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Chapter 5.

Elections. Congressional Districts. Presidential Electors.

Cross Reference.—See c. 4, § 50, re certain sections applicable to primary elections.

Preparation and Distribution of Ballots.

Sec. 1. Terms defined.—The term "state election," as used in this chapter, shall apply to any election held for the choice of a national, state, district or county officer, whether for a full term or for the filling of a vacancy, and the term "state officer" shall apply to any person to be chosen by the qualified voters at such an election. The term "city election" shall apply to any municipal election so held in a city, and the term "city officer" shall apply to any person to be chosen by the qualified voters at such an election. (R. S. c. 5, § 1.)

Cross reference.—See § 94, re penalties applicable to §§ 1-15.

Cited in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Sec. 2. Specimen ballots of nominations transmitted to clerks 7 days before any election, and published.—The secretary of state shall, 7 days at least previous to the day of any state election, transmit to the clerk in each city, town and plantation in which such election is to be held, specimen ballots containing the names, residences and party or political appellations of all candidates nominated as provided in chapter 4 for such election and to be voted for at each voting place in each such city, town and plantation respectively, substantially in the form of the general ballot to be so used therein; and the clerks shall immediately cause the specimen ballots for each ward, town or plantation, as the case may be, to be conspicuously posted in one or more public places in such ward, town or plantation. The secretary of state shall likewise cause to be published prior to the day of any such election, in at least 2 newspapers, if there be so many printed or published in each county, representing so far as practicable, the political parties which, at the preceding election, cast the largest and next largest numbers of votes, a specimen ballot of all such nominations, so far as may be, in the form in which they shall appear upon the general ballots. New nominations made or authorized shall be transmitted, posted and published promptly, and so far as practicable in the manner herein directed, and communications transmitted as herein directed by the secretary of state to any clerk shall be duplicated on the succeeding day. (R. S. c. 5, § 2. 1951, c. 348, § 6.)

Sec. 3. Printed lists to be posted 4 days before city election; publication.—The city clerk of each city shall, 4 days at least prior to the day of

any city election therein, cause to be conspicuously posted in one or more public places in each ward of such city, a printed list containing the names, residences and party or political appellations of all candidates nominated as provided in chapter 4, and to be voted for in such ward, substantially in the form of the general ballot to be so used therein; and he shall likewise cause to be published, prior to the day of such election, in at least 2 newspapers, if there be so many printed or published in such city, representing the political parties which cast at the preceding election the largest and next largest numbers of votes, a list of all such nominations made, so far as may be, in the form in which they shall appear upon the general ballots. (R. S. c. 5, § 3.)

Sec. 4. Ballots used in elections to be furnished at public expense. —All ballots cast in elections for national, state, district and county officers in cities, towns and plantations and all ballots cast in municipal elections in cities shall be printed and distributed at public expense, as hereinafter provided. The printing of the ballots and cards of instructions to voters shall in municipal elections in cities be paid for by the several cities respectively, and in all other elections the printing of the ballots and cards of instructions and the delivery of them to the several municipalities shall be paid for by the state. The distribution of the ballots to the voters shall be paid for by the cities, towns and plantations respectively. (R. S. c. 5, § 4.)

Quoted in part in Opinion of the Justices, 107 Me. 514, 78 A. 656.

Sec. 5. What the ballot shall contain and how printed; size of ballot. —Every general ballot or ballot intended for the use of all voters, which shall be printed in accordance with the provisions of this chapter, shall contain the names and residences, ward residences in city elections, of all candidates whose nominations for any office specified in the ballot have been duly made and not withdrawn in accordance herewith, and the office for which they have been severally nominated, and shall contain no other names except that in case of electors of president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political designation. The names of candidates nominated by any party shall be grouped together upon the ballot. Above each group shall be placed the name of the political party by which the candidates comprising such group were placed in nomination, or the political designation as described in the certificate of nomination, or nomination papers, under a square each side of which shall be not less than 2 inches; above such square shall be printed the following words in plain letters: To vote a straight ticket mark a cross (X) or a check mark (√) within this square. Below the name of each candidate for any office in any group there shall be left a blank space in which the voter may write the name of any person for whom he desires to vote as a candidate for such office; at the right of each name and at the right of the blank space above provided for, there shall be left a blank square in which the voter may mark a cross (X) or a check mark (√); under the name of the office to be voted for, when there is more than 1 office to be filled, there shall be printed the words "Vote for not more than 2", "Vote for not more than 3" and so forth in accordance with the number of offices to be filled as the case may be. If only 1 person be nominated by any party, or under any political designation, his name with the office for which he is a candidate shall be printed by itself under the name of such party or political designation. Whenever the approval of a constitutional amendment or other question is submitted to the vote of the people such question or questions shall be printed upon a separate ballot. The ballots shall be so printed as to leave a blank space above such amendment or question so as to give each voter a clear opportunity to designate by a cross (X) or a check mark (√), therein, his answers to the questions submitted, and on the ballot may be printed such words as will aid the voter to do this as "yes" or "no" and the like. The ballot shall be not less

than 4 inches in width and not less than 6 inches in length. Before distribution, the ballots shall be so folded in marked creases that their width and length when folded shall be uniform. On the back and outside, when folded, shall be printed "Official Ballot for," followed by the designation of the voting place for which the ballot is prepared, the date of the election and a facsimile of the signature of the city clerk who has caused the ballot to be printed. All ballots furnished to any municipality by the secretary of state, as required by law for use at any state election, shall be printed upon the outside so that "Official Ballot for," the designation of the voting place for which the ballot is prepared, the date of the election and the facsimile of the signature of the secretary of state shall appear on all sides of the folded ballot. Except as otherwise herein provided, ballots for use in elections of senators and representatives to the congress of the United States, state and county officers, and senators and representatives to the state legislature shall be printed upon clean white paper and ballots to be used in elections as to constitutional and referendum questions submitted to the vote of the people shall be printed upon tinted paper, the color or tint of which may be determined by the secretary of state, without any distinguishing mark or figure thereon. Whenever a cross (X) has heretofore been required, including referendum elections held pursuant to private and special acts, a cross (X) or a check mark (√) shall both be valid. (R. S. c. 5, § 5. 1947, c. 82, § 3. 1949, c. 244.)

The designation of the office is an indispensable part of any ballot. There must be both an office and a candidate. Pease v. Ballou, 108 Me. 177, 79 A. 532.

The designation of the office, as well as the candidate, must appear upon the ballot as printed by the secretary of state, such being the positive requirement of statute. Crosby v. Libby, 114 Me. 35, 95 A. 329.

Sufficiency of designation of office. — The provision of this section, that the ballot prepared and distributed by the secretary of state shall contain a specification of the office for which the candidates have been severally nominated, must be reasonably construed with reference to the obvious purpose for which it is prepared and for which it is to be used. It is designed to afford the elector a convenient and reliable method of exercising the privilege of indicating his choice of the candidates for the office designated on the ballot. It is designed when cast to be an expression of the will of the voter, and his purpose should not be defeated by an immaterial error in the description of the office. The terms employed in the designation of it should be interpreted with reference to the general provisions of the statute, of which the voter must be presumed to have knowledge, relating to that office. But it is not indispensable that in all cases it should be described upon the ballot with technical accuracy or in the precise language of the statute. If the terms used upon the ballot, read in the light of the general statutes upon the subject, are apt and sufficient to identify the office and express the will of the voter with reasonable certainty, he is not to be disfranchised for want of legal formality in the designation of the office on the official ballot. Opinion of the Justices, 107 Me. 514, 78 A. 656, in which it was said that voters are not misled by the use of the term "county clerks" instead of the more appropriate one of "clerk of judicial courts" on the official ballot, and their purpose in casting their ballots can be ascertained with reasonable certainty.

Quoted in part in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Waterman v. Cunningham, 89 Me. 295, 36 A. 395.

Cited in State v. Boyington, 56 Me. 512.

Sec. 6. Number of ballots to be provided.—There shall be provided for each voting place, at which an election is to be held, 1 set of such general ballots and 1 set of ballots containing any constitutional amendment or other question submitted to the vote of the people, each of not less than 75 for every 50 votes and fraction of 50 votes cast in such voting place at the next preceding election, city, state or national, corresponding to and in congruity with the election for which such ballots are to be provided. (R. S. c. 5, § 6.)

Sec. 7. Ballots to be folded and fastened in blocks; record kept of

number furnished.—All ballots when printed shall be folded as hereinbefore provided, and fastened together in convenient numbers in packages, books or blocks, in such manner that each ballot may be detached and removed separately. A record of the number of ballots, printed and furnished to each voting place, shall be kept and preserved by the secretary of state and the several city clerks for 1 year. (R. S. c. 5, § 7.)

Sec. 8. Ballots sent to clerks; record.—The secretary of state shall send the general and special ballots, together with the specimen ballots and cards of instructions printed by him, as herein provided, to the several city, town and plantation clerks, so as to be received by them, 48 hours at least previous to the day of election. They shall be sent in sealed packages, with marks on the outside clearly designating the voting place for which they are intended and the number of ballots of each kind enclosed; and the respective city, town and plantation clerks shall, on delivery to them of such packages, return receipts therefor to the secretary of state. The secretary of state shall keep a record of the time when, and the manner in which, the several packages are sent, and shall preserve for 1 year the receipts of the city, town and plantation clerks. (R. S. c. 5, § 8.)

Cited in Crosby v. Libby, 114 Me. 35, 95 A. 329.

Sec. 9. Instructions for guidance of voters; specimen ballots.—The secretary of state, in case of state elections, and the several city clerks, in case of city elections, shall prepare full instructions for the guidance of voters at such elections, as to obtaining ballots, the manner of marking them, the method of gaining assistance and the obtaining of new ballots in place of those accidentally spoiled, and they shall respectively cause the same, together with copies of sections 92 to 94, inclusive, and section 107 of this chapter, and section 2 of chapter 4, to be printed in large, clear type, on separate cards, to be called cards of instructions; and they shall respectively furnish them and the ballots for use in each such election. They shall also cause to be printed on tinted paper, and without the facsimile indorsements, ten or more copies of the form of the ballot provided for each voting place at each election therein, which shall be called specimen ballots and shall be furnished with the other ballots provided for each such voting place. (R. S. c. 5, § 9.)

Sec. 10. Ballots, etc., to be provided by city clerks.—The ballots together with the specimen ballots and cards of instructions printed by the city clerks, as herein provided, shall be packed by them in separate sealed packages, with marks on the outside clearly designating the voting places for which they are intended, and the number of ballots of each kind enclosed. (R. S. c. 5, § 10.)

Sec. 11. One set of ballots sent to presiding election officer on day of election; cards of instructions and specimen ballots posted in each compartment.—The several city, town and plantation clerks, or municipal officers, shall send to the presiding election officer or officers of each such voting place before the opening of the polls on the day of election, 1 set of ballots so prepared, sealed and marked for such voting place, and a receipt of such delivery shall be returned to them from the presiding election officer or officers present, which receipt, with a record of the number of ballots sent, shall be kept in the clerk's office for 1 year. At the opening of the polls in each voting place the seals of the packages shall be publicly broken, and the packages shall be opened by the presiding election officer or officers, and the packages, books or blocks of ballots shall be delivered to the ballot clerks. The cards of instructions shall be immediately posted at or in each voting shelf or compartment provided in accordance with this chapter for the marking of ballots, and not less than 3 such cards and not less than 5 specimen ballots shall be immediately posted in or about the voting room outside the guardrail. (R. S. c. 5, § 11.)

Sec. 12. In case of loss of ballots, other ballots to be prepared and furnished.—In case the ballots to be furnished to any city, town or plantation, or voting place therein, in accordance with the provisions hereof, shall fail for any reason to be duly delivered, or in case after delivery they shall be destroyed, lost or stolen, it shall be the duty of the clerk or municipal officers of such city, town or plantation to cause other ballots to be prepared substantially in the form of the ballots so wanting and to be furnished; and upon receipt of such other ballots from him or them, accompanied by a statement under oath that the same have been so prepared and furnished by him or them and that the original ballots have so failed to be received or have been so destroyed, lost or stolen, the election officers shall cause the ballots so substituted to be used in lieu of the ballots so wanting. (R. S. c. 5, § 12.)

Duties of Municipal and Election Officers. Voting Compartments.

Sec. 13. Voting districts; warden and clerk appointed; check lists prepared.—The municipal officers, 60 days before any election, may, after public notice and hearing, divide towns and wards of cities into not more than 5 convenient voting districts. By writing under their hands to be filed with and recorded by the city or town clerk, they shall define the limits and designate the voting places of each district, and attested copies thereof shall forthwith be posted by the clerks in not less than 6 public and conspicuous places in such town or ward, and the same shall be published in one or more of the newspapers, if any, printed in such city or town, 30 days at least before such election and an attested copy thereof shall be immediately filed in the office of the secretary of state. They shall also 10 days before any such election appoint a warden or presiding officer and clerk, in addition to the regular ballot clerks for each voting place other than the one in which the wardens duly elected for such ward shall preside, who shall perform the same duties at elections as presiding officers and clerks of towns and wards now perform. Any vacancy occurring after appointment may be filled by the voters of such voting district as similar vacancies are now filled. All such officers shall be sworn and make all returns of all elections directly to the city or town clerk. The board of registration of voters for any city in which a ward has been so divided, and the municipal officers of any town which has been so divided, shall in the manner now provided by law, prepare check lists of the qualified voters for each of such voting districts, in lieu of the check lists now provided by law for the entire ward or town, to be used as hereinafter provided, and all provisions of law applicable to check lists for wards and towns shall apply to check lists for such voting districts. (R. S. c. 5, § 13. 1951, c. 191.)

Cross references.—See § 65, re separate voting place for Connor; § 100 re penalty for neglect to keep check list; P. & S. L., 1943, c. 31, re polling districts in Harpswell.

Legislative intent appears to sanction more than one place for the accommodation of voters, and to negative the theory of the necessity of a moderator to regulate and control a deliberative assembly, or intention that the voters should be congregated at one time and place to enable them to participate in such an assembly. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

Sec. 14. Clerk for each voting place; additional clerks.—The municipal officers of cities, towns and plantations, voting in accordance with the provisions of this chapter, shall biennially in the month of May appoint clerks for each voting place; and such municipal officers shall appoint as such clerks such persons as shall be recommended for appointment by the several political party committees of the several cities, towns or plantations representing the 2 political parties which, at the gubernatorial election next preceding such appointment, cast the greatest numbers of votes. For each voting place in cities and towns, 4 clerks, and for each voting place in plantations and for each island

ward of the city of Portland and for the island district of the town of Cumberland and the districts in the town of Cranberry Isles, 2 clerks shall be appointed. Such clerks shall equally represent each of the political parties which cast the largest numbers of votes in the state election next preceding their appointment. Each of such clerks shall be sworn to the faithful performance of his duties, and shall hold office for 2 years from the date of his appointment, and until a successor is appointed and qualified, or he vacates the office. A removal to another ward or town shall constitute a vacancy. Vacancies occurring in the office of election or ballot clerk shall be forthwith filled by the municipal officers in towns and plantations and by the mayors of cities in manner hereinbefore provided. Such election clerks shall attend at the times and places designated for meetings in their respective wards, towns or plantations for the election of any national, state, county, city or ward officers and for the determination of any question submitted to the qualified voters of any city by lawful authority, shall be present at and assist in the counting by the presiding election officer or officers of all votes cast in such meetings, and shall receive such reasonable compensation for each day's actual service as the municipal officers of their respective cities, towns and plantations may determine. On the recommendation of the political party committee of any other party represented on the official ballot, the municipal officers shall appoint 1 such election clerk in each voting place, for such political party, who shall be qualified for the performance of his duties, in like manner as the clerks of the 2 before-mentioned parties, shall hold office for a like term, or for such part thereof as the party for which he is appointed maintains its right to be represented upon the official ballot, and who during such term shall have like rights and duties with the before-mentioned clerks to be present at and assist in the counting of votes, and shall serve with or without compensation as the municipal officers in any case may deem advisable; vacancies occurring in case of such clerks to be filled as in case of other clerks herein mentioned. No person shall be eligible to the position of election clerk in any ward, town or plantation where he is a candidate to be voted for. Two of the clerks in each voting place, one from each major political party, shall be detailed by the municipal officers to act as ballot clerks. The 2 ballot clerks thus detailed and appointed in each voting place shall have charge of the ballots therein and shall furnish them to the voters in the manner hereinafter set forth. A duplicate list of the qualified voters in each ward, town or plantation shall be prepared for the use of the ballot clerks, and all the provisions of law relative to the preparation, furnishing and preservation of check lists shall apply to such duplicate lists. Provisions in the charter of any city for the election of 2 persons to assist the warden in receiving, sorting and counting the ballots are not affected by the provisions hereof; but persons so elected shall be deemed election clerks for that purpose; they shall equally represent the 2 political parties which at the state election next preceding cast the greatest numbers of votes. Provided, however, that the municipal officers of cities, towns and plantations may, when necessity requires, appoint additional election clerks for each voting place in cities, towns and plantations and for each island ward of the city of Portland and for the island district of the town of Cumberland and the districts in the town of Cranberry Isles, who shall be sworn and shall assist the election officers in the several voting precincts of the state. Such additional clerks shall be recommended and appointed in the same manner, hold office for the same time, and receive the same compensation as is provided for regular election clerks in this section. Provided, however, that in towns of not more than 300 inhabitants 2 clerks, each representing one of the 2 political parties which at the gubernatorial election preceding such appointment cast the greatest number of votes, shall be sufficient. (R. S. c. 5, § 14. 1953, cc. 22, 46.)

