

MAINE STATE LEGISLATURE

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



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

REPORT
OF
THE COMMISSIONER
ON THE
REVISION AND CONSOLIDATION
OF THE
PUBLIC LAWS
OF THE
STATE OF MAINE
UNDER
RESOLVE OF APRIL 15, 1927

AUGUSTA
KENNEBEC JOURNAL PRINT
1928

TITLE THREE.

Agriculture, Trade and Labor

- CHAP. 38. Department of agriculture.
39. Prevention of contagious diseases among animals.
 40. Protection against adulterated or misbranded goods. Packing of food. Packing of apples. Beverages.
 41. Regulation of sale of milk.
 42. Extermination of insect pests. Bee industry.
 43. Principal, factors, and agents. Warehousemen. Partnerships.
 44. Board of accountancy. Notaries public. Holidays and days of public observance. Demand on bills and notes. Interest.
 45. Auctions and auctioneers. Itinerant vendors.
 46. Pawnbrokers and intelligence offices.
 47. Pilots and ship owners. Wrecks and shipwrecked goods, lighters, and harbors. Port wardens.
 48. Inspection and sale of manufactured articles. Trade-marks and trade names. Assayers of ores and metals.
 49. Sea and shore fisheries.
 50. Survey and sale of wood, bark, coal, hoops, staves, and lumber.
 51. Timber upon rivers, streams, and adjacent lands.
 52. Standard weights and measures, meridian lines and standards of length.
 53. Provisions relating to labor.
 54. Compensation for personal injury to employees.
-

CHAPTER 38.

Department of Agriculture.

Sec. 1. State department of agriculture; election of commissioner; bond.
R. S. c. 34, § 1. 1917, c. 150. 1917, c. 201. 1921, c. 88. A state department of agriculture shall be maintained for the improvement of agriculture and the advancement of the interests of husbandry. A commissioner of agriculture shall be elected by the legislature by joint ballot of the senators and representatives in convention, and shall hold his office for the term of four years and until his successor is elected and qualified. He shall give bond in the sum of ten thousand dollars to the state, with sufficient sureties, or with a surety company authorized to do business in the state, as surety, to be approved by the treasurer of state, conditioned to faithfully account for all moneys received and disbursed by him as said commissioner. The commissioner of agriculture may, with the approval of the governor and council, appoint a deputy commissioner of agriculture, who shall be the chief of one of the department bureaus in the department of agriculture, and shall perform the duties of the commissioner of agriculture during his absence, in addition to his duties as chief of a department bureau. The deputy commissioner shall hold office during the term of office of the commis-

CHAP. 38

sioner or until his successor is appointed, and his compensation and expenses shall be paid from any funds appropriated for the use of the department bureau of which he is chief. When the office of commissioner of agriculture shall become vacant by reason of the death, resignation, removal or inability to serve of the regularly elected incumbent of the office, the governor shall appoint a commissioner of agriculture to serve until the election of his successor, as provided by law, and his qualification.

See Const. of Me., Art. IX, § 1.

Sec. 2. Duties. R. S. c. 34, § 2. R. S. c. 37, § 4. 1921, c. 81. 1923, c. 201. The commissioner of agriculture is the chief executive charged with the enforcement of chapters thirty-eight to forty-two inclusive, and shall be vigilant in discovering violations thereof and making complaint to the proper authorities. He shall by personal observation, investigation, and correspondence, acquaint himself with the methods and wants of practical husbandry, the means of fertilization, and the adaption of various products to the soils and climate of the state; also, with the progress of scientific and practical agriculture elsewhere, with a view to the more complete development of the natural resources of the state. He shall gather statistics of information concerning agriculture and publish the same annually; he shall assist the farmers of the state, in so far as is practicable, to secure farm help and to promote increased production of farm crops through the selection, the growing and the dissemination of superior strains of seeds. He shall make and preserve a full record of all rules and regulations promulgated under the provisions of this chapter, and all payments and expenses incurred hereunder, and all other transactions performed by him in the discharge of his duties, as herein provided. He may investigate and furnish statements to shippers and other interested parties as to the quality and condition of fruits, vegetables, dairy, and other perishable farm products when received within the state for intrastate or interstate commerce, under such rules and regulations as he may prescribe, including payment of such fees as will be reasonable and as nearly as may be to cover the cost for the service rendered. Statements so issued by the authorized agents of the department shall be received in all courts of the state of Maine as prima facie evidence of the truth of the statements therein contained. He may employ such agents and assistants and make such purchases as may be necessary in the proper performance of his duties.

Sec. 3. Bureaus to be grouped into divisions; appropriations for each division. 1919, c. 64. The various bureaus and lines of work in the department of agriculture shall be grouped into divisions, known as divisions of animal industry, plant industry, markets, inspection, and administration. Appropriations made for the various bureaus and other lines of work in a division and any other funds available for the same purpose, shall be credited to that division, and appropriations shall be made for each division.

Sec. 4. Commissioner of agriculture to employ animal husbandry expert. 1919, c. 150. The commissioner of agriculture is hereby authorized to employ an animal husbandry expert and suitable assistance, paying such expenses in connection therewith as said commissioner may approve.

Sec. 5. To hold institutes; character of their work. R. S. c. 34, § 3. He shall hold or cause to be held two farmers' institutes in each county annually and as many more as the appropriation therefor will allow. The work of said institutes shall be devoted to the presentation and discussion of questions bearing upon agriculture and the agricultural interests of the state; and for this purpose said commissioner may employ speakers who are qualified and versed in the subjects assigned them. He may also appoint and employ assistants, experts, lecturers, a stenographer and other aids needed in conducting such institute

work, and shall fix the compensation of such employees. He may hold such institutes independently or in connection with other organizations devoted to agricultural interests and as far as possible and for the best agricultural interests of the state, aid and encourage agricultural societies and associations in the state, and shall collect and preserve in his office for public inspection all valuable data relating to the practical work of such societies and associations.

Sec. 6. To hold a state dairymen's conference, and state seed improvement meeting. R. S. c. 34, § 4. 1925, c. 143. He shall, in connection with, and with the aid of the Maine Dairymen's Association, annually hold a state dairymen's conference for the exhibit of dairy products and appliances, where in prizes for high merit and quality in butter and cheese may be offered, and may employ experts and lecturers to enhance dairy interests, but the expenses of the same shall not exceed the sum of seven hundred dollars annually. He shall also in connection with, and with the aid of the Maine Seed Improvement Association, annually hold a state seed improvement meeting for the exhibition of seeds adapted to the soil of Maine, wherein prizes for high merit in quality and variety may be offered, and may employ experts and lecturers to advocate the use of improved seed by the farmers of the state, but the total expense for such prizes and lecturers shall not exceed the sum of one thousand dollars annually. He may also in connection with, and with the aid of the several poultry associations of the state offer prizes for excellence in displays of poultry and poultry products, but the amount of the same shall not exceed the sum of one thousand dollars annually.

Sec. 7. Appropriation. R. S. c. 34, § 5. An appropriation of three thousand dollars annually shall be made for said institute work and for all other purposes set out in the two preceding sections.

Sec. 8. To assist in promoting horticultural and dairy work. R. S. c. 34, § 6. The commissioner of agriculture shall aid and assist societies and associations organized and established for the advancement of pomology, horticulture and dairy work, also societies devoted to the interests of the pure breeding of stock of all kinds.

Sec. 9. To apportion the state stipend due societies. R. S. c. 34, § 7. He shall apportion annually the stipend due from the state to the said agricultural societies, including the State Pomological Society; he shall issue blanks to the proper officers of said societies for such returns as may be deemed necessary for a full and complete knowledge of the work of said societies for each year, and shall certify to the governor and council the amount of bounty due such society, and shall designate to the treasurer of state to whom such moneys shall be paid, but said societies shall not be entitled to such bounty, unless they shall make such returns.

Sec. 10. Authority to summon officers and examine books and records. R. S. c. 34, § 8. He may summon before him and examine on oath any officer of an incorporated agricultural society or other person whose testimony he shall deem necessary in the proper discharge of his duties, and may require such witnesses to bring before him for examination, any books or records in their custody or control which he may deem necessary for his information in the performance of his duties.

Sec. 11. Methods and costs of marketing farm products, authorizing study of. 1917, c. 218. 1921, c. 44. The commissioner of agriculture is hereby authorized and directed, through such agents as he may appoint for the purpose, and in cooperation with such agricultural corporations or associations as he may deem proper, to investigate the existing methods and costs of marketing

CHAP. 38

farm products and purchasing farm supplies, and to secure improvement therein.

Sec. 12. Commissioner of agriculture to cooperate with federal government as to publication of agricultural statistics. 1919, c. 99. The commissioner of agriculture is authorized to cooperate with the United States Department of Agriculture in the collection and publication of agricultural statistics in accordance with the agreement heretofore entered into under authority of public laws of nineteen hundred nineteen, chapter ninety-nine, [and such modifications as may from time to time be made with the approval of the governor and council].

Sec. 13. Annual report. R. S. c. 34, § 9. He shall annually make a report to the governor and council, on or before the first day of January of each year, of the work of the department of agriculture in detail, combining in the same a report of the State Pomological Society and Maine Dairymen's Association, and all other matters relating to the promotion of agriculture; and for the purpose of said report, said society and association shall furnish said commissioner with all necessary data therefor on or before the first day of December of each year. He shall further report all farmers' institutes held and the work therein done, and all public lectures carried on under his authority, and such part of said reports as is of public interest shall be printed for free distribution; for the purpose of making up his report as herein provided, said commissioner shall attend the various agricultural exhibitions in the state and report upon the quality and character of the work of the same.

Sec. 14. Annual account of all expenditures. R. S. c. 34, § 10. He shall render on the first day of January of each year a detailed and itemized account of all expenses of his office, of all institutes held and of all moneys paid out for employees under the provisions hereof, also all sums of money paid for prizes on exhibits and for all other purposes; and for this purpose he shall keep necessary books in which an account of all moneys received and expended shall be entered, which books shall be open to public inspection.

Agricultural Experiment Station.

Sec. 15. Agricultural experiment station. R. S. c. 34, § 11. The department of the University of Maine known and designated as the Maine Agricultural Experiment Station, heretofore established at said university in connection therewith, and under its direction, for the purpose of carrying into effect the provisions of an act of the Congress of the United States, approved March 2, 1887, to establish agricultural experiment stations in connection with the colleges established in the several states under the provisions of an act approved July 2, 1862, and of the acts supplementary thereto, shall be maintained in accordance with the purposes for which it was originally established.

Sec. 16. Scientific investigations in orcharding, and crops. R. S. c. 34, § 12. The Maine Agricultural Experiment Station shall conduct scientific investigations in orcharding, corn and other farm crops, and, to this end, shall maintain the farm heretofore purchased in the name of the state, and stocked and equipped, for the use and benefit of said station. The director of the Maine Agricultural Experiment Station shall have the general supervision, management and control of said farm and of all investigations thereon.

Sec. 17. Investigations in animal husbandry. R. S. c. 34, § 13. 1921, c. 148. The Maine Agricultural Experiment Station shall also conduct scientific investigations in animal husbandry, including experiments and observations on dairy cattle and other domestic animals, and such investigations shall be under the control of the director of said station. The experiments in animal husbandry may be conducted at any of the farms owned by the state.

Sec. 18. Appropriation. R. S. c. 34, § 14. The sum of five thousand dollars shall be annually appropriated in favor of the Maine Agricultural Experiment Station, and the same shall be expended by the director of said station in executing the provisions of the preceding section. Payments of said appropriation shall be made quarterly in advance upon the warrant of the governor and council.

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

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

Act of Congress, approved February 24, 1925, entitled "An Act to Authorize the More Complete Endowment of Agricultural Experiment Stations, and for Other Purposes," accepted. Public Laws 1927, c. 18.

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

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

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

Extension Work with U. of M. College of Agriculture.

Sec. 19. Extension work in agriculture provided for in each county. 1919, c. 42, § 1. In order to aid in diffusing among the people of the state of Maine useful and practical information on subjects relating to agriculture, home economics and rural life and to encourage the application of the same, there may be inaugurated in each of the several counties of the state of Maine extension work which shall be carried on in cooperation with the University of Maine, College of Agriculture.

Sec. 20. Manner in which work may be carried on. 1919, c. 42, § 2. Cooperative agricultural extension work shall consist of the giving of practical demonstrations in agriculture and home economics, and imparting information on said subjects through field demonstrations, publications, and otherwise; and this work shall be carried on in each county in such manner as may be mutually agreed upon by the executive committee of the farm bureau of such county, provided for in section twenty-one, and the trustees of the University of Maine, College of Agriculture, or their duly appointed representatives.

Sec. 21. Organizations to be known as "Farm bureaus" to be formed. 1919, c. 42, § 3. That for the purpose of carrying out the provisions of sections nineteen to twenty-three there may be created in each county or combination of two counties within the state of Maine an organization to be known as a "farm bureau," in the following manner: Whenever a number not less than two hundred of bona fide rural residents within any county or combination of two counties in the state of Maine shall have effected temporary organization for doing extension work in agriculture and home economics, and shall have adopted a constitution and set of by-laws acceptable to the University of Maine, College of Agriculture, they shall be recognized as the official body within said county or counties for carrying on extension work in agriculture and home economics within said county or counties in cooperation with the University of Maine, College of Agriculture. Such organization may make such regulations and by-laws for its government and the carrying on of its work as are not inconsistent with the provisions of said sections; provided that any county farm bureau or other county organization within any of the counties in the state of Maine that is now doing extension work in agriculture and home economics in cooperation with the University of Maine, College of Agriculture, upon complying with the provisions of this section, shall be the recognized farm bureau of the county or counties where it is located, and provided further that but one such organization shall be formed in each county.

CHAP. 38

Sec. 22. Farm bureau to prepare budget; county commissioners may levy tax. 1919, c. 42, § 4. The executive committee of each county farm bureau shall annually prepare an annual financial budget for the twelve months beginning January first next thereafter, showing in detail its estimate of the amount of money to be expended under the provisions of these sections within the county or counties for such twelve months; shall submit the same to a vote of the bureau at the regular annual meeting, and, if the budget is approved by a majority vote of the members of the bureau present at such meeting, the executive committee shall submit the same to the board of county commissioners on a date in December approved by said county commissioners, and the county commissioners shall include the amount of this budget in the appropriations by them annually recommended, and levy a tax therefor; provided further that the amount thus raised by direct taxation within any county or combination of counties for the purposes of these sections shall be not less than one thousand and not more than two thousand dollars annually. Whenever the inhabitants of two counties shall unite for organization in one farm bureau the amount of the tax assessed upon each county shall be in the proportion which the number of farm bureau members in that county bears to the total number of members in the two counties so united.

Sec. 23. Annual report to be rendered to trustees of University of Maine College of Agriculture and to county commissioners. 1919, c. 42, § 5. It shall be the duty of each said county farm bureau annually on or before the tenth day of December, to present its plan of extension work for the ensuing year and to render to both the trustees of the University of Maine, College of Agriculture, and the county commissioners a full detailed report of its extension activities for the preceding fiscal year, including a detailed report of its receipts and expenditures from all sources; and the financial report of such county farm bureau shall be on such forms as may be prescribed by the trustees of the University of Maine, College of Agriculture.

State Agricultural Society.

Sec. 24. Election of officers. R. S. c. 34, § 15. The Maine State Agricultural Society, at its annual meeting, shall elect, by ballot, a president, secretary, treasurer, trustees, and other necessary officers.

Sec. 25. Powers of society; bond and account of treasurer; annual report of secretary. R. S. c. 34, § 16. Said society may take and hold property, real and personal, the annual income of which shall not exceed five thousand dollars, to be applied exclusively to the advancement of agriculture, horticulture, and the arts connected therewith; and the treasurer of said society shall give a suitable bond to the board of trustees, for the safe-keeping of said property, and for the faithful discharge of his duties. At each annual meeting, the treasurer shall submit a full and correct account of the money received and expended; and the secretary shall make a report of the doings of the society, with such information and suggestions as he deems useful to the public.

County and Local Agricultural Societies.

Sec. 26. County and local societies, or treasurers, may hold and manage property; bonds of treasurers. R. S. c. 34, § 17. County and local agricultural societies may take and hold property, real and personal, the annual income of which shall not exceed three thousand dollars, to be applied to the purposes provided in their charters; or their treasurers may receive conveyances or leases

of such property, for their societies, and hold, sell, mortgage or pledge it, and shall give bonds to the trustees for the safe-keeping thereof and the faithful discharge of their duties.

Sec. 27. State aid to agricultural societies; apportionment; special provision for Maine pomological society; procedure for apportioning stipend. R. S. c. 34, § 18. 1923, c. 155. 1927, c. 126. There shall be appropriated annually from the state treasury a sum of money not to exceed three and one-half cents per inhabitant of the state, which shall be known as the state stipend for aid and encouragement to agricultural societies and hereafter in this chapter designated as the stipend. This stipend shall be divided among the legally incorporated agricultural clubs, societies and fair associations of the state, hereafter in this chapter designated as societies, according to the following schedule and method. Two thousand dollars shall be paid annually to the Maine Pomological Society and the balance of said stipend shall be divided pro rata among the legally incorporated societies, not heretofore provided for according to the amount of premiums and gratuities actually paid in full and in cash or valuable equivalent by said societies upon livestock and agricultural and domestic products but no such society whether specifically mentioned in this chapter or otherwise shall be entitled to any share of the stipend unless it shall have complied with the following requirements, which shall be considered by the commissioner of agriculture hereinafter known as the commissioner, as the basis upon which his apportionment of the stipend shall be made as provided in section nine of this chapter. Each society claiming a share of the state stipend under this section shall file with the commissioner not later than December thirty-first of the year for which said stipend is requested, a statement made under oath, by its treasurer, setting forth the financial condition and transactions of the society, the amounts paid in premiums in the several classes or displays herein provided for, and such additional information relative to the character of displays, and the conduct of exhibitions as the commissioner may request, and upon blanks to be furnished by him. No premiums or gratuities shall be considered by the said commissioner in apportioning the amount of stipend to which any society is entitled except those offered and paid upon livestock, poultry, vegetables, grain, fruit, flowers, livestock products, home canned foods, grange exhibits, farm exhibits, boys' and girls' club exhibits, domestic and fancy articles produced in the farm home, and pulling contests by horses and oxen, and in no case shall the amount allowed on account of premiums paid in said class of domestic and fancy articles exceed the total amount allowed as premiums upon vegetables, grain, fruits, and flowers. No society, the Maine Pomological Society excepted, shall receive from the state a sum greater than that actually raised and paid by the society as premiums and gratuities in the classes herein provided, and in no case shall any society be entitled to any share of the stipend unless it shall have raised and paid in premiums in the classes heretofore set forth at least four hundred dollars. No society shall receive any portion of the stipend in excess of twenty-five hundred dollars. No society shall receive any portion of such stipend unless it shall have regularly entered and displayed in an attractive manner upon its exhibition grounds not less than one hundred separate and distinct exhibits or entries of vegetables, fruits or dairy products of a quality acceptable to the commissioner or his regularly authorized agent and of varieties known to be common or standard to the county in which such exhibition is held. The stipend may, however, be paid to such agricultural society or societies as may display a lesser number of exhibits of vegetables, fruits, or dairy products, than as hereinbefore required, provided the commissioner shall certify that in his opinion such society or soci-

CHAP. 38

eties have been unable for good and sufficient reasons to secure such required number of exhibits. No society shall be entitled to any share of the stipend unless it shall require all cattle exhibited or allowed upon its grounds at exhibition time to be tuberculin tested within one year previous to the date of its exhibition and declared free from tuberculosis by a veterinarian approved by the commissioner. Each and all societies receiving aid from the state under this section shall cause the prohibitory liquor law to be enforced on all grounds over which they have control and not allow immoral shows, gambling in any form, or games of chance on said grounds. Neglect or failure on the part of any society to observe any of the foregoing requirements shall be deemed sufficient cause for withholding such society's share of the stipend, and the commissioner is required and directed to authorize payment of stipend only to such societies as have observed all of the said requirements.

Sec. 28. Payments withheld until certain certificates and specifications are filed; investigation of complaints. R. S. c. 34, § 19. No payment of any state aid, whether made under the provisions of the preceding section or by special appropriation, shall be made to any society until the treasurer thereof files with the treasurer of state a certificate on oath, stating the amount raised by it and containing the specifications required in section thirty-one; and also a certificate from the commissioner of agriculture that he has examined into the claim of said society; that in his opinion it has complied with the provisions of sections thirty-one and thirty-four and with the following section; that there has been awarded and paid by said society as premiums and gratuities a sum at least equal to the amount apportioned to said society, and that the provisions in regard to immoral shows, gambling, and the sale of intoxicating liquors have been strictly complied with. In case of any complaint in writing, signed by the complainant, of the violation of any of the provisions of this chapter relating to the payment of state aid in any form to agricultural societies, the commissioner of agriculture may investigate such alleged violation, and employ such agents and counsel as may be necessary, to aid him in such investigation, and the expense incurred shall be paid out of the general appropriation for aid of agricultural societies; provided, that when it is found upon such investigation that the society against which complaint has been made has violated the provisions of this chapter, the expense of such investigation shall be paid from the amount that would otherwise have been paid to said society; provided, further, that if the society against which the complaint is made receives its aid by special enactment, then the expense of the investigation shall be paid from the said appropriation for such society.

Sec. 29. Society offering premiums on grade males not entitled to state aid. R. S. c. 34, § 20. No state stipend shall be paid to any agricultural society offering or paying premiums on grade males; the commissioner of agriculture may make this a part of the sworn return to be made by the proper officers of all agricultural societies; provided that *evidence as to* eligibility to registration be accepted as satisfactory proof of purity of blood.

Sec. 30. Expenditure of bounty. R. S. c. 34, § 22. Every society receiving the bounty of the state, shall expend an equal amount each year in premiums and gratuities for the improvement and encouragement of agriculture, horticulture, or the mechanic arts, unless the commissioner of agriculture directs for what purposes a sum not exceeding half of such bounty shall be expended; and then it shall be expended accordingly.

Sec. 31. Statements required from competitors. R. S. c. 34, § 23. Every society applying for the bounty of the state shall require of all competitors for

premiums either on animals, crops, dairy products, or improvements of soils or manures, a full and accurate statement of the process or method of rearing, managing, producing, and accomplishing the same, together with its cost and value, with a view of showing the profits or benefits derived or expected therefrom; and the application for bounty shall embrace all the specifications included in the following form, to wit:

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

Sec. 32. Secretaries to report annually to commissioner of agriculture. R. S. c. 34, § 24. The secretaries of the several societies shall prepare an annual report, embracing a concise statement of the financial condition and doings of the society, with a synopsis of the premiums awarded, to be made by filling blanks furnished by the commissioner of agriculture. Said report shall also state the leading features of the annual exhibition, the character of the efforts of the society for the advancement of agriculture, the principal crops raised in the county or district, the success attending their culture as compared with former years, and the obstacles met with; and generally the condition, prospects and wants of agriculture; which report, with a list of the officers of the society and the post-office address of each, renewed at each new election, and all statements made by successful competitors for premiums, and any reports of committees, essays, addresses, or other papers presented to the society containing matters of general interest, shall be returned to the commissioner by the first Wednesday of each December. Upon receipt and after examination of said returns, if the commissioner finds them full, faithful, and accurate, according to the intent hereof, he shall issue the certificate mentioned in section twenty-eight, and not otherwise.

Sec. 33. Societies may fix bounds for exhibitions. R. S. c. 34, § 25. All incorporated agricultural societies may, by their officers, define and fix bounds of sufficient extent for the erection of their cattle-pens and yards, and for convenient passageways to and about the same, on the days of their cattle shows and exhibitions, and for their plowing matches and trial of working teams, within which no person shall enter or pass, unless in conformity with the regulations of the officers thereof; and said societies shall furnish suitable space for the exhibition of farm implements and machinery at a reasonable rental; but they shall not so occupy or include the lands of any person without his consent, or obstruct the public travel of any highway.

Sec. 34. Penalty for violation of regulations. R. S. c. 34, § 26. Whoever, contrary to such regulations, enters or passes within the bounds so fixed, after notice of such regulations, when such grounds are not fenced, (no notice being necessary when such grounds are fenced) shall be subject to a fine of not exceeding five dollars or to imprisonment not exceeding ten days.

Sec. 35. Penalty for defrauding agricultural or horticultural societies. R. S. c. 34, § 27. Whoever shall gain admission to the grounds or buildings of any agricultural or horticultural society during the holding of an exhibition, otherwise than by the regular entrance provided, for the purpose of defrauding such society out of the regular entrance fee to such grounds or buildings; or who by fraud, misrepresentation, or otherwise unlawfully obtains such admission; and any person obtaining any premium or gratuity offered by such society by fraud or misrepresentation, shall be deemed guilty of larceny from such society, and on conviction shall be punished accordingly.

CHAP. 38

Sec. 36. Persons may be appointed to keep order, with powers of constables. R. S. c. 34, § 28. The officers of any such society may appoint a sufficient number of suitable persons, to act as constables at cattle shows and exhibitions, with all the powers of constables, for the preservation of the public peace, and the enforcement of the regulations of said society, within the towns where such shows and exhibitions are held, from noon of the day preceding the commencement of the same until noon of the day succeeding the termination thereof, and no longer.

Sec. 37. Sale of merchandise and refreshments, and exhibitions, near grounds restricted. R. S. c. 34, § 29. Whoever sells any refreshments, or other merchandise, or exhibits any show or play, within a quarter of a mile of the fair grounds of any agricultural society, during the time of any exhibition thereof, unless in his own dwelling-house, or usual and ordinary place of business or lets any land or building adjoining, or overlooking the fair grounds of such society, to spectators of any exhibition thereof, during the time of such exhibition, without the written consent of its trustees, forfeits to such society not exceeding one hundred dollars, to be recovered on complaint of two of its trustees.

Sec. 38. Powers and privileges of Eastern Maine State Fair. R. S. c. 34, § 30. The corporation known as Eastern Maine State Fair shall have all the police powers, together with all other powers and privileges, at all its exhibitions, of whatever name or nature, which are conferred upon agricultural societies by sections thirty-three, thirty-four and thirty-six and the provisions, restrictions, forfeitures, and penalties provided by section thirty-five, and by the preceding section shall be applicable to all exhibitions of such corporation.

Sec. 39. Competitors for premiums holden to pay entry fee; lien on animals, to secure payment. R. S. c. 34, § 31. Whoever makes entries of animals or articles as competitors for premiums or purses offered by any agricultural society, or by any person or association in the state, shall be holden to pay the entry fee in accordance with the advertised rules and regulations of any such society, person, or association, not in conflict with the laws of the state; and a lien is hereby created upon such animals and articles for such entry fee to secure payment thereof with costs, to be enforced by an action of debt against the person owning such animals or articles, or the person entering the same; or the same may be enforced in the same manner as liens on goods in possession and choses in action, but such lien shall not affect the title of any innocent purchaser of said animals or articles without actual notice of such lien.

See c. 104, §§ 70-79.

Sec. 40. Conduct of exhibitions. R. S. c. 34, § 32. Agricultural societies, persons, and associations, holding public exhibitions for competition for premiums or purses are authorized to conduct and manage the same in accordance with the advertised rules and regulations, not in conflict with the laws of the state.

Note. Penalty for false registration of blooded animal, c. 138, § 16.

Penalty for entering in any race a disguised horse, or entering a horse in wrong class, c. 138, § 16.

CHAPTER 39.

Prevention of Contagious Diseases Among Animals.

| | | |
|----------|-------|-------------------------|
| Sections | 1-20 | Prevention of Diseases. |
| Sections | 21-24 | Quarantine Powers. |
| Section | 25 | Marking Sheep. |
| Section | 26 | Record of Stallion. |

Prevention of Disease.

Sec. 1. Commissioner to investigate as to existence of diseases. R. S. c. 35.

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

Note. Notice to commissioner of agriculture of case of tuberculosis or glanders in domestic animals, c. 22, § 116.

Non-graduate veterinarian, in service of state, to submit to examination as to his fitness to render professional services, c. 21, § 87.

Note. 1921, c. 54 abolishes office of live stock sanitary commissioner and transfers duties to commissioner of agriculture.

Sec. 2. Notice, by publication, of existence of diseases; quarantine of animals and places; appraisal of animals affected. R. S. c. 35, § 3. 1921, c. 188, § 1. Upon the discovery of any disease mentioned in the preceding section, the commissioner of agriculture shall give notice of the existence and the locality thereof, by publication in such newspapers as he may select, and shall notify in writing the officials or agents of any railroad, steamboat, or other transportation company, doing business in or through such infected locality, of the existence of such disease; he shall establish and maintain such quarantine of animals, places, premises, or localities, as he may deem necessary to prevent the spread of any such disease; he shall cause the animal or animals affected with the said disease, to be appraised in accordance with the rules and regulations made by him, as hereinafter authorized and provided, and shall cause the same to be destroyed, and a proper disposition of the carcass made, according to the rules and regulations aforesaid; he shall pay to the owner or owners thereof their value, as determined at the time of the appraisal, out of any moneys appropriated by the legislature for that purpose; provided, however, that no appraised value shall be more than one hundred and fifty dollars for cattle, with a pedigree recorded or recordable in the recognized herd books of the breed in which the cattle destroyed may belong, nor more than seventy-five dollars for the cattle which have no recordable pedigree; and all other animals so destroyed shall be paid for at the rate of one-half their cash value; provided, that no appraised value shall exceed one hundred dollars for any horse condemned; provided, further, that in no case shall compensation be allowed for any animal destroyed under the provisions of this chapter, which may have contracted or been exposed to such disease in a foreign country or on the high seas, or that may have been brought

CHAP. 39

into this state, within one year previous to such animal showing evidence of such disease, and the owner or owners thereof shall furnish satisfactory evidence as to the time during which such animal or animals shall have been owned in the state; nor shall compensation be allowed to any owner who in person, or by agent, knowingly and wilfully conceals the existence of such disease, or the fact of exposure thereto in animals of which the person making such concealment, by himself or agent, is in whole or in part owner. In addition to the appraisal value paid to the owner of cattle as above provided, such owner shall also be entitled to the proceeds derived from the sale of any carcass in excess of fifty dollars.

Sec. 3. Commissioner required to publish rules and regulations, to be approved by the governor. R. S. c. 35, § 4. The commissioner of agriculture shall make, record, and publish rules, and regulations, providing for and regulating the agencies, methods, and manner of conducting the investigation aforesaid, regarding the existence of said contagious diseases; for ascertaining, entering, and searching places where such diseased animals are supposed to exist; for ascertaining what animals are so diseased, or have been exposed to contagious diseases; for making, reporting, and recording descriptions of said animals so diseased, exposed and destroyed and for appraising the same, and for making payment therefor; and shall make all other needful rules and regulations, which may in his judgment be deemed requisite, to the full and due execution of the provisions of this chapter. All such rules and regulations before they shall become operative shall be approved by the governor, and thereafter published in such manner as may be provided in such rules and regulations; after such publication, said rules and regulations shall have the force and effect of law, so far as the same are not inconsistent with the laws of this state, or the United States.

Sec. 4. Penalty for obstructing commissioner in the performance of his duties. R. S. c. 35, § 5. 1925, c. 24, § 1. Any person who knowingly and wilfully refuses permission to the commissioner of agriculture, or his duly constituted agent, to make, or who knowingly or wilfully obstructs said commissioner of agriculture, or his duly constituted agent, in making necessary examination of, and as to animals, supposed by the commissioner of agriculture or his agent to be diseased as aforesaid, or in destroying the same, or who knowingly attempts to prevent the commissioner of agriculture or his duly constituted agent, from entering upon the premises and other places hereinbefore specified, where any of said diseases are by the commissioner of agriculture supposed to exist, and any person who shall knowingly or wilfully change, remove, conceal, or substitute any tag, brand, label, or mark, fixed, fastened, or set by the chief of the division of animal industry or his agent or by any of the duly authorized inspectors, agents, or representatives of the commissioner of agriculture of this state or by any duly authorized inspector or official of any other state, upon any animal, place, or premises in this state shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, not exceeding ninety days, or by both at the discretion of the court.

Sec. 5. Penalty for knowingly concealing the existence of disease. R. S. c. 35, § 6. Any person who is the owner of, or who is possessed of any interest in any animal affected with any of the diseases named in section one, or any person who is agent, common carrier, consignee, or is otherwise charged with any duty in regard to any animal so diseased, or exposed to the contagion of such disease, or any officer or agent, charged with any duties under the provisions of this chapter, who shall knowingly conceal the existence of such contagious disease,

or the fact of such exposure to contagion, and who shall knowingly and wilfully fail within a reasonable time to report to the commissioner of agriculture the knowledge of their information in regard to the existence and location of such disease, or of exposure thereto, shall be punished as provided in section four.

Sec. 6. Quarantine declared when owner refuses to accept sum to be paid under appraisal. R. S. c. 35, § 7. When the owner of animals adjudged under the provisions of this chapter, by the proper authority, to be diseased, or to have been exposed to contagion, refuses to accept the sum authorized to be paid under the appraisement provided for in this chapter, the commissioner of agriculture shall declare and maintain a rigid quarantine for thirty days as to the animals adjudged as aforesaid, to be diseased, or exposed to any contagious or infectious disease, and of the premises or places where said cattle, horses, sheep, or swine may be found, according to the rules and regulations prescribed by said commissioner of agriculture, approved by the governor, and published as provided in section three.

Sec. 7. Penalty for transporting any animal affected, or that has been exposed to contagious diseases. R. S. c. 35, § 8. No person owning or operating a railroad, nor the owner or owners or masters of any steam, sailing, or other vessel, within the state, shall receive for transportation, or transport from one part of the state to another part of the state, or bring from any other state or foreign country, any animal affected with any of the diseases named in section one, or that have been exposed to such diseases, especially the disease known as tuberculosis, knowing such animal to be affected or to have been so exposed; nor shall any person or persons, company, or corporation, drive on foot, or transport in private conveyance, from one part of the state to another part of the state, any animal knowing the same to be affected with, or to have been exposed to, any of said diseases; the proper movement of these animals under the direction of the commissioner of agriculture for purposes of slaughter and disposal, excepted. Any person or persons violating any provision of this section shall be punished by fine of not exceeding one hundred dollars, or by imprisonment not exceeding three months, or by both fine and imprisonment.

Sec. 8. Conditions under which owner of condemned cattle may receive compensation therefor; cattle reacting to tuberculin test may be killed. R. S. c. 35, § 9. 1921, c. 188, § 2. When cattle shipped from Maine to the quarantine station at Brighton, Massachusetts, are subjected to the tuberculin test, and respond to such test, and the inspector for the "Cattle Bureau of Massachusetts" shall find upon post-mortem examination that such cattle were diseased with tuberculosis, and shall so state in writing to the commissioner of agriculture within thirty days from shipment from the state, and shall also give in writing a description of such animal, the name of the owner, the shipper, the date and name of place from which the same was shipped, the name of the party of whom it was bought and the fair cash value of such animal when condemned, and shall also comply with any other rule or regulation that the commissioner of agriculture may require, the owner shall be entitled to receive a fair market value, not to exceed seventy-five dollars for grade, and one hundred and fifty dollars for pure bred cattle, with a pedigree recorded or recordable; but in no case shall the owner be paid for any animal condemned under the provisions of this section, until he has filed with the commissioner of agriculture a claim, stating the name of the owner, the shipper, his post-office address, place and date of shipment, a fair market value for such animal, name of the person from whom said animal was purchased or consigned and such other information as the commissioner of agriculture may require; such claim shall be accompanied

CHAP. 39

in every instance with a "sale ticket" for such part of the animal as may have been sold, and the proceeds of such sale in excess of fifty dollars shall be added to the appraised value to be paid the owner of any condemned animal under the foregoing provisions. Cattle reacting to the tuberculin test may be sent to establishments maintaining a United States government meat inspection service, and be killed under federal government inspection, and be disposed of according to the requirements of the Government Meat Inspection Act.

Sec. 9. Persons bringing horses into this state must have permit; penalty. R. S. c. 35, § 10. 1917, c. 235. Any person or persons bringing horses into the state must have a permit and shall notify the commissioner of agriculture within forty-eight hours after their arrival; the commissioner shall at once cause the same to be examined by a physical examination, or to be tested with mallein or cause the blood test to be used at the expense of the owner, or the commissioner of agriculture may accept a certificate of health showing satisfactory mallein test or physical examination made by an inspector of the bureau of animal industry of the United States or by a veterinarian whose certificate is approved by the state official having authority to approve same under the laws of the state from which the animal is shipped. If an animal is found to be glandered no compensation shall be allowed. No permit or examination will be required for horses used in circuses and to perform on the stage. Whoever violates this section shall be punished by a fine as provided in section sixteen.

Sec. 10. Vaccination provided for. R. S. c. 35, § 11. Such sum as the commissioner of agriculture may deem necessary shall be used for the vaccination of cattle against tuberculosis, under the rules and regulations made for the control of such work.

Sec. 11. Dairy, breeding, and show cattle to be tested. R. S. c. 35, § 12. 1925, c. 24, § 2. All cattle that are to be shown or exhibited, in any state agricultural show, shall be tested with tuberculin, within twelve months of the opening date of the exhibition where they are to be shown. Such test shall be made under the direction of the commissioner of agriculture, who shall furnish a certificate of such test to the owner or owners of such animals. State agricultural associations that receive any aid from the state shall demand a certificate of test, duly authorized by the commissioner of agriculture, from owners of cattle that are to compete for prizes in accordance with the above, under penalty of forfeiture of such aid; but this provision shall not apply to calves less than one year old.

Sec. 12. Commissioner to make rules and regulations for investigation of tuberculosis. R. S. c. 35, § 13. 1917, c. 160, § 2. The commissioner of agriculture shall make all needful rules and regulations as to the manner in which application shall be made to him for the investigation of tuberculosis in the herds of the state; provided, however, that he employ regular skilled veterinarians and shall regulate the way and manner in which the test shall be applied and the state shall not be made responsible for any private test made.

Sec. 13. Certificate to be left with owner of condemned cattle. R. S. c. 35, § 14. There shall be left with the owner of all condemned animals a proper certificate, duly authenticated, showing the number condemned and the value at which they are appraised, which shall be transferable only with the consent and acceptance of the commissioner.

Sec. 14. Stables where condemned animals were found to be disinfected. R. S. c. 35, § 15. The commissioner of agriculture shall thoroughly disinfect all stables and premises where condemned animals were found, or cause the same to be done by a competent agent in the employ of such commissioner, and

the expense incurred on account of such disinfectant shall be paid one-half from the appropriation allowed for the use of the division of animal industry and one-half by the owner or person in control of such stable and premises.

Sec. 15. Assessors' return of pure-blood cattle filed with commissioner. R. S. c. 35, § 16. All assessors of taxes shall keep a record of all pure-blooded cattle kept for breeding purposes, and shall make a report of the same to the commissioner of agriculture on or before the first day of July of each year, showing the name of the owner, number in the herd, age and sex; such reports shall be made upon blanks furnished by the commissioner.

Sec. 16. Certificate of health upon sale of pure-blooded cattle for breeding purposes; penalty. R. S. c. 35, § 17. 1917, c. 235, § 2. All persons selling pure-blooded cattle, or cattle represented to be pure blooded, for breeding purposes, shall before delivery, make a report to the commissioner of agriculture upon blanks furnished by him upon application, stating the number of cattle sold, the age and sex, and to whom sold; before delivery, such cattle shall be tested with tuberculin under the direction of, and a certificate of health given by the commissioner of agriculture, unless such a test has been carried out under his direction within one year; but this provision shall not apply to calves less than six months old. Such certificate of health shall be delivered to the buyer by the seller. Whoever violates any provision of this section shall be punished by a fine of not less than twenty-five, or more than fifty dollars for each offense.

Sec. 17. Permit required for cattle entering the state; tuberculin tests; exceptions; penalty. R. S. c. 35, § 18. 1917, c. 235, § 3. 1923, c. 48. No neat stock, (calves, cows, steers, oxen, or bulls), or stags of any age shall be allowed to enter this state, from any other state or country, either for dairying purposes, breeding purposes, or for slaughter, except cattle in transit under the control of the federal government, without a permit duly authorized by the commissioner of agriculture, which permit shall accompany the shipment. Such animals may be tested with tuberculin within sixty days of their arrival within the state whenever such test is deemed necessary by the commissioner of agriculture or his duly authorized agent in charge of the live stock sanitary work, and whenever such animal or animals are so held for a retest they shall be considered as being in quarantine upon the premises of the owner. All persons bringing animals into the state must conform to the regulations of the United States department of agriculture requiring that such animals be tuberculin tested within a reasonable time prior to shipment, such test being administered by an inspector of the United States department of agriculture, or by a veterinary authorized by said United States department of agriculture to test for interstate shipment, and a copy of the tuberculin test chart of such test must also accompany the animal or animals so tested whether brought into the state by steamship, railroad, truck, or any other conveyance, or driven on foot. This ruling shall not, however, apply to calves under one year of age from a fully accredited herd or to cattle designed for immediate slaughter, but the latter must be slaughtered within ten days after being brought into the state under inspection that shall be acceptable to the commissioner of agriculture or his duly authorized agent in charge of the live stock sanitary work. Whoever violates any provision of this section shall be punished as provided in section sixteen.

Sec. 18. County attorneys to prosecute violations. R. S. c. 35, § 19. The several county attorneys shall prosecute all violations of this chapter, which shall be brought to their notice or knowledge by any person making the complaint under oath; the supreme judicial court and superior courts shall have jurisdiction of such offenses.

Note. Should not the municipal court be given jurisdiction of crimes and offenses under this chapter?

CHAP. 39

Sec. 19. Commissioner may employ agents and fix compensation. R. S. c. 35, § 21. The commissioner of agriculture may employ skilled veterinarians in all tuberculin tests and such other agents and employees as he may deem necessary to carry into effect the provisions of this chapter, and may fix the compensation of the person or persons so employed, and terminate such employment at his discretion.

Sec. 20. Payment of expenses. R. S. c. 35, § 22. The actual and necessary traveling expenses of the commissioner and his employees, the expense of disinfecting premises, cars, vessels, and other places, destroying diseased animals and those exposed to disease, and paying for the same, and all other expenses necessary to properly carry out the provisions of this chapter shall be paid by the treasurer of state upon vouchers approved by the commissioner of agriculture, after the same have been audited by the state auditor. All money received from the sale of hides and carcasses of condemned animals shall be expended for the purposes of this chapter.

Quarantine Powers.

Sec. 21. Commissioner of agriculture authorized to enter premises to make tests; to quarantine animals and premises; to require slaughter of animals. 1925, c. 24. For the protection of the public health and to prevent the infection of the live stock of the state with contagious disease, the commissioner of agriculture, the chief of the division of animal industry or any of their duly authorized agents are hereby empowered to enter upon any premises at any time and test for tuberculosis or other contagious disease, by any reputable method, any animal found thereon; and should any such animal be found to be infected with tuberculosis or other contagious disease, the commissioner of agriculture or his agent shall have power to quarantine such animal and all premises and such other animals as the commissioner or his agent may deem necessary in order to prevent the spread of the disease. The commissioner of agriculture or his agent is empowered to require the slaughter and disposal of any animals found to be infected with tuberculosis or other contagious disease as provided in section two of this chapter.

Sec. 22. Commissioner of agriculture authorized to prohibit moving of cattle to and from quarantined areas; animals brought into said area may be quarantined. 1925, c. 24. The commissioner of agriculture or his agent in charge of live stock sanitary work is hereby empowered to prohibit the movement of cattle of every description into or from any area where bovine tuberculosis or other contagious disease is known to exist and where the commissioner of agriculture or his agent has assumed charge of such disease eradication; such quarantine to remain until all animals within the area designated shall be subjected to the tuberculin test or other test or examination satisfactory to the commissioner of agriculture or his agent. If any animals are brought into any such area in violation of this regulation, the commissioner of agriculture or his agent shall be further empowered to quarantine such animals until they shall be tested by an accredited veterinarian at the expense of the owner.

Sec. 23. Owner of animals or his agent to secure animals to be tested. 1925, c. 24. The owner or his agent shall so secure animals to be tested as to make it possible for the inspector of the commissioner of agriculture or his agent in charge of live stock sanitary work to apply the test that is deemed necessary in an expeditious manner.

Sec. 24. Penalty for violation of provisions of three preceding sections. Any owner or owners of cattle who shall refuse or neglect to comply with the pro-

visions of the three preceding sections or who shall violate any of the provisions of the said sections shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished as provided in section four of this chapter.

Marking Sheep.

Sec. 25. Owner of sheep to have mark to be recorded. R. S. c. 38, § 16. All owners of sheep shall mark them with some distinctive mark, by a cut in the ears, or a brand on some part of the animal, and cause such mark to be recorded by the clerk of their town in a book kept for that purpose.

Record of Stallions.

Sec. 26. Record of advertised stallions to be filed and recorded in registry. R. S. c. 38, § 17. The owner or keeper of any stallion for breeding purposes, before advertising, by written or printed notices, the service thereof, shall file a certificate with the register of deeds in the county where said stallion is owned or kept, stating the name, color, age, and size of the same, together with the pedigree of said stallion as fully as attainable, and the name of the person by whom he was bred; and such register shall record such certificate in a book kept for that purpose. Copies of such certificate, duly certified by such register, may be used in evidence, the same as the original, in any court in the state. Whoever neglects to make and file such certificate shall recover no compensation for said services, and, if he knowingly and wilfully makes and files a false certificate of the statements aforesaid, he forfeits one hundred dollars, to be recovered by complaint, indictment, or action of debt, to the county where the offense is committed.

Penalty for false registration of blooded animal, c. 138, § 16; 87 Me. 150; 89 Me. 264; 97 Me. 38.

CHAPTER 40.

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

| | |
|----------------|---|
| Sections 1-37 | Adulterated or Misbranded Goods. |
| Sections 38-39 | Packing of Food. |
| Sections 40-48 | Packing of Apples. |
| Sections 49-54 | Provisions for Enforcement. |
| Sections 55-56 | Appropriations. |
| Sections 57-63 | Grades and Standards for Farm Products. |
| Sections 64-71 | Beverages. |

Adulterated or Misbranded Goods.

Sec. 1. Sale of certain adulterated articles prohibited. R. S. c. 36, § 1. No person shall, within this state, manufacture, sell, distribute, transport, offer, or expose for sale, distribution, or transportation, any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, or insecticide which is adulterated or misbranded within the meaning of this chapter.

116 Me. 35; 120 Me. 423.

Sec. 2. Definitions. R. S. c. 36, § 2. The term "agricultural seed" as used

CHAP. 40

in this chapter shall be held to include the seeds of alfalfa, barley, Canadian blue grass, Kentucky blue grass, brome grass, buckwheat, alsike clover, crimson clover, red clover, medium clover, white clover, field corn, Kaffir corn, meadow fescue flax, Hungarian, millet, oats, orchard grass, rape, redtop, rye, sorghum, timothy, and wheat.

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

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

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

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

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

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

123 Me. 439.

Sec. 3. Marking of packages of seed. R. S. c. 36, § 3. 1919, c. 237, § 1. Every lot or package of agricultural seed which is sold, distributed, transported, offered or exposed for sale, distribution, or transportation for seed, in the state by any dealer in seed shall have affixed in a conspicuous place on the outside thereof, a plainly written or printed statement clearly and truly giving the name thereof and its minimum percentage of purity and freedom from foreign matter, together with the name and approximate amount of each kind of noxious weed seed contained therein, and also a guarantee of the germinating power of the seed and the date of the test for germination.

Sec. 4. Certified seed, defined. 1923, c. 62, § 1. 1925, c. 21, § 1. The term certified seed as used in this chapter shall be deemed to mean potatoes or such vegetable seeds as shall have been grown and prepared for sale in accordance with regulations laid down by the commissioner of agriculture and for which a certificate or tag has been issued as provided in section seven of this chapter. Authority to make all reasonable rules and regulations hereunder is hereby given the commissioner of agriculture.

Sec. 5. Application for certification; agreement regarding payment of fee for inspection. 1923, c. 62, § 2. 1925, c. 21, § 2. Any grower of potatoes or vegetable seeds may make application to the commissioner of agriculture for inspection and certification of this crop growing or to be grown in this state, giving description of his land and such information as the commissioner may require. He shall also enter into an agreement to pay such fee into the treasury of state for said inspection and certification as the commissioner shall deem

necessary to cover the cost of inspection and certification. Thereupon his crops shall be listed for inspection and inspected and certified by the commissioner or his agents under such rules and regulations as the commissioner may provide. Authority to make all reasonable rules and regulations hereunder is hereby given the commissioner of agriculture.

Sec. 6. Fee for inspection and certification, how determined. 1923, c. 62, § 3. In determining the amount of the fee to be paid by the growers of potatoes or other vegetable seeds for inspection and certification under this chapter, the commissioner of agriculture may establish an entry charge not to exceed fifty cents on each acre of potatoes or other vegetable for which such inspection and certification is requested, but in the case of potatoes which shall be found to be unfit for certification, the amount of such entry fee shall not exceed the actual cost of labor performed by the commissioner or his agents upon such potatoes, nor shall the charge for labor so performed upon such potatoes as shall be found unfit for certification exceed the above named amount of fifty cents per acre, and in the case of potatoes which shall be accepted and certified the commissioner shall establish a fee for field inspection not to exceed two dollars and fifty cents per acre inclusive of entry charge and also a supplementary charge of five cents for each barrel of potatoes which shall be finally accepted, certified, and sold as certified seed as defined in this chapter.

Sec. 7. Commissioner of agriculture to issue certificate; contents of certificate; counterfeit and false tags prohibited; penalty. 1923, c. 62, §§ 4, 5. 1927, c. 12, §§ 1, 2. The commissioner of agriculture may issue a certificate or tag which shall be attached to each container or package in which certified seed shall be offered or exposed for sale. Such tag or certificate shall indicate the name of the grower, the shipping station or depot, the name of the inspector making the final inspection, the variety of the seed, and shall bear the imprint of the seal of the state of Maine. Any tag, having the words "inspected," or "certified seed" thereon, attached to the container or package in which certified seed shall be offered or exposed for sale, shall be so attached thereto that the whole of said certificate or tag shall be in full view. Any person who shall knowingly or wilfully misuse any such tag or certificate or who shall attach to any package or container of seed which has not been duly inspected and certified, any such tag or certificate which shall have printed thereon the words "certified seed" or which by reason of color, size, shape, or otherwise may convey the impression that such seed has been certified by the commissioner or his agents, shall be punished by a fine of fifty dollars for each offense and shall be thenceforth denied the privileges of sections four to eight.

Sec. 8. Privileges denied to those in arrears. 1923, c. 62, § 6. 1925, c. 21, § 3. No person who is in arrears as to payment for past services of the department of agriculture hereunder shall be entitled to further services until payment of all such arrears shall have been made.

Sec. 9. Marking of packages of commercial feeding stuff. R. S. c. 36, § 4. Every lot or package of commercial feeding stuff, which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person, shall have affixed, in a conspicuous place on the outside thereof, a plainly printed statement, clearly and truly giving the number of net pounds in the package; the name, brand or trade-mark under which the article is sold; the name and principal address of the manufacturer or shipper; a chemical analysis stating the maximum percentage of crude fiber, the minimum percentage of crude fat, and the minimum percentage of crude protein (allowing one per cent of nitrogen to equal six and one-fourth per cent

CHAP. 40

of protein) which it contains, all three constituents to be determined by the methods adopted by the association of official agricultural chemists; if the feeding stuff is a compound feed, the name of each ingredient contained therein; and if artificially colored, the name of the material used for that purpose. If the feeding stuff is sold in bulk or put up in packages belonging to the purchaser, the seller shall upon the request of the purchaser furnish him with a copy of the statements named in this section.

Sec. 10. Sale and manufacture of commercial feeding stuff, regulated; registration fee. R. S. c. 36, § 5. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution, or transportation, in the state, any commercial feeding stuff shall before so doing file with the commissioner of agriculture for each and every commercial feeding stuff bearing a distinguishing name or trade-mark, a certified copy of the statements required by section nine. Said certified copy shall be accompanied when said commissioner shall so request, with a sealed package containing not less than one pound of the commercial feeding stuff. The person who shall file said certificate shall pay annually to the commissioner of agriculture a registration fee of ten dollars, this fee to be assessed on any brand offered for sale, distribution, or transportation in the state; provided, however, that a brand of commercial feeding stuff may be re-registered for the following year without the payment of the fee upon the establishment by the person who paid said fee that the total sales within the state during the year for which said fee was paid did not exceed fifty tons. Whenever any person shall have filed such certificate and paid such registration fee, no other person shall be required to file such statement or pay such fee.

Sec. 11. Marking of pressed hay; person receiving hay not marked may defend action for price. R. S. c. 38, § 15. All hay pressed and put up in bundles, except hay pressed by farmers and retailed from their own barns, shall have the first letter of the christian name and the whole of the surname of the person putting up the same, written, printed, or stamped on bands or boards made fast thereto, with the name of the state and the place where such person lives. Whoever offers for sale or shipment any pressed hay not marked as aforesaid, except hay pressed by farmers and retailed from their own barns, forfeits one dollar for each bale so offered, to be recovered by complaint. No person who has received hay not marked as provided in this section shall defend any action for the price thereof upon that ground, unless he shall prove that, before the delivery of said hay to him, he requested the person from whom he bought the same to comply with the provisions of this section.

Sec. 12. Marking of packages of commercial fertilizer. R. S. c. 36, § 6. 1919, c. 126, § 1. Every lot or package of commercial fertilizer, which is manufactured, sold, distributed, transported, offered or exposed for sale, distribution, or transportation in the state by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly giving the number of net pounds in the package; the name brand or trade-mark under which the fertilizer is sold; the name and principal address of the manufacturer or importer and a chemical analysis stating the minimum percentage of nitrogen, available as plant food, present as nitrates, ammonium salts, or organic nitrogen, of potash soluble in water, of phosphoric acid in available form, soluble and reverted, and of total phosphoric acid, the constituents to be determined by the methods adopted by the association of official agricultural chemists. If the fertilizer is sold in bulk or put up in containers furnished by the purchaser, the seller shall, upon request of the purchaser, furnish the latter with a copy of the statements named in this section.

Sec. 13. Lime, marl or wood-ashes classed as a commercial fertilizer; statement of percentages; fee for certificate. R. S. c. 36, § 7. Lime, marl, or wood-ashes intended for fertilizing purposes, and without regard to the price at which it is sold or offered for sale, shall be classed as a commercial fertilizer within the meaning of this chapter. All the requirements and penalties relative to commercial fertilizers named in this chapter shall apply to any and every lot of lime, marl, or wood-ashes intended for fertilizing purposes. In addition to the requirements of section twelve the label and certificates shall truly state the minimum and maximum percentage of total lime (calcium oxide), the minimum and maximum percentage of total magnesia (magnesium oxide), the minimum and maximum percentage of lime combined as carbonate (calcium carbonate), and magnesium combined as carbonate (magnesium carbonate), and minimum percentage of lime sulphur (calcium sulphate), in gypsum or land plaster. The person filing the certificate shall annually pay to the commissioner of agriculture a registration fee of ten dollars for each brand of lime intended for fertilizing purposes.

Sec. 14. Sale and manufacture of commercial fertilizer, regulated; registration fee. R. S. c. 36, § 8. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution, or transportation in the state any commercial fertilizer shall before so doing file with the commissioner of agriculture for each and every fertilizer bearing a distinguishing name or trade-mark, a certified copy of the statements named in section twelve. Said certified copy shall be accompanied when said commissioner shall so request with a sealed package containing not less than two pounds of the commercial fertilizer. The person who shall file said certificate shall pay annually to the commissioner of agriculture a registration fee as follows: Ten dollars each for the nitrogen and the phosphoric acid and five dollars for the potash contained or said to be contained in the fertilizer, this fee to be assessed on any brand offered for sale, distribution or transportation in the state. Whenever any person shall have filed said certificate and paid said registration fee, no other person shall be required to file such statement or pay such fee.

116 Me. 33.

Sec. 15. Marking of packages of fungicide. R. S. c. 36, § 9. Every lot or package of a fungicide or an insecticide which is manufactured, sold, distributed, transported, offered, or exposed for sale, distribution or transportation in the state by any person, shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the number of net pounds in the package, the name or trade-mark under which the article is sold, the name and address of the manufacturer or shipper, and a chemical analysis stating the minimum percentage of total arsenic and the maximum percentage of water-soluble arsenic which it contains, the constituents to be determined by the methods adopted by the association of official agricultural chemists.

Sec. 16. Manufacture and sale of fungicides, etc., regulated; registration fee. R. S. c. 36, § 10. Any person who shall manufacture, sell, distribute, transport, offer or expose for sale, distribution, or transportation in the state any fungicide or insecticide shall before so doing file with the commissioner of agriculture for each and every fungicide or insecticide bearing a distinguishing name or trade-mark, a certified copy of the statements made in accordance with the preceding section. Said certified copy shall be accompanied when said commissioner of agriculture shall so request with a sealed package containing not less than one pound of the fungicide or insecticide. The person filing such certificate shall pay annually to the commissioner of agriculture a registration fee of ten dollars, this fee to be assessed on any brand offered for sale, distribution, or transport-

CHAP. 40

tation in the state, except that said fee shall not be assessed for the registration of a fungicide or insecticide consisting of organic matter and not containing any added inorganic matter or mineral chemical, provided that a complete chemical analysis of said fungicide or insecticide is given in, and as part of, the certificate required under this section. Whenever any person shall have filed said certificate and paid said registration fee, no other person shall be required to file such statement or pay such fee.

Sec. 17. Registration may be refused when name or trade-mark is misleading. R. S. c. 36, § 11. The commissioner of agriculture may refuse to register any commercial feeding stuff or commercial fertilizer, bearing a name, brand or trade-mark which is misleading or deceptive or which would tend to mislead or deceive as to materials of which it is composed, and in the case of commercial feeding stuff when the specific names of each and all of the ingredients used in its manufacture are not stated. He may also cancel the registration of any feeding stuff, commercial fertilizer, fungicide, or insecticide that he deems to be manufactured, sold, distributed, transported, offered or exposed for sale, distribution, or transportation in violation of any of the provisions of this chapter. The registration of each brand of commercial feeding stuff, commercial fertilizer, fungicide, or insecticide shall terminate on the thirty-first day of December of each year.

Sec. 18. When goods to be deemed adulterated. R. S. c. 36, § 12. 1919, c. 126, § 2; c. 237, § 2. 1921, c. 113. For the purpose of this chapter an article shall be deemed to be adulterated:

In case of agricultural seed:

First. If its purity falls below its accompanying guaranty.

Second. If it contains the seed of any poisonous plant, or any kind or amount of weed seed other than the kinds or amounts represented in the statement required by section three of this chapter.

Third. If it, upon a test of germination made within six months of the date of test in statement under the provisions of section three herein above, does not show the same germinating power given in said statement prescribed by the provisions of said section three. Provided, that said seed has been constantly kept under conditions not injurious to its germinating qualities, and that a margin of tolerance of five per cent. shall be allowed. Provided, also, that in the event of violation of this chapter in relation to seeds, the commissioner of agriculture shall proceed according to the provisions of sections fifty and fifty-one.

In case of **commercial feeding stuff**: First. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

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

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

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

In case of **commercial fertilizer**: First. If its weight, composition, quality, strength or purity do not conform in each particular to the claims made upon the affixed guaranty.

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

Third. If it is found to contain any pulverized leather, hair, ground hoofs,

horns, wool waste, peat, garbage tankage, cyanamid, or any nitrogenous ingredients derived from any inert material whatsoever, unless the same has been so treated as to be available as plant food as determined by the methods adopted by the association of official agricultural chemists, without an explicit printed statement of the fact, conspicuously affixed to the package of such fertilizer and accompanying and going with every lot or package of the same, in which fertilizer the above named materials aid in making up the required or guaranteed analysis.

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

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

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

In case of **food**: First. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength.

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

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

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

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

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

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

Eighth. If it does not conform to the standards of strength, quality, and purity, now or hereafter to be established by statute or fixed by the commissioner of agriculture: Provided, that no food except clams, oysters, and scallops shall be deemed to be adulterated under this provision if the standard of strength, quality or purity be plainly stated, so as to be understood by the non-professional person, upon the container thereof, although the standard may differ from that established by statute or fixed by said commissioner.

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

In case of **fungicide or insecticide**: In case of **paris green**:

CHAP. 40

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

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

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

In the case of **lead arsenate**:

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

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

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

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

In the case of **fungicide or insecticide other than paris green and lead arsenate**:
First. If its strength or purity fall below the professed standard or quality under which it is sold.

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

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

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

116 Me. 33; 117 Me. 288; 121 Me. 365; 122 Me. 248; 124 Me. 142, 269.

Sec. 19. Term "misbranded" defined. R. S. c. 36, § 13. The term "misbranded" as used herein, shall apply to all articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, and insecticide, the package or label of which shall bear any statement, design, or device regarding such article, or the ingredients or substances contained therein which shall be false or misleading in any particular, or which is falsely branded in any particular.

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

In case of **agricultural seed**:

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

In case of **commercial feeding stuff**:

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

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

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

In case of **commercial fertilizer**:

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

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

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

In case of a **drug**:

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

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

In case of **food**:

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

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

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

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

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

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

In case of **fungicide and insecticide**:

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

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

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

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

CHAP. 40

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

Sixth. If it consists partially or completely of an inert substance or substances which do not prevent, destroy, repel, or mitigate insects or fungi and does not have the percentage amount of such inert ingredient plainly and correctly stated on the label.

116 Me. 33.

Sec. 20. Misbranding of food in package form. R. S. c. 36, § 14. For the purpose of this chapter an article of food in package form if sold at a greater price than five cents, shall also be deemed to be misbranded if the quantity of the contents be not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count; provided, however, that reasonable variations shall be permitted, and tolerances shall be established by rules and regulations made in accordance with section forty-nine.

Sec. 21. Sale of adulterated or misbranded vinegar prohibited. 1923, c. 172, § 1. No person shall, within this state, manufacture, sell, distribute, transport, offer or expose for sale, distribution or transportation, any product known as vinegar which is adulterated or misbranded within the meaning of this chapter.

Sec. 22. Definitions of vinegars. 1923, c. 172, § 2. The terms "cider vinegar," "apple vinegar" shall be construed to mean the product made exclusively from the expressed juice of clean whole apples, by alcoholic and subsequent acetous fermentations, the acidity, solids, and ash of which have been derived exclusively from the apples from which it was fermented.

The term "sugar vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of sugar, syrup, molasses, or refiner's syrup.

The term "malt vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of an infusion of barley malt.

The terms "wine vinegar" and "grape vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of the juice of grapes.

The term "glucose vinegar" shall be construed to mean the product made by the alcoholic and subsequent acetous fermentations of solutions of corn sugar or glucose.

The terms "spirit vinegar," "distilled vinegar," "grain vinegar" shall be construed to mean the product made by the acetous fermentations of dilute distilled alcohol.

Sec. 23. Adulterations of vinegars defined. 1923, c. 172, § 3. For the purpose of this chapter vinegar shall be deemed to be adulterated:

First: If it contains any drugs, acids, coloring matter, or ingredients not derived exclusively from the substances from which they were respectively made.

Second: If it contains less than four grams of acetic acid in one hundred cubic centimeters of the vinegar at seventy degrees Fahrenheit.

Third: If manufactured by the destructive distillation of wood, known as pyroligneous acid, or acetic acid derived from other sources than fruit, grain, vegetables, sugar or syrup.

Fourth: If it is found to contain any preparation of lead, copper, sulphur dioxide, sulphuric acid, other mineral acids or any substitute for vinegar produced other than by alcoholic and subsequent acetous fermentation or other ingredients injurious to health.

Sec. 24. Misbranding of vinegars defined. 1923, c. 172, § 4. For the purposes of this chapter vinegar shall be deemed to be misbranded:

First: If packages containing vinegar made from wine or fruits which have been reduced with water are not plainly marked or branded "Reduced to Four Per Centum Acid Strength" or "Reduced to Forty Grains," indicating the acidity to which it has been so reduced.

Second: If a product made from dried apples, or from apple skins, apple cores and chops by the process of grinding and soaking with subsequent alcoholic and acetous fermentations of the solution thus obtained is not plainly marked to show the material from which it is produced.

Third: If the package containing said vinegar or its label is not plainly branded with the name of the manufacturer or distributor and his place of business.

Fourth: If every container or receptacle which contains any vinegar other than pure cider or apple vinegar, except delivered to the purchaser in the unbroken package, does not bear plain or conspicuous marks or brands, showing the kind of vinegar so delivered and the substance or substances from which it was made

Fifth: If mixtures of two or more of the vinegars, above defined, are not plainly and conspicuously branded with the word "compound" together with the proportions of the vinegars so mixed.

Sec. 25. Provisions of sections 21-25 not applicable to common carriers, unless knowingly violated. 1923, c. 172, § 6. The provisions of sections twenty-one to twenty-five, both inclusive, shall not apply to railroad companies, steamboat companies, express companies, or other common carriers of property coming under the jurisdiction of the interstate commerce commission or the public utilities commission of the state of Maine unless they knowingly violate it.

Sec. 26. "Storage" and "processed eggs" defined. Use of word "fresh" prohibited in connection with such eggs. 1927, c. 93, §§ 1, 3. The term "storage eggs" as used in this chapter shall be held to mean any shell eggs that for a period of thirty days or over, have been held in storage at a temperature of forty-five degrees Fahrenheit, or less.

The term "processed eggs" shall be held to mean any shell eggs which in a way other than storage, have been so treated as to keep them from natural deterioration. No person, firm, or corporation, selling or exposing for sale any shell eggs which have been in storage or in any way processed, shall use the word "fresh" in any combination of words to describe the character or value of such eggs.

Sec. 27. Receptacles of storage or processed eggs to be so marked; purchaser of such eggs to be informed. 1927, c. 93, § 2. Any person, firm, or corporation who exposes or offers for sale, either in any public place or elsewhere, any shell eggs which have been in storage or which in any way have been processed, shall conspicuously display upon the receptacle in which such shell eggs are offered for sale, or upon the package in which they are delivered to the purchaser, a notice containing the words "cold storage eggs" or "processed eggs" in accordance with the fact; and in case any shell eggs which have been in storage or which have been processed are exposed for sale or offered for sale, in a manner which does not require a receptacle or package, the purchaser shall be informed definitely that such shell eggs are either cold storage or processed eggs, to the end that the purchaser may have knowledge of the facts with reference to the storage or processing of such eggs.

Sec. 28. Invoice of storage eggs to state character; containers to be dated with date of receipt and withdrawal from storage. 1927, c. 93, § 4. Whenever any person, firm or corporation within the state of Maine, ships or delivers to

CHAP. 40

a purchaser within the state of Maine, any shell eggs which have been in storage or processed, such person, firm or corporation shall deliver to the purchaser an invoice or bill showing thereon the character of such eggs. All containers of shell eggs deposited in cold storage shall be marked plainly with date of receipt and date of withdrawal by the officer, or his agents, in charge of the cold storage plant.

Sec. 29. Penalty. 1927, c. 93, § 5. Any person, firm, or corporation who violates any provision of sections twenty-six to twenty-eight, both inclusive, shall, upon conviction, be liable to a fine of not more than fifty dollars or imprisonment of not more than sixty days, or both, and jurisdiction upon the several municipal courts of the state for trial and punishment of offenses under said sections is hereby expressly confirmed, and the commissioner of agriculture is expressly empowered to enforce the provisions of said sections and to be vigilant in discovering violations hereof, and making complaint to the proper authorities.

See §§ 51, 54.

Analyses.

Sec. 30. Annual analysis; results of analyses to be published. R. S. c. 36, § 15. The director of the Maine Agricultural Experiment Station shall annually analyze, or cause to be analyzed, samples of articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, and insecticide, at such time and to such extent as the commissioner of agriculture may determine. And said commissioner, in person or by deputy, shall have free access, ingress and egress at all reasonable hours to any place or any building wherein articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, or insecticide are manufactured, stored, transported, sold, offered or exposed for sale. He may also, in person or by deputy, open any case, package, or other container, and may, upon tendering the market price, take samples for analysis. The results of all analyses of articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, and insecticide made by said director shall be published by him in the bulletins or reports of the experiment station, together with the names of the persons from whom the samples were obtained, the names of the manufacturers thereof, and such additional information as to him may seem advisable.

116 Me. 33.

Sec. 31. Samples of commercial fertilizer may be analyzed. R. S. c. 36, § 16. Any person within the state may send to the commissioner of agriculture samples of commercial fertilizers sold or offered for sale within the state for the purpose of analysis under the following conditions: Said samples shall be taken in the presence of a witness, from not less than five packages of properly stored commercial fertilizer in accordance with directions to be furnished by said commissioner; a copy of all marks upon or affixed to the package, including the brand or trade-mark, the name of the manufacturer and the guaranteed chemical analysis, shall accompany the sample or be deposited with the secretary of the grange or the selectmen of the town where the sample is taken.

116 Me. 33.

Sec. 32. Analysis and fees. R. S. c. 36, § 17. On receipt of a sample of commercial fertilizer accompanied with (1) a certified statement signed by the witness that the sample was taken as provided in the preceding section, (2) a copy of the marks on or affixed to the package from which the sample was procured or a signed statement from the secretary of a grange or a selectman that the copy of the marks upon the package has been deposited with him, and (3) an analysis fee of ten dollars for each sample, the commissioner of agri-

culture shall make or cause to be made an analysis of the fertilizer and shall forthwith report the results of said analysis to the sender.

Sec. 33. When analysis to be deemed of public importance, fees to be returned. R. S. c. 36, § 18. If on receipt of the copy of the marks upon the package from which the sample of commercial fertilizer was taken, it shall be found that not more than one sample of the same brand has been analyzed by said commissioner within the year, or if the actual analysis shall differ materially from the guaranteed analysis, the analysis made by said director shall be deemed of public importance, and the analysis fee shall be returned to the person who sent the sample. If the actual analysis agrees reasonably with the guaranteed analysis and more than one sample of the brand from which said sample was taken shall have been examined within the year, said commissioner shall pay said analysis fee to the treasurer of state.

116 Me. 33.

Sec. 34. Analysis of commodities. R. S. c. 36, § 19. 1919, c. 85. The commissioner of agriculture shall have all analyses for commodities, except milk and cream, examined under the inspection laws of which he is the executive made at the Maine Agricultural Experiment Station. The director of said station shall analyze or cause to be analyzed all samples submitted to him by said commissioner. Said station shall be compensated to cover the expense of said analyses by said commissioner.

Sec. 35. Certificate signed by director, presumptive evidence. R. S. c. 36, § 20. Every certificate duly signed and acknowledged by the director of the Maine Agricultural Experiment Station, relating to the collection and analysis of any sample of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, or insecticide, shall be presumptive evidence of the facts therein stated.

Sec. 36. Adulteration or misbranding prohibited. R. S. c. 36, § 21. No person shall adulterate or misbrand, within the meaning of this chapter, any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, or insecticide or manufacture, sell, distribute, transport, offer or expose for sale, distribution, or transportation, any article of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, or insecticide, in violation of any of the provisions of this chapter. Whoever violates said provisions shall be punished by a fine not exceeding one hundred dollars for the first offense, and by a fine not exceeding two hundred dollars for each subsequent offense.

116 Me. 33.

Sec. 37. Exemption from prosecution. R. S. c. 36, § 22. No person shall be prosecuted under the provisions of the preceding sections of this chapter when he can establish proof of purchase, and a guaranty signed by the person residing in the United States, from whom the purchase was made, to the effect that the article in question is not adulterated or misbranded within the meaning hereof.

Packing of Food.

Sec. 38. Packing of food in tin or glass regulated; permit; packer to pay for inspection of product. R. S. c. 36, § 23. Any person intending to pack food in tin or glass within this state may annually file with the commissioner of agriculture an application for a permit. Said application shall state the location of the factory, the kind of food to be packed, the name of the packer and the date on which it is expected that packing will begin. Within sixty days after the filing of such application for permit, the commissioner shall, upon receipt of one hundred dollars, issue to such applicant a permit for packing said food in con-

CHAP. 40

formity with the requirements of this chapter for the calendar year. Such packer shall also pay monthly, not later than the tenth day of each month, the cost of maintaining the inspection of the food packed during the previous month. The one hundred dollars paid by a person for a permit, as aforesaid, shall be credited to him, at the close of the calendar year, as a payment toward the cost of inspecting his product. Said commissioner may, however, cancel any permit whenever the provisions of this chapter have not been complied with.

Sec. 39. Commissioner of agriculture to see that food is packed in conformity with law; penalty for false marking. R. S. c. 36, § 24. The commissioner of agriculture shall, by adequate inspection, see that the food packed hereunder is in conformity with the requirements of this chapter; and he shall authorize the persons packing a food in conformity herewith to mark the container of said food with a statement certifying that the food contained therein was packed, inspected and passed under the Maine pure food and drug law. Whoever shall falsely mark any container as having been packed in conformity with the requirements of this chapter shall be punished by a fine not exceeding five hundred dollars for each container thus falsely marked.

Packing of Apples.

Sec. 40. Standard barrel for apples; standard bushel box. R. S. c. 36, § 25. The standard barrel for apples shall contain seven thousand cubic inches; provided, however, that a barrel of the following dimensions when measured without distention of parts: length of stave, twenty-eight and one-half inches; diameter of head, seventeen and one-eighth inches; distance between heads, twenty-six inches; circumference of bulge not less than sixty-four inches outside measurement, shall be a lawful barrel. The standard bushel box for apples shall contain two thousand three hundred fifty cubic inches; provided, however, that a box eighteen inches by eleven and one-half inches by ten and one-half inches, inside measurement, without distention of parts, shall be a lawful bushel box.

Sec. 41. Marks upon barrels and boxes used in shipping apples; penalty. R. S. c. 36, § 26. Manufacturers of standard barrels and boxes to be used in shipping apples shall mark, in a conspicuous place, on each barrel the words "standard barrel" and on each box the words "standard box." Whoever fails to comply with this section shall be punished by fine not exceeding one hundred dollars.

Sec. 42. Standard grades established. R. S. c. 36, § 27. 1923, c. 94, § 1. 1925, c. 107. 1927, c. 193. The standard grade for apples, when packed in closed packages shall be as follows:

First. Maine Standard Fancy, shall consist of apples of one variety which are mature but not overripe, well formed, and free from decay, spray burn, limb rub, sunscald, visible watercore, or injury caused by dirt or other foreign matter, by skin punctures or bruises except those incident to proper packing, or by hail, russeting, disease, insects, or mechanical or other means. Each apple of this grade shall have the amount of color specified hereinafter for the variety.

Second. Maine Standard A, shall consist of apples of one variety which are mature but not overripe, free from decay and from damage caused by dirt or other foreign matter, by skin punctures or bruises except those incident to proper packing, or by spray burn, russeting, limb rubs, sunscald, visible watercore, hail, disease, insects, or mechanical or other means. Each apple of this grade shall have the amount of color specified hereinafter for the variety.

Third. Maine Commercial, shall consist of apples of one variety which meet the requirements of Maine Standard A except as to color and provided further

that early varieties such as Duchess of Oldenburg, Gravenstein, Twenty Ounce, Wealthy, Williams, and other varieties which ripen at the same period need not be mature.

Fourth. Maine Standard B, shall consist of apples of one variety which are mature but not over ripe, free from decay and from serious damage caused by dirt or other foreign matter, by bruises except those incident to proper packing, or by spray burn, sunscald, mail, disease, insects, or mechanical or other means.

In order to allow for variations incident to proper grading and handling, not more than ten per centum, by weight, or the apples in any one lot may be below the requirements of said respective grades but not more than one-tenth of this amount of one per centum shall be allowed for decay.

Fifth. Unclassified shall consist of apples which are not graded in conformity with any of the foregoing grades.

Color Requirements

In addition to the foregoing requirements for Maine Standard Fancy and Maine Standard A each apple of these grades must have the percentage of color shown in the table below. "Color" means a good shade of red characteristic of the variety. Faded brown stripes shall not be considered as color.

| Variety | Maine Standard Fancy | Maine Standard A |
|-------------------------------|-------------------------|---------------------|
| Solid Red: | | |
| Black Ben Davis | 50 per cent..... | 25 per cent |
| Esopus Spitzenburg | 50 per cent..... | 25 per cent |
| Gano | 50 per cent..... | 25 per cent |
| King David | 50 per cent..... | 25 per cent |
| Opalescent | 50 per cent..... | 25 per cent |
| Winesap | 50 per cent..... | 25 per cent |
| Other similar varieties | 50 per cent..... | 25 per cent |
| Striped or partially red: | | |
| Delicious | 50 per cent..... | 25 per cent |
| Jonathan | 50 per cent..... | 25 per cent |
| McIntosh | 50 per cent..... | 25 per cent |
| Other similar varieties | 50 per cent..... | 25 per cent |
| Baldwin | 33 per cent..... | 15 per cent |
| Ben Davis | 33 per cent..... | 15 per cent |
| Fameuse | 33 per cent..... | 15 per cent |
| Nero | 33 per cent..... | 15 per cent |
| Northern Spy | 33 per cent..... | 15 per cent |
| Paragon | 33 per cent..... | 15 per cent |
| Rome Beauty | 33 per cent..... | 15 per cent |
| Stayman Winesap | 33 per cent..... | 15 per cent |
| Tompkins King | 33 per cent..... | 15 per cent |
| Wagener | 33 per cent..... | 15 per cent |
| Wealthy | 33 per cent..... | 15 per cent |
| Williams | 33 per cent..... | 15 per cent |
| York Imperial | 33 per cent..... | 15 per cent |
| Other similar varieties | 33 per cent..... | 15 per cent |
| Duchess of Oldenburg | 25 per cent..... | 10 per cent |
| Gravenstein | 25 per cent..... | 10 per cent |
| Hubbardston | 25 per cent..... | 10 per cent |
| Red Astrachan | 25 per cent..... | 10 per cent |

CHAP. 40

| | | |
|---|-------------------------|-------------------------|
| Stark | 25 per cent..... | 10 per cent |
| Twenty Ounce | 25 per cent..... | None |
| Other similar varieties | 25 per cent..... | None |
| Red Cheeked or Blushed:: | | |
| Maiden Blush | Blushed Cheek... | None |
| Monmouth (Red Cheeked Pippin)..... | Blushed Cheek... | None |
| Winter Banana | Blushed Cheek... | None |
| Other red cheeked or blushed varieties..... | Blushed Cheek... | None |
| Yellow or green varieties..... | Characteristic Color | Characteristic Color |

Size Requirements

"Minimum size" as used in this chapter means the transverse diameter of the smallest apples permitted in the container taken at right angles to a line running from the stem to the blossom end. Minimum sizes shall be stated in terms of whole and quarter inches, as two and one-quarter inches minimum, two and one-half inches minimum, in accordance with the facts.

In order to allow for variations incident to proper sizing not more than five per centum, by weight, of the apples in any container may be below the specified minimum size.

Definition of Terms

The following terms as used in this section means:

"Well formed" means having the shape characteristic of the variety.

"Free from damage" means that the apples shall not be injured by any defect to any extent either apparent in the process of proper grading or which would cause a loss in the ordinary preparation for use. The following blemishes shall not be considered as damage: (1) Two small healed insect punctures not larger than one-eighth inch in diameter in which the injured tissue is dry and corky; (2) russeting and limb rubs which do not materially disfigure the fruit; (3) scab spots affecting an aggregate area of not more than one-fourth inch in diameter; (4) hail marks where the injury is superficial and the skin has not been broken or discolored; (5) spray burn or sunscald where the injury is superficial and the normal color of the fruit is not materially changed and where there is no blistering or cracking of the skin.

"Free from serious damage" means that no defect shall be permitted which taken singly or collectively, materially deform or disfigure the fruit. The following defects shall not be considered as serious damages: (1) Healed insect punctures which do not materially deform the fruit; (2) small scab and blotch infections not exceeding an aggregate area of one-half inch in diameter, or cedar rust infection not exceeding an aggregate area of three-quarters inch in diameter provided the skin is not cracked; (3) superficial blemishes such as fly speck and sooty blotch affecting not to exceed one-third of the surface; (4) or fruit spots such as Bitter Pit (Stippen) and Jonathan Spot affecting not to exceed ten per centum of the surface.

Decay, scald, or other deterioration developing in storage or in transit on apples otherwise up to grade shall be considered as affecting the condition and not the grade.

No shipment, consignment or lot of apples in closed packages shall be condemned without examination of at least one-fifth of the contents of five per centum of the packages in such shipment, consignment or lot. Any shipment,

consignment or lot in which five per centum of the packages are found to contain fruit below the grade marked on the container may be condemned by the commissioner of agriculture or his authorized deputies.

Sec. 43. Marks required on outside of package. R. S. c. 36, § 28. 1923, c. 94, § 2. Every closed package of apples, which is packed, sold, distributed, transported, offered or exposed for sale, distribution or transportation in the state by any person shall have affixed in a conspicuous place on the outside thereof a plainly printed statement clearly and truly stating the size of the package in terms of standard bushel box or standard barrel, the name and address of the owner or shipper of the apples at the time of packing, the name of the variety, the class or grade of the apples contained therein, and the minimum size of the fruit in the packages, and if the apples were grown in Maine, that fact shall be plainly designated and the word apples must appear in all instances.

Sec. 44. Misbranded or adulterated apples not to be packed. R. S. c. 36, § 29. No person shall, within this state, pack, sell, distribute, transport, offer or expose for sale, distribution, or transportation, apples which are adulterated or misbranded within the meaning of sections forty-five and forty-six of this chapter.

118 Me. 339.

Sec. 45. Terms "adulterated" and "misbranded" defined. R. S. c. 36, §§ 30, 31. For the purpose of sections forty to forty-eight, both inclusive, apples packed in a closed package shall be deemed to be adulterated if their measure, quality, grade, or purity do not conform in each particular to the claims made upon the affixed guaranty, and shall be deemed to be misbranded: first, if the package fails to bear all statements required by section forty-three; second, if the package bears any statement, design, or device regarding such article or its contents which shall be false or misleading in any particular, or is falsely branded in any particular.

Sec. 46. Commissioner of agriculture to have access to places where apples are packed. R. S. c. 36, § 32. The commissioner of agriculture, in person or by deputy, shall have free access, ingress and egress, at all reasonable hours to any place or any building wherein apples are packed, stored, transported, sold, offered or exposed for sale, or for transportation. He may also, in person or by deputy, open any box, barrel or other container, and may, upon tendering the market price, take samples therefrom.

Sec. 47. Penalty. R. S. c. 36, § 33. Whoever adulterates or misbrands apples within the meaning of section forty-five, or whoever packs, sells, distributes, transports, offers, or exposes for sale, distribution, or transportation, apples in violation of any provision of sections forty to forty-eight, both inclusive, shall be punished by a fine not exceeding one hundred dollars for the first offense, and by a fine not exceeding two hundred dollars for each subsequent offense.

Sec. 48. Guaranty as a bar to prosecution. R. S. c. 36, § 34. No person shall be prosecuted under the provisions of the eight preceding sections when he can establish a guaranty signed by the person from whom he received any such article, to the effect that the same is not adulterated or misbranded, within the meaning of sections forty-five and forty-six, designating it. Said guaranty, to afford protection, shall contain the name and address of the party or parties making the sale of such article to said dealer, and in such case said party or parties shall be amenable to the prosecutions, fines and other penalties which would attach, in due course, to the dealer under the provisions of the eight preceding sections.

Provisions for Enforcement.

Sec. 49. Uniform rules, regulations, standards of purity. R. S. c. 36, § 35. The commissioner of agriculture shall make uniform rules and regulations for carrying out the provisions of this chapter. He may also fix standards of purity, quality, or strength when such standards are not specified or fixed by law, and shall publish them together with such other information concerning articles of agricultural seed, commercial feeding stuff, commercial fertilizer, drug, food, fungicide, and insecticide as he may deem to be of public benefit.

Sec. 50. Hearing in case of violation. R. S. c. 36, § 36. When the commissioner of agriculture becomes cognizant of the violation of any provision of this chapter, he shall cause notice of such fact, stating the date, hour, and place of hearing, with a copy of the findings, or, in case of a packer of food, a copy of the charge to be preferred, to be given to the person concerned and the person from whom the sample was obtained, and the person whose name appears upon the label, (if a resident of the state), who shall be given an opportunity to be heard under such rules and regulations as may be prescribed by the commissioner. When the hearing relates to the packing of apples, it shall be held in the county where the inspection was made.

Sec. 51. Enforcement of laws by commissioner. R. S. c. 36, § 37. The commissioner of agriculture shall diligently enforce all provisions of this chapter, and shall be entitled to, and shall receive the assistance of the attorney-general and of the several county attorneys. He may recover the penalties imposed for violations of this chapter in an action of debt brought in his own name, the venue to be as in other civil cases, and if he prevails in any such action, shall recover full costs; or he may prosecute for violations hereof by complaint or indictment, and such prosecution shall be commenced in the county in which the offense was committed.

Sec. 52. Appointment of deputies. R. S. c. 36, § 38. He may, with the approval of the governor and council, appoint, and fix the compensation of, a chief deputy and such other deputies as in his judgment are required to assist him, and to enable him to carry out the provisions of all laws, the execution of which is entrusted to him. The chief deputy shall hold office during good behavior, and such other deputies during the pleasure of the commissioner; their compensation and expenses shall be paid from any funds appropriated for the use of the commissioner in the execution of said laws.

Sec. 53. Rules of construction. R. S. c. 36, § 39. The word "person" as used in this chapter shall be construed to import both the singular and the plural, as the case demands, and shall include corporations, companies, societies, and associations. When construing and enforcing the provisions of this chapter, the act, omission or failure of any officer, agent or other person acting for or empowered by any corporation, company, society, or association, within the scope of his employment or office, shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society, or association as well as that of the person.

Sec. 54. Jurisdiction; disposal of funds. R. S. c. 36, § 40. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of actions brought for the recovery of penalties imposed by this chapter, and of prosecutions for violations hereof. All fines received under this chapter by county treasurers shall be paid by them to the commissioner of agriculture; and all money received by the commissioner of agriculture under this chapter shall be paid by him to the treasurer of state, and the same is hereby appropriated for the purposes of this chapter.

Appropriations.

Sec. 55. Appropriation. R. S. c. 36, § 41. 1919, c. 225. The legislature shall from time to time appropriate sums in favor of the commissioner of agriculture, division of inspections, and the same shall be expended by the commissioner in executing the laws relating to the collection, examination, inspection, and analysis of agricultural seeds, concentrated commercial feeding stuffs, commercial fertilizer, and foods and drugs. Payments of said appropriation shall be made upon the warrants of the governor and council. The commissioner shall annually publish a classified account of all receipts and expenditures under this section.

Sec. 56. Method of expending appropriation. R. S. c. 36, § 42. Any sums of money appropriated to carry out the provisions of chapter fifty-two relating to the duties of the state sealer of weights and measures, shall be added to the funds appropriated to carry out the provisions of this chapter, and expended as a part thereof; or any funds appropriated to carry out the provisions of this chapter may be expended in carrying out the provisions aforesaid, relating to the duties of the state sealer of weights and measures.

Grades and Standards for Farm Products.

Sec. 57. Commissioner of agriculture may establish grades for farm products; exceptions; hearings to be held. 1927, c. 49, § 1. The commissioner of agriculture may establish and promulgate official grades and standards for farm products excepting dairy products and apples produced within the state for the purposes of sale, and may from time to time amend or modify such grades and standards. Before establishing, amending, or modifying any such grades or standards the commissioner shall hold public hearing in such places within the state as shall be most convenient to producers of the commodity under consideration. Notice of such hearings shall be advertised for three successive weeks prior thereto, in a newspaper or newspapers of general circulation within the county where the hearing is to be held, and shall specify the date and place of each hearing and that it is to be held for the purpose of obtaining information with a view to establishing grades or standards for farm products.

Sec. 58. Brands, labels, and trade marks may be determined by commissioner; permission to use brands may be granted; permission may be revoked. 1927, c. 49, § 2. The commissioner of agriculture may determine or design brands, labels, or trade marks for identifying farm products packed in accordance with such official grades and standards established as aforesaid, and may furnish information to packers and shippers as to where such labels and trade marks may be obtained. A written application to the commissioner requesting permission to use said brands, labels, or trade marks, and a written acceptance thereto by the commissioner or duly authorized assistants shall be a condition precedent to the use of such brands, labels, or trade marks. The commissioner may revoke or suspend the right to use such brands, labels, or trade marks whenever it appears on investigation that they have been used to identify farm products not in fact conforming to the grade indicated.

Sec. 59. Publicity of grades, standards, brands, etc., to be given. 1927, c. 49, § 3. Upon the establishment of such grades or standards, brands, labels, or trade marks, the commissioner of agriculture shall give due publicity through the newspapers of the state, setting forth the grade or grades so established and the date on which such establishment is to become effective, and distribute information explaining the same and their use.

CHAP. 40

Sec. 60. After establishment of standards and grades, unlawful to use same without permit. 1927, c. 49, § 4. After notice of the establishment of grades or standards and the determination of brands, labels or trade marks as herein provided, it shall be unlawful to use a brand, label, or trade mark to identify farm products as being of a grade established as aforesaid before a permit is granted or after the revocation of the right to use such brand, label or trade mark by the commissioner. Violations of this section shall be punished for the first offense by a fine of not more than fifty dollars and for subsequent offenses by a fine of not more than two hundred dollars.

Sec. 61. Inspection of branded products; certificates of inspection. 1927, c. 49, § 5. The commissioner or his duly authorized agents may inspect farm products, marked, branded, or labelled in accordance with official grades or standards established and promulgated by the commissioner, as herein provided, for the purpose of determining and certifying the quality and condition thereof and other material facts relative thereto. Certificates issued in pursuance of such inspection and executed by the inspector shall state the date and place of inspection, the grade, condition, and approximate quality of the farm products inspected and such other pertinent facts as the commissioner may require. Such a certificate relative to the condition or quality of said farm products shall be prima facie evidence in all courts of the state of the facts required as aforesaid to be stated therein.

Sec. 62. Commissioner may make rules and regulations. 1927, c. 49, § 6. The commissioner may prescribe rules and regulations for carrying out the purposes of sections fifty-seven to sixty-three, including the fixing of fees as provided in section two of chapter thirty-eight.

Sec. 63. Authority of commissioner in making inspections; penalty for obstructing commissioner. 1927, c. 49, § 7. The commissioner, in person or by deputy, shall have free access at all reasonable hours to any building or other place wherein it is reasonably believed that farm products are marked, branded, or labelled in accordance with official grades established and promulgated by the commissioner are being marketed or held for commercial purposes. He shall also have power in person or by deputy to open any bags, crates, or other containers containing said farm products and examine the contents thereof, and may upon tendering the market price, take samples therefrom. Whoever obstructs or hinders the commissioner of agriculture or any of his duly qualified assistants in the performance of his duties under sections fifty-seven to sixty-three shall be punished by a fine of not less than ten dollars nor more than one hundred dollars.

Beverages.

Sec. 64. Manufacturers, bottlers, and wholesalers of non-alcoholic beverages to be licensed by commissioner of agriculture; fee; term of license; manufacturers of sweet cider, excepted. 1925, c. 155, § 1. No person, firm, or corporation shall manufacture or bottle for sale at wholesale any drink product or other non-alcoholic beverage within this state without having first filed with the commissioner of agriculture an application for license accompanied with a fee of ten dollars upon receipt of which application the commissioner of agriculture shall issue to the person, firm, or corporation making such application a license to manufacture soft drinks or other non-alcoholic beverages as hereinafter provided. Said license shall run for one year from the date of the application unless sooner revoked as herein provided and shall be renewed annually thereafter. Said provision is not to apply to persons engaged in the manufacture of sweet cider.

Sec. 65. Commissioner has power to revoke or suspend license; may revoke or suspend license temporarily; authority granted to make rules and regulations. 1925, c. 155, § 2. The commissioner of agriculture shall have the power to revoke or suspend any license issued under the provisions of sections sixty-four to seventy whenever it is determined by himself or any of his deputies or other properly qualified official that any of the provisions of said sections have been violated. Any person, firm, or corporation whose license has been so revoked or suspended shall discontinue the manufacture and sale within the state of Maine of soft drinks and other non-alcoholic beverages until the provisions of said sections have been complied with and a new license issued, or the suspension removed. The commissioner of agriculture may revoke or suspend such license temporarily until there is a compliance with the provisions of said sections as hereinafter provided or permanently for the unexpired period of such license. The commissioner of agriculture is given the right to make such rules and regulations as he may deem necessary for the enforcement of the provisions of said sections. Said license shall run for one year from the date of the application and shall terminate on the thirtieth day of June of each year unless sooner revoked or suspended as herein provided.

Sec. 66. Notice to be given to licensee prior to revoking license; procedure; right of appeal. 1925, c. 155, § 3. Before revoking or suspending any license the commissioner of agriculture shall give written notice to the licensee affected stating that he contemplates the revocation or suspension of the same and giving his reasons therefor. Such notice shall appoint a time of hearing before said commissioner and shall be mailed by registered mail to the licensee. On the day of the hearing the licensee may by himself or counsel present such evidence to the commissioner as he deems fit and after hearing all the testimony the commissioner shall decide the question in such manner as to him appears just and right. Any licensee who feels aggrieved or dissatisfied with the decision of the commissioner may appeal from said decision within ten days to the supreme judicial court or the superior court of the county where the licensee resides.

Sec. 67. Term "drink product" defined. 1925, c. 155, § 4. For the purpose of this chapter the term "drink product" as used herein shall be held to include all non-alcoholic beverages, non-alcoholic cereal beverages, non-alcoholic fruit juices and carbonated beverages.

Sec. 68. Labeling of bottles where artificial coloring is used; kind of coloring matter permitted; prohibited ingredients. 1925, c. 155, § 5. Whenever artificial colors or flavors are used in the manufacture of drink products or other non-alcoholic beverages, the bottle or other container shall be distinctly labeled or crowned "Artificially colored and flavored." Whenever artificial coal tar colors are used, nothing but the certified colors as approved by the United States bureau of chemistry shall be allowed. All non-alcoholic ciders, non-alcoholic fruitades, non-alcoholic fruit juices or other similar drinks that are artificially colored or flavored shall be so labeled or crowned. All drink products and other non-alcoholic beverages sold in bulk or from open containers or receptacles that contain artificial coloring or artificial flavors of any character shall be so labeled. Said labels to be prominently displayed on all stands, booths or other places where said drink product or other non-alcoholic beverages are sold or dispensed. The use of saccharine, salicylic acid and sulphites in the manufacture of drink products and other non-alcoholic beverages is hereby prohibited.

Sec. 69. Manufacturing plants to be well lighted and ventilated and kept clean; machines and containers to be kept sanitary. 1925, c. 155, § 6. All buildings, stores, factories, or other places where drink products or other non-

CHAP. 41

alcoholic beverages are manufactured or bottled shall be well lighted and ventilated and shall be kept at all times in a clean and sanitary condition. All machines, bottles, jars, jugs, crocks, or other utensils or containers used in the manufacture of drink products or other non-alcoholic beverages shall be kept in a clean and sanitary place, and in a sanitary condition.

Sec. 70. Containers to be cleaned and sterilized before filling. 1925, c. 155, § 7. All bottles, jars, jugs or other containers used for drink products or other non-alcoholic beverages before being filled shall be thoroughly cleaned, sterilized, and then thoroughly rinsed in pure water.

Sec. 71. Penalty. 1925, c. 155, § 8. Any person, firm, or corporation who shall violate any of the provisions of sections sixty-four to seventy or shall neglect or refuse to comply with the provisions hereof shall be punished by a fine not exceeding one hundred dollars for the first offense and by a fine not exceeding two hundred dollars for each subsequent offense.

CHAPTER 41.

Regulation of Sale of Milk.

| | | |
|----------|-------|--|
| Sections | 1- 3 | Duties of Commissioner of Agriculture. |
| Sections | 4- 5 | Registration of Milk Dealers. |
| Sections | 6-30 | Inspection and Sale of Milk. |
| Sections | 31-42 | Protection of Milk Dealers in the Use of Containers. |

Duties of Commissioner of Agriculture.

Sec. 1. Duty of commissioner of agriculture to enforce law; to have access to all places of business. R. S. c. 37, §§ 1, 4. The commissioner of agriculture shall, either in person or by duly authorized agents and assistants, diligently inquire into and investigate the production, manufacture, transportation, storage, and sale of milk, cream, butter, and all other dairy products, substitutes therefor, or imitations thereof. The commissioner, his agents and assistants, shall have access at all reasonable hours, to all places of business, factories, or carriages, cans or other vessels used or which he or they believe to be used in the production or handling of milk or any other dairy product, substitute therefor, or imitation thereof, and upon tendering the market price of a sample of milk or other dairy product, substitute therefor, or imitation thereof, may take such sample from any person, firm, corporation, association, or society; the commissioner shall cause all samples so taken to be analyzed. He shall likewise diligently enforce the laws relating to the sealing of cans, bottles, and other vessels used in the purchase and sale of milk and cream, the protection thereof against mutilation, and the cleansing and sterilizing thereof before use or before being forwarded to producers or distributors of milk; and he may, either in person, or by his duly authorized agent or assistant, seize without warrant such cans, bottles, or other vessels used in the purchase or sale of milk or cream, as may, in his judgment, be needed as evidence of violation of the laws above referred to. For the above purposes he may employ such agents, assistants, chemists, counsel, and clerks, and he may purchase such samples of milk, cream, and other dairy products, substitutes therefor, or imitations thereof, and such stationery, postage, printed matter, and other supplies incidental thereto, as may be necessary for the proper enforcement of said laws; for such expenses the sum of four thousand

dollars shall be appropriated annually, to be paid upon the presentation of proper vouchers to the state auditor.

See c. 140, §§ 3, 6-10.

Sec. 2. Penalty for obstructing commissioner in performance of duty. R. S. c. 37, § 2. Whoever hinders, obstructs, or in any way interferes with the commissioner of agriculture, his agents, or assistants, in the performance of his or their duty, herein above set forth, by refusing entrance to any place where he is authorized to enter, or access to any receptacle to which he is authorized to have access, or by refusing to deliver to him, his agents, or assistants, a sample of milk or any other dairy product, substitute therefor, or imitation thereof, sold, offered, or exposed for sale by the person to whom such request is made if the value thereof is tendered, or in any other manner hinders, obstructs, or interferes with said commissioner, his agents, or assistants, in the performance of any of their said duties, shall be punished by a fine of one hundred dollars for the first offense and two hundred dollars for each subsequent offense.

Sec. 3. Publication of results of analyses. R. S. c. 37, § 3. 1919, c. 66, § 1. The commissioner of agriculture may, in his discretion, publish the results of all analyses with the names of the persons, firms, corporations, associations, and societies from which the samples analyzed were taken, together with such suggestions as he may deem advisable, in the regular or special bulletins issued by the department of agriculture. He may also, in his discretion, issue each month a report of the results of all analyses, for distribution to such newspapers in the state as may request a copy.

Sec. 4. Registration of milk dealers; penalty for refusing to register or post certificate. R. S. c. 37, § 5. 1919, c. 66, § 2. 1921, c. 132. 1925, c. 18. 1927, c. 61. Any person, firm, corporation, association, or society who shall sell or deliver milk or cream as a business to any person from a wagon or other conveyance, depot, or store, or who shall sell or deliver milk to a hotel, restaurant, boarding-house, or any public place, shall be considered a milk dealer within the meaning of this section, and shall on or before the first day of January in each year, apply to the commissioner of agriculture for registration, furnishing such information as may be required, upon blanks issued and furnished by the commissioner to such persons as may request the same. Every such registration shall expire on the first day of January, next after its issue, and shall be granted only to the milk dealer owning or leasing the vehicle or place from which sales or supplies are to be made, and shall not be transferred. Upon receipt of the application for registration, containing the information required, and upon being satisfied that all milk is being produced and handled in a sanitary way and is from cows free from disease, the commissioner shall issue to the applicant a certificate of registration, which certificate shall be posted in a conspicuous place in the store or depot from which sale or supply is made, and the number of the certificate of registration for each wagon or other vehicle shall be placed in a conspicuous place on said wagon or other vehicle. The commissioner may cancel the certificate of any dealer, who, after due hearing on complaint by the commissioner or his authorized agent, is found to be selling milk produced or handled under unsanitary conditions or milk from diseased cows. If any person, firm, corporation, association, or society desires to become a milk dealer, as provided by this section, before the first day of January in any year, he or they shall, prior to engaging in the business, register with the commissioner of agriculture in the manner hereinbefore provided, for each place or vehicle from which sale or supply is to be made. Any dealer who neglects or refuses to register with the commissioner of agriculture, or to post certificates of registration in the store or depot from which sale or supply is made, or to post the number of the cer-

CHAP. 41

tificate of registration on the wagon or other vehicle from which sale or supply is made, as provided in this section, or to surrender his certificate to the commissioner when notified in writing that the same has been cancelled, and the reason given for cancellation, or who himself or by his servant or agent, sells or delivers or has in his custody or possession with intent to sell or deliver any milk after having been refused the aforesaid certificate of registration by the commissioner of agriculture, forfeits fifty dollars to be recovered in an action of debt, to be prosecuted in the name of the state by the county attorney for the county in which such violation has occurred; but the provisions of this section shall not apply to milk or cream delivered to a creamery or butter or cheese factory.

Sec. 5. Municipal officers to prosecute violations. R. S. c. 37, § 6. The mayor and aldermen, selectmen, assessors, city marshal, chief of police and constables in every city and town shall make complaint and prosecute all violations of the preceding sections, and promptly enforce all laws against illegal sale and transportation of dairy products.

Inspection and Sale of Milk.

Sec. 6. Inspector or agent of state department of health may make inspection of dairy buildings. R. S. c. 37, § 7. Whenever, in the opinion of any officer or duly authorized inspector or agent of the state department of health, it may be necessary to guard against the spread of any infectious or communicable disease, or to investigate the source of infection of any case or outbreak of said disease, or to facilitate the control of said disease, said officer, inspector, or agent may at all times enter and inspect premises, rooms, carriages, or other places occupied or used in the production, manufacture, storage, sale, transportation, or distribution of milk, cream, ice-cream, or other dairy product, and may inspect all cans and other utensils or things used in, or appertaining to the work or business.

Sec. 7. Officer may prohibit sale or transportation of infected products; duty of state department of health. R. S. c. 37, § 8. When any officer, inspector, or duly authorized agent of the state department of health has reason to believe that the milk, cream, ice-cream, or other dairy product from any farm, home, or other place has been or is contaminated or infected by being handled or otherwise exposed to any person who has an infectious or communicable disease, or to any person of whom there is reason to believe that he may be an infection carrier, or that the milk is otherwise infected; said officer, inspector, or agent may issue an order prohibiting the transportation, sale, distribution, or use of such milk or other dairy product from that farm, home, or other place so long as the danger of contamination or infection is believed to exist; but when such order is given, the state department of health shall, so far as possible, determine the time when the danger of transmitting infection has passed, and shall endeavor to shorten the period during which the milk or other dairy product shall be debarred or withheld from transportation, sale, distribution, or use.

Sec. 8. Officers may take samples to aid in investigations. R. S. c. 37, § 9. Any officer or authorized inspector or agent of the state department of health, may, upon tendering the market price of a sample of milk, cream, ice-cream, or other dairy product, take such sample from any person, firm, corporation, association, or society, when it is believed that such sample may help in any investigations which it may be thought desirable to make.

Sec. 9. State department of health may make rules and regulations as to diseases transmitted through milk. R. S. c. 37, § 10. The state department of

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

Sec. 10. Penalty for interference with inspector or agent in performance of duty. R. S. c. 37, § 11. Whoever hinders, obstructs, or interferes with any officer, inspector, or duly authorized agent of the state department of health while in the performance of his duties, or violates or disobeys any of the orders, rules, or regulations which may be made or given by the state department of health or any officer, inspector, or agent thereof, shall be punished by a fine of not less than five, nor more than fifty dollars, or by imprisonment for not less than ten, nor more than thirty days.

Sec. 11. Inspector of milk, appointment. R. S. c. 37, § 12. 1917, c. 190, § 1. The municipal officers of cities and towns containing not less than three thousand inhabitants, and the municipal officers of all other towns on application of ten voters therein, shall appoint annually one or more persons to be inspectors of milk, cream, butter, and all other dairy products, substitutes therefor, and imitations thereof, who before entering upon their duties, shall give notice of their appointment by publishing the same for two weeks in a newspaper published in their towns, if any, otherwise by posting such notice in two or more public places therein; and they may receive such fees as said officers establish.

Sec. 12. Duties of inspectors of milk. R. S. c. 37, § 13. 1917, c. 190, § 2. Inspectors appointed by the municipal officers of cities and towns shall keep an office and books for the purpose of recording the names and places of business of all persons selling milk or other dairy products within their jurisdiction. They shall have access at all reasonable hours to all places of business, factories, or carriages, cans, or other vessels used in the production, handling, or sale of milk or any other dairy product, substitute therefor, or imitation thereof, and, upon tendering the market price of a sample of milk or other dairy product, substitute therefor, or imitation thereof, may take such sample from any person, firm, corporation, or association; cause it to be analyzed or otherwise satisfactorily tested, and preserve the result as evidence. The inspectors shall, if the owner of the product inspected so requests, leave with the owner a sealed specimen of the product examined by them, which shall be marked in the same manner as the specimen taken at that time by the inspector; and they shall prosecute for all violations of sections fifteen and twenty-seven.

Sec. 13. Interference with milk inspector; penalty. 1917, c. 190, § 3. Whoever in any way interferes with a milk inspector of a city or town, or his agent, in the performance of his duties, by refusing entrance to a place he is authorized to enter, or access to a receptacle to which he is authorized to have access, or by refusing to deliver to him a sample which he is authorized to take, or in any other way interferes with said inspector or his agent in the performance of his duties, shall be fined not less than ten nor more than fifty dollars, or imprisoned for not less than ten nor more than thirty days.

See c. 140, §§ 2-6.

Sec. 14. Standard measure for milk and cream. R. S. c. 37, § 14. All milk and cream bought and sold by measure for consumption within this state shall be bought and sold by wine measure, the standard for which shall be two hundred and thirty-one cubic inches to the gallon, and for subdivisions of the gallon, in the same proportion.

CHAP. 41

Sec. 15. All measures, cans, etc., to be proved and plainly marked; penalty. **R. S. c. 37, § 15.** All measures, cans, or other vessels used in the purchase or sale of milk or cream, except glass bottles and jars sealed in accordance with the provisions of sections nineteen and twenty, shall be tried and proved by the standard mentioned in the preceding section, by the sealer of weights and measures of the city or town in which the person, firm, or corporation purchasing or selling such milk or cream resides or has a place of business. The sealer of weights and measures shall, agreeably to such a standard, plainly stamp thereon the quantity which such measures, cans, or other vessels hold, together with the year in which such measures, cans, or other vessels are sealed. Whoever, by himself, clerk, servant, or agent, sells by measure any milk or cream by any other than the measure so tried, sealed and marked, shall forfeit for each offense the sum of ten dollars. Any measure, can, or other vessel used in the purchase or sale of milk or cream, lawfully sealed, as aforesaid, in any city or town within the state shall be deemed to be lawfully sealed under the provisions of this section.

See c. 52, § 31. *125 Me. 123.

Sec. 16. Penalty for mutilating cans and measures, or erasing names and marks. **R. S. c. 37, § 17.** Whoever by himself or by his servant or agent, or as the servant or agent of any other person, firm, or corporation, having custody of a milk can, measure, or other vessel used as a container for milk destined for sale, wantonly, wilfully, or maliciously indents, bends, or otherwise mutilates said can, measure, or other vessel so that the same will not contain eight quarts and one pint, standard measure, as hereinbefore provided, or who wantonly, wilfully, