheries.
 46. Survey and sale of wood, bark, coal, hoops, staves and lumber.
 47. Timber upon rivers, streams and adjacent lands.
 48. Standard weights and measures, and meridian lines.
 49. Provisions relating to labor.
 50. Compensation for personal injuries to employees.
-

CHAPTER 34.

Agricultural Institutions.

- Sections 1-10 Department of Agriculture.
 Sections 11-14 Agricultural Experiment Station.
 Sections 15-16 State Agricultural Society.
 Sections 17-32 County and Local Agricultural Societies.

Department of Agriculture.

Sec. 1. State department of agriculture; election of commissioner; bond.
R. S. c. 60, § 1. A state department of agriculture shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry. A commissioner of agriculture shall be elected biennially by the legislature by joint ballot of the senators and representatives in convention and shall hold his office for the term of two years and until his successor is elected and qualified. He shall give bond in the sum of ten thousand dollars to the state, with sufficient sureties, or with a surety company authorized to do business in the state, as surety, to be approved by the treasurer of state, conditioned to faithfully account for all moneys received and disbursed by him as said commissioner.

See Const. of Me. Art. ix., § 1.

Sec. 2. Duties; appropriation. R. S. c. 60, § 1. 1909, c. 98, § 1. The commissioner of agriculture shall by personal observation, investigation and correspondence, acquaint himself with the methods and wants of practical husbandry, the means of fertilization, and the adaptation of various products to the soils and climate of the state; also with the progress of scientific and practical agriculture elsewhere, with a view to the more complete development of the natural resources of the state; he shall gather statistics of information concerning agriculture and publish the same annually; he shall assist the farmers of the state, in so far as is practicable, to secure farm help, and to promote increased production of farm crops through the selection, the growing and the dissemination of superior strains of seeds. An appropriation of three thousand dollars annually shall be made, to be expended by the commissioner of agriculture for the purpose of carrying out the provisions of this section and of section six of this chapter, and for such other purposes and in such manner as in his judgment will best promote the interests of agriculture in this state.

Sec. 3. Shall hold institutes; character of their work. R. S. c. 60, § 2. He shall hold or cause to be held two farmers' institutes in each county annually and as many more as the appropriation therefor will allow. The work of said institutes shall be devoted to the presentation and discussion of questions bearing upon agriculture and the agricultural interests of the state; and for this purpose said commissioner may employ speakers who are qualified and versed in the subjects assigned them. He may also appoint and employ assistants, experts, lecturers, a stenographer and other aids needed in conducting such institute work, and shall fix the compensation of such employees. He may hold such institutes independently or in connection with other organizations devoted to agricultural interests and as far as possible and for the best agricultural interests of the state, aid and encourage agricultural societies and associations in the state, and shall collect and preserve in his office for public inspection all valuable data relating to the practical work of such societies and associations.

Sec. 4. Shall hold a state dairymen's conference. R. S. c. 60, § 3. 1909, c. 98, § 2. 1913, c. 59, § 1. He shall, in connection with, and with the aid of the Maine Dairymen's Association, annually hold a state dairymen's conference for the exhibit of dairy products and appliances, wherein prizes for high merit and quality in butter and cheese may be offered, and may employ experts and lecturers to enhance dairy interests, but the expenses of the same shall not exceed the sum of seven hundred dollars annually.

Sec. 5. Appropriation. R. S. c. 60, § 4. An appropriation of three thousand dollars annually shall be made for said institute work and for all other purposes set out in the two preceding sections.

Sec. 6. Shall assist in promoting horticultural and dairy work. R. S. c. 60, § 5. The commissioner of agriculture shall aid and assist societies and associations organized and established for the advancement of pomology, horticulture and dairy work, also societies devoted to the interests of the pure breeding of stock of all kinds.

Sec. 7. Shall apportion the state stipend due societies. R. S. c. 60, § 6. He shall apportion annually the stipend due from the state to the said agri-

CHAP. 34

cultural societies, including the State Pomological Society; he shall issue blanks to the proper officers of said societies for such returns as may be deemed necessary for a full and complete knowledge of the work of said societies for each year, and shall certify to the governor and council the amount of bounty due such society, and shall designate to the treasurer of state to whom such moneys shall be paid, but said societies shall not be entitled to such bounty, unless they shall make such returns.

Sec. 8. Authority to summon officers and examine books and records. 1909, c. 95, § 4. He may summon before him and examine on oath any officer of an incorporated agricultural society or other person whose testimony he shall deem necessary in the proper discharge of his duties, and may require such witnesses to bring before him for examination, any books or records in their custody or control which he may deem necessary for his information in the performance of his duties.

Sec. 9. Annual report. R. S. c. 60, § 7. 1913, c. 59, § 2. He shall annually make a report to the governor and council, on or before the first day of January of each year, of the work of the department of agriculture in detail, combining in the same a report of the State Pomological Society and Maine Dairymen's Association, and all other matters relating to the promotion of agriculture; and for the purpose of said report, said society and association shall furnish said commissioner with all necessary data therefor on or before the first day of December of each year. He shall further report all farmers' institutes held and the work therein done, and all public lectures carried on under his authority, and such part of said reports as is of public interest shall be printed for free distribution; for the purpose of making up his report as herein provided, said commissioner shall attend the various agricultural exhibitions in the state and report upon the quality and character of the work of the same.

Sec. 10. Annual account of all expenditures. R. S. c. 60, § 8. He shall render on the first day of January of each year a detailed and itemized account of all expenses of his office, of all institutes held and of all moneys paid out for employees under the provisions hereof, also all sums of money paid for prizes on exhibits and for all other purposes; and for this purpose he shall keep necessary books in which an account of all moneys received and expended shall be entered, which books shall be open to public inspection.

Note. Additional permanent appropriations: Resolve of 1905, c. 32 as amended by Resolve of 1909, c. 96, appropriating five thousand dollars annually for the purpose of improving and protecting the dairy interests of the state by employing a dairy expert and suitable assistants.

Resolve of 1913, c. 61, appropriating five hundred dollars annually for the use of the Maine Seed Improvement Association; increased to one thousand dollars annually by Resolve of 1915, c. 61.

Agricultural Experiment Station.

Sec. 11. Agricultural Experiment Station. R. S. c. 60, § 10. The department of the University of Maine known and designated as the Maine Agricultural Experiment Station, heretofore established at said university in connection therewith, and under its direction, for the purpose of carrying into effect the provisions of an act of the Congress of the United States, approved March 2, 1887, to establish agricultural experiment stations in connection with the colleges established in the several states under the pro-

visions of an act approved July 2, 1862, and of the acts supplementary thereto, shall be maintained in accordance with the purposes for which it was originally established.

Sec. 12. Scientific investigations in orcharding, and crops. 1909, c. 15, § 1. The Maine Agricultural Experiment Station shall conduct scientific investigations in orcharding, corn and other farm crops, and, to this end, shall maintain the farm heretofore purchased in the name of the state, and stocked and equipped, for the use and benefit of said station. The director of the Maine Agricultural Experiment Station shall have the general supervision, management and control of said farm and of all investigations thereon.

Sec. 13. Investigations in animal husbandry. 1913, c. 141, § 1. The Maine Agricultural Experiment Station shall also conduct scientific investigations in animal husbandry, including experiments and observations on dairy cattle and other domestic animals, and such investigations shall be under the control of the director of said station.

Sec. 14. Appropriation. 1913, c. 141, § 2. The sum of five thousand dollars shall be annually appropriated in favor of the Maine Agricultural Experiment Station, and the same shall be expended by the director of said station in executing the provisions of the preceding section. Payments of said appropriation shall be made quarterly in advance upon the warrant of the governor and council.

Note. Act of Congress approved March 16, 1906, entitled "An Act to provide for an increased annual appropriation for Agricultural Experiment Stations, and regulating the expenditure thereof," accepted; Public Laws 1907, c. 39.

Act of Congress approved May 8, 1914, entitled "An Act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of the act of congress, approved July 2, 1862 and of acts supplementary thereto, and the United States Department of Agriculture," assented to Resolves 1915, c. 60; appropriation therefor, Resolves 1915, c. 59.

The Carleton Fund, the gift of James J. H. Gregory, for the promotion of scientific orcharding in Maine, accepted; Resolves 1911, c. 60.

Department of agriculture authorized to conduct scientific investigations in Aroostook Co. P. & S. L. 1913, c. 190; P. & S. L. 1915, c. 86.

Director of experiment station to make analyses of poisonous drugs, c. 20, § 28.

State Agricultural Society.

Sec. 15. Election of officers. R. S. c. 60, § 11. The Maine State Agricultural Society, at its annual meeting, shall elect, by ballot, a president, secretary, treasurer, trustees and other necessary officers.

Sec. 16. Powers of society; bond and account of treasurer; annual report of secretary. R. S. c. 60, § 12. Said society may take and hold property, real and personal, the annual income of which shall not exceed five thousand dollars, to be applied exclusively to the advancement of agriculture, horticulture, and the arts connected therewith; and the treasurer of said society shall give a suitable bond to the board of trustees, for the safe-keeping of said property, and for the faithful discharge of his duties. At each annual meeting, the treasurer shall submit a full and correct account of the money received and expended; and the secretary shall make a report of the doings of the society, with such information and suggestions as he deems useful to the public.

County and Local Agricultural Societies.

Sec. 17. County and local societies, or treasurers, may hold and manage property; bonds of treasurers. R. S. c. 60, § 13. County and local agricultural societies may take and hold property, real and personal, the annual income of which shall not exceed three thousand dollars, to be applied to the purposes provided in their charters; or their treasurers may receive conveyances or leases of such property, for their societies, and hold, sell, mortgage or pledge it, and shall give bonds to the trustees for the safe-keeping thereof and the faithful discharge of their duties.

Sec. 18. State aid to agricultural societies; apportionment. R. S. c. 60, § 14. 1907, c. 45. 1909, c. 95, § 1. There shall be appropriated annually from the state treasury a sum of money not exceeding two cents to each inhabitant of the state, which shall be divided among the legally incorporated agricultural societies of the state not provided for by special enactment, according to the amount of premiums and gratuities actually paid in full by said societies; provided, that the stipend shall be based entirely upon the premiums and gratuities actually paid in full on exhibition stocks and products; provided, further, that no society shall receive from the state a sum greater than that actually raised and paid by the society for said purposes; provided, also, that each of the said societies, and all agricultural societies receiving aid from the state by special act of the legislature, shall cause the prohibitory liquor law to be enforced on all grounds over which they have control, and not allow immoral shows, gambling in any form or games of chance on said grounds.

Sec. 19. Payments withheld until certain certificates and specifications are filed; investigation of complaints. R. S. c. 60, § 15. 1909, c. 95, § 2. No payment of any state aid, whether made under the provisions of the preceding section or by special appropriation, shall be made to any society until the treasurer thereof files with the treasurer of state a certificate on oath, stating the amount raised by it and containing the specifications required in section twenty-three; and also a certificate from the commissioner of agriculture that he has examined into the claim of said society; that in his opinion it has complied with the provisions of sections twenty-three and twenty-four and with the following section; that there has been awarded and paid by said society as premiums and gratuities a sum at least equal to the amount apportioned to said society, and that the provisions in regard to immoral shows, gambling and the sale of intoxicating liquors have been strictly complied with. In case of any complaint in writing, signed by the complainant, of the violation of any of the provisions of this chapter relating to the payment of state aid in any form to agricultural societies, the commissioner of agriculture may investigate such alleged violation, and employ such agents and counsel as may be necessary, to aid him in such investigation, and the expense incurred shall be paid out of the general appropriation for aid of agricultural societies; provided, that when it is found upon such investigation that the society, against which complaint has been made, has violated the provisions of this chapter, the expense of such investigation shall be paid from the amount that would otherwise have been paid to said society; provided, further, that if the society against which

the complaint is made receives its aid by special enactment, then the expense of the investigation shall be paid from the said appropriation for such society.

Sec. 20. Society offering premiums on grade males not entitled to state aid. R. S. c. 60, § 16. No state stipend shall be paid to any agricultural society offering or paying premiums on grade males; the commissioner of agriculture may make this a part of the sworn return to be made by the proper officers of all agricultural societies; provided that evidence as to eligibility to registration be accepted as satisfactory proof of purity of blood.

Sec. 21. State aid conditional on use of score-card system. R. S. c. 60, § 17. Resolves 1907, c. 162. The payment of the annual appropriations to the state fairs and the payment of the state stipend to all other agricultural societies receiving a three-hundred-dollar stipend or more shall be conditional upon the use of the score-card system in the judging of dairy products. A copy of each score-card as filled by the judge shall be delivered to the exhibitor of each exhibit.

Sec. 22. Expenditure of bounty. R. S. c. 60, § 18. Every society receiving the bounty of the state, shall expend an equal amount each year in premiums and gratuities for the improvement and encouragement of agriculture, horticulture or the mechanic arts, unless the commissioner of agriculture directs for what purposes a sum not exceeding half of such bounty shall be expended; and then it shall be expended accordingly.

Sec. 23. Statements required from competitors. R. S. c. 60, § 19. Every society applying for the bounty of the state shall require of all competitors for premiums either on animals, crops, dairy products or improvements of soils or manures, a full and accurate statement of the process or method of rearing, managing, producing and accomplishing the same, together with its cost and value, with a view of showing the profits or benefits derived or expected therefrom; and the application for bounty shall embrace all the specifications included in the following form, to wit:

"I, A. B., treasurer of the — society, hereby apply for bounty in aid of said society, as granted by law, and being sworn, or affirmed, say that \$— has been raised and paid in good faith into the treasury of said society, and that \$— has been actually paid in full in premiums, in conformity with law."

Sec. 24. Secretaries to report annually to commissioner of agriculture. R. S. c. 60, § 20. The secretaries of the several societies shall prepare an annual report, embracing a concise statement of the financial condition and doings of the society, with a synopsis of the premiums awarded, to be made by filling blanks furnished by the commissioner of agriculture. Said report shall also state the leading features of the annual exhibition, the character of the efforts of the society for the advancement of agriculture, the principal crops raised in the county or district, the success attending their culture as compared with former years, and the obstacles met with; and generally the condition, prospects and wants of agriculture; which report, with a list of the officers of the society and the post-office address of each, renewed at each new election, and all statements made by successful competitors for premiums, and any reports of committees,

CHAP. 34

essays, addresses or other papers presented to the society containing matters of general interest, shall be returned to the commissioner by the first Wednesday of each December. Upon receipt and after examination of said returns, if the commissioner finds them full, faithful and accurate, according to the intent hereof, he shall issue the certificate mentioned in section nineteen, and not otherwise.

Sec. 25. Societies may fix bounds for exhibitions. R. S. c. 60, § 21. 1909, c. 95, § 3. All incorporated agricultural societies may, by their officers, define and fix bounds of sufficient extent for the erection of their cattle-pens and yards, and for convenient passageways to and about the same, on the days of their cattle shows and exhibitions, and for their plowing matches and trial of working teams, within which no person shall enter or pass, unless in conformity with the regulations of the officers thereof; and said societies shall furnish suitable space for the exhibition of farm implements and machinery at a reasonable rental; but they shall not so occupy or include the lands of any person without his consent, or obstruct the public travel of any highway.

Sec. 26. Penalty for violation of regulations. R. S. c. 60, § 22. 1915, c. 22. Whoever, contrary to such regulations, enters or passes within the bounds so fixed, after notice of such regulations, when such grounds are not fenced, (no notice being necessary when such grounds are fenced) shall be subject to a fine of not exceeding five dollars or to imprisonment not exceeding ten days.

Sec. 27. Penalty for defrauding agricultural or horticultural societies. 1915, c. 219. Whoever shall gain admission to the grounds or buildings of any agricultural or horticultural society during the holding of an exhibition, otherwise than by the regular entrance provided, for the purpose of defrauding such society out of the regular entrance fee to such grounds or buildings; or who by fraud, misrepresentation or otherwise unlawfully obtains such admission; and any person obtaining any premium or gratuity offered by such society by fraud or misrepresentation, shall be deemed guilty of larceny from such society, and on conviction shall be punished accordingly.

Sec. 28. Persons may be appointed to keep order, with powers of constables. R. S. c. 60, § 23. The officers of any such society may appoint a sufficient number of suitable persons, to act as constables at cattle shows and exhibitions, with all the powers of constables, for the preservation of the public peace, and the enforcement of the regulations of said society, within the towns where such shows and exhibitions are held, from noon of the day preceding the commencement of the same until noon of the day succeeding the termination thereof, and no longer.

Sec. 29. Sale of merchandise and refreshments, and exhibitions, near grounds, restricted. R. S. c. 60, § 24. Whoever sells any refreshments, or other merchandise, or exhibits any show or play, within a quarter of a mile of the fair grounds of any agricultural society, during the time of any exhibition thereof, unless in his own dwelling-house, or usual and ordinary place of business or lets any land or building adjoining, or overlooking the fair grounds of such society, to spectators of any exhibition thereof,

during the time of such exhibition, without the written consent of its trustees, forfeits to such society not exceeding one hundred dollars, to be recovered on complaint of two of its trustees.

Sec. 30. Powers and privileges of Eastern Maine State Fair. R. S. c. 60, § 25. The corporation known as Eastern Maine State Fair shall have all of the police powers, together with all other powers and privileges, at all of its exhibitions of whatever name or nature, which are conferred upon agricultural societies by sections twenty-five, twenty-six and twenty-eight and the provisions, restrictions, forfeitures and penalties provided by section twenty-seven and by the preceding section shall be applicable to all exhibitions of such corporation.

Sec. 31. Competitors for premiums holden to pay entry fee; lien on animals, to secure payment. R. S. c. 60, § 27. Whoever makes entries of animals or articles as competitors for premiums or purses offered by any agricultural society, or by any person or association in the state, shall be holden to pay the entry fee in accordance with the advertised rules and regulations of any such society, person or association, not in conflict with the laws of the state; and a lien is hereby created upon such animals and articles for such entry fee to secure payment thereof with costs, to be enforced by an action of debt against the person owning such animals or articles, or the person entering the same; or the same may be enforced in the same manner as liens on goods in possession and choses in action, but such lien shall not affect the title of any innocent purchaser of said animals or articles without actual notice of such lien.

See c. 96, §§ 67-76.

Sec. 32. Conduct of exhibitions. R. S. c. 60, § 28. Agricultural societies, persons and associations, holding public exhibitions for competition for premiums or purses are authorized to conduct and manage the same in accordance with the advertised rules and regulations, not in conflict with the laws of the state.

Note. Penalty for false registration of blooded animal, c. 128, § 14.

Penalty for entering in any race a disguised horse, or entering a horse in wrong class, c. 128, § 15.

Resolves in favor of State Agricultural Societies: Maine State Agricultural Society, 1913, c. 170. Eastern Maine State Fair, 1889, c. 160; 1893, c. 187. Central Maine Fair Company, 1911, c. 205. Maine State Pomological Society, 1913, c. 20.

CHAPTER 35.

The Prevention of Contagious Diseases Among Animals.

Sec. 1. Live stock sanitary commissioner, appointment; bond; tenure. 1911, c. 195, §§ 1, 21. For the purpose of facilitating and encouraging the live stock interests of the state, and for extirpating all insidious, infectious and contagious diseases among cattle, horses, sheep and swine, and especially tuberculosis, the governor shall appoint one person of known ability, who shall be charged with the execution of the provisions of this chapter and shall be known and designated as the live stock sanitary commissioner. Before entering upon the duties of the office, he shall give bond to the state in such sum as the governor and council may designate, with sureties, or with a surety company authorized to do business in the state, as surety, to be approved by them, for the faithful performance of all duties of his office. He shall hold office for the term of four years unless sooner removed by the governor, and shall cooperate with, and perform the duties of his office under the general direction of the commissioner of agriculture.

Sec. 2. Commissioner shall investigate as to existence of diseases. 1911, c. 195, § 2. The live stock sanitary commissioner shall cause investigation to be made as to the existence of tuberculosis, pleuro-pneumonia, foot and mouth disease, glanders, hog-cholera and other infectious and contagious disease, among cattle, horses, sheep and swine; and he, or his duly constituted agent, may enter any premises or places including stockyards, cars and vessels, within any county or part of the state, in or at which he has reason to believe there exists any such disease, and make search, investigation and inquiry in regard to the existence thereof.

Note. Notice to live stock sanitary commissioner of case of tuberculosis or glanders in domestic animals, c. 19, § 108.
Non-graduate veterinarian, in service of state, to submit to examination as to his fitness to render professional services, c. 18, § 60.

Sec. 3. Notice, by publication, of existence of diseases; quarantine of animals and places; appraisal of animals affected. 1911, c. 195, § 2. 1913, c. 210, § 1. 1915, c. 304, § 1. Upon the discovery of any disease mentioned in the preceding section, the live stock sanitary commissioner shall give notice of the existence and the locality thereof, by publication in such newspapers as he may select, and shall notify in writing the officials or agents of any railroad, steamboat or other transportation company, doing business in or through such infected locality, of the existence of such disease; he shall establish and maintain such quarantine of animals, places, premises or localities, as he may deem necessary to prevent the spread of any such disease; he shall cause the animal or animals affected with the said disease, to be appraised in accordance with the rules and regulations made by him, as hereinafter authorized and provided, and shall cause the same to be destroyed, and a proper disposition of the carcass made, according to the rules and regulations aforesaid; he shall pay to the owner or owners thereof their value, as determined at the time of the appraisal, out of any moneys appropriated by the legislature for that purpose; provided, however, that no appraised value shall be more than one hundred dollars

for cattle, with a pedigree recorded, or recordable in the recognized herd books of the breed in which the cattle destroyed may belong, nor more than seventy-five dollars, for the cattle which have no recordable pedigree; and all other animals so destroyed shall be paid for at the rate of one-half their cash value; provided, that no appraised value shall exceed one hundred dollars for any horse condemned; provided, further, that in no case shall compensation be allowed for any animal destroyed under the provisions of this chapter, which may have contracted or been exposed to such disease in a foreign country or on the high seas, or that may have been brought into this state, within one year previous to such animal showing evidence of such disease, and the owner or owners thereof shall furnish satisfactory evidence as to the time during which such animal or animals shall have been owned in the state; nor shall compensation be allowed to any owner who in person, or by agent, knowingly and wilfully conceals the existence of such disease, or the fact of exposure thereto in animals of which the person making such concealment, by himself or agent, is in whole or in part owner.

Sec. 4. Commissioner required to publish rules and regulations, which shall be approved by the governor. 1911, c. 195, § 3. The live stock sanitary commissioner shall make, record, and publish rules and regulations, providing for and regulating the agencies, methods and manner of conducting the investigation aforesaid, regarding the existence of said contagious diseases; for ascertaining, entering and searching places where such diseased animals are supposed to exist; for ascertaining what animals are so diseased, or have been exposed to contagious diseases; for making, reporting and recording descriptions of said animals so diseased, exposed and destroyed and for appraising the same, and for making payment therefor; and shall make all other needful rules and regulations, which may in his judgment be deemed requisite, to the full and due execution of the provisions of this chapter. All such rules and regulations before they shall become operative, shall be approved by the governor, and thereafter published in such manner as may be provided in such rules and regulations; after such publication, said rules and regulations shall have the force and effect of law, so far as the same are not inconsistent with the laws of this state, or the United States.

Sec. 5. Penalty for obstructing commissioner in the performance of his duties. 1911, c. 195, § 4. Any person who knowingly and wilfully refuses permission to the live stock sanitary commissioner, or his duly constituted agent, to make, or who knowingly or wilfully, obstructs said live stock sanitary commissioner, or his duly constituted agent, in making necessary examination of, and as to animals, supposed by the live stock sanitary commissioner or his agent to be diseased as aforesaid, or in destroying the same, or who knowingly attempts to prevent the live stock sanitary commissioner or his duly constituted agent, from entering upon the premises and other places hereinbefore specified, where any of said diseases are by the live stock sanitary commissioner supposed to exist, shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, not exceeding ninety days, or by both at the discretion of the court.

CHAP. 35

Sec. 6. Penalty for knowingly concealing the existence of disease. 1911, c. 195, § 5. Any person who is the owner of, or who is possessed of any interest in any animal affected with any of the diseases named in section two, or any person who is agent, common carrier, consignee or is otherwise charged with any duty in regard to any animal so diseased, or exposed to the contagion of such disease, or any officer or agent, charged with any duties under the provisions of this chapter, who shall knowingly conceal the existence of such contagious disease, or the fact of such exposure to contagion, and who shall knowingly and wilfully fail within a reasonable time to report to the live stock sanitary commissioner the knowledge of their information in regard to the existence and location of such disease, or of exposure thereto, shall be punished as provided in section five.

Sec. 7. Quarantine declared when owner refuses to accept sum to be paid under appraisal. 1911, c. 195, § 6. When the owner of animals adjudged under the provisions of this chapter, by the proper authority, to be diseased, or to have been exposed to contagion, refuses to accept the sum authorized to be paid under the appraisal provided for in this chapter, the live stock sanitary commissioner shall declare and maintain a rigid quarantine for thirty days as to the animals adjudged as aforesaid, to be diseased, or exposed to any contagious or infectious disease and of the premises or places where said cattle, horses, sheep or swine may be found, according to the rules and regulations prescribed by said live stock sanitary commissioner, approved by the governor, and published as provided in section four.

Sec. 8. Penalty for transporting any animal affected, or that has been exposed to contagious diseases. 1911, c. 195, § 7. No person owning or operating a railroad, nor the owner or owners or masters, of any steam, sailing or other vessel, within the state, shall receive for transportation, or transport from one part of the state to another part of the state, or bring from any other state or foreign country, any animal affected with any of the diseases named in section two, or that have been exposed to such diseases, especially the disease known as tuberculosis, knowing such animal to be affected or to have been so exposed; nor shall any person or persons, company or corporation, drive on foot, or transport in private conveyance, from one part of the state to another part of the state, any animal knowing the same to be affected with, or to have been exposed to, any of said diseases; the proper movement of these animals under the direction of the live stock sanitary commissioner for purposes of slaughter and disposal, excepted. Any person or persons violating any provision of this section shall be punished by fine of not exceeding one hundred dollars, or by imprisonment not exceeding three months, or by both fine and imprisonment.

Sec. 9. Conditions under which owner of condemned cattle may receive compensation therefor; cattle reacting to tuberculin test may be killed. 1911, c. 195, § 8. 1913, c. 74. 1915, c. 304, § 2. When cattle shipped from Maine to the quarantine station at Brighton, Massachusetts, are subjected to the tuberculin test, and respond to such test, and the inspector for the

"Cattle Bureau of Massachusetts" shall find upon post-mortem examination that such cattle were diseased with tuberculosis, and shall so state in writing to the live stock sanitary commissioner within thirty days from shipment from the state, and shall also give in writing a description of such animal, the name of the owner, the shipper, the date and name of place from which same was shipped, the name of the party of whom it was bought and the fair cash value of such animal when condemned, and shall also comply with any other rule or regulation that the live stock sanitary commissioner may require, the owner shall be entitled to receive a fair market value, not to exceed seventy-five dollars for grade and one hundred dollars for thoroughbred cattle, with a pedigree recorded or recordable; but in no case shall the owner be paid for any animal condemned under the provisions of this section, until he has filed with the live stock sanitary commissioner a claim, stating the name of the owner, the shipper, his post-office address, place and date of shipment, a fair market value for such animal, name of the person from whom said animal was purchased or consigned and such other information as the live stock sanitary commissioner may require; such claim shall be accompanied in every instance with a "sale ticket" for such part of the animal as may have been sold, and the amount of such sale shall be deducted from the appraised value due the owner of the condemned animal. Cattle reacting to the tuberculin test may be sent to establishments maintaining a United States government meat inspection service, and be killed under federal government inspection, and be disposed of according to the requirements of the Government Meat Inspection Act.

Sec. 10. Persons bringing horses into this state must have permit; penalty. 1911, c. 195, § 9. 1913, c. 210, § 2. Any person or persons bringing horses into the state must have a permit and shall notify the live stock sanitary commissioner within forty-eight hours after their arrival; the commissioner shall at once cause the same to be examined by a physical examination or to be tested with mallein, or cause the blood test to be used, at the expense of the owner; if an animal is found to be glandered no compensation shall be allowed. No permit or examination will be required for horses used in circuses and to perform on the stage. Whoever violates this section shall be punished by a fine as provided in section seventeen.

Sec. 11. Vaccination provided for. 1911, c. 195, § 10. Such sum as the live stock sanitary commissioner may deem necessary, shall be used for the vaccination of cattle against tuberculosis, under the rules and regulations made for the control of such work.

Sec. 12. Dairy, breeding, and show cattle shall be tested. 1911, c. 195, § 11. Cattle used for dairy purposes or for breeding purposes, that are to be shown in competition for prizes, in any state agricultural show, shall be tested with tuberculin, within twelve months of the opening date of the exhibition where they are to be shown. Such test shall be made under the direction of the live stock sanitary commissioner, who shall furnish a certificate of such test, to the owner or owners of such animals. State agricultural associations that receive any aid from the state, shall demand a certificate of test, duly authorized by the live stock sanitary commissioner, from owners of cattle that are to compete for prizes in accordance with the

CHAP. 35

above, under penalty of forfeiture of such aid; but this provision shall not apply to calves less than one year old.

Sec. 13. Commissioner shall make rules and regulations for investigation of tuberculosis; use of tuberculin test by veterinarian. 1911, c. 195, § 12. 1913, c. 210, § 3. The live stock sanitary commissioner shall make all needful rules and regulations as to the manner in which application shall be made to him for the investigation of tuberculosis in the herds of the state; provided, however, that he employ regular skilled veterinarians and shall regulate the way and manner in which the test shall be applied and the state shall not be held responsible for any private test made. Any registered veterinarian in good standing may use the tuberculin test by filing with the commissioner of agriculture evidence of his registration and that he is in good standing; upon receipt of such evidence the commissioner of agriculture shall issue a permit granting him the right to practice for the department. The live stock sanitary commissioner having sufficient evidence that any veterinarian to whom a permit has been issued, is incompetent or has been engaged in fraudulent practices in the use of the tuberculin test, shall suspend him from practicing by written notice, which notice shall state the reason for his suspension. The live stock sanitary commissioner shall immediately file with the governor and commissioner of agriculture the evidence of incompetency or of fraudulent practice in the use of the tuberculin test. The governor and commissioner of agriculture shall give the person accused a hearing, and if they find he is incompetent or has been engaged in fraudulent practice in the use of the tuberculin test, they shall strike his name from the list; but if found competent, and not guilty of fraudulent practice in the use of the tuberculin test, they shall notify the live stock sanitary commissioner of their finding, and he shall notify the party that he may resume practice for the department.

Sec. 14. Certificate shall be left with owner of condemned cattle. 1911, c. 195, § 13. There shall be left with the owner of all condemned animals a proper certificate, duly authenticated, showing the number condemned and the value at which they are appraised, which shall be transferable only with the consent and acceptance of the commissioner.

Sec. 15. Stables where condemned animals were found shall be disinfected. 1911, c. 195, § 14. The live stock sanitary commissioner shall thoroughly disinfect all stables and premises where condemned animals were found, or cause the same to be done by a competent agent in the employ of such commissioner, and the expense incurred on account of such disinfectant shall be paid one-half from the appropriation allowed for the use of such commissioner, and one-half by the owner or person in control of such stable and premises.

Sec. 16. Assessors' return of pure-blood cattle, filed with commissioner. 1911, c. 195, § 15. All assessors of taxes shall keep a record of all pure-blooded cattle kept for breeding purposes, and shall make a report of the same to the live stock sanitary commissioner on or before the first day of July of each year, showing the name of the owner, number in the herd, age and sex; such reports shall be made upon blanks furnished by the commissioner.

Sec. 17. Certificate of health upon sale of pure-blooded cattle for breeding purposes. 1911, c. 195, § 16. All persons selling pure-blooded cattle, or cattle represented to be pure blooded, for breeding purposes, shall before delivery, make a report to the live stock sanitary commissioner, upon blanks furnished by him upon application, stating the number of cattle sold, the age and sex, and to whom sold; before delivery, such cattle shall be tested with tuberculin under the direction of, and a certificate of health given by, the live stock sanitary commissioner, unless such a test has been carried out under his direction within one year; but this provision shall not apply to calves less than one year old. Such certificate of health shall be delivered to the buyer by the seller. Whoever violates any provision of this section, shall be punished by a fine of not less than twenty-five, or more than fifty dollars for each offense.

Sec. 18. Permit required for cattle entering the state. 1911, c. 195, § 17. No neat stock, (calves, cows, steers, oxen or bulls), or stags of any age, shall be allowed to enter this state, from any other state or country, either for dairying purposes, breeding purposes or for slaughter, except cattle in transit under the control of the federal government, without a permit duly authorized by the live stock sanitary commissioner, which permit shall accompany the shipment. Such animals shall be tested with tuberculin within thirty days of arrival, regardless of any other test made, and shall be held in quarantine upon the premises of the owner, until released by the live stock sanitary commissioner. Whoever violates any provision of this section shall be punished as provided in section seventeen.

Sec. 19. County attorneys shall prosecute violations. 1911, c. 195, § 18. The several county attorneys shall prosecute all violations of this chapter, which shall be brought to their notice or knowledge by any person making the complaint under oath; the supreme judicial court and superior courts shall have jurisdiction of such offenses.

Sec. 20. Commissioner shall keep a record; report; when duties are suspended, records turned over to commissioner of agriculture. 1911, c. 195, § 19. The live stock sanitary commissioner shall make and preserve a full record of all rules and regulations promulgated under the provisions of this chapter, and all payments and expenses incurred hereunder, and all other transactions performed by him, in the discharge of his duties as herein provided; and he shall on or before the first Wednesday in January of each year, and at other times as he may deem conducive to the public interest, or whenever required by the governor, report to the governor full and accurate accounts of his expenditures and other proceedings under the provisions hereof, and of the condition of any infectious or contagious disease among animals in the state; said report shall be communicated by the governor to the legislature. Whenever the functions of said live stock sanitary commissioner shall be suspended or terminated, he shall turn over to the commissioner of agriculture all his books, papers, records, and other effects, taking his receipt therefor; and the commissioner of agriculture shall remain the custodian of the same until such time as the functions of said live stock sanitary commissioner may be restored.

Sec. 21. Commissioner may employ agents and fix compensation. 1911, c. 195, § 20. The live stock sanitary commissioner may employ skilled

CHAP. 36

veterinarians in all tuberculin tests and such other agents and employees as he may deem necessary to carry into effect the provisions of this chapter, and may fix the compensation of the person or persons so employed, and terminate such employment at his discretion.

Sec. 22. Payment of expenses. 1911, c. 195, §§ 20, 22. The actual and necessary traveling expenses of the commissioner and his employees, the expense of disinfecting premises, cars, vessels and other places, destroying diseased animals and those exposed to disease, and paying for the same, and all other expenses necessary to properly carry out the provisions of this chapter, shall be paid by the treasurer of state upon vouchers approved by the live stock sanitary commissioner, after the same have been audited by the state auditor. All money received from the sale of hides and carcasses of condemned animals shall be expended for the purposes of this chapter.

CHAPTER 36.

Protection Against Adulterated or Misbranded Goods. Packing of Food. Packing of Apples.

Adulterated or Misbranded Goods.

Sec. 1. Sale of certain adulterated articles prohibited. 1911, c. 119, § 1. No person shall, within this state, manufacture, sell, distribute, transport, offer or expose for sale, distribution, or transportation, any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide or insecticide which is adulterated or misbranded within the meaning of this chapter.

Sec. 2. Definitions. 1911, c. 119, § 2. The term "agricultural seed" as used in this chapter shall be held to include the seeds of alfalfa, barley, Canadian blue grass, Kentucky blue grass, brome grass, buckwheat, alsike clover, crimson clover, red clover, medium clover, white clover, field corn, Kaffir corn, meadow fescue flax, Hungarian, millet, oats, orchard grass, rape, redtop, rye, sorghum, timothy and wheat.

The term "commercial feeding stuff" as used herein shall be held to include all articles of food used for feeding live stock, and poultry, except hays and straws, the whole seeds, and the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, flaxseed and broom corn.

The term "commercial fertilizer" as used herein shall be held to include all materials used for fertilizing purposes, the price of which exceeds ten dollars a ton.

The term "drug" as used herein shall be held to include all medicines and preparations recognized in the United States pharmacopœia or national formulary for internal or external use, and any substance or mixture of substances intended to be used for the cure, mitigation, or prevention of disease of man or other animals.

The term "food" as used herein shall be held to include all articles, whether simple, mixed or compound, used for food, drink, confectionery, or condiment by man or animals.

The term "fungicide" as used herein shall be held to include any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any and all fungi that may infest vegetation, or be present in any environment whatsoever.

The term "insecticide" as used herein shall include Paris green, lead arsenate, and any substance or mixture of substances intended to be used for preventing, destroying, repelling, or mitigating any insect which may infest vegetation, man, animals, or houses, or be present in any environment whatsoever.

Sec. 3. Marking of packages of seed. 1911, c. 119, § 3. Every lot or package of agricultural seed which is sold, distributed, transported, offered or exposed for sale, distribution, or transportation for seed, in the state by any person shall have affixed in a conspicuous place on the outside thereof, a plainly written or printed statement clearly and truly giving the name thereof and its minimum percentage of purity and freedom from foreign matter.

Sec. 4. Marking of packages of commercial feeding stuff. 1911, c. 119, § 4. Every lot or package of commercial feeding stuff, which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person, shall have affixed in a conspicuous place on the outside thereof, a plainly printed statement, clearly and truly giving the number of net pounds in the package; the name, brand or trade-mark under which the article is sold; the name and principal address of the manufacturer or shipper; a chemical analysis stating the maximum percentage of crude fiber, the minimum percentage of crude fat, and the minimum percentage of crude protein (allowing one per cent of nitrogen to equal six and one-fourth per cent of protein) which it contains, all three constituents to be determined by the methods adopted by the association of official agricultural chemists; if the feeding stuff is a compound feed, the name of each ingredient contained therein; and if artificially colored, the name of the material used for that purpose. If the feeding stuff is sold in bulk or put up in packages belonging to the purchaser, the seller shall upon the request of the purchaser furnish him with a copy of the statements named in this section.

Sec. 5. Sale and manufacture of commercial feeding stuff, regulated; registration fee. 1911, c. 119, § 5. 1913, c. 140, § 1. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation, in the state, any commercial feeding stuff shall before so doing file with the commissioner of agriculture for each and every commercial feeding stuff bearing a distinguishing name or trade-mark, a certified copy of the statements required by section four. Said certified copy shall be accompanied when said commissioner shall so request, with a sealed package containing not less than one pound of the commercial feeding stuff. The person who shall file said certificate shall pay annually to the commissioner of agriculture a registration fee of ten dollars, this fee to be

CHAP. 36

assessed on any brand offered for sale, distribution or transportation in the state; provided, however, that a brand of commercial feeding stuff may be re-registered for the following year without the payment of the fee upon the establishment by the person who paid said fee that the total sales within the state during the year for which said fee was paid did not exceed fifty tons. Whenever any person shall have filed such certificate and paid such registration fee, no other person shall be required to file such statement or pay such fee.

Sec. 6. Marking of packages of commercial fertilizer. 1911, c. 119, § 6. Every lot or package of commercial fertilizer, which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly giving the number of net pounds in the package; the name or trade-mark under which the article is sold; the name and principal address of the manufacturer or shipper and a chemical analysis stating the minimum percentage of nitrogen, or its equivalent in ammonia in available form, of potash soluble in water, of phosphoric acid in available form, soluble and reverted, and of total phosphoric acid, the constituents to be determined by the methods adopted by the association of official agricultural chemists. If the fertilizer is sold in bulk or put up in packages belonging to the purchaser, the seller shall, upon request of the purchaser, furnish the purchaser with a copy of the statements named in this section.

Sec. 7. Lime, marl or wood-ashes classed as a commercial fertilizer; statement of percentages; fee for certificate. 1913, c. 164. Lime, marl or wood-ashes intended for fertilizing purposes, and without regard to the price at which it is sold or offered for sale, shall be classed as a commercial fertilizer within the meaning of this chapter. All the requirements and penalties relative to commercial fertilizers named in this chapter shall apply to any and every lot of lime, marl or wood-ashes intended for fertilizing purposes. In addition to the requirements of section six the label and certificates shall truly state the minimum and maximum percentage of total lime (calcium oxide), the minimum and maximum percentage of total magnesia (magnesium oxide), the minimum and maximum percentage of lime combined as carbonate (calcium carbonate), and magnesium combined as carbonate (magnesium carbonate), and minimum percentage of lime sulphur (calcium sulphate) in gypsum or land plaster. The person filing the certificate shall annually pay to the commissioner of agriculture a registration fee of ten dollars for each brand of lime intended for fertilizing purposes.

Sec. 8. Sale and manufacture of commercial fertilizer, regulated; registration fee. 1911, c. 119, § 7. 1913, c. 140, § 1. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation in the state any commercial fertilizer shall before so doing file with the commissioner of agriculture for each and every fertilizer bearing a distinguishing name or trade-mark, a certified copy of the

statements named in section six. Said certified copy shall be accompanied when said commissioner shall so request with a sealed package containing not less than two pounds of the commercial fertilizer. The person who shall file said certificate shall pay annually to the commissioner of agriculture a registration fee as follows: Ten dollars each for the nitrogen and the phosphoric acid and five dollars for the potash, contained or said to be contained in the fertilizer, this fee to be assessed on any brand offered for sale, distribution or transportation in the state. Whenever any person shall have filed said certificate and paid said registration fee, no other person shall be required to file such statement or pay such fee.

Sec. 9. Marking of packages of fungicide. 1911, c. 119, § 8. Every lot or package of a fungicide or an insecticide which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person, shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the number of net pounds in the package, the name or trade-mark under which the article is sold, the name and address of the manufacturer or shipper, and a chemical analysis stating the minimum percentage of total arsenic and the maximum percentage of water-soluble arsenic which it contains, the constituents to be determined by the methods adopted by the association of official agricultural chemists.

Sec. 10. Manufacture and sale of fungicides, etc., regulated; registration fee. 1911, c. 119, § 9. 1913, c. 140, § 1; c. 164, § 1. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation in the state any fungicide or insecticide shall before so doing file with the commissioner of agriculture for each and every fungicide or insecticide bearing a distinguishing name or trade-mark, a certified copy of the statements made in accordance with the preceding section. Said certified copy shall be accompanied when said commissioner of agriculture shall so request with a sealed package containing not less than one pound of the fungicide or insecticide. The person filing such certificate shall pay annually to the commissioner of agriculture a registration fee of ten dollars, this fee to be assessed on any brand offered for sale, distribution or transportation in the state, except that said fee shall not be assessed for the registration of a fungicide or insecticide consisting of organic matter and not containing any added inorganic matter or mineral chemical, provided that a complete chemical analysis of said fungicide or insecticide is given in, and as part of, the certificate required under this section. Whenever any person shall have filed said certificate and paid said registration fee, no other person shall be required to file such statement or pay such fee.

Sec. 11. Registration may be refused when name or trade-mark is misleading. 1911, c. 119, § 10. 1913, c. 140, § 1. The commissioner of agriculture may refuse to register any commercial feeding stuff or commercial fertilizer, bearing a name, brand or trade-mark which is misleading or deceptive or which would tend to mislead or deceive as to materials of which it is composed, and in the case of commercial feeding stuff when

CHAP. 36

the specific names of each and all of the ingredients used in its manufacture are not stated. He may also cancel the registration of any feeding stuff, commercial fertilizer, fungicide or insecticide that he deems to be manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in violation of any of the provisions of this chapter. The registration of each brand of commercial feeding stuff, commercial fertilizer, fungicide or insecticide shall terminate on the thirty-first day of December of each year.

Sec. 12. When goods shall be deemed to be adulterated. 1911, c. 119, § 11.
For the purpose of this chapter an article shall be deemed to be adulterated:

In case of **agricultural seed**:

First. If its purity falls below its accompanying guaranty.

Second. If it contains the seed of any poisonous plant.

In case of **commercial feeding stuff**:

First. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

Second. If it be colored, coated, or stained in a manner whereby damage or inferiority is concealed.

Third. If it contains any poisonous or deleterious ingredients which may render such article injurious to the health of live stock or poultry.

Fourth. If any milling or manufactured offals or any foreign substance whatever have been added to any whole or ground grain or other commercial feeding stuff, unless the true composition, mixture or adulteration is plainly marked or indicated upon the container thereof.

In case of **commercial fertilizer**:

First. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

Second. If it contains any material deleterious to growing plants.

In case of a **drug**: 1913, c. 140, § 1.

First. If, when a drug is sold under or by a name recognized in the United States pharmacopœia or national formulary, it differs from the standard of strength, quality, or purity, as laid down in the United States pharmacopœia, or national formulary official at the time of investigation, or as fixed by the commissioner of agriculture: provided, that no drug defined in the United States pharmacopœia, the national formulary or by said commissioner shall be deemed to be adulterated under this provision if the standard of strength, quality, or purity be plainly stated, so as to be understood by the non-professional person, upon the bottle, box or other container thereof, although the standard may differ from that laid down in the United States pharmacopœia, national formulary, or that fixed by said commissioner.

Second. If its strength or purity differs from the professed standard or quality under which it is sold.

In case of **confectionery**:

If it contains terra alba, barytes, talc, chrome yellow, or other mineral substances, or poisonous color or flavor, or other ingredients deleterious or detrimental to health, or any vinous, malt, or spirituous liquor or compound, or narcotic drug.

In case of **food**:

First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituents of the article have been wholly or in part abstracted.

Fourth. If it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed.

Fifth. If it contain any poisonous or other added deleterious ingredient which may render such article injurious to health.

Sixth. If it consists in whole or in part of a filthy, decomposed or putrid animal or vegetable substance, or any portion of an animal unfit for food, whether manufactured or not, or if it is the product of a diseased animal, or one that has died otherwise than by slaughter.

Seventh. If in the manufacture, sale, distribution, transportation, or in the offering or exposing for sale, distribution or transportation, it is not at all times securely protected from filth, flies, dust or other contamination, or other unclean, unhealthful or unsanitary conditions.

Eighth. If it does not conform to the standards of strength, quality, and purity, now or hereafter to be established by statute or fixed by the commissioner of agriculture: provided, that a food shall not be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated, so as to be understood by the non-professional person, upon the container thereof, although the standard may differ from that established by statute or fixed by said commissioner.

Ninth. If its strength or quality or purity fall below the professed standard or quality under which it is sold.

In case of **fungicide or insecticide**:In the case of **Paris green**:

First. If it does not contain at least fifty per centum of arsenious oxide (As_2O_3).

Second. If it contains arsenic in water-soluble forms equivalent to more than three and one-half per centum of arsenious oxide (As_2O_3).

Third. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

In the case of **lead arsenate**:

First. If it contains more than fifty per centum of water.

Second. If it contains total arsenic equivalent to less than twelve and one-half per centum of arsenic oxide (As_2O_5).

Third. If it contains arsenic in water-soluble forms equivalent to more than seventy-five one-hundredths per centum of arsenic oxide (As_2O_5).

Fourth. If any substances have been mixed and packed with it so as to reduce, lower, or injuriously affect its quality or strength: provided, however, that extra water may be added to lead arsenate if the resulting mixture is labeled lead arsenate and water, the percentage of extra water being plainly and correctly stated on the label.

CHAP. 36

In the case of **fungicide or insecticide other than Paris green and lead arsenate:**

First. If its strength or purity fall below the professed standard or quality under which it is sold.

Second. If any substance has been substituted wholly or in part for the article.

Third. If any valuable constituent of the article has been wholly or in part abstracted.

Fourth. If it is intended for use on vegetation and shall contain any substance or substances injurious to such vegetation.

Sec. 13. Term "misbranded" defined. 1911, c. 119, § 12. The term "misbranded" as used herein, shall apply to all articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide and insecticide, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, or which is falsely branded in any particular.

For the purpose of this chapter an article shall also be deemed to be misbranded.

In case of **agricultural seed:**

If any lot or package fail to bear all the statements required by section three.

In case of **commercial feeding stuff:**

First. If any package fails to bear all of the statements required by section four.

Second. If the printed statements required by section four to be affixed to the package differ from the statements required by section five.

Third. If any brand is manufactured, transported, distributed, sold, offered or exposed for sale, distribution, or transportation upon which the registration fee required by section five has not been paid.

In case of **commercial fertilizer:**

First. If any package fail to bear all the statements required by section six.

Second. If the printed statements required by section six to be affixed to the package differ from the statement required by section eight.

Third. If any brand is manufactured, distributed, transported, sold, offered or exposed for sale, distribution or transportation upon which the registration fee required by section eight has not been paid.

In case of a **drug:**

First. If it be an imitation of or offered for sale under the name of another article.

Second. If the contents of the package as originally put up shall have been removed, in whole or in part, and other contents shall have been placed in such package, or, except in the case of a physician's prescription compounded by a physician or a registered pharmacist, if the package fail to bear a statement on the label of the quantity or proportion of any alcohol, morphine, opium, cocaine, heroin, alpha or beta eucaine, chloroform, cannabis indica, chloral hydrate or acetanilide or any derivative or any preparation of any such substances contained therein.

In case of food:

First. If it be an imitation of or offered for sale under the distinctive name of another article.

Second. If the contents of the package as originally put up shall have been removed in whole or in part and other contents shall have been placed in such package, or if it fail to bear a statement on the label of the quantity or proportion of each and any added coloring matter, preservative, chemical or drug contained therein.

Third. If the package containing it or its label shall bear any statement, design, or device regarding the ingredients or the substances contained therein, which statement, design, or device shall be false or misleading in any particular:

Provided, that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed to be adulterated or misbranded in the following cases:

First. In the case of mixtures or compounds which may be now or from time to time hereafter known as articles of food, under their own distinctive names, and not an imitation of or offered for sale under the distinctive name of another article, if the name be accompanied on the same label or brand with a statement of the place where said article has been manufactured or produced.

Second. In the case of articles labeled, branded, or tagged so as to plainly indicate that they are compounds, imitations, or blends, and the word "compound," "imitation," or "blend," as the case may be, is plainly stated on the package in which it is offered for sale: provided, that the term "blend" as used herein shall be construed to mean a mixture of like substances, not excluding harmless coloring or flavoring ingredients used for the purpose of coloring and flavoring only, and whose presence is declared upon the label; provided further, that nothing in this chapter shall be construed as requiring or compelling proprietors or manufacturers of proprietary goods which contain no unwholesome added ingredient to disclose their trade formulas except in so far as the provisions of this chapter may require to secure freedom from adulteration or misbranding.

In case of fungicide and insecticide:

First. If any lot or package fail to bear all the statements required by section nine.

Second. If the printed statements required by section nine to be affixed to the lot or package differ from the statements required by section ten.

Third. If any brand is manufactured, transported, distributed, sold or offered or exposed for sale, distribution or transportation upon which the registration fee required by section ten has not been paid.

Fourth. If it be an imitation of or offered for sale under the name of another article.

Fifth. If it be labeled or branded so as to deceive or mislead the purchaser, or if the contents of the package as originally put up shall have been removed in whole or in part, and other contents shall have been placed in such packages.

Sixth. If it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi

CHAP. 36

and does not have the percentage amount of such inert ingredient plainly and correctly stated on the label.

Sec. 14. Misbranding of food in package form. 1913, c. 164. For the purpose of this chapter an article of food in package form if sold at a greater price than five cents, shall also be deemed to be misbranded if the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, that reasonable variations shall be permitted, and tolerances shall be established by rules and regulations made in accordance with section thirty-five. And further provided that the penalties of this chapter shall not be enforced on account of sale of food not branded in terms of weight, measure, and numerical count, purchased prior to September third, nineteen hundred and fourteen.

Analyses.

Sec. 15. Annual analysis; results of analyses to be published. 1911, c. 119, § 14. 1913, c. 140, § 2. The director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide and insecticide, at such time and to such extent as the commissioner of agriculture may determine. And said commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide or insecticide are manufactured, stored, transported, sold, offered or exposed for sale. He may also, in person or by deputy, open any case, package or other container, and may, upon tendering the market price, take samples for analysis. The results of all analyses of articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide and insecticide made by said director shall be published by him in the bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, the names of the manufacturers thereof, and such additional information as to him may seem advisable.

Sec. 16. Samples of commercial fertilizer may be analyzed. 1911, c. 130, § 1. 1913, c. 140, § 1. Any person within the state may send to the commissioner of agriculture samples of commercial fertilizers sold or offered for sale within the state for the purpose of analysis under the following conditions: Said samples shall be taken in the presence of a witness from not less than five packages of properly stored commercial fertilizer in accordance with directions to be furnished by said commissioner; a copy of all marks upon or affixed to the package, including the brand or trademark, the name of the manufacturer and the guaranteed chemical analysis, shall accompany the sample or be deposited with the secretary of the grange or the selectmen of the town where the sample is taken.

Sec. 17. Analysis and fees. 1911, c. 130, § 2. 1913, c. 140, § 1. On receipt of a sample of commercial fertilizer accompanied with (1) a certified statement signed by the witness that the sample was taken as provided

in the preceding section, (2) a copy of the marks on or affixed to the package from which the sample was procured or a signed statement from the secretary of a grange or a selectman that the copy of the marks upon the package has been deposited with him, and (3) an analysis fee of ten dollars for each sample, the commissioner of agriculture shall make or cause to be made an analysis of the fertilizer and shall forthwith report the results of said analysis to the sender.

Sec. 18. When analysis shall be deemed of public importance, fees shall be returned. 1911, c. 130, § 3. 1913, c. 140, §§ 1, 4. If on receipt of the copy of the marks upon the package from which the sample of commercial fertilizer was taken, it shall be found that not more than one sample of the same brand has been analyzed by said commissioner within the year, or if the actual analysis shall differ materially from the guaranteed analysis, the analysis made by said director shall be deemed to be of public importance, and the analysis fee shall be returned to the person who sent the sample. If the actual analysis agrees reasonably with the guaranteed analysis and more than one sample of the brand from which said sample was taken shall have been examined within the year, said commissioner shall pay said analysis fee to the treasurer of state.

Sec. 19. Analysis of commodities. 1913, c. 140, § 5. The commissioner of agriculture shall have all analyses of commodities examined under the inspection laws of which he is the executive made at the Maine Agricultural Experiment Station. The director of said station shall analyze or cause to be analyzed all samples submitted to him by said commissioner. Said station shall be compensated to cover the expense of said analyses by said commissioner.

Sec. 20. Certificates signed by director, presumptive evidence. 1911, c. 119, § 20. Every certificate duly signed and acknowledged by the director of the Maine Agricultural Experiment Station, relating to the collection and analysis of any sample of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide or insecticide, shall be presumptive evidence of the facts therein stated.

Sec. 21. Penalty for adulterating or misbranding. 1911, c. 119, § 16. Any person who adulterates or misbrands within the meaning of this chapter, any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide or insecticide, or any person who manufactures, sells, distributes, transports, offers or exposes for sale, distribution or transportation any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide or insecticide in violation of any provision of this chapter, shall be punished by a fine not exceeding one hundred dollars for the first offense, and by a fine not exceeding two hundred dollars for each subsequent offense.

Sec. 22. Exemption from prosecution. 1911, c. 119, § 17. No person shall be prosecuted under the provisions of the preceding sections of this chapter when he can establish proof of purchase, and a guaranty signed by the person residing in the United States, from whom the purchase was made, to the effect that the article in question is not adulterated or misbranded within the meaning hereof.

Packing of Food.

Sec. 23. Packing of food in tin or glass regulated; permit; packer shall pay for inspection of product. 1911, c. 151, § 1. 1913, c. 140, § 1. Any person intending to pack food in tin or glass within this state may annually file with the commissioner of agriculture an application for a permit. Said application shall state the location of the factory, the kind of food to be packed, the name of the packer and the date on which it is expected that packing will begin. Within sixty days after the filing of such application for permit, the commissioner shall, upon receipt of one hundred dollars, issue to such applicant a permit for packing said food in conformity with the requirements of this chapter for the calendar year. Such packer shall also pay monthly, not later than the tenth day of each month, the cost of maintaining the inspection of the food packed during the previous month. The one hundred dollars paid by a person for a permit, as aforesaid, shall be credited to him, at the close of the calendar year, as a payment toward the cost of inspecting his product. Said commissioner may, however, cancel any permit whenever the provisions of this chapter have not been complied with.

Sec. 24. Commissioner of agriculture shall see that food is packed in conformity with law; penalty for false marking. 1911, c. 151, §§ 2, 4. 1913, c. 140, § 1. The commissioner of agriculture shall, by adequate inspection, see that the food packed hereunder is in conformity with the requirements of this chapter; and he shall authorize the persons packing a food in conformity herewith to mark the container of said food with a statement certifying that the food contained therein was packed, inspected and passed under the Maine pure food and drug law. Whoever shall falsely mark any container as having been packed in conformity with the requirements of this chapter shall be punished by a fine not exceeding five hundred dollars for each container thus falsely marked.

Packing of Apples.

Sec. 25. Standard barrel for apples; standard bushel box. 1913, c. 156, § 1. The standard barrel for apples shall contain seven thousand cubic inches; provided, however, that a barrel of the following dimensions when measured without distention of parts: length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge not less than sixty-four inches outside measurement, shall be a lawful barrel. The standard bushel box for apples shall contain two thousand three hundred and fifty cubic inches; provided, however, that a box eighteen inches by eleven and one-half inches by ten and one-half inches, inside measurement, without distention of parts, shall be a lawful bushel box.

Sec. 26. Marks upon barrels and boxes used in shipping apples. 1915, c. 266. Manufacturers of standard barrels and boxes to be used in shipping apples shall mark, in a conspicuous place, on each barrel the words "standard barrel" and on each box the words "standard box." Whoever fails to comply with this section shall be punished by fine not exceeding one hundred dollars. Municipal and police courts, and trial justices shall

have original jurisdiction, concurrent with the supreme judicial court and the superior courts, of prosecutions under this section.

Sec. 27. Standard grades established. 1913, c. 156, § 2. The standard grades for apples when packed in closed packages shall be as follows:

First. Fancy, shall consist of apples of one variety above the average size and color for the variety, and none smaller than two and one-half inches in diameter, sound and free from worm-holes, bruises, scab or any other defect that materially injures the appearance or useful quality of the apples, and shall be properly packed in clean, strong packages.

Second. Number one, or class one, shall consist of well-matured apples of one variety of normal shape and good color for the variety, not less than two and one-quarter inches in diameter, sound and free from all defects such as worm-holes, bruises, scab or any other defect that materially injures the appearance or useful quality of the apple, and shall be properly packed in clean, strong packages.

Third. Number two, or class two, shall consist of well-matured apples of one variety, not less than two inches in diameter, of medium color for the variety and normal shape. Apples two and one-quarter inches in diameter or less, must be sound. Apples more than two and one-quarter inches in diameter may have one defect such as a worm-hole or a bruise if the skin is not broken and shall be properly packed in clean, strong packages.

Fourth. Unclassified. Apples not conforming to the foregoing conditions as to variety, size and other conditions, shall be classed as Unclassified.

Sec. 28. Marks required on outside of package. 1913, c. 156, § 3. Every closed package of apples which is packed, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the size of the package in terms of standard bushel box or standard barrel, the name and address of the owner or shipper of the apples at time of packing, the name of the variety, the class or grade of the apples contained therein, and if the apples were grown in Maine that fact shall be plainly designated.

Sec. 29. Misbranded or adulterated apples shall not be packed. 1913, c. 156, § 4. No person shall, within this state, pack, sell, distribute, transport, offer or expose for sale, distribution, or transportation, apples which are adulterated or misbranded within the meaning of sections thirty and thirty-one of this chapter.

Sec. 30. Term adulterated defined. 1913, c. 156, § 5. For the purpose of sections twenty-five to thirty-four, both inclusive, of this chapter, apples packed in a closed package shall be deemed to be adulterated if their measure, quality, grade or purity do not conform in each particular to the claims made upon the affixed guaranty.

Sec. 31. Misbranded, defined. 1913, c. 156, § 6. For the purpose of sections twenty-five to thirty-four, both inclusive, of this chapter, apples packed in a closed package shall be deemed to be misbranded:

First. If the package fails to bear all statements required by section twenty-eight.

CHAP. 36

Second. If the package bears any statement, design or device regarding such article or its contents which shall be false or misleading in any particular, or is falsely branded in any particular.

Sec. 32. Commissioner of agriculture shall have access to places where apples are packed. 1913, c. 156, § 8. The commissioner of agriculture, in person or by deputy, shall have free access, ingress and egress, at all reasonable hours to any place or any building wherein apples are packed, stored, transported, sold, offered or exposed for sale, or for transportation. He may also, in person or by deputy, open any box, barrel or other container, and may, upon tendering the market price, take samples therefrom.

Sec. 33. Penalty for adulteration and misbranding. 1913, c. 156, § 10. Whoever adulterates or misbrands apples within the meaning of sections thirty and thirty-one of this chapter, or whoever packs, sells, distributes, transports, offers or exposes for sale, distribution or transportation, apples in violation of any provision of sections twenty-five to thirty-four, both inclusive, of this chapter, shall be punished by a fine not exceeding one hundred dollars for the first offense, and by a fine not exceeding two hundred dollars for each subsequent offense.

Sec. 34. Guaranty as a bar to prosecution. 1911, c. 156, § 11. No person shall be prosecuted under the provisions of the nine preceding sections when he can establish a guaranty signed by the person from whom he received any such article, to the effect that the same is not adulterated or misbranded, within the meaning of sections thirty and thirty-one, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to said dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of the nine preceding sections.

Provisions for Enforcement.

Sec. 35. Uniform rules and regulations and standards of purity. 1911, c. 119, § 13; c. 151, § 2. 1913, c. 140, § 1; c. 156, § 7. The commissioner of agriculture shall make uniform rules and regulations for carrying out the provisions of this chapter. He may also fix standards of purity, quality or strength when such standards are not specified or fixed by law, and shall publish them together with such other information concerning articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide and insecticide as he may deem to be of public benefit.

Sec. 36. Hearing in case of violation. 1911, c. 119, § 15; c. 151, § 3. 1913, c. 140, § 1; c. 156, § 9. When the commissioner of agriculture becomes cognizant of the violation of any provision of this chapter, he shall cause notice of such fact, stating the date, hour and place of hearing, with a copy of the findings, or, in case of a packer of food, a copy of the charge to be preferred, to be given to the person concerned and the person from whom the sample was obtained, and the person whose name appears upon the label, (if a resident of the state), who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. When the hearing relates to the packing of apples, it shall be held in the county where the inspection was made.

Sec. 37. Enforcement of laws by commissioner. 1911, c. 119, § 19; c. 151, § 6. 1913, c. 140, § 1; c. 156, § 14. The commissioner of agriculture shall diligently enforce all provisions of this chapter, and shall be entitled to, and shall receive the assistance of the attorney-general and of the several county attorneys. He may recover the penalties imposed for violations of this chapter in an action of debt brought in his own name, the venue to be as in other civil cases, and if he prevails in any such action, shall recover full costs; or he may prosecute for violations hereof by complaint or indictment, and such prosecution shall be commenced in the county in which the offense was committed.

Sec. 38. Appointment of deputies. 1913, c. 140, § 7. He may, with the approval of the governor and council, appoint, and fix the compensation of, a chief deputy and such other deputies as in his judgment are required to assist him, and to enable him to carry out the provisions of all laws, the execution of which is entrusted to him. The chief deputy shall hold office during good behavior, and such other deputies during the pleasure of the commissioner; their compensation and expenses shall be paid from any funds appropriated for the use of the commissioner in the execution of said laws.

Sec. 39. Rules of construction. 1911, c. 119, § 18; c. 151, § 5. 1913, c. 156, § 12. The word "person" as used in this chapter shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or empowered by any corporation, company, society or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission or failure of such corporation, company, society or association as well as that of the person.

Sec. 40. Jurisdiction; disposal of funds. 1911, c. 119, § 19; c. 151, §§ 6, 7. 1913, c. 140, §§ 1, 3; c. 156, § 14. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of actions brought for the recovery of penalties imposed by this chapter, and of prosecutions for violations hereof. All fines received under this chapter by county treasurers shall be paid by them to the commissioner of agriculture; and all money received by the commissioner of agriculture under this chapter shall be paid by him to the treasurer of state, and the same is hereby appropriated for the purposes of this chapter.

Appropriations.

Sec. 41. Appropriation. 1909, c. 115, § 1. 1913, c. 140, § 1. The sum of nine thousand dollars shall be annually appropriated in favor of the commissioner of agriculture, and the same shall be expended by the commissioner in executing the laws relating to the collection, examination, inspection and analysis of agricultural seeds, concentrated commercial feeding stuffs, commercial fertilizer, and foods and drugs. Payments of said appropriation shall be made quarterly upon the warrants of the governor

CHAP. 37

and council. The commissioner shall annually publish a classified account of all receipts and expenditures under this section.

Sec. 42. Method of expending appropriation. 1913, c. 140, § 8. Any sums of money appropriated to carry out the provisions of chapter forty-eight relating to the duties of the state sealer of weights and measures, shall be added to the funds appropriated to carry out the provisions of this chapter, and expended as a part thereof; or any funds appropriated to carry out the provisions of this chapter, may be expended in carrying out the provisions aforesaid, relating to the duties of the state sealer of weights and measures.

CHAPTER 37.

Regulation of Sale of Milk.

- Sections 1- 4 Duties of Commissioner of Agriculture.
 Sections 5- 6 Registration of Milk Dealers.
 Sections 7-31 Inspection and Sale of Milk.
 Sections 32-36 Protection of Milk Dealers in Use of Containers.

Duties of Commissioner of Agriculture.

Sec. 1. Duty of commissioner of agriculture; shall have access to all places of business. 1909, c. 35, § 1. The commissioner of agriculture shall, either in person or by duly authorized agents and assistants, diligently inquire into and investigate the production, manufacture, transportation, storage and sale of milk, cream, butter and all other dairy products, substitutes therefor or imitations thereof. The commissioner, his agents and assistants, shall have access at all reasonable hours, to all places of business, factories or carriages, cans or other vessels used or which he or they believe to be used in the production or handling of milk or any other dairy product, substitute therefor or imitation thereof, and upon tendering the market price of a sample of milk or other dairy product, substitute therefor or imitation thereof, may take such sample from any person, firm, corporation, association or society; the commissioner shall cause all samples so taken to be analyzed.

Sec. 2. Penalty for obstructing commissioner in performance of duty. 1909, c. 35, § 2. Whoever hinders, obstructs, or in any way interferes with the commissioner of agriculture, his agents or assistants, in the performance of his or their duty, herein above set forth, by refusing entrance to any place where he is authorized to enter, or access to any receptacle to which he is authorized to have access, or by refusing to deliver to him, his agents or assistants, a sample of milk or any other dairy product, substitute therefor or imitation thereof, sold, offered or exposed for sale by the person to whom such request is made if the value thereof is tendered, or shall in any other manner hinder, obstruct or interfere with said commissioner, his agents or assistants, in the performance of any of their said

duties, shall be punished by a fine of one hundred dollars for the first offense and two hundred dollars for each subsequent offense.

Sec. 3. Publication of results of analyses. 1909, c. 35, § 3. The commissioner of agriculture shall publish the results of all analyses with the names of the persons, firms, corporations, associations and societies from which the samples analyzed were taken, together with such suggestions as he may deem advisable, in the regular or special bulletins issued by the department of agriculture. He may also, in his discretion, issue each month a report of the results of all analyses, for distribution to such newspapers in the state as may request a copy.

Sec. 4. Duty of commissioner to enforce law. 1909, c. 35, § 5; c. 242, § 6. 1911, c. 97. The commissioner of agriculture shall, either in person or by his duly authorized agent or assistant, diligently enforce the laws relating to the production, manufacture, transportation, storage and sale of milk and all other dairy products, substitutes therefor or imitations thereof, including oleomargarine and renovated butter. He shall likewise diligently enforce the laws relating to the sealing of cans, bottles and other vessels used in the purchase and sale of milk and cream, the protection thereof against mutilation, and the cleansing and sterilizing thereof before use or before being forwarded to producers or distributors of milk; and he may, either in person, or by his duly authorized agent or assistant, seize without warrant such cans, bottles or other vessels used in the purchase or sale of milk or cream, as may, in his judgment, be needed as evidence of violation of the laws above referred to. For the above purposes he may employ such agents, assistants, chemists, counsel and clerks, and he may purchase such samples of milk, cream and other dairy products, substitutes therefor or imitations thereof, and such stationery, postage, printed matter and other supplies incidental thereto, as may be necessary for the proper enforcement of said laws; for such expenses the sum of four thousand dollars shall be appropriated annually, to be paid upon the presentation of proper vouchers to the state auditor.

See c. 130, §§ 3, 6-10.

Registration of Milk Dealers.

Sec. 5. Registration of milk dealers; penalty for refusing to register or post certificate. 1909, c. 35, § 4. Any person, firm, corporation, association or society who shall sell or deliver milk or cream to any person from a wagon or other conveyance, depot or store, or who shall sell or deliver milk to a hotel, restaurant, boarding-house or any public place, shall be considered a milk dealer within the meaning of this section, and shall on or before the first day of April in each year register with the commissioner of agriculture, furnishing such information as may be required, upon blanks issued and furnished by the commissioner to such persons as may request the same. Every such registration shall expire on the first day of April, next after its issue and shall be granted only to the milk dealer owning or leasing the vehicle or place from which sales or supplies are to be made, and shall not be transferred. Upon receipt of the application for registration, containing the information required, the commissioner shall issue to the applicant a certificate of registration, which certificate shall be posted

CHAP. 37

in a conspicuous place in the store or depot from which sale or supply is made, and the number of the certificate of registration for each wagon or other vehicle shall be placed in a conspicuous place on said wagon or other vehicle. If any person, firm, corporation, association or society desires to become a milk dealer, as provided by this section, before the first day of April in any year, he or they shall, prior to engaging in the business, register with the commissioner of agriculture in the manner hereinbefore provided, for each place or vehicle from which sale or supply is to be made. Any dealer who neglects or refuses to register with the commissioner of agriculture, or to post certificates of registration in the store or depot from which sale or supply is made, or to post the number of the certificate of registration on the wagon or other vehicle from which sale or supply is made, as provided in this section, forfeits fifty dollars to be recovered in an action of debt, to be prosecuted in the name of the state by the county attorney for the county in which such violation has occurred; but the provisions of this section shall not apply to milk or cream delivered to a creamery or butter or cheese factory.

Sec. 6. Municipal officers shall prosecute violations. 1909, c. 35, § 8. The mayor and aldermen, selectmen, assessors, city marshal, chief of police and constables in every city and town shall make complaint and prosecute all violations of the preceding sections, and promptly enforce all laws against illegal sale and transportation of dairy products.

Inspection and Sale of Milk.

Sec. 7. Inspector or agent of state board of health may make inspection of dairy buildings. 1915, c. 178, § 1. Whenever, in the opinion of any officer or duly authorized inspector or agent of the state board of health, it may be necessary to guard against the spread of any infectious or communicable disease, or to investigate the source of infection of any case or outbreak of said disease, or to facilitate the control of said disease, said officer, inspector or agent may at all times enter and inspect premises, rooms, carriages or other places occupied or used in the production, manufacture, storage, sale, transportation or distribution of milk, cream, ice-cream or other dairy product, and may inspect all cans and other utensils or things used in, or appertaining to the work or business.

Sec. 8. Officer may prohibit sale or transportation of infected products; duty of state board of health. 1915, c. 178, § 2. When any officer, inspector, or duly authorized agent of the state board of health has reason to believe that the milk, cream, ice-cream or other dairy product from any farm, home or other place has been or is contaminated or infected by being handled or otherwise exposed to any person who has an infectious or communicable disease, or to any person of whom there is reason to believe that he may be an infection carrier, or that the milk is otherwise infected; said officer, inspector or agent may issue an order prohibiting the transportation, sale, distribution or use of such milk or other dairy product from that farm, home or other place so long as the danger of contamination or infection is believed to exist; but when such order is given, the state board of health shall, so far as possible, determine the time when the danger of

transmitting infection has passed, and shall endeavor to shorten the period during which the milk or other dairy product shall be debarred or withheld from transportation, sale, distribution or use.

Sec. 9. Officers may take samples to aid in investigations. 1915, c. 178, § 3. Any officer or authorized inspector or agent of the state board of health, may, upon tendering the market price of a sample of milk, cream, ice-cream or other dairy product, take such sample from any person, firm, corporation, association or society, when it is believed that such sample may help in any investigations which it may be thought desirable to make.

Sec. 10. State board of health may make rules and regulations as to diseases transmitted through milk. 1915, c. 178, § 4. The state board of health may make, alter or modify such rules and regulations as may be thought necessary relating to the diseases which it believes may be carried or transmitted through milk or other dairy products, or relating to the ways and means through which the danger of the spread of infection may be prevented or lessened, and the methods which shall be followed by any officer, inspector or agent of the state board of health in the performance of his duties in relation thereto.

Sec. 11. Penalty for interference with inspector or agent in performance of duty. 1915, c. 178, § 5. Whoever hinders, obstructs or interferes with any officer, inspector or duly authorized agent of the state board of health while in the performance of his duties, or violates or disobeys any of the orders, rules or regulations which may be made or given by the state board of health or any officer, inspector or agent thereof, shall be punished by a fine of not less than five, nor more than fifty dollars, or by imprisonment for not less than ten, nor more than thirty days.

Sec. 12. Inspectors of milk, appointment. R. S. c. 39, § 9. The municipal officers of cities and towns containing not less than three thousand inhabitants, and the municipal officers of all other towns on application of ten voters therein, shall appoint annually one or more persons to be inspectors of milk, who before entering upon their duties, shall give notice of their appointment by publishing the same for two weeks in a newspaper published in their towns, if any, otherwise by posting such notice in two or more public places therein; and they may receive such fees as said officers establish.

Sec. 13. Duties of inspectors of milk. R. S. c. 39, § 10. Inspectors shall keep an office and books for the purpose of recording the names and places of business of all persons selling milk within their jurisdiction. They may enter any place where milk is kept or stored for sale, and examine all carriages used in the conveyance thereof, and when they have reason to believe any milk found therein to be adulterated, they shall take specimens thereof, cause them to be analyzed or otherwise satisfactorily tested, and preserve the result as evidence. Said inspectors shall leave with the owner of the milk inspected a sealed specimen of the milk examined by them, which shall be marked in the same manner as the specimen taken at that time by said inspectors; and they shall prosecute for all violations of sections fifteen and twenty-eight.

See c. 130, §§ 2-6.

CHAP. 37

Sec. 14. Standard measure for milk and cream. 1909, c. 242, § 1. All milk and cream bought and sold by measure for consumption within this state shall be bought and sold by wine measure, the standard for which shall be two hundred and thirty-one cubic inches to the gallon, and for subdivisions of the gallon, in the same proportion.

Sec. 15. All measures, cans, etc., shall be proved and plainly marked. 1909, c. 242, § 2. 1911, c. 53. All measures, cans or other vessels used in the purchase or sale of milk or cream, except glass bottles and jars sealed in accordance with the provisions of sections twenty and twenty-one, shall be tried and proved by the standard mentioned in the preceding section, by the sealer of weights and measures of the city or town in which the person, firm or corporation purchasing or selling such milk or cream resides or has a place of business. The sealer of weights and measures shall, agreeably to such standard, plainly stamp thereon the quantity which such measures, cans or other vessels hold, together with the year in which such measures, cans or other vessels are sealed. Whoever, by himself, clerk, servant or agent, sells by measure any milk or cream by any other than the measure so tried, sealed and marked, shall forfeit for each offense the sum of ten dollars. Any measure, can or other vessel used in the purchase or sale of milk or cream, lawfully sealed, as aforesaid, in any city or town within the state shall be deemed to be lawfully sealed under the provisions of this section.

See c. 48, § 25.

Sec. 16. Capacity of cans to be used in wholesale trade. 1909, c. 242, § 3. When milk or cream is purchased by measure at wholesale by any person, firm or corporation engaged in the business of buying or selling milk or cream or both, the can or other vessel containing such milk or cream shall hold eight quarts and one pint and no more, and shall be tried, proved, sealed and marked as herein provided.

Sec. 17. Penalty for mutilating cans and measures, or erasing names and marks. 1909, c. 242, § 4. Whoever by himself or by his servant or agent, or as the servant or agent of any other person, firm or corporation, having custody of a milk can, measure or other vessel used as a container for milk destined for sale, shall wantonly, wilfully or maliciously indent, bend or otherwise mutilate said can, measure or other vessel so that the same will not contain eight quarts and one pint, standard measure, as hereinbefore provided, or who shall wantonly, wilfully or maliciously erase, efface or otherwise mutilate said can, measure or other vessel so that any names, figures or other marks placed thereon by a sealer of weights and measures shall become illegible shall be punished by a fine not exceeding fifty dollars.

Sec. 18. Milk cans shall be cleansed and sterilized; storage room shall be kept in sanitary condition. 1909, c. 242, § 5. All persons, firms and corporations who shall purchase milk or cream for the purpose of reselling the same, either at wholesale or retail, shall thoroughly cleanse and sterilize all cans, vessels and other utensils prior to their being used in the manufacture, transportation, storage and sale of said milk or cream. All persons, firms and corporations engaged in the business of retailing milk or cream, shall thoroughly cleanse and sterilize all vessels, jars, cans and

other utensils used in the manufacture, storage and sale of milk or cream immediately before such vessels, jars or cans are filled for distribution. And the place or room in which milk or cream is stored, bottled or otherwise handled shall be kept in a clean and sanitary condition. Any person, firm or corporation violating this section or section sixteen of this chapter shall be punished by fine not exceeding fifty dollars.

Sec. 19. Milk cans shall be cleansed and sterilized before delivery. 1911, c. 60. All cans or other receptacles used in the transportation of milk or cream shall be cleansed and sterilized before being forwarded to the producer or distributor of milk or cream for use. Whoever by himself, clerk, servant or agent ships or transports or causes to be shipped or transported any cans or other receptacles not cleansed and sterilized as provided in this section, shall be punished by a fine of not exceeding fifty dollars for each offense.

Sec. 20. Capacity of milk bottles and jars. 1913, c. 81, § 1. Glass bottles and jars which are used for the distribution of milk or cream to consumers and which hold, when filled to a level with the bottom of the cap or stopple, not less than thirty-two ounces or more than thirty-two ounces and six drams; not less than sixteen ounces or more than sixteen ounces and four drams; not less than eight ounces or more than eight ounces and two drams for the quart, pint and one-half pint respectively, shall be sealed as full measure under the provisions of section thirteen of chapter forty-eight, or by the manufacturer. All dealers in milk or cream who use glass bottles or jars for the distribution of milk or cream to consumers, which have not been sealed by the manufacturer, shall bring such bottles or jars to the office of their city or town sealer to be sealed as aforesaid. If a bottle or jar has once been sealed by a sealer of weights and measures, or by the manufacturer, it shall not in any case be necessary to have it sealed again at any time while it is used for the distribution of milk or cream to consumers. Glass bottles or jars sealed under the provisions of this section shall not be legal measures except for the distribution of milk or cream to consumers.

Note. Penalty for violation of this section, c. 48, § 24.

Sec. 21. Marking of bottles and jars sealed by manufacturer; bond of manufacturer. 1913, c. 81, § 1. 1915, c. 44. Such bottles or jars as are sealed by the manufacturer shall be marked with the name, initials or trademark of the manufacturer, and designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number and the words "Maine Seal" shall be marked on the outside of the upper half of each bottle. The designating number shall be furnished by the state sealer of weights and measures upon application by the manufacturer, and upon filing by the manufacturer, with the treasurer of state, of a bond payable to the state in the sum of one thousand dollars, with sureties to be approved by the attorney-general, conditioned upon his conforming to the requirements of this section. A record of the bonds furnished, the designating numbers and to whom furnished, shall be kept in the office of the state sealer of weights and measures.

CHAP. 37

Sec. 22. Penalty for violation. 1913, c. 81, § 1. Any manufacturer who sells milk or cream bottles to be used in this state that do not comply as to size and markings with the provisions of the two preceding sections, shall forfeit five hundred dollars, to be recovered by the attorney-general in an action upon the bond of such manufacturer. Any dealer who uses for the purpose of selling milk or cream, jars or bottles purchased after the third day of July, nineteen hundred and fifteen, that do not comply with the requirements of this section as to markings and capacity, shall be deemed guilty of using false or insufficient measures.

Sec. 23. County attorneys shall give aid. 1909, c. 35, § 6. The county attorney for the county in which any violation of the preceding sections has occurred, shall when called upon to do so by the commissioner of agriculture or either of his duly authorized agents or assistants, give all the aid in his power to secure the enforcement thereof, and shall prosecute cases arising thereunder or under other provisions relating to dairy products, substitutes therefor or imitations thereof.

Sec. 24. Court jurisdiction. 1909, c. 35, § 7. Trial justices and municipal and police courts shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for violations of the preceding sections and of all other laws relating to the production, manufacture, transportation, storage and sale of milk, cream, butter, cheese and all other dairy products, substitutes therefor or imitations thereof.

See c. 130, §§ 2, 3, 6-13.

Sec. 25. Milk shall be weighed and tested by the Babcock test. 1905, c. 76, § 1. All milk or cream purchased by any person, firm or corporation, for use in or to be resold by any creamery in this state, shall be weighed and shall be tested by the Babcock test to ascertain the amount of butter-fat per pound therein contained; and the value of the cream or milk thus purchased shall be determined by the amount of butter-fat per pound as thus ascertained. The test herein provided shall be made by the owners or operators of the creamery purchasing as aforesaid; but upon petition in writing, signed by twenty-five per cent or more of the patrons of any creamery and addressed to the commissioner of agriculture, or upon petition in writing signed by the owner or operator of any creamery and addressed to said commissioner, one or more tests shall be made by, or under the direction of said commissioner, and the finding of said commissioner shall be conclusive upon all parties therein concerned; provided, however, that when the total number of patrons of any one creamery exceeds one hundred then the number of petitioners herein required need not exceed thirty. All samples of cream tested by said test shall be weighed and the standard unit for testing shall be eighteen grams.

Sec. 26. Penalty for violation. 1905, c. 76, § 2. Any person, firm or corporation, or the servant or agent of any person, firm or corporation, who shall violate the preceding section, shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days.

Sec. 27. Semi-monthly payment for cream and milk. 1915, c. 32. Every person, firm or corporation purchasing cream or milk for the purposes of reselling, or of manufacturing the same into other products, shall pay the

producer, unless otherwise provided by written contract, semi-monthly; payment shall be made on the first day of each and every month for all cream or milk received prior to the fifteenth day of the preceding month, and payment shall be made on the fifteenth day of each and every month for all cream or milk received prior to the first day of the same month. Whoever violates the provisions of this section shall be punished by a fine of not less than ten, nor more than fifty dollars.

Sec. 28. Bottles and glasses used to measure milk or cream shall be tested for accuracy, and marked. R. S. c. 39, § 12. All bottles, pipettes or other measuring glasses used by any person, firm or corporation, or their agents or employees, at any creamery, butter factory, cheese factory, condensed milk factory or elsewhere in this state, in determining by the Babcock test or any other test, the value of milk or cream received from different persons at such creameries or factories, shall be tested before such use, for accuracy of measurement and for accuracy of the per cent scale marked thereon. Such bottles, pipettes or measuring glasses shall bear in marks or characters ineffaceable the evidence that such test has been made by the authority named in the following section. No inaccurate bottles, pipettes or other glasses shall bear such marks or characters.

See c. 44, § 12.

Sec. 29. Duty of director of Maine Agricultural Experiment Station, to test and mark all bottles, etc. R. S. c. 39, § 13. The director of the Maine Agricultural Experiment Station, or some competent person designated by him, shall test the accuracy of all bottles, pipettes or other measuring glasses used by persons, firms or corporations in the state buying or pooling milk or cream, or apportioning butter or cheese, made from the same, by the contents of butter-fat contained therein. The said director, or the person designated by him, shall mark such bottles, pipettes or other measuring glasses as are found correct, with marks or characters which cannot be erased, and which marks or characters shall stand as proof that they have been so tested. The said director shall receive for such service no more than the actual cost incurred, which shall be paid by the persons or corporations for whom it is done.

Sec. 30. Persons who manipulate test, shall be certified by superintendent of dairy school. R. S. c. 39, § 14. Any person, either for himself or in the employ of any other person, firm or corporation, who manipulates the Babcock test or any other test, whether mechanical or chemical, for the purpose of measuring the contents of butter-fat in milk or cream for a basis of apportioning the value of such milk or cream, or of the butter or cheese made from the same, shall secure a certificate from the superintendent of the dairy school at the University of Maine that he is competent and well qualified to perform such work. The rules and regulations in the application for such certificate and in the granting of the same shall be such as the superintendent of that school may arrange, and the fee for issuing a certificate shall not exceed one dollar, and shall be paid by the applicant.

Sec. 31. Penalty for using sulphuric acid of less than required specific gravity; penalty for violations of §§ 28, 30. R. S. c. 39, § 15. Whoever uses, or has in his possession with intent to use, at any creamery, butter

CHAP. 37

factory, cheese factory or condensed milk factory, any sulphuric acid of less than one and eighty-two hundredths of specific gravity in the process known as the Babcock test or any other test for determining the butter-fat contents of milk or cream, shall be punished by a fine not exceeding twenty-five dollars for the first offense, and for a second offense not exceeding fifty dollars. Any person, firm or corporation, violating the provisions of section twenty-eight, shall be punished by a fine not exceeding fifty dollars for the first offense, and for a second offense not exceeding one hundred dollars; and any person violating section thirty shall be punished by a fine not exceeding ten dollars. Every inspector of milk, sheriff, deputy sheriff and constable shall institute complaint against any person violating said provisions, and one-half of the fines shall go to the complainant and the balance to the state.

Protection of Milk Dealers in the Use of Containers.

Sec. 32. Dealers may file description of name and devices; and publish such description. 1907, c. 129, § 1. All persons and corporations engaged in buying, selling or dealing in milk or cream in cans, jugs, bottles or jars, with their names or other marks or devices, together with the word "Registered," branded, engraved, blown or otherwise produced in a permanent manner in or upon such cans, jugs, bottles or jars, may file in the office of the clerk of the city or town in which their principal place of business is situated, and in the office of the secretary of state, a description of the name or names, mark or marks, device or devices so used by them, and cause such description to be published once each week for four weeks successively in a newspaper published in the city or town in which said description has been filed aforesaid; if there is no newspaper published in such city or town, then such publication may be made in any newspaper published in the county in which such city or town is situated.

See c. 44, § 30.

Sec. 33. Penalty for using any milk can, without consent of owner; possession constitutes prima facie evidence. 1907, c. 129, § 2. Whoever without the consent of the owner takes, detains or uses in his business, sells, disposes of, buys, conceals or traffics in any milk can, jug, bottle or jar, the owner of which has complied with the provisions of the preceding section, shall be punished for the first offense by a fine not exceeding five dollars, or by imprisonment for a term not exceeding sixty days, for each can, jug, bottle or jar so taken, detained or used in his business, sold, disposed of, bought, concealed or trafficked in; and for any subsequent offense by a fine not exceeding ten dollars, or by imprisonment for a term not exceeding six months, for each can, jug, bottle or jar so taken, detained or used in his business, sold, disposed of, bought, concealed or trafficked in as aforesaid. Possession by any person in the transaction of his business of any such article the owner of which has complied with the provisions of the preceding section shall constitute prima facie evidence of the unlawful taking, use, detention, possession of or traffic in the same within the meaning of this section.

Sec. 34. Penalty for defacing or mutilating any can, jug, etc. 1907, c. 129, § 3. Whoever without the consent of any owner who has complied with the provisions of section thirty-two wilfully destroys, mutilates or defaces any can, jug, bottle or jar bearing such owner's name, mark or device, or wilfully erases, mars, covers or changes any word or mark branded, engraved, blown or otherwise produced, in a permanent manner in or upon any such can, jug, bottle or jar, shall be punished for the first offense by a fine not exceeding five dollars, or by imprisonment for a term not exceeding sixty days, for each can, jug, bottle or jar so destroyed, mutilated or defaced, or for each can, jug, bottle or jar upon which any word or mark has been erased, marred, covered or changed as aforesaid; and for any subsequent offense by a fine not exceeding ten dollars, or by imprisonment for a term not exceeding six months, for each can, jug, bottle or jar, so destroyed, mutilated or defaced, or for each can, jug, bottle or jar upon which any word or mark has been erased, marred, covered or changed as aforesaid.

Sec. 35. Penalty for placing any foul substance into any can, jug, etc. 1907, c. 129, § 4. Whoever puts any unclean or foul substance or matter into any milk can, jug, bottle or jar, the owner of which has complied with the provisions of section thirty-two, shall be punished for the first offense by a fine of not less than fifty cents nor more than five dollars, for each can, jug, bottle or jar so defiled; and for any subsequent offense by a fine of not less than two, nor more than twenty dollars, for each can, jug, bottle or jar so defiled.

Sec. 36. Search warrant may be issued for vessels held in wrongful possession. 1907, c. 129, § 5. Whenever any person or corporation having complied with the provisions of section thirty-two, or the agent of any such person or corporation, shall make oath before the judge of any municipal or police court, or before any trial justice, that he has reason to believe and does believe that any person or corporation has wrongfully in possession, or is secreting any of his or its milk cans, jugs, bottles or jars, marked and described as provided in section thirty-two, said judge or trial justice shall, if satisfied that there is reasonable cause for such belief, issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person or an agent or employee of the corporation in whose possession such cans, jugs, bottles or jars are found, and shall thereupon inquire into the circumstances of such possession; if said judge or trial justice finds that such person or corporation has been guilty of a wilful violation of sections thirty-three, thirty-four or thirty-five, he shall impose the penalty prescribed in the section or sections so violated, and shall also award to the owner possession of the property taken upon such search warrant.

See c. 134, § 13.

CHAPTER 38.

Extermination of Insect Pests. Sale of Pressed Hay. Marking Sheep. Record of Stallions.

Sections 1-14	Protection of Trees and Shrubs.
Section 15	Sale of Pressed Hay.
Section 16	Marking Sheep.
Section 17	Record of Stallions.

Protection of Trees and Shrubs.

Sec. 1. State horticulturist, his appointment; term "nursery stock" defined. 1907, c. 15, §§ 3, 14. 1911, c. 176, § 4. 1913, c. 120, § 2. The commissioner of agriculture shall appoint a state horticulturist, and the division of the department of agriculture under which such officer performs his duties, shall be known as the bureau of horticulture. The term "nursery stock," as used in the eleven following sections, is therein applied to all fruit and ornamental trees, shrubs and vines, and includes currant, gooseberry, blackberry and raspberry bushes, and strawberry plants.

Sec. 2. Gipsy and brown-tail moths public nuisances; duty of commissioner; penalty for obstructing commissioner or officer. 1907, c. 15, §§ 2, 7, 10, 12. 1909, c. 34, § 7. 1911, c. 84, § 2. For the purposes of the ten following sections the gipsy and brown-tail moths in their different stages, are hereby declared public nuisances, and their suppression is authorized and required, but no owner or occupant of real estate infested by such nuisance shall by reason thereof be liable to an action civil or criminal except to the extent and in the manner and form herein set forth. The commissioner of agriculture shall disseminate information concerning brown-tail and gipsy moths, San Jose scale and other injurious insects; and the entire work of suppressing the gipsy moth in all its forms shall be done under the direct charge of the commissioner. Any person who shall purposely resist or obstruct the commissioner or any person or persons under his employ, or any officer or agent of a city or town while engaged in the execution of the purposes of this section and the ten following sections, shall be punished by a fine not exceeding twenty-five dollars for each offense.