Sec. 15. Voting compartments provided; display of American flag. —The municipal officers in each city, town and plantation shall cause their re-

spective voting places to be suitably provided with a sufficient number of voting shelves and compartments, at or in which voters may conveniently mark their ballots so that in the marking thereof they shall be screened from the observation of others, and each voting shelf and compartment shall have a wooden swing door or drop curtain so arranged that the top thereof shall be not less than 6 feet from the floor and the bottom thereof shall be at least 2 feet and 6 inches from the floor. Such entrance shall be closed while the voter is within the compartment, and no one shall be allowed therein with him, unless he calls for assistance in the marking of his ballot, and such assistance shall be furnished according to the provisions of this chapter. A guardrail shall be so constructed and placed that only such persons as are inside it can approach within 6 feet of the ballot boxes and of the voting shelves and compartments. The arrangement shall be such that the ballot boxes shall not be hidden from the view of persons present, and the voting shelves and compartments shall be so arranged that the entrance of each compartment shall be next to the guardrail, so as to admit to full view of the persons just outside the guardrail those who enter and leave each compartment. The number of the voting shelves and compartments shall be not less than 1 for every 200 voters qualified to vote at such voting place, and not less than 2 in any town, and not less than 5 in any ward of a city. No persons, other than the election officers, election clerks and voters admitted as hereinafter provided, shall be permitted within the guardrail, except by authority of the presiding election officer or officers for the purpose of keeping order and enforcing the law. Each voting shelf and compartment shall be kept provided with proper supplies and conveniences for marking the ballots. The American flag shall be displayed in each voting place at every election. (R. S. c. 5, § 15.)

Cross references.—See § 94, re penalties applicable to §§ 1-15; § 105, re penalty if election clerk offers to assist voter before being directed to do so; § 107, re penalty for voter showing ballot, interfered with, etc.

The fundamental idea of the Australian ballot method is secrecy, in order to prevent, or at least to diminish, bribery and corruption. To effectuate that purpose booths are required in each voting precinct, within which, apart from public and private gaze, the electors must mark their ballots. There are no exceptions in this provision. It applies to all. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

Use of compartments is mandatory. — So closely interwoven is the idea of secrecy with the casting of the ballot itself that the requirement as to booths is mandatory and imperative, a part of the very essence of the thing to be done. If this provision can be ignored and the elector mark his ballot on a table in the open, in the plain view of spectators as well as of election officers, then the genius and spirit of the Australian ballot are destroyed. It is true that this is a hardship upon the innocent voters who come to the polling place expecting that the officers have done their duty and erected the necessary booths; and it might further be argued that this places the power of invalidating an entire election in the hands of the election officers who have neglected their duty through sinister motives. The answer, however, is, that to hold such an election valid in face of the utter disregard of the vital and essential purpose of the act is to abolish the wise and well settled distinction between mandatory and directory requirements and to regard all as directory, if voters are thereby to be disfranchised, as in every case they must be. As a matter of public policy it is absolutely essential that the secret ballot system be maintained throughout the state even if in some instances, because of the ignorance or neglect of the officials, a few voters may lose their ballots. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

And failure to use them invalidates election.—If election booths are not used as required by this section, but the voters mark their ballots at tables in open rooms, this is a violation of a mandatory requirement, and the election is thereby invalidated, and none of the ballots in the town can be counted. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

Notifying Meetings and Proceedings. Ballot Boxes.

Sec. 16. Calling of meetings in towns for state elections; conduct

of meetings.—The selectmen of every town, by their warrant, shall cause the inhabitants thereof, qualified according to the constitution, to be notified and warned of every state election and of every election on questions submitted to the people by the legislature to be held therein in the same manner as is provided by law in the case of town meetings, such warrant to specify the officers to be voted for and the questions to be voted upon, and as to conducting town meetings for such elections, they shall be subject to the regulations contained in this chapter for meetings for the election of governor, senators and representatives, unless otherwise provided by law. (R. S. c. 5, § 16.)

Section provides single method of notification.—This section warrants the conclusion that a single method is provided for notification and conduct of meetings called for the sole purpose of casting a ballot for the election of county, state and national officers, and that the same identical method is used for the determination of questions submitted to the people by the legislature. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

Sec. 17. Officers presiding have powers of moderator.—The selectmen or other officers, required by the constitution and laws to preside at any meeting called under the provisions of the preceding section, shall have all the powers of moderators of town meetings, as provided in chapter 91; and they shall refuse the vote of any person not qualified to vote. (R. S. c. 5, § 17.)

Cross reference. — See c. 91, § 46, re powers of moderator.

Validity of meeting for vote on question submitted to people presided over by selectmen.—The preliminary proceedings for calling ordinary town meetings and those for calling special elections being identical, this section giving to the selectmen all the powers of moderators, a meeting held to ballot upon a question submitted to the voters would be valid whether provision was made for the election of a moderator, or whether a selectman presided. Norway Water District v. Norway Water Co., 139 Me. 311, 30 A. (2d) 601.

Sec. 18. Selectmen absent, others may be chosen pro tempore. — If a majority of the selectmen are absent from any such meeting duly warned, or being present, neglect or refuse to act as such and to perform all their duties, the voters may choose so many selectmen pro tempore, as are necessary to constitute or to complete the number competent to act. (R. S. c. 5, § 18.)

Quoted in Opinion of the Justices, 70 Me. 560.

Sec. 19. Presiding officer at such choice.—During the choice of selectmen pro tempore any selectman present may act as moderator; if no selectmen are present, or if those present neglect or refuse to act as such, the town clerk shall preside; and the person so presiding shall have all the powers and discharge the duties of moderator. (R. S. c. 5, § 19.)

Sec. 20. Duties and powers of selectmen pro tempore.—Selectmen pro tempore accepting the trust shall be sworn faithfully to discharge the duties of their office, so far as it relates to such meeting and election; and in making a record and return of the votes, as the constitution and laws require, and in all matters incidental to the trust, they shall have the powers of permanent selectmen and be subject to the same duties and liabilities. (R. S. c. 5, § 20.)

Sec. 21. In case of division of a town, where electors may vote.— Whenever any territory is set off from one town and annexed to another, the inhabitants of the territory set off, otherwise qualified, may vote for representative to congress, senators or representatives to the legislature, in the town to which they are annexed, if such town is within the congressional, senatorial or representative district as the case may be, to which they previously belonged; otherwise, such inhabitants may vote for those officers in the town from which

they were set off, until the next congressional, senatorial or representative apportionment has been made. (R. S. c. 5, § 21.)

Sec. 22. Time of opening and closing polls.—Meetings for the election of state and county officers, and for acting on initiative and referendum questions, and for the election of municipal officers in cities, may be opened at 6 o'clock in the forenoon, and shall be opened not later than 10 o'clock in the forenoon; the polls shall be kept open until 7 o'clock in the afternoon and shall then be closed, except that towns of 300 inhabitants or less shall have the option of closing the polls at 5 o'clock in the afternoon. Notice of the time of opening and closing shall be given in the warrant calling the meeting. (R. S. c. 5, § 22.)

See § 94, re penalty; c. 91, § 58, re town clerk to prepare cards of instruction.

Sec. 23. Check list required; rule as to voting.—The officers presiding at any election, except for the choice of town officers, shall use the check list herein required at the polls at state elections, and shall use but 1 ballot box; and no votes shall be received unless delivered by the voter in person after he has audibly announced his name to the presiding officers, unless physically unable to do so, and they have had opportunity to be satisfied of his identity and find his name on the list and mark it, and ascertain that his vote is single. (R. S. c. 5, § 23.)

Cross reference.—See c. 3, § 48, re check list for choice of town officers.

Presumption the officers performed duty.—This section requires that the name of a voter shall be marked as he votes. The usual mark is a dot or a cross at the name, and such mark is the usual indication that a voter has voted. The town officers are presumed to have done their duty. Belmont v. Vinalhaven, 82 Me. 524, 20 A. 89.

Stated in State v. Gilman, 96 Me. 431, 52 A. 920.

Sec. 24. Check list to be returned to clerk within 24 hours after close of polls.—Wardens of cities and selectmen of towns shall, within 24 hours after the closing of the polls in their respective voting districts at any election, return the check lists now provided by law for towns, wards, voting precincts and voting districts to the clerks of their respective cities and towns. Any person violating the provisions of this section shall be punished by a fine of not less than $100, nor more than $500, or by imprisonment for 30 days. (R. S. c. 5, §§ 24, 117.)

Sec. 25. Clerks to preserve check lists, and furnish certified copies thereof.—Clerks of towns shall preserve the check lists used at any election at which the ballots cast are to be returned to the secretary of state under the provisions of this chapter, for 1 year without alteration, and shall furnish to any person a certified copy thereof within 20 days after demand and payment or tender of the legal charges therefor, and shall without charge furnish the governor and council with a certified copy thereof within 20 days after demand, under the penalty provided in section 96. (R. S. c. 5, § 25.)

See c. 3, § 48, re check list for choice of town officers.

Sec. 26. State ballot boxes; uniform design; special ballot boxes.—Ballot boxes used for the reception of official ballots shall be of uniform design; they shall be provided for each voting place by the secretary of state at the expense of the state, and shall be known as "state ballot boxes"; each box shall be equipped with a suitable lock and key; in the top of each box there shall be an opening through which each ballot shall be put into the box; such opening shall be large enough and not larger than may be necessary to allow a single folded ballot to be easily passed through such opening into the box, and shall be covered with a slide which shall be kept shut except when opened to receive a ballot. Each

box shall be large enough properly to receive and hold all ballots which may lawfully be deposited therein at any election. Provided, however, that with the approval of the secretary of state, the attorney general and 1 member of the governor's council to be designated by the governor, cities and towns may at their own expense provide ballot boxes with sufficient locks and seal fastenings, which shall contain mechanical devices for receiving, registering and indorsing every legal ballot deposited therein; but no such ballot box shall record any distinguishing number or mark upon a ballot. Such ballot boxes so provided shall be known as "state ballot boxes", and shall be large enough properly to receive and hold all ballots which may be used at all state, municipal or other elections. (R. S. c. 5, § 26.)

Sec. 27. State ballot boxes, regulated.—State ballot boxes shall be used for receiving all official ballots cast at elections. The election officers at each voting place shall, at the opening of the polls and before any ballots are received, publicly open the ballot box, and ascertain by personal examination, and publicly show that the same is empty, and shall immediately thereafter lock the box and deliver the key thereof to the ward, precinct, town, district or plantation clerk, to be retained by him until the polls are closed. The ballot box shall not after it has been shown to be empty and has been locked, be removed from public view nor opened nor any ballot removed therefrom until the polls are closed. If it becomes impossible to use the state ballot box, the voting shall proceed in such manner as the presiding officer shall direct, and in such case the clerk shall record the reason why such ballot box is not used, and shall enclose an attested copy of such record in the package with the ballots cast. (R. S. c. 5, § 27.)

See §§ 97, 104, re liability and penalty.

Sec. 28. Other ballot boxes, how constructed and used. — Ballot boxes used at elections for which official ballots are not provided shall be covered at the top with a slide only, which shall be kept shut, except when opened to receive a ballot; but such boxes may contain mechanical devices which tend to prevent fraud in elections and do not materially abridge the rights of voters; and if the presiding officers do not comply with the requirements of this chapter, or if they attempt to evade the same, they shall be subject to the penalties provided in section 96. (R. S. c. 5, § 28.)

Sec. 29. Commission to examine and approve voting and counting machines; secrecy essential.—The secretary of state, the attorney general and 1 member of the governor's council to be designated by the governor shall, at such times, under such conditions, and after such public notice as they see fit to give, examine voting and counting machines and apparatus; and they shall certify their approval of such machines as, in their judgment, furnish convenient, simple and satisfactory means of voting and of ascertaining the true result thereof with facility and accuracy, special regard being had to preventing and detecting double voting; but no machine shall be approved which does not secure to the voter a degree of secrecy in voting equal to that afforded by the use of the official ballot provided by law. No machine except such as is approved by said officers and used in accordance with this and the 3 following sections shall be used in this state. (R. S. c. 5, § 29.)

Sec. 30. Cities and towns authorized to purchase and use machines. A city or town may, at a legal meeting held not less than 10 days before any regular election, determine upon and purchase or accept for trial, and order the use of one or more voting and counting machines for the then ensuing election in such city or town, and thereafter in case such machine or machines are purchased, they shall be used at all elections held therein for all purposes except elections of town officers until otherwise voted at a legal meeting. (R. S. c. 5, § 30.)

Sec. 31. Bond to be given to keep machines in good order.—When voting and counting machines are approved and purchased, the seller thereof shall give to the secretary of state a suitable bond with sufficient sureties, conditioned to keep each machine in good working order for 5 years at his own expense. (R. S. c. 5, § 31.)

Sec. 32. Regulations and instructions for use of voters to be furnished.—The secretary of state shall make regulations for the use of voting machines, and before each state and presidential election shall furnish appropriate instructions for the voters in cities and towns where such machines are used, and like appropriate instructions shall be furnished by clerks of cities before each city election. (R. S. c. 5, § 32.)

Sec. 33. Presiding officer to have charge of ballot box; custody of ballot boxes; defective or lost ballot boxes.—The presiding officer at each voting place shall have charge of the state ballot box, and shall at the close of each election return it to the city, town or plantation clerk. The clerk of each city, town or plantation shall have the custody of the state ballot boxes provided therefor and shall at the expense of the municipality provide for their safekeeping and for keeping them in good order and repair, subject to the supervision and control of the secretary of state. If a state ballot box becomes defective or is lost or destroyed, the clerk of the municipality shall seasonably make written application to the secretary of state for another ballot box, and the same shall be supplied at the expense of the municipality. Any presiding officer or any city, town or plantation clerk who shall neglect to perform any duty imposed by this section shall be punished by a fine of not less than $5 nor more than $1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment, for each offense, and thereafter shall be disqualified from holding the office of election or ballot clerk. (R. S. c. 5, §§ 33, 106.)

See § 97, re liabilities.

Manner of Voting and Returns.

Cross Reference.—See c. 4, § 28, re applicability of §§ 34-40 to primary elections.

Sec. 34. Voter to give his name to ballot clerk, and if on check list he may enter within guardrail; distribution of ballots.—Any person desiring to vote shall give his name, and if requested to do so, his residence, to one of the ballot clerks, who shall thereupon announce the same in a loud and distinct tone of voice, clear and audible, and if such name is found upon the check list by the ballot clerk having charge thereof, he shall likewise repeat the name, and the voter shall be allowed to enter the space enclosed by the guardrail. The ballot clerk shall give him 1, and only 1, ballot and his name shall be immediately checked on the check list. Besides the election officers and election clerks, not more than 2 voters in excess of the number of voting shelves or compartments provided shall be allowed in the enclosed space at one time. (R. S. c. 5, § 34.)

See § 94, re penalty.

