

MAINE STATE LEGISLATURE

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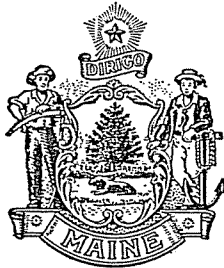
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Sec. 25. Vivisection in schools supported wholly or in part by public money, prohibited; penalty. R. S. c. 135, §§ 73, 74. 1933, c. 9. No person in any of the schools of the state supported wholly or in part by public money shall practice vivisection or perform any experiment upon a living animal, or exhibit to any pupil in such school an animal which has been vivisected or experimented upon. Whoever wilfully violates any of the provisions of this section shall be punished by a fine of not less than \$10, nor more than \$25.

Sec. 26. Sale of diseased horses illegal; penalty. R. S. c. 135, §§ 75, 76. It shall be unlawful for any person holding an auctioneer's license to receive or offer for sale or to sell at public auction, or for any person to sell at private sale, any horse which by reason of debility, disease, or lameness, or for other cause could not be worked in this state without violating the laws against cruelty to animals, but this section shall not be construed to prohibit the sale to, and the purchase of animals by humane societies incorporated under the laws of this state for the purpose of humanely killing the same. Any licensed auctioneer violating any provision of this section shall forfeit his license, and any person violating any provision of this section shall be punished by a fine of not less than \$5, nor more than \$100, or by imprisonment for not more than 6 months.

Sec. 27. Moving-picture films not to involve in preparation deliberate cruelty to animals; penalty; jurisdiction. R. S. c. 135, §§ 77, 78, 79. 1933, c. 118, § 1. No person knowingly and wilfully, as owner, manufacturer, photographer, exhibitor, manager, director, or agent, or in any other capacity shall prepare, manufacture, make, exhibit, or participate in the preparation, manufacturing, making, or exhibiting of any moving or motion-picture film involving in its preparation, manufacture, or making, intentional and deliberate cruelty to animals for the sole purpose of furnishing a scene for said moving or motion-picture film. Any person who violates any provision of this section shall be punished by a fine of not more than \$100, or by imprisonment for not more than 3 months, or by both such fine and imprisonment. Any corporation violating any such provision shall be responsible for the knowledge and acts of its agents and servants therein and shall be punished by a fine as herein provided, and such corporation and its agent or servant may be punished for the same act. Trial justices shall have jurisdiction of all offenses under this section.

CHAPTER 128.

NUISANCES.

Sec. 1. Common nuisances; jurisdiction to abate. R. S. c. 26, § 1. All places used as houses of ill-fame, or for the illegal sale or keeping of intoxicating liquors, or resorted to for lewdness or gambling; all houses, shops, or places where intoxicating liquors are sold for tipping purposes, and all places of resort where intoxicating liquors are kept, sold, given away, drunk, or dispensed in any manner not provided for by law are common nuisances. The supreme judicial court and the superior court shall have jurisdiction in equity, upon information filed by the county attorney or upon petition of not less than 7 legal voters of his county setting forth any of the facts contained herein, to restrain, enjoin, or abate the same, and an injunction for such purpose may be issued by

said court or any justice thereof. Such injunction shall be recorded within 30 days in the registry of deeds in the county where said nuisance is located and shall forever run against the building or other place or structure in which said nuisance is committed. No dismissal of such information or complaint shall prevent action upon any information or complaint subsequently filed covering the same subject matter.

See c. 12, § 79, re bounds and limits of military camps; c. 22, § 207, re barber and beauty shops; c. 27, § 131, re gipsy and brown-tail moths; c. 27, § 142, re European corn borer; c. 32, § 72, re portable mills established without license; c. 57, § 70, re sale of liquor within 2 miles of National Home; c. 62, §§ 30, 46, re buildings used in connection with narcotic drugs; c. 85, § 49, re fire safeguards; 63 Me. 219; *64 Me. 529; 65 Me. 295, *430; 66 Me. 419; 67 Me. 125; 69 Me. 136; 74 Me. 153; 75 Me. 124, 590; 78 Me. 439; 81 Me. 108, 411; 82 Me. 158, *558; 84 Me. 437, 560; 85 Me. 289; *96 Me. 562, 568; 97 Me. 307, 311, 317, 482; 98 Me. *197, 352, 397; 99 Me. 63, *488; *101 Me. 40; *105 Me. 130; 106 Me. 193, 359; 107 Me. 179; 108 Me. 531; 110 Me. 98; 112 Me. 17, *197; *118 Me. 31; 119 Me. 472; *120 Me. 121; 124 Me. 76; 125 Me. 505; 126 Me. 153, 330, 340, 484.

Sec. 2. Penalty. R. S. c. 26, § 2. Whoever keeps or maintains such nuisance shall be punished by a fine of not less than \$200, nor more than \$1,000, and in addition thereto by imprisonment for not less than 60 days, nor more than 11 months, and in default of payment of said fine shall be imprisoned for an additional term of not less than 60 days, nor more than 11 months.

See c. 84, § 147, re private drains; 64 Me. 529; 65 Me. 295; 68 Me. 545; 78 Me. 441; 81 Me. 108; 82 Me. 158; 84 Me. 560; 85 Me. 289; *101 Me. 40; 107 Me. 179; 110 Me. 98; 126 Me. 330, 340.

Sec. 3. Lease void; remedy of owner. R. S. c. 26, § 3. If any tenant or occupant, under any lawful title, of any building or tenement not owned by him uses it or any part thereof for any purpose named in section 1, he forfeits his right thereto, and the owner thereof may make immediate entry, without process of law, or may avail himself of the remedy provided in chapter 109.

See c. 109, § 11, re lease of tenant of house of ill fame void at option of landlord; 56 Me. 323; 68 Me. 545; *97 Me. 307, 311, 317; 108 Me. 531.

Sec. 4. Liability of owner. R. S. c. 26, § 4. Whoever knowingly lets any building or tenement owned by him, or under his control, for any purpose named in section 1, or knowingly permits the same or part thereof to be so used, or who, after being notified in writing of such illegal use by an officer or citizen of the county in which the building or tenement is located, omits to take all proper measures either to abate said nuisance or, failing therein, to eject therefrom the person or persons maintaining such nuisance is guilty of aiding in the maintenance of a nuisance and shall be punished by a fine of not less than \$200, nor more than \$1,000, and in addition thereto by imprisonment for not less than 60 days, nor more than 11 months; and in default of payment of said fine shall be imprisoned for an additional term of not less than 60 days, nor more than 11 months.

67 Me. 125; *79 Me. 98; 97 Me. 90; 107 Me. 179.

Sec. 5. Throwing of bottles etc. on the highways prohibited; penalty. 1943, c. 278. Whoever throws or deposits on any public way or on land within the bounds of such way any bottles or metal cans, except in proper containers placed for rubbish collection and removal, shall be punished by a fine of not more than \$10.

Sec. 6. Fence maliciously kept, when deemed a nuisance. R. S. c. 26, § 6. Any fence or other structure in the nature of a fence, unnecessarily exceeding 6

feet in height, maliciously kept and maintained for the purpose of annoying the owners or occupants of adjoining property shall be deemed a private nuisance.

*91 Me. 221; 104 Me. 124.

Sec. 7. Certain nuisances described. R. S. c. 26, § 5. 1933, c. 106. The erection, continuance, or use of any building or place for the exercise of a trade, employment, or manufacture, which, by noxious exhalations, offensive smells, or other annoyances becomes injurious and dangerous to the health, comfort, or property of individuals, or of the public; causing or suffering any offal, filth, or noisome substance to collect, or to remain in any place to the prejudice of others; obstructing or impeding, without legal authority, the passage of any navigable river, harbor, or collection of water; corrupting or rendering unwholesome or impure the water of a river, stream, or pond; unlawfully diverting it from its natural course or state, to the injury or prejudice of others; and the obstructing or encumbering by fences, buildings, or otherwise, of highways, private ways, streets, alleys, commons, common landing places, or burying-grounds are nuisances within the limitations and exceptions hereafter mentioned; and all automobile dumps or automobile graveyards, so called, where old, discarded, worn out, or junked automobiles, or parts thereof, are gathered together, kept, deposited, or allowed to accumulate, in such manner or in such location or situation, either within or without the limits of any highway, as to be unsightly, detracting from the natural scenery and injurious to the comfort and happiness of individuals and the public, and injurious to property rights, are declared to be public nuisances.

See c. 22, §§ 36, 79, re duties of local health officers; c. 22, § 143, re depositing carcass of dead animal where it may cause nuisance; c. 41, § 63, re railroad crossings made without consent of mayor and aldermen; c. 46, § 18, re obstructing public travel in digging up and opening streets; c. 88, § 113, re automobile junk yards; 7 Me. 156; 12 Me. 361; 17 Me. 294; 26 Me. 132; *30 Me. 74; 32 Me. 85; 37 Me. 362; *42 Me. 156, 527; 43 Me. 201; 47 Me. 163; *49 Me. 30; *51 Me. 504; 57 Me. 403; 58 Me. 48; 50 Me. 367; 60 Me. 194; 65 Me. 435, 438; 68 Me. 515; *80 Me. 310; 83 Me. 278; 85 Me. 281; *86 Me. 57; 88 Me. 380; 97 Me. 562; 102 Me. 55; 104 Me. 162; 126 Me. 128; 131 Me. 1; 137 Me. 48, 183; 138 Me. 63.

Sec. 8. Town officers may assign places for unwholesome employments. R. S. c. 26, § 7. The municipal officers of a town, when they judge it necessary, may assign places therein for the exercise of any trades, employments, or manufactures described in section 7, and may forbid their exercise in other places, under penalty of being deemed public or common nuisances and the liability to be dealt with as such. All such assignments shall be entered in the records of the town, and may be revoked when said officers judge proper.

See c. 85, § 32, re regulation of certain occupations in maritime towns; 34 Me. 40; *65 Me. 435; 85 Me. 281.

Sec. 9. Proceedings, when places so assigned become offensive. R. S. c. 26, § 8. When a place or building so assigned becomes a nuisance, offensive to the neighborhood or injurious to the public health, any person may complain thereof to the superior court and if, after notice to the party complained of, the truth of the complaint is admitted by default or made to appear to a jury on trial, the court may revoke such assignment and prohibit the further use of such place or building for such purposes, under a penalty of not more than \$100 for each month's continuance after such prohibition, to the use of said town; and may order it to be abated and issue a warrant therefor, or stay it as hereinafter provided; but if the jury acquit the defendant, he shall recover costs of the complainant.

85 Me. 281.

Sec. 10. When buildings for manufacture of powder are nuisances. R. S. c. 26, § 9. If any person manufactures gunpowder, or mixes or grinds the composition therefor, in any building within 80 rods of any valuable building not owned by such person or his lessor, which was erected when such business was commenced, the former building shall be deemed a public nuisance; and such person may be prosecuted accordingly.

See c. 85, § 42, re regulations by insurance commissioner respecting explosives; 85 Me. 281.

Sec. 11. Burning of bricks may be prohibited; penalty. R. S. c. 26, § 10. A town, at its annual meeting, may prohibit the burning of bricks, or the erecting of brick-kilns within such parts thereof as they deem for the safety of the citizens or their property. If any person, by himself or others, violates such prohibition, the municipal officers shall cause said bricks or brick-kiln to be forthwith removed, at the expense of the owner thereof; and the offender forfeits not more than \$200 to the town; and if said bricks or brick-kiln are not removed before conviction, the court may issue a warrant for the removal thereof, or stay it as hereinafter provided.

85 Me. 281.

Sec. 12. Mills and dams on streams, and fences and buildings fronting on public ways, sometimes not nuisances. R. S. c. 26, § 11. The erection and maintenance of water mills and dams to raise water for working them upon or across streams not navigable as provided in chapter 166 shall not be deemed a nuisance, unless they become offensive to the neighborhood, or injurious to the public health, or unless they occasion injuries or annoyances of a kind not authorized by said chapter. Fences and buildings fronting on public ways, commons, or lands appropriated to public use shall not be deemed nuisances when erected for the times and in the manner provided in section 102 of chapter 84, unless the owner of the same shall be estopped as therein provided from justifying his occupation within the limits of said way.