Sec. 3. Nurseries to be inspected annually. 1907, c. 15, § 3. 1909, c. 34, § 1. 1911, c. 176, § 1. All nurseries or places where trees, shrubs, vines and plants are grown or offered for sale, shall be inspected at least once a year by the state horticulturist or by some competent person acting under his direction, and if no dangerous insects or fungous diseases are found therein a certificate to that effect shall be given. If such pests are found therein, the owner of the stock shall take such measures to destroy the same as the state horticulturist shall prescribe, and no certificate as aforesaid shall be given until the said horticulturist has satisfied himself that all such pests have been suppressed.

Sec. 4. State horticulturist may inspect any orchard, field or garden; diseased trees or shrubs to be destroyed. 1907, c. 15, § 3. 1909, c. 34, § 1. 1911, c. 176, § 1. The state horticulturist, either personally or through competent assistants, may inspect any orchard, field, garden or roadside in public or private grounds, which he or they may know or have reason to suspect to be infested with the San Jose scale or any serious pest or infectious disease, when in his or their judgment such pests or infectious diseases are a menace to adjoining owners; and the state horticulturist may in writing order the owner, occupant or person in charge thereof, to properly spray or give other suitable treatment, or to cut and destroy any such diseased trees or shrubs, if in the opinion of the state horticulturist such action is necessary. If the owner of such orchard, field or garden neglects or refuses to comply with such written order, he shall be fined not less than ten, nor more than fifty dollars for each offense.

Sec. 5. Nursery stock shipped into state shall bear certificate of inspection; further inspection; destruction or return of infested stock. 1907, c. 15, § 4. 1909, c. 34, § 2. 1911, c. 176, § 2. All nursery stock shipped into this state from any other state, country or province shall bear on each box or package a certificate that the contents of said box or package have been investigated by a duly authorized inspecting officer, and that said contents appear to be free from all dangerous insects and diseases. The state horticulturist, or his competent assistants, may inspect, at the point of destination, all stock coming into the state, whether under certificate or not, and if such stock is found to be infested with any injurious insects or plant diseases, the state horticulturist shall cause it to be destroyed or returned to the consignor at the consignor's expense, if he shall so elect.

Sec. 6. Transportation companies shall not transport uninspected stock; notice to commissioner of agriculture of consignments. 1907, c. 15, § 5. 1913, c. 120, § 1. Any transportation company that shall bring into this state any nursery stock such as trees, shrubs, vines, cuttings or buds, or any transportation company, owner or owners of nursery stock or persons selling nursery stock as thus defined, who shall transport such stock or cause it to be transported within the state, the same not having attached to each box or package an unexpired official certificate of inspection which shall meet the requirements specified in section five, shall be punished by fine not exceeding one hundred dollars for each offense; and all transportation companies shall immediately, upon receiving consignments notify the commissioner of agriculture of the fact that such consignments are in their possession, or en route to some point within the state, and give the names and addresses of the consignor and consignee, destination of each shipment, the name of the transportation company bringing such stock, and the road or roads over which it is brought; and shall also make such further report relative to such shipments as the commissioner of agriculture may from time to time require.

Sec. 7. Agents and dealers in nursery stock shall obtain a license; fee. 1907, c. 15, § 6. 1909, c. 34, § 3. 1911, c. 84, § 1; c. 176, § 3. 1913, c. 120, § 2. No person, firm or corporation, excepting growers, shall engage in, continue in, or carry on the business of selling or dealing in nursery stock,

CHAP. 38

or solicit purchases of nursery stock within this state, either as owner thereof, or as agent of such owner, without first obtaining a license to carry on and conduct such business in this state. The form of license shall be prescribed by the state horticulturist, and the license shall be issued by him upon proper application therefor, and shall be in force one year from date of issue. The license fee shall be five dollars a year for agents, dealers, salesmen or solicitors. The license shall be issued in the name of the dealer, solicitor, salesman, or agent, as the case may be, and no license shall be assigned or transferred. Licenses of salesmen, dealers, agents, or solicitors shall show the name and location of nursery and place of business of the nurserymen or tree dealers whom they represent or from whom they purchase their stock. Fees obtained from such licenses shall be paid into the state treasury and added to the appropriation of the bureau of horticulture, and shall be used exclusively for the inspection of nursery stock introduced into the state from outside the state. Such license may be revoked at any time for failure to comply with the aforesaid requirements, or for such other causes as may in the opinion of the commissioner of agriculture be sufficient. Any violation of this section shall be punishable by a fine of not less than ten, nor more than fifty dollars for each offense.

110 Me. 264.

Sec. 8. Notice to commissioner of agriculture of presence of insects; his duties; destruction of insects within public ways and parks. 1907, c. 15, § 7. 1909, c. 34, § 4. 1911, c. 84, § 2. 1915, c. 218. If any person in the state suspects the presence of the brown-tail moth or San Jose scale preying upon trees, shrubs or vines in his possession or within his knowledge, he shall forthwith notify the commissioner of agriculture to that effect; and said commissioner shall cause the said trees, shrubs or vines to be inspected. If sufficient cause is found, the commissioner of agriculture shall forthwith notify the municipal officers of the city, town or plantation where such pests have been found. Municipal officers thus notified shall immediately cause to be destroyed such of the above-named insects in their different stages as may be found within the limits of the public streets and parks; said limit shall extend to and include all trees whose branches overhang the highway. If the municipal officers neglect or fail to perform the duties herein imposed upon them within a reasonable time, the commissioner of agriculture shall order such city, town or plantation to proceed to destroy the above-named insects in accordance with methods to be prescribed by him and to spend such an amount in the above-named work as he shall deem necessary. If any city, town or plantation shall fail to comply with the directions of said commissioner in the performance of said work and the expenditure of such money within the time specified by him, the commissioner of agriculture shall cause the said work to be done and shall charge the actual expense of the same to said city, town or plantation; such amount shall be collected as a state tax and credited to the appropriation for said purpose.

Sec. 9. Notice to owners of real estate to destroy insects; owner neglecting, town shall destroy. 1907, c. 15, § 7. 1909, c. 34, § 4. 1911, c. 84, § 2.

Whenever a city, town or plantation is notified by the commissioner of agriculture of the presence of the brown-tail moth or San Jose scale, the mayor of each city, the selectmen of each town and the assessors of each plantation shall notify each owner of real estate located therein, requiring him to destroy the above-named insects in his orchard and shade trees within a specified time. If the owner fails to destroy the above-named insects before the specified time, the city, town or plantation, subject to the approval of the commissioner of agriculture, shall destroy them, and shall assess upon such aforesaid real estate the actual cost of so doing, to an amount, however, not exceeding one per cent of the assessed valuation of the above-named property. The amount so assessed shall be collected in the form of a tax.

Sec. 10. Towns may raise money; expenditure. 1907, c. 15, §§ 7, 12. 1909, c. 34, § 7. Cities and towns may raise the sums necessary to carry out the provisions of the preceding section in the same manner as money is raised for other necessary municipal purposes. Whenever any city or town shall appropriate or raise a sum of money and shall pay the same into the state treasury for the purpose of exterminating the gipsy moth within its borders, the commissioner of agriculture shall cause such amount to be expended in such city or town as herein provided, together with an equivalent amount from the appropriation made therefor; provided, however, that if the commissioner of agriculture finds it to be unnecessary or impracticable to expend such entire amount during the year following such payment to the treasurer of state, one-half the amount so remaining unexpended shall be reimbursed to such city or town.

See c. 4, § 58.

Sec. 11. Duties of municipal officers as to worthless trees along highways. 1907, c. 15, § 11. 1909, c. 34, § 6. 1911, c. 84, § 3. The municipal officers of cities and towns shall, before the first day of June of each year, cut, burn and destroy all dead or worthless apple trees, and all wild cherry trees within the limits of the public ways, streets and parks of their respective towns and cities. For neglect or failure to perform the aforesaid duties each of such officers shall be punished by a fine of not less than fifty dollars.

Sec. 12. Jurisdiction; control of prosecutions. 1907, c. 15, § 4. 1909, c. 34, §§ 2, 8. 1911, c. 176, § 2. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for violations of the eleven preceding sections. All prosecutions shall be instituted by the commissioner of agriculture and shall be directed by him; all penalties recovered for any violation of said sections shall be paid into the state treasury and are hereby appropriated for the use of the commissioner in the enforcement of said sections in addition to any specific appropriation made therefor, and may be drawn from the treasury in the same manner as such appropriation.

Sec. 13. Crop pest commission, its membership, duties and authority. 1915, c. 147, §§ 1, 2. The Crop Pest Commission, heretofore established, consisting of the governor, the attorney-general, the commissioner of agri-

CHAP. 38

culture, the pathologist and the entomologist of the Maine Agricultural Experiment Station, may direct the commissioner of agriculture to make such regulations as said commission deem necessary to prevent the introduction into the state, or the dissemination therein, of any insect, pest or plant disease, seriously injurious to vegetation.

Sec. 14. Vegetation and nursery stock, defined. 1915, c. 147, § 3. In the preceding section and in any regulation made under the authority thereof, "vegetation" shall mean any tree, shrub, vine, vegetable or other plant, or the product, or any other portion of the tree, shrub, vine, vegetable or other plant; "nursery stock" shall mean all fruit and ornamental trees, shrubs and vines, and shall include currant, gooseberry, blackberry and raspberry bushes.

Sale of Pressed Hay.

Sec. 15. Marking of pressed hay; person receiving hay not marked may defend action for price. R. S. c. 39, § 37. All hay pressed and put up in bundles, except hay pressed by farmers and retailed from their own barns, shall have the first letter of the christian name and the whole of the surname of the person putting up the same, written, printed or stamped on bands or boards made fast thereto, with the name of the state and the place where such person lives. Whoever offers for sale or shipment any pressed hay not marked as aforesaid, except hay pressed by farmers and retailed from their own barns, forfeits one dollar for each bale so offered, to be recovered by complaint. No person who has received hay not marked as provided in this section shall defend any action for the price thereof upon that ground, unless he shall prove that, before the delivery of said hay to him, he requested the person from whom he bought the same to comply with the provisions of this section.

Marking Sheep.

Sec. 16. Owner of sheep shall have mark, to be recorded. R. S. c. 39, § 40. All owners of sheep shall mark them with some distinctive mark, by a cut in the ears, or a brand on some part of the animal, and cause such mark to be recorded by the clerk of their town in a book kept for that purpose.

Record of Stallions.

Sec. 17. Record of advertised stallions to be filed and recorded in registry of deeds. R. S. c. 39, § 41. The owner or keeper of any stallion for breeding purposes, before advertising, by written or printed notices, the service thereof, shall file a certificate with the register of deeds in the county where said stallion is owned or kept, stating the name, color, age and size of the same, together with the pedigree of said stallion as fully as attainable, and the name of the person by whom he was bred; and such register shall record such certificate in a book kept for that purpose. Copies of such certificate, duly certified by such register, may be used in evidence, the same as the original, in any court in the state. Whoever neglects to

make and file such certificate, shall recover no compensation for said services, and, if he knowingly and wilfully makes and files a false certificate of the statements aforesaid, he forfeits one hundred dollars, to be recovered by complaint, indictment or action of debt, to the county where the offense is committed.

Penalty for false registration of blooded animal, c. 128, § 14; 87 Me. 150; 89 Me. 264; 97 Me. 38.

CHAPTER 39.

Principal, Factors and Agents. Warehousemen. Partnerships.

- Sections 1-3 Authority of Factors and Agents.
 Sections 4-10 Public Warehouses and Warehousemen.
 Sections 11-15 Publicity of Mercantile Partnerships.
 Sections 16-25 Limited Partnerships.

Authority of Factors and Agents.

Sec. 1. How far shipper, factor or agent shall be considered the owner of goods under his control. R. S. c. 33, § 1. Every person in whose name merchandise is forwarded, every factor or agent entrusted with the possession of any bill of lading, custom house permit or warehouse keeper's receipt for the delivery of such merchandise, and every such factor or agent not having the documentary evidence of title, who is entrusted with the possession of merchandise for the purpose of sale, or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as to give validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole or any part of such merchandise, money advanced, or negotiable instrument or other obligation in writing, given by such person upon the faith thereof.

1 Me. 179; 4 Me. 543; 11 Me. 418; 15 Me. 343; 31 Me. 411; 57 Me. 64.

Sec. 2. Title does not extend to prior demands against agent. R. S. c. 33, § 2. No person, taking such merchandise in deposit from such agent as security for an antecedent demand, shall thereby acquire or enforce any right or interest therein other than such agent could then enforce.

Sec. 3. Rights of the true owner in such cases. R. S. c. 33, § 3. But the true owner of such merchandise, upon repayment of the money so advanced, restoration of the security so given or satisfaction of all legal liens, may demand and receive his property, or recover the balance remaining as the proceeds of the legal sale thereof, after deducting all proper claims and expenses thereon.

Public Warehouses and Warehousemen.

Sec. 4. Title to goods in possession of warehouseman passes to purchaser, or pledgee, by indorsement of warehouseman's receipt. R. S. c. 33, § 4. The title to merchandise stored in a public warehouse, or on the

CHAP. 39

wharves and premises of the warehouseman, and in his possession, passes to a purchaser or pledgee, in good faith, by the indorsement to such purchaser, or pledgee, but not in blank, of the warehouseman's receipt therefor, signed by the person to whom the receipt was originally given, or by an indorsee of the receipt, and recorded in the books of the warehouseman with whom such merchandise is stored.

Sec. 5. Account of warehouse transactions to be kept. R. S. c. 33, § 5. Each warehouseman shall keep books in which shall be entered an account of all transactions relating to the warehousing, storing and insuring of merchandise and the issuing and the indorsement of warehouseman's certificates, which books shall be open to the inspection of any person interested in the property stored in the warehouse.

Sec. 6. Goods attachable as goods of person receipted to, or as goods of last recorded indorsee. R. S. c. 33, § 6. Merchandise stored with a public warehouseman may be attached as the property of the person named in the warehouseman's receipt therefor, when no indorsement of such receipt has been recorded on the books of the warehouseman; and, where such indorsement has been recorded, may be attached as the property of the last indorsee of the receipt shown by the books of the warehouseman, by leaving at the warehouse where the merchandise is stored a copy of the writ, with a copy of so much of the officer's return thereon as relates to the attachment of such merchandise. And such attachment is valid against any transfer which was not recorded in the books of the warehouseman, when the copy of the writ was left.

Sec. 7. Penalty for disposing of warehouseman's certificate without disclosing attachment. R. S. c. 33, § 7. Whoever indorses or assigns, or otherwise disposes of a warehouseman's certificate, after his interest in the property described in such certificate has been attached, without disclosing the attachment thereof to the person to whom such certificate has been indorsed, assigned or disposed of, if he has knowledge of such attachment, shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding three years.

Sec. 8. Public warehouseman, defined. R. S. c. 33, § 8. Any person, firm or corporation advertising or offering to receive merchandise on storage for other parties, shall be deemed a public warehouseman for the purposes of this chapter.

Sec. 9. Grain, etc., stored in public warehouse becoming mixed. R. S. c. 33, § 9. When grain or other property is so stored in a public warehouse that different lots or parcels are mixed together, so that the identity of the same cannot be accurately preserved, the warehouseman's receipt for any portion thereof shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification.

Sec. 10. Goods, etc., remaining in warehouse may be sold at public auction; demand for payment of charges; notice of sale; disposal of proceeds. R. S. c. 33, § 10. Whenever goods, merchandise or any articles of personal property shall remain in a public warehouse for one year after the expiration of the time for which the charges shall have been paid, or for six

months after the charges thereon have been lawfully demanded and left unpaid, the same may be sold at public auction, subject to the following conditions; the warehouseman, in case such demand has not been made, shall first demand payment of the charges thereon by registered letter directed to the person who deposited such goods, merchandise or articles of personal property in said warehouse, if such person left with the warehouseman his address to which the letter may be directed. After such demand, or in cases where no such demand is required or where no address was given to the warehouseman to which such letter may be directed, the warehouseman shall give thirty days' notice of the time and place of sale in a public newspaper published in the city or town where the warehouse is, or if no public newspaper shall be published in such city or town, then in any public newspaper published in the county in which such city or town is; said notices shall contain a brief description of the property to be sold, with such marks thereon as may serve to identify it, if it shall be so marked, together with the name of the person depositing such articles in said warehouse and the name of the owner thereof if known; and shall specify the time after the expiration of said thirty days, and the place, which shall be in the city or town where the warehouse is, at which the sale shall be made. The proceeds of such goods, merchandise or articles of personal property so sold, after deducting the charges thereon, including the cost of publishing such notice and sale, shall be placed to the credit of the owner of the goods, merchandise or other articles of personal property sold, if known, otherwise to the credit of the person depositing said goods, merchandise or articles of personal property, in the books of the warehouseman making the sale, and shall be paid to the owner thereof on demand, and the warehouseman shall not be liable for any greater sum than shall be received from said sale, less said charges thereon.

100 Me. 451.

Publicity of Mercantile Partnerships.

Sec. 11. Persons engaging in mercantile partnerships shall file certificate; certificate of withdrawal. 1915, c. 276, § 1. Whenever two or more persons become associated as partners or otherwise for the purpose of engaging in any mercantile enterprise, they shall, before commencing business, deposit in the office of the clerk of the city or town in which the same is to be carried on, a certificate signed and sworn to by them, setting forth their names and places of residence, the nature of the business in which they intend to engage, and giving the name under which they are to transact business. Whenever any member of such partnership or association withdraws therefrom, he may certify under oath to the fact of such withdrawal which certificate shall be deposited in the clerk's office where the partnership certificate is recorded; and he shall conclusively be presumed to be a member of the firm or association to the time of his depositing such certificate.

Sec. 12. Sole proprietor shall file certificate when adopting any business name or style other than his own name. 1915, c. 276, § 2. Whenever any person intends to engage in such business as sole proprietor thereof, and

CHAP. 39

to adopt any business name, style or designation other than his own name exclusively, he shall, before commencing business, deposit in the office of the clerk of the city or town in which such business is to be carried on, a certificate signed and sworn to by him setting forth his name and place of residence, the name, style or designation under which the business is to be conducted, and stating that he is the sole proprietor.

Sec. 13. Statement cannot be contradicted in judicial proceeding. 1915, c. 276, § 5. A person signing and making oath to any certificate deposited as provided by the two preceding sections, shall not be permitted in any judicial proceeding to contradict the statements contained in such certificate. Whoever swears or affirms to any such certificate which is not true in fact shall be deemed guilty of perjury.

Sec. 14. Record. 1915, c. 276, § 3. The clerks of the several cities and towns shall record, in suitable books, kept exclusively for the purpose, the certificates deposited under the provisions of sections eleven and twelve, and such books shall be open to public inspection.

Sec. 15. Penalty for neglect to file certificate. 1915, c. 276, § 4. Whoever fails to deposit seasonably the certificate required by sections eleven and twelve shall be punished by a fine of five dollars for each day he is in default.

Limited Partnerships.

Sec. 16. Organization for mercantile, mechanical, or manufacturing business. R. S. c. 35, § 1. Limited partnerships for the transaction of mercantile, mechanical or manufacturing business, but not for banking or insurance, may be formed upon the following conditions and liabilities, to consist of one or more persons, called general partners, who shall be jointly and severally responsible, as general partners are by law, and of one or more persons, who contribute a specific sum in actual cash payment, as capital, to the common stock, called special partners, who shall not be liable for the debts of the partnership beyond the sum so contributed by each.

Sec. 17. Certificate and particulars thereof. R. S. c. 35, § 2. Persons forming such a partnership shall sign a certificate, containing the following particulars:

- I. The name of the firm, under which the partnership shall be conducted.
- II. The name and place of residence of each of the general and each of the special partners.
- III. The general nature of the business to be transacted, and the amount of capital which each of the special partners contributes.
- IV. The time when the partnership shall commence, and when it shall cease.

Sec. 18. Certificate to be acknowledged and recorded. R. S. c. 35, § 3. Such partnership shall not be considered as formed, until such certificate is acknowledged by all the partners before a justice of the peace, and recorded in the registry of deeds for each county or registry district where such partnership is to have an established place of business, in a book kept for that purpose open to public inspection.

Sec. 19. Liability for any misstatement therein. R. S. c. 35, § 4. If any statement is made in such certificate, which misleads third persons, or is intentionally false, all the persons interested in such partnership are liable for all the engagements thereof, as general partners, to any person thereby deceived or injured.

Sec. 20. Publication of such partnership, and mode of renewing it. R. S. c. 35, § 5. After such registry, the partners shall cause a copy of the certificate above mentioned to be published in a newspaper printed in the county in which the principal place of business is situated, if any, otherwise in one printed in an adjoining county, or in the state paper, for six weeks successively, the first publication to be within twenty days thereafter; and if not so published, or if upon every renewal or continuance of such partnership beyond the time originally fixed for its duration, a certificate is not made, signed, acknowledged, recorded and published, as aforesaid, it shall be deemed a general one.

Sec. 21. Special partners not to be named and not to act. R. S. c. 35, § 6. The business of the partnership shall be conducted under a firm, in which no names are used but those of the general partners, without the word "company," or any other general term; and the general partners only shall transact business; and if the name of any special partner is used in the firm with his consent and privity, or if he makes any contract respecting the concerns of the partnership with any person, except the general partners, he shall be deemed a general partner as to such contract.

Sec. 22. Capital not to be reduced below the amount stated in the certificate. R. S. c. 35, § 7. During the continuance of such partnership, no part of the capital stock shall be withdrawn therefrom, nor any division of interest or profits be made, so as to reduce the capital stock below the sum stated in the certificate above mentioned; and if during the continuance or at the termination of the partnership, the property is not sufficient to pay the partnership debts, the special partners shall be severally answerable for all sums by them in any way received, withdrawn or divided, with interest thereon from the time of withdrawal, notwithstanding the provision in the following section.

Sec. 23. Prosecution of suits relating to partnership business. R. S. c. 35, § 8. Suits respecting the business of such partnership shall be commenced and prosecuted by and against the general partners only, except in those cases in which provision is hereinbefore made, that special partners shall be deemed general partners, and special partnerships, general partnerships; in which cases all the partners deemed general partners, may join or be joined in such suits.

Sec. 24. Voluntary dissolution, and notice thereof. R. S. c. 35, § 9. No voluntary dissolution of such partnerships shall take place before the time specified in the certificate before named, unless a notice thereof is recorded in each registry, in which the original certificate, or certificate of renewal or continuance is recorded, and published in such paper, as is directed in section twenty.

Sec. 25. In cases not otherwise provided for herein, limited partners to be same as general. R. S. c. 35, § 10. In all cases not otherwise provided

CHAP. 40

for herein, the members of limited partnerships are subject to the liabilities, and entitled to the immunities, incident to general partnerships, and the supreme judicial court may hear and determine, in equity, all questions between copartners in any partnership formed by virtue of this chapter, and between said copartners and any creditors of the firm.

CHAPTER 40.

Board of Accountancy. Registration of Dealers in Securities. Notaries Public. Holidays and Days of Public Observance. Demand on Bills and Notes. Forged Checks. Interest.

- Sections 1-10 State Board of Accountancy.
 Sections 11-23 Registration of Dealers in Securities.
 Sections 24-32 Notaries Public and Protests.
 Sections 33-38 Holidays and Days of Public Observance.
 Section 39 Demand on Bills and Notes.
 Section 40 Liability of Banks on Forged Checks.
 Sections 41-47 Interest.

State Board of Accountancy.

Sec. 1. Appointment of Board of Accountancy. 1913, c. 144, §§ 2, 3. The Maine Board of Accountancy as heretofore established shall consist of three members, who shall be citizens and residents of the state, appointed annually by the governor, with the advice and consent of the council, for terms of three years, as the terms of the several members expire. Vacancies occurring during a term shall be filled for the unexpired term. Two members of said board shall be skilled in the art of accounting and shall have been actively engaged in the profession of a public accountant; they shall be holders of certificates issued under the provisions of the first ten sections of this chapter; the other member shall be a practicing attorney in good standing in the courts of this state.

Sec. 2. Organization; powers and duties. 1913, c. 144, §§ 1, 4. A majority of the board shall constitute a quorum for the transaction of its business. They shall annually elect a chairman and secretary. They may have and use a common seal and make such rules, by-laws and regulations, not inconsistent with law, as they shall deem necessary to improve and promote the science and art of accounting, and to carry out the purposes and enforce the provisions of sections one to ten, both inclusive, of this chapter. The board shall promote the standard of general education; the standard of special education in the science and art of accounting; the standard of moral character and general public experience as prescribed in said sections, in all examinations conducted hereunder. The secretary shall keep proper records of the doings of the board, and of his receipts and expenditures, and of all certificates issued and applications received by the board.

See c. 117, §§ 54, 55.

Sec. 3. Certificate as certified public accountant. 1913, c. 144, § 7. Any person who shall have received from the board a certificate of his qualifications to practice as a public accountant, as hereinafter provided, shall be styled and known as a certified public accountant, and no other persons shall assume such title or use the abbreviation C. P. A. or any other words, letters or figures to indicate that the person using the same is such certified public accountant.

Sec. 4. Examinations. Issue of certificates. 1913, c. 144, § 8. At such times as the board may fix, it shall hold meetings for the examination of applicants for certificates and shall give notice thereof by publication in a daily newspaper in each of the cities of Portland, Lewiston, Bangor and Augusta, stating the time and place of such meetings, not less than twenty days prior to the date thereof. At such meetings the board shall conduct examinations of applicants who have been residents of the state at least one year prior thereto, and of certified public accountants of any other state or foreign government which extends similar privileges to certified public accountants of this state, and who have paid the required fee. To those who have shown the required proficiency in the theory of accounts, practical accounting, auditing, business systems and commercial law, and such other subjects as it deems necessary, and whom they believe to be of such character and fitness as to qualify them to act as public accountants, they shall issue a certificate over the signatures of the board and under its seal that the applicant is entitled to practice as a certified public accountant in accordance with the provisions of sections one to ten, both inclusive, of this chapter.

Sec. 5. Board may waive examination of persons holding certificates from other states. 1913, c. 144, § 9. The board may, in its discretion, waive the examination and the payment of fees and may issue a certificate for a certified public accountant to any person possessing the qualifications mentioned in the preceding section who is the holder of a certified public accountant's certificate issued under the laws of another state or foreign government which extends similar privileges to certified public accountants of this state; provided the requirements in the state or foreign government which has granted it to the applicant are, in the opinion of the board equivalent to those herein provided.

Sec. 6. Fee for examination; second examination. 1913, c. 144, § 10. Each applicant for examination shall pay to the secretary of the board a fee of twenty-five dollars at the time of filing his application and no other fees or costs shall be required to be paid by him. If the applicant fails to pass the examination the fee shall not be returned to him, but he shall be entitled to take another examination after one year, at any advertised meeting at which there are to be other applicants for examination. The fee shall be paid by every person to whom a certificate for a certified public accountant is issued by the board, except that where reciprocal certificates are issued the fees required shall be not less than, nor more than the fees charged to certified public accountants of this state for similar privileges.

Sec. 7. Certificates may be revoked. 1913, c. 144, § 11. The board may revoke any certificate issued by it, upon proof of bad moral character, dis-

CHAP. 40

honesty, conviction of crime, incompetency or unprofessional conduct; provided, however, that a written notice shall have been mailed to the holder of such certificate at least twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a time and place for a hearing thereon before the board. Upon the revocation of any certificate it shall be surrendered to the board by the holder.

Sec. 8. List of persons certified shall be filed in office of secretary of state. 1913, c. 144, § 12. Upon the granting of any certificate for a certified public accountant by the board, the secretary shall immediately file in the office of the secretary of state a certificate showing the name, residence and post-office address, of the person to whom the certificate issued together with the date thereof and such other information as the board may deem advisable; the certificate so filed shall be open to inspection by all persons at all reasonable times.

Sec. 9. Penalty for falsely assuming to be a certified accountant. 1913, c. 144, § 13. Whoever shall advertise or issue any sign, card or other indication, designating himself as a certified public accountant, or shall assume the title of a certified public accountant, or use the abbreviation C. P. A., or any other words, letters or figures to represent that he is a certified public accountant, or shall practice as such without having received a certificate in accordance with the provisions of the eight preceding sections of this chapter, or whoever shall issue any such sign, card or other indication or assume such title or abbreviation after any certificate authorizing such use by him has been revoked, or continue to practice as a certified public accountant, shall upon conviction be punished by a fine not exceeding five hundred dollars.

Sec. 10. Annual report. 1913, c. 144, § 14. The board shall annually make a report to the governor and council showing its receipts and disbursements in detail, the names of persons to whom certificates have been issued, and the names of persons whose certificates have been revoked with the reasons therefor, during each fiscal year ending on the thirtieth day of June.

Registration of Dealers in Securities.

Sec. 11. Dealers in securities shall be registered; salesmen shall be registered. 1913, c. 209, § 2. No dealers in securities shall in this state, by direct solicitation or through agents or salesmen, or by letter, circular or advertising, sell, offer for sale, or invite offers for or inquiries about, securities unless registered as a dealer under the provisions of the following sections. No salesman or agent shall in this state, in behalf of any dealer, sell, offer for sale, or invite offers for or inquiries about, securities unless registered as a salesman or agent of such dealer, under the provisions of the following sections.

Sec. 12. Application for registration; non-resident dealers shall file power of attorney; notice and proceedings on application; issue of certificate and changes therein. 1913, c. 209, § 3. Any dealer desiring registration shall file written application therefor with the bank commissioner, which shall be in such form as may be prescribed by the commissioner,

and shall state the principal place of business, the name or style of doing business, and the address of the dealer, the names, residences and business addresses of all persons interested in the business as principals, officers, directors or managing agents, specifying as to each his capacity and title, and the length of time during which the dealer has been engaged in the business. Every non-resident dealer shall file a power of attorney, irrevocable, properly authorized, and with satisfactory certificates or other evidence of the authorization, appointing the commissioner agent for the service of legal process upon the dealer in any action in the courts of this state, based upon or arising in connection with any sale of, attempt to sell, or advertising of, securities in this state, or any violation of sections eleven to twenty-two, both inclusive. Upon the filing of the application, the commissioner shall forthwith give notice of the fact and date of such application, and of the name, principal place of business and address of the dealer, by advertisement inserted once in the state paper, and once in a newspaper of general circulation where the dealer's place of business is located, if it is elsewhere in this state than in the city of Augusta. The registration certificate shall not be issued before the expiration of two weeks from the last publication. Any person may, within such period of two weeks, file objection to the proposed registration. Each application shall be accompanied by certificates or other evidence sufficient to reasonably establish the dealer's good repute; and the commissioner may make such other and further investigation thereof as he deems desirable. Upon being satisfied of the dealer's good repute, the commissioner shall, in case no objection to the proposed registration be filed, register the dealer. If the commissioner shall not be satisfied with the dealer's good repute, or if, within the period of two weeks succeeding the publication aforesaid, objection shall be made to the proposed registration, the commissioner shall give notice of either fact to the dealer, and upon request from the dealer shall fix a time and place for hearing, of which fourteen days' notice shall be given by mail to the dealer and to the objectors, and by publication in the state paper; and at such hearing opportunity shall be given to said dealer, and to any other persons interested or objecting, to offer further evidence as to the dealer's repute. If satisfied, as a result of such hearing, of the dealer's good repute in business, the commissioner shall thereupon register the dealer. Upon registration of any dealer, a registration certificate shall be issued stating the name, principal place of business and address of the dealer, the names, residences and business addresses of all the persons interested in the business as principals, officers, directors or managing agents, and the fact that the dealer has been registered for the current calendar year as a dealer in securities. The certificate shall in other respects be in such form as the commissioner may determine, but shall state in bold type that the commissioner does not recommend, and assumes no responsibility for, securities offered by the dealer. Changes in the certificate, necessitated by changes in the personnel of a partnership, or in the principals, officers, directors or managing agents of any dealer, may be made at any time upon written application to the commissioner, accompanied by statement of the facts necessitating the change. Upon the

CHAP. 40

issue of the amended certificates, the original certificate and the certified copies thereof outstanding shall be promptly surrendered to the commissioner.

Sec. 13. Registration of agents or salesmen. 1913, c. 209, § 4. Upon written application by a registered dealer, the commissioner shall register, as agents or salesmen of such dealer, such persons as the dealer may request. The application shall be in such form as the commissioner may prescribe, and shall state the residences and addresses of the persons whose registration is requested. The commissioner shall issue to each person so registered a registration certificate, stating his name, residence and address, the name, principal place of business and the address of the dealer, and the fact that he is registered for the current calendar year as agent or as salesman, as the case may be, of the dealer. The certificate shall in other respects be in such form as the commissioner shall determine, but shall state in bold type that the commissioner does not recommend, or assume any responsibility for, securities offered by the dealer, or the dealer's agents or salesmen. Upon application by the dealer, the registration of any agent or salesman shall be canceled.

Sec. 14. Definition of terms "dealer" and "securities." 1913, c. 209, § 1. Under sections eleven to twenty-three, both inclusive, the term "dealer" shall mean any individual, partnership, association or corporation engaging in the business of selling or offering for sale securities, except to, or through the medium of, or as agent or salesman of, a registered dealer. But sales made by, or in behalf of a vendor, in the ordinary course of bona fide personal investment, or change of investment, shall not constitute such vendor, or the agent of such vendor, if not otherwise engaged either permanently or temporarily in selling securities, a dealer in securities; nor shall the offer of or sale of its own securities by an association or a corporation to its own members or stockholders constitute such association or corporation a dealer in securities.

The term "securities" shall include all stocks, bonds, debentures or certificates of participation, and all other forms of securities, except that it shall not be held to include commercial paper or other evidence of debt running not more than nine months, or securities legal for purchase by savings banks under the statutes of any New England state, or notes secured by mortgage of real estate in this state, or the shares of loan and building associations organized under the laws of this state.

Sec. 15. Registrations shall expire at close of calendar year; renewals. 1913, c. 209, § 5. 1915, c. 232. All registrations shall expire at the close of the calendar year, but new registrations for the succeeding year shall be issued as of course, upon written application of the dealer, and payment of the fee provided in section sixteen of chapter one hundred eighteen, without the filing of further statements or furnishing any further information, unless specifically requested by the commissioner; provided, that applications for renewal of registration shall be made on or before the first day of March in each year, and if not so made, applications thereafter received shall be treated as, and be subject to the same fees provided for, original registrations.

Sec. 16. List of dealers shall be published. 1913, c. 209, § 6. The commissioner shall, at least twice during each year, publish in the state paper a list of the then registered dealers, and of their registered agents or salesmen, and shall also at any time, on request by mail or otherwise, inform any inquirer as to whether or not any individual, partnership, corporation or association is registered either as dealer, agent or salesman.

Sec. 17. Certificate shall be shown to prospective purchasers. 1913, c. 209, § 7. Any dealer may, and any person named in a registration certificate as above provided may, in behalf of any dealer, sell, offer for sale or invite offers for or inquiries about securities in this state, but shall at all times when so engaged carry with him the registration certificate, or a copy thereof, certified by the commissioner, which shall at any time be shown to any prospective customer upon request. No dealer, agent or salesman shall advertise publicly the fact of his registration, or use such fact or the registration certificate, in connection with any sale or effort to sell securities, except by statement of the fact or by exhibiting the certificate or a certified copy thereof.

Sec. 18. Commissioner may require dealer to file list of securities, and statements of assets and earnings. 1913, c. 209, § 8. The commissioner may at any time require a dealer to file with him a list of the securities which he has offered for sale or advertised within the preceding six months, or which he is at the time offering for sale or advertising, or any portion thereof; and may require the filing of statements of assets or earnings, or any other facts he may deem pertinent in relation to any of the securities offered or to be offered by the dealer, or the associations or corporations issuing them; and may require the filing of copies of any or all printed or otherwise re-duplicated circulars or printed advertisements relating to securities which the dealer has within six months offered for sale or which the dealer shall thereafter offer for sale; and, thereupon, unless satisfied that all such offerings of the dealer have been and are to be made honestly and in good faith, and with disclosure of pertinent facts sufficient to enable intending purchasers to form a judgment of the nature and value of the securities, and without intent to deceive or defraud, may prohibit the dealer from selling or offering the securities, or any of them, or in any way advertising them.

Sec. 19. Dealer's registration may be revoked; registration of agent or salesman thereby revoked. 1913, c. 209, § 9. The commissioner may, unless furnished with satisfactory evidence as provided in the preceding section, or in case of violation of any provision of sections eleven to twenty-two, both inclusive, or in case of dishonest, deceitful or fraudulent conduct, on the part of the dealer in connection with the carrying on of the business, revoke the dealer's registration; and may, having reasonable cause to believe that the dealer may have been guilty of violation of the provisions of said sections, or of dishonest, deceitful or fraudulent conduct in connection with the carrying on of the business, suspend the dealer's registration until satisfied to the contrary. In either case, the dealer shall not be regarded as registered under the provisions hereof, until restored to registration by the commissioner, either on his own initiative or upon order

CHAP. 40

of court as hereinafter provided. The revocation or suspension of the dealer's registration shall constitute a revocation or suspension of the registration of any agent or salesman of the dealer.

Sec. 20. Agent's registration may be revoked. 1913, c. 209, § 9. The commissioner may, in case of violation of any provision of sections eleven to twenty-two, both inclusive, or in case of dishonest, deceitful or fraudulent conduct, on the part of any agent or salesman in connection with the business, revoke the agent's or salesman's registration; and may, having reasonable cause to believe that the agent or salesman may have been guilty of violation of the provisions of said sections, or of dishonest, deceitful or fraudulent conduct in connection with the business, suspend the agent's or salesman's registration until satisfied to the contrary. In either case, the agent or salesman shall not be regarded as registered under the provisions hereof, until restored to registration by the commissioner, either on his own initiative or upon order of court as hereinafter provided. In case of suspension or revocation of registration, all certificates shall at once be surrendered to the commissioner upon his request.

Sec. 21. Service of notices. 1913, c. 209, § 10. Notice of any requirement or decision of the commissioner shall be sufficient if sent by mail addressed to the dealer, agent or salesman, as the case may be, at the address designated in the application for registration.

Sec. 22. Appeals; proceedings thereon. 1913, c. 209, § 11. Appeals may be taken by any person aggrieved by any decision of the commissioner, to the supreme judicial court, by petition addressed to that court, stating the decision complained of. Upon such petition, citation shall be issued to the commissioner, who shall file an answer to the petition, stating therein his reasons for the decision. The court may, in its discretion, after hearing the commissioner, or his representative, suspend the order of the commissioner, pending the determination of the petition upon its merits, and may, after final hearing thereon, make such decree in connection with the matter complained of as justice may require. The court shall make provision for summary hearing and determination of such petitions so far as in its discretion seems desirable.

Sec. 23. Penalties. 1913, c. 209, § 12. Any dealer or any person violating any provision of sections eleven to twenty-two, both inclusive, or knowingly filing with the commissioner or furnishing to him any false or misleading statements or information, shall be punished upon conviction thereof by a fine of not more than one thousand dollars, or by imprisonment for not more than sixty days, or by both such fine and imprisonment. The foregoing penalties shall be in addition to, and not a substitute for, any civil or criminal liability now or hereafter existing.

Notaries Public and Protests.

Sec. 24. Notary's seal; authority to administer oaths. R. S. c. 34, § 1. 1911, c. 138. Every notary public shall constantly keep a seal of office, whereon is engraven his name, and the words "notary public" and "Maine" or its abbreviation "Me.," with the arms of state, or such other device as he chooses. When authorized by the laws of this state or of any other

state or country, to do any official act, he may administer any oath necessary to the completion or validity thereof.

Sec. 25. Duty as to protests of losses, and record and copies thereof. **R. S. c. 34, § 2.** When requested, he shall enter on record all losses or damages sustained or apprehended by sea or land, and all averages, and such other matters, as, by mercantile usage, appertain to his office; grant warrants of survey on vessels; and all facts, extracts from documents and circumstances, so noted, shall be signed and sworn to by all the persons appearing to protest; he shall note, extend and record the protest so made; and grant authenticated copies thereof, under his signature and notarial seal, to those who request and pay for them.

Sec. 26. Demand and notice on notes, bills, etc. **R. S. c. 34, § 3. 1905, c. 58.** He may, in behalf of any person interested, present any bill of exchange or other negotiable paper for acceptance or payment to any party liable therefor; notify indorsers or other parties thereto; record and certify all contracts usually recorded or certified by notaries; and in general, do all acts which may be done by notaries public according to the usages of merchants, and authorized by law; he may do all things that justices of the peace are or may be authorized to do and shall have the same territorial jurisdiction; he shall record all mercantile and marine protests by him noted and done in his official capacity.

15 Me. 454; 16 Me. 43, 247, 260; 17 Me. 363; 18 Me. 295; 21 Me. 219; 86 Me. 214; 113 Me. 391.

Sec. 27. Acts of notary who is interested in corporation; when unlawful. **1911, c. 125.** Any notary public who is a stockholder, director, officer or employee of a bank or other corporation, may take the acknowledgment of any party to any written instrument executed to or by such corporation, or may administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or may protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such bank or other corporation: provided, that it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument. This section shall apply to notaries public in office on the thirtieth day of June, nineteen hundred and eleven, and shall validate any acts theretofore done by them which would be valid hereunder.

Sec. 28. Copies, evidence. **R. S. c. 34, § 4.** The protest of any foreign or inland bill of exchange, or promissory note or order, and all copies or certificates by him granted shall be under his hand and notarial seal, and shall be received in all courts as legal evidence of such transaction, and as to the notice given to the drawer or indorser, and of all facts therein contained.

15 Me. 138; 16 Me. 43, 183, 260; 23 Me. 287, 554; 26 Me. 50; 41 Me. 304, 323; 43 Me. 154, 205; 49 Me. 27; 50 Me. 597; 53 Me. 411.

CHAP. 40

Sec. 29. When office vacated, records to be deposited with clerk of courts. R. S. c. 34, § 5. On the resignation or removal from office of any notary public, his records shall be deposited with the clerk of the judicial courts in the county for which he was appointed; and by a neglect for three months to comply with the above requisition on his part, or if he is deceased, on the part of his executor or administrator, for three months after the acceptance of his trust, either forfeits not less than fifty, nor more than five hundred dollars.

Sec. 30. Penalty for injuring or concealing such records. R. S. c. 34, § 6. Whoever knowingly destroys, defaces or conceals such record, forfeits not less than two hundred, nor more than one thousand dollars; and is liable for damages to any person injured, in an action on the case.

Sec. 31. Duties of clerks relating thereto, and fees. R. S. c. 34, § 7. All clerks shall receive and safely keep all such records and papers lodged in their offices and give attested copies thereof, for which they shall receive the same fees as a notary; and such copies shall be as valid as if certified by notaries.

16 Me. 183.

Sec. 32. Fees for protest, and appropriation of penalties. R. S. c. 34, § 8. For each protest of a bill or note, notifying parties, making his certificate thereof in due form and recording his proceedings, a notary public shall receive one dollar and fifty cents. All penalties provided in sections twenty-nine and thirty accrue half to the state and half to the prosecutor.

Holidays and Days of Public Observance.

Sec. 33. Bank holidays. R. S. c. 34, § 9. 1907, c. 48, § 2. Any day of public thanksgiving, appointed by the governor and council or by the president of the United States, the first day of January, the twenty-second day of February, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September and the twenty-fifth day of December are hereby declared to be bank holidays.

Sec. 34. Days of grace abolished; sight drafts excepted. R. S. c. 34, § 10. No days of grace, according to the custom of merchants, shall be allowed on any promissory note, draft, check, bill of exchange, bond or other evidence of indebtedness made, drawn or accepted after the first day of July, eighteen hundred and ninety-seven, unless expressly stipulated therein; but the same shall be due and payable as therein expressed, without grace; provided, that this section shall not apply to any draft or bill of exchange drawn payable at sight.

Sec. 35. Notes, etc., falling due on Sunday or any bank holiday, shall be payable next succeeding business day. R. S. c. 34, § 11. Any promissory note, draft, check, acceptance, bill of exchange, bond or other evidence of indebtedness made, drawn or accepted after the first day of July, eighteen hundred and ninety-seven, that shall fall due on Sunday or any bank holiday, shall be payable and presentable for payment on the secular or business day next succeeding such Sunday or holiday. If a bank holiday falls on Sunday, the following Monday shall be deemed a bank holiday for the purposes of this chapter.

13 Me. 414; 14 Me. 100, 288; 84 Me. 241.

Sec. 36. Every Saturday afternoon, not a bank holiday, when deemed a half holiday. R. S. c. 34, § 12. Every Saturday, which is not a bank holiday according to law, from twelve o'clock noon until twelve o'clock midnight shall, for all purposes whatever as regards the presenting for payment or acceptance and the protesting and giving notice of dishonor of bills of exchange, drafts, bank checks and promissory notes made after the twentieth day of March, eighteen hundred and ninety-seven, be treated as and deemed a half holiday; and all bills of exchange, drafts, bank checks and promissory notes which are liable to be protested for non-acceptance or non-payment at twelve o'clock noon on any Saturday which is not a bank holiday according to law, may be protested for non-acceptance or non-payment, as the case may be, on any such Saturday at any time after twelve o'clock noon, or on the next succeeding secular or business day.

Note. School holidays, c. 16, § 109. Days on which courts are not held, c. 82, § 52. Days on which arrests in civil actions may not be made, c. 86, § 82.

Sec. 37. Arbor day. R. S. c. 34, § 14. The governor shall annually set apart a day in the spring as Arbor Day, and shall issue a proclamation recommending that it be observed by the people of the state in the planting of trees, shrubs and vines, in the adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of a day so established.

Sec. 38. Old Home Week. R. S. c. 34, § 15. The week commencing with the second Sunday in August of each year is hereby designated and set apart as Old Home Week.

Demand on Notes and Bills.

Sec. 39. Demand on note payable at time and place certain. R. S. c. 34, § 13. In an action on a promissory note payable at a place certain, either on demand, or on demand at or after a time specified therein, the plaintiff shall not recover, unless he proves a demand made at the place of payment prior to the commencement of the suit.

