

MAINE STATE LEGISLATURE

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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 4

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

Limited Partnerships.

Sec. 21. Publication of such partnership and mode of renewing it.

—After such registry, the partners shall cause a copy of the certificate to be published in a newspaper printed in the county in which the principal place of business is situated, if any, otherwise in one printed in an adjoining county, or in the state paper, for 2 weeks successively, the first publication to be within 20 days thereafter. If not so published, or if upon every renewal or continuance of such partnership beyond the time originally fixed for its duration a certificate is not made, signed, acknowledged, recorded and published, it shall be deemed a general one. (R. S. c. 167, § 13. 1961, c. 102.)

Effect of amendment.—The 1961 amendment substituted “2” for “6” near the end of the present first sentence and made other minor changes.

Sec. 24. Prosecution of actions relating to partnership business.—

Actions respecting the business of such partnership shall be commenced and prosecuted by and against the general partners only, except in those cases in which provision is hereinbefore made, that special partners shall be deemed general partners, and special partnerships, general partnerships; in which cases all the partners deemed general partners may join or be joined in such actions. (R. S. c. 167, § 16. 1961, c. 317, § 623.)

Effect of amendment.—The 1961 amendment substituted “actions” for “suits” at the beginning and at the end of this section.

Sec. 26. Limited partners same as general.—In all cases not otherwise provided for herein, the members of limited partnerships are subject to the liabilities and entitled to the immunities incident to general partnerships, and the superior court may hear and determine in civil actions all questions between copartners in any partnership formed by virtue of this chapter, and between said copartners and any creditors of the firm. (R. S. c. 167, § 18. 1961, c. 317, § 624.)

Effect of amendment.—The 1961 amendment substituted “superior court may hear and determine in civil actions” for “superior judicial court and the superior court may hear and determine in equity” in this section.

Chapter 182.

Trade-Marks and Trade Names.

Sec. 3. Damages.—Whoever violates section 2 is liable to any party aggrieved thereby for all damages actually incurred, to be recovered in a civil action. (R. S. c. 168, § 3. 1961, c. 317, § 625.)

Effect of amendment.—The 1961 amendment substituted “section 2” for “the provisions of the preceding section” near the beginning of this section and “a civil action” for “an action on the case” at the end thereof.

Chapter 183.

Fair Trade Act.

Sec. 2. Unfair competition defined.—Willfully and knowingly advertising, offering for sale, selling or disposing of any commodity at less than the price stipulated in any contract entered into pursuant to section 1, whether the person so advertising, offering for sale, selling or disposing of is or is not a party

to such contract, is unfair competition and is actionable by any person injured thereby. (R. S. c. 169, § 2. 1961, c. 317, § 626.)

Effect of amendment.—The 1961 amendment deleted “the provisions of” preceding “section 1” near the middle of this section and substituted “by” for “at the suit of” near the end of the section.

Chapter 184. Unfair Sales Act.

Sec. 1. Definitions.

History of “Unfair Sales” legislation.—See *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

Purpose and constitutionality.—This law comes within the well recognized police powers of the state, and has for its purpose the prevention of ruthless, unfair and destructive competition, and to that extent is constitutional. *Wiley v. Sampson-Ripley Co.*, 151 Me. 400, 120 A. (2d) 289.

The Maine statute contains language unlike that found in the statutes of other states. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

Conduct which was lawful at common law is by the statute made wrongful. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

And the statute, being in derogation of the common law, must be strictly construed. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

The statute has newly created what may be termed a business crime. The offending merchant may find himself faced with either criminal prosecution, the threat of injunction, or an action at law for damages. In either case, he is entitled to be informed by the statute in explicit and unambiguous language what acts and conduct are prohibited. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

It is most important that the language of the statute inform the businessman of ordinary intelligence whether his particular business operations are covered by the statute, and if so, what conduct on his part is specifically prohibited. If the statute is so vague and uncertain with respect to these matters as to leave him to guess as to its application, it is unenforceable as to him. This basic rule applies alike to criminal prosecution and injunctive relief. *Farmington Dowel Products Co. v.*

Forster Mfg. Co., 153 Me. 265, 136 A. (2d) 542.

Wrongful intent and sales below cost must coexist.—Many states have taken legislative action to prevent so-called “unfair sales.” Courts which have construed these enactments have generally agreed that two essential factors must be shown to coexist, the wrongful intent and the sales below cost. Absent either factor, the prosecution for violation must fail. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

So long as the intent to injure competitors is not implemented by the unlawful act, the statute may not be invoked. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

The merchant who seeks by “building the better mousetrap” or by some lawful competitive inducement to corner the market for himself, but without resort to any conduct prohibited by law, may possess the requisite intent to injure or destroy competition and yet not be in violation of the statute. In short, proof of either of the essential factors without proof of the other will not suffice. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

A producer or a manufacturer is not engaged in the business of making sales at retail within the meaning of the statute. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

When a statute uses a cost definition which is manifestly applicable only to distributors, that is a sufficient indication that the act was not designed to apply to manufacturers. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.

And the phrase “which is the product of his or its own manufacture” in subsection VIII is meaningless when read in context with the entire act. *Farmington Dowel Products Co. v. Forster Mfg. Co.*, 153 Me. 265, 136 A. (2d) 542.