6 Me. 123; 7 Me. 156; 8 Me. 145; 24 Me. 234; 60 Me. 194; 85 Me. 281.

Sec. 13. Penalty and abatement of nuisance. R. S. c. 26, § 12. Whoever erects, causes, or continues a public or common nuisance, as herein described or at common law, where no other punishment is specially provided, shall be punished by a fine of not more than \$100; and the court with or without such fine may order such nuisance to be discontinued or abated, and issue a warrant therefor as hereinafter provided.

21 Me. 12, 85; 30 Me. 78; 85 Me. 281; 94 Me. 530.

Sec. 14. Bushes, trees, and stumps to be removed from area to be flowed by dam to be erected on public water; penalty for violation; exception. R. S. c. 26, §§ 13, 14, 15. Whoever hereafter erects a dam on any of the public waters of this state shall, within 3 years after a head of water is held and flowage created thereby, remove from the flowed area all trees, bushes, and stumps that he can legally remove therefrom, to such an extent that the tops of all trees, bushes, and stumps left thereon shall be at least 5 feet below the surface of the mean low-water level maintained during the period beginning June 1st and ending December 1st next following of each year and shall within said 3-year period remove such growth as he can legally remove from the edge of the flowed area to such an extent that no dry-ki and debris shall form to be carried away by the water; and for the purpose of protecting the right of the public in the navigation of the waters over said flowed area the owner of such dam shall, after the creation of

flowage thereby, have the right to cut and remove from the flowed area all trees, bushes, and stumps remaining thereon, and the damage to the owner thereof caused by such removal shall be ascertained in the same manner as is provided for the ascertainment of the damages caused by the flowage.

Any dam erected hereafter which is maintained in violation of the provisions of this section shall constitute a public nuisance, and be subject to the provisions of section 13.

This section shall not apply to dams which are created solely for log driving purposes where the water is stored for not exceeding 3 months of each year, nor shall the same be interpreted in any instance to require the removal of stumps below the swell of the roots.

Sec. 15. Motor boats equipped with suitable mufflers; muffling devices approved by U. S. inspectors; penalty. R. S. c. 26, §§ 16, 17, 18. All motor boats run or operated in any tidal or other waters within the state shall be provided or equipped with proper and suitable mufflers or other devices which shall effectually deaden sound. Said muffler shall be used all the time the engine of the motor boat is in operation; provided that it shall be allowable to cut out said mufflers, in case of boats while entered and competing in boat races held under the auspices of some regularly organized club, between the hours of 8 o'clock in the morning and sunset following.

Any muffling device approved by the United States inspectors having jurisdiction of the tidal waters of this state shall, in case of motor boats run or operated on such tidal or other waters in the state, be deemed to be a compliance with the provisions of this section, provided such defense shall be set up and proved by the defendant.

Whoever violates any provision of this section between 8 o'clock in the forenoon and 8 o'clock at night shall be punished by a fine of not less than \$5, nor more than \$25; whoever violates any provision of this section between 8 o'clock in the afternoon and 8 o'clock in the forenoon shall be subject to a double penalty; and any such violation shall be deemed a common nuisance within the meaning of section 13.

Sec. 16. Action for damages caused by nuisance. R. S. c. 26, § 19. Any person injured in his comfort, property, or the enjoyment of his estate by a common and public or a private nuisance may maintain against the offender an action on the case for his damages, unless otherwise specially provided.

*44 Me. 156; *49 Me. 30; *51 Me. 504; 57 Me. 377; 75 Me. 378; 80 Me. 33, 310; *85 Me. 281; 102 Me. 60; 103 Me. 50; 104 Me. 162; *106 Me. 422; 126 Me. 128; 135 Me. 29; 138 Me. 63.