30 Me. 32; 43 Me. 559; 83 Me. 267; 94 Me. 395; 95 Me. 386, 388.

Note. The last sentence of R. S. 1903, c. 34, § 13 has been transferred to c. 114, § 4.

Liability of Banks on Forged Checks.

Sec. 40. Liability of banks for forged or raised checks, fixed. 1911, c. 100. No bank shall be liable to a depositor for the payment by it of a forged or raised check unless within one year after the return to the depositor of the voucher of such payment, such depositor shall notify the bank that the check so paid is forged or raised.

Note. Penalty for fraudulent issue of check without funds to pay it, c. 128, § 13.

Interest.

Sec. 41. Legal rate of interest. R. S. c. 46, § 1. In the absence of an agreement in writing, the legal rate of interest is six per cent a year.

66 Me. 219, 283; 68 Me. 526; 73 Me. 471.

Sec. 42. Rate on loans on personal property limited. R. S. c. 46, § 2. 1905, c. 90. 1907, c. 97. All loans contracted after the eleventh day of March, eighteen hundred and ninety-nine, for less than two hundred dollars, secured by mortgage, conveyance, or pledge of personal property, shall be

CHAP. 40

dischargeable by the debtor upon payment or tender of the principal sum actually borrowed, and interest at the rate specified therein, which shall not exceed three per cent a month for a period not exceeding three months, and thereafter not exceeding the rate of fifteen per cent a year; no renewal thereof shall bear a greater rate than fifteen per cent a year. A sum not exceeding three dollars for the actual expense of making the loan and in securing the same may be charged and collected. And all loans made in violation hereof shall bear interest at the rate of six per cent only, and all payments made in excess of six per cent interest on loans so made in violation hereof shall be applied to the discharge of the principal; and, in case a greater sum has been paid by the borrower than the amount of the principal and interest at six per cent on loans so made in violation hereof, such excess may be recovered from the person loaning the money, whether principal or agent, by the borrower, in an action on the case.

102 Me. 508; 109 Me. 426; 112 Me. 444.

Sec. 43. Mortgages shall be discharged and pledge restored, upon payment of amount due. R. S. c. 46, § 3. When a loan for less than two hundred dollars is secured by mortgage or pledge of personal property the creditor shall discharge such mortgage and restore such pledge upon payment or tender to him of the amount due him under the preceding section, and such payment or tender may be made by the debtor or by any person having an interest in the property pledged or mortgaged.

Sec. 44. Mortgage on household furniture not valid, unless it states amount of loan, etc. R. S. c. 46, § 4. No mortgage of household furniture made to secure a loan under the provisions of section forty-two shall be valid unless it states with substantial accuracy the amount of the loan, the time for which the loan is made, the rate of interest to be paid and the actual expense of making and securing the loan.

Sec. 45. Penalty for refusing to discharge mortgage or restore pledge. R. S. c. 46, § 5. Whoever refuses or neglects after a request, to discharge a mortgage or to restore the property held as a pledge as provided in section forty-three, shall be liable in an action of tort by the debtor or by any person having an interest in the property pledged or mortgaged for all damages resulting to him for any violation of said section forty-three.

Sec. 46. Application of §§ 42-45 limited. R. S. c. 46, § 6. The four preceding sections shall not be construed to apply to licensed pawnbrokers nor to affect section forty-one.

Sec. 47. Acting as agent to evade usury laws in other state, unlawful; loans in violation of this section voidable. 1913, c. 96. No person, corporation or partnership shall engage within this state in the business of acting as the agent or attorney of non-resident borrowers of money in sums of three hundred dollars or less, with intent to evade the usury laws in force in the foreign state or territory in which the actual borrower has his residence when such loan, or any contract in connection therewith, is made. All such loans made, or contracted for, by such agent or attorney for a foreign principal, in violation of this section, shall be voidable at the option of the debtor, such option to be exercised by him in any foreign jurisdiction where any contract or promise made by him in connection with the making or procuring of such loan is attempted to be enforced.

CHAPTER 41.

Auctions and Auctioneers. Itinerant Vendors.

Sections 1-10 Auctions and Auctioneers.

Sections 11-27 Itinerant Vendors.

Auctions and Auctioneers.

Sec. 1. License; fee. R. S. c. 36, § 1. The municipal officers of any town may license any legal voter thereof, by a writing under their hands, to be auctioneer for one year, in every town in their county; and shall record every such license in a book kept by them for that purpose. Upon receipt of such license, such auctioneer shall pay two dollars to the treasurer of said licensing town for said town, and may be exempted from the deduction of two and one-half per cent from the gross amount of sales provided in section three.

4 Me. 263, 335; 25 Me. 142; 38 Me. 311; 43 Me. 160; 53 Me. 394.

Sec. 2. Appeal to county commissioners in case of refusal. R. S. c. 36, § 2. If such officers, after written application to them for a license, unreasonably refuse or neglect to grant it, the applicant, by giving them ten days' notice and a bond to pay all costs arising thereafter, may appeal to the county commissioners, who, after a hearing of the parties, may grant the license if they judge it reasonable.

Sec. 3. Auctioneers to keep account of goods sold; tax on goods of non-residents; penalty. R. S. c. 36, § 3. Every person licensed shall keep a fair and particular account of all goods and chattels by him sold, stating of whom received, and the price for which the same were sold; and unless otherwise authorized, if said goods are sold voluntarily for the benefit of parties residing out of the state, he shall deduct two and a half per cent from the gross amount of the sales for the use of the town where the sale is made, and pay the same to the treasurer thereof within ten days after the sale; and in default thereof, he shall be fined not less than fifty, nor more than three hundred dollars, and shall forfeit his license.

53 Me. 394.

Sec. 4. Penalty for allowing any person not a voter in town, to act under him. R. S. c. 36, § 4. No auctioneer shall allow any person, not a legal voter in the town from which he received his license, to act for or under him in any sales at public auction, under a penalty of fifty dollars for each offense; and any person so acting is subject to the same penalty.

Sec. 5. Penalty for receiving goods of minors or servants or selling before sunrise or after sunset; town officers may license to sell after sunset. R. S. c. 36, § 5. If an auctioneer receives goods for sale at public auction, of any servant or minor, knowing him to be such, or sells goods, before sunrise or after sunset, at public auction, he forfeits not less than fifty, nor more than one hundred and seventy dollars for each offense; but the municipi-

CHAP. 41

pal officers of any town may license any duly licensed auctioneer specially, to sell after sunset upon payment of a sum not exceeding twenty dollars.

Sec. 6. Real estate lying in two towns, how sold; blooded animals may be sold without license. R. S. c. 36, § 6. A parcel of real estate lying partly in one town and partly in another, may be sold by an auctioneer of either; but if an auctioneer sells or offers to sell real or personal property at public auction in any other towns than those authorized by his license, or if any person sells without a license, he forfeits not exceeding six hundred dollars; provided, however, that any person, employed by the owner of blooded animals may sell the same, as auctioneer, at public auction, whether licensed by municipal officers or not.

43 Me. 160.

Sec. 7. Penalty if occupant of building permits any person to sell therein contrary to law. R. S. c. 36, § 7. If the tenant or occupant of any building, having actual possession and control thereof, knowingly permits any person to sell any goods or chattels at public auction contrary to the first ten sections of this chapter, in such building, or in any apartment, or yard appurtenant thereto, he forfeits not more than six hundred, nor less than one hundred dollars.

Sec. 8. Exceptions as to sales by officers. R. S. c. 36, § 8. Nothing in the preceding sections extends to sales made by sheriffs, deputy sheriffs, coroners, constables, tax collectors, executors or administrators, or any other person authorized to sell goods, chattels or lands, by order of any court or judge of probate.

Sec. 9. Fines, how recovered and appropriated. R. S. c. 36, § 9. All fines imposed by the preceding sections of this chapter may be recovered by indictment; and it is the special duty of city marshals and their deputies, sheriffs, constables and police officers, to make immediate complaint for every offense against the provisions hereof.

Sec. 10. Town officers may grant special license to auctioneers to sell on invoice. R. S. c. 36, § 10. The municipal officers of any city or town, may, upon presentation of an invoice or inventory of the property to be sold, which shall be produced unless said municipal officers decide that the same is unnecessary, grant a special license to any auctioneer, a voter in the state, to sell at public auction, between the hours of seven in the forenoon and six in the afternoon, upon payment to such city or town of five dollars for each invoice or inventory.

Itinerant Vendors.

Sec. 11. Itinerant vendors not to sell without licenses. R. S. c. 45, § 1. Every itinerant vendor who shall sell or expose for sale, at public or private sale, any goods, wares and merchandise without state and local licenses therefor, issued as hereinafter provided, shall be punished for each offense by fine not exceeding fifty dollars or by imprisonment not exceeding sixty days, or by both such fine and imprisonment.

112 Me. 215.

Sec. 12. Penalty for advertising sale, before licenses shall be issued. R. S. c. 45, § 2. All persons, both principals and agents, who shall by circu-

lar, handbill, newspaper or in any other manner, advertise any such sales as those referred to in the preceding section, before proper licenses shall be issued to the vendor, shall be punished by fine not exceeding fifty dollars or imprisonment not exceeding sixty days, or by both such fine and imprisonment.

Sec. 13. Vendors shall take out state and local licenses; rights of municipal officers unaffected. R. S. c. 45, § 3. Every itinerant vendor, whether principal or agent, before commencing business, shall take out a state license and local licenses in the manner hereinafter set forth, but nothing herein contained shall affect the right of any municipal officers to make such regulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter.

Sec. 14. Vendors shall make deposit before procuring license; license not transferable; licensee may have assistants. R. S. c. 45, § 4. Every itinerant vendor desiring to do business in this state shall deposit with the secretary of state the sum of five hundred dollars as a special deposit, and after such deposit, upon application in proper form and the payment of a further sum of twenty-five dollars as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in the state in conformity with the provisions of this chapter for the term of one year from the date thereof. Every license shall set forth a copy of the application upon which it is granted. Such license shall not be transferable nor give authority to more than one person to sell goods as an itinerant vendor, either by agent or clerk or in any other way than in his own proper person, but any licensee may have the assistance of one or more persons in conducting his business, who may aid that principal but shall not act for or without him. No person shall be entitled to hold, or directly or indirectly receive the benefit of more than one state license at any one time, and any license obtained, held or used in violation of law is void.

112 Me. 217.

Sec. 15. Applications for state licenses shall disclose name and residence of owner. R. S. c. 45, § 5. All applications for state licenses shall be sworn to, shall disclose the names and residences of the owners or parties in whose interests said business is conducted, and shall be kept on file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records both of the secretary of state and of the several towns relative to such licenses, shall be in convenient form, and open for public inspection.

Sec. 16. Local license must be obtained; proceedings. R. S. c. 45, § 6. Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering or exposing for sale any goods in such town shall pay to the collector for the use of such town, as a further local license fee for such sale in such town, a sum to be computed as provided in the following section. A receipt for said local license fee when paid shall be indorsed by said collector on the back of such state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed or offered for sale in such

CHAP. 41

town. Every application for a local license shall be signed by the holder of the accompanying state license and shall specify the kind and line of goods then in stock in such town, the name of the town from which said goods were last shipped, and the name of the town in which said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each town respectively, in which said goods shall be successively offered or exposed for sale.

112 Me. 217.

Sec. 17. Assessors shall examine stock and certify to collector, amount of local license fee; license restricted to goods described in application; vendor shall pay additional license fee, when stock is increased. R. S. c. 45, § 7. The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by such applicant's state license shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town, such goods, wares and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, not exceeding in amount at any one time the valuation on which his local license fee for such town was computed; such license shall continue in force so long as such licensee shall in good faith continuously keep, offer and expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the first day of April next following the date of application. Any itinerant vendor, who after applying or paying for a local license shall increase his stock kept, offered or exposed for sale in the town for which such local license fee was paid above the valuation on which such local license fee was computed, without first making reasonable written application to the collector of such town for a supplemental license for such excess of stock shall be fined not less than twenty, nor more than fifty dollars, and for each day such excess of stock is kept, offered or exposed for sale without payment of local license fee therefor shall be fined not less than twenty, nor more than fifty dollars, and forfeits his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees.

90 Me. 253.

Sec. 18. Penalty for neglect to file application for local license. R. S. c. 45, § 8. Whoever as proprietor or clerk, having in his care, custody or keeping, any goods for the sale of which a local license is required, neglects or refuses to file the application for local license required by law, or whoever makes a false or fraudulent representation or statement in any appli-

cation for a local license, shall be fined not less than twenty, nor more than fifty dollars for each day such goods are kept, offered or exposed for sale. The penalties provided herein are not to be construed as substitutes for payment of local license fees.

Sec. 19. Town has lien on goods, for license fees; collector may maintain an action of debt for fee; officers charged with enforcement of law. R. S. c. 45, § 9. Every town in which is kept, exposed or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock to be enforced by suit and attachment within ten days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section seventeen the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name, but for the benefit of such town. Tax collectors, police officers and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license.

Sec. 20. Vendor shall state to secretary of state all facts relating to sale. R. S. c. 45, § 10. No itinerant vendor shall advertise, represent or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, testator's, executor's, administrator's, receiver's, wholesale or manufacturer's, or closing out sale or as a sale of any goods damaged by smoke, fire, water or otherwise, or in any similar form, unless he shall before so doing, state under oath to the secretary of state, either in the original application for a state license or in a supplementary application subsequently filed, and copy on the license all the facts relating to the reasons and character of such special sale so advertised or represented, including a statement of the names of the persons from whom the goods, wares and merchandise were obtained, the date of delivery to the person applying for the license, and the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares and merchandise to be so sold.

Sec. 21. Penalty for making false statement. R. S. c. 45, § 11. Any false statement in an application, either original or supplementary, for a license, and any failure on the part of any licensee to comply with all the requirements of the last preceding section shall subject said itinerant vendor to the same penalty as if he had no license.

Sec. 22. State licenses shall expire in one year. R. S. c. 45, § 12. All state licenses issued under section fourteen shall expire by limitation one year from the date thereof, and may be, if so desired, surrendered at any time prior thereto for cancelation.

Sec. 23. Upon expiration or surrender of license, duty of secretary of state. R. S. c. 45, § 13. Upon the expiration and return or surrender of each state license, the secretary of state shall cancel the same, indorse the date of delivery and cancelation thereon, and place the same on file. He shall then hold the special deposit of each licensee hereinbefore mentioned for the period of sixty days, and after satisfying any and all claims made

CHAP. 41

upon the same under the following section, shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee depositing it.

Sec. 24. Deposits shall be subject to attachment and execution; and to payment of fines and penalties incurred by licensee; claims satisfied in the order in which notice of claim is received; deposits shall not be paid to licensees, so long as there are claims against them. R. S. c. 45, § 14. Each deposit made with the secretary of state shall be subject, so long as it remains in his hands, to attachment and execution in behalf of creditors whose claims arise in connection with business done in the state, and the secretary of state may be held to answer as trustee, under the trustee process, in any civil action in debt or case brought against any licensee, and the secretary of state shall pay over, under order of court, or upon execution, such sum of money as he may be chargeable with upon his answer or otherwise. Said deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violation of the thirteen preceding sections of this chapter, and the clerk or recorder of the court in which, or the trial justice by whom, such fine or penalty is imposed shall thereupon notify the secretary of state of the name of the licensee, against whom such fine or penalty is adjudged and of the amount of such fine or penalty, and the secretary of state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified to said clerk, recorder or trial justice, and if the secretary of state shall not have a sufficient sum so deposited he shall make payment as aforesaid, of so much as he has in his hands. All claims upon the deposit shall be satisfied after judgment, fine or penalty in the order in which notice of the claim is received by the secretary of state, until all such claims are satisfied or the deposit exhausted, but no notice filed after the expiration of the sixty days' limit aforesaid shall be valid. No deposits shall be paid over by the secretary of state to the licensees so long as there are any outstanding claims or notices of claims against them, respectively, unless he is satisfied that such claims will not be prosecuted to final judgment or that no fine or penalty will be imposed.

Sec. 25. Construction of words, "itinerant vendors;" vendor shall not be exempt by associating himself with local trader. R. S. c. 45, § 15. The words "itinerant vendors" for the purposes of this chapter shall be construed to mean and include all persons, both principals and agents, who engage in a temporary or transient business in this state, either in one locality or in traveling from place to place selling goods, wares and merchandise, and who, for the purposes of carrying on such business, hire, lease or occupy any building or structure for the exhibition and sale of such goods, wares and merchandise, or who sell goods, wares and merchandise, at retail from a car, steamer or vessel. No itinerant vendor shall be relieved or exempted from the provisions and requirements hereof by reason of associating himself temporarily with any local dealer, trader or merchant, or by conducting such temporary or transient business in connection with or as a part of the business of, or in the name of any local dealer, trader or merchant.

Sec. 26. Persons exempt. R. S. c. 45, § 16. The provisions of the fifteen preceding sections shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares and merchandise by sample for future delivery, nor to hawkers on the streets or pedlers from vehicles.

Sec. 27. Jurisdiction of prosecutions. R. S. c. 45, § 17. Municipal and police courts and trial justices shall have jurisdiction of all complaints and prosecutions under this chapter.

CHAPTER 42.

Pawnbrokers and Intelligence Offices.

Pawnbrokers.

Sec. 1. Licenses of pawnbrokers; term. R. S. c. 37, § 1. The municipal officers of any town may grant licenses to persons of good moral character to be pawnbrokers therein for one year, unless sooner removed by said officers for violation of law; whoever carries on said business without a license, forfeits not exceeding one hundred dollars.

Sec. 2. An account of all business done must be kept. R. S. c. 37, § 2. Every pawnbroker shall keep a book, in which he shall enter the date, duration, amount and rate of interest of every loan made by him; an accurate account and description of the property pawned, and the name and residence of the pawner, and, at the same time, shall deliver to said pawner a written memorandum signed by him, containing the substance of the above entry, and, at all reasonable times, shall submit said book to the inspection of any of the officers aforesaid; and for every violation of this section he forfeits twenty dollars.

Sec. 3. Rates of interest fixed. R. S. c. 37, § 3. No pawnbroker shall directly or indirectly receive a rate of interest greater than twenty-five per cent a year on a loan not exceeding twenty-five dollars, nor more than six per cent on a larger loan made upon property pawned, under a penalty of one hundred dollars for each offense.

See c. 40, § 46.

Sec. 4. Time and mode of selling pawned property, and notice thereof, fixed under a penalty. R. S. c. 37, § 4. No pawnbroker shall sell any property pawned, until it has remained in his possession for three months after the expiration of the time for which it was pawned; all such sales shall be at public auction by a licensed auctioneer, after notice of the time and place of sale, the name of the auctioneer, and a description of the property to be sold has been published in a newspaper in the town, where the property is pawned, if any, and if not, after such notice has been posted in two public places therein at least two weeks before the sale; all sales of such property otherwise made, are void, and the pawnbroker, undertaking to make them, forfeits twenty dollars for every such offense.

CHAP. 42

Sec. 5. Penalty for not paying over proceeds. R. S. c. 37, § 5. After deducting from the proceeds of any sale as aforesaid the amount of the loan, the interest then due, and the proportional part of the expenses of sale, such pawnbroker shall pay the balance to the person who would have been entitled to redeem such property if no sale had been made; and if not so paid on demand, the broker forfeits double the amount so retained, half to the pawnner, and half to the state.

Intelligence Offices.

Sec. 6. Regulation of employment agencies; annual license fee; particulars of license; license not valid to protect another place; affidavits. 1911, c. 87, §§ 1, 7, 8. No person shall open, keep or carry on any employment agency in the state, unless such person shall first procure a license therefor from the municipal officers of the city or town where such employment agency is to be located. Any person who shall open or conduct any such agency without first procuring such license shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty, nor more than three hundred dollars, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment. Such license shall be granted upon the payment to the city or town treasurer, annually, of a fee of twenty-five dollars for the use of said city or town; the license shall be signed by a majority of the municipal officers, and shall continue in force from May first to May first of the succeeding year. Every license so granted shall contain the name of the person licensed, a designation of the city, street and number of the house or building in which the licensee is authorized to carry on the employment agency, and the number and date of such license, and shall be exhibited in a public and conspicuous place in the office or place of business of the licensee. Such license shall not be valid to protect any other place than that designated therein, unless consent is first obtained from the municipal officers, nor until the written consent to such transfer, of the surety or sureties on the bond required by the following section is filed with the original bond. No such agency shall be located on premises where intoxicating liquors are sold or dispensed contrary to law, nor shall any license be issued to any person, directly or indirectly engaged or interested in the sale of intoxicating liquors. The application for such license shall be filed with the municipal officers at least one week prior to the date of hearing thereon, and the municipal officers shall act upon any application within thirty days after the filing thereof. Each application shall be accompanied by the affidavits of two persons who have known the applicant, or the chief officers thereof, if a corporation, for two years at least, stating that the applicant is, or said officers are, of good moral character, and a resident, or residents, of the state and has, or have, been such for at least five years prior to the date of such application.

Sec. 7. Bond required of applicant; action on bond. 1911, c. 87, § 2. The municipal officers shall require such person to file with his application a bond to the inhabitants of the city or town wherein such application is made, in the penal sum of one thousand dollars, with one or more sureties, to be approved by said municipal officers, conditioned that the obligor will

conform to and not violate any of the duties, terms, conditions, provisions or requirements of the last eight sections of this chapter. Whoever is aggrieved by the misconduct of any such licensed person, may maintain an action in the name of the inhabitants of the city or town, to whom the bond was given, but for his own benefit, upon the bond of such person, in any court having jurisdiction, and shall be liable for costs in such action, and the inhabitants of such city or town shall not be liable.

Sec. 8. Licensee shall keep register, which shall be open for inspection. 1911, c. 87, § 3. Every such licensee shall keep a register in which shall be entered in the English language the date of every accepted application for employment, name and address of the applicant to whom employment is offered or promised, written name and address of the person to whom applicant is sent for employment, and of the fee received. The aforesaid register of applicants for employment shall be open during office hours to inspection by any one or more of the municipal officers, their authorized agents, or any police officer when on duty. No licensee, or his employees, shall knowingly make any false entry in such register.

Sec. 9. Receipt shall be given to applicants for employment; fee returned if no employment is obtained. 1911, c. 87, § 4. 1915, c. 38. Every licensee shall give to each applicant for employment from whom a fee or other valuable thing shall be received for procuring such employment, or to whom a charge is made therefor, which fee or other valuable thing shall in no case exceed the sum of one dollar if paid in advance, or one dollar and twenty-five cents if charged to the applicant, a receipt, if said fee is paid in advance, or a statement if it is charged, in which shall be stated the name of the applicant, the amount of the fee or other valuable thing, the date, the name or nature of the employment or situation to be procured, and the name and address of the person, firm or corporation, to whom the applicant is referred or sent for work or employment. Such fee shall be in full compensation for all service of said licensee. If the applicant does not obtain a situation, or employment through the agency of such licensee within six days after the application as aforesaid, said licensee shall return to said applicant on demand the amount of the fee or other valuable thing so paid and delivered by said applicant to said licensee, or if a charge was made, said licensee shall cancel the same, provided that said person, seeking employment through such agency, does not break any agreement he may make with said licensee, relative to time of entering into the employment sought for. The man to be employed must be furnished with a duplicate card showing name, last residence, and name and residence of nearest relative or friend. No licensee shall by himself, agent, or otherwise, induce or attempt to induce any employee to leave his employment with a view to obtaining other employment through such agency.

Sec. 10. No person shall be sent to place of bad repute; questionable characters not permitted to frequent agency. 1911, c. 87, § 5. No licensee shall send, or cause any female help or servant, or inmate or performer, to be sent to any questionable place or place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution,

CHAP. 42

vice, or gambling, the character of which such licensee knows, either actually or by reputation. No licensee shall knowingly permit questionable characters, prostitutes, gamblers, intoxicated persons, or procurers to frequent such agency. No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment in violation of law.

Sec. 11. Enforcement; complaints for violation, how and to whom made; notice of hearing; revocation of license. 1911, c. 87, § 6. The enforcement of sections six to thirteen, both inclusive, shall be entrusted to the municipal officers during their term of office and until the qualification of their successor or successors. Complaints of the violation of any provision of said sections shall be made orally or in writing to said municipal officers, and reasonable notice thereof, and of the time and place of hearing, not less than twenty-four hours, shall be given in writing to such licensee by serving upon him a concise statement of the facts constituting the complaint; the hearing shall be had before said municipal officers at such time and place as they may designate, within one week from the date of such service, and no adjournment shall be taken for a period longer than one week. The result of such hearing shall be announced within one week from the date thereof. The municipal officers may refuse to issue and may revoke any license for good cause shown within the meaning and purpose of said sections; and when it is shown to the satisfaction of a majority of said municipal officers that any person is guilty of any immoral, fraudulent or illegal act or conduct in connection with said business, said municipal officers shall revoke the license of such person; but notice of such charges shall be presented in writing signed by the party making the same and reasonable opportunity shall be given such licensee to defend himself in the manner heretofore provided in this section. Whenever said municipal officers shall refuse to issue or shall revoke any license of an employment agency, their decision shall be final. Whenever for any cause such license shall be revoked, such revocation shall take effect upon announcement of the decision, and such revocation shall be considered good cause for refusing to issue another license to said person or his representative, or to any person with whom he is to be associated in the business of furnishing employment or help.

Sec. 12. Penalty. 1911, c. 87, § 6. Whoever violates any provision of sections six to thirteen, both inclusive, of this chapter, except as is otherwise provided, shall be punished by a fine not exceeding twenty-five dollars with costs of prosecution. Judges of municipal and police courts, and trial justices shall have jurisdiction of such offenses, and in default of payment may commit the respondent to the county jail or house of correction for a period not exceeding thirty days. Any municipal officer may institute criminal proceedings to enforce the provisions of said sections.

Sec. 13. Definitions. 1911, c. 87, §§ 9, 10. The term "person" in the six preceding sections shall include persons, company, society, association, firm or corporation, and the term "employment agency" shall include the business of keeping an intelligence office, employment bureaus or other agencies for procuring work or employment for persons seeking employ-

ment, or for acting as agents for procuring such work or employment, where a fee or other valuable thing is exacted, charged or received, or for procuring or assisting to procure employment, work or situation of any kind or for procuring or providing hereby for any person; but said sections shall not apply to the employment of seamen nor to teachers' agencies or charitable institutions.

CHAPTER 43.

Pilots and Ship Owners, Wrecks and Shipwrecked Goods, Lighters and Harbors. Port Wardens.

Pilots.

Sec. 1. Appointment and bond of pilots. R. S. c. 38, § 1. The governor, with the advice and consent of the council, may appoint pilots for any port, in which a majority of the ship owners and masters apply in writing therefor and recommend suitable persons; and shall give to each of them branches or warrants for the execution of the duties of his office; and such pilots shall, before entering upon said duties, give bond to the treasurer of state in the sum of five thousand dollars for the faithful performance thereof.

Const. of Me. Art. ix, § 1. Appointment of pilots for harbor of Portland, P. & S. L. 1915, c. 184.

Sec. 2. Their duty; master may pilot his own vessel. R. S. c. 38, § 2. Such pilots shall take charge of all vessels, drawing nine feet of water and upwards, bound into, and of all such vessels, except coasting and fishing vessels, bound to sea out of any said ports, and shall pilot them into or out of the port assigned them, first showing to the master thereof their branch and informing him of their fees; but any master may pilot his own vessel without being subject to pay therefor.

Sec. 3. Governor and council to fix fees, hear complaints, suspend or remove pilots. R. S. c. 38, § 3. The governor and council may fix the fees of pilotage; specify the same in the branch of each pilot; transmit to each collector of customs in said ports a schedule thereof, to be hung up by him for public inspection; hear and determine all complaints against such pilots for misconduct, and suspend or remove them and appoint others in their places.

Sec. 4. Liability for damage caused by their fault. R. S. c. 38, § 4. If any vessel, while under the charge of such pilot, is lost, run aground, or cast away, through his fault, he is liable to pay the owner or insurer a just compensation for any damage thereby sustained.

Ship Owners.

Sec. 5. Ship owners' liability to freighters. R. S. c. 38, § 5. No ship owner is answerable beyond the amount of his interest in the vessel and freight, for the embezzlement, loss or destruction, by the master and mar-

CHAP. 43

iners, of any property put on board of such vessel; nor for any act of theirs without his privity or knowledge; but if several owners of property on the same voyage suffer damage as aforesaid, and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may prosecute a bill in equity for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto.

65 Me. 545.

Sec. 6. Charterer deemed the owner, and responsible to the real owner. R. S. c. 38, § 6. For the purposes of the preceding section the charterer of any vessel, navigating the same at his own expense, shall be deemed the owner; and if loss happens to any person, from the causes therein mentioned, and it is compensated from the freight or vessel, the owner thereof may recover the amount from the charterer.

65 Me. 545.

Wrecks and Shipwrecked Goods.

Sec. 7. Appointment and bond of commissioners of wrecks; remedy on bond. R. S. c. 38, § 7. The governor, with the advice and consent of the council, may appoint in counties where needed, commissioners of wrecks and shipwrecked goods, removable at pleasure; each shall give bond to the judge of probate for his county for the faithful discharge of his duties; and any person interested may have the same remedy for the breach of such bond, as on administrator's bonds.

See Const. of Me. Art. ix, § 1.

Sec. 8. Their powers and duties. R. S. c. 38, § 8. Every such commissioner, immediately on receiving information of any shipwreck, or of the finding of any shipwrecked property of any kind, to the amount of one hundred dollars on any of the shores or waters within his county, shall immediately repair to the place where the property is, and if the same is not in the custody of any owner or agent, he shall take charge of it, and secure and preserve the same for the owner.

Sec. 9. Authority of commissioner; penalty for disobeying orders. R. S. c. 38, § 9. The commissioner, in such case, may employ as many persons as he thinks necessary, to assist in preserving the property; appoint guards to receive it; suppress all tumults and disorders; and any person who disobeys any of his lawful orders, forfeits for each offense not exceeding ten dollars, to be recovered for the town in an action on the case in the name of the commissioner.

Sec. 10. All property to be inventoried and delivered to owner. R. S. c. 38, § 10. The commissioner shall on every such occasion, take an inventory of all the property coming into his possession; and when required by any person interested, make oath thereto; and shall deliver a copy thereof, if required, together with all such property, to the person lawfully authorized to receive it; provided, that there is first paid or secured to him a reasonable compensation for his services, and such custom-house duties and other charges, if any, as he has paid, or become liable to pay, on account of the property in question.

Sec. 11. Commissioner to decide compensation of other persons. R. S. c. 38, § 11. No person interested in any such property shall be held to pay to any person, other than a commissioner, any compensation for services or expenses in taking or securing any property, except property taken or secured before the arrival of the commissioner; in which case the commissioner shall, upon due hearing of all parties interested, determine the amount of compensation by his award in writing; which shall be final, unless the sum awarded to any party exceeds fifty dollars.

Sec. 12. Appeal to judge of probate, who may finally decide, and enforce his decision. R. S. c. 38, § 12. If the commissioner and the party interested disagree respecting the commissioner's charges, or if the award aforesaid exceeds fifty dollars, any party aggrieved may appeal to the judge of probate for the county where the property is situated; who shall, either in vacation or term time, on due notice, decide the case in a summary manner, and issue, under the seal of the court, any process necessary to carry his decision into effect.

Sec. 13. Penalty for intermeddling with property after arrival of commissioner. R. S. c. 38, § 13. Whoever after the arrival of the commissioner and without his direction or that of some person interested, takes, detains or intermeddles with any such property, forfeits not exceeding one thousand dollars for each offense, to be recovered in an action of debt by the commissioner or any person interested, to his own use.

Sec. 14. Commissioner to publish particulars of wreck; penalty for neglect. R. S. c. 38, § 14. The commissioner shall, as soon as practicable, publish all the facts and particulars of the shipwreck and of the property found, in such manner as shall be best for the information of all parties; and in case of neglect, he forfeits fifty dollars to the interested party first suing therefor in an action of debt.

Sec. 15. Property may be sold. R. S. c. 38, § 15. He may dispose of so much of the property by public auction within thirty days after taking it, as is necessary to pay the duties thereon at the custom-house; and whenever necessity requires it, may, in the same way sell such as is perishable, giving reasonable public notice, and if practicable, in a public newspaper.

Sec. 16. Property to be accounted for to treasurer of state; liability for neglect. R. S. c. 38, § 16. If no person interested appears within one year after such property is taken into custody, and establishes his claim thereto, the commissioner shall present, under oath, to the treasurer of state, an inventory of the property; and if sold, an account of the sales, with an account of all moneys paid by him as duties and expenses thereon; and pay and deliver to the treasurer the balance of such accounts, with all the property remaining in his hands for the use of the state; and if he neglects to do so for sixty days after the expiration of such year, the treasurer shall cause a suit therefor to be commenced in behalf of the state.

Sec. 17. Treasurer to allow commissioner's pay. R. S. c. 38, § 17. The treasurer may make to the commissioner on the settlement of his account as aforesaid, a just compensation for his services and expenses, to be ascertained in case of a disagreement between them, as provided in section twelve.

Lighters and Harbors.

Sec. 18. Lighters, to be marked; marks to be inspected and renewed. R. S. c. 38, § 18. Every boat or lighter employed in carrying stones, sand or gravel, shall be marked at light water-mark, and at least at five other places, with the figures four, twelve, sixteen, twenty-four and thirty, legibly made on the stem and stern-post thereof; expressing the weight which such boat or lighter is capable of carrying, when the lower part of the respective numbers touches the water in which it floats; and such marks shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed.

Sec. 19. Fine for unmarked lighters, and false marking. R. S. c. 38, § 19. The master or owner, who uses his craft without such marks, and any person, who falsely marks any such boat or lighter, forfeits fifty dollars to be recovered by any prosecutor in an action of debt.

Sec. 20. Town officers to appoint inspectors, and regulate fees. R. S. c. 38, § 20. The municipal officers of every town where boats and lighters are employed for the purposes aforesaid, shall annually, in April or May, appoint some suitable person who shall be sworn, to examine and ascertain the capacities of all such boats and lighters, and mark them as above prescribed; and said officers shall establish and regulate the fees therefor.

Sec. 21. Capacity altered, to be re-marked. R. S. c. 38, § 21. When such inspector thinks that the burden or capacity of any such boat or lighter is altered by repairs or otherwise he shall forthwith ascertain the same anew, and mark it accordingly.

Sec. 22. Penalty for throwing ballast into roadstead, port or harbor; or taking stone from shore or island. R. S. c. 38, § 22. No master of any vessel shall throw overboard ballast in any road, port or harbor, under penalty of sixty dollars; and no person shall take any stone or other ballast from any island, beach or other land, without consent of the owner, under a penalty not exceeding seven dollars for each offense, to be recovered in an action of debt by any prosecutor, half for himself and half for the town where the offense is committed.

Port Wardens.

Sec. 23. Port wardens, election of. R. S. c. 38, § 23. Port wardens shall be elected in any city or town situated on navigable waters, upon the petition of ten or more citizens engaged in commercial pursuits therein.

As to appointment of harbor masters, see c. 4, § 126.

Sec. 24. By board of trade, or by town officers. R. S. c. 38, § 24. If in such city or town, there is a board of trade duly incorporated, said board shall annually elect the port wardens; otherwise the municipal officers thereof shall annually elect them.

Sec. 25. Removal; vacancies. R. S. c. 38, § 25. Said boards of trade, by their managers, or said municipal officers, shall forthwith, on complaint of any person aggrieved, after hearing, remove for cause, any port warden by them elected, and all vacancies shall be filled by said authorities.

Sec. 26. Qualification and term of office. R. S. c. 38, § 26. Port wardens shall be men of commercial or nautical experience, and shall hold office

one year from each election and until others are qualified in their stead, except when removed for cause, or when elected to serve out an unexpired term; and they shall be sworn faithfully to perform their duties.

Sec. 27. Record. R. S. c. 38, § 27. They shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein.

Sec. 28. Duty of port warden, on arrival of vessels. R. S. c. 38, § 28. When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port, and survey her hatches, and notice if they are properly caulked and secured; and if they have been opened by some person not a port warden, that fact shall also be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall also examine the condition and stowage of the cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office; and for the purpose of ascertaining the extent of said damage, they shall examine goods, wares or merchandise of any description, in any warehouse or store, or on any wharf or at any place where the same are; provided, that said goods, wares or merchandise are part of the cargo, and are claimed to be damaged; and they shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office.

Sec. 29. Duty of port warden in case of vessels arriving in distress. R. S. c. 38, § 29. When requested in writing by any person interested, port wardens shall also survey the cargo of any vessel arriving in port in distress; and shall make and record in the books of their office, a full and particular report of the condition of said cargo, and of their recommendations in relation to the disposal of such portions of the same as in their judgment may not be in condition for reshipment, reference being had to the best interests of all concerned.

Sec. 30. In case of wrecked or damaged vessels. R. S. c. 38, § 30. When requested in writing by any person interested, they shall also survey any vessel which may have suffered wreck or damage, or which may be deemed unseaworthy; and such port wardens shall call to their assistance one merchant and one shipwright, both of whom shall be competent and disinterested persons and shall be sworn faithfully to perform their duties in the examination and survey; and said surveyors and port wardens shall examine the hull, spars, sails, rigging and all the appurtenances of said vessel, and make and record in the books of the port wardens' office a full and particular report of all the surveys by them held on said vessel, specifying what damage she has sustained and what repairs in their opinion are necessary to render her again seaworthy; and the aforesaid report shall be presumptive evidence of the necessity of such repairs and of the sufficiency of the same when made.

Sec. 31. Port wardens, their fees of office. R. S. c. 38, § 31. Port wardens shall be allowed fees to be paid by the person requesting their services,

CHAP. 44

as follows: For survey of hatches, two dollars; for each survey of cargo on shipboard, one dollar; for certificate of stowage of cargo, two dollars; for each subsequent certificate, one dollar; for each survey to ascertain extent of damage, two dollars; for each certificate thereof, two dollars; for each survey required by section twenty-nine, four dollars; for each certificate thereof, two dollars; on each survey as required by section thirty, for each person, two dollars; for each certificate thereof, two dollars.

Sec. 32. Jurisdiction; penalty for performing duties of port wardens, without authority. R. S. c. 38, § 32. In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this chapter; and any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden, forfeits for each offense one hundred dollars, to be recovered in an action of debt by any prosecutor.

CHAPTER 44.

Inspection and Sale of Manufactured Articles. Trade-marks and Trade Names. Assayers of Ores and Metals. Maine Mining Bureau.

Sections 1-8	Inspection of Flour.
Sections 9-10	Inspection of Leather.
Sections 11-23	Use of Trade-marks and Trade Names.
Section 24	Oils.
Sections 25-29	Inspection of Petroleum, Coal-Oil and Burning-Fluid.
Sections 30-32	Marks on Syphons, Bottles and Cans.
Sections 33-38	Sale of Lightning-Rods.
Section 39	Sale of Firearms.
Section 40	Assayers of Ores and Metals.
Sections 41-44	Maine Mining Bureau.

Inspection of Flour.

Sec. 1. Inspectors of flour, their appointment. R. S. c. 39, § 1. The municipal officers of towns may appoint annually in their towns, one or more suitable persons not interested in the manufacture and sale of flour to be inspectors thereof for one year from the date of appointment.

Sec. 2. Inspectors to be sworn and to receive certificate of appointment. R. S. c. 39, § 2. Such inspector, before entering upon his duties, shall be sworn to the faithful and impartial discharge thereof before the town clerk, who, upon payment of fifty cents, shall give him a certificate of his appointment and qualification, to be exhibited on the demand of any person interested in any inspection made by him.

Sec. 3. Inspection; duties of inspectors defined; record to be kept. R. S. c. 39, § 3. Inspection of flour shall be for the purpose of ascertaining its

soundness; every package inspected shall be opened sufficiently to allow a trier to be passed through it, and a sample of the whole length of the passage shall be taken out and examined by the inspector, who shall mark upon each package with a brand or stencil, the word, "Sound" or "Unsound," as the quality of the flour contained in each is found, and his name, residence, office and the year of inspection. He shall keep a record of all flour inspected by him, in a suitable book which he shall exhibit to any person requiring it.

Sec. 4. Penalty for fraudulent marks. R. S. c. 39, § 4. If an inspector falsely and fraudulently marks any package of flour, he shall be fined five dollars for every such package, and forfeits to any person injured thereby three times the amount of damage, in an action of debt.

Sec. 5. Penalty for alteration, etc., of inspection marks. R. S. c. 39, § 5. Whoever, with intent to defraud, alters, obliterates or counterfeits the marks of an inspector, and whoever, with such intent, places upon any package of flour, marks falsely purporting to be inspection marks, shall be fined not exceeding fifty dollars for each offense and on conviction of placing such false marks on as many as ten packages at one time, shall also be imprisoned not exceeding ten months.

Sec. 6. Purchasers of flour may require inspection before delivery; fees. R. S. c. 39, § 6. The purchaser may require flour to be inspected before delivery. The inspector's fees shall be five cents a package for lots of less than ten; for lots of more than ten and not exceeding twenty, two cents a package; and for every package exceeding twenty, one cent; to be paid by the person demanding inspection.

Sec. 7. Duties of inspectors in relation to sample packages. R. S. c. 39, § 7. Inspectors shall, when required, determine whether the flour conforms to and equals the sample furnished, and shall mark, with some distinct and intelligible mark, the packages that are found like the sample, and for this service they may charge an additional compensation of one-half cent a package.

Sec. 8. Contract for sale of uninspected flour not prohibited, if inspection is not required. R. S. c. 39, § 8. Nothing herein contained prohibits any contract for the manufacture or sale of uninspected flour, when inspection is not required by the buyer or the seller.

Inspection of Leather.

Sec. 9. Appointment, duties and fees of inspectors of sole leather. R. S. c. 40, § 15. The municipal officers of each town, when they deem it expedient, may appoint one or more suitable inspectors of sole leather, who shall receive such fees from their employer, as said officers establish; and when paid by the seller, to be repaid to him by the buyer; when requested, they shall go to any place in their town to inspect any sides of sole leather, which have not been inspected in this state according to law.

See Const. of Me. Art. ix, § 1.

Sec. 10. Mode of inspecting and stamping sole leather. R. S. c. 40, § 16. Each inspector shall provide himself with a proper apparatus, with which he shall weigh and stamp every side of sole leather inspected by him, with

CHAP. 44

the weight thereof, his surname, and the name of his town; and on all sole leather made of good hides, and in the best manner, the word "best," shall be stamped; on all made of such hides in a merchantable manner, the word "good;" and on all other, the words, "second quality," "third quality," "damaged," or "bad," according to the fact; and whoever counterfeits, alters or defaces such mark, forfeits twenty dollars for each offense, half to the town and half to the prosecutor.

Use of Trade-marks and Trade Names.

Sec. 11. Manufacturer of leather, boots and shoes, may stamp his name thereon; effect; penalty for counterfeiting stamp. R. S. c. 40, § 17. Every manufacturer of leather, and of boots and shoes, of any description, has the exclusive right of stamping them with the initials of his christian name, and the whole of his surname; and such stamping is a warranty that the article is merchantable, and well made of good materials; and if any person fraudulently stamps any such articles with the name or stamp of any other person, he shall be fined not exceeding twenty dollars, or imprisoned not exceeding six months.

Sec. 12. No person shall use another's trade-mark. R. S. c. 40, § 18. When a person uses any peculiar name, letters, marks, device, or figures, cut, stamped, cast or engraved upon, or in any way attached to or connected with any article manufactured or sold by him to designate it as an article of a peculiar kind, character or quality, or as manufactured by him, no other person shall use, without his consent, the same or any similar names, letters, marks, devices or figures, for the purpose of falsely representing any articles to have been manufactured by him, or to be of the same kind, character or quality, as that manufactured or sold by the party rightfully using the same.

Sec. 13. Damages for violation. R. S. c. 40, § 19. Whoever violates the provisions of the preceding section, is liable to any party aggrieved thereby, for all damages actually incurred, to be recovered in an action on the case.

Sec. 14. Business names, unauthorized use of, prohibited. R. S. c. 40, § 20. No one shall assume, or continue to use in his business, either alone, or in connection with his own or any other name, or designation, the name of any person formerly connected with him in partnership, without the written consent of such person or his legal representative.

Sec. 15. Injunctions. R. S. c. 40, § 21. The supreme judicial court may restrain, by injunction, any use of trade-marks or names, in violation of the foregoing provisions.

Sec. 16. Proprietor of trade-mark may file certificate with secretary of state; its contents. R. S. c. 40, § 22. Any person, entitled to the exclusive use of any trade-mark, or who intends to adopt and use any trade-mark not previously adopted or used by another, may file for record in the office of the secretary of state a certificate setting forth his name, residence and place of business; the class of merchandise and the particular description of goods comprised in such class to which such trade-mark has been or is to be appropriated; a description thereof, and of the mode in which it is

to be applied and used; the date when it was first used or adopted; that he has a right to the use of it; and that no other person, firm or corporation has the right to such use, either in the identical form, or having such near resemblance thereto as is calculated to deceive. A facsimile of such trade-mark shall be incorporated in or annexed to said certificate, and a duplicate shall be filed therewith, to be pasted or bound into the record book, if practicable. Such certificate shall be signed and sworn to by such person, or his agent.

Sec. 17. Penalty for perjury; if secretary of state believes certificate untrue, he may decline to record it, until compelled by mandamus; proceedings. R. S. c. 40, § 23. Whoever wilfully swears or affirms falsely to any such certificate, is guilty of perjury, and shall pay treble damages to every party injured thereby. If the secretary of state has reason to apprehend, on the filing of such certificate, that any statement therein contained is untrue, he may decline to record the same, unless the party filing it obtains a writ of mandamus to compel him. Such writ may be granted by any proper court, but without costs to the secretary, on proof that all the statements in such certificate are true, but no final hearing on the application therefor, shall be had until such notice thereof as said court orders has been advertised in one or more newspapers published in the county where the party filing said certificate resides; and any persons who desire may appear and intervene as parties defendant, and oppose the granting of such writ, and shall be liable to judgment for any costs occasioned by such intervention.