Sec. 35. How voter shall prepare ballot; manner of voting.—On receipt of his ballot the voter shall forthwith, and without leaving the enclosed space, retire alone to one of the voting shelves or compartments and shall prepare his ballot by marking in the appropriate place a cross (×) or a check mark (√) as follows: He may place such mark within the square above the name of a party group or ticket, in which case he shall be deemed to have voted for all the persons named in the group under such party or designation. If the voter shall desire to vote for any person or persons, whose name or names are not printed as candidates in such party group or ticket, he may erase or draw a line through any name or names which are printed therein and place a cross (×) or a check mark (√) in the square at the right of the name of the candidate of his choice

in any other party group or ticket. Or, as an optional method of voting, the voter may omit the cross (X) or the check mark (√) in the party square and place a cross (X) or a check mark (√) in the blank square at the right of the name of each candidate he wishes to vote for. If the voter wishes to vote for a candidate whose name is not on the ballot, he may write the name under the name of the candidate erased or through whose name he has drawn a line. Or, if the voter does not desire to vote for a person or persons whose name or names are printed upon the party group or ticket, he may erase or draw a line through such name or names with the effect that the ballot shall not be counted for such candidate or candidates. Stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot. In case of a question submitted to the vote of the people, he shall place such mark in the appropriate margin above the answer which he desires to give. Before leaving the voting shelf or compartment, the voter shall fold his ballot without displaying the marks thereon, in the same way it was folded when received by him, and he shall keep the same so folded until he has voted. Before leaving the enclosed space he shall deposit his ballot in the box with the official indorsement uppermost, and in case he has received a ballot containing a question submitted to the people, he shall deposit it likewise at the same time. He shall mark and deposit his ballot without undue delay, and shall quit the enclosed space as soon as he has voted. No voter shall be allowed to occupy a voting shelf or compartment occupied by another, or to remain within the enclosed space more than 10 minutes, or to occupy a voting shelf or compartment for more than 5 minutes in case all of such shelves or compartments are in use and other voters are waiting. No voter not an election officer or an election clerk, whose name has been checked on the list by the ballot clerk, shall be allowed to reenter the enclosed space during the election. The presiding election officer or officers, for the time being, shall enforce the observance of the provisions of this section. (R. S. c. 5, § 35. 1947, c. 82, § 4.)

I. General Consideration.
II. Marking of Ballots.
III. Use of Stickers.
IV. Erasures and Write Ins.

Cross reference.—See § 94, re penalty.

I. GENERAL CONSIDERATION.

Purpose of section. — The leading purpose of this section was to give the elector an opportunity to cast his vote in such a manner that no other person would know for what candidate he voted, and thus to protect him against all improper influences and enable him to enjoy absolute freedom from restraint and entire independence in the expression of his choice. It was designed to secure complete and inviolable secrecy in that respect, and under established rules of construction it should be examined with reference to the mischief to be remedied and the object to be accomplished, and interpreted, if practicable, so as to promote and not destroy the purpose of its enactment. Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

The very purpose and spirit of the Australian system, are secrecy with respect to the ballot cast, and immunity to the voter from danger of detection as to how he marked his ballot. Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

The objects of this law are universally recognized to be twofold, the securing of a secret ballot and the prevention of bribery and corruption at the polls. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

The intent of the Australian ballot law was not to limit or defeat the sacred right of franchise by establishing a method so intricate or complicated as to circumvent the intention of the honest voter. That intention must of course be expressed in compliance with statutory requirements but those requirements are to be interpreted broadly and reasonably. Crosby v. Libby, 114 Me. 35, 95 A. 329; Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Section provides two methods of voting. —The section provides two methods of voting, first, the group method by placing a cross in the party square and thereby including the names of all the candidates of that party printed below in the party column, unless some of them are erased; second, the voter may omit the cross in the party square and then the words are: "and place a cross or check mark in the blank square at the right of the name of

each candidate he wishes to vote for." Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

Exercise of elective franchise subject to regulation.—It is a recognized and familiar principle that the elective franchise, though guaranteed by the constitution as a sacred privilege to the persons there named as electors, must still be exercised under such regulations and restrictions as the legislature may deem reasonably necessary to maintain order in the elections, prevent intimidation, bribery and fraud, preserve the purity of the ballot box and thus secure a genuine expression of public sentiment. Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

And this section must be complied with.—If voters did not conform to the plain and specific directions of this section, the ballots are defective and cannot be counted. Waterman v. Cunningham, 89 Me. 295, 36 A. 395.

Applied in Murray v. Waite, 113 Me. 485, 94 A. 943.

II. MARKING OF BALLOTS.

Marking must be in accord with section.—The marking must be as this section commands, in a particular place and by a particular emblem, and the intention of the voter must be expressed in compliance with statutory requirements, and if not so expressed his ballot is fatally defective. Libby v. English, 110 Me. 449, 86 A. 975.

And ballot rejected if section not complied with.—The marking must be as this section commands in a particular place and by a particular emblem. Therefore, an entire ballot must be rejected for all candidates if there is no cross or check whatever in a square, or if the mark, though in a square, cannot fairly be construed to be a cross or check. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Mark used must be specified by this section. — The marking must be by the symbol specified by this section. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

Although latitude given in case of deviation from exact mark. — Considerable latitude in favor of the voter should be given in cases of all deviations from the exact cross or check. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

And must be made at proper place. — Nothing is left to intendment by this section. To entitle the vote to be counted, the cross (X) or check mark (√) must be made at the place designated by the section. Waterman v. Cunningham, 89 Me. 295, 36 A. 395.

But mathematical precision not required.—Each ballot must be tested by an honest judgment upon an inspection of the ballot itself and mathematical precision in the marking cannot be required or expected. Therefore crosses may be made of any size within the square; they may be made by ink or by a pencil mark of any color or even by the stub of a broken lead; the lines may have been extended inadvertently beyond the squares and in retracing the lines of a cross extra lines may appear. All the countless variations must be referred to the one paramount requirement of what answers to a cross in the square. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Court not to consider intention of voter.—Whatever the intention, or lack of intention, of the voter, in marking his ballot at variance with the requirements of the statute, is a matter which may, if thought proper, be addressed to the attention of the legislature, but cannot be considered in the deliberations of the court. Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525. See Waterman v. Cunningham, 89 Me. 295, 36 A. 395.

Marking where party method used. — The voter is allowed to place the cross within the square if he wishes to vote the entire party ticket; or to erase any printed name or names and under the name or names so erased to fill in the name or names of his choice. Or if he does not desire to vote for a person whose name is printed on the party ticket he may erase such name and the ballot shall not be counted for such person. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

This section gives the voter the option either of crossing the name in another party column, or of writing it in the blank space below the erased name and crossing it. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

"If the voter shall desire to vote for any person or persons whose name or names are not printed as candidates in such party group or ticket he may erase or draw a line through any name or names which are printed therein and place a cross (X) or a check mark (√) in the square at the right of the name of the candidate of his choice in any other party group or ticket." This is not an exclusive method and if, in voting by the group method, the voter wishes to vote for a candidate of another party, he need not cross the name of that candidate in its party column. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

III. USE OF STICKERS.

Ballot rejected for improper use of stickers. — Under this section "stickers shall not be counted unless used to fill a vacancy or correct an error in the printed ballot," and where neither contingency existed the ballots must be rejected. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

Sticker covering office designation. — Given a ballot properly prepared by the secretary of state with the designation of the office and the name of the candidate, the vote should be counted when from inspection of other parts of the same ballot and of other ballots cast at the same election, it is apparent what the designation of office covered is. When the designation of the office has been placed upon the ballot by the secretary of state in conformity with law and it has been covered by the voter in applying the strip or sticker, it cannot be contended that such voter applying the strip or sticker intended by the same act to render his vote void. Crosby v. Libby, 114 Me. 35, 95 A. 329.

Location of Sticker as Affecting Validity of Ballot.—See Crosby v. Libby, 114 Me. 35, 95 A. 329.

IV. ERASURES AND WRITE INS.

Provisions of section concerning write-ins must be followed.—To vote for a person not printed on the ballot, the person must erase the printed name to which he objects, and under the name so erased fill in the name he desires. No other mode is allowed by the statute. Its provisions are plain and specific, and if not followed the vote cannot be counted. Waterman v. Cunningham, 89 Me. 295, 36 A. 395.

And name must be written under name erased.—Where a printed name is erased and another name is written above it, the provisions of this section that the new name shall be written under the names erased is violated. This invalidates the ballot, so far as these two candidates are concerned. Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Where the name of one of the candidates was completely erased, and the name of the other was written, not below, but upon the space where the erased name had been, this is contrary to the statutory provision, and invalidates the ballot for these candidates. Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled on another point in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Write in name need not be marked where party method used. — Where the party group method is employed, the written in name may be counted without being crossed; the written in name is substituted for the printed name, has all the rights that the printed name has, and the party cross at the top covers and carries with it all the names in that group below whether party candidates or not. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

Eligibility of candidate does not affect ballot.—A voter may vote for whom he pleases, whether the name be on the official ballot, or is written in by himself. The eligibility of his candidate does not affect the validity of his ballot. Libby v. English, 110 Me. 449, 86 A. 975.

Line through printed name sufficient erasure.—The drawing of a pencil mark through the name of the candidate discarded has been considered as a sufficient erasure, although the primary meaning of erasure is to rub out or obliterate. Crosby v. Libby, 114 Me. 35, 95 A. 329.

The above case was decided prior to inclusion in this section of the provision for drawing a line through the name of the discarded candidate.—Ed. Note.

Sec. 36. Voter unable from any cause to mark ballot, may receive assistance of election clerks.—Any voter who shall declare to the presiding election officer or officers that he cannot mark his ballot by reason of physical disability or from inability to read the same, or who shall declare to the election officers that his religious faith prevents him from marking his ballot shall receive the assistance, in the marking of his ballot, of two of the election clerks, who shall not both represent one and the same political party, and they shall certify on the outside of such ballot that the same was marked by them, or by the voter with their assistance, and thereafter shall give no information concerning the same. The presiding election officer or officers may require every voter who applies for such assistance to make oath to his inability to mark his ballot, before such clerks shall be directed to assist as aforesaid, and such officer or officers are qualified to administer such oath, and no clerk shall assist or offer to assist any voter in marking

his ballot until directed to do so by the presiding election officer or officers. (R. S. c. 5, § 36.)

Cross reference.—See § 94, re penalty.

Necessity of assistance dependent on voter's declaration and not on fact of infirmity.—This section makes it the duty of the election clerks to assist, if the voter declares that he cannot mark his ballot because of infirmity. The test is not the fact of infirmity but the voter's declaration of the fact, on oath if exacted. If voters make a false declaration, still it is the duty of the clerks to assist. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

Sec. 37. If voter spoils ballot he may obtain others.—No person shall take or remove any ballot from the voting place before the close of the polls. If a voter spoils a ballot he may successively obtain others, one at a time, not exceeding 3 in all, upon returning each spoiled one. The ballots thus returned shall be immediately canceled, and together with those not distributed to the voters, and with the check lists used, which shall be certified by the ballot clerks to be such, shall be secured, sealed and sent to the several city, town and plantation clerks. (R. S. c. 5, § 37.)

Cross reference. — See §§ 94, 113, re penalties.

Spoiled ballots not counted.—If ballots were spoiled by the voters themselves, and as such returned to the election officers, cancelled by them, and new ballots given out by the officials and used by the voters in accordance with the provisions of this section, then such spoiled and cancelled ballots cannot be counted because they were not actually cast. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

Sec. 38. Right of challenge; note of challenge to be made on ballot and check list.—Any qualified elector in a town or city may challenge the right of any person to vote in such town or in any ward in such city at any election held therein, and shall be given opportunity by the presiding officer or officers thereof to make such challenge, who shall note the fact of such challenge, together with the reason stated therefor, upon the voting list used in such town or ward, and upon the ballot so challenged, witnessed by 2 election officers representing 2 different political parties. Before permitting a person so challenged to vote, the presiding officer or officers shall cause him to state his place and date of birth; occupation; place of business; whether married or single; if married, the name and residence of the husband or wife; how long a resident of the town or city; and where his last vote was cast; which answers shall be reduced to writing on blanks furnished for that purpose by the town or city clerk, and signed by the voter, whose signature shall be witnessed by 2 election officers representing 2 different political parties. The presiding officer or officers shall promptly return all such records to the town or city clerk, who shall keep them on file for public inspection for 1 year. Any failure to comply with the provisions of this section shall constitute a felony and be punished by a fine of not more than $1,000, or by imprisonment for not more than 2 years. (R. S. c. 3, § 30; c. 5, § 38.)

Intent to violate section not necessary for conviction. — It is not necessary to prove any intent in order to justify a conviction under this section. As to unlawful acts which naturally affect the result of an election, a criminal intent will be presumed. State v. Dunn, 136 Me. 299, 8 A. (2d) 594.

Sufficiency of indictment for violation of section.—In general, an indictment for an offense under this section is simply required to cover only, with time and place, all the material statutory terms and need not be expanded beyond them. State v. Dunn, 136 Me. 299, 8 A. (2d) 594.

Sec. 39. Ballots, how counted.—The ballots shall be sorted and counted in open ward or town meeting by election officials who shall be duly sworn by the city or town clerks and who shall be considered public officials. No person in the employ of any political party or its agents or in the employ of any candidate for election or his agent or in the employ of any corporation interested in any referendum within 6 months next prior to the election or referendum shall serve as an election officer. The ballots counted by the election officers shall be

made up into secure packages and each such package shall have plainly written or stamped thereon the names of the officials counting the ballots in such package; and all such election officers shall sign and file with such package a statement of their count thereof. The counting of ballots shall be done in such manner as to afford the electors present opportunity to observe the sorting and counting, and the result shall be declared and recorded in open ward or town meeting. When the ballots have been sorted and counted and the result declared and recorded, each lot of ballots together with the signed statement of the count of that lot thereof shall in open meeting be sealed in a package by the election official or officials who counted the same. The package so sealed shall be placed in the container in which the ballots had been delivered at the voting place together with all unused ballots and the container shall be sealed before removal from the voting place to the office of the city, town or plantation clerk. The check lists which have been used at such voting place shall likewise be sealed and forthwith returned to the city, town or plantation clerk. In case two or more kinds of official ballots are used in any election, each kind shall be sealed in a separate package. All such ballots, check lists and signed statements of officials shall be so sealed that the packages and check lists cannot be opened or examined without first breaking the seal; and the sealed packages of ballots cast at any state election or at any election of presidential electors shall have an indorsement of substantially the following tenor indorsed thereon or securely affixed thereto:

"This package contains the ballots cast at an election for held in the of (or in ward of the city of) on the day of 19 ; said ballots were sorted, counted, result declared and recorded, and this package sealed in open meeting in accordance with section 39 of chapter 5 of the revised statutes."

Such indorsement shall be signed by the ward, town or plantation clerk and by the wardens in cities or voting precincts, or by a majority of the selectmen of towns and of the assessors of plantations. The ballots, check lists and signed statements of officials returned to the city clerk after any city election and all other ballots returned to him shall be preserved by him as a public record for 6 months. The provisions of this section shall apply to all elections, including primary elections and elections for determining initiated and referendum questions. (R. S. c. 5, § 39. 1953, c. 365, § 17.)

Cross reference. — See §§ 94, 113, re penalties.

Ballots may be inspected by interested person.—From the language of this section it is evident that the clerk is not forbidden to open the packages to enable interested persons to inspect the ballots. Keefe v. Donnell, 92 Me. 151, 42 A. 345.

The contents of the packages, the ballots, are the concern of this section. Its language must be applied to them. They are to be preserved. They are to be "the public record," and their place is in the custody of the town clerk. A record, however, is not public unless it can be inspected by any person interested in what it shows. Keefe v. Donnell, 92 Me. 151, 42 A. 345.

But not counted, sorted, etc. — An interested person has a legal right to inspect the ballots, a right which the town clerk must accord to him. It does not follow, however, that he or any one in his behalf can sort or count, or in any way handle or even touch the ballots. He can inspect them and they must be exposed to his inspection, but they are all the while in the custody of the clerk and he is responsible for them. The inspection must be in his presence, and he can make and insist on such regulations or restrictions consistent with the right of inspection, as will secure every ballot, like any other record, from loss, impairment or change in any respect. Keefe v. Donnell, 92 Me. 151, 42 A. 345.