Sec. 17. Process for abatement of nuisance. R. S. c. 26, § 20. When on indictment, complaint, or action any person is adjudged guilty of a nuisance, the court, in addition to the fine imposed, if any, or to the judgment for damages and costs for which a separate execution shall issue, may order the nuisance abated or removed at the expense of the defendant; and after inquiring into and estimating, as nearly as may be, the sum necessary to defray the expense thereof, the court may issue a warrant therefor substantially in the form following:

"STATE OF MAINE

_____, ss. To the sheriff of our county of _____, or either of his deputies,
Greeting.

Whereas, by the consideration of our honorable _____ court, at a term begun and held at _____, within and for said county, upon indictment," (or "complaint," or "action in favor of A. B.," as the case may be,) "C. D., of _____,

&c., was adjudged guilty of erecting," ["causing," or "continuing,"] "a certain nuisance, being a building in _____, in said county," (or "fence," or other thing, describing particularly the nuisance and the place,) "which nuisance was ordered by said court to be abated and removed: We therefore command you forthwith to cause said nuisance to be abated and removed; also that you levy of the materials by you so removed, and of the goods, chattels and lands of said C. D., a sum sufficient to defray the expense of removing and abating the same, not to exceed _____ dollars," (the sum estimated by the court,) "together with your lawful fees, and thirty-three cents more for this writ. And, for want of such goods and estate to satisfy said sums, we command you to take the body of said C. D., and him commit unto our jail in _____, in said county, and there detain until he pays such sums or is legally discharged. And make return of this warrant, with your doings thereon, within thirty days. Witness, A. B., Esq., at _____, this _____ day of _____, in the year of our Lord 19—.
J. S., Clerk."

When the conviction is upon an action before a trial justice and no appeal is made, the justice, after estimating the sum necessary to defray the expense of removing or abating the nuisance, may issue a like warrant, making corresponding alterations in its form.

80 Me. 307; 85 Me. 281; 94 Me. 530; 138 Me. 63.

Sec. 18. Warrant to be stayed, if defendant gives security to discontinue nuisance. R. S. c. 26, § 21. Instead of issuing the warrant required by the preceding section, the court or trial justice may order it to be stayed on motion of the defendant, and on his entering into recognizance in such sum and with such surety as the court or justice directs, in case of an indictment, to the state, or in case of a complaint or action, to the plaintiff, conditioned that the defendant will either discontinue said nuisance, or that within a time limited by the court and not exceeding 6 months, he will cause it to be abated and removed, as may be directed by the court; and on failing to perform such condition, the recognizance shall be deemed forfeited, and the court, or any justice thereof, in term time or in vacation, or said trial justice on being satisfied of such default, may forthwith issue the warrant and scire facias on the recognizance.

Sec. 19. Expenses of abatement to be defrayed as in case of execution; defendant entitled to poor debtor's oath. R. S. c. 26, § 22. The expense of abating a nuisance by virtue of a warrant shall be collected by the officer as damages and costs are collected on execution; except that the materials of buildings, fences, or other things removed as a nuisance may be first levied upon and sold by the officer, and the proceeds, if any remain after paying the expense of removal, shall be paid by him, on demand, to the defendant or the owner of such property; and if said proceeds are not sufficient to satisfy the expenses, the officer shall collect the residue as aforesaid. A person committed to jail on such warrant may avail himself of the poor debtor's oath, as if he had been committed on execution. If said expense cannot be collected of the defendant, it shall be paid as costs in criminal prosecutions.

Sec. 20. Jurisdiction by injunction. R. S. c. 26, § 23. Any court of record before which an indictment, complaint, or action for a nuisance is pending may, in any county, issue an injunction to stay or prevent such nuisance, and make such orders and decrees for enforcing or dissolving it as justice and equity require.

60 Me. 194.

Sec. 21. Stationary, internal combustion, or steam engine not to be used without license from town officers; notice and hearing on application; appeal, proceedings; unlicensed engine; abatement. R. S. c. 26, §§ 24, 25, 26, 27. 1931, c. 18. 1935, c. 84, § 12. No stationary, internal combustion, or steam engine shall be erected in a town until the municipal officers have granted license therefor, designating the place where the buildings therefor shall be erected, the materials and mode of construction, the size of the boiler and furnace, and such provision as to height of chimney or flues, and protection against fire and explosion, as they judge proper for the safety of the neighborhood. Such license shall be granted on written application, recorded in the town records, and a certified copy of it furnished, without charge, to the applicant.

When application is made for such license, said officers shall assign a time and place for its consideration, and give at least 14 days' public notice thereof, in such manner as they think proper, at the expense of the applicant. Any person aggrieved by the decision of the selectmen of towns in granting or refusing such license may appeal therefrom to the next term of the superior court held in said county, which court may appoint a committee of 3 disinterested persons, as is provided in relation to appeals from location of highways. Said committee shall be sworn and give 14 days' notice of the time and place of their hearing to the parties interested, view the premises, hear the parties, and affirm, reverse, or annul the decision of said selectmen, and their decision shall be final. Pending such appeal from granting such license, the supreme judicial court in equity or the superior court in equity may enjoin the erection of such building and engine.

Any such engine erected without a license shall be deemed a common nuisance without other proof than its use.

Said officers shall have the same authority to abate and remove an engine, erected without license, as is given to the local health officer in chapter 22.

See c. 22, § 142, re removal of private nuisances; 65 Me. 435; *75 Me. 378; *80 Me. 490; *117 Me. 187.

Sec. 22. Blasting rocks, notice to be given; penalty. R. S. c. 26, §§ 34, 35. Persons engaged in blasting lime-rock or other rocks shall before each explosion give seasonable notice thereof, so that all persons or teams approaching shall have time to retire to a safe distance from the place of said explosion; and no such explosion shall be made after sunset.

Whoever violates any provision of this section forfeits to the prosecutor \$5 for each offense, to be recovered in an action of debt, and is liable for all damages caused by any explosion; and if the persons engaged in blasting rocks are unable to pay or, after judgment and execution, avoid payment of the fine, damages, and costs by the poor debtor's oath, the owners of the quarry in whose employment they were are liable for the same.

82 Me. 242; *88 Me. 268; 93 Me. 67.

Sec. 23. Dangerous buildings may be adjudged nuisances; proceedings; notice to owner; return. R. S. c. 26, § 36. When the municipal officers of a town, after personal notice in writing to the owner of any burnt, dilapidated, or dangerous building, or by publication in a newspaper in the same county, if any, 3 weeks successively, otherwise in the state paper, and after a hearing of the matter, adjudge the same to be a nuisance or dangerous, they may make and record an order prescribing what disposal shall be made thereof, and thereupon the town clerk shall deliver a copy of such order to a constable, who shall serve such owner, if a resident of the state, with an attested copy thereof, and make

return of his doings thereon to said clerk forthwith. If the owner, or part owner, is unknown or resides without the state, such notice shall be given by publication in the state paper, or in a paper published in the county, 3 weeks successively.

See § 27; c. 80, § 83, sub-§ IX, re buildings constructed, repaired, etc., contrary to by-laws; c. 85, § 19, re entrance to buildings by officers, for examination.

Sec. 24. Town officers may order nuisance abated. R. S. c. 26, § 37. If no application is made to a justice of the supreme judicial court or the superior court, as is hereafter provided, the municipal officers of such town shall cause said nuisance to be abated, removed, or altered in compliance with their order, and all expenses thereof shall be repaid to the town within 30 days after demand, or may be recovered of such person by an action for money paid.

See § 27.

Sec. 25. Owner may apply to supreme judicial or superior court. R. S. c. 26, § 38. Any owner aggrieved by such order may apply to a justice of the supreme judicial or superior court, in term time or vacation, who shall forthwith, after notice and hearing, affirm, annul, or alter such order. If the court is not in session, the action shall be entered on the docket of the preceding term.

See § 27.

Sec. 26. Costs. R. S. c. 26, § 39. If the court affirms such order, costs shall be recovered by the town. If it wholly annuls such order, costs shall be recovered by the applicant; and if it alters it in part, the court may render such judgment as to costs as justice requires.

See § 27.

Sec. 27. Sections 23-26 require vote of town. R. S. c. 26, § 40. The 4 preceding sections shall not be in force in any town unless adopted at a legal meeting thereof.

CHAPTER 129.

TIMBER UPON RIVERS, STREAMS, AND ADJACENT LANDS.

Sec. 1. Penalty for unlawful conversion of lumber. R. S. c. 52, § 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 the 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, \$20, to be recovered on complaint; one-half for the state and one-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. 52, § 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