Sec. 18. Exclusive right to use of trade-mark, guaranteed; rights are assignable. R. S. c. 40, § 24. Every party entitled to make and file such certificate and affidavit, upon recording the same in said office, becomes entitled to the exclusive use of the trade-mark therein described, so long as he or his assigns continue to be engaged in the manufacture or sale of the merchandise or description of goods to which it is appropriated; and such right is assignable in writing; but all assignments thereof are good only against the assignor and his personal representatives, until lodged for record in said office.

Sec. 19. Certificates and assignments recorded; copies are evidence. R. S. c. 40, § 25. The secretary of state shall retain all such certificates on file, and cause the same and all assignments of trade-mark rights to be recorded at length in his office. Copies of the record of any such certificate, attested by him under the seal of the state, are prima facie evidence of the right of the party filing such certificate to the exclusive use of the trade-mark therein described for the periods limited in the preceding section.

See c. 118, § 13.

Sec. 20. Counterfeiting trade-marks, and sale of goods with such counterfeits thereon, prohibited; penalty. R. S. c. 40, § 26. Whoever knowingly and wilfully counterfeits, or causes to be counterfeited, any private stamps, labels or trade-marks, used by a mechanic or manufacturer about the sale of his goods, with intent to defraud the purchaser or manufacturer; or sells such goods with such counterfeit stamps, labels or trade-marks thereon, knowing them to be counterfeit, without disclosing the fact to the pur-

CHAP. 44

chaser, shall be punished by imprisonment for less than one year, or by a fine not exceeding two hundred dollars.

Sec. 21. Penalty for counterfeiting recorded trade-marks. R. S. c. 40, § 27. Whoever reproduces, copies, counterfeits or imitates any such recorded trade-mark, knowing the same to have been recorded, and affixes such reproduction, copy, counterfeit or imitation to goods resembling, or designed to resemble, those to which such trade-mark is so appropriated, shall pay to the owner of such trade-mark double damages, besides such sum, not exceeding five hundred dollars, as the court, before which the action is brought, orders to be added to the damages found by the verdict or judgment.

Sec. 22. Penalty for fraudulent use of such trade-marks. R. S. c. 40, § 28. Whoever fraudulently and with intent to deceive, affixes any trade-mark recorded under section nineteen or any such imitation thereof as is calculated to deceive, to any goods, receptacle or package similar in descriptive properties to those to which such trade-mark is appropriated, or who fraudulently and with intent to deceive, places in any receptacle or package to which is lawfully affixed a recorded trade-mark, goods other than those which said trade-mark is designed and appropriated to protect; or who fraudulently and with intent to deceive, deals in or keeps for sale any goods with a trade-mark fraudulently affixed, as above described, or any goods contained in any package or receptacle having a lawful trade-mark, but not being such goods as said trade-mark was designed and appropriated to protect, shall be fined not more than five hundred dollars, or imprisoned not more than thirty days.

Sec. 23. Rights to existing trade-marks not abridged. R. S. c. 40, § 29. This chapter does not abridge rights to any existing trade-marks, whether the same are hereafter recorded or not, nor any remedies or rights of action otherwise or heretofore existing in favor of owners of trade-marks.

Note. Labels of Workmen's Unions protected, c. 49, §§ 38-44.

Oils.

Sec. 24. Pure sperm-oil defined; penalty for adulteration. R. S. c. 40, § 8. All oils sold under the names of sperm, summer, fall and winter oils, are deemed to be sold for pure sperm-oil, the test of which is Southworth's oleometer. Whoever sells under said names, any oils which are adulterated by the mixture of an inferior article, without disclosing the full extent of adulteration to the purchaser, forfeits to the prosecutor fifteen dollars for each offense; and the oil so sold shall be deemed whale-oil, and the seller is liable to the purchaser for the difference between pure sperm and whale-oil, to be recovered in an action on the case.

Inspection of Petroleum, Coal-Oil and Burning-Fluid.

Sec. 25. Inspectors of petroleum, their appointment and duties. R. S. c. 40, § 9. In towns containing two thousand inhabitants or more, the municipal officers, on or before the first day of May annually, shall appoint one or more persons, and fix their compensation, to be inspectors of petroleum, coal-oil, and burning-fluid, who, when requested, shall inspect such

oils and burning-fluids by applying the fire test with G. Tagliabue's pyrometer or some other accurate instrument, to ascertain the igniting or explosive point thereof in degrees of Fahrenheit's thermometer, and they shall cause every vessel or cask thereof, by them so inspected, to be plainly marked by the name of such inspector, the date of inspection, and the igniting or explosive point of the contents thereof.

See Const. of Me. Art. ix, § 1.

Sec. 26. Casks which shall be marked "Unsafe for illuminating purposes;" penalty for false marking. R. S. c. 40, § 10. When a cask or vessel of such oil or fluid will not bear the fire test of at least one hundred and twenty degrees Fahrenheit without ignition or explosion, the same shall be marked as aforesaid, and also "Unsafe for illuminating purposes." If an inspector knowingly puts false marks upon such casks or vessels inspected by him, he shall be fined not exceeding five hundred dollars, or be imprisoned six months.

Sec. 27. Penalty for neglect of such inspection, and marking. R. S. c. 40, § 11. Every person and corporation engaged in manufacturing petroleum, coal-oil or burning-fluid, shall cause every cask or other vessel thereof to be so inspected and marked, by a sworn inspector. Whoever manufactures or sells such oil or burning-fluid not so inspected and marked in this state, or that has been so inspected and marked as unsafe for illuminating purposes, shall pay a fine not exceeding five hundred dollars, or be imprisoned six months.

See c. 30, § 20.

Sec. 28. Rights and duties of town and police officers. R. S. c. 40, § 12. The municipal officers of towns, and the police of cities, may at all times examine all such oils and fluids kept in their towns for sale, and cause them to be inspected and tested; and they shall do so in all cases where they are informed or believe that the same are kept for sale in violation of law; and cause the keeper and seller to be prosecuted therefor.

Sec. 29. Persons engaged in sale of oil may file with town clerk, description of marks used on cans. R. S. c. 40, § 13. All persons or corporations, engaged in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, in cans of a capacity of not less than five gallons, with their names, or other marks or devices branded, stamped, engraved, etched, impressed or otherwise produced upon such cans or anything connected therewith or appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid, used by them, and cause the same to be published once a week for three successive weeks, in any newspaper published in the county in which said notice may have been filed as aforesaid.

Marks on Syphons, Bottles and Cans.

Sec. 30. Protection of marks on containers used for soda-water and similar beverages. R. S. c. 40, § 37. All persons or corporations engaged in the manufacture or sale of soda-water, mineral and aerated waters, ginger ale, small beer, spruce beer, white beer, or other similar beverages, in

CHAP. 44

syphons, boxes, cans, bottles, kegs or other vessels, with their names, or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such syphons, boxes, cans, bottles, kegs or anything connected therewith and appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid used by them, and cause the same to be published once a week for three successive weeks, in any newspaper published in the county in which said notice may have been filed as aforesaid.

Sec. 31. Unlawful use, or defacing of containers so marked; penalty. R. S. c. 40, § 38. 1915, c. 98, § 1. Whoever knowingly and wilfully, without the written consent of an owner who has complied with the provisions of the preceding section or of section twenty-nine, uses, buys, sells, fills or traffics in any such syphon, box, can, bottle, keg or other vessel, or any such can of a capacity of not less than five gallons, used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, so marked as aforesaid, or defaces, covers up or obliterates the names, marks or devices thereon, with intent to use, fill, buy, sell, dispose of or traffic therein, or to convert the same to his own use, shall, on complaint, be punished by imprisonment for not more than thirty days, or by fine of not more than twenty dollars, and fifty cents additional for each such syphon, box, can, bottle, keg or other vessel or such can of a capacity of not less than five gallons, so used, bought, sold, filled, trafficked in or disposed of, or by both such imprisonment and fine in the discretion of the magistrate hearing the complaint; and the said magistrate on finding such person or persons guilty, shall impose the punishment herein prescribed and shall award possession of the property taken to the owner thereof.

Sec. 32. Search warrant may issue to search for such containers. R. S. c. 40, § 39. 1915, c. 98, § 3. Whenever any person in his own behalf or in behalf of any corporation shall make complaint on oath to any magistrate or court, authorized to issue warrants in criminal cases, that he has reason to believe and does believe that any of his or said corporation's syphons, boxes, cans, bottles, kegs or other vessels, or any of his or said corporation's cans of a capacity of not less than five gallons, used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, a description of the names, marks or devices whereon has been so filed and published as aforesaid, are being unlawfully used, filled, bought, sold, disposed of or trafficked in, or unlawfully had by any person or corporation, manufacturing or selling said beverages, oils, fluids or liquids, or by any junk dealer or dealer in second-hand articles, or by any vendor of such syphons, boxes, cans, bottles, kegs or other vessels, or cans of a capacity of not less than five gallons used for the purposes aforesaid, the said magistrate shall thereupon issue a search warrant to search therefor.

Sale of Lightning-Rods.

Sec. 33. Manufacturer selling lightning-rods shall be licensed. 1915, c. 270, § 1. No manufacturer, whether a person, firm or corporation, shall sell or offer for sale material used for the protection of buildings from

damage by lightning until licensed so to do by the insurance commissioner, as hereinafter provided.

Sec. 34. Conditions under which insurance commissioner may issue license; filing of bond to fulfil guarantee; form of guarantee. 1915, c. 270, § 2. No such license shall be issued until the insurance commissioner has approved of the material made by such manufacturer for protection from lightning, and of the manner and system of installing such material, nor until such manufacturer has filed a bond with the insurance commissioner in the penal sum of ten thousand dollars, with surety or sureties satisfactory to the insurance commissioner, conditioned for fulfilling the guarantee agreement provided for by this section, together with a written stipulation that legal process affecting such manufacturer or his agent, served upon the insurance commissioner for the time being, shall have the same effect as if personally served upon such manufacturer or his agent within the state. The manufacturer shall also file with the insurance commissioner a copy of the guarantee agreement to be issued by him, which shall be in a form approved by the insurance commissioner and must provide in substance that in the event of damage by lightning to property equipped by said manufacturer or his agent, any money paid for the equipment of said building shall be returned to the owner thereof, or the damage to said building repaired. When the manufacturer has complied with the foregoing requirements, and the insurance commissioner is satisfied that the manufacturer is safe and reliable as to assets, business standing and methods, and is entitled to confidence, the insurance commissioner shall issue a license to such manufacturer, to continue in force one year from date of issue. The license may be revoked at any time by the insurance commissioner for good cause, after a hearing.

Sec. 35. Agent's license. 1915, c. 270, § 3. Upon written notice from a manufacturer licensed under the preceding section, of the appointment of a suitable person, who must be a resident of the state, to act as his agent in this state, and upon the presentation of a certificate of the good reputation and moral character of such person, signed by the mayor or selectmen of the city or town of which he is a resident, the insurance commissioner may, if he is satisfied that the appointee is a suitable person and a resident of this state, issue to him a license as such agent. Such license shall continue in force one year from date of issue, but may be revoked at any time by the insurance commissioner for good cause, after a hearing.

Sec. 36. Agent shall exhibit license when requested by public officer. 1915, c. 270, § 4. Every agent shall, upon demand, exhibit his license to any mayor, selectman, sheriff or his deputy, constable or police officer, and to any person to whom he sells or offers to sell lightning-rods, and shall furnish a copy of sections thirty-three to thirty-eight, both inclusive, to every person to whom he sells such lightning-rods. If he neglects or refuses to do so, he shall be liable to the penalty provided by the following section for acting as such agent without a license.

Sec. 37. Penalty for selling without license; license not transferable. 1915, c. 270, § 5. Whoever sells or offers for sale such lightning-rods or other material, without being licensed as provided by section thirty-four or section thirty-five, shall be punished by a fine of not more than two hun-

CHAP. 44

dred dollars, or by imprisonment for six months for each offense. The licenses provided for by sections thirty-four and thirty-five are valid for only one person, firm or corporation, and are not transferable.

Sec. 38. Holder of guarantee agreement may bring suit on bond. 1915, c. 270, § 6. The holder of any guarantee agreement issued under the provisions of section thirty-four may bring suit in the name of the insurance commissioner upon the bond provided by said section, and have the same procedure and remedies thereon as in the case of official bonds of sheriffs, but the amount of damages need not be first ascertained. Whenever legal process against such manufacturer is served upon the commissioner, he shall take such action as is provided in the case of the service of legal process against foreign insurance companies.

See c. 85, §§ 14-18.

Sale of Firearms.

Sec. 39. Record shall be kept of all firearms sold; penalty for not keeping record, or for giving false name to dealer. 1913, c. 133. No dealer shall sell, let, or loan any firearm to any person without first recording in a book kept for the purpose, the name or make, calibre and number, if any, of said firearm, also the name and address of the purchaser or recipient of said firearm. Said record shall be made before said firearm is delivered, and shall be open to the inspection of any sheriff, deputy sheriff, police officer, constable, game warden, or prosecuting attorney. Any dealer who fails to keep such record or refuses to show the same to any officer named above, shall be punished by a fine not exceeding fifty dollars. Whoever gives a false or fictitious name to said dealer shall be punished by a fine not exceeding fifty dollars. This section shall not apply to wholesalers, who sell only to other dealers, or to manufacturers who sell only at wholesale.

Note. Sale or use of firearms fitted with device to deaden sound prohibited, c. 33, § 80.

Assayers of Ores and Metals.

Sec. 40. Assayers, their appointment, duty and compensation. R. S. c. 40, § 1. The governor, with the advice and consent of the council, may appoint one or more suitable persons to be assayers, who shall assay such ores, metals and other substances, requiring chemical analysis, as are offered for that purpose, and shall give a certificate thereof; they shall receive a reasonable compensation from their employers.

See Const. of Me. Art. ix, § 1.

Maine Mining Bureau.

Sec. 41. Organization. R. S. c. 40, § 59. The land agent, the commissioner of agriculture and the commissioner of labor and industry are constituted a mining board to be known as the Maine Mining Bureau. They shall organize by electing from their number a president and a secretary.

Sec. 42. Duty of bureau. R. S. c. 40, § 60. Said bureau shall collect reliable information concerning the deposits of all precious and useful minerals and other valuable subterranean productions in the state that are supposed to exist in quantities sufficient to justify the development of such properties.

Sec. 43. Metallurgical cabinet shall be established. R. S. c. 40, § 61. It shall establish a metallurgical cabinet of exhibit of the state in such room in the state house, as the superintendent of public buildings may direct, and in such cabinet they shall properly arrange samples and specimens of ores, valuable rocks and metals of the state collected by them, for the safe keeping and preservation of same.

Sec. 44. Report. R. S. c. 40, § 62. It shall biennially issue a pamphlet containing such reliable information concerning the mineral resources of the state as it has collected, and shall distribute at least one thousand copies of such pamphlet among the business men and capitalists of other states.

CHAPTER 45.

Sea and Shore Fisheries.

- Sections 1- 4 Department of Sea and Shore Fisheries.
- Sections 5-16 Inspection of Fish.
- Sections 17-47 Regulation of Lobster Industry.
- Sections 48-49 Regulation of Packing Fish.
- Sections 50-52 Fish Culture and Development of Fishing Industry.
- Sections 53-67 Regulation of Shell-Fish Industry.
- Sections 68-83 Use of Seines, Weirs, Nets and Artificial Flies.
- Sections 84-93 General Provisions.

Department of Sea and Shore Fisheries.

Sec. 1. Commissioner of sea and shore fisheries, appointment, term, duties, report; record of prosecutions. R. S. c. 41, § 1. 1905, c. 16, § 1. 1913, c. 131. The governor, with the advice and consent of the council, shall appoint a commissioner who shall have general supervision of the sea and shore fisheries and shell-fish regulated by this chapter and shall hold his office for three years and until his successor is appointed and qualified. He shall exercise supervision over all the fisheries and their products taken from tide-waters within the state, including the proper enforcement of all laws relating to the catching, packing, curing, manufacturing, branding and transportation of all kinds of pickled, salt, smoked, fresh, canned, or frozen shell or other fish. He shall make a detailed biennial report in the month of December, showing the amount of capital invested in, number of men employed in, value of products of, and any other information that he may be able to obtain relating to the sea and shore fisheries, excepting the sardine fishery, concerning which no statement or estimate of the number of cases packed shall be made. He shall keep a record of all prosecutions for violations of this chapter; the names of persons or firms prosecuted, the fines imposed and collected in each case, and the final disposition of the same, and submit the same in his report to the governor.

CHAP. 45

Sec. 2. Appointment of fish wardens; term; powers and duties; bond. Appointment of deputy wardens. R. S. c. 41, § 2. The governor with the advice and consent of the council upon the recommendation of the commissioner of sea and shore fisheries, may appoint suitable persons as fish wardens, who shall hold office for the term of three years unless sooner removed, and shall enforce all laws and the rules and regulations relating to sea and shore fisheries, arrest all violators thereof, and prosecute all offenses against the same; they shall have the same power to serve criminal processes against such offenders, and shall be allowed the same fees as sheriffs for like services; they shall have the same right as sheriffs to require aid in executing the duties of their office. They shall, before being qualified to discharge the duties required by this chapter, give bond with two good and sufficient sureties or with a surety company authorized to do business in the state, as surety, in the penal sum of two thousand dollars, approved by the commissioner of sea and shore fisheries, to the treasurer of state, conditioned for the faithful performance of the duties of their office. The commissioner of sea and shore fisheries may appoint deputy wardens, for whose official misconduct and neglect he shall be answerable, and said deputy wardens shall be sworn. Their appointment and discharge shall be in writing. Such deputy wardens shall be subject to all the laws pertaining to wardens appointed by the governor and council, and have the same powers. And said commissioner may revoke such appointment at any time.

99 Me. 229; 107 Me. 349.

Sec. 3. Authority of commissioner, wardens and deputy wardens to enforce laws relating to sea and shore fisheries; use of search warrants. R. S. c. 48, § 3. 1905, c. 108. 1915, c. 235, § 1. Fish wardens and deputy wardens shall be held to be officers with all the powers of sheriffs within the meaning of that term as used in the general law, and shall have jurisdiction and authority in all the counties of the state, and in all the waters within the jurisdiction of the state. They shall enforce all laws relating to the sea and shore fisheries, and may enforce any provisions of law relating to the lobster industry, either with or without a warrant, but shall obtain a warrant thereafter within twenty-four hours. The commissioner of sea and shore fisheries and fish wardens may, with or without a warrant arrest any person whom they may have reasonable grounds to believe guilty of violating any of the provisions of this chapter, and may with or without a warrant, but subject to the provisions of section forty-two, enter upon, open and search any vessel, boat, building, car, trap or other receptacle or place where they have reasonable grounds to believe that fish or lobsters liable to seizure are to be found, and seize and carry away all fish or lobsters liable to seizure found therein, and any lobster car, trap, net, barrel, box or package in which the same are found or which are liable to seizure under any of the provisions of this chapter, the fish, lobsters or other property thus seized to be disposed of according to law; but no dwelling-house or hotel shall be searched without a warrant issued for that purpose, and then only in the day time. Any magistrate may issue warrants to search within his jurisdiction any dwelling-house or hotel in the day time, or any

building, vessel, boat, or receptacle for fish or lobsters, or any place or places used therefor to the commissioner of sea and shore fisheries, or fish warden appointed and qualified as provided in this chapter. Such warrants shall issue subject to the requirements of section thirteen of chapter one hundred and thirty-four.

94 Me. 132.

Sec. 4. Wardens shall make monthly report. R. S. c. 41, § 4. Each warden shall make a detailed monthly report to the commissioner of sea and shore fisheries of all that has come to his knowledge relating to the fisheries within his county, or in any county where he has rendered services, from the first day of one month to the first day of the following month, in such manner and on such blanks as the commissioner may prescribe and furnish, and shall do such other acts as the commissioner may require for the purpose of gaining information and for the proper enforcement of the law.

Inspection of Fish.

Sec. 5. Appointment of inspectors of fish; term. R. S. c. 41, § 5. In each town where pickled fish are cured or packed for exportation, the governor, with the advice and consent of the council, shall, from time to time, as occasion requires, appoint one or more persons skilled in the quality of the same, to be inspectors of fish, who shall hold their office for five years, unless sooner removed by the governor and council.

Sec. 6. Inspectors shall give bond. R. S. c. 41, § 6. Every such inspector, before entering upon his duties, shall give bond with sufficient sureties to the treasurer of the town for which he is appointed, to the satisfaction of the municipal officers thereof, in the penal sum of not less than five hundred, nor more than five thousand dollars, for the faithful performance of his official duties; and such officers shall, at least once a year, examine the bonds given by said inspectors, and if that of any inspector is not in their opinion sufficient they shall forthwith notify him, and if for thirty days thereafter he neglects to give satisfactory bond, they shall give information thereof to the governor who shall remove him from office.

See Const. of Me. Art. ix, § 1.

Sec. 7. Inspectors shall make return annually of all fish inspected. R. S. c. 41, § 7. Every inspector shall, by the thirtieth day of November, annually, make a return into the office of the commissioner of sea and shore fisheries of all fish by him inspected during the year preceding the thirtieth day of such November, designating the quantities, kinds and qualities of pickled fish, and said commissioner shall embody the substance thereof in his next official report.

Sec. 8. Any person injured by neglect of inspector may bring action on bond. R. S. c. 41, § 8. Any person injured by the neglect or misdoings of an inspector, on tendering to such treasurer a reasonable indemnity against the costs may bring an action on such inspector's bond in the name of the treasurer, for his own use, and may have a copy of the bond therefor; and if judgment is rendered thereon for the plaintiff, execution shall issue for the sum found due to the person for whose use such action is

CHAP. 45

brought, and the sum awarded in damages shall be entered by the clerk of the court on the original bond, to remain in the custody of the treasurer.

Sec. 9. Duty of inspector as to inspection and packing of fish. R. S. c. 41, § 9. Every inspector who inspects any kind of fish that are split and pickled for packing, shall see that they are, in the first instance, free from taint, rust or damage, and well struck with salt or pickle; and such of said fish as are in good order and of good quality, shall be pickled in barrels, half barrels, quarter barrels and tenths of barrels or kits; each barrel containing two hundred pounds, and so on in that proportion; and the same shall be packed in good, clean coarse salt, sufficient for their preservation; and then each cask shall be headed up and filled with clear, strong pickle, and shall be branded by the inspector with the name and quality of the fish therein.

Sec. 10. Mackerel shall be branded. R. S. c. 41, § 10. Mackerel of the best quality, not mutilated, measuring, when split, not less than thirteen inches from the extremity of the head to the crotch or fork of the tail, free from taint, rust or damage, shall be branded "Number one;" the next best quality, being not less than eleven inches, measuring as aforesaid, free from taint, rust or damage, shall be branded "Number two;" those that remain after the above selection, free from taint or damage, and not less than thirteen inches, measuring as aforesaid, shall be branded "Number three large;" those of the next inferior, free from taint or damage, not less than ten inches, measured as aforesaid, shall be branded "Number three;" all other mackerel, free from taint or damage, shall be branded "Number three small." The inspector shall brand or stencil in plain letters on the head of every such cask, the weight, the initials of his christian name, the whole of his surname, the name of his town, and the letters "Me.," and an abridgment in figures, of the year when packed.

Sec. 11. Quality of casks and how made; dimensions. R. S. c. 41, § 11. All barrels and casks used for packing pickled fish, shall be made of sound, well-seasoned white oak, white ash, spruce, pine, chestnut or poplar staves with heading of either of such kinds of wood, sound, well planed and seasoned, and when of pine, free from sap, and the barrels hooped with at least three strong hoops on each bilge, and three also on each chime; the barrel staves shall be twenty-eight inches in length, and the heads not less than sixteen and one-half inches between the chimes, and made in workmanlike manner, to hold pickle. The barrels shall contain from twenty-eight to thirty gallons each, and the aliquot parts of a barrel in the same proportion.

Sec. 12. Pickled alewives and herring, how prepared and packed. R. S. c. 41, § 12. Every inspector who inspects pickled alewives or herring, or other small fish, packed whole or round, shall see that they are struck with salt or pickle, and then put in good casks of the size and material aforesaid, packed closely therein, and well salted, and the casks filled with fish and salt, putting no more salt with the fish than is necessary for their preservation; and the inspector shall brand or stencil all such casks with the name of the inspected fish as aforesaid.

Sec. 13. Fees for inspection and branding. R. S. c. 41, § 13. The fees for inspection and branding, exclusive of cooperage, are for each barrel

seven cents, and all such fees shall in the first instance be paid by the original owners of the fish, who may recover the amount thereof from the party buying or receiving the same, under the marks and brand aforesaid, and in addition to the price thereof.

Sec. 14. Penalty for selling or exporting uninspected or damaged fish. R. S. c. 41, § 14. Whoever sells in the state, or exports therefrom any fish in barrels or boxes, not inspected, packed and branded, as aforesaid, except good and wholesome fish packed in kegs of less than ten gallons, or pickled, dry or smoked fish imported into the state from some other state or country lawfully inspected and branded there, and whoever sells or exports unlawfully any fish known by him to be tainted or damaged, unless sold as such, forfeits ten dollars for every hundredweight thus sold or exported.

Sec. 15. Penalty for attempting to export uninspected fish; warrant for seizure; penalty for refusing to aid officer. R. S. c. 41, § 15. Whoever ships or receives on board any vessel or other carriage for transportation from the state, any pickled fish in barrels, parts of barrels or casks, not inspected and branded or stenciled as aforesaid, forfeits not less than fifty dollars for each offense, and any trial justice may issue his warrant to the proper officer, directing him to seize and secure such prohibited fish, and convey it to any inspector within a convenient distance for inspection; and whoever refuses to give necessary aid in the service of such warrant when required by the officer, forfeits five dollars to the prosecutor in an action of debt; and such inspector shall open, inspect, pack and brand such fish according to law, and detain the same until all lawful charges of seizure and inspection are paid.

Sec. 16. Penalty for intermixing inspected fish; for fraud of inspector. R. S. c. 41, § 16. If any person takes from a cask or barrel, any pickled fish lawfully inspected and branded, and substitutes therefor or fraudulently intermixes other fish; or if any inspector marks any cask or barrel out of his own town, or which he has not inspected, packed, and himself prepared according to law; permits other persons unlawfully to use his brands, or wilfully and fraudulently uses the same himself after the expiration of his commission, he forfeits one dollar for each cask or barrel so dealt with; but an inspector may, after a satisfactory examination, brand such packages, thereby becoming responsible for the quality of the contents as represented by his brand.

Regulation of Lobster Industry.

Sec. 17. Lobster fishermen and persons purchasing lobsters and holding or transporting for sale shall be licensed; exception of common carriers; penalty. 1915, c. 235, § 2. No person, firm or corporation, either by themselves as principal or by their servants or agents, shall, at any time, catch, take, hold, buy, ship, transport, carry, give away, remove, sell or expose for sale, or have in his or its possession, except for the immediate consumption of himself and family, any lobster from any of the waters within the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise or draw in or from any of said waters, or caused to be placed, set, kept, maintained, supervised, lifted, raised or drawn in or from any of said waters

CHAP. 45

any pot, trap, trawl, car, boat, smack, vessel or other contrivance designed or adapted for the catching, taking, holding or for removal or transportation of lobsters, unless licensed to do so as hereinafter provided; except that common carriers engaged in carrying general freight on fixed schedules may, without license, transport, within or without the state, lobsters legally caught; provided that said lobsters are received by said common carriers at one of their regular established places of business upon land for receiving freight; and provided the receptacle containing said lobsters is plainly marked showing the contents to be lobsters, together with the full and correct name and address of both consignor and consignee. Every person, firm or corporation who shall violate any of the provisions of this section, or aid in doing so, upon conviction in any court of competent jurisdiction, as defined in section thirty-four, shall be fined twenty-five dollars for the first offense; for the second offense, fifty dollars; and for any subsequent offense, fifty dollars, and shall be sentenced to imprisonment for thirty days, in addition to said fine; and no such party convicted of a third offense shall, either by themselves or their servants or agents, be entitled to receive a license during the period of one year from the date of said conviction.

Sec. 18. Applications for licenses and issuance thereof; fees; report by commissioner. 1915, c. 235, § 3. The commissioner of sea and shore fisheries shall grant and issue licenses to any citizen of this state, or to any person who has resided in this state for one year immediately preceding the date of application for license, or to corporations or firms engaged in the lobster business located in this state or other states, to catch, take, hold, buy, ship, transport, carry, give away, remove, sell or expose for sale, within this state, and have in his or its possession, lobsters from the waters within the jurisdiction of this state, in the manner, at the time and subject to the regulations provided in sections seventeen to thirty-four, both inclusive. Applications for licenses shall be made upon special forms provided by the commissioner of sea and shore fisheries, and the said commissioner shall keep the clerks of the various cities, towns and plantations bordering on the seashore, and other clerks who request them, supplied with blank applications; said clerks shall keep a supply of the same on hand and furnish them to all applicants. All applications, when filled out, shall be forwarded to the office of said commissioner, together with the fees for same. Such licenses shall be granted to expire on the last day of November next succeeding the granting of the same, unless sooner revoked, as provided in section twenty, and each person, firm or corporation to whom licenses shall be granted, shall, for each license, pay to said commissioner the sum of one dollar for the use of the state, to be forwarded to the treasurer of state; which amounts shall be credited to and be a part of the funds to be used for operating expenses in the department of sea and shore fisheries. The commissioner, in his biennial report shall state the number of licenses granted, the names of the parties licensed and the amount of money received therefor. He shall issue to each person, firm or corporation licensed as aforesaid a certificate, stating the name of the person, firm or corporation to whom such license has been granted, the number of said license and the date of expiration of such license.

Sec. 19. Agent of person licensed may use license under certain conditions. 1915, c. 235, § 3. If any person, firm or corporation to whom such license shall be granted shall be incapacitated for any reason, except for the violation of the laws of the state relating to the lobster industry, from using said license, said person, firm or corporation may permit his agent or employee, if a citizen of this state, to perform such duties under the license as may be necessary during the period of his or its incapacity; provided that said agent or employee shall, when performing said duties so licensed, exhibit, upon demand of any authorized person, the certificate issued to his superior, as provided in the preceding section.

Sec. 20. License may be revoked for violation of law; new license cannot be obtained for one year. 1915, c. 235, § 3. If any person, firm or corporation, by themselves or their agents, licensed as aforesaid, shall, at any time, be adjudged guilty of any violation of the provisions of law relating to the lobster industry, except as otherwise provided herein, after a full hearing before any court of competent jurisdiction as defined in section thirty-four, the commissioner of sea and shore fisheries may revoke the license issued to such party, and such party shall thereupon cease to have any authority thereunder; and no such party, or their servants or agents, shall be entitled to receive a license during the period of one year from the date of any second conviction, but the license shall be suspended from the date of offense charged until final determination by the court. The commissioner of sea and shore fisheries shall revoke the license of any person, under this section, when he has evidence that such person has violated any provision of the laws relating to lobsters, and the license issued to such person shall be void.

Sec. 21. Commissioner may restore licenses; on refusal, application to court. 1915, c. 235, § 3. The commissioner may, in his discretion, on sufficient evidence, restore a license revoked by him, and, if he refuses so to do, the license may be restored by any justice of the supreme judicial or superior courts; provided the said justice finds that said commissioner erred in his conclusion of facts, and application is made to the said justice within ten days after the refusal of the said commissioner to restore said license.

Sec. 22. License shall be surrendered to officer making arrest; licenses issued through fraud or error shall be void; penalty for the fraud. 1915, c. 235, § 15. Any license which has been revoked for the violation of any law of this state relating to the lobster industry, shall be void, and shall immediately be surrendered to the officer who serves the warrant or indictment, or who secures the conviction of the offender; said officer shall forthwith forward said license to the commissioner of sea and shore fisheries, who shall cancel the same. Any license issued to any party through error or fraud, or within one year from the date a license was revoked or forfeited, shall be void, and shall be surrendered on demand of any officer authorized to enforce any law governing the lobster industry of this state, and any party who fraudulently obtains a license under sections seventeen to thirty-four, both inclusive, shall be fined one hundred dollars and imprisoned sixty days in addition, for each offense.

CHAP. 45

Sec. 23. Penalty for refusing to show certificate. 1915, c. 235, § 4. Each person, firm or corporation licensed under the provisions of section eighteen, shall, at all times while engaged in the pursuit so licensed, exhibit, upon demand of any authorized person, the certificate issued to him or them, as provided in said section. Every person, firm or corporation violating this section shall, for each offense, upon conviction, be fined twenty-five dollars.

Sec. 24. Negative allegation need not be proved; license a defense. 1915, c. 235, § 5. No negative allegations of any kind need be averred or proved in any prosecution brought under sections seventeen to thirty-four, both inclusive, but the respondent in any such action may show his license by way of defense.

Sec. 25. Permission to set traps on trawls must be obtained. 1915, c. 235, § 6. When pots or traps are set on trawls, when conditions make it impossible to set otherwise, buoys plainly marked, as provided in the laws of this state, governing the lobster industry, shall be set at both ends of the trawls; but permission for setting such trawls must be obtained from the commissioner of sea and shore fisheries, and so stated on the licenses issued under section eighteen.

Sec. 26. Method of marking pots, traps, boats and other contrivances used by lobster fishermen; penalty. 1915, c. 235, § 7. No person, firm or corporation licensed under section eighteen or section thirty shall use any pots, traps, boats, trawls or other contrivance used for the catching or taking of lobsters, or cars or other contrivance used for holding or keeping lobsters before transporting or selling, unless the same and the buoys attached thereto are plainly marked, as provided by the laws of the state governing the lobster industry, with the name or names of the owners thereof, or the person or persons using the same. In each instance the surname with initials shall be marked together with the license number or numbers of such party or parties. Every person, firm or corporation violating the provisions of this section shall be fined, upon conviction, twenty dollars, or imprisoned not more than thirty days; the license shall be suspended pending the decision of the court, and, on conviction, the license shall be forfeited, and the respondent shall not be entitled to receive a new one for the period of one year from date of conviction; all pots, traps, cars, buoys, trawls and other contrivance, together with the contents thereof, used contrary to the provisions of the laws of this state governing the lobster industry, shall be seized by any officer engaged in the enforcement of said laws and disposed of as provided by law.

Sec. 27. Only owner or authorized persons shall interfere with contrivances used in lobster industry. 1915, c. 235, § 8. No person, except the commissioner of sea and shore fisheries, his wardens and deputy wardens, or other officers qualified to enforce the laws of the state governing the lobster industry, shall lift or raise any pot or trap, car, trawl or other contrivance used in the lobster industry belonging to any person, firm or corporation licensed under section eighteen, and set for catching or taking and holding lobsters, except with the permission of the owners thereof.

Sec. 28. Right of search and seizure given to officers enforcing lobster law. 1915, c. 235, § 9. For the purpose of enforcing the provisions relating to the protection of lobsters, as provided by the laws of the state relating to the lobster industry, the commissioner of sea and shore fisheries and his wardens and deputy wardens may search, at any time, in suspected places, including buildings of every description, or any pot, trap, trawl, car, boat, smack, vessel or other vehicle that they may believe is used in the catching, taking, holding or transporting of lobsters, and may seize and remove lobsters taken, held or offered for sale in violation of the provisions of any law of the state relating to the lobster industry. The commissioner may appoint as many persons as he wishes, who hold licenses under section eighteen, as deputy wardens, but so long as they hold licenses they shall serve without pay.

See § 3.

Sec. 29. Lobsters bought for shipment out of state must conform to the law. 1915, c. 235, § 10. No person shall acquire any property in lobsters caught in the waters under the jurisdiction of this state, for the purpose of shipping the same beyond the limits of this state, unless such lobsters conform to the law, and are shipped in accordance with the provisions of sections seventeen to thirty-four, both inclusive.

Sec. 30. Lobster smacks and other means of transportation must be licensed; terms of the license; bond. 1915, c. 235, § 11. No lobsters shall be transported beyond the limits of this state, whether of legal length or otherwise, except by common carriers as provided in section seventeen, unless by persons licensed to transport lobsters outside the limits of the state under the following conditions: the commissioner of sea and shore fisheries shall issue a license, which shall not be transferable, to the owner or party in control of any smack, vessel or other means of transportation, either foreign or domestic, authorizing him to purchase and to transport lobsters within or beyond the limits of the state upon the following conditions: The license in each instance shall state the name of the smack, vessel or other conveyance to be used in so purchasing or transporting lobsters, and will give no authority to purchase or transport in any other smack, vessel or other conveyance except that named in the license. The name of the smack, vessel or other conveyance may, however, be changed by the licensee upon application to said commissioner, within the license period, without further charge. The fee for issuing said license shall be five dollars, and a record shall be kept of the same, similar to that provided for other licenses in section eighteen. Besides the name of the conveyance, the license shall bear the date of taking effect and the termination thereof, which last named date shall be the last day of November next after it becomes effective, and shall state that such license, together with the bond hereinafter provided for, shall be forfeited upon the violation of any law of this state relating to lobsters; and it shall further provide that such smack, vessel or other conveyance shall, at all times, be subject to inspection and search by the commissioner of sea and shore fisheries, or his wardens or deputy wardens, with warrant or without, in which inspection and search they shall in no way be obstructed. Before said license is issued,

CHAP. 45

the applicant shall file with the said commissioner a bond in the penal sum of five hundred dollars, conditioned that the same shall be forfeited to the state upon conviction of the licensee of any breach of any laws of this state pertaining to lobsters. All licensees under this section shall be required to load all smacks, vessels or other contrivances within the waters over which this state has jurisdiction, and any licensee loading outside the jurisdictional waters of this state, or who refuses to come within the jurisdictional waters of this state when ordered so to do by the commissioner, or any of his wardens or deputy wardens, shall be deemed to have violated the provisions of this section, and his bond shall be forfeited. Any license issued under this section shall become void on conviction for the breach of any law of this state pertaining to lobsters. No new license shall be issued for a period of one year to any party whose license has been revoked because of such conviction. Any license issued contrary to the provisions of this section is void and of no effect.

Sec. 31. Punishment of persons not licensed for violation of section 30. 1915, c. 235, § 12. Whoever violates the preceding section, not having obtained a license, shall be punished by a fine of not less than twenty-five, nor more than two hundred fifty dollars, and the owner or parties in charge of any smack, vessel or other contrivance used in illegally transporting lobsters outside the state, as aforesaid, shall become indebted and pay to the state the sum of five hundred dollars, which sum shall be a lien upon said smack, vessel or other contrivance, and may be enforced in the name of the state by any appropriate process.

Sec. 32. Punishment of licensee for violation of provisions of sec. 30. 1915, c. 235, § 12. Any licensee convicted of violation of section thirty shall be punished by a fine of not less than twenty-five, nor more than two hundred fifty dollars, and, in addition thereto, shall forfeit the bond given by him to the state; and any person in charge of any smack, vessel or other contrivance used in illegally transporting lobsters out of this state, as aforesaid, shall be punished by a fine of not less than twenty-five, nor more than two hundred fifty dollars.

Sec. 33. Money received from fines and forfeited bonds, how expended. 1915, c. 235, § 12. All fines collected and money received from bonds forfeited shall be turned over to the commissioner of sea and shore fisheries, who shall forward the same to the treasurer of state; which amounts shall be credited to and be a part of the funds used for operating expenses in the department of sea and shore fisheries.

Sec. 34. Jurisdiction of courts; proceedings against parties not found. 1915, c. 235, § 13. The several municipal and police courts shall have concurrent jurisdiction with the supreme judicial court and superior courts over all offenses under the seventeen preceding sections, and to the full extent of the penalties therein specified. In case any warrant is issued or indictment found against any licensee under section thirty, and any officer qualified to serve said warrant or indictment shall certify to the court from which it issued that he has made diligent search and has been unable to locate the respondent, the court shall cause a written notice to be sent to the respondent at the address given in the application for license, setting forth the fact that said warrant or indictment had issued against

him, and naming a time and place for hearing on same, which shall not be less than fourteen, nor more than thirty days from date of mailing the notice; the notice shall state that, in the event of his failure to appear, his bond given to the state shall be forfeited. If he appears, the court will proceed under the warrant or indictment as though he had been apprehended. In the event that he does not appear, the court shall order his bond forfeited; but the order of the court forfeiting said bond shall not otherwise affect the warrant or indictment. Any warrant issued by any such court shall cover offenses occurring in the county where said court is established or in any adjoining county. Parties defendant, however, have the same right of appeal from the sentences of said inferior courts as is now provided by law in other criminal cases.

Sec. 35. Unlawful to have in possession lobsters less than four and three-fourths inches long; possession of mutilated lobsters, evidence; lobsters must be sold in shell; liability of common carriers; meat liable to seizure. R. S. c. 41, § 17. 1907, c. 49. 1909, c. 67. No person shall buy or sell, give away or expose for sale or possess for any purpose any lobster less than four and three-fourths inches in length, alive or dead, cooked or uncooked, measured in manner as follows: Taking the length of the back of the lobster measured from the end of the bone of the nose to the center of the rear end of the body shell; and any lobster shorter than the prescribed length when caught shall be immediately liberated alive at the risk and cost of the parties taking them, under a penalty of one dollar for each lobster so caught, bought, sold, given away, or exposed for sale or in possession. The possession of mutilated lobsters, cooked or uncooked, shall be prima facie evidence that they are not of the required length. All lobsters or parts of lobsters sold for use in this state or for export therefrom must be sold and delivered in the shell, under a penalty of twenty dollars for each offense; and whoever ships, transports, carries, buys, gives away, sells or exposes for sale lobster meat after the same shall have been taken from the shell shall be liable to a penalty of one dollar for each pound of meat so shipped, transported, carried, bought, given away, sold or exposed for sale. Any person or corporation in the business of a common carrier of merchandise, who shall knowingly carry or transport from place to place lobster meat after the same shall have been taken from the shell shall be liable to a penalty of fifty dollars upon each conviction thereof. All lobster meat so illegally shipped, transported, carried, bought, given away, sold or exposed for sale shall be liable to seizure and may be confiscated. Nothing contained herein shall be held to prohibit the sale of lobsters that have been legally canned.

79 Me. 55, 163; 80 Me. 87; 83 Me. 180; 85 Me. 121; 87 Me. 109; 93 Me. 420;
94 Me. 129; 99 Me. 227; 101 Me. 351; 102 Me. 294.

Sec. 36. Lobsters, with eggs attached, may be purchased by commissioner of sea and shore fisheries. R. S. c. 41, § 18. The commissioner of sea and shore fisheries may purchase at a rate not exceeding twenty-five per cent above the market price, lobsters with eggs attached, caught along the coast of the state. Whoever catches any such lobsters with eggs attached, may safely store the same in lobster cars or sections of cars used for that purpose only, and may keep them separate from other lobsters

CHAP. 45

until such time as the said commissioner or some person or persons designated by him can gather and pay for them. The commissioner or his agent shall liberate them in the vicinity of the location where they were caught; or said commissioner may at his discretion sell any portion or all of them to the officer in charge of the United States fish hatchery for artificial propagation, the proceeds to be applied to the appropriation made for carrying out the provisions of this section.

Sec. 37. Close time on female lobsters. R. S. c. 41, § 19. No person shall destroy, catch, buy, sell, expose for sale or possess any female lobsters in spawn or with eggs attached at any season of the year, under a penalty of ten dollars for each lobster so destroyed, caught, bought, sold, exposed for sale or possessed, provided, however, if it appears that it was intended to dispose of them in accordance with the preceding section, or to liberate them in accordance with the provisions of this chapter, the person having such lobsters in possession shall not be liable to any of the penalties herein provided, though he may have failed, for any cause not within his control, to so liberate them.

Sec. 38. Length of lobsters that may be canned; penalty for violation. R. S. c. 41, § 20. 1909, c. 65. No person shall can lobsters less than four and three-fourths inches in length, alive or dead, measured in accordance with section thirty-five; and for every lobster canned contrary to the provisions of this section, every person, firm, association or corporation so canning shall be liable to a penalty of one dollar for every lobster so canned, and a further penalty of three hundred dollars for every day on which such unlawful canning is carried on.

Sec. 39. Shipment of lobsters regulated; notice to commissioner of place of business for shipping lobsters. 1915, c. 271, § 1. Every person, firm, association or corporation, that hereafter opens a place of business in this state for shipping lobsters, or shall change said place of business after once it is established, shall thirty days before shipping any lobsters therefrom notify the commissioner of sea and shore fisheries, of such location from which lobsters are to be shipped, or change of location, together with the information as to where and how said lobsters are to be kept before packing, by what carrier the shipments are to be made and the customary hours of said shipments.

Sec. 40. Arrangements for examination before shipment. 1915, c. 271, § 2. Whenever the commissioner shall receive from any person, firm, association or corporation that now has or hereafter may open such place of business, or may change said place of business after once it is established, the notice referred to in the preceding section, he shall, if arrangements can be made with said person, firm, association or corporation for the suitable inspection of lobsters before shipment from said place of business, inspect such lobsters before shipment; but before such arrangements are made all lobsters shall be subject to examination in transit.

Sec. 41. Lobster shipping cases, how marked. 1915, c. 271, § 3. All lobsters to be shipped shall be packed in barrels, boxes, or packages marked with the word "Lobsters" in capital letters at least one inch in length, together with the full name of the shipper, and said marking shall be

placed in a plain and legible manner on the outside of said barrels, boxes or other packages.

Sec. 42. Lobsters subject to examination before shipment; not thereafter without consent; disposal of lobsters seized. R. S. c. 41, § 21. 1915, c. 271, § 4. All lobsters so packed shall be open for the inspection of the commissioner or his wardens, at or before the time of the packing thereof, but after the same are packed and marked, as required by the preceding section, and by the shipper delivered to the transportation company the said barrels, boxes or packages shall not be opened for inspection by anyone without the consent of the shipper; and in case of seizure by any duly authorized officer, of any barrels, boxes or other packages in transit, containing lobsters, which are not so marked, or in case of seizure by such officer, of barrels, boxes or other packages, containing lobsters, less than the prescribed length, such lobsters as are alive and less than the prescribed length shall be liberated, and all such lobsters as are of the prescribed length, found in such barrels, boxes or packages shall be forfeited and disposed of under the provisions of section forty-seven.

83 Me. 211.

Sec. 43. Penalty for shipping lobsters not properly marked; penalty on common carriers. R. S. c. 41, § 22. 1915, c. 271, § 5. Every person, firm, association or corporation who ships lobsters without having the barrels, boxes or other packages in which the same are contained, marked as prescribed in section forty-one, shall upon conviction be punished by a fine of twenty-five dollars, and upon subsequent conviction thereof by a fine of fifty dollars; and any person or corporation in the business of a common carrier of merchandise, who shall carry or transport from place to place lobsters in barrels, boxes or other packages not so marked, shall be liable to a penalty of fifty dollars upon each conviction thereof.

Sec. 44. Cars in which lobsters are kept shall be branded; penalty. R. S. c. 41, § 23. All cars in which lobsters are kept and all lobster cars while in the water, shall have the name of the owner or owners thereof on the top of the car, where it may be plainly seen, in letters no less than three-fourths of an inch in length, plainly carved or branded thereon, and all traps, nets or other devices for the catching of lobsters, shall have, while in the water, the owner's name carved or branded in like manner on all the buoys attached to said traps or other devices, under a penalty of ten dollars for each car, and five dollars for each trap or device not so marked; and if sufficient proof to establish the ownership of such cars or traps cannot readily be obtained they may be declared forfeited.

Sec. 45. Traps not to be set near fish weir. R. S. c. 41, § 24. No person shall set any lobster trap within three hundred feet of the mouth or outer end of the leaders of any fish weir, under a penalty of ten dollars for each offense.

Sec. 46. Penalty for interference with lobster traps; does not apply to unmarked traps. R. S. c. 41, § 25. Whoever, except as provided in sections three and twenty-eight of this chapter, takes up, or attempts to take up, or in any way knowingly and wilfully interferes with any lobster trap while set for use, without the authority of the owner thereof, shall be pun-

CHAP. 45

ished by a fine of not less than twenty, nor more than fifty dollars; provided, however, that no action, complaint or indictment shall be maintained under this section unless the name of the owner of all such traps shall be carved or branded in legible letters, not less than three-fourths of an inch in length, on all the buoys connected with such traps.

Sec. 47. How lobsters seized, shall be disposed of; officer shall file libel in behalf of the state; contents; procedure; proceeds shall finally be paid to treasurer of state; appeal by claimant; fees and costs. R. S. c. 41, § 26. When any lobsters are seized by virtue of the provisions of this chapter, the officer making such seizure shall cause such lobsters, so seized, as he is not required by law to liberate, to be appraised within twenty-four hours after the time of such seizure by three disinterested men residing in the county where such seizure is made, to be selected by him, and the lobsters so seized and appraised shall thereupon be sold by the officer making the seizure thereof, at such time and in such manner as shall by him be deemed proper. The officer making such seizure and sale shall within ten days after the time of such seizure file a libel in behalf of the state before a trial justice, or a judge of a police or municipal court of the county in which such seizure was made, setting forth the fact of such seizure, appraisal and sale, the time and place of the seizure, the number of lobsters so seized and sold and the amount of the proceeds of such sale; and such trial justice or judge shall appoint a time and place for the hearing on such libel, and shall issue a notice of the same to all persons interested to appear at the time and place appointed, and show cause why the lobsters so seized and sold, and the proceeds of such sale, should not be declared forfeited, which notice shall be served upon the owner, if known, and by causing an attested copy of such libel and notice to be posted in two public and conspicuous places in the town in which the seizure was made, seven days at least before the time of hearing. If any person appears at the time and place of hearing and claims that the lobsters so seized and sold were not liable to forfeiture at the time of seizure, and that he was entitled thereto, the trial justice or judge shall hear and determine the cause, and if he shall decide that such lobsters at the time of seizure were not liable to forfeiture and that the claimant was entitled thereto, he shall order the proceeds of such sale to be paid to the claimant; if no claimant shall appear, or if such trial justice or judge shall decide that such lobsters, at the time of seizure were liable to forfeiture, or that the claimant was not entitled thereto, he shall decree a forfeiture of such lobsters and of the proceeds of sale, and shall order the proceeds of sale, after deducting all lawful charges, to be paid to the treasurer of state, to be used as directed in section ninety-three, and shall render judgment against the claimant for costs to be taxed as in civil suits, and issue execution therefor against him in favor of the state, which costs, when collected, shall be paid to the treasurer of state, to be added to and made a part of the appropriation for sea and shore fisheries. The claimant shall have the right of appeal to the next supreme judicial or superior court in the county, upon recognizing as in criminal cases. The fees and costs of seizure, appraisal and sale, and of all other proceedings in the case, shall be as provided by law in criminal cases, and,

in case a forfeiture shall be declared, shall be paid out of the proceeds of the sale, otherwise shall be paid by the county, as in criminal cases.

94 Me. 133.

Regulation of Packing Fish.

Sec. 48. Rules governing sale or packing of herring; enforcement by commissioner. 1905, c. 16, § 2. Whoever takes, preserves, sells or offers for sale between the first day of December and the fifteenth day of the following April, any herring for canning purposes less than eight inches long, measured from one extreme to the other, or packs or cans sardines of any description, between the first day of December and the fifteenth day of the following April, forfeits twenty dollars for every hundred cans so packed or canned, and for every hundred herring so taken. All cans shall be decorated, stamped or labeled with quality, packer's name and place of business, or merchant's name for whom the same are packed, except sardines packed in plain cans and shipped for buyers' labels or cartons. Whoever sells or offers for sale any sardines in cans not so decorated or labeled, shall forfeit one dollar for every can so sold or offered for sale, to be recovered by complaint, indictment or action of debt. No person shall use in the herring fishery, in any of the waters of this state, torches or any artificial light, of any kind, for the purpose of catching herring, under a penalty of ten dollars for each offense. The commissioner of sea and shore fisheries shall insist upon the strict observance of the provisions of this section and enforce the penalties for violation thereof.

98 Me. 547.

Sec. 49. Size of smoked herring boxes regulated. 1913, c. 91. No person, firm or corporation engaged in the state in buying, selling and packing of smoked herring, shall sell or offer for sale smoked herring in boxes of less than the following dimensions, viz: two inches in depth, six inches in width, inside measure, and twelve inches in length, outside measure. Whoever packs, sells or offers for sale, smoked herring in boxes in violation of this section shall forfeit twenty-five cents for each box so packed, sold or offered for sale; but this section does not apply to boxes of boneless herring.

Fish Culture and Development of Fishing Industry.

Sec. 50. Commissioner of sea and shore fisheries may take land; not to exceed two acres in one location; proceedings; by lease, etc., may acquire more than two acres. 1905, c. 88, § 2. The commissioner of sea and shore fisheries may, for the purposes of this and the following section, take any shore rights, flats and waters not exceeding an area of two acres in extent at any one location, and hold the same for a period not exceeding ten years; such location when so taken may be used by said commissioner, or by the United States commissioner of fish and fisheries, in the prosecution of the work of fish culture and scientific research relative to shell-fish, or other fish over which said commissioner now has supervision; and whenever said commissioner shall deem it necessary in the furtherance of the objects and purposes of this and the following section to take any such shore rights, flats and waters, he shall proceed in accordance with the

CHAP. 45

provisions of section five of chapter thirty-three; and in addition thereto shall cause a copy of so much of the proceedings as will show the character and extent of the shore rights, flats and waters taken, and also the location thereof, and time for which taken, to be posted near the location, and shall also cause suitable marks or ranges to be set upon the adjacent upland so as to define, as far as practicable, the limits and boundaries of the location to be used in such experiments; and shall cause public notice of the taking of such shore rights, flats or waters to be given by publishing the fact of such taking once a week for three successive weeks in a newspaper published in the county where the shore rights, flats or waters are situated. Said commissioner may, by agreement, lease or grant, and under such terms and conditions as may be agreed upon with the owner thereof, take possession of suitable shell-fish grounds, flats, waters and water-rights, not limited to two acres in area, with necessary shore rights, and may use and operate the same under the provisions of and for the purposes of this section.

Sec. 51. Shores and flats set apart for shell-fish industry; proceedings. 1905, c. 88, § 3. The commissioner, upon the application of any person or corporation interested or engaged in scientific research relating to shell-fish, or other fish over which the commissioner has supervision, or in the cultivation and development of the shell-fish industry for economic purposes, setting forth their desire to make experiments relative to the cultivation and conservation of shell-fish, or such other fish over which the commissioner now has supervision, shall, after being satisfied of the facts set out in said application, and that the applicant either owns or has the consent, so far as the same can be granted, of the owner of the flats, shore rights and waters where such work is to be undertaken, and that the granting of such rights will not unreasonably interfere with navigation, give notice of a hearing on such application, by causing the same to be published at least two weeks in some newspaper published in the county where the proposed location is situated, and stating therein the time and place where such hearing will occur; and if, upon such hearing, the commissioner is satisfied that the interests of the state will be promoted by such experiments, he shall issue a certificate setting apart so much of such shores, flats and water privileges, not exceeding one acre in extent, to any one of such applicants, and for such length of time, not exceeding the period of six years, as in his judgment may be necessary and proper to accomplish the ends sought to be obtained. Such certificate shall be recorded in the registry of deeds of the county or registry district in which the location is situated, and the applicant shall also cause public notice of the issuance of such certificate to be given by publishing the same in a newspaper published in the county where such location is situated, and by posting in a conspicuous place near said location a copy of such certificate, and also by placing stakes or other monuments upon the adjoining upland, so as to designate the locations so set apart, as the commissioner shall, in his certificate specify.

Sec. 52. All persons forbidden to take fish on shores taken; penalty. 1905, c. 88, §§ 4, 5. No person shall, during the period that such shores, flats and waters are taken for the purposes of the two preceding sections,

take, dig, fish or in any manner destroy or interfere with such fish, or interfere with the shores, flats and waters so set apart, under a penalty of not less than fifty, nor more than one hundred dollars, for each offense, or by imprisonment not exceeding thirty days, or by both fine and imprisonment. All fines and penalties recovered under this section shall, after restoring the damages sustained by the person holding such certificate, be paid to the treasurer of state, and added to and made a part of the appropriation for sea and shore fisheries.

Regulation of Shell-Fish Industry.

Sec. 53. Towns may grant licenses for propagation and cultivation of clams; term; license may be assigned. 1911, c. 69, § 1. Upon application in writing, the mayor and aldermen of a city or the selectmen of a town shall grant a written license, to any person who has resided in the state or who has been a taxpayer in the city or town for not less than one year preceding the date of his application, for the purposes of planting and cultivating clams upon and in not exceeding one-fourth of the flats and creeks of their respective cities and towns and within the limits to be specified in the license, for a term of not more than ten, nor less than five years; all such licenses shall be subject to such rules and regulations as are approved by the city council of the city, or by the voters of the town at an annual or special town meeting, and may be assigned by the licensee to any person who has been a resident of the state or a taxpayer in the city or town for not less than one year preceding the date of the assignment, but shall not be assigned or transferred without the written consent of the mayor and aldermen of such city or the selectmen of such town.

Sec. 54. Proceedings before licenses shall be granted; preference shall be given to riparian owner of adjacent property. 1911, c. 69, § 2. No license shall be granted if the exercise thereof would materially obstruct navigable water, nor until after a public hearing, due notice of which has been posted in three or more public places, and published in a newspaper, if there be any, published in the city or town in which the premises are situated, at least ten days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area, and description of the grounds applied for. In granting said licenses preference shall be given to the riparian proprietors of the adjacent property, when there are two or more applicants for the same territory and the adjacent riparian proprietor is one of them.

Sec. 55. Survey and plan of territory covered by license shall be made; territory shall be marked. 1911, c. 69, § 5. Before granting any license, the mayor and aldermen of a city or the selectmen of a town shall cause a survey and plan of the territory within which licenses are to be granted, to be made, and shall cause the territory covered by any license issued by them to be marked upon a copy of such plan to be kept in the office of the city or town clerk. The licensee upon receiving his license shall cause the territory covered thereby to be plainly marked out by stakes, buoys, ranges or monuments which shall be maintained by him during the term of the

CHAP. 45

license. Failure to place or maintain the same shall be sufficient cause for revocation of the license by the authority granting the same.

Sec. 56. License shall describe territory covered and shall be recorded; records open to public inspection. 1911, c. 69, § 4. A license granted hereunder shall describe by metes and bounds the waters, flats and creeks, to which the license is applicable, and shall have no force until it is recorded with the clerk of the city or town granting the same, in a book to be kept for the purpose in the office of the clerk of the city or town, and such books shall be open to public inspection; the licensee shall pay annually to the city or town a fee of not less than one dollar nor more than five dollars per acre for the license, as the mayor and aldermen of the city and the selectmen of the town may determine. Forms for licenses and for assignments shall be provided by the mayor and aldermen of a city or the selectmen of a town at the expense of the city or town.

Sec. 57. Unlawful to take clams on licensed territory except by license; licensee shall have exclusive use of territory covered by license. 1911, c. 69, §§ 3, 7. No person, except the licensee or his agents or assignees, shall dig or take clams or clam seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees shall for the purposes described in the license have the exclusive use of the territory described therein during the term of the license and may in an action of tort recover treble damages of any person who, without his or their consent, digs or takes clams or other shell-fish in the territory covered by the license or removes the same therefrom. Whoever so digs, takes or removes clams or other shell-fish shall, in addition, be subject to a penalty of twenty dollars for each offense.

Sec. 58. Proceedings if licensee fails to occupy and use territory covered by license. 1911, c. 69, § 6. Whenever it appears to the mayor and aldermen of a city or selectmen of a town who have granted such a license, that the licensee or his assignee does not actually occupy and use in good faith for the purposes specified in sections fifty-three and fifty-four, the territory covered by the license, they shall petition the supreme judicial court or the superior court in the county where the territory is situated, to appoint a commission to investigate and report to the court, as to the use and occupancy of such territory; the court shall appoint a commission of one or more persons who, after twelve days' notice to the petitioners and the respondent, shall hear the petitioners and respondent and shall transmit their findings to the court. If it shall appear to the court that the said territory is not used and occupied in good faith for the purposes stated in the license, the court may order that use of the territory shall revert to the city or town and that all stakes or buoys and other appliances marking the same shall be removed. Costs upon said petition may be recovered in the discretion of the court.

Sec. 59. Towns may regulate taking of clams. R. S. c. 41, § 34. 1905, c. 161. 1907, c. 125. 1909, c. 60. Any town may at its annual meeting, fix the times in which clams may be taken within its limits, and the prices for which its municipal officers shall grant permits therefor; and unless so regulated by vote, residents of the town may take clams without written

permit. But without permit, any inhabitant within his own town, or transient persons therein, may take clams for the consumption of himself and family. This section does not apply to hotel keepers taking clams for the use of their hotels, nor does it interfere with any law relating to the taking of shell-fish for bait by fishermen. Whoever takes clams contrary to municipal regulations authorized by this section, shall, for each offense, be fined not more than ten dollars, or imprisoned not more than thirty days. This section shall not be construed to effect the repeal of chapter three hundred and seventeen of the private and special laws of the year nineteen hundred and three, nor of any law applicable to a particular locality enacted by the legislature in the year nineteen hundred and five; but any town to which any special law applied may in addition have all the advantages of this section, if such town shall so vote.

89 Me. 543; 98 Me. 388; 102 Me. 231; 103 Me. 329; 105 Me. 81; see P. & S. L. 1905, c. 351, c. 372, c. 386.

Sec. 60. Size of bait barrels. 1909, c. 60. In all contracts relating to the sale of clam bait, fresh or salt, by the barrel, and clam bait barrels, such barrel shall be twenty-five and one-fourth inches long and fifteen and one-half inches head diameter, outside measure. Whoever violates this provision shall be liable to a penalty not exceeding fifty dollars for each offense.

Sec. 61. Close time for clams. R. S. c. 41, § 35. The canning, packing and barreling of clams, either fresh or in salt, and the digging of clams for the purpose of canning, packing or barreling, between the first day of June and the fifteenth day of September following, is hereby prohibited under a penalty of one dollar a bushel in the shell. But this section shall not apply to the barreling of clams in the shell for consumption in this state.

Sec. 62. Transportation of clams regulated. R. S. c. 41, § 36. The shipping or transportation of clams in any manner beyond the limits of the state, between the first day of June and the fifteenth day of September following, except clams which had been canned, packed or barreled between the fifteenth day of September and the first day of June, is hereby prohibited under a penalty of three dollars for each bushel so shipped or transported.

Sec. 63. Any inhabitant may plant oysters and have exclusive right to take same; penalty for trespassing on such beds. R. S. c. 41, § 37. Any inhabitant of the state, with consent of the adjacent riparian proprietors, may plant oysters below low-water mark in any navigable waters, in places where there is no natural oyster-bed; enclose such grounds with stakes, set at suitable distances, and extending at least two feet above high-water mark, but so as not to obstruct the free navigation of such waters; and have the exclusive right of taking such oysters. Whoever trespasses on such enclosure or injures such oyster-beds, is liable in an action of trespass for all damages; and if he takes any oysters therein without the consent of the owner, he shall forfeit not less than twenty, nor more than fifty dollars, or be imprisoned not exceeding three months.

101 Me. 354.

CHAP. 45

Sec. 64. Authorized selection of proper locations for experiments in propagation of shell-fish. 1909, c. 265, § 1. The commissioner of sea and shore fisheries may from time to time, as his judgment may determine, select proper locations below low-water mark on the coast of Maine for the propagation of oysters and quahaugs, and between high and low-water mark for the propagation of clams, cause the same to be properly stocked with oysters, quahaugs, and clams, and erect proper and sufficient marks or bounds to indicate the locations thus made. But this section shall not be construed to authorize the taking of flats, which by the colonial ordinance of sixteen hundred and forty-one are possessed by the adjacent upland owners, without the consent of such owners and the payment of proper damages to such owners for such taking.

Sec. 65. Locations protected for three years. 1909, c. 265, § 2. No person shall dig, fish for, take or carry away any oysters, quahaugs or clams within any location so selected, for a period of three years after such location was stocked as aforesaid, without the permission in writing of the commissioner of sea and shore fisheries; nor shall any person wilfully injure, deface, destroy or remove any such bounds or marks, nor tie or fasten any boat or vessel thereto.

Sec. 66. Penalty. 1909, c. 265, § 3. Whoever violates any provision of the two preceding sections shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding sixty days, or by both fine and imprisonment.

Sec. 67. Close time on scallops; boat and equipment may be seized and detained; prima facie evidence of violation. 1911, c. 2. 1915, c. 92. No person shall catch, buy or sell, expose for sale, give away or have in his possession for any purpose any scallops, shelled or in the shell, between the fifteenth day of April and the first day of November of each year. But this section shall not apply to any of the waters of Penobscot bay, lying between lines running south from Naskeag point on the east, and from Dice's Head, by the eastern shore of Islesboro, on the west, and including the waters of Bagaduce river; where scallops may be taken between June fifteenth and September fifteenth of each year. It shall be unlawful to ship scallops so taken, out of the state. Whoever violates this section shall be liable to a penalty of fifty dollars, and in addition shall pay a penalty of five dollars for each and every gallon or part thereof of shelled scallops, so bought, sold, exposed for sale, given away or in his possession; and shall pay a penalty of five dollars for each one hundred scallops or any part thereof, in the shell, so bought, sold, exposed for sale, given away or in his possession; and any boat with its equipment, engaged and used in such unlawful catching or selling of scallops may be seized and detained by an officer or warden, not exceeding twenty-four hours, in order that it may be attached or taken by due process of law, to satisfy any judgment that may be recovered; but said boat and equipment shall be released at any time on payment of penalty and costs legally due. Scallop gear found on board any boat in close time shall be prima facie evidence of a violation of this section.

Note. Swelling of scallop meats by artificial means forbidden, c. 130, § 14.

Use of Seines, Weirs, Nets and Artificial Flies.

Sec. 68. Unlawful to use purse or drag seines in certain waters; regulation of fishing therein. R. S. c. 41, § 38. 1905, c. 143. No person shall use any purse or drag seines in the following waters: In Casco bay north of a line drawn easterly from Prince's point in the town of Yarmouth to Bear island in the town of Phippsburg, excepting for smelts, bluebacks and spurling; in Kennebec river above a line drawn across said river from Fort Popham in the town of Phippsburg to a point opposite at the lower end of Long island in the town of Georgetown; in Sheepscot river above a bridge leading from Wiscasset to Edgecomb; in Damariscotta river above a line drawn from Farnham's head in the town of Boothbay to a point opposite on the shore in the town of Bristol, excepting the use of drag seines between the above line and The Ledges, for all fish excepting alewives; in Medomak river, above a line drawn from Martin's point in the town of Friendship, westerly by the northeast end of Hog island to a point opposite in the town of Bremen, or take smelts in said river and its tributaries in any other way than by hook and line; in Georges river, above a line drawn from Hooper's point in the town of St. George, westerly past the northerly end of Caldwell's island to a point opposite on the shore in the town of Cushing, or take smelts in said river and its tributaries in any other way than by hook and line, or dip-nets, and no individual shall take more than one-half bushel of smelts within a period of twenty-four hours with dip-net; in all bays, inlets, rivers and harbors east of the west shore of the Penobscot bay and river where any entrance to the same or any part thereof from mainland to mainland is not more than three nautical miles in width, but purse and drag seines may be used for the purpose of taking smelts in these waters, except in Bluehill bay. The taking of herring, or fishing therefor, by the use of purse or drag seines and all other seines or nets, except the use of seines or nets in weirs, from the first day of June to the first day of November in the waters of Machias bay and its approaches inside of or to the northward of a direct line drawn straight from the highest summit of the island called The Brothers, easterly to a point one-half mile distant and due south from Libby island lighthouse, thence from said point easterly to the southerly extremity of the southern island called Double Head Shots, is hereby prohibited. The use of purse or drag seines within a distance of one-half of a nautical mile from any fish weir in any of the waters of the state east of White Head on the west shore of Penobscot river is hereby prohibited; but such seines may be used for the taking of smelts and for the purpose of taking fish in weirs, but shall not be used in any water in which their use is prohibited by special or general law. Whoever violates any provision of this section shall be liable to a penalty not exceeding five hundred dollars for each offense, to be recovered by complaint, indictment or action of debt.

85 Me. 192.

Sec. 69. Regulation of places and times of taking salmon, shad and alewives in certain rivers. R. S. c. 41, § 39. 1915, c. 180. No salmon, shad or other migratory fish shall be taken or fished for within five hundred yards of any fishway, dam or mill race; nor in the Penobscot river between

CHAP. 45

the mouth of the Kenduskeag stream and the water-works dam at Treat's falls on said river, nor between the Augusta highway bridge over the Kennebec river and the Augusta dam; nor in Mill river, a tributary of Georges river, in Thomaston, Maine, between said Georges river and the old dam at head of tide-waters in said Mill river; nor any salmon five hundred feet above Ferry point bridge on the St. Croix river in Calais, between the first days of April and November, except by the ordinary mode of angling with single hook and line or artificial flies; nor shall hook and line or artificial flies be used at any time within one hundred yards of any fishway, dam or mill race; but this section shall not apply to the taking of alewives by the town of Warren in the Georges river, and by the town of Waldoboro in Medomak river, under the authority granted said towns by a private and special law of Massachusetts, passed the sixth day of March, eighteen hundred and two, and amendments thereof, passed by the legislature of this state; nor shall it apply to the taking of alewives by the town of Woolwich in Nequasset stream; nor shall it apply to the taking of alewives by the West Harbor Ice Company in the water below its fishway, erected under authority given by chapter one hundred forty of the private and special laws of nineteen hundred five. Fly-fishing shall be allowed up to the bridge across the Denny's river at Lincoln's mill, but not between said bridge and Lincoln's mill dam. This section shall not apply to the Laconia falls and the Lower falls, so called, of the Saco river, located at Biddeford and Saco; and upon the first three days of each week, from the first of June to the first of September of each year, all persons may dip for salmon, shad and alewives at the falls last named above. Any person may take any salmon, shad or alewives in the waters of Orange river, in the town of Whiting, in the county of Washington, up to one hundred and thirty yards of the fishway at the lower dam in said river, subject, however, to all the laws of the state, and laws regulating the taking of such fish in said river. The penalty for any violation of this section is a fine of not more than fifty, nor less than ten dollars for each offense, and a further fine of ten dollars for each salmon and one dollar for each shad so taken.

78 Me. 394.

Sec. 70. Protection of weirs. R. S. c. 41, § 40. 1907, c. 95. No person shall set any net or seine within one thousand feet of the mouth of any weir under a penalty of fifty dollars for each offense.

101 Me. 354.

Sec. 71. Owner may use. R. S. c. 41, § 41. The owner or person in charge of any weir is hereby permitted to use nets and seines in such weir.

Sec. 72. Close time for salmon. R. S. c. 41, § 42. From the fifteenth day of July to the first day of April following, there shall be a close time for salmon during which no salmon shall be taken or killed in any manner, under a penalty of not more than fifty, nor less than ten dollars, and a further penalty of ten dollars for each salmon so taken or killed. Provided, however, that between the fifteenth days of July and September it is lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise. But any person may take salmon by weirs on the Saint

Croix river below the breakwater at the ledge between the fifteenth day of May and the first day of September.

Sec. 73. Weekly close time of salmon, shad, alewives and bass established; how it shall be observed. R. S. c. 41, § 43. Between the first day of April and the fifteenth day of July there shall be a weekly close time of forty-eight hours from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives or bass, shall be taken. During the weekly close time all seines, nets and other movable apparatus shall be removed from the water. Every weir shall have, in that part where the fish are usually taken, an opening three feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing, shall be taken out, carried on shore and there remain during the weekly close time, to the intent that during said close time the fish may have a free and unobstructed passage through such weir or other structure, and no contrivance which tends to hinder such fish shall be placed in any part thereof. If the enclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir is equivalent to one extending from the bottom to the top. The penalty for the violation of this section is twenty dollars for each offense. This section does not apply to the Kennebec, Androscoggin or Penobscot rivers or their tributaries, or to the Saint Croix river below the breakwater at the ledge. Provided, however, that the weekly close time on the Damariscotta river below the bridge at Damariscotta shall be from sunset on each Saturday night to twelve o'clock on the following Sunday night.

78 Me. 394; 81 Me. 395.

Sec. 74. Regulation of smelt fishing. R. S. c. 41, § 44. 1905, c. 20; c. 30; c. 91. 1907, c. 12; c. 35; c. 123; c. 136. 1909, c. 165. 1913, c. 113. 1915, c. 144. No smelts shall be taken or fished for in tidal waters, nor in any brook, stream or river emptying into tide-waters, within one thousand feet of tide-water, except by hook and line, between the first days of April and October, under a penalty of not less than ten, nor more than thirty dollars for each offense, and a further penalty of twenty cents for each smelt so taken, and all weirs for the capture of smelts shall be open and so remain, and all nets used in the smelt and tomcod fishery shall be taken from the water on or before said first day of April under a penalty of not less than twenty, nor more than fifty dollars, and a further fine of five dollars for each day that any such weir or net remains in violation of the law. But weirs with catch pounds covered with nets, the meshes of which are one inch square in the clear, or greater, and weirs with catch pounds covered with nets which are erected and used for the catching of herring are not subject to this section. But no smelts caught in such weirs after the first day of April, shall be sold or offered for sale in this state, nor shall smelts caught in any manner between the first day of April and the first day of October following be offered for sale, sold or shipped from the state under a penalty of twenty-five dollars for each offense; provided, however, that dip-nets may be used between the first day of April and the first day of May, and all smelts caught by dip-nets between said days may be lawfully offered for sale and sold in this state; provided, further, that

CHAP. 45

this section does not apply to smelts taken in the Androscoggin river above the Merrymeeting bay bridge, or in Narraguagus bay or river between the first days of October and November, nor to smelts taken in the Penobscot river and its tributaries between the first and thirtieth days of April, nor to smelts taken in Casco bay between the fifteenth day of September and the first day of October, nor to smelts taken in Franklin bay between the first day of April and the first day of May, nor to smelts taken in Little Kennebec bay, so called, or in Narraguagus bay or river, in the county of Washington, between the first day of April and the twentieth day of May, nor to smelts taken in West bay and West Bay stream, so called, in the town of Gouldsboro, Hancock county, nor to smelts taken in Tunk stream and Parritt and Whitten stream, so called, in the town of Steuben in Washington county, between the first day of April and the first day of May, nor to smelts taken in Passamaquoddy bay, St. Croix river and Cobscook bay and the coves and inlets tributary to these bays between the first day of September and the first day of October.

Sec. 75. Taking smelts in Narraguagus river regulated. 1909, c. 224. No person shall take any smelts by means of purse, or by drag seines of any kind, in the tide-waters of Narraguagus river or bay, so called, in the county of Washington, under a penalty of fifty dollars for each offense, to be recovered by complaint or indictment, one-half to the use of the complainant, and one-half to the inhabitants of the town in which said offense is committed, for the benefit of schools.

Sec. 76. Smelt fishing in certain tidal waters along coast, regulated. 1911, c. 90. 1915, c. 116. No smelts shall be taken or fished for in the tidal waters along the coast of Maine within one-half mile of the coast line at mean high-water mark starting from Cape Small Point on the west bank of the Kennebec river and continuing easterly along the coast of Maine to Owl's Head in Penobscot bay, except by hook and line or weirs or set-nets through the ice, under penalty of not less than ten, nor more than fifty dollars for each offense, to be recovered by complaint or indictment. This section shall not apply to the waters along the coast of Maine between Martin's Point and White Head in the county of Knox.

Note. As to protection of smelts in inland waters, above tide-waters, see c. 33, § 26.

Sec. 77. Nets with meshes smaller than one inch prohibited. R. S. c. 41, § 45. No net, the meshes of which are smaller than one inch square in the clear shall be used in any waters frequented by migratory fishes, except the Saint Croix river, between the first days of April and October, under a penalty of not more than twenty, nor less than ten dollars for each offense; but this section shall not apply to dip-nets.

Sec. 78. Stationary contrivances regulated. R. S. c. 41, § 46. No weir, hedge, set-net or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than two feet of water at ordinary low water, under a penalty of not more than one hundred, nor less than fifty dollars, and forfeiture of all apparatus and material so unlawfully used. This provision applies to any seine or drift-net which is at any time attached to a stationary object, but not to fykes or bag-nets used in the winter fishery for smelts and tomcods, nor to any implements lawfully used above the flow of tide, nor to any portion of Penobscot river,

bay or tributaries, nor to the Saint Croix river five hundred feet above Ferry's point, in Calais.

85 Me. 121, 164.

Sec. 79. Depth of weirs, how measured; standard for low water on the Kennebec river. R. S. c. 41, § 47. 1909, c. 246. The limit of depth prescribed for weirs in the preceding section shall be measured at the entrance of the weir, provided that no part of the weir known as the leader, is in more than two feet of water at low-water mark. Weirs may exceed the limit of two feet in depth, measured as aforesaid, under the following conditions; first, the distance from the before mentioned two feet limit to the entrance of such weir shall not exceed one hundred feet; second, no such weir shall obstruct more than one-eighth of the channel, except that in the Cathance, Abbagadasset and Eastern rivers, such weirs may extend twenty-five feet beyond the one-eighth aforesaid, provided such extension shall not exceed one-fourth of the width of the channel in the Abbagadasset and Eastern rivers; third, every such weir shall be stripped so as to render it incapable of taking fish between the fifteenth day of June and the fifteenth day of August of each year; but these conditions apply only to weirs that exceed the aforesaid limit of depth. The standard for low-water mark on the Kennebec river, is in all cases the nearest bench-mark of the new United States coast survey, allowance being made at the various points for the difference in time. The provisions of this and the preceding sections do not apply to weirs built for the purpose of taking herring, or other salt-water fish.

Sec. 80. Forfeitures. R. S. c. 41, § 48. All boats, implements and materials used and all fish taken in violation of the two preceding sections are liable to forfeiture.

Sec. 81. Taking alewives in Damariscotta river regulated. R. S. c. 41, § 49. Whoever shall construct, set, maintain or use any net, weir, seine or other device, in the waters of the Damariscotta river, northerly of the bridge between the villages of Newcastle and Damariscotta, for the purpose of taking or catching alewives, or whoever shall take or catch any alewives within said limits, except by hook and line, shall be punished by a fine of two hundred dollars for each offense; all nets, weirs, seines or other machines or devices, prohibited as aforesaid, shall be deemed forfeited and contraband, and any member of the fish committee of the towns of Newcastle and Nobleborough finding them in such use, may destroy them. But nothing in this section shall be construed to abridge or affect in any manner, the rights and privileges now held by law, by said towns of Newcastle and Nobleborough in the alewife fishery in the said Damariscotta river.

Sec. 82. Fishing about Pemaquid falls restricted. R. S. c. 41, § 51. All fishing for alewives at or about Pemaquid falls below the mill dam, shall be restricted to four days in each week, and the fishing season shall be from the first day of April to the fifteenth day of July of each year, for the term aforesaid, and all fishing shall be under such regulations and further restrictions as the fish committee of the town of Bristol shall decide upon.

Sec. 83. Persons not authorized shall not catch alewives in Pemaquid river. R. S. c. 41, § 52. No person not authorized by the fish committee

CHAP. 45

of the town of Bristol, shall be allowed to catch or disturb any alewives in Pemaquid river above the flow of the tide, and no person unless authorized by said fish committee, shall set traps, or use any other contrivance, for catching eels, or any other fish, that shall in any way interfere with the passage, either way, of alewives old or young; whoever violates this section shall be subject to a fine of twenty-five dollars and one dollar for each fish so taken or destroyed.

General Provisions.

Sec. 84. Dead or injured fish shall not be cast on shores, nor released in harbors. 1905, c. 77, §§ 1, 2. No person shall cast or deposit upon the shores, or release and deposit in the bays, harbors or rivers of this state any dead fish, or fish that have been smothered or injured so that they will die. Whoever wilfully violates this section, or aids therein, shall be punished by fine of one hundred dollars, or by imprisonment not exceeding thirty days, or by both fine and imprisonment.

Sec. 85. Shooting seals in Casco bay regulated. 1905, c. 67. No person shall during the months of June, July and August destroy seals in the waters of Casco bay by shooting with rifle or other long-range weapon, which might endanger human life, under a penalty of fifty dollars for each offense.

Sec. 86. Use of dynamite or poisonous substance for destroying fish, sale of fish so taken, and carrying such substances or explosives in fishing boat forbidden. 1915, c. 217. No person shall use dynamite or any poisonous or stupefying substance whatever, for the purpose of destroying or taking any kind of fish in tidal waters. No person shall buy, sell, give away or expose for sale, or possess for any purpose, any fish taken by use of dynamite or any poisonous or stupefying substance; and no person while engaged in fishing shall carry in his fishing-boat or vessel, any dynamite or other explosives, or any poisonous or stupefying substance. Whoever violates any provision of this section shall be punished by fine of one hundred dollars and costs, and in addition thereto shall be imprisoned for a term of sixty days.

Sec. 87. Persons deriving special benefit from protected waters shall post notices of such protection. R. S. c. 41, § 54. All persons who derive special benefits from legislation for the protection of fish in any waters of this state, in excess of what is or may be derived by others, shall publish such protection by posting and maintaining notices substantially as hereinafter provided. Said notices shall be placed on the banks or shores of such protected waters not more than ten feet nor less than six feet above the ground, in a conspicuous position; and if on running water such notices shall be not more than one-half mile apart on the banks of such waters; and if on a pond or lake, not more than one mile apart on the shores of such pond or lake.

78 Me. 486.

Sec. 88. Form of such notices; no liability unless notices are posted. R. S. c. 41, §§ 55, 57. Said notices shall be painted on wood in black Roman letters not less than two inches in length and not less than one-

half inch in breadth, so that such letters shall be plainly legible, and such notices shall state the number of the act and the date of the same giving the said protection to such waters. In case no notices as herein provided are posted and maintained on waters that are protected by any special law, no one violating such law shall be liable thereunder to any penalties therein set forth.

Sec. 89. Mutilation. R. S. c. 41, § 56. Any one mutilating or destroying such notices, shall be subject to the same penalties as set forth in section thirty-two of chapter one hundred and twenty-nine.

Sec. 90. Application of sections 87-89. R. S. c. 41, § 58. The three preceding sections shall not apply to towns which by special act have acquired vested rights in any fishery in said towns.

Sec. 91. Vessels owned by non-residents liable for unlawful fishing. R. S. c. 41, § 59. All vessels, boats, craft, owned and officered by non-residents, and apparatus of every kind, employed in unlawful fishing, or having on board any fish unlawfully taken, are liable for all fines and costs herein provided for; and any officer may seize and detain said property not exceeding twenty-four hours, in order that it may be attached and taken by due process of law to satisfy any judgment that may be recovered, but it shall, at any time be released on payment, by the owner or master, of the fine, costs and reasonable expenses.

Sec. 92. Jurisdiction of offenses. R. S. c. 41, § 60. In all prosecutions under this chapter municipal and police judges and trial justices within their counties have by complaint original and concurrent jurisdiction with the supreme judicial and superior courts.

79 Me. 17, 160; 80 Me. 85; 89 Me. 42.

Sec. 93. Fines and penalties, how recovered; settlement of offenses; commissioner shall report to treasurer of state. R. S. c. 41, § 61. 1909, c. 99. All fines and penalties under this chapter may be recovered by complaint, indictment or action of debt made or brought in the county where the offense was committed. The action of debt shall be brought in the name of the commissioner of sea and shore fisheries, and all offenses under, or violations of, the provisions of this statute, may be settled by the commissioner of sea and shore fisheries, upon such terms and conditions as he deems advisable. All fines, penalties and collections under this chapter, except when otherwise expressly provided, shall forthwith be paid to the commissioner of sea and shore fisheries and by him be paid to the treasurer of state to be added to and made a part of the appropriation for sea and shore fisheries. And the commissioner shall report to the treasurer of state the amount of each fine, penalty and collection itemized and the name of the party paying the same which shall be kept on record in the treasurer's office.

See §§ 52, 75, 76; c. 33, § 87; 87 Me. 206; 89 Me. 42; 99 Me. 229; 101 Me. 352.

Note. Notices on petition to legislature for special legislation relating to fish, c. 2, § 40.

Use of dynamite or other explosives or any poisonous or stupefying substance, for purpose of destroying or taking fish forbidden, c. 33, § 24.

Cultivation of fish for purposes of science by commissioners of inland fisheries and game, c. 33, § 5.

Cultivation of useful fishes by riparian proprietors, c. 33, § 33.

Trespass on islands in salt water for purpose of hunting thereon, c. 100, §§ 12-15.

Penalty for swelling scallop meats by artificial means, c. 130, § 14.

CHAPTER 46.

Survey and Sale of Wood, Bark, Coal, Hoops, Staves and Lumber.

- Sections 1-5 Wood and Bark.
Sections 6-9 Charcoal.
Sections 10-12 Coal.
Sections 13-24 Boards, Plank and other Lumber.
Sections 25-27 Logs.

Wood and Bark.

Sec. 1. Dimensions of a cord of wood. R. S. c. 42, § 1. Towns may, by ordinance, regulate the measure and sale of wood, coal and bark therein, and the location of teams hauling the same; and may enforce it by reasonable penalties. All cord-wood exposed for sale shall be four feet long including half the scarf, and well and closely laid together; a cord of wood or bark shall measure eight feet in length, four feet in width, and four feet in height, or otherwise contain one hundred and twenty-eight cubic feet; and the measurer shall make due allowance for refuse or defective wood, and bad stowage.

See c. 4, § 98, ¶ v; 14 Me. 406; 82 Me. 318.

Sec. 2. Penalty for selling wood or bark before survey. R. S. c. 42, § 2. If any fire-wood or bark, brought into any town by land, is sold and delivered, unless otherwise agreed to by the purchaser, before it is measured by a sworn measurer, and a ticket signed by him and given to the driver, stating the quantity that the load contains, the name of the driver, and the town in which he resides, such wood or bark is forfeited, and may be libeled and disposed of according to law.

72 Me. 119; 82 Me. 574.

Sec. 3. Measure of cord-wood brought by water. R. S. c. 42, § 3. All cord-wood, brought by water into any town for sale, shall be corded on the wharf or land, on which it is landed, in ranges making up in height what is wanting in length; then it shall be so measured and a ticket given to the purchaser, who shall pay the stated fees; and no such wood shall be carried away by any wharfinger or carter, before it has been so measured, under a penalty of one dollar for every load.

Sec. 4. Ticket required, and penalty for not showing it. R. S. c. 42, § 4. Persons, carrying fire-wood from a wharf or landing for sale, shall be furnished by the owner or seller with a ticket stating the quantity, and the name of the driver; and if such fire-wood is carried away without such ticket, or any driver refuses to exhibit such ticket to any sworn measurer on demand, or does not consent to have the same measured, when in the opinion of the measurer the ticket certifies a greater quantity of wood than the load contains, such wood shall be forfeited, and may be seized and libeled by said measurer according to law.

Sec. 5. Penalty for fraudulent stowage. R. S. c. 42, § 5. When any wood, bark or charcoal, sold by the cord, foot or load, is so stowed as

to prevent the surveyors from examining the middle of the load, and it appears on delivery, that it was stowed with a fraudulent intent of obtaining payment for a greater quantity than there was in fact, the seller or owner thereof forfeits ten dollars to the county.

Charcoal.

Sec. 6. Measure and sale of charcoal. R. S. c. 42, § 6. Charcoal brought into a town for sale, may be measured and sold by the cord or foot, estimating the cord at ninety-six bushels, when the purchaser and seller agree to the same; and the measurers before named shall be measurers of charcoal also.

Sec. 7. Coal baskets to be sealed; dimensions; penalty for using smaller baskets. R. S. c. 42, §§ 7, 8. All baskets for measuring charcoal brought into a town for sale, shall be sealed by the sealer of the town where the person using them usually resides, and shall contain two bushels and be of the following dimensions, viz.: nineteen inches in breadth in every part, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and in measuring charcoal for sale, the basket shall be well heaped. Whoever measures charcoal for sale, in any basket of less dimensions, or not sealed, forfeits, for each offense, five dollars.

Sec. 8. Seizure of unlawful baskets. R. S. c. 42, § 9. The municipal officers of towns may appoint some suitable person to seize and secure all baskets used for measuring coal, not according to the provisions hereof.

Sec. 9. Penalty for refusing to give certificate. R. S. c. 42, § 10. Any measurer of wood, bark or charcoal, who neglects or refuses to give to the owner or purchaser a certificate of the contents of a load, forfeits five dollars for each offense; and all the penalties hereinbefore provided, may be recovered by action of debt or complaint, half to the town where the offense is committed, and half to the prosecutor.

Coal.

Sec. 10. Weight of ton. R. S. c. 42, § 11. Anthracite, bituminous and other mineral coal shall be sold by weight; and two thousand pounds thereof are a ton.

Sec. 11. Weighers of coal. R. S. c. 42, § 12. The municipal officers of towns shall annually appoint weighers of such coal, who shall receive such fees as said officers may establish, to be paid by the buyer.

See Const. of Me. Art. ix, § 1.

Sec. 12. Coal sold by weight, certificate required. R. S. c. 42, § 13. Unless coal is sold by the cargo, the seller shall, on request of the purchaser, cause it to be weighed by a sworn weigher, who shall make a certificate of the weight; and he shall deliver such certificate to the buyer, before commencing a suit against him for the price of such coal.

65 Me. 138, 139; 68 Me. 268.

Boards, Plank and Other Lumber.

Sec. 13. Towns to elect surveyors of lumber. R. S. c. 42, § 14. Every town, at its annual meeting, shall elect one or more surveyors of boards,

CHAP. 46

plank, timber and joist; one or more surveyors of shingles, clapboards, staves and hoops; and every town containing a port of delivery whence staves and hoops are usually exported, shall also elect two or more viewers and cullers of staves and hoops; and the municipal officers of a town may, if they deem it necessary, appoint not exceeding seven surveyors of logs.

See c. 4, §§ 12, 14; see Const. of Me. Art. ix, § 1.

Sec. 14. Lumber to be surveyed before delivery. R. S. c. 42, § 15. All boards, plank, timber and joist, offered for sale, shall, before delivery, be surveyed by a sworn surveyor thereof, and if he has doubts of the dimensions, he shall measure the same, and mark the contents thereon, making reasonable allowance for rots, knots and splits, drying and shrinking; pine boards three-fourths of an inch thick when fully seasoned, and in that proportion when partly seasoned, shall be considered merchantable; and no pine boards, except sheathing boards, shall be shipped for exportation beyond the United States, but such as are square edged, and not less than seven-eighths of an inch thick, nor less than ten feet long, under penalty of forfeiture to the town whence shipped.

77 Me. 590; 82 Me. 318; 90 Me. 295.

Sec. 15. Dimensions and quality of shingles. R. S. c. 42, § 16. All shingles, packed for exportation beyond the state, shall be sixteen inches long, free from shakes and worm-holes, and at least three-eighths of an inch thick at the butt end when green, and if of pine, free from sap. They shall be four inches wide on an average, not less than three inches wide in any part, hold their width three-fourths of the way to the thin end, well shaved or sawed, and be denominated "number one;" but shingles intended for sale within the state, if of inferior quality or of less dimensions, may be surveyed and classed accordingly, under the denominations of "number two," and "number three."

Sec. 16. Manner of sawing and packing shingles; forfeiture. R. S. c. 42, § 17. All shingles shall be split or sawed crosswise the grain; each bundle shall contain two hundred and fifty shingles, and if in square bundles, twenty-five courses, and be twenty-two inches and a half at the lay; and when packed to be surveyed as "number one," or for exportation, if in any bundle there are five shingles deficient in the proper dimensions, soundness or number, to make two hundred and fifty merchantable shingles, or if any shingles are offered for sale, before they are surveyed and measured by a sworn surveyor of some town in the county where they were made, and the quality branded on the hoop or band of the bundle, unless the parties otherwise agree, they are forfeited to the town where the offense is committed.