Sec. 40. When ballot not counted.—If a voter marks more names for any 1 office than there are persons to be elected to such office, or if for any reason it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for such office. No ballot without the offi-

cial indorsement shall, except as herein otherwise provided, be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this chapter shall be counted. Ballots not counted shall be marked defective on the back thereof, and shall be preserved as required by section 39. No marks, other than those authorized by law, shall be placed upon the ballot by the voter; but no ballot, after having been received by the election officers, shall be rejected as defective because of marks, other than those authorized by law, having been placed upon it by the voter, unless such marks are deemed to have been made with fraudulent intent, and no ballot shall be rejected as defective because of any irregularity in the form of the cross or the check mark in the square at the head of the party column unless such irregularity is deemed to have been intentional and made with a fraudulent purpose. (R. S. c. 5, § 40. 1947, c. 82, § 5.)

Cross references.—See § 94, re penalty; note to § 50, re power of governor and council to consider distinguishing marks.

Requirement of § 35 not modified by this section.—The requirement that a ballot, to be counted, must be marked with a cross or check is neither abrogated nor modified by this section. Libby v. English, 110 Me. 449, 86 A. 975.

Unofficial ballots cannot be counted.—The provision of this section that "no ballot without official endorsement shall, except as herein otherwise provided, be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this chapter shall be counted," is mandatory, and there is no exception that modifies this express requirement. It is of the very essence of the result to be accomplished and not a mere detail. Unofficial ballots cannot be counted. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

This section expressly prohibits the placing of any mark upon the ballot by the voter other than those authorized by law. But it is obvious that this provision is practically ineffective, as to marks on the face of the ballot, because § 35 requires the voter, before leaving the voting shelf, to fold his ballot without displaying the marks thereon, and to keep it so folded until he has voted, and this section declares that no ballot after it has been received by the election officers shall be rejected as defective because of unauthorized marks placed upon it by the voter, or because of any irregularity in the form of the cross or check mark, unless the one or the other, as the case may be, is deemed intentional and made with a fraudulent purpose. Whatever mark is made on the face of the ballot by the voter, the election officers cannot know of it before the ballot is received, and after it is received, it cannot be rejected, unless deemed to be intentional and fraudulent. Libby v. English, 110 Me. 449, 86 A. 975.

Marks inconsistent with honest purpose invalidate ballot. — If a voter has placed such a mark or device or name or initials or figures upon the ballot as seem inconsistent with an honest purpose, such a ballot should be rejected. Libby v. English, 110 Me. 449, 86 A. 975, wherein it was held that the placing of initials on the bottom of a ballot was clearly an unlawful distinguishing mark and that the act itself imported a dishonest, fraudulent purpose and invalidated the ballot. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

But fraudulent purpose must clearly appear.—A ballot should not be rejected on the ground of fraudulent marking, when its appearance is consistent with any honest action or intention of the voter. The burden to show fraud is on the one that claims it. Doubts should be resolved in favor of the voter, unless the fraudulent purpose clearly appears. Murray v. Waite, 113 Me. 485, 94 A. 943; Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

The plain intendment of this section seems to be that all ballots marked with a cross or check in the proper square shall be counted if the intention of the voter can be ascertained, no matter whatever other casual, accidental, mistaken or unnecessary marks the voter may have placed upon the ballot, provided the same are not deemed to have been fraudulently made. And the fraudulent intent or purpose must appear affirmatively. If it does not so appear, the ballot must be counted. Fraud is not to be surmised, it must clearly appear. Murray v. Waite, 113 Me. 485, 94 A. 943.

The placing of crosses in two squares at the heads of party columns does not necessarily invalidate the ballot, since the passage of this section. It would invalidate it if such marking appeared to be fraudulent. It could not be counted for a particular office when different names appear in different columns as candidates for that office, for in such case it would be impos-

sible to determine for whom the voter intended to vote. This section declares that ballots shall not be rejected because of unauthorized marks, unless deemed fraudulent. Libby v. English, 110 Me. 449, 86 A. 975.

And mark must have been intentional. —In order that a distinguishing mark be effective to cause the rejection of a ballot it must be established from an inspection of the ballot that it was made intentionally and not accidentally. Crosby v. Libby, 114 Me. 35, 95 A. 329.

In the absence of any evidence of intentional fraud in making marks as distinguishing marks, they are not to be rejected. That they are irregular in form does not make them defective. Opinion of the Justices, 124 Me. 453, 466, 126 A. 354.

Marks of every sort and character cannot be allowed. If so, the secrecy of the Australian ballot and the avoidance of bribery at elections sought to be secured thereby would be circumvented. Purchasable voters could readily prove their agreed upon compensation. If names, words, initials or letters unauthorized by law are placed upon a ballot deliberately and designedly it is safe to say that ordinarily they are placed there for no honest purpose. Neither mistake, nor inadvertence, nor feeble sight has inspired them. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

When distinguishing mark invalidates ballot.—The plain intendment of this section seems to be that all ballots marked with a cross in the square at the head of the column shall be counted, if the intention of the voter can be ascertained no matter whatever other casual, accidental, mistaken or unnecessary marks the voter may have placed upon the ballot, provided the same are not deemed to have been fraudulently made. And, since the manifest purpose of the Australian ballot law is to secure the secrecy of the ballot and thereby prevent bribery and corruption at the polls (see note to § 35), it must follow that when a voter has made unauthorized marks upon his ballot, or has made a peculiar or irregular mark in the proper place, with a design to distinguish it from other ballots, so that the identity of the voter can be determined afterwards, and so that it may be ascertained that he has kept his part of a bargain, such marking must be deemed dishonest and fraudulent; and the ballot must be rejected. Libby v. English, 110 Me. 449, 86 A. 975.

Before a ballot should be rejected because of an alleged distinguishing mark, it should appear (1) that the mark is in fact a distinguishing mark, that is, a mark or device of such a character as to distinguish this ballot from others, (2) that it was made intentionally, and not accidentally, and (3) that it was intended to be a distinguishing mark, that is, a mark which fairly imports upon its face a dishonest purpose. Libbey v. English, 110 Me. 449, 86 A. 975; Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Question of whether mark distinguishing is one of fact.—It is obvious that the question of whether a given mark is or is not distinguishing so as to invalidate the ballot is a question of fact and one upon which persons of equal intelligence, experience and learning may well and honestly differ. Frothingham v. Woodside, 122 Me. 525, 120 A. 906.

Where a voter has left doubtful what he intended to do, the ballot should be rejected. Murray v. Waite, 113 Me. 485, 94 A. 943.

But ballot counted if voter's choice determinable. — In considering ballots, the intention of the voter as gathered from an inspection of the ballot should control, unless non compliance with some positive provision of statute forbids. The ballot should be counted where it is possible to determine the voter's choice legally expressed. Crosby v. Libby, 114 Me. 35, 95 A. 329.

This section provides that if for any reason, it is impossible to determine the voter's choice for an office to be filled, his ballot shall not be counted for that office. If the converse of this be thereby implied, namely, that all ballots shall be counted where it is possible to determine the voter's choice, a wide latitude would be given to the canvasser. However it must be a legally expressed choice with presumptions in favor of the voter rather than against him. Crosby v. Libby, 114 Me. 35, 95 A. 329; Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Applied in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Cited in Opinion of the Justices, 54 Me. 602.

Sec. 41. Secretary of state to provide suitable seals, printed forms of indorsements, blanks, returns and letters of instruction.—The secretary of state shall at the expense of the state provide and seasonably send to the several city, town and plantation clerks suitable seals for use as required by the

provisions of this chapter, and printed forms of indorsements, and suitable blanks for all certificates, copies of records and returns required to be made to his office by this chapter; and shall also prepare and send in the same package with such seals a letter of instruction especially calling the attention of each clerk to the provisions of sections 27, 33, 37, 39 and 104. (R. S. c. 5, § 41. 1953, c. 365, § 18.)

Sec. 42. Clerk to transmit returns of votes to secretary of state.— The clerk of each town shall cause to be delivered at the office of the secretary of state the returns of votes given in his town for governor, senators, representatives to the legislature, United States senators, representatives to congress, presidential electors and county officers, within 3 days next succeeding any meeting for their election, or shall deposit them, postpaid, in some post office, directed to the secretary of state, within 24 hours after such meeting, to be transmitted by mail. The returns shall be opened and filed by the secretary of state, and kept for public examination. (R. S. c. 5, § 43. 1951, c. 8, § 3.)

Cross references. — See §§ 97, 116, re penalties; c. 21, § 5, re penalty for neglect to distribute blanks for election returns.

Cited in Opinion of the Justices, 64 Me. 596.

Sec. 43. Secretary of state to send messenger for returns or ballots; expense of messenger, how paid.—At the expiration of 14 days after any election specified in the preceding section, the secretary of state shall forthwith send a messenger to every town from which returns of votes have not been received, as provided in the preceding section, and the expense of each messenger shall be audited and paid as provided in section 79 and added to the next state tax assessed on the town. (R. S. c. 5, § 44. 1953, c. 365, § 18.)

Sec. 44. Return of number of registered voters. — Within 10 days after the state election and the presidential election each city, town and plantation clerk shall make a return on a blank provided by the secretary of state of the total number of registered voters in such municipality at the close of the polls on election day. (1953, c. 264.)

Sec. 45. County attorney to be notified if return not received.—If any return of any town is not received by the secretary of state within 30 days next after such meeting, he shall forthwith notify the county attorney of the county in which such town is situated, who shall give immediate notice thereof to the clerk of such town, and unless he receives satisfactory evidence that such clerk has complied with the requirements of section 41, he shall prosecute for the penalty hereinafter provided. (R. S. c. 5, § 45.)

See § 96, re penalty for neglect of duties.

Sec. 46. Loss of returns supplied by copy of record. — When an original return of any town is lost or destroyed, the selectmen and clerk of such town, on receiving information of such loss or destruction, shall forthwith cause a copy of the record of the meeting at which such vote was given to be made with their certificate upon the same sheet, that it is a true copy of the record, that it truly exhibits the names of all persons voted for, for the offices designated, and the number of votes given for each at such meeting, and that such copy contains all the facts stated in the original return. (R. S. c. 5, § 46.)

See § 114, re penalty for neglect to supply lost return.

Sec. 47. Oaths to be made to copy.—The selectmen and town clerk, who were present at the meeting and signed the original return, shall sign the certificate mentioned in the preceding section, designating their offices against their names as in the original return, and make oath that such copy and certificate are

true before some justice of the peace of the county, who shall make certificate of such oath on the same paper. (R. S. c. 5, § 47.)

See §§ 108, 114, 115, 116, re penalties.

Sec. 48. Certificate, how sealed and returned.—Such copy and certificate provided for in section 46 shall then be sealed up and directed to the secretary of state, with the nature of the contents written on the outside; and the clerk of such town shall cause the same to be delivered into the office of the secretary of state as soon as may be. (R. S. c. 5, § 48.)

See §§ 97, 114, 115, re penalties.

Sec. 49. Secretary of state to permit interested persons to inspect ballots.—The secretary of state shall permit any candidate or other interested person to inspect the ballots as returned to him, in his presence, or in the presence of the deputy secretary of state, or in the presence of any clerk of his office designated by him, under such reasonable regulations or restrictions consistent with the right of inspection as will secure every ballot from loss, injury or change in any respect. After each inspection the packages shall again be sealed and the fact and date of inspection shall be noted on the package. Whenever required to do so, the secretary of state or the deputy secretary of state shall produce any package of ballots in his custody before the governor and council, the legislature or either branch or any committee thereof, or before any court or magistrate having jurisdiction of any proceeding relating thereto. (R. S. c. 5, § 49.)

Sec. 50. Mode of determining who are elected; proceedings for correcting returns; notice of election; rule for canvassing returns and determining election.—The governor and council, not later than the 1st day of December as to presidential elections and not later than the 15th day of October as to all other regular elections, in each year in which an election is held, and within 15 days after any special election shall open and compare the votes so returned and have the same tabulated, and may receive testimony on oath to prove that the return from any town does not agree with the record of the vote of such town in the number of votes, or the names of the persons voted for, and to prove which of them is correct; and the return, when found erroneous, may be corrected by the record. The secretary of state shall cause to be printed copies of the tabulation of the vote of such election which shall be available to the public, and no such correction may be made without application within 20 days after the printed tabulation is so made available, stating the error alleged, nor without reasonable notice thereof given to the persons affected by such correction, and during said 20 days any person voted for, may personally, and by or with counsel, examine the returns in presence of the governor and council, or either of them, or of any member of the council. Upon written application filed with the secretary of state within 20 days after the printed tabulation is so made available, alleging that the return or record of the vote cast in any town does not correctly state the vote as actually cast in such town and specifying the offices as to which such errors are believed to have occurred, the governor and council in open meeting shall examine the ballots cast in such town and the return thereof, and if such return or record is found to be erroneous, it shall be corrected in accordance with the number of ballots found to have been actually cast in such town; but no such examination of ballots shall be made without reasonable notice to all candidates for the offices specified in the application as to which such errors are alleged to have occurred, stating when and where such examination will be made, and affording such candidates a reasonable opportunity to be present in person or by counsel at such examination and be heard in relation thereto. The persons having the highest numbers of votes, not exceeding the number to be chosen, shall be declared elected; and the governor shall issue a certificate thereof in accordance with the provisions of section 4 of chapter 21, and such persons shall enter upon

the discharge of their official duties on the 1st day of January thereafter. If a number of persons, exceeding the number to be chosen, receive an equal number of votes, no one is elected.

To ascertain what persons have received the highest numbers of votes, the governor and council shall count and declare for any person all votes appearing by the returns to have been intentionally cast for him, although his name upon the return is misspelled or written with only the initial or initials of his Christian name or names; and they may hear testimony upon oath, in relation to such returns, in order to ascertain the intention of the electors, and shall decide accordingly. This section shall apply in determining the election of all county officers and, so far as it relates to the examination and correction of returns, it shall apply in determining the election of United States senators, representatives to congress, members of the legislature and presidential electors. When a return is defective by reason of any informality, an attested copy of the record may be substituted therefor. (R. S. c. 5, § 50.)

History of section.—See Opinion of the Justices, 54 Me. 602

Purpose of section. — The constitution calls for a return that is regular in essential forms, and which truly represents the facts to be described by it. But much of the constitutional requirement is directory merely. It does not aim at depriving the people of their right of suffrage or their right of representation for formal errors, but aims at avoiding such a result. Where the constitutional requirement has not been fully or has been defectively, executed by town officers, it is in aid of the constitutional provision to supply the omission or deficiency as nearly and as correctly as may be. Such is the purpose of this section. It is competent for the governor and council to allow an erroneous return, or one that is informal or defective, to be aided and corrected by an attested copy of the record, as by statute provided. Opinion of the Justices, 70 Me. 560.

The wisdom of this section is apparent. It enables the canvassing board within certain limits, to give effect to the will of the people and to disregard the captious quibblings by which the attempt is sometime made to deprive citizens of their most important political rights without an opportunity to be heard. Rounds v. Smart, 71 Me. 380.

And section is of the highest equity. The will of the people should not be defeated by the negligence or fraud of municipal officers. If their error or mistake is not correctible, any town clerk, by omitting intentionally his signature, might nullify the votes of his town without possibility of correction. Rounds v. Smart, 71 Me. 380.

And constitutional. — This section is in terms made applicable in determining the election of all county officers. The governor and council as a canvassing board are bound to obey its requirements. They cannot do otherwise without a manifest violation of law. Nor can it for a moment be pretended that this section violates any provisions of the constitution. The same power which creates a canvassing board may determine the limits within which it may act and prescribe its rules of action. Rounds v. Smart, 71 Me. 380.

Section mandatory. — While the language of this section is permissive, it falls within the well known legal rule, that when public rights are concerned it shall be construed as mandatory—a command clothed in the language of courtesy, so clothed because it could not be doubted that high and honorable officials would unhesitatingly avail themselves of all lawful means to declare the result of an election according to the actual fact, in obedience to the fundamental principles of popular government. The governor and council are bound by the section. It is mandatory upon them. It imposes a duty to the public that must be performed. Opinion of the Justices, 70 Me. 560.

It is the duty of the governor and council to hear evidence and determine whether the record or return is correct, and, if they determine the record to be correct, to receive it or a duly certified copy of it, to correct the return. Opinion of the Justices, 70 Me. 560.

The governor and council, in comparing and examining the returns of votes and in declaring who are elected, act as a canvassing board. They only know what the returns indicate. In their investigations they are limited to the evidence derivable from the returns transmitted to them by the several clerks of the cities, towns or plantations of the state, except when their powers have been enlarged by statute. Opinion of the Justices, 64 Me. 596.

And their authority is limited.—The au-

thority of the governor and council in relation to the proof, which they may receive and upon which they must act, is restricted within very narrow limits. Opinion of the Justices, 64 Me. 588.

And they cannot exceed statutory powers.—The powers conferred upon the governor and council by this section are specific and precise, and it would be irregular to go beyond them, or in any manner to deviate from them. Opinion of the Justices, 54 Me. 602.

And the governor and council can only act upon the returns signed and returned by the proper officers, except in reference to the number of votes and persons voted for, the statute permitting no discretion in the performance of their duty. Opinion of the Justices, 64 Me. 588.

Governor and council cannot consider distinguishing marks.—The fact that certain votes had distinguishing marks or figures is not one as to which the governor and council are by this section empowered to correct by having recourse to the records of towns. They are to "open and compare them," and, upon comparison subject to certain specified and defined corrections, to determine who are to be declared elected. And that is the limit of authority conferred on them. Opinion of the Justices, 54 Me. 602.

Nor investigate irregularities. — This section conveys no right, power, authority or duty upon the governor and council to investigate and pass upon questions of irregularities, illegal practices or fraud in the conduct of a congressional election. Opinion of the Justices, 131 Me. 506, 174 A. 850.

Governor and council act in executive capacity. — The governor and council, in exercising the powers and performing the duties in respect to elections delegated to them under this section act in their executive capacity. They do not constitute a single tribunal in which the governor votes as a member, but a bipartite body in which his vote is as governor and the votes of the councillors are as members of the branch of the executive. Action, affirmative or negative, lies in the concurrence of the vote of the governor with that of the council. A tie vote, in effect, results when the governor and his council disagree. Opinion of the Justices, 131 Me. 506, 174 A. 850.

The canvassing board is not a judicial body, and in election cases the contestants for elective county offices may have their rights determined by appropriate processes. The decision of the canvassing board, is only prima facie evidence, and not conclusive in direct proceedings to try the right. Rounds v. Smart, 71 Me. 380.

And its findings are not conclusive. — The governor and council are nowhere authorized to extend their inquries beyond the limits of this section—to inquire into the validity of meetings—whether or not votes were cast by aliens or minors or any of the various questions involving the validity of the result. Their judgment is not made conclusive. In case of senators and representatives, the final determination rests with the senate and house. So in reference to county officers, the courts in the last resort, must determine the rights of the parties. Prince v. Skillin, 71 Me. 361.

It is not the duty of the governor and council to count the ballots in a precinct for any candidate upon which a majority can agree as being legal votes, and correct the return in accordance therewith, notwithstanding there are other ballots upon the legality and counting of which a majority cannot agree. Opinion of the Justices, 131 Me. 506, 174 A. 850.

Under the constitution the House of Representatives of the legislature is the sole judge of the elections and qualifications of its own members. This section recognizes the controlling force of these constitutional provisions by limiting its application, in determining the election of a representative to the legislature, to the examination and correction of returns. Neither the constitution nor any statute confers right, power or authority on the governor and council to decide whether any ballots cast in an election of a representative to the legislature shall be counted or rejected. Opinion of the Justices, 143 Me. 417, 88 A. (2d) 151.

Duty to determine if officials have complied with law.—In canvassing the returns of plantations it is the duty of the governor and council, from the returns and records required to be filed with the secretary of state, to determine whether or not the plantation officials have complied with the provisions of law. Opinions of the Justices, 131 Me. 503, 174 A. 849.

Cited in Bacon v. York County Com'rs., 26 Me. 491; Burkett v. Robie, 137 Me. 42, 15 A. (2d) 71.

Sec. 51. Result of any election by ballot, how determined.—To determine the result of any election by ballot, the number of persons who voted shall first be ascertained by counting the whole number of separate ballots given in,

which shall be distinctly stated, recorded and returned. No person ineligible to an office shall be declared elected thereto; but such votes shall be counted to determine whether any person has received the necessary number of all votes cast. In case of United States senators, representatives to congress, members of the legislature and county and state officers, except where a different rule is prescribed in the constitution, the person or persons, not exceeding the number to be voted for at any one time for any such office, having the highest number of votes given at such election shall be declared elected, and the governor shall issue a certificate thereof in accordance with the provisions of section 4 of chapter 21. If, by reason of two or more persons receiving an equal number of votes, the election of the requisite number of officers cannot be declared without declaring more than the requisite number elected, no one of those having an equal number of votes shall be declared elected. In all other cases no person shall be declared elected, who has not received a majority of the whole number of votes counted as aforesaid; and if a number greater than is required to be chosen receive a majority of such whole number, the number so required, of those who have the greatest excess in votes over such majority, shall be declared elected. If the number to be elected cannot be so completed by reason of any two or more of such persons having received an equal number of votes, the persons having such equal number shall be declared not elected. In all cases not otherwise provided for, if no person eligible to the office receives the requisite number of votes to elect him, then the governor shall order a new election; provided, however, that nothing in this section shall give the governor and council authority to determine questions of eligibility in cases of senators and representatives to the legislature. (R. S. c. 5, § 51.)

Cross references. — See U. S. Const., Art. I, § 2, sub-§ 4, re vacancies in U. S. house of representatives; Const. of Me., Art. IV, Part First, § 5, re election of state representatives; Const. of Me. Art. IV, Part Second, § 2, re election of state senators; Const. of Me., Art. V, Part First, § 3, re election of governor; Const. of Me., Art. VI, § 7, re election of judges and registers of probate; Const. of Me., Art. IX, § 10, re election of sheriffs.

Total number of ballots counted.—Under this section, the whole number of ballots given should be counted. Prince v. Skillin, 71 Me. 361.

Cited in Opinion of the Justices, 131 Me. 506, 174 A. 850.

Sec. 52. Application in determining certain questions.—This chapter shall apply in determining the results of voting upon any resolve of the legislature submitting a constitutional amendment to the people and the results of voting upon any measures submitted to the determination of the people under the amendment to the constitution of the state adopted September 14, 1908, except questions relating to municipal affairs submitted under the provisions of section 21 of Part Third of Article IV of the constitution; provided, however, that the governor and council may, without the application mentioned in section 50, examine in open meeting the ballots cast on any such resolve or measure; and when such examination is made with or without application, in lieu of the notice prescribed in section 50, a notice thereof and of the time and place fixed therefor shall be given by publishing such notice at least twice in some newspaper, if any, published in the town where the ballots to be examined were cast, and if there be no such newspaper then in a newspaper published in the town in the same county nearest the town where the ballots to be examined were cast; the 1st publication of such notice shall be at least 7 days before the time fixed for such examination. (R. S. c. 5, § 52.)

Sec. 53. Jurisdiction of superior court not affected.—Nothing contained in the preceding sections shall affect the jurisdiction of the superior court or any justice thereof to entertain proceedings under the provisions of sections 84 to 88, inclusive. (R. S. c. 5, § 53.)

Cities. Portland Islands.

Sec. 54. Electors in cities to meet in wards; warden to preside.—For the purpose of all elections regulated by the provisions of this chapter, the inhabitants of cities shall meet as the constitution requires, in ward meetings, to be notified and warned, as are town meetings for similar purposes. The warden shall preside; the clerk shall make such record as the constitution requires, and the city constables shall preserve order. (R. S. c. 5, § 54.)

Cited in Portland v. Sivovlos, 136 Me. 4, 1 A. (2d) 179.

Sec. 55. Warden pro tempore.—If the warden is absent from any meeting mentioned in the preceding section, or refuses or neglects to preside, a warden pro tempore shall be chosen, and during such choice, the ward clerk shall preside; and the warden pro tempore, accepting the trust, shall be sworn, and be clothed with the powers and perform the duties of warden of such meeting, and shall be liable to the same penalties as those to which a warden is liable. (R. S. c. 5, § 55.)

Sec. 56. Portland islands constitute 3 wards for certain purposes. — The several islands within the city of Portland constitute 3 separate wards as to entitle the voters of each of said wards to choose a warden, a ward clerk and 1 constable, who shall be residents of said islands and of their respective wards. The first of said wards comprises Long Island, Hope Island, Jewell's Island and Little Chebeague Island, or such parts thereof as are within the city of Portland, and the ward meetings of said 1st ward shall be held on Long Island. The 2nd of said wards shall comprise Crotch Island, otherwise known as and called Cliff Island. The ward meeting of this ward shall be held on Cliff Island. The 3rd of said wards comprises the remaining islands within the city of Portland, and the ward meetings of said 3rd ward shall be held on Peak's Island. The electors of each of said wards may meet as provided in section 54, and also for the choice of city officers, at the place designated, and may, on the day of election, vote for all officers named in the warrant calling the meeting. (R. S. c. 5, § 56. 1953, c. 196.)

Sec. 57. Proceedings at island ward meetings.—The warden shall preside impartially at such island ward meetings, receive the votes of all electors present, and sort, count and declare them in open meeting and in presence of the clerk, who shall make a list of the persons voted for with the number of votes for each person against his name, and the offices respectively, and in open ward meeting and in presence of the warden, shall make a fair record thereof; a fair copy of this list shall be attested by the warden and clerk, sealed up in open meeting, and delivered to the clerk of ward number 1 in Portland within 18 hours after closing the polls, and the votes thus thrown shall belong to the last mentioned ward. (R. S. c. 5, § 57.)

Sec. 58. If no choice, new meetings; vacancies.—When, in any city, a choice of any representative to the legislature is not effected, the municipal officers shall call new meetings of the wards for the purpose, to be held at the same time, within 2 weeks after any former meeting; and like proceedings shall be had at such meetings, as at the 1st, until a choice is effected; and when the municipal officers of any city have knowledge that the seat of a representative therein has been vacated, they shall call meetings of the wards for the purpose of filling such vacancy; and like proceedings shall be had at such meetings as at other meetings for the election of representatives. (R. S. c. 5, § 58.)

No authority is given to the governor and council, when there is no return, to order a new election. When the seat of a representative has been vacated by death, resignation or otherwise, provision is made by this section for the filling of existing vacancies. By these provisions whenever the municipal officers, therein men-

tioned, by any means have knowledge of the death of a representative-elect, or of a vacancy caused in any other way, it is their duty to order a new election. If it appears to the house of representatives that there was an election of representatives in fact, they should admit them to their seats, though no return thereof was made to the secretary of state. The representative is not to be deprived of his rights because municipal officers have neglected their duty. Opinion of the Justices, 70 Me. 560.

Sec. 59. Elections by plurality in cities.—In all elections by the people in cities, the candidate receiving the greatest number of votes for any municipal office, although such number is not a majority of all the votes cast, shall be deemed elected to such office, provided that the provisions of this section have been adopted by majority vote at a regular or special election in the city where the election is held. (R. S. c. 5, § 59.)

Plantations.

Sec. 60. List of voters.—The assessors of each plantation shall, on or before the 11th day of August in each year in which a biennial state election is held, prepare a list of such inhabitants within its limits, as they judge to be constitutionally qualified to vote in such election, deposit it in the office of the plantation clerk, and correct and post it in the manner required of selectmen of towns. (R. S. c. 5, § 60.)

See. c. 3, §§ 36-39, re selectmen.

Sec. 61. Meetings for choice of state officers.—The assessors of each plantation shall call a meeting of the voters qualified under the provisions of the preceding section, to be held on the 2nd Monday of September in every such year, at some convenient and central place in the plantation, for the election of governor, senators and representatives to the legislature, by a warrant in due form by them signed, in which the time, place and purposes of the meeting shall be set forth; and notice shall be given by posting a copy thereof in one or more public places in the plantation at least 7 days before the day of the meeting. Similar notice shall be given of all meetings for choice of United States senators, representatives to the legislature or to congress, of state and county officers and of presidential electors. (R. S. c. 5, § 61.)

Sec. 62. Votes, how received; record of votes to be returned to secretary of state.—The assessors shall preside impartially at all meetings held under the provisions of sections 60 to 63, inclusive, receive the votes of all qualified voters present, sort, count and declare them in open plantation meeting and in presence of the clerk, who shall form a list of the persons voted for, with the number of votes for each person written out in words against his name, and make a full record thereof in presence of the assessors and in open plantation meeting. The clerk shall transmit the record of votes aforesaid to the secretary of state in the manner provided for the return of record of votes in towns. (R. S. c. 5, § 62.)

Cross reference.—See § 42, re return of record of votes in towns.

Error arising from failure to comply with the mandatory provisions of this section is correctible on concurrent action by the governor and council. Opinion of the Justices, 131 Me. 506, 174 A. 850.

Sec. 63. Votes to be allowed in elections, as in towns.—Votes cast under the provisions of the 3 preceding sections shall be received and allowed for presidential electors, for governor, senators and representatives to the legislature and to congress, Untied States senators and county officers the same as votes cast in a town in the same county. (R. S. c. 5, § 63.)

See § 50, re votes in towns.

Unincorporated Places.

Sec. 64. Voting.—Persons having a legal residence in unorganized territory may, upon presentation to the municipal officers of any town within the same representative district of satisfactory evidence of such legal residence and of the legal qualifications of a voter, vote therein in all primary, state and national elections. Upon approval, the municipal officers shall cause the name of the applicant to be entered on the voting list and check list and the letters "U. T." placed after the name. Such applicant may be enrolled in a political party in accordance with the provisions of section 2 of chapter 4. Both registration and enrollment may be effected on the day of election. No resident of unorganized territory who votes in accordance with the provisions of this section shall be given a local option liquor referendum ballot.

In the case of unorganized territory located in remote sections of the state or in cases where there is no easily accessible town in their representative district, the secretary of state shall, upon written request of a resident of such unorganized territory, designate the town wherein such applicant may apply for the right to vote and shall notify the proper town officials thereof. The officials in charge of the ballots shall mark a line through the names of candidates for which the voter from unorganized territory is not entitled to vote, note upon the ballot the fact that the voter was from a designated unorganized township and place their initials thereunder.

An elector who shall become a resident of any unorganized territory, or who shall remove from one unorganized territory to another, shall have the privilege of voting in the town where previously registered for 3 months after such change of residence and thereafter as a resident of the unorganized territory under the same conditions as hereinbefore provided.

An elector in unorganized territory, who is unable to present himself because of distance or other good and sufficient reason in the town where registered as a voter, may vote by absentee ballot.

Any person who certifies to a false statement relative to qualifications as a voter or as a resident of unorganized territory, for the purpose of securing the privilege of suffrage under the provisions of this section and section 65 shall be punished for each offense by a fine of not more than $100, or by imprisonment for not more than 6 months.

Any person who, having voted in accordance with the provisions of this section, votes again on the same day in any other place shall upon conviction be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months. (R. S. c. 5, §§ 64, 109. 1947, c. 83. 1949, c. 349, § 1. 1951, c. 45. 1953, c. 308, § 4.)

Cross references.—See § 112, re penalties; c. 3, § 2, re qualifications of voters; c. 6, re absent voting; c. 7, re voting by armed forces.

Cited in Sargent v. Milo, 90 Me. 374, 38 A. 341.

Sec. 65. Connor to have separate voting place.—The municipal officers of Limestone are directed to establish a voting place at Connor, an unorganized township in the county of Aroostook, for all state and national elections, including primary elections, at which voting place all residents of unorganized places entitled to vote in the town of Limestone may cast their ballots under the conditions provided in this section. The municipal officers shall prepare a separate list of such voters, resident in unorganized places who are entitled to vote in the town of Limestone, as may request the privilege of voting at Connor at the time they qualify as voters in Limestone under the provisions of section 64, and all persons whose names are so included in said list shall be entitled to vote at said voting place in Connor instead of at Limestone.

Municipal officers of Limestone shall select 4 ballot clerks from the inhabitants of Connor, representing the two political parties which at the gubernatorial elec-

tion next preceding such appointment cast the greatest number of votes and shall select a warden who shall be a resident of Limestone.

The conduct of elections at said voting place shall be the same as in towns having separate voting districts, and all the provisions of the revised statutes with respect to separate voting districts in towns are made applicable to said voting place at Connor as though the same were located within the territorial limits of the town of Limestone, and the powers and duties of municipal officers in such case are conferred upon the municipal officers of the town of Limestone. (1953, c. 200, § 1.)

Unclassed Towns.

Sec. 66. When no choice of representatives to legislature.—When at a town meeting held for election of representatives to the legislature, in a town not classed with other towns as a representative district, by reason of two or more persons having an equal number of votes, a full choice of representatives is not effected, the meeting shall be considered adjourned to the same day of the week following and to the same hour and place at which the first meeting was called; and at such adjourned meeting, the voters shall give in their votes for so many representatives as are necessary to make up the number to which such town is entitled; and like adjournments shall be had until the full number is elected. (R. S. c. 5, § 65.)

Sec. 67. Vacancies.—When the selectmen of any town, not classed with others as a representative district, have knowledge that the seat of a representative thereof has been vacated, they shall forthwith issue their warrant, giving at least 7 days' notice, for a meeting of the electors of such town to fill such vacancy; and at such meeting like proceedings shall be had, as at a state election. (R. S. c. 5, § 66.)

Cross reference. — See § 58 and notes thereto, re choice of representative to legislature in cities.

Cited in Opinion of the Justices, 70 Me. 560, 570.

Soldiers, etc., Authorized to Vote.

Cross Reference.—See Const. of Me., Art. II, § 4, re soldiers, etc., allowed to vote.

Sec. 68. Inmates of Veterans Administration Center or civilian conservation corps camp, residence of, and right to vote.—All persons who are inmates of the Veterans Administration Center at Togus, in the county of Kennebec, or who are subject to the rules and regulations thereof, or who shall receive rations therefrom, or who are enrolled as members of any civilian conservation corps camp or similar institution in this state, shall be deemed citizens of the respective towns in this state in which they had a legal residence, when their connection with said Veterans Administration Center or such civilian conservation corps camp or similar institution, commenced, so long as such connection therewith shall continue, but any person connected with the Veterans Administration Center or a civilian conservation corps camp or similar institution, as aforesaid, but having a domicile in a town in this state, outside of said Center, or such civilian conservation corps camp or similar institution, and a voting residence therein, shall not be disqualified from voting in the town in which he has such residence, on account of his connection with said Center or such civilian conservation corps camp or similar institution; provided, however, that any enrollee of any civilian conservation corps camp or similar institution, who shall become of voting age while stationed therein, shall be deemed to be a voter in the town where he had his residence when his connection with such camp or similar institution commenced, provided he has met all the necessary qualifications which would entitle him to vote in such town. He shall not be deemed to have lost his residence in such town by reason of his being stationed at any such camp or similar institution. (R. S. c. 5, § 67.)

Representative Districts. U. S. Congress and Senate.

Sec. 69. Congressional districts for election of representatives to congress. — Representatives to the congress of the United States shall be apportioned as follows: The counties of Cumberland, York, Oxford and Sagadahoc shall compose the 1st district and be entitled to 1 representative. The counties of Androscoggin, Franklin, Knox, Lincoln, Kennebec, Somerset and Waldo shall compose the 2nd district and be entitled to 1 representative. The counties of Aroostook, Hancock, Penobscot, Piscataquis and Washington shall compose the 3rd district and be entitled to 1 representative, which divisions of the state into representative districts shall be and continue in force until the taking effect of a reapportionment under an act of congress.

The representatives chosen in the several districts shall at the time of their election be residents therein and their election shall take place on the day of the biennial state election. (R. S. c. 5, § 71.)

See U. S. Const., Art. I, § 2, sub-§ 2, re qualifications of representatives to congress.

Sec. 70. Election to fill United States senate vacancy; temporary appointments.—Whenever a vacancy occurs in the representation of the state in the senate of the United States, the vacancy shall be filled for the unexpired term at the following biennial state election, provided such vacancy occurs not less than 60 days prior to the date of the primaries for nominating candidates to be voted for at such election; otherwise at the biennial state election next following. Pending such election, the governor with the advice and consent of the council shall make a temporary appointment to fill the vacancy, and the person so appointed shall serve until the election and qualification of the person duly elected to fill such vacancy. (R. S. c. 5, § 72. 1945, c. 348, § 1.)

Cross references. — See U. S. Const., Art. I, § 2, sub-§ 4, re vacancy in representation to congress; U. S. Const., Amend. XVII, re vacancy in representation to U. S. senate.

Cited in Opinion of the Justices, 131 Me. 506, 174 A. 850.

Sec. 71. Election to fill vacancy in national house of representatives.—Whenever a vacancy occurs in the representation of the state in the national house of representatives, the governor, in any manner having knowledge thereof, shall issue his proclamation for an election to fill the same. If congress is in session when such vacancy occurs, the proclamation shall issue forthwith; otherwise, in season to secure representation at the next called or regular session of congress. (1945, c. 348, § 2.)

Cross references.—See U. S. Const., Art. I, § 2, sub-§ 4, re vacancy in representation to congress; U. S. Const., Amend. XVII, re vacancy in representation to U. S. senate.

Cited in Opinion of the Justices, 131 Me. 506, 174 A. 850.

Sec. 72. Clerks of towns to mail returns to secretary of state; canvass of returns, declaration of result and issue of certificate of election. —The clerk of each town, within 24 hours after the close of the polls, shall deposit in some post office the returns of the votes cast at such special election postpaid, directed to the secretary of state, to be transmitted by mail. The governor and council shall meet 7 days after such election, and open and canvass such returns, and declare the result. They shall receive certified copies of the record of any town if the return from such town is lost, or is not received by the secretary of state. The governor shall immediately issue a certificate of election to the person thus declared to have received a plurality of votes. (R. S. c. 5, § 73.)

Sec. 73. Vacancies in representative districts.—When the selectmen

of the oldest town in a representative district are notified or otherwise satisfied, that at the last meeting of the district for the election of a representative no choice was effected, or that the seat of their representative has been vacated, they shall, as soon as may be, leaving a convenient time for calling meetings in the several towns, appoint a day of election to fill such vacancy, and notify the selectmen of the other towns accordingly. (R. S. c. 5, § 74.)

Cross reference.—See § 58 and notes thereto.

Cited in Opinion of the Justices, 70 Me. 560, 570.

Sec. 74. Meetings and proceedings.—The selectmen of the several towns shall by warrant call meetings to be held upon the day appointed, and proceedings shall then be had as required by the constitution and laws for the election of representatives on the 2nd Monday of September. (R. S. c. 5, § 75.)

See Const. of Me., Art. II, § 4, re time of state election.

Choice of Electors of President and Vice-President.

Sec. 75. Presidential electors to be chosen; meetings.—Whenever the election of president and vice-president of the United States is to take place, there shall be chosen from the inhabitants of the state as many presidential electors as the state is entitled to; and on the Tuesday next after the 1st Monday in November of such year, the people qualified to vote for senators shall assemble in city, ward, town or plantation meetings to be notified, held and regulated as prescribed by the constitution and laws for the election of senators. (R. S. c. 5, § 76.)

See U. S. Const., Art. II, § 1, sub-§ 2, re electors of president and vice-president; Const. of Me., Art. II, § 4, re time of state election.

Sec. 76. Town officers to proceed as in other meetings.—All laws in relation to the duties of city, town and plantation officers, and of voters in the election of governor, senators and representatives to the legislature, and to the penalties incurred for their violation, apply, so far as applicable, to meetings held for the election of presidential electors and to returns thereof. (R. S. c. 5, § 77.)

Sec. 77. Secretary of state to furnish blanks; names of candidates to appear.—The secretary of state shall procure blank returns of the proper form for such cities, towns and plantations and furnish them to the several clerks thereof at least 30 days before the day of election of electors as aforesaid.

The names of the electors shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties as defined by law shall appear at the head of their respective tickets. (R. S. c. 5, § 78. 1949, c. 4, § 1.)

See c. 21, § 5, re duty to distribute blanks for election returns, penalty.

Sec. 78. Votes, how received, returned and counted; secretary to send for delinquent returns; notice to persons elected.—The votes shall be sorted, counted, declared and recorded; and the returns of the number of ballots and of the votes given for each candidate shall be made, according to the constitution and laws, to the secretary of state, on or before the 2nd Tuesday after such meeting; on said 2nd Tuesday, the governor and council shall be in session, and shall open, examine and count the returns of votes so made, and the secretary of state shall forthwith send a messenger to every city and town from which a return has not been received at his office for the purpose of procuring the wanting return and the governor and council shall again meet on the 3rd Tuesday following such election, and examine and count all the votes received from the several cities, towns and plantations and the votes of citizens in the military

service lawfully returned into the office of the secretary of state; and they shall forthwith send a certificate of election to each person who has received the greatest number of all the votes returned, not exceeding the number to be chosen.

A vote for the candidates of any political party for both president and vice-president shall be conclusively deemed to be a vote for candidates of the same party for presidential electors, and shall be so counted and recorded for such electors as the state shall be empowered to elect.

The canvass of the votes for candidates for president and vice-president and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party, respectively, and the certificate of such election made by the governor and council shall be in accord with such return. (R. S. c. 5, § 79. 1949, c. 4, § 2.)

Sec. 79. Expense of sending for returns to be paid by state, and added to state tax of delinquent towns.—The expense of each messenger sent as required by the preceding section shall be audited and allowed by the governor and council, and paid out of the state treasury; and unless they are of opinion that the officers of any delinquent town have fully performed their duties in making the required returns, the amount so paid shall be added to the next state tax assessed on such town; but if the same messenger is sent to two or more towns on the same route, the amount to be paid by each of them shall be apportioned by the governor and council according to their relative distances and the expense of traveling. (R. S. c. 5, § 80.)

Sec. 80. If no choice of majority of electors, governor to assemble legislature.—If, on such examination, it appears that there has not been a choice of a majority of the whole number of electors, the governor, by proclamation, shall convene the legislature forthwith; and the legislature by joint ballot of the senators and representatives in convention assembled shall choose as many electors as are necessary to complete the number to which the state is entitled. (R. S. c. 5, § 81.)

Sec. 81. Duties of governor; meetings of electors; vacancies.—As soon as practicable after the electors are chosen, the governor shall communicate by registered mail under the seal of the state to the secretary of state of the United States a certificate of the ascertainment of the electors, setting forth the names of the electors, and the number of votes given for each person voted for; and the governor shall deliver to the electors, on or before the 1st Monday after the 2nd Wednesday of December next after their election, 6 original duplicates of the same certificate under the seal of the state. If there shall have been any contest concerning the choice of any electors, or in case of a choice under the provisions of the preceding section, the governor, after such determination, shall communicate under the seal of the state to the secretary of state of the United States a certificate of such determination in form and manner as the same shall have been made. The electors shall convene in the senate chamber at Augusta on the 1st Monday after the 2nd Wednesday of December next after their election, at 2 o'clock in the afternoon; and if any elector so chosen is not present, the electors then present, by a majority of votes, shall forthwith elect a qualified person to supply such deficiency. (R. S. c. 5, § 82.)

Sec. 82. Proceedings of presidential electors.—When convened as required by the preceding section, the electors shall vote by ballot for 1 person for president and for 1 person for vice-president of the United States; one of whom, at least, shall not be an inhabitant of this state; they shall name in their ballots the person voted for as president, and in distinct ballots the person voted for as vice-president; they shall make and subscribe 6 certificates of all the votes by them given, each of which shall contain 2 distinct lists, one of the votes given for president, and the other of the votes given for vice-president; they shall

annex to each of the certificates one of the lists of the electors which shall have been delivered to them by the governor; they shall seal them up and certify on each certificate that a list of votes of the state of Maine for president and vice-president of the United States is contained therein. The electors shall dispose of the certificates so made by them and the lists attached thereto in the following manner:

I. They shall forthwith forward by registered mail one of such certificates and lists to the president of the senate of the United States at the seat of government.

II. Two of such certificates and lists shall be delivered to the secretary of state of the state of Maine, one of which shall be held by him subject to the order of the president of the senate of the United States; the other shall be preserved by him for 1 year, shall be a part of the public records of his office, and shall be open to public inspection.

III. On the day thereafter they shall forward by registered mail two of such certificates and lists to the secretary of state of the United States at the seat of government.

IV. They shall forthwith cause the remaining certificate and list to be delivered to the judge of the United States District Court for the district of Maine. (R. S. c. 5, § 83.)

Sec. 83. Compensation.—Electors shall receive as compensation $10 a day for as many days as are necessarily employed in the discharge of their official duty and such travel as members of the legislature receive. They may appoint a secretary and such other officers as they deem proper who shall receive such reasonable compensation for their services as the electors shall allow them. (R. S. c. 5, § 84.)

See U. S. Const. Amend. XII, re manner of choosing president and vice-president.

Contested Elections.

Sec. 84. Claimant of county or municipal office to proceed as in equity.—Any person claiming to be elected to any county or municipal office, or to the office of county attorney, may proceed as in equity against the person holding or claiming to hold such office, or holding a certificate of election to such office, or who has been declared elected thereto by any returning board or officer, or who has been notified of his election, by petition returnable before any justice of the superior court, in term time or vacation, in the county where either party resides or where the duties of such office are to be performed, and such justice shall have jurisdiction thereof and the power to issue restraining orders or injunctions in connection therewith. (R. S. c. 5, § 85.)

History of section.—See Racine v. Hunt, 116 Me. 188, 100 A. 911.

Object of section.—The object of this section was two-fold: to give a summary remedy to parties aggrieved and to diminish the expenses of litigation by accomplishing by one process what before required two processes, both dilatory and expensive, the writs of quo warranto and mandamus. Rounds v. Smart, 71 Me. 380.

A petition to determine a contested election is not an action at law. It is not a bill in equity. It is a special, statutory proceeding which confers upon a single justice, and upon the other justices on appeal, jurisdiction to inquire into and determine contested election cases. The evident purpose of the statute is to provide a simple, inexpensive and prompt remedy for one who has been unlawfully deprived of the fruits of an election. It takes the place of quo warranto to oust an officer who has not been legally elected, to be followed by mandamus to install the rightful claimant. Howard v. Harrington, 114 Me. 443, 96 A. 769.

By quo warranto the intruder to a public office is ejected. By mandamus the legal

officer is put in his place. This section accomplishes by one and the same process the objects contemplated by both these results. And it enables a claimant of an office held by another to institute proceedings upon his own initiative, without the intervention of the attorney general. Russell v. Stevens, 118 Me. 101, 106 A. 115.

The statutory proceeding is designed to combine the ouster from office of quo warranto with the introduction into office of mandamus. Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585.

This section does not impair vested rights. There is no vested right in an office, which the legislature may create or destroy, as it judges most consonant to the public interest. The section only provides for a process to determine the rights of parties. The rules of evidence remain unchanged. Before, as after its passage, the rights of the parties litigant are determined by the greater or lesser number of votes they respectively receive. Rounds v. Smart, 71 Me. 380.

This section should not be considered with reference to other provisions of chapter. This was an original act. It did not amend or relate to any other statute. It was entitled: "An Act Providing for the Trial of Causes Involving the Right of Parties to Hold Public Office." The fact that it was incorporated by the commissioner on revision in the election chapter gives it no constructive relation to that chapter. It did not amend it. It did not allude to it. It stood alone, and, as amended, stands alone now, so far as the rest of the chapter is concerned. Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

This section, in its inception, was not an amendment of the election statute, but an original act, very properly codified, upon the revision of the statutes, in the chapter relating to elections, under the heading, "Contested Elections." Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

This section preserves the popular will. It equally prevents usurpation and fraud. It protects the officer legally elected. It conserves honest elections. It can injure no one. As literally expressed it is also a beneficent law. Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

The clause in this section providing that the claimant "may proceed as in equity" was used merely in contradistinction to proceedings on the law side of the court, with its stated terms, and more rigid rules of procedure. Howard v. Harrington, 114 Me. 443, 96 A. 769.

It is true that this section provides that the claimant "may proceed as in equity" by petition returnable before any justice of the superior court, but it does not say he shall bring a bill in equity, and the subsequent proceedings bear slight resemblance to those required by the equity rules. Howard v. Harrington, 114 Me. 443, 96 A. 769.

Petition not bill in equity.—It is true that the statute says that the petitioner "may proceed as in equity," but that does not make the petition a bill in equity, nor make an election contest one of equitable jurisdiction. Howard v. Harrington, 114 Me. 443, 96 A. 769.

Whom proceeding may be against.—The proceeding of this section is permitted against not only the holder of a certificate of election, but against four other classes of respondents, viz: one holding the office, one claiming to hold it, one declared elected, and one notified of election. Russell v. Stevens, 118 Me. 101, 106 A. 115.

Section applicable to any county or municipal office.—The language of this section is very broad and when given its usual and original meaning includes any municipal office. Tremblay v. Murphy, 111 Me. 38, 88 A. 55. See Racine v. Hunt, 116 Me. 188, 100 A. 911.

This section is very broad as it now stands and says that any person claiming to be elected to "any municipal office" may maintain a petition. The statute intended to give to claimants of all municipal offices the same right to a speedy determination of a disputed election as claimants of other offices have and not leave them to the remedy of quo warranto. Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

It was the active intent of the legislature to apply the procedure prescribed in this section to all elective offices, county and municipal. Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

Filing of petition does not preclude action by municipal officers.—The fact that two city councilmen petitioned the court to have their rights definitely determined in accordance with this section did not prevent the city council, which had rights in the matter and represented the public, from taking such action as they saw fit. The right of the council to determine its own members is primary, subject to revision of the court, and until the court has decided definitely as to the legality of the election of the members, it was within the power of the common council to pursue the power given them by charter. Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

When proceeding to be commenced.—

Under this section the proceeding may be commenced before or at any time during the term of the office at stake. There is no compulsion on the petitioner to start the contest within a given period. Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585.

Applied in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Smith v. Randlette, 98 Me. 86, 56 A. 199; Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Pease v. Ballou, 108 Me. 177, 79 A. 532; Libby v. English, 110 Me. 449, 86 A. 975; Murray v. Waite, 113 Me. 485, 94 A. 943; Crosby v. Libby, 114 Me. 35, 95 A. 329; Frothingham v. Woodside, 122 Me. 525, 120 A. 906; Allen v. Hackett, 123 Me. 106, 121 A. 906; Googins v. Gilpatrick, 131 Me. 23, 158 A. 699; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254.

Sec. 85. Petition of claimant to be filed in clerk of court's office; proceedings; judgment.—The petition shall state the names and residences of the several parties and the facts upon which the claimant relies to maintain his suit, and shall be signed by him and verified by his oath. Such petition shall be filed in the office of the clerk of courts in the county where it is returnable, and the time of hearing thereon shall be appointed by the justice having jurisdiction thereof, and indorsed thereon. Notice of pendency of the suit, and of the time and place of hearing thereon, shall be served on the adverse party, by giving him in hand, or leaving at his last and usual place of abode, a copy of the petition and order of the court thereon, or in such other manner as the justice directs, and such notice shall be given at least 7 days before the hearing. The parties, or their counsel, shall be heard upon written or oral testimony, according to the practice in like procedure, and in such manner as the justice directs; and if it appears upon such hearing that the petitioner has been elected, and is entitled by law to the office claimed by him, or if such adverse party fails to appear, the justice shall render judgment in favor of the petitioner. (R. S. c. 5, § 86.)

Purpose of petition.—The ultimate purpose of the petition is to oust the respondent, by showing that the petitioner is entitled to the office. Howard v Harrington, 114 Me. 443, 96 A. 769.

Judgment final absent appeal. — This section terms the decision of the justice a "judgment," and like any other judgment unappealed from, it, of course, becomes final. If appealed from then the decision of the appellate court becomes the final judgment. Wilson v. Lacroix, 111 Me. 324, 89 A. 69.

And final adjudication precludes further litigation in quo warranto proceedings.— When title to an office has been finally adjudicated in proceeding under this section, the same question cannot be again litigated in quo warranto proceedings. Wilson v. Lacroix, 111 Me. 324, 89 A. 69.

Petitioner must be entitled to office.— The petitioner may have judgment in his favor only if he "is entitled by law to the office claimed by him". If the claimant is disqualified, clearly he has no right to proceed under the statute. Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585. See notes to § 87.

A person not elected cannot maintain a petition under this section. Heald v. Payson, 110 Me. 204, 85 A. 576.

Burden of proof.—Upon each petitioner falls the burden of showing that he was elected to the office which he claims. Before the court can enter judgment in his favor it must appear "that the petitioner has been elected, and is entitled by law to the office claimed by him." It is not sufficient to show that the incumbent was not elected; the petitioner must show that he himself was elected and is entitled by law to the office. Russell v. Stevens, 118 Me. 101, 106 A. 115.

Admissibility of evidence.—The statutory language is broad, and it imposes no limitations as to the manner of proof. Any evidence, admissible according to the rules of evidence, is admissible in an election case to show the truth. Racine v. Hunt, 116 Me. 188, 100 A. 911.

Petition held sufficient.—See Rounds v. Smart, 71 Me. 380.

Applied in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Cited in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Durgin v. Curran, 106 Me. 509, 77 A. 689; overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Pease v. Ballou, 108 Me. 177, 79 A. 532; Libby v. English, 110 Me. 449, 86 A. 975; Tremblay v. Murphy, 111 Me. 38, 88

A. 55; Crosby v. Libby, 114 Me. 35, 95 A. 329; Russell v. Stevens, 118 Me. 101, 106 A. 115; Frothingham v. Woodside, 122 Me. 525, 120 A. 906; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254.

Sec. 86. Appeal. — Either party may, within 10 days after rendition of judgment, enter an appeal therefrom in the office of the clerk of courts in the county where the judgment is rendered, which appeal shall briefly set forth the reasons therefor, and an attested copy thereof shall be served upon the appellee or his attorney within 10 days after the same has been filed, in such manner as the justice orders. The appellant shall cause copies of the petitions, pleadings, findings and testimony upon which judgment is rendered, approved by the justice before whom the hearing is had, to be printed and transmitted to the chief justice within 20 days after such appeal is taken, with written argument thereon. A copy of such argument shall, within said 20 days, be served upon the adverse party or his attorney, who may forward within 10 days thereafter an argument in reply, and thereupon the justices of the supreme judicial court shall immediately consider the cause and decide thereon and transmit their decision to the clerk of courts in the county where the suit is pending, and final judgment shall be entered accordingly. (R. S. c. 5, § 87.)

Case determined de novo on appeal.— The appeal vacates the proceedings below and transfers the case, as in probate proceedings, so that the appellate justices are to determine all questions de novo. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

The legislature in providing for an appeal, was to obtain the decision of the appellate justices de novo upon all disputed questions both of law and fact, and the clause in the statute providing that the claimant "may proceed as in equity" (§ 84) was used merely in contradistinction to proceedings on the law side of the court, with its stated terms and more rigid rules of procedure. Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

This section provides that an appeal from the decision of the single justice shall set forth the reasons therefor. This is not required in an appeal in equity, but is in probate appeals; and the appeal itself is taken, not to the law court as such, but to the justices. A careful consideration of the entire statute and its object leads to the conclusion that the purpose of the legislature in providing for an appeal, was to obtain the decision of the appellate justices de novo upon all disputed questions of law and fact. Howard v. Harrington, 114 Me. 443, 96 A. 769.

The appeal is not to the law court but to the justices of the supreme judicial court who "shall immediately consider the cause and decide thereon and transmit their decision to the clerk of courts in the county where the suit is pending..." On appeal the case is considered de novo. Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585.

Applied in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Redington v. Bartlett, 88 Me. 54, 33 A. 664; Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Pease v. Ballou, 108 Me. 177, 79 A. 532; Libby v. English, 110 Me. 449, 86 A 975; Tremblay v. Murphy, 111 Me. 38, 88 A. 55; Murray v. Waite, 113 Me. 485, 94 A. 943; Crosby v. Libby, 114 Me. 35, 95 A. 329; Russell v. Stevens, 118 Me. 101, 106 A. 115; Frothingham v. Woodside, 122 Me. 525, 120 A. 906; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254.

Sec. 87. Court may issue order when final judgment has been rendered.—When final judgment has been rendered, any justice of the superior court may issue an order to the party unlawfully claiming or holding such office, commanding him to surrender such office to the officer who has been adjudged to be lawfully entitled thereto, together with all papers, records, moneys and property connected therewith or belonging thereto, and may enforce such order by fine or imprisonment, or both; and thereupon the party in whose favor such judgment is rendered, shall be qualified and enter upon the duties of such office, and hold the same until the expiration of the term for which he has been elected. (R. S. c. 5, § 88.)

Legal incumbent installed under this section.—After final judgment has been rendered from either the single justice or from the court on appeal, the party un-

lawfully holding the office may be ousted and the legal incumbent may be installed, under this section. Wilson v. Lacroix, 111 Me. 324, 89 A. 69.

Order dependent on petitioner's right to office.—It is only when a petitioner shows himself entitled to an office that "the court may issue an order to the party unlawfully claiming or holding such office, commanding him to surrender such office to the officer who has been adjudged to be lawfully entitled thereto." Heald v. Payson, 110 Me. 204, 85 A. 576; Howard v. Harrington, 114 Me. 443, 96 A. 769; Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585. See § 85 and notes thereto.

Applied in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Pease v. Ballou, 108 Me. 177, 79 A. 532; Tremblay v. Murphy, 111 Me. 38, 88 A. 55; Crosby v. Libby, 114 Me. 35, 95 A. 529; Frothingham v. Woodside, 122 Me. 525, 120 A. 906; Allen v. Hackett, 123 Me. 106, 121 A. 906; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254.

Cited in Libby v. English, 110 Me. 449, 86 A. 975.

Sec. 88. Costs.—The prevailing party shall recover costs, and double or treble costs may be awarded in the discretion of the justice. (R. S. c. 5, § 89.)

Under this section the prevailing party is entitled to costs as a matter of law. The question of whether any costs shall be awarded is not left to the discretion of the sitting justice as in equity. Murray v. Waite, 113 Me. 485, 94 A. 943.

Who is prevailing party.—When the petitioner has failed to oust the party holding the election certificate, the latter is the prevailing party within the meaning of the section regardless of whether such party actually received more votes than the petitioner and regardless of whether he may be ousted in some other form of proceeding. Murray v. Waite, 113 Me. 485, 94 A. 943.

Cited in Curran v. Clayton, 86 Me. 42, 29 A. 930, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Bartlett v. McIntire, 108 Me. 161, 79 A. 525; Pease v. Ballou, 108 Me. 177, 79 A. 532; Libby v. English, 110 Me. 449, 86 A. 975; Wilson v. Lacroix, 111 Me. 324, 89 A. 69; Crosby v. Libby, 114 Me. 35, 95 A. 329; Russell v. Stevens, 118 Me. 101, 106 A. 115; Frothingham v. Woodside, 122 Me. 525, 120 A. 906; Duquette v. Merrill, 141 Me. 232, 42 A. (2d) 254; Lesieur v. Lausier, 148 Me. 500, 96 A. (2d) 585.

Sec. 89. Contesting seat in house of representatives. — When any person intends to contest before the house of representatives the right of any other person to his seat therein, he shall serve notice thereof upon such person which notice may be served at any time after the election and shall be served at least 15 days prior to the organization of the house; he shall present his petition to the house within 3 days after its organization, stating the grounds upon which he proposes to contest such seat, and all testimony on either side shall be by depositions taken in the manner authorized by chapter 117 in cases of contested senatorial elections, or by parol evidence, and shall be presented to the house within 3 days from the commencement of the session. If this law is not strictly complied with, except in extreme cases where injustice would be done if a continuance were not allowed, the party neglecting shall be denied a postponement, and the committee on elections shall proceed to determine the case by the testimony before them. (R. S. c. 5, § 90.)

Betting on Elections. Display of Circulars.

Sec. 90. Betting on elections punished.—No person shall make a bet or wager upon the result of any election in the state, in money or in any kind of property, real or personal, under penalty of forfeiting the money or property so bet or wagered to the town in which he resides, or if he does not reside in the state, then to the town in which the bet or wager is made, to be recovered in an action on the case. The mayor or person performing the function of mayor of the city or the treasurer of the town or plantation entitled to such forfeiture shall

forthwith proceed to sue for it, as soon as he has proper evidence of such betting or wagering.

Any party to such bet or wager, who has paid or conveyed to the winning party the money or property so bet or wagered, may recover it, or its value, in an action on the case.

All conveyances, by deed or otherwise, of any interest in real estate made by reason of any such bet or wager, are void; the person making them forfeits the full value of the interest so conveyed to the town entitled to the forfeiture for such betting or wagering, to be recovered in an action on the case. (R. S. c. 5, § 91.)

Betting on elections is declared illegal by this section. It is placed on the same footing with other gambling, and is not less mischievous. Gilmore v. Woodcock, 69 Me. 118.

Action must be against party making bet.—An action by the city under this section must be brought against a party making the bet. Gilmore v. Woodcock, 69 Me. 118.

This section contemplates an adjudication in a suit to which the person making the bet shall be a party in order to complete the forfeiture and deprive the person of the money to which he would be otherwise entitled as his own. Gilmore v. Woodcock, 70 Me. 494.

By this section, the mayor of the city or treasurer of the town entitled to the forfeited money is directed to sue for and recover it; and this suit must of necessity be against the party wagering the money. Gilmore v. Woodcock, 70 Me. 494.

And stakeholder not liable to suit.—The stakeholder is not liable in a suit brought by the mayor of a city under this section, unless seasonably summoned as trustee of him who is subject to the penalty and forfeiture. Gilmore v. Woodcock, 70 Me. 494.

The money does not belong to the city until it has been adjudged forfeited in a suit brought against the maker of the bet. Gilmore v. Woodcock, 70 Me. 494.

Not necessary to sue for identical money bet.—Under the original statute, the parties betting each forfeited "a sum equal to" the wager, to the use of the city or town where he resided, to be recovered by an action of debt in any court competent to try the same. No transformation which the section has undergone in the process of revision indicates any intention on the part of the legislature to change the substance of the forfeiture, though the form of action has been changed to case. It is not merely the identical money wagered which may be pursued; it might not always be possible to identify or trace it. Gilmore v. Woodcock, 69 Me. 118.

Section does not affect rights of person making bet against stakeholder.—The liability of a person making a bet in violation of this section to a judgment in favor of the city against him for an equivalent amount cannot affect his right of action against the stakeholder, when it does not appear that the fund has been in any way impounded in the stakeholder's hands to meet the city's judgment. Unless the necessary legal steps have been taken to enforce a forfeiture, a man whose money or property is liable to forfeiture under the law is still entitled to all remedies that the law gives him for the protection of his rights in it. Gilmore v. Woodcock, 69 Me. 118.

It is no part of the duty of the stakeholder to enforce the penalty in favor of the city, nor can he avail himself of the bettor's liability to the city as a defense to an action against him by the bettor. Gilmore v. Woodcock, 69 Me. 118.

Applied in McDonough v. Webster, 68 Me. 530.

Cited in Howard v. Harrington, 114 Me. 443, 96 A. 769.

Sec. 91. Display of circulars, etc., prohibited at voting places. — On caucus, primary or election days no poster, card, handbill, placard, novelty, picture, circular not required by law or loud-speaker, so called, intended to influence the opinion of any voter shall be posted, exhibited, circulated, distributed or operated in the building where the voting place is located, on the walls thereof, on the premises on which the building is located, on the sidewalk adjoining the premises where such voting place is located, or within 250 feet of the entrance to such voting place. This does not apply to placards on automobiles traveling to and from the voting places. (R. S. c. 5, § 92.)

Penalties.

Sec. 92. Falsely filing or destroying any nomination paper or letter of withdrawal.—Any person who shall falsely make or willfully deface or destroy any certificate of nomination or nomination paper, or any part thereof, or any letter of withdrawal; file any certificate of nomination or nomination paper, or letter of withdrawal, knowing the same or any part thereof to be falsely made; suppress any certificate of nomination or nomination paper, or any part thereof, which has been duly filed; forge or falsely make the official indorsement on any ballot; willfully destroy or deface any ballot, or willfully delay the delivery of any ballots; or shall take or remove any ballot outside of the enclosure provided for voting before the close of the polls shall be punished by a fine of not more than $1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 5, § 93.)

Sec. 93. Destroying nomination lists, cards of instructions or specimen ballots posted for instruction. — Any person who shall, prior to an election, willfully deface or destroy any list of candidates posted in accordance with the provisions of this chapter, or who, during an election, shall willfully deface, tear down, remove or destroy any card of instructions or specimen ballot printed or posted for the instruction of voters, or who shall, during an election, willfully remove or destroy any of the supplies or conveniences furnished to enable a voter to prepare his ballot, or who shall willfully hinder the voting of others shall be punished by a fine of not less than $5, nor more than $100. (R. S. c. 5, § 94.)

See c. 91, § 58, re town clerk to prepare cards of instruction.

Sec. 94. Neglect of duty by public officer. — Any public officer upon whom a duty is imposed by the provisions of sections 1 to 15, 22, 34 to 37, 39 and 40 who shall willfully neglect to perform such duty, or who shall willfully perform it in such a way as to hinder any object of said sections, shall be punished by a fine of not less than $5, nor more than $1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 5, § 95.)

Sec. 95. Neglect to summon voters; willful neglect to be recovered by indictment.—If any person required to summon the voters of a city, town or plantation to assemble at any meeting for holding an election neglects to do so or to make due return of the warrant therefor, he forfeits $25 to his city, town or plantation for each offense, to be recovered as provided in section 98; and if he willfully neglects or refuses, he shall forfeit not less than $50, nor more than $200, ½ to the state and ½ to the prosecutor, to be recovered by indictment. (R. S. c. 5, § 96.)

See § 97, re limitation of liability of town officers.

Sec. 96. Neglect, misfeasance of selectmen or other officers. — If any town officer, or such officer chosen pro tempore, willfully neglects or refuses to perform any duty required of him, or willfully does, authorizes or permits to be done anything prohibited by the constitution or by this chapter, he shall for each offense forfeit not less than $50, nor more than $500, and be imprisoned for not less than 3 months, nor more than 9 months, unless otherwise expressly provided in this chapter. (R. S. c. 5, § 97.)

The facts necessary to constitute an offence under this section must be set forth in the indictment. State v. Small, 10 Me. 109.

Sec. 97. Liability of town officers limited; neglect deemed willful unless contrary is shown.—In no case, except as provided in sections 95 and 98,

shall an officer of a town incur any punishment, or be liable in damages by reason of his official acts or neglects, unless they are unreasonable, corrupt or willfully oppressive; but the neglect to prepare the list of voters, to deposit it in the town clerk's office, to post it, as required herein, to call town meetings for elections, to comply with the requirements of or to perform any duty imposed by sections 27, 33, 37, 39 and 104, or any of them, to cause returns of votes, or copies thereof, to be delivered into the office of the secretary of state, as required by the constitution and laws, or to make the records by law required shall be deemed willful and unreasonable, and the burden shall be upon the accused to prove the contrary. (R. S. c. 5, § 98. 1953, c. 365, § 18.)

By acts which are neither unreasonable, corrupt, nor wilfully oppressive, an official does not incur a penalty. Harlow v. Young, 37 Me. 88.

Applicability of section not restricted to election officials.—The terms of this section, are general and apply to all cases and to all the official acts of every officer of every city, town or plantation, in the state, whether his official duties are connected with elections or otherwise. They are not to be restricted by the title of the act of which they are a part, and to avoid a forfeiture, they should receive a fair and liberal construction. If standing alone, as a separate enactment, there could be no doubt that they would apply to all cases of official neglects, by the class of officers mentioned; and as they stand now, unrestricted by the title, and unconnected with other sections, they are to be construed in the same manner, and by the same rules, as if they constituted an independent enactment. Harlow v. Young, 37 Me. 88; Tremblay v. Murphy, 111 Me. 38, 88 A. 55.

What constitutes official act.—An act which is not part of an officer's official duty to perform is not an official act within the meaning of this section. Chase v. Cochran, 102 Me. 431, 67 A. 320.

If the act is corrupt or oppressive, it would surely be unreasonable. An act may be unreasonable, and fall short of being either corrupt or oppressive. The fact that unreasonableness is the least in degree of the wrongs that may be imputed to officers, supersedes the necessity of determining the question of corruptness or willfullness. If the officers were not unreasonable in their action, no liability attaches. Sanders v. Getchell, 76 Me. 158.

Test of reasonableness of official's act.—Town officers shall be accountable for intelligence enough to be able to perform the official services required of them at least ordinarily well. Ignorance cannot excuse them. It is not altogether whether their acts are reasonable in their own estimation, but whether reasonable in fact. Men may act unreasonably and not know it. If they knew their acts were unreasonable, they would be acting corruptly or maliciously. When a person accepts a town office, he vouches for his competency to perform its duties. Sanders v. Getchell, 76 Me. 158.

The officers must act honestly and reasonably. If their action is such as sensible and impartial men generally would approve, they would no doubt be justified. But cases may occur of so close and doubtful a character, either upon the law or fact, that even reasonable and impartial men would be likely to differ in their judgments upon the question. Occasionally there are contentions that could be decided either way, and the decision not be unreasonable. The officials would not be liable for an action on their part, if the question presented to them was so doubtful that reasonable and competent men, unaffected by bias or prejudice, might naturally differ in their views upon it; if the question is such that there is room for two honest and apparently reasonable conclusions to be reached. Sanders v. Getchell, 76 Me. 158.

Presumption in favor of officer.—There would be no justice, under this section, in holding officials to absolute legal and technical accuracy in all things. The very object of the section was to change such a rule. The section implies that mistakes may be made, but excuses them unless unreasonably made. The liability for error is not absolute but conditional. The presumption of correctness is with the officer. The more doubtful the case, the stronger the presumption. Sanders v. Getchell, 76 Me. 158.

Liability of officers prior to enactment of section.—See Sanders v. Getchell, 76 Me. 158.

Applied in Pierce v. Getchell, 76 Me. 216.

Quoted in State v. Small, 10 Me. 109.

Sec. 98. Neglect to issue warrant for state or national election.—If aldermen of cities, selectmen of towns or assessors of plantations neglect to issue their warrant as required by law for a meeting for the choice of state or county officers, representatives to the legislature, or to congress, United States senators, or of presidential electors, they shall each forfeit $50 to their city, town or plantation to be recovered in action of debt by the treasurer, or by any citizen thereof when the treasurer is a member of the delinquent board. (R. S. c. 5, § 99.)

Sec. 99. Neglect of selectmen to deposit and post lists.—If selectmen of a town or assessors of a plantation willfully neglect to deposit a list of voters with the town or plantation clerk, or to post such lists, as hereinbefore required, they shall each forfeit not less than $50, nor more than $100; and for each day's neglect after the 20th day of August, and until the state election then next ensuing, they shall each forfeit $30. (R. S. c. 5, § 100.)

Sec. 100. Neglect to keep check list or to reject illegal votes.—If the selectmen or assessors willfully neglect or refuse to keep and use a check list, as provided in section 23, or fraudulently receive the vote of any person not qualified to be an elector, as provided by the constitution, they shall each forfeit not less than $50, nor more than $100. (R. S. c. 5, § 101.)

Cited in Mussey v. White, 3 Me. 290; Bowie v. Stackpole, 119 Me. 333, 111 A. 409.

Sec. 101. Penalties of 2 preceding sections, how recoverable.—The penalties provided in the 2 preceding sections may be recovered in an action of debt, in the name and to the use of the town or plantation, where the offense is committed, to be prosecuted to final judgment at the request of any voter therein, by the treasurer, unless he is one of the delinquent officers, and in that case, by one of the constables. (R. S. c. 5, § 102.)

Sec. 102. Striking names from list without notice. — Any municipal officer who strikes from the list of voters, after it has been prepared and posted, the name of any person residing in the municipality, without the notice and opportunity for hearing provided in section 39 of chapter 3, shall forfeit not less than $20, nor more than $100, to be recovered in an action on the case by the person whose name was struck out. (R. S. c. 5, § 103.)

Sec. 103. Altering, erasing, etc., names or voting in another's name.—Whoever wrongfully alters, erases or mutilates any name on a list of voters, or fraudulently votes in the name of another or under an assumed name shall for each offense be punished by a fine of not more than $300, or by imprisonment for not more than 11 months. (R. S. c. 5, § 104.)

See c. 3, § 33, re penalty for false registration or attempt to impersonate another, etc.

Sec. 104. Not complying with requirements of § 27. — Any presiding officer or ward, precinct, town, district or plantation clerk who does not comply with the requirements of section 27 or evades or attempts to evade the same, or any person who violates any provision of said section or hinders or attempts to hinder any election officer or any ward, precinct, town, district or plantation clerk in the performance of his duties under said section shall be punished for each offense by a fine of not less than $50, nor more than $500, and by imprisonment for not less than 3 months, nor more than 9 months. (R. S. c. 5, § 105.)

Sec. 105. Election clerk offers to assist voter before being directed to do so.—Any election or ballot clerk who shall assist or offer to assist any

voter before such clerk shall have been directed by the presiding officer or officers to do so shall be punished by a fine of not less than $25, nor more than $100, or by imprisonment for not more than 60 days for each offense, and thereafter shall be disqualified from holding the office of election or ballot clerk. (R. S. c. 5, § 107.)

Sec. 106. Knowingly voting where not entitled.—Whoever, at an election of state and county or municipal officers or presidential electors, knowingly votes in any city, town or plantation where he has no legal right to vote shall be imprisoned for not less than 3 months, nor more than 11 months. (R. S. c. 5, § 108.)

Indictment where disqualification imposed as penalty for crime.—In a prosecution under this section, if the alleged disqualification for voting is imposed as a penalty for crime, that offense should be specifically set forth in the indictment charging the accused with illegal voting. State v. Symonds, 57 Me. 148.

Sec. 107. Voter allows his ballot to be seen, or makes false statement as to inability to mark ballot, or for interfering with voter when marking ballot.—A voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere or attempt to interfere with any voter while inside the enclosure provided for voting or while marking his ballot, or who shall endeavor to induce any voter before voting to show how he marks or has marked his ballot shall be punished by a fine of not less than $5, nor more than $100; and election officers shall report any person so doing to a police officer or constable, whose duty it shall be to see that the offender is duly brought before the proper court. (R. S. c. 5, § 110.)

Cross reference.—See c. 91, § 58, re town clerk to prepare cards of instruction.

Stated in Durgin v. Curran, 106 Me. 509, 77 A. 689, overruled in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Cited in Bartlett v. McIntire, 108 Me. 161, 79 A. 525.

Sec. 108. Misconduct of electors at elections.—At any meeting for an election, where a list of voters is necessary, whoever willfully votes before the presiding officer has had opportunity to find his name on the list, or knowing that it is not on it, or willfully gives any false answer or statement to the officers presiding at such meeting in order that his name or the name of any other person may be entered on such list or his vote or that of another be received, or casts more than 1 vote at one balloting, or is disorderly at such meeting shall forfeit for each offense not less than $10, nor more than $100. Such penalties may be recovered by indictment, ½ to the state and ½ to the prosecutor. (R. S. c. 5, §§ 111, 124.)

Double voting, which was an offense at common law, may be committed in the absence of a list of voters, both at a meeting where it is not required, or where its use is improperly omitted. State v. Gilman, 96 Me. 431, 52 A. 920.

Necessity for naming person for whom votes cast in indictment for double voting.—In a prosecution under this section for voting more than once, the offense is in voting more than once at one balloting and not in voting more than once for the same person or persons. The presumption is that the ballots designated the persons and the offices, and they need not be named in the indictment. State v. Gilman, 96 Me. 431, 52 A. 920.

Sufficiency of allegation that meeting was legal.—In a prosecution for violation of this section, the indictment did not allege in terms that the meeting at which the offense was committed was a legal meeting, but it was held that the indictment was sufficient if the language necessarily indicated a meeting called and held according to law. State v. Gilman, 96 Me. 431, 52 A. 920.

For another case dealing with the suffi-

ciency of the indictment in a prosecution under this section, see State v. Boyington, 56 Me. 512.

History of section.—See State v. Gilman, 36 Me. 431, 52 A. 920.

Sec. 109. Bribery and corruption at elections.—Whoever by bribery, menace, willful falsehood or other corrupt means, directly or indirectly attempts to influence any voter in giving his vote or ballot, or to induce him to withhold it, or disturbs or hinders him in the free exercise of his right of suffrage at any election held under the provisions of the constitution or of this chapter, and whoever receives or offers to receive a bribe for his vote as aforesaid shall be punished by a fine of not more than $500, or by imprisonment for not more than 11 months, and shall be ineligible to any office for 10 years. (R. S. c. 5, § 112.)

Cross reference.—See Const. of Me., Art. IX, § 13, re bribery at elections.

Cited in State v. Jackson, 73 Me. 91.

Sec. 110. Person selling his vote.—Whoever shall offer, or promise, or agree to receive any money or other valuable consideration for giving in his vote at any election held under the provisions of the constitution or of this chapter, and shall in accordance with such offer, promise or agreement give in his vote at such election shall be punished by a fine of not more than $100, or by imprisonment for not more than 11 months, and shall be excluded from the right of suffrage for a term of 10 years. (R. S. c. 5, § 113.)

Sec. 111. Copies of the preceding section to be furnished and posted in voting precincts.—The secretary of state shall furnish the mayors or persons performing the function of mayor of cities, the selectmen of towns and assessors of plantations with copies of the preceding section in a printed form suitable to be posted in conspicuous places in the voting precinct of every city, town or plantation, and they shall cause such copies to be so posted. (R. S. c. 5, § 114.)

Sec. 112. Refusing to permit elector of unorganized territory to vote.—The selectmen of a town or the assessors of a plantation who willfully refuse to permit an elector of unorganized territory, who furnishes proper evidence of his legal qualifications as a voter and of his residence in the unorganized territory, to vote in accordance with the provisions of section 64, shall be punished by a fine of not less than $10, nor more than $100, or by imprisonment for not more than 6 months. (R. S. c. 5, § 115.)

Sec. 113. Neglect of duty under § 37 or 39. — Any election officer, selectman, warden, election clerk, ballot clerk, town clerk or other officer however designated, who shall neglect to perform any duty imposed by either section 37 or 39, and any person who shall abstract from or in any manner tamper with packages of ballots, or shall break any seal affixed to any package of ballots or to any box containing packages of ballots before they are delivered at the office of the secretary of state, or who shall in any manner abstract from or tamper with unused ballots, shall be punished for each offense by a fine of not less than $50, nor more than $500, and by imprisonment for not less than 3 months, nor more than 9 months. (R. S. c. 5, § 116. 1953, c. 365, § 18.)

See § 97, re limitation of liability of town officers.

Sec. 114. Neglect to supply lost return.—If any town officer, or any such officer chosen pro tempore, willfully neglects or refuses to perform the duties required by sections 46, 47 and 48, on notice of the loss and destruction of any return therein described, he shall forfeit not less than $100, nor more than $500. (R. S. c. 5, § 118.)

See § 115, re penalty for making false certificate.

Sec. 115. Making false certificate. — Any officer mentioned in section 114, permanent or pro tempore, who in such case makes a false certificate and makes oath to its truth shall be punished as for perjury and be disqualified from holding any office under the constitution and laws of the state for 10 years. (R. S. c. 5, § 119.)

See c. 135, § 1, re punishment for perjury.

Sec. 116. Neglect of persons to whom returns are entrusted for delivery.—If a person, to whom returns of votes of any city, town or plantation for governor, senators or representatives in congress are entrusted by the clerk thereof to be forwarded to the office of the secretary of state, willfully neglects to use all proper means for their delivery, within the time required, he shall forfeit not less than $100, nor more than $500, or be imprisoned for not less than 2 months, nor more than 6 months. (R. S. c. 5, § 120.)

Sec. 117. County attorneys to prosecute for willful negligence in not delivering returns.—Every county attorney, who receives from the secretary of state a certificate that the return of votes of any town in his county for governor, senators or representatives in congress has not been duly received at the office of the secretary of state, shall immediately ascertain, so far as he can, by the default of what officer or person such omission occurred, and shall demand of him, if he finds such default to have been willful or caused by culpable negligence, the sum thereby forfeited; and if it is not immediately paid, he shall prosecute the delinquent. (R. S. c. 5, § 121.)

Sec. 118. Military parades on election day.—Any officer of the militia who parades men under his command or exercises any military command on a day of election, except in time of war or public danger, or in case of riot, invasion or insurrection, or imminent danger thereof, or in case of public danger resulting from flood, conflagration or tempest, or at a regularly scheduled and ordered drill in an armory shall forfeit for each offense not less than $10, nor more than $300. Such penalties may be recovered by indictment, ½ to the state and ½ to the prosecutor. (R. S. c. 5, §§ 123, 124.)

Sec. 119. Penalties, how recovered.—Any penalty provided for in this chapter, which may be recovered by the treasurer of a town may be recovered by any voter of said town in a suit in his own name, to the same uses as if recovered by the treasurer if the treasurer refuses or neglects for 10 days after written request of such voter to commence suit therefor. (R. S. c. 5, § 125.)