77 Me. 592.

Sec. 17. Dimensions and quality of clapboards. R. S. c. 42, § 18. All clapboards, exposed for sale or packed for exportation, shall be made of good sound timber, free from shakes and worm-holes, and if of pine, clear of sap; and they shall be at least five-eighths of an inch thick on the back or thickest part, five inches wide, and four feet six inches long, and straight and well shaved or sawed.

Sec. 18. Dimensions and quality of staves, and how enumerated. R. S. c. 42, § 19. Staves packed for sale or exportation shall be well and proportionably split, and of the following dimensions, viz.:

White oak butt staves, at least five feet in length, five inches wide, and one inch and a quarter thick on the heart or thinnest edge, and every part thereof;

White oak pipe staves, at least four feet and eight inches in length, four inches broad in the narrowest part, and not less than three-quarters of an inch thick on the heart or thinnest edge;

White or red oak hogshead staves, at least forty-two inches long, and not less than half an inch thick on the least or thinnest edge;

White or red oak barrel staves for a market out of the United States, thirty-two inches long; if for use within the United States, thirty inches long; and in either case, half an inch thick on the heart or thinnest edge;

All white or red oak hogshead or barrel staves, at least, one with another, four inches in breadth, and no one less than three inches in breadth in the narrowest part; those of the breadth last mentioned shall be clear of sap; and two staves shall be sold as one cast; fifty casts, one hundred staves; and ten hundred staves, one thousand.

Sec. 19. Dimensions and quality of hogshead hoops; how packed, and forfeiture for deficiency. R. S. c. 42, § 20. All hogshead hoops, exposed for sale or packed for exportation, shall be from ten to thirteen feet in length, and of oak, ash or walnut, and of good and sufficient substance, well shaved; if of oak or ash, at least one inch broad, and, if of walnut, three-quarters of an inch at the smaller end; the different lengths shall be made up in bundles by themselves; each bundle shall contain twenty-five hoops, four bundles shall make one hundred, and ten hundred hoops, one thousand; and every bundle, packed for sale or exportation, found to be deficient in number or dimensions, is forfeited to the town where it is exhibited.

85 Me. 284.

Sec. 20. Manufactured lumber, not to be offered for sale until surveyed and branded; penalty; shipmaster also liable. R. S. c. 42, § 21. No person shall deliver on sale, or ship or attempt to ship for exportation, any boards, plank, timber, joists, shingles, clapboards, staves or hoops, before they have been surveyed, measured, viewed or culled, as the case may be, and branded by the proper officer, and a certificate thereof given by him, specifying the number, quality and quantity thereof, under a penalty of two dollars a thousand, by quantity or tale, as such article is usually sold, half to the town where the offense is committed, and half to the prosecutor; and in addition thereto, the master or owner of any vessel, exporting any of the articles aforesaid beyond the limits of the United States contrary to law, shall, for the first offense, forfeit two hundred dollars to the town whence said articles are exported; and if after conviction he commits a second offense in the same vessel, he forfeits the same sum, and the vessel is also forfeited to the town.

68 Me. 144; 77 Me. 591; 83 Me. 324; 85 Me. 284.

Sec. 21. Failure to survey lumber and give certificate shall not defeat action for price. R. S. c. 42, § 22. In any action hereafter brought for the

CHAP. 46

price of boards, plank, timber, joists, shingles, clapboards, staves or hoops, unless sold by the cargo, any failure to survey, measure, view or cull and brand the same and to give certificate thereof as required by section twenty, shall not defeat recovery in such action, unless it appears that before delivery the purchaser requested such survey, measurement, view or culling, and branding and certificate.

90 Me. 295.

Sec. 22. Master or owner to produce surveyor's certificate before clearance, with affidavit thereto. R. S. c. 42, § 23. The master or owner of any vessel, having any of the lumber or other articles mentioned in section twenty on board, for exportation as aforesaid, shall, before the vessel is cleared at the custom-house, produce to the collector a certificate from the proper officer, that the same have been duly surveyed, measured, viewed or culled, as the case may require; and such master or owner shall likewise make oath before the collector, or a justice of the peace, whose certificate shall be returned to the collector, that the articles so shipped for exportation are the same articles thus surveyed, measured, viewed or culled, that he has no others on board of the like description, and that he will not take any others.

Sec. 23. Penalty, if surveyor or culler neglects duties or practices fraud in his office. R. S. c. 42, § 24. If any person, duly elected a surveyor, measurer, viewer or culler of any of said articles under this chapter, and duly qualified, unnecessarily refuses or neglects to attend to the duties of his office when requested, he forfeits three dollars; and if he connives at or willingly allows any breach of the provisions hereof, or practices any other fraud or deceit in his official duties, he forfeits thirty dollars to the use aforesaid.

Sec. 24. Recovery of penalties. R. S. c. 42, § 25. All pecuniary penalties aforesaid may be recovered by action of debt, indictment or complaint, and all other forfeitures, by a libel filed by the treasurer or any inhabitant of the town interested.

Logs.

Sec. 25. Duty of surveyors of logs. R. S. c. 42, § 26. Surveyors of logs may inspect, survey and measure all mill logs floated or brought to market or offered for sale in their towns, and divide them into several classes, corresponding to the different quality of boards and other sawed lumber, which may be manufactured from them; and they shall give certificates under their hands of the quantity and quality thereof to the person, at whose request they are surveyed.

8 Me. 32; 25 Me. 401; 53 Me. 491; 62 Me. 168; 92 Me. 196.

Sec. 26. Method of scaling logs. 1909, c. 191. Unless the parties otherwise agree, in the scaling or measurement of unmanufactured logs and timber the cubic foot shall be the unit of measure, to be determined by mathematical calculation or by such cubic rule as the parties may agree upon.

Sec. 27. Round timber shall be scaled. 1915, c. 278. Any person measuring round timber, the quantity of which is estimated by the thousand, shall scale the same and mark upon each log surveyed by him the contents thereof, unless otherwise agreed by the parties contracting.

CHAPTER 47.

Timber upon Rivers, Streams and Adjacent Lands.

Sec. 1. Penalty for unlawful conversion of timber. R. S. c. 43, § 1. Whoever takes, carries away or otherwise converts to his own use, without the consent of the owner, any log suitable to be sawed or cut into boards, clapboards, shingles, joists or other lumber, or any mast or spar the property of another, whether the owner is known or unknown, lying in any river, pond, bay, stream or inlet, or on, or near the bank or shore thereof, or cuts out, alters or destroys any mark made thereon, without the consent of the owner, and with intent to claim the same, forfeits for every such log, mast or spar, twenty dollars, to be recovered on complaint; half for the state, and half for the complainant.

2 Me. 131; 3 Me. 203; 16 Me. 68; 64 Me. 442.

Sec. 2. Such unlawful conversion declared larceny. R. S. c. 43, § 2. Whoever fraudulently and wilfully takes and converts to his own use, either by himself or by another in his employment, any such log, mast or spar, lying as aforesaid, for the purpose of being driven to a market or place of manufacture, is guilty of larceny and shall be punished accordingly.

See c. 122, §§ 1, 8; 64 Me. 443.

Sec. 3. Presumptive evidence of guilt; double damages recoverable. R. S. c. 43, § 3. In prosecutions under sections one and two, if such log, mast or spar is found in the possession of the accused partly destroyed, partly sawed or manufactured, or with the marks cut out or altered, not being his property, it is presumptive evidence of his guilt; and the burden of proof is then on him; and whoever is guilty of the offense described in either section is also liable to the owner, in an action of debt, for double the value of the log, mast or spar so dealt with.

64 Me. 442.

Sec. 4. Right of owner to search mill, boom or raft, for lost logs; penalty for obstructing. R. S. c. 43, § 4. The owner of such logs, masts or spars, may at any time, by himself or his agent, enter in a peaceable manner upon any mill, mill-brow, boom or raft of logs, or other timber, in search of such lost property; and whoever wilfully prevents or obstructs such search forfeits for each offense not less than twenty, nor more than fifty dollars, to the person by whom or on whose account such entry was claimed, to be recovered in an action of debt.

Sec. 5. Logs or timber in any boom on Saco river or tributaries, to be released on request, if safe to do so; liability for damages for neglect. R. S. c. 43, § 5. If any boom on the Saco river, or any of the waters connected therewith, is so placed or constructed, as to prevent the free and usual passage of timber down the river, the owner or occupant thereof, at his own expense, shall release and turn out the timber so detained, when requested to do so by the owner thereof, if it can be done with safety; and

CHAP. 47

if for two days after request, he neglects or refuses to do so, he is liable to the owner of the timber, in an action on the case, for all damages by him sustained.

Sec. 6. When logs or timber of different owners are intermixed, how driven, and lien for expenses. R. S. c. 43, § 6. Any person, whose timber in any waters of the state is so intermixed with the logs, masts or spars of another, that it cannot be conveniently separated for the purpose of being floated to the market or place of manufacture, may drive all timber with which his own is so intermixed, toward such market or place, when no special and different provision is made by law for driving it; and is entitled to a reasonable compensation from the owner, to be recovered after demand therefor on said owner or agent, if known, in an action on the case; he has a prior lien thereon until thirty days after it arrives at its place of destination, to enable him to attach it; and if the owner cannot be ascertained, the property may be libeled according to law, and enough of it disposed of to defray the expenses thereof; the amount to be determined by the court hearing the libel.

46 Me. 365; 71 Me. 39; 78 Me. 274; 88 Me. 415, 423; 93 Me. 525.

Sec. 7. Logs or timber, lodged on banks, may be forfeited, if advertised. R. S. c. 43, § 7. Logs or other timber carried by freshets, or otherwise lodged, upon lands adjoining any waters, are forfeited to the owner or occupant thereof, after they have so remained for two years, if such lands, during that time were improved; otherwise after six years; provided, that such owner or occupant, within one year after the same were found so lodged, advertises, as nearly as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon, and the place where found, three weeks successively in some newspaper in the county, if any, otherwise in the state paper.

110 Me. 16.

Sec. 8. Owner may remove timber, on tender of damages; otherwise, damages for owner. R. S. c. 43, § 8. The owner of said timber may enter on said land and remove it at any time before forfeiture, having previously tendered to the owner or occupant thereof, a reasonable compensation for all damages occasioned by the lodging, remaining or removal of said timber, and the expense of advertising it; but if the timber is removed by the owner, or otherwise, without such tender, the owner of the land may recover, in an action of trespass, the damages aforesaid.

31 Me. 24; 57 Me. 276; 62 Me. 44; 76 Me. 386; 110 Me. 16.

Sec. 9. Penalty for unlawful conversion of railroad sleepers, ship knees or cedar lumber on ponds or streams; double damages. R. S. c. 43, § 9. Whoever wilfully and fraudulently takes, carries away or otherwise converts to his own use, any railroad sleeper, knee or other ship timber, or cedar for shingles or other purposes, the property of another, whether known or not, without his consent, lying in any river, stream, pond, bay or inlet, or on or near the shore thereof; or cuts out, alters or destroys any mark thereon, forfeits ten dollars for each offense, to be recovered and appropriated as in section one; and is liable to the owner in double the

amount thereof in an action of debt; and such owner has all the rights and is subject to all the liabilities provided for the owner of logs, masts and spars, in the six preceding sections.

57 Me. 9.

Note. Maliciously driving nails into logs intended for manufacture, penalty, c. 129, § 13.

Letting loose rafts or logs, c. 129, § 14.

CHAPTER 48.

Standard Weights and Measures, Meridian Lines and Standards of Length.

Sections 1-7	State Sealer of Weights and Measures.
Sections 8-27	Local Sealers of Weights and Measures.
Section 28	Measurers of Salt, Corn and Grain.
Sections 29-30	Standard Weight and Measure.
Section 31	Sale of Ice by Weight.
Sections 32-37	Meridian Lines and Standards of Length.

State Sealer of Weights and Measures.

Sec. 1. State sealer of weights and measures. 1911, c. 82, § 1. 1913, c. 116, § 1. The commissioner of agriculture shall be the state sealer of weights and measures.

The standard weights and measures furnished by the government of the United States in accordance with the joint resolution of Congress approved June fourteenth, eighteen hundred and thirty-six, and any additions thereto and renewals thereof certified to by the United States bureau of standards, and weights, measures, balances and apparatus added by the state sealer of weights and measures and verified by the United States bureau of standards, shall be the standards of weights and measures throughout this state.

Sec. 2. Standards adopted by the state. 1911, c. 82, § 2. 1913, c. 116, § 1. The standards adopted by the state shall be kept at the state house under the supervision of the state sealer and shall not be removed or used except for the adjustment of a set of working standards that are copies of the original standards or for scientific purposes or to be verified by the national bureau of standards. The state sealer shall maintain the state standards in good order and shall submit them at least once in ten years to the national bureau of standards for certification. He shall at least once in five years cause the standards of the several cities and towns to be compared and corrected to conform with the state standards.

Sec. 3. Shall establish tolerances in this state; other powers and duties. 1913, c. 116, § 1. The state sealer of weights and measures shall after consultation with, and with the advice of, the national bureau of standards, establish tolerances for use in this state and said tolerances shall be the legal tolerances of the state. He shall have general supervision of the

CHAP. 48

weights and measures, and weighing and measuring devices of the cities and towns of the state, and cause the enforcement of all laws pertaining to weights and measures in use in the state and may appoint such agents as he desires to assist in the enforcement.

Sec. 4. State sealer shall enforce provisions of law. 1913, c. 116, § 2. He shall enforce the provisions of law requiring municipal officers to procure and maintain standards of weights and measures, and the appointing of a sealer of weights and measures. He may appoint a deputy who shall have the authority conferred by the two following sections.

Sec. 5. State sealer or deputy shall inspect work of local sealers. 1913, c. 116, § 2. He or his duly appointed deputy shall visit the various cities and towns in the state in order to inspect the work of the local sealers, and may at all times inspect and test the weights, measures and balances of any person, firm, association or corporation used, or to be used, in purchasing from or selling to the public any goods, wares, merchandise or other commodities; if any such weights, measures or balances are found to be inaccurate or defective, he shall forthwith cause the same to be corrected or condemned.

Sec. 6. May test commodities offered for sale; may have access to buildings. 1913, c. 116, § 2. He, or his duly appointed deputy may, at irregular intervals, examine commodities sold or offered for sale and test them for correct weight, measure or count, and bring complaint for violations of sections eight to twenty-five, both inclusive, of this chapter. He, or his duly appointed deputy may for the purpose stated above, and in the general performance of his or their official duties, have access without formal warrant to any stand, place, building or premises, or may stop any vendor, pedler, junk dealer, coal wagon, ice wagon, or any person for the purpose of making the proper tests.

Sec. 7. Record and annual report. 1911, c. 82, § 3. He shall keep a record in detail of the work of his office and shall annually, on or before the first day of December, make a written report of the work and the expenses of his office to the governor and council.

Local Sealers of Weights and Measures.

Sec. 8. Municipal officers shall appoint sealer of weights and measures; may be sealer in adjoining towns. R. S. c. 44, § 1. 1913, c. 116, § 3. 1915, c. 99. The municipal officers of each town shall annually in the month of April appoint a sealer of weights and measures, not necessarily a resident therein, removable at pleasure, and may fill vacancies; for each month that said municipal officers neglect this duty they severally shall forfeit ten dollars. Within ten days after each such appointment the clerk of each city or town shall communicate the name of the person so appointed to the state sealer of weights and measures, and for the neglect of this duty shall forfeit ten dollars. Such sealer of weights and measures in any town may be sealer for several adjoining towns if such is the pleasure of the municipal officers therein, provided such action receives the approval of the state sealer of weights and measures.

Sec. 9. Treasurers of each town shall keep town standards. R. S. c. 44, § 2. 1913, c. 116, § 3. The treasurers of each town, at the expense thereof, or jointly with the treasurers of adjacent towns, shall constantly keep as town standards a set of beams and weights and measures subject to the approval of the state sealer and conformable to the state standards. Said treasurers shall cause all beams and weights and measures belonging to their towns to be proved and sealed by the state standards once in five years, beginning the first day of January, nineteen hundred thirteen, and for every neglect of said duty they forfeit one hundred dollars.

Sec. 10. Cities may own scales; appoint weighers and deputy sealers. R. S. c. 44, § 3. 1913, c. 116, § 3. Any city may purchase and keep for use scales for weighing hay and other articles, appoint weighers and fix their fees, to be paid by the purchaser. The municipal officers of cities and towns may appoint a deputy sealer of weights and measures to hold office during their pleasure and fix his compensation. Such deputy shall act under the direction of the sealer of weights and measures in the municipality, and shall have the same authority as the sealer in the performance of his duties.

Sec. 11. City and town sealers shall keep records of weights and measures sealed; shall make annual report. R. S. c. 44, § 4. 1913, c. 116, § 3. The several city and town sealers and other persons authorized to inspect weights and measures shall keep records of all weights and measures, balances and measuring devices inspected, sealed or condemned by them, giving the name of the owner or agent, the place of business, the date of inspection and kind of apparatus so inspected, sealed or condemned. He shall make an annual report, duly sworn to, on or before the first day of November of each year, to the state sealer, giving in addition to the above an inventory of the standards and apparatus in his possession, and such other information as he may deem important, or as the state sealer may require.

Sec. 12. Duty of sealer to receive and receipt for standards; penalty for neglect. R. S. c. 44, § 6. 1915, c. 97. The person appointed as provided in section eight, shall receive the standards and seal from the treasurer, giving a receipt therefor, describing them and their condition, and therein engaging to re-deliver them at the expiration of his office in like good order; and he shall be accountable for their due preservation while in his possession. For every neglect of any duty prescribed by this chapter he shall forfeit ten dollars.

68 Me. 470.

Sec. 13. Sealers shall give notice of times and places for sealing weights and measures. R. S. c. 44, § 7. The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement, or by posting in one or more public places in their respective cities and towns notices to all inhabitants or persons having usual places of business therein and who use weights, measures or balances for the purpose of selling any goods, wares, merchandise or other commodities or for public weighing to bring in their weights, measures and balances to be adjusted and sealed. Such sealers shall attend in one or more convenient places and shall adjust, seal and record all weights, measures and balances so brought in.

CHAP. 48

Sec. 14. Sealers shall visit persons who neglect to comply. R. S. c. 44, § 8. After giving said notice the said sealers shall go to the houses, stores and shops of persons who neglect to comply therewith, and having entered the same with the assent of the occupants thereof, shall adjust and seal their weights, measures and balances.

Sec. 15. Shall visit annually owners of hay, coal and platform scales and test same. R. S. c. 44, § 9. Said sealers shall go once a year and oftener if necessary, to every hay and coal scale, to every platform balance within their respective cities and towns that cannot be easily or conveniently removed, and shall test the accuracy of and adjust and seal the same.

Sec. 16. All scales, weights and measures may be tested any time. R. S. c. 44, § 10. All persons using any scales, weights or measures for the purpose of buying or selling any commodity, may, when they desire it, have the same tested and sealed by the sealers of weights and measures at the office of any of said sealers.

Sec. 17. If sealer cannot seal any weights, etc., he may mark to show inspection; use of weights, etc., that cannot be adjusted by sealers forbidden. R. S. c. 44, § 11. In case a sealer of weights and measures cannot seal any weights, measures and balances in the manner before provided, he may mark them with a stencil, or by other suitable means so as to show that they have been inspected; but he shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standards. If such weights, measures or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall affix to such weights, measures or balances a notice, forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards; and whoever removes said notice without consent of the officer affixing the same, shall for each offense forfeit a sum not less than ten dollars and not exceeding fifty dollars.

Sec. 18. Sealer shall be furnished with appliances for testing weights, etc. R. S. c. 44, § 12. A sealer when visiting the place of business of any person for the purpose of testing any weights, measures or balances, may use for that purpose such weights, measures or balances as he can conveniently carry with him, and each city and town shall furnish its sealer with one or more duplicate sets of weights, measures and balances, which shall at all times be kept to conform to the standards furnished by the state, and all weights, measures and balances so sealed shall be deemed to be legally sealed the same as if tested and sealed with the standard weights, measures and balances.

Sec. 19. False weights and measures may be seized. R. S. c. 44, § 13. A sealer of weights and measures may seize without a warrant such weights, measures or balances as may be necessary to be used as evidence in cases of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owners, or forfeited as the court may direct.

Sec. 20. Proceedings, when complaint is made, that incorrect weights, etc., are being used; penalty for using weight, etc., after refusal of permission to test. R. S. c. 44, § 14. When a complaint is made to a sealer of weights and measures by any person that he has reasonable cause to believe

or when such sealer himself has reasonable cause to believe that a weight, measure or balance used in the sale of any commodity within his city or town is incorrect, the said sealer shall go to the place where such weight, measure or balance is and shall test the same, and mark it according to the result of the test applied thereto; and if the same is incorrect and cannot be adjusted, the said sealer shall attach a notice thereto, certifying that fact, and forbidding the use thereof until it has been made to conform to the authorized standard. Any person using a weight, measure or balance after a sealer has demanded permission to test the same, and has been refused such permission shall be liable to a penalty of not less than ten, nor more than one hundred dollars.

Sec. 21. How incorrect weights, etc., shall be stamped. R. S. c. 44, § 15. All weights, measures and balances that cannot be made to conform to the standard shall be stamped "condemned" or "CD" by the sealer, and no person shall thereafter use the same under the penalties provided in the case of the use of false weights and measures.

Sec. 22. Scales shall be sealed before use. R. S. c. 44, § 16. Before any weights, measures, scales, steelyards, beams or balances are used, they shall be sealed by a public sealer of weights and measures.

68 Me. 470.

Sec. 23. Sales by gross weight. R. S. c. 44, § 17. Such articles as are sold or exchanged in any market or town in the state by gross or avoirdupois weight, shall be sold or exchanged as follows: twenty-five avoirdupois pounds constitute one quarter; four quarters, one hundred; and twenty hundreds, one ton; and all other articles, usually sold by tale, shall be sold by decimal hundred.

Sec. 24. Penalty for use of false scales or measures; presumptive evidence. R. S. c. 44, § 18. 1913, c. 116, § 2. Whoever by himself, or by his servant, or as the agent or servant of another, shall use or retain in his possession any false scales, weight or measure or weighing or measuring device in the buying or selling of any commodity or thing, or whoever after a weight, measure, scale, balance or beam has been adjusted and sealed, shall alter it so that it does not conform to the public standard and shall fraudulently make use of it, or whoever shall dispose of any condemned scales, weight, measure, or weighing or measuring device, contrary to law, or remove any tag, stamp or mark placed thereon by the sealer; or whoever by himself, or by his agent or servant, or as agent or servant of another, shall sell, offer or expose for sale less than the quantity he represents, or whoever by himself, or by his agent or servant, or as the agent or servant of another, shall sell, offer for sale, or have in his possession for the purpose of selling, any false scales, weight or measure, or any device or instrument to be used or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall for the first offense be punished by a fine of not more than fifty dollars; for the second offense by a fine of not less than twenty, nor more than two hundred dollars, and for any subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty, nor more than ninety days. The possession or use by any person of any false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise is pre-

CHAP. 48

sumptive evidence of knowledge by such person of the falsity of such weight, measure or other apparatus. Every sealer of weights and measures who has reasonable cause to believe that a weight, measure, scale, balance or beam has been altered since it was last adjusted and sealed shall enter the premises in which it is kept or used and shall examine the same.

Sec. 25. Penalty for using weights, etc., which have not been sealed. R. S. c. 44, § 19. Whoever sells by any other weights, measures, scales, beams or balances than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offense, and when by the custom of trade such weights, measures, scales, beams or balances are provided by the buyer, he shall, if he purchases by any other, be subject to a like penalty to be recovered by an action of tort to the use of the complainant.

See c. 37, § 15.

Sec. 26. Jurisdiction of courts. 1913, c. 116, § 2. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for all offenses against the laws pertaining to weights and measures.

Sec. 27. Sealer may be paid salary and fees paid into treasury. R. S. c. 44, § 20. The city council of a city may by ordinance, and a town may by by-law, provide that the sealer of weights and measures for their city or town shall be paid by a salary, and that he shall account for and pay into the treasury of the city or town the fees received by him by virtue of his office; and where such salary is paid no fees shall be charged for services rendered under section thirteen.

Note. Sealers of weights and measures shall annually seal all measures used for sale of milk, c. 37, § 15; duties of, as to charcoal baskets, c. 46, § 7; fees of, c. 118, § 23.

Measurers of Salt, Corn and Grain.

Sec. 28. Appointment and fees of measurers. R. S. c. 39, § 38. The municipal officers of towns annually may appoint measurers of salt, corn and grain therein, who shall receive such fees from the purchaser as said officers establish; and, in every contract made in the state for the sale of salt by the hogshead, such hogshead shall consist of eight bushels; and, when the buyer or seller requests, salt, corn or grain bought or sold in places where such measurers live shall be measured by them.

Standard Weight and Measure.

Sec. 29. Standard weight fixed. R. S. c. 39, § 39. 1913, c. 124. 1915, c. 110. The standard weight of a bushel of potatoes is sixty pounds; of apples, forty-four pounds; of dried apples, twenty-five pounds; of wheat, sixty pounds; of corn or rye, fifty-six pounds; of cracked corn, feed, or meal of any kind except oatmeal, fifty pounds; of barley or buckwheat, forty-eight pounds; of carrots or English turnips, fifty pounds; of onions, fifty-two pounds; of rutabaga, sugar beets, mangel-wurzel, turnip and other beets, sixty pounds; of parsnips, forty-five pounds; of beans, sixty pounds; of Lima beans, fifty-six pounds; of shell beans, twenty-eight pounds; of soy beans, fifty-eight pounds; of scarlet or white runner pole beans, fifty pounds; of string beans, twenty-four pounds; of Windsor (broad) beans,

forty-seven pounds; of beet greens, dandelions, kale or spinach, twelve pounds; of parsley, eight pounds; of peas, sixty pounds; of unshelled green peas, twenty-eight pounds; of wrinkled peas, fifty-six pounds; of rough rice, forty-four pounds; of oats, thirty-two pounds; of green peanuts, twenty-two pounds; of roasted peanuts, twenty pounds; of Turk's Island or other coarse grades of salt, seventy pounds; of Liverpool or other fine grades of salt, sixty pounds; of lime, seventy pounds; of hair used in masonry, well dried and cleaned, eleven pounds; of strawberries, raspberries or blackberries, forty pounds; of blueberries, forty-two pounds; of currants, forty pounds; of cranberries, thirty-two pounds; of peaches, forty-eight pounds; of pears, fifty-eight pounds; of dried peaches, thirty-three pounds; of sweet potatoes, fifty-four pounds; of quinces, forty-eight pounds; of tomatoes, fifty-six pounds; all to be in good order and fit for shipping or for market; the measure of each of these articles shall be determined as aforesaid at the request of the vendor or vendee; and if either party refuses so to do he forfeits twenty cents for each bushel, to the person prosecuting therefor within thirty days.

The standard weight of a bushel of herd's-grass seed when well cleaned and in good condition is forty-five pounds; of clover seed, sixty pounds; of alfalfa seed, sixty pounds; of flaxseed, fifty-six pounds; of hemp seed, forty-four pounds; of Hungarian grass seed, forty-eight pounds; of orchard grass seed, fourteen pounds; of redtop seed, fourteen pounds; of sorghum seed, fifty pounds; of timothy seed, forty-five pounds; of millet seed, fifty pounds; of Japanese millet seed, thirty-five pounds; of bran, twenty pounds; of Sea Island cotton seed, forty-four pounds; of upland cotton seed, thirty pounds.

The standard weight of a barrel of flour is one hundred and ninety-six pounds; of a barrel of potatoes in good order and fit for shipping is one hundred and sixty-five pounds; of a barrel of sweet potatoes in like condition, one hundred and fifty pounds.

Sec. 30. Sale of fruits, nuts and vegetables, by measure, regulated. 1913, c. 116, § 4. All fruits, nuts and vegetables, if sold by measure, shall be sold by dry measure, United States standard, and shall be measured by level measure. Baskets or other receptacles holding one quart or less which are to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, huckleberries, raspberries or gooseberries, shall be of the capacity of one quart, one pint or one-half pint, United States standard, dry measure. Whoever sells or offers for sale or has in possession with intent to sell, any of the aforesaid fruits in any basket or other receptacle holding one quart or less which does not conform to said standard, or conforming to said standard is not level measure, shall be punished by a fine of ten dollars for each offense. Said baskets or other receptacles shall not be required to be tested and sealed as provided by this chapter, but any sealer or health officer may test the capacity of any basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and if the same is found to contain less than the standard measure, or if the quantity of such fruit is otherwise less than as herein provided, he shall seize the same and make complaint against the vendor.

Sale of Ice by Weight.

Sec. 31. Sale of ice by weight, when requested. 1913, c. 116, § 4. A dealer in ice who on request of the purchaser of ice refuses or neglects to weigh the same when delivered or gives false weight shall for each offense be punished as provided in section twenty-four of this chapter. Whoever, having charge of the delivery of ice from a wagon, not being a dealer in ice, refuses on the request of the purchaser of ice to weigh the same when it is delivered, or gives false weight, shall be punished by a fine of not more than ten dollars.

Meridian Lines and Standards of Length.

Sec. 32. County commissioners shall erect and maintain meridian line; record to be kept by clerk of courts. R. S. c. 44, § 21. The county commissioners, at the expense of their several counties, shall erect and forever maintain therein, at such place or places remote from electrical disturbances as the public convenience requires, a true meridian line to be perpetuated by stone pillars with brass or copper points firmly fixed on the tops thereof, indicating the true range of such meridian; and shall protect the same and provide a book of records to be kept by the clerk of courts, or by a person appointed by them nearer to such structure, and accessible to all persons wishing to refer thereto.

Sec. 33. Care and custody. R. S. c. 44, § 22. Such structures shall be under the care and custody of such clerks; and any surveyor residing in said county or engaged in surveying therein, shall have free access thereto for the purpose of testing the variation of the magnetic needle.

Sec. 34. Surveyors shall annually verify compass; shall record declination of needle, etc., and shall enter same in field note-book; penalty for neglect. R. S. c. 44, § 23. When such meridian lines have been established and completed every land surveyor shall, at least annually, before making any survey, test and verify his compass, or other instrument using the magnetic needle, by the meridian line so established in the county where his surveys are to be made, and shall enter the declination of such needle from the true meridian in the book mentioned in section thirty-two, together with the style and make of such instrument and its number, if any, and the date and hour of observation, and subscribe his name thereto for future reference; and shall insert corresponding entries as to date and declination, in his field note-books, which field note-books shall also show dates at which his surveys are made. Neglect or refusal to comply with this section shall render such surveyor liable to a penalty of twenty-five dollars for each neglect, to be recovered on complaint in the county where any survey is made, half to the complainant and half to the county. The provisions of this section shall not apply to such surveys as are made by angles from some fixed, permanent line, or by a solar instrument and independent of the magnetic needle.

Sec. 35. County commissioners shall erect and maintain standard of length; description thereof; their care and custody; duty of surveyors to verify tape or chain and record result; penalty for neglect. R. S. c. 44, § 24. The county commissioners at the expense of the several counties shall also

erect and forever maintain therein, at such place or places as the public convenience may require, a standard of length of not less than one hundred feet, with suitable subdivisions marked thereon. Such standard may consist of stone monuments permanently fixed with metal plates on the tops thereof, properly marked and protected; or of a steel bar of the necessary length properly marked and suitably placed and protected. All such standards shall be made to correspond with the standard of the United States Bureau of Weights and Measures, and shall be provided with proper means for determining the tension of tapes or chains during comparison. They shall be under the care and custody of the clerk of courts, who shall keep a suitable book for the record of comparisons, and they shall be accessible to any person for comparing any tape, chain, or other linear measure. Every surveyor shall before making surveys in this state, and at least annually, compare his tape or chain used in such surveys with the standard in the county in which he resides or in which surveys are to be made; and shall record the result in the book provided for that purpose, giving description of such tape or chain, with the difference, if any, between the same and such standard, together with the date and temperature and the tension on such tape or chain at the time of comparison. When such standard shall have been completed in any county, any surveyor residing or making surveys in such county who shall neglect or refuse to comply with the terms of this section, shall be liable to the penalties and disability set forth in section thirty-four.

Sec. 36. Penalty for injuring meridian lines. R. S. c. 44, § 25. Whoever wilfully displaces, alters, defaces, breaks or otherwise injures any of the pillars or points, plates, enclosures, bars, locks, bolts, or any part of the structure of any meridian line or standard of length shall forfeit not exceeding one hundred dollars, to be recovered by indictment, half to the prosecutor and half to the county, and shall also be liable in an action of debt for the amount necessarily expended in repairing damages caused by his act.

Sec. 37. Governor to appoint commissioner to verify meridians. R. S. c. 44, § 26. When such meridian line or standard of length is established, repaired or rebuilt in any county, the governor with the advice and consent of the council shall appoint a competent commissioner, not necessarily a resident of this state, to inspect and verify the same. Such commissioner shall in case of a meridian line verify the same by astronomical observation, and in his report shall give an accurate description of such structures, its latitude and longitude, and the declination of the needle at the time; and in case of a standard of length shall give a description of the structure, its location and exact length as determined by comparison with some authentic standard from the United States Bureau of Weights and Measures. All such reports shall be full and accurate and be deposited in the office of the secretary of state, and a certified copy shall be filed and recorded in the office of the clerk of courts in the county where such structure is situated. Such commissioner shall receive from the state such just compensation as the governor and council shall allow.

CHAPTER 49.

Provisions Relating to Labor.

- Sections 1- 8 State Board of Arbitration and Conciliation.
Sections 9-16 Department of Labor and Industry.
Sections 17-31 Labor of Women and Children.
Section 32 Seats for Female Employees.
Section 33 Custodians of Elevators.
Sections 34-35 Weekly Payment of Wages.
Sections 36-37 Preference to Maine Workmen and Contractors.
Sections 38-44 Labels of Workingmen's Unions.

State Board of Arbitration and Conciliation.

Sec. 1. Appointment and qualification of state board of arbitration and conciliation; duties, authority to make rules; report. 1909, c. 229, §§ 1, 2, 3. 1913, c. 143. The state board of arbitration and conciliation as heretofore established shall consist of three members appointed by the governor, with the advice and consent of the council, from time to time upon the expiration of the terms of the several members, for terms of three years. One member shall be an employer of labor or selected from some association representing employers of labor, and another shall be an employee or an employee selected from some bona fide trade or labor union and not an employer of labor. Vacancies occurring during a term shall be filled for the unexpired term. The board shall hold a meeting on the third Wednesday of September in each year and shall organize by choosing from its members a chairman and secretary. It shall be the duty of the board to endeavor to settle disputes, strikes and lockouts between employers and employees. The board shall from time to time make such rules of procedure as it deems necessary, and shall annually, on or before the first day of December, make a report to the governor and council, which shall be incorporated in and printed with the biennial report of the department of labor and industry.

See Const. of Me. Art. ix, § 1.

Sec. 2. Board shall be notified of strike, or threatened strike; proceedings in settlement of strike; governor may request state board to investigate. 1909, c. 229, § 4. Whenever it appears to the mayor of a city or the selectmen of a town that a strike is seriously threatened, or a strike actually occurs, he or they shall at once notify the state board of arbitration and conciliation and such notification may also be given by the employer or employees actually concerned in the strike or lockout. If, when such strike is threatened or actually occurs, it appears that as many as ten employees are directly concerned therein, the state board of arbitration and conciliation shall, as soon as may be, communicate with such employer and employees and endeavor by mediation to obtain an amicable settlement or

endeavor to persuade such employer and employees to submit the matter in controversy to a local board of arbitration and conciliation or to the state board. If the matter be submitted, the board to which it is submitted shall investigate such controversy and ascertain which party is mainly responsible or blameworthy for the existence of the same, and the board may make and publish a report finding such cause and assigning such responsibility or blame. The state board shall, upon request of the governor, investigate and report upon any controversy if in his opinion it threatens to affect the public welfare.

Sec. 3. Board may make inquiry into cause of controversy, hear parties and make written decision; effect of decision. 1909, c. 229, § 5. In any controversy where not less than ten employees are directly concerned the board shall, upon application as hereinafter provided, and as soon as practicable, visit the place where the controversy exists and make careful inquiry into its cause, and the board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both to adjust said controversy, and make a written decision thereof, which shall at once be made public, shall be open to public inspection, and shall be recorded by the secretary of the board; said decision shall for six months be binding on the parties who join in the application or until the expiration of sixty days after either party has given notice to the other in writing of his intention not to be bound thereby; such notice may be given to the employees by posting it in three conspicuous places in the shop, factory, yard, or other place where they work.

Sec. 4. Application for inquiry; secretary shall give notice of time and place of hearing. 1909, c. 229, § 6. The application for such inquiry may be signed by the employer or by a majority of the employees in the department of the business in which the controversy exists or by their duly authorized agent or by both parties, and, if signed by an agent claiming to represent a majority of the employees, the board shall satisfy itself that he is duly authorized to do so. The application shall contain a statement of the matter in controversy and a promise to continue in business or at work without any strike or lockout until the decision of the board, if such decision is made within three weeks after the date of filing the application. The secretary of the board shall forthwith after such filing cause public notice to be given of the time and place of hearing on the application, unless both parties join in the application and present therewith the written request that no public notice shall be given. If such request is made, notice shall be given to the parties in such a manner as the board shall order, and the board may give public notice notwithstanding such request.

Sec. 5. Authority to summon witnesses and require production of books. 1909, c. 229, § 7. The board may summon as witnesses any operative or any person who keeps the record of wages earned in the department of business in which the controversy exists and may require the production of books which contain the record of wages paid. Summonses may be signed and oaths administered by any member of the board. Witnesses

CHAP. 49

summoned by the board shall be allowed the same fees as are paid to witnesses in the supreme judicial court; these fees together with all necessary expenses of the board shall be paid by the treasurer of state on warrants drawn by the governor and council.

Sec. 6. Controversy may be submitted to local board of arbitration; decision. 1909, c. 229, § 8. The parties to any controversy described in section three may submit such controversy to a local board of arbitration and conciliation which may be either mutually agreed upon or may be composed of three persons, one of whom shall be designated by the employer, one by the employees or their duly authorized agent; the third, who shall be chairman, by the other two; such board shall have all the powers exercised by the state board, and its decision shall have the same effect as that of the state board. The decision of said board shall be rendered within ten days after the close of any hearing held by it and shall at once be filed with the clerk of the municipality where the controversy arose, and a copy thereof shall be filed with the secretary of the state board by the clerk of the said municipality. Each of said arbitrators shall be entitled to receive three dollars for each day of actual service, to be paid by the treasurer of state on a warrant drawn by the governor and council.

Sec. 7. Advertisements during strike or disturbance, regulated; when provision not operative. 1913, c. 16, §§ 1, 2. If an employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations that a strike, lockout or other labor disturbance exists. The provisions of this section shall cease to be operative when the state board of arbitration and conciliation shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Said board shall determine this question as soon as may be, upon the application of the employer.

Sec. 8. Penalty for violation. 1913, c. 16, § 3. Whoever, whether a person, firm, association or corporation, violates the preceding section shall be punished by a fine of not less than twenty-five, nor more than fifty dollars.

Department of Labor and Industry.

Sec. 9. Appointment of commissioner; deputy; salaries and expenses shall be audited; unexpended balance. 1911, c. 65, §§ 1, 7, 8. 1915, c. 348, §§ 2, 3. A state department of labor and industry shall be maintained under the direction of an officer whose title shall be commissioner of labor and industry, and state factory inspector. He shall be appointed by the governor, with the advice and consent of the council, for a term of three years, and shall hold office until his successor is appointed and qualified. He shall have an office in the state capitol. He shall appoint a deputy who shall be clerk of the department, and deputy state factory inspector, and shall hold office during the pleasure of the commissioner; he shall

also appoint a stenographer for the department and a woman factory inspector, and may employ special agents and such other assistants as may be required for the work of the department. The special agents and other assistants shall work under the supervision and direction of the commissioner and shall be paid for their services such compensation as he may deem proper, not exceeding five dollars a day and necessary traveling expenses. All expenses of the department shall be audited by the state auditor and shall be payable upon proper vouchers certified by the commissioner; provided, that the amount thereof shall not exceed for any two years the sum of fourteen thousand dollars, making the total annual appropriation for the department for all purposes, exclusive of the salaries of the commissioner, his deputy and a stenographer, seven thousand dollars. Any unexpended balance to the credit of the department of labor at the close of any year in which the legislature regularly meets shall be carried over and made available for use in the following year.

Sec. 10. Work of department; enforcement of laws relating to employment of minors and women; bulletins. 1911, c. 65, §§ 2, 9. The department shall collect, assort and arrange statistical details relating to all departments of labor and industrial pursuits in the state; to trade unions and other labor organizations and their effect upon labor and capital; to the number and character of industrial accidents and their effect upon the injured, their dependent relatives and upon the general public; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the state, including the names of firms, companies or corporations, where located, the kind of goods produced or manufactured, the time operated each year, the number of employees classified according to age and sex, and the daily and average wages paid each employee; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the industries of the state. The commissioner of labor and industry shall cause to be enforced all laws regulating the employment of minors and women; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads and in other places; all laws regulating the payment of wages, and all laws enacted for the protection of the working classes. He shall, on or before the first day of January, biennially, report to the governor, and may make such suggestions and recommendations as he may deem necessary for the information of the legislature. He may from time to time, cause to be printed and distributed bulletins upon any subject that shall be of public interest and benefit to the state.

Sec. 11. Authorized to gather facts and statistics; to have a seal; may take testimony; penalty for refusal to testify; sources of information shall be confidential. 1911, c. 65, § 3. The commissioner may furnish a written or printed list of interrogatories for the purpose of gathering such facts and statistics as are contemplated herein, to any person, or the proper officer of any corporation operating within the state, and may require full and complete answers thereto under oath; the commissioner shall have a seal, and may take and preserve testimony, issue subpoenas, administer oaths, and examine witnesses under oath in all matters relating to the duties herein

CHAP. 49

required of said department of labor and industry; such testimony shall be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the commissioner shall be paid, from any funds at the disposal of the department, the same fees as witnesses before the supreme judicial court. Whoever, being duly summoned under the provisions of this section, shall wilfully neglect or refuse to attend, or refuse to answer any question propounded to him concerning the subject of such examination as provided in this section, or whoever being furnished by the commissioner with a written or printed list of interrogatories, shall neglect or refuse to answer and return the same under oath, shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment; provided, however, that no witness shall be compelled to go outside of the county in which he resides, to testify. In the report of said department no use shall be made of the names of individuals, firms or corporations supplying the information called for by this section, unless by written permission; such information being confidential and not for the purpose of disclosing personal affairs.

Sec. 12. Powers of commissioner or agent to enter manufacturing establishments; penalty for refusing entrance or information; duty when conditions are found unsanitary, unsafe or injurious to health; penalties and their recovery. 1911, c. 65, § 4. 1915, c. 348, §§ 1, 4. The commissioner, as state factory inspector, and any authorized agent of the department of labor and industry, may enter any factory or mill, workshop, private works or state institutions which have shops or factories, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this section and the two preceding sections, and may examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places, and may make a record of such inspection. Whoever shall refuse to admit or shall unreasonably delay the commissioner, or any authorized agent of the department of labor and industry, in so entering, or shall refuse to give the information so desired by said commissioner or authorized agent, shall be punished by a fine not exceeding one hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment in the discretion of the court. If the commissioner as state factory inspector, or any authorized agent of the department of labor and industry, shall find upon such inspection that the heating, lighting, ventilation or sanitary arrangement of any workshops or factories is such as to be injurious to the health of the persons employed or residing therein or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs and machinery in such workshops and factories are located or are in a condition so as to be dangerous to employees and not sufficiently guarded, or that vats, pans, or any other structures, filled with molten metal or hot liquids, are not surrounded with proper safeguards for preventing accidents or injury to those employed at or near them, he shall notify, in writing, the owner, proprietor or agent

of such workshops or factories to make, within thirty days, the alterations or additions by him deemed necessary for the safety and protection of the employees; and if such alterations or additions are not made within thirty days from the date of such written notice, or within such time as said alterations or additions can be made with proper diligence upon the part of such proprietors, owners or agents, said proprietors, owners or agents so notified shall be deemed guilty of a misdemeanor, and shall be punished by a fine of not less than twenty-five, nor more than two hundred dollars, or by imprisonment not more than thirty days, or by both such fine and imprisonment at the discretion of the court. All fines or penalties provided in this section and the preceding section may be recovered or enforced by complaint or indictment; and in all prosecutions under said sections, trial justices and judges of the municipal and police courts, within their counties, shall have, by complaint, original and concurrent jurisdiction with the supreme judicial court and superior courts.

See c. 30, § 46.

Sec. 13. Terms defined. 1911, c. 65, § 5. The following terms used in the four preceding sections shall have the following meanings: The word "person" means an individual, corporation, partnership, company or association. The word "factory" means any premises where steam, water or other mechanical power is used in aid of any manufacturing process there carried on. The word "workshop" means any premises, room or place, not being a factory as above defined, wherein any manual labor is exercised by way of trade, or for the purpose of gain in or incidental to any process of making, altering, repairing, ornamenting, finishing or adapting for sale any article or part of an article, and to which or over which premises, room or place the employer of the person or persons working therein has the right of access or control; provided, however, that the exercise of such manual labor in a private house, or a private room by the family dwelling therein, or by any of them, or in case a majority of persons therein employed are members of such family, shall not of itself constitute such house or room a workshop within this definition. The aforesaid terms shall have the meanings above defined for them respectively in all laws of this state relating to the employment of labor, unless a different meaning is plainly required by the context.

Sec. 14. Municipal officers required to furnish information. 1911, c. 65, § 6. All state, county, city and town officers are hereby directed to furnish the commissioner of labor and industry upon his request, such statistical or other information contemplated by sections ten, eleven and twelve as shall be in their possession as such officers.

Sec. 15. Reports of deaths, accidents and injuries shall be made to commissioner of labor. 1911, c. 102, §§ 1, 2. The person in charge of any factory, workshop or other industrial establishment shall within ten days after the occurrence, report in writing to the commissioner of labor and industry all deaths, accidents, or serious physical injuries sustained by any person therein or on the premises, stating as fully as possible the cause of the death or the extent and cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto

CHAP. 49.

as may be required by said commissioner, who may investigate the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings. No statement contained in any such report shall be admissible in evidence in any action arising out of the death or accident therein reported. The term "serious physical injuries," as used in this section, shall be construed to mean every accident which results in the death of the employee or causes his absence from work for at least six days thereafter.

Sec. 16. Penalty for failure to comply with § 15. 1911, c. 102, § 3. Any person in charge of properties as described in the preceding section, where accidents shall have occurred, who shall fail or refuse to send such notices and statements and otherwise comply with the provisions of said section, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars.

Labor of Women and Children.

Sec. 17. Employment of women and minors in manufacturing establishments regulated. R. S. c. 40, § 48. 1909, c. 70. 1911, c. 55, § 1. No female minor under eighteen years of age, no male minor under sixteen years of age, and no woman shall be employed in laboring in any manufacturing or mechanical establishment in the state, more than ten hours in any one day, except when it is necessary to make repairs to prevent the interruption of the ordinary running of the machinery, or when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-eight in a week; and no male person sixteen years of age and over shall be so employed as above, more than ten hours a day during minority, unless he voluntarily contracts to do so with the consent of his parents, or one of them, if any, or guardian, and in such case he shall receive extra compensation for his services; provided, however, that any female of eighteen years of age or over, may lawfully contract for such labor for any number of hours in excess of ten hours a day, not exceeding six hours in any one week, or sixty hours in any one year, receiving additional compensation therefor; but during her minority, the consent of her parents, or one of them, or guardian, shall be first obtained. Nothing in this section shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon, to prevent decay thereof or damage thereto.

Sec. 18. Employers shall post notices, stating number of hours' work required each day; employment for a longer time, unlawful. R. S. c. 40, § 49. 1911, c. 143. Every employer shall post in a conspicuous place in every room where such persons are employed, a notice printed in plain, large type, stating the number of hours' work required of them on each day of the week, the exact time for commencing work in the morning, stopping at noon for dinner, commencing after dinner, and stopping at night; the form of such printed notice shall be furnished by the commissioner of labor, and shall be approved by the attorney-general. And the employment of any such person for a longer time in any day than that so stated,

shall be deemed a violation of the preceding section, unless it appears that such employment is to make up for time lost on some previous day of the same week, in consequence of the stopping of machinery upon which such person was employed or dependent for employment.

Sec. 19. Penalty for violation; certificate of parent or guardian, shall be evidence of age; penalty for making false certificate. R. S. c. 40, § 50. Whoever, either for himself, or as superintendent, overseer or agent of another, employs or has in his employment any person in violation of the provisions of section seventeen, and every parent or guardian who permits any minor to be so employed, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense. A certificate of the age of a minor made by him and by his parent or guardian at the time of his employment, shall be conclusive evidence of his age in behalf of the hirer, upon any prosecution for a violation of the provisions of section seventeen. Whoever falsely makes and utters such a certificate with an intention to evade the provisions of this chapter relating to the employment of minors, shall be subject to a fine of one hundred dollars.

Note. Sections seventeen, eighteen and nineteen are inconsistent with P. L. 1915, c. 350, entitled, "An Act relative to the Hours of Employment of Women and Minors," and are repealed by the terms thereof; but that act has been referred to the people under section seventeen, article four, part three of the amended constitution of the state, and in accordance with a proclamation of Governor Curtis dated August 10, 1916 will be voted on by the people on the eleventh day of September, 1916.

Sec. 20. Employment of children under fourteen years of age regulated. 1915, c. 327, § 1. No child under fourteen years of age shall be employed, permitted or suffered to work in, about, or in connection with any manufacturing or mechanical establishment. No child under fourteen years of age shall be employed, permitted or suffered to work at any business or service for hire, whatever during the hours that the public schools of the town or city in which he resides are in session.

Sec. 21. Regulations for employment of minors between fourteen and sixteen years of age; issuance of work permits; physician's certificate may be required. 1915, c. 327, § 2. No minor between the ages of fourteen and sixteen years shall be employed, permitted or suffered to work in any of the aforementioned occupations unless the person, firm or corporation employing such child procures and keeps on file accessible to any truant officer, factory inspector or other authorized officer charged with the enforcement of sections twenty to thirty-one, both inclusive, of this chapter, a work permit issued to said child by the superintendent of schools of the city or town in which the child resides, or by some person authorized by him in writing. The person authorized to issue a work permit shall not issue such permit until such child has demonstrated his ability to read at sight and write simple sentences in the English language and perform simple arithmetical problems involving the fundamental processes of addition, subtraction, multiplication and division, such educational test to be prepared and furnished by the superintendent of schools or the school committee of each city and town in the state, or has furnished a certificate to that effect signed by any teacher in any of the public schools of the city or town in which such child resides, or by the principal of any approved private school; nor until he has received, examined, approved and filed satisfactory evidence of age showing that the child is fourteen years old

CHAP. 49

or upwards; such evidence shall consist of a certified copy of the town clerk's record of the birth of said child, or a certified copy of his baptismal record, showing the date of his birth and place of baptism, or a passport showing the birth. The superintendent of schools, or the person authorized to issue such work permit may require, in doubtful cases, a certificate signed by a physician appointed by the school board, or, in case there is no school physician, from the medical officer of the board of health, stating that such child has been examined by him, and, in his opinion, has reached the normal development of a child of its age, and is in sufficiently sound health and physically able to perform the work which he intends to do. The state factory inspector, his deputy or agent, may require a similar certificate in doubtful cases, of the minors employed under a work permit. A work permit when duly issued shall excuse such child from attendance at public school; but no person shall issue such permit to any minor then in or about to enter his employment or the employment of the firm or corporation of which he is a member, stockholder, officer or employee.

Sec. 22. Vacation permits for work during summer vacation. 1915, c. 327, § 2. Vacation permits shall be issued by the local superintendent of schools, or by some person authorized by him in writing, to minors between fourteen and sixteen years of age, on satisfaction of the same requirements, with the exception of the educational qualifications, as for the regular work permits, and shall entitle their holders to work during the summer school vacation. These permits shall be void after the first Monday of September following. They shall be known as vacation permits, shall be of different color from the work permits and shall state plainly the date after which they are void.

Sec. 23. Blanks to be furnished by commissioner of labor; permits to be in duplicate; papers forwarded to department; surrender and cancelation of permits. 1915, c. 327, § 2. The blank work permit and other papers required in the two preceding sections shall be formulated by the commissioner of labor and industry, and furnished by him to the persons authorized to issue work permits. The forms of such permits and other papers shall be approved by the attorney-general. Every work permit and every vacation permit shall be made out in duplicate. All duplicates, accompanied by the original papers on which such permits were issued, shall be forwarded to the department of labor and industry, by the officer issuing same, between the first and tenth days of each month. Said department shall examine said papers and promptly return them to the officer who sent them. Said original papers upon which said permits were issued shall be filed by said officer and preserved for such time as said permits are outstanding, or until the minor arrives at the age of sixteen. They shall be at all times accessible to the commissioner of labor and industry or any authorized agent of his department. Said officer shall return to said child all papers with him filed in proof of age, upon a surrender of the work permit. All permits thus surrendered shall be marked canceled by the officer receiving them. Whenever there is reason to believe that a work permit was improperly issued the commissioner of labor and industry, and state factory inspector, his deputy or agent, shall notify the local superintendent of schools of the place in

which said certificate was issued. The local superintendent shall cancel such permit when directed so to do by the commissioner of labor and industry.

Sec. 24. Blank employment certificates shall be prepared; notice to commissioner when employment is terminated. 1915, c. 327, § 2. Employment certificates, to be formulated by the commissioner of labor and industry, approved by the attorney-general, and supplied by the department of labor, shall be prepared by the employer of said child and mailed within twenty-four hours to the office of the commissioner to be kept on file by him. When such child leaves such employment, the employer shall return to the child the work permit by him filed, and immediately notify the commissioner of labor and industry that such child has left his employ.

Sec. 25. Record of age shall be received as evidence. 1915, c. 327, § 3. Any record of age, as provided under section twenty-one to determine whether or not a work permit may be issued to any child shall be received as evidence of the age of such child in any prosecution under sections twenty to thirty-one, both inclusive, of this chapter.

Sec. 26. Work permit shall be conclusive evidence; officer may demand documentary evidence of age of child employed. 1915, c. 327, § 4. A work permit in regular form and signed by a duly authorized officer, for all minors between the ages of fourteen and sixteen years, shall be conclusive evidence of age and educational attainment, in behalf of the employer of any child, upon any prosecution for violation of the provisions of the law relating to the employment of children. An inspector of factories, truant officer, or other officer charged with the enforcement of sections twenty to thirty-one, both inclusive, of this chapter, may make demand on any employer in or about whose place or establishment a minor apparently under the age of sixteen years is employed, permitted or suffered to work, that such employer shall either furnish him within ten days documentary evidence of age as specified in section twenty-one, or shall cease to employ, permit or suffer such child to work in such place or establishment.

Sec. 27. Punishment of employer for violation of law. 1915, c. 327, § 5. Any person, firm or corporation, agent or manager of any firm or corporation, who, either for himself or for some firm or corporation, or by himself, or through agents, servants or foremen, employs, permits or suffers any child to be employed, or to work in violation of any of the provisions of sections twenty to thirty, both inclusive, of this chapter, or otherwise fails to comply with any of the provisions of said sections, shall be punished by a fine of not less than twenty-five, nor more than two hundred dollars.

Sec. 28. Punishment of parent, guardian, or custodian of child, for violation of law. 1915, c. 327, § 5. Whoever, having any child under his control as parent, guardian, custodian, or otherwise, permits or suffers such child to be employed or to work in violation of any of the provisions of sections twenty to thirty, both inclusive, of this chapter, or whoever presents, or permits or allows any child under his control to present, to any employer, owner or superintendent, overseer or agent as required under section twenty-one any work permit containing any false statements as to the date of birth or age of such child, knowing them to be false, shall be punished by a fine of not less than ten, nor more than fifty dollars for each offense.

CHAP. 49

Sec. 29. Penalty for failure to perform duty. 1915, c. 327, § 5. Whoever being authorized to issue a work permit, shall knowingly fail to perform the duties of his office as required by the provisions of sections twenty to thirty, both inclusive, of this chapter, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense.

Sec. 30. Penalty for testifying to false statements. 1915, c. 327, § 5. Whoever being authorized to sign the foregoing work permit, or whoever signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record, or a physician's certificate, shall knowingly testify to any false statement therein, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense.

Sec. 31. Enforcement of penalties and fines. 1915, c. 327, § 6. All fines or penalties provided for by the terms of the eleven preceding sections may be recovered or enforced by complaint or indictment, and in all prosecutions under this chapter and amendments and additions thereto, trial justices and judges of the municipal and police courts within their counties shall have by complaint original and concurrent jurisdiction with the supreme judicial court and superior courts.

Seats for Female Employees.

Sec. 32. Chairs in stores, shops, etc., for women or girls. 1911, c. 26. The proprietor, manager or person having charge of any mercantile establishment, store, shop, hotel, restaurant or other place where women or girls are employed as clerks or help therein in this state shall provide chairs, stools or other contrivances for the comfortable use of such female employees for the preservation of their health and for rest when not actively employed in the discharge of their respective duties. Whoever violates this section shall be punished by a fine of not less than ten, nor more than one hundred dollars.

Custodians of Elevators.

Sec. 33. Management of elevators, how regulated. 1907, c. 4. No person, firm or corporation shall employ or permit any person under fifteen years of age to have the care, custody, management or operation of any elevator, or shall employ a person under eighteen years of age to have the care, custody, management or operation of any elevator running at a speed of over two hundred feet a minute. Whoever violates this section shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, for each offense.

109 Me. 450.

Weekly Payment of Wages.

Sec. 34. Weekly payment of wages; state, county, city and town employees; exceptions; penalty. 1911, c. 39. 1913, c. 26. 1915, c. 296. Every corporation, person or partnership, engaged in a manufacturing, mechanical, mining, quarrying, mercantile, street railway, telegraph or telephone business; in any of the building trades; upon public works, or in the construction or repair of street railroads, roads, bridges, sewers, gas, water

or electric light works, pipes or lines; every incorporated express company or water company; and every steam railroad company or corporation shall pay weekly each employee engaged in his or its business the wages earned by him to within eight days of the date of said payment, but any employee, leaving his or her employment, shall be paid in full on the following regular pay-day, provided, that when an employee is discharged he shall be paid the wages due him on demand; and the state, its officers, boards and commissions shall so pay every mechanic, workman and laborer who is employed by it or them, and every county and city shall so pay every employee who is engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer or employee requests in writing to be paid in a different manner; and every town shall so pay each employee in its business if so required by him; but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand. The provisions of this section shall not apply to an employee engaged in cutting and hauling logs and lumber, nor the driving of same until it reaches its place of destination for sale or manufacture; nor to an employee of a cooperative corporation or association if he is a stockholder therein unless he requests such corporation to pay him weekly. No corporation, contractor, person or partnership shall by a special contract with an employee or by any other means exempt himself or itself from the provisions of this section. Whoever violates the provisions of this section shall be punished by a fine of not less than ten, nor more than fifty dollars.

Sec. 35. Contracts requiring notice of intention to quit work or discharge employee. R. S. c. 40, § 51. Any person, firm or corporation engaged in any manufacturing or mechanical business, may contract with adult or minor employees to give one week's notice of intention on such employee's part, to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee; and on failure, shall pay to such employee, a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. Provided, however, that the enforcement of the penalty aforesaid, shall not prevent either party from recovering damages for a breach of the contract of hire.

91 Me. 61.

Preference to Maine Workmen and Contractors.

Sec. 36. In awarding certain contracts, preference shall be given to residents of the state; invitations for bids shall be advertised; section not applicable to certain work. 1909, c. 228, § 1. The state, counties, cities and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the state or by any municipality, shall in the awarding of contracts for constructing, altering, repairing, furnishing or equipping its buildings, or public works, give preference to workmen and to bidders for such contracts who are residents of this state, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the state. Invitations for

CHAP. 49

bids for such work or material shall be advertised in at least three daily newspapers in the state, one at least of which is published within the county where the work is to be done, provided a daily newspaper is published in such county, otherwise in a weekly newspaper published in such county; and specifications and plans for the same shall be provided and be accessible for figuring, for at least thirty days before the opening of the bids; if the bidders have conformed to all the requirements called for in the advertisements for bids, and the lowest bidder is financially responsible and able to furnish proper bonds for the fulfilment of his contract, such contract for work or materials shall be awarded by the proper officers of the state, county, city, or institution, to such bidder; provided the bid submitted by the lowest bidder is equally favorable with bids submitted by any contractors residing without the state, as above provided. This section shall not apply to construction or repairs amounting to less than one thousand dollars, or to emergency work, or to state road work.

Sec. 37. Proposal and bids shall be recorded. 1909, c. 228, § 2. Every institution and municipality calling for bids as above provided, shall enter proposals and bids upon its books, showing the name, residence of each bidder, and the amount and terms of each bid, and to whom the work or contract was awarded; and the same shall be open to the inspection of the governor and council.

Labels of Workingmen's Unions.

Sec. 38. Unlawful to counterfeit labels, trade-marks, etc., of any association or union of workingmen. R. S. c. 40, § 30. No person shall counterfeit or imitate any label, trade-mark, device or form of advertisement, adopted or used by any association or union of workingmen, to indicate that goods to which such label, trade-mark, device or form of advertisement may be attached or affixed, or on which the same may be printed, painted, stamped or impressed were manufactured, or produced, packed or put on sale by such association or union, or by any member or members thereof, or use such label, trade-mark, device or form of advertisement without the consent or authority of the association or union so having adopted and used it; provided, that such label, trade-mark, device or form of advertisement was not, before such adoption and use, lawfully adopted, owned and used by another; but any association or union, desiring to adopt and use such label, trade-mark, device or form of advertisement previously adopted, owned and used by another, may acquire from such owner the right to so adopt and use it.

Sec. 39. Labels and trade-marks shall be filed and recorded in office of secretary of state; certificate of record, proof of adoption; label closely resembling one already in use, shall not be recorded. R. S. c. 40, § 31. Every such association or union adopting a label, trade-mark, device or form of advertisement as aforesaid, shall file the same for record in the office of the secretary of state, by leaving two copies, counterparts or facsimile thereof, with the secretary of state, together with a statement in writing, signed and sworn to by some person for and in behalf of such association or union, stating when and by whom so far as he knows and

believes, said label, trade-mark, device or form of advertisement was adopted or used, in what manner and for what purpose the same is to be used and by what right the same is claimed, and such other particulars as shall serve to identify the same; said secretary shall deliver to such association or union, so filing the same, a duly attested certificate of the record of the same. Such certificate of record, in all suits and prosecutions under this chapter, shall be sufficient proof of the adoption of such label, trade-mark, device or form of advertisement. Whoever wilfully swears or affirms falsely to any such statement in writing is guilty of perjury. No label, trade-mark, device or form of advertisement, so closely resembling one already recorded as to be liable to be mistaken therefor, shall be recorded, and when in the judgment of the secretary of state, such resemblance exists he may refuse to record such label, trade-mark, device or form of advertisement, and thereupon proceedings may be had for a writ of mandamus, upon the application of any such association or union, as provided in section seventeen of chapter forty-four.

Sec. 40. Union using lawful trade-mark may enjoin manufacture and use of counterfeit; counterfeits to be destroyed. R. S. c. 40, § 32. Every such association or union that has adopted and uses a label, trade-mark, device or form of advertisement, as aforesaid, which has been recorded in the office of the secretary of state as hereinbefore provided, may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof, or of any goods to which such counterfeits or imitations shall be affixed or attached, or on which the same shall be printed, painted or impressed, and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display or sale, and shall award the complainant in such suit, such damages resulting from such wrongful manufacture, use, display or sale as may by said court be deemed reasonable, and shall require the defendants to pay such association or union the profits derived from such wrongful manufacture, use, display or sale; and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

Sec. 41. Punishment for counterfeiting label or trade-mark. R. S. c. 40, § 33. Whoever knowingly and with intent to mislead or deceive, counterfeits or imitates any such recorded label, trade-mark, device or form of advertisement, or knowingly uses or sells any counterfeit or imitation of any such recorded label, trade-mark, device or form of advertisement, or knowingly sells or disposes of, or keeps, or has in his possession with intent that the same shall be sold, any goods to which any such counterfeit or imitation of such recorded label, trade-mark, device or form of advertisement is attached or affixed, or on which the same is printed, painted, stamped or impressed, shall be punished for the first offense by a fine not exceeding one hundred dollars, or by imprisonment for less than one year, and for every subsequent offense, by a fine of not less than one hundred, nor more than five hundred dollars, or by imprisonment for not less than sixty days, nor more than three years.

Sec. 42. Punishment for wilful use of genuine trade-mark in manner not authorized. R. S. c. 40, § 34. Whoever wilfully uses or displays the genu-

CHAP. 50

ine label, trade-mark, device or form of advertisement of any such association or union, in any manner not authorized by such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense, shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 43. Punishment for wilful, unauthorized use of name or seal. R. S. c. 40, § 35. Whoever in any way wilfully uses the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, without the authority of such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 44. Prosecution of suits. R. S. c. 40, § 36. In all cases where such association or union is not incorporated, suits and proceedings hereunder may be commenced and prosecuted by an officer or member of such association or union, for and in behalf of and for the benefit of such association or union.

CHAPTER 50.

Compensation for Personal Injuries to Employees.

Sections 1-48 The Workmen's Compensation Act.

Sections 49-57 The Employer's Liability Law.

The Workmen's Compensation Act.

Sec. 1. Title of law. Words and phrases defined. 1915, c. 295, §§ 1, 51. The first forty-eight sections of this chapter shall be known, and may be cited, and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act"; the phrase "this act," as used in said sections, refers thereto.

The following words and phrases as used in the first forty-eight sections of this chapter, shall, unless a different meaning is plainly required by the context, have the following meaning:

I. "Employer" shall include corporations, partnerships, natural persons, the state, counties, water districts and all other quasi-municipal corporations of a similar nature, cities and also such towns as vote to accept the provisions of this act, and if employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

II. "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) farm laborers; (b) domestic servants; (c) masters of and seamen on

vessels engaged in interstate or foreign commerce; (d) person whose employment is but casual, or is not in the usual course of the trade, business, profession or occupation of his employer; (e) officials of the state, counties, cities, towns or water districts and other quasi-municipal corporations of a similar character. Policemen and firemen shall be deemed employees within the meaning of this act. If, however, any policeman or fireman claims compensation under this act, there shall be deducted from such compensation any sum which such policeman, fireman or other person may be entitled to receive for any pension or other benefit fund to which the state or municipal body may contribute. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents and other persons to whom compensation may be payable.

III. "Assenting employer" shall include all employers who have complied with the provisions of section six hereof, and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force.

IV. "Commissioner" shall mean the commissioner of labor and industry of the State of Maine. "Commission" shall mean the industrial accident commission created by section twenty-nine hereof.

V. "Industrial Accident Insurance Policy" shall mean a policy in such form as the insurance commissioner of the State of Maine approves, issued by any stock or mutual casualty insurance company that may be now or hereafter authorized to do business in this state, which in substance and effect guarantees the payment of the compensation, medical and hospital services, and expense of sickness and burial herein provided for, in such instalments, at such time or times, and to such person or persons and upon such conditions as in this act provided. Whenever a policy or certificate of renewal thereof is filed as herein provided, a copy of such policy certified by the insurance commissioner of the State of Maine or his deputy, shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

VI. "Insurance Company" shall mean any casualty insurance company authorized to do business in the State of Maine, which may issue policies conforming to the provisions of the paragraph next preceding. Whenever in this act relating to procedure the words "Insurance Company" is used, it shall be held to apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensations and benefits hereinafter provided direct to his employees.

VII. "Representatives" may include executors, administrators, and the dependents of deceased employees. Payments may be made to dependents directly, or to executors or administrators. If payments are made to the latter, they shall forthwith pay the same to the dependents as the same are hereinafter defined.

VIII. "Dependents" shall mean members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons

CHAP. 50

shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives, or from whom she was living apart for a justifiable cause, or because he had deserted her or upon whom she is dependent at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is dependent at the time of the accident.

(c) A child or children, including adopted and step-children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

In all cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the injury. In such other cases, if there is more than one person wholly dependent the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is anyone wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.

IX. "Average weekly wages, earnings or salary," of an injured employee shall be computed as follows:

(a) If the injured employee has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employee is employed regularly during the ordinary working hours concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings or salary received by him from all such employers were wages, earnings or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly wages" shall be three hundred times the average daily wages, earnings or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned

in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings or salary" of the injured employee cannot reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings or salary.

(e) The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the previous provisions of this section.

In the sections of this act relating to notices and procedure, all powers and rights granted to, or duties and obligations imposed upon employers or employees, shall inure to the benefit of and may be exercised by guardians of minors or other incapacitated persons and the legal representatives of deceased persons.

Sec. 2. Defenses not permitted. 1915, c. 295, § 2. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death, resulting from personal injury so sustained, it shall not be a defense (a) that the employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risk of the injury.

Sec. 3. Section two not applicable to certain employers. 1915, c. 295, § 3. The provisions of section two shall not apply to employers who employ five or less workmen or operatives regularly in the same business, and in case of the employer being engaged in more than one kind of business, in one of which he employs five or more workmen or operatives regularly, and in another employs five or less workmen or operatives, the fact that he elects to become subject to the provisions of this act shall not bring him within the provisions of it as to any such business in which he employs five or less workmen or operatives, and at the time of electing to become subject to the provisions of this act, if engaged in more than one kind of business, he shall specify the business or businesses in which he is engaged and concerning which he desires to come under the provisions hereof.

CHAP. 50

Sec. 4. Law not applicable to persons engaged in domestic service, agriculture or logging. 1915, c. 295, § 4. The provisions of this act shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees engaged in domestic service or agriculture, or in the work of cutting, hauling, rafting or driving logs.

Sec. 5. Section two shall not apply to assenting employers; such employers exempt from other suits. 1915, c. 295, § 5. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees of an employer who has elected to become subject to this act in the manner provided in section six hereof. In the case of personal injury sustained by an employee in the course of his employment or of death resulting from personal injury so sustained, assenting employers shall be exempt from suits either at common law or under section nine of chapter ninety-two, or under sections forty-nine to fifty-six, both inclusive, of this chapter.

Sec. 6. I. Employer may become assenting employer; approval of classifications of policies of insurance companies assuming risks; may withdraw approval. 1915, c. 295, § 6. Any employer desiring to become an assenting employer as herein provided, may file with the commission at its office in Augusta, his written assent in such form as the commission approves and also file with said commission a copy of an industrial accident insurance policy in any stock or mutual insurance company or association authorized to do business in the State of Maine, said policy being stamped with the approval of the insurance commissioner of said State of Maine.

Any insurance company issuing policies covering the payment of compensation provided for in this act shall file with the insurance commissioner a copy of the form thereof, and no such policy shall be issued until said insurance commissioner has approved the same. Every such insurance company shall file with the insurance department its classification of risks and premiums relating thereto, and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. The insurance commissioner may withdraw his approval of any classification of risks or premium rates relating thereto, and he may at any time approve a revised classification of risks and premium rates relating thereto.

II. Employer desiring to become an assenting employer shall file written assent with the commission, and deposit satisfactory security. Any employer desiring to become an assenting employer as herein provided, may file with the commission his written assent in such form as said commission approves, after furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and upon the deposit of cash, satisfactory securities or a bond, as the commission may determine, such bond to run to the treasurer of state, and his successor in office, in such sum as said commission may determine and shall be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensations and

benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of state and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that the commission may at any time in their discretion deny to an assenting employer the right to continue in the exercise of the option granted by this paragraph.

III. Commissioner shall issue certificate to employer. Upon the filing of such assent and complying with the provisions of paragraphs I or II of this section, the commissioner shall issue to such employer a certificate stating that such employer has conformed to the provisions of this act and setting forth the date on which the policy filed under paragraph I expires. The certificate thus issued shall remain in full force until the date of the expiration of such policy, or until withdrawn as provided in paragraph II, or until the employer assenting under paragraph II shall notify the commissioner that he withdraws his assent, or files an industrial accident policy in place of the securities so deposited by him.

IV. Commission may approve system in use January 1, 1915; approval of substitute system. Subject to the approval of the commission any employer may continue with his employees in lieu of the compensation and insurance provided by this act the system of compensation, benefit or insurance which was used by such employer on the first day of January, nineteen hundred fifteen. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it fails to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

V. Notice shall be kept posted in place of business. A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act and the date of the expiration of the policy filed, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or place of business, conspicuous and accessible to his employees. For wilful failure to post such notices, the employer shall be subject to a penalty of ten dollars per day for every day of such wilful neglect, to be recovered by complaint or indictment. Such failure to so post notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

Sec. 7. Employee subject to this act waives right of action at common law, unless notice is given; requisites of notice. 1915, c. 295, § 7. An employee of an employer who shall have elected to become subject to the

CHAP. 50

provisions of this act as provided in section six of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section nine of chapter ninety-two, or under sections forty-nine to fifty-six, both inclusive, of this chapter, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right. and within ten days thereafter have filed a copy thereof with the commission or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commissioner a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age illegally permitted under the laws of this state shall be deemed sui juris for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

Sec. 8. Injury or death caused by wilful intention or intoxication shall not be compensated for. 1915, c. 295, § 8. No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

Sec. 9. Employee shall be incapacitated two weeks before compensation. 1915, c. 295, § 9. No compensation except as provided by section ten of this act shall be paid under this act for any injury which does not incapacitate the employee for a period of at least two weeks from earning full wages, but, if such incapacity extends beyond the period of two weeks, compensation shall begin on the fifteenth day after the injury.

Sec. 10. Employer shall furnish medical aid during first two weeks. 1915, c. 295, § 10. During the first two weeks after the injury the employer shall furnish reasonable medical and hospital services, and medicines when they are needed, but the amount of the charge for such services and medicines shall not exceed the sum of thirty dollars, unless in case of major surgical operations being required, and the employer and employee being unable to agree upon the same, the amount to be allowed for such medical services or medicines shall be fixed by the commission upon petition by either party setting forth the facts.

Sec. 11. Action for injury of employee not having given notice. 1915, c. 295, § 11. If an employee who has not given notice of his claim of common law or statutory rights or action, or who has given such notice and has waived the same, as provided in section seven of this act, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

Sec. 12. Employer's liability for death. 1915, c. 295, § 12. If death results from the injury, the employer shall pay the dependents of the employee wholly dependent upon his earnings for support at the time of his injury a weekly payment equal to one-half his average weekly wages, earnings, or salary, but not more than ten dollars nor less than four dollars a week, for a period of three hundred weeks from the date of the injury; provided, however, that if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen years, or over said age but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of the injury a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of injury. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. Provided, however, that if the deceased leaves no dependents at the time of the injury, the employer shall not be liable to pay compensation under this act except as specifically provided in the following section.

Sec. 13. Compensation when employee has no dependents. 1915, c. 295, § 13. If the employee dies as a result of the injury, leaving no dependents at the time of the injury, the employer shall pay, in addition to any com-

CHAP. 50

pensation provided for in this act, the reasonable expense of his last sickness and burial, which shall not exceed two hundred dollars.

Sec. 14. Compensation for total disability; total disability, how determined. 1915, c. 295, § 14. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to one-half his average weekly wages, earnings or salary, but not more than ten dollars nor less than four dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of the injury, nor the amount more than three thousand dollars. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

Sec. 15. Compensation for partial disability. 1915, c. 295, § 15. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to one-half the difference between his average weekly wages, earnings or salary, before the injury and the average weekly wages, earnings or salary which he is able to earn thereafter, but not more than ten dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury.

Sec. 16. Schedule of accidents, provided for. 1915, c. 295, § 16. In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such partial incapacity continues under the provisions of section fifteen, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

For the loss of a thumb, one-half the average weekly wages during fifty weeks.

For the loss of the first finger, commonly called the index finger, one-half the average weekly wages during thirty weeks.

For the loss of the second finger, one-half the average weekly wages during twenty-five weeks.

For the loss of the third finger, one-half the average weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little finger, one-half the average weekly wages during fifteen weeks.

The loss of the first phalange of the thumb or of any finger, shall be considered to be equal to the loss of one-half of said thumb or finger, and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger; provided, however, that in no case shall the amount received

for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, one-half the average weekly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe, one-half the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe and the compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe.

For the loss of a hand, one-half the average weekly wages during one hundred twenty-five weeks.

For the loss of an arm, or any part above the wrist, one-half the average weekly wages during one hundred fifty weeks.

For the loss of a leg, or any part above the ankle, one-half the average weekly wages during one hundred fifty weeks.

For the loss of a foot, one-half the average weekly wages for one hundred twenty-five weeks.

For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, one-half the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations as to maximum and minimum amounts, that is, of not more than ten and not less than four dollars a week, as provided for total or partial disability.

Sec. 17. Notice of injury shall be given employer. 1915, c. 295, § 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the accident shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

Sec. 18. Contents of such notice. 1915, c. 295, § 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place and cause of the injury, and the name and address of the person injured and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

Sec. 19. Service of such notice. 1915, c. 295, § 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute a completed service.

CHAP. 50

Sec. 20. Notice not void for mere inaccuracy of statement; notice, when unnecessary. 1915, c. 295, § 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake or unforeseen cause.

Sec. 21. Employee shall submit to examinations by physician, or medical examiner. 1915, c. 295, § 21. The employee shall after the injury, at all reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of this state, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon selected and paid by himself, present at such examination of which right the employer shall give him notice when requesting such examination.

The chairman of the commission may at any time after the injury appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner shall be fixed and paid by the commission.

Such medical examiner being first duly sworn to the faithful performance of his duties before any justice of the peace, or any clerk of the supreme judicial court, shall thereupon and as often as the chairman of the commission may direct, examine such injured employee in order to determine the nature, extent and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the commission, and a copy thereof certified by the clerk of said commission may be produced in evidence in any hearing or proceedings to determine the amount of compensation due said employee under the provisions of this act. If such employee refuses to submit himself to examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

Sec. 22. Savings or insurance shall not be taken into consideration. 1915, c. 295, § 22. No savings or insurance of the injured employee independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act.

Sec. 23. Incompetents or minors may have guardian exercise right of claim. 1915, c. 295, § 23. In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any right, privilege or election accrues to him or them under this act, his guardian, or next friend may, in his behalf, claim and exercise such right, privilege or election, and no limitation of time in this

act provided shall run so long as such incompetent or minor has no guardian.

Sec. 24. Waiver of rights to compensation not valid; claims not assignable. 1915, c. 295, § 24. No agreement by an employee, except as provided in section thirty, to waive his rights to compensation under this act shall be valid. No claims for compensation under this act shall be assignable, or subject to attachment, or liable in any way for debt.

Sec. 25. Agreement that remedies under this act exclusive, in case of employment out of state; presumption. 1915, c. 295, § 25. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

Sec. 26. Liability created in other person than employer; election by employee; subrogation of employer to rights of employee. 1915, c. 295, § 26. When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act, any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

Sec. 27. Claims under this act entitled to preference over unsecured debt. 1915, c. 295, § 27. The claim for compensation under this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state, but nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 28. Commutation of payments to lump sum. 1915, c. 295, § 28. In case payments have continued for not less than six months either party may, upon due notice to the other party, petition the commission for an order commuting the future payments to a lump sum. Such petition shall be considered by the commission and may be summarily granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance of weekly payments will, as compared with lump sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered, the commission shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments, capitalized at their

CHAP. 50

present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment, the liability of such employer under any agreement, award, findings, or decree shall be discharged of record.

Sec. 29. Industrial Accident Commission of the State of Maine; appointment of chairman; tenure; removal and appointment of successor; appointment of secretary; appropriation. Authority of commission. 1915, c. 295, § 29. The Industrial Accident Commission of the State of Maine as heretofore established, shall consist of three members. The insurance commissioner and the commissioner of labor and industry shall be ex officio members thereof. The governor shall appoint a chairman of the commission, who shall be learned in the law and a member of the bar in good standing; he shall hold office for three years from the date of his appointment unless removed as hereinafter provided, and until his successor is appointed and qualified; he shall be sworn, and for inefficiency, wilful neglect of duty or for malfeasance in office, may after notice and hearing be removed from office by the governor and council. In case of vacancy occurring through death, resignation or removal, the governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid. The commission shall have a secretary appointed and removable by it. It shall be allowed the sum of two thousand dollars, or so much thereof as is necessary, for expert and clerical assistance and other expenses in organizing a suitable system of administration. The sum of seven thousand five hundred dollars shall be annually appropriated for the payment of clerical and other assistance, physicians' and witness fees, traveling and other expenses.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine." It shall have its office and keep its records in the state house in Augusta, but may hold sessions at any place within the state. The commission shall have a general supervision over the administration of this act and shall have the following powers:

I. To make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof.

II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any questions in dispute before it.

III. The chairman of the commission at any hearing before him under the provisions of this act, may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters in dispute before him. Witness fees in all proceedings under this act shall be the same as for witnesses before the supreme judicial court.

Sec. 30. Memorandum of agreement as to compensation; proceedings upon failure to agree or when agreement is not approved. 1915, c. 295, § 30. If the employer and the employee reach an agreement in regard to compensation under this act a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commis-

sioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same and the clerk of the commission shall record it in a book kept for that purpose. In case the commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest, may file in the office of the commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent and character of the injury and the knowledge of the employer or notice of the occurrence of the injury, and, if an agreement had been reached between the parties which had not been approved by the commissioner, the form of such agreement and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

Sec. 31. Notice on petitions. 1915, c. 295, § 31. Within four days after the filing of the petition, a copy thereof attested by the clerk of the commission shall be mailed by said clerk, postage prepaid, to the other parties named in the petition, or notice be given in such other manner as the commission may determine.

Sec. 32. Proceedings as to answers. 1915, c. 295, § 32. Within ten days after the filing of such petition, all the other parties interested in opposition to the petition shall file an answer to said petition and furnish a copy thereof to the petitioner, which answer shall state the claims of the opponents with reference to the matter in dispute as disclosed by the petition. The chairman of said commission may grant further time for filing answer and allow amendments to said petition and answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition. If any party be an infant or person under disability, either parent or a guardian, or a guardian ad litem for such infant or person under disability may file the petition or answer required by this section.

Sec. 33. Chairman shall fix time for hearing; place of hearing. 1915, c. 295, § 33. The whole matter shall then be referred to the chairman of said commission, who shall fix a time for hearing upon the request of either party, upon a three days' notice given to the other party. All hearings shall be held in the town where the accident occurred, unless the claimant shall in writing request that it be held in some other place.

Sec. 34. Proceedings at hearing; decision; decree by justice of supreme judicial court; appeal; modification of decree. 1915, c. 295, § 34. If from the petition and answer there appear to be facts in dispute, the chairman of the commission shall then hear such witnesses as may be presented by each party, or by agreement the claims of both parties as to the facts in dispute may be presented by affidavits. From the evidence thus furnished the chairman shall, in a summary manner, decide the merits of the controversy. His decision, together with a statement of the facts submitted, his

CHAP. 50

findings of fact and rulings of law, and any other matters pertinent to the questions raised at the hearing, shall be filed in the office of the commission, and a copy thereof certified by the clerk of the commission mailed forthwith to all parties interested. His decision in the absence of fraud, upon all questions of fact shall be final.

Any party in interest may present copies certified by the clerk of said commission of any order or decision of the commission or of its chairman, or of any memorandum of agreements approved by the commissioner, together with all papers in connection therewith, to the clerk of courts for the county in which the injury occurred; whereupon any justice of the supreme judicial court shall render a decree in accordance therewith and notify all parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except there shall be no appeal therefrom upon questions of fact found by said commission or its chairman, or where the decree is based upon a memorandum of agreement approved by the commissioner. Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure and the law court may, after consideration, reverse or modify any decree made by a justice, based upon an erroneous ruling or finding of law. There shall be no appeal from a decree based upon any order or decision of the commission or of its chairman, or upon any memorandum of agreement approved by the commissioner, which has not been certified and presented to the court within ten days after the notice of the filing thereof by the commission or its chairman. Upon the presentation to it of a certified copy of any decision of the chairman of the commission terminating, diminishing, increasing or modifying any payments under the provisions of section thirty-six, or under any decision of said chairman or any agreement approved by the commissioner the court shall revoke or modify its decree, if any has been based thereon, to conform to such decision.

Sec. 35. Agreement or decision of chairman shall have same effect as judgment of court. 1915, c. 295, § 35. Any agreement between employer and employee filed with the commission and approved by the commissioner or any decision of the chairman of said commission under the provisions of section thirty-four, shall have the same effect as the judgment of a court, and a copy thereof certified to by the clerk of said commission and filed with the clerk of the court of the county in which either the employer or employee resides, or where the business of the employer is located, shall be enforceable by the supreme judicial court by any suitable process including execution against the goods, chattels and real estate, and including proceedings for contempt for wilful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced.

Sec. 36. Agreement, award, findings, or decree may from time to time be reviewed. 1915, c. 295, § 36. At any time before the expiration of two years from the date of the approval of an agreement by the commissioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings

or decree may be from time to time reviewed by the chairman of said commission upon the application of either party, after due notice to the other party, upon the ground that the incapacity of the injured employee has subsequently ended, increased or diminished. Upon such review the said chairman may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the said chairman upon such review shall be served on the parties and filed with the clerk of the commission and may be certified to the court in like time and manner and subject to like disposition as in the case of original decrees; provided that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the commissioner in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section thirty of this act.

Sec. 37. Commission may prescribe forms and make suitable orders of procedure; construction of act. 1915, c. 295, §§ 37, 49. The commission may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient and inexpensive disposition of all proceedings under this act; and in interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. It may provide blank forms of notices, agreements, and other forms required under this act.

Sec. 38. Proceedings shall not abate because of death. 1915, c. 295, § 38. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

Sec. 39. Agreement or petition shall be made within two years. 1915, c. 295, § 39. An employee's claim for compensation under this act shall be barred unless an agreement or a petition, as provided in section thirty shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

Sec. 40. Compulsory upon state, county, cities, and quasi-municipal corporations. 1915, c. 295, § 40. This act shall be compulsory as to the state, counties, cities, water districts and other quasi-municipal corporations of a similar nature. The provisions of section six of this act shall not apply to the state, counties, cities, water districts and other quasi-municipal corporations of a similar nature or to any towns voting to accept the provisions of this act.

Sec. 41. Assenting employers shall make reports of accidents; copy of receipt in final settlement filed with commission; penalty for neglect. 1915, c. 295, § 41. All assenting employers shall make prompt reports to the commission of all accidents to their employees in the course of employment,

CHAP. 50

with the average weekly wages or earnings of such employees, together with such other particulars as the commission may require and shall also report whenever the injured employee shall resume his employment and the amount of his wages or earnings.

Whenever any final settlement is made with an injured employee, either by the employer or insurance company, a copy of the receipt or final agreement showing the total amount of money paid to such injured employee, shall be filed with the commission, but shall not be binding without the approval of the commission or of its chairman. Any employer or insurance company that shall wilfully neglect or refuse to make such reports or file any receipts or agreements required to be filed under this act, shall be liable to a forfeiture of ten dollars for each day of such wilful neglect or refusal, to be enforced by the commission in an action of debt in the name of the state. All sums so recovered shall be paid into the state treasury and be credited to the appropriation made for the administration of this act.

Sec. 42. Insurance companies shall furnish information to insurance commissioner; penalty for refusal. 1915, c. 295, § 42. Any insurance company insuring employers under this act shall fill out any blanks and answer all questions submitted to them that may relate to policies, premiums, amount of compensations paid, and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of ten dollars for each day of such refusal, to be enforced by the commission in an action of debt in the name of the state. All money so recovered shall be paid into the state treasury and credited to the appropriation for the administration of this act.

Sec. 43. Annual report of commission. 1915, c. 295, § 43. The commission shall make an annual report giving such full statistical information as may be contained in their department in relation to the administration of this act, particularly with reference to the number of employees affected, the number injured, the amount of compensations received and the cost of the same to the employers.

Sec. 44. Effect upon persons engaged in commerce. 1915, c. 295, § 44. This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

Sec. 45. Monthly payment to non-residents provided for. 1915, c. 295, § 45. If an employee receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

Sec. 46. Unconstitutional parts of act, if any, shall not affect validity of act as a whole. 1915, c. 295, § 46. If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof, which can be given effect without the part so decided to be unconstitutional or invalid.

Sec. 47. Penalty for making false statement. 1915, c. 295, § 47. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation, he shall be guilty of a misdemeanor and liable to a fine of not exceeding fifty dollars, and he shall forfeit all right to compensation under this act after conviction for such offense.

Sec. 48. Act not applicable to injuries sustained prior to January 1, 1916. 1915, c. 295, § 48. The provisions of this act shall not apply to injuries sustained, or accidents which occur prior to the first day of January, A. D., nineteen hundred sixteen.

The Employer's Liability Law.

Sec. 49. Employer's liability defined. 1909, c. 258, § 1. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

First, a defect in the condition of the ways, works or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

Second, the negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer;

Third, the negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine or train upon a railroad;

The employee or his legal representatives, shall, subject to the provisions of the eight following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine or train within the meaning of said clause.

108 Me. 361; 110 Me. 376.

Sec. 50. Action for damages for death in addition to those for injury. 1909, c. 258, § 2. If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is

CHAP. 50

preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury.

Sec. 51. Action for damages by widow or next of kin. 1909, c. 258, § 3. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section forty-nine, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer.

Sec. 52. Damages for death, how assessed. 1909, c. 258, § 4. If, under the provisions of either of the two preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section forty-nine for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section fifty, shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section fifty, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section fifty-one, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section fifty-one shall not be less than five hundred nor more than five thousand dollars.

109 Me. 585.

Sec. 53. Notice of injury in writing within sixty days; action within one year. 1909, c. 258, § 5. No action for the recovery of damages for injury or death under the provisions of sections forty-nine to fifty-two, both inclusive, shall be maintained unless notice of the time, place and cause of the injury is given to the employer within sixty days and the action is commenced within one year after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured, or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place or cause of the injury, if it is shown that there

was no intention to mislead, and that the employer was not in fact misled thereby.

If a notice given under this section is claimed by the employer to be insufficient for any reason he shall so notify in writing the person giving it within ten days, stating the insufficiency claimed to exist, and thereupon the person whose duty is to give the notice may, within thirty days, give a new notice with the same effect as if originally given.

Sec. 54. Liability of employer not barred by entering into contracts with independent contractor. 1909, c. 258, § 6. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub-contractor, caused by any defect in the condition of the ways, works, machinery or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

Sec. 55. Employee has no right of action for damages, if he knew of defect or negligence, and failed to give notice. 1909, c. 258, § 7. An employee or his legal representatives shall not be entitled under the provisions of sections forty-nine to fifty-two, both inclusive, to any right of action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

Sec. 56. Application of §§ 49-55 limited. 1909, c. 258, §§ 8, 9. The provisions of the seven preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees, or to those engaged in cutting, hauling or driving logs. Nothing in said sections shall be construed to abridge any common law rights or remedies which the employee may have against his employer, but a judgment recovered under the provisions of said sections, or a settlement of any action commenced or claim made for death or injury, under the provisions thereof, shall be a bar to any claim made or action begun to recover for the same injury or the same death, under the provisions of the common law or under the provisions of any other statute.

110 Me. 376.

Sec. 57. Special contracts prohibited. 1909, c. 33. No person shall, by a special contract with his employees, exempt himself or another person from liability which he may be under to them, for injuries suffered by them in his employment and resulting from the negligence of the employer or such other person, or of a person in his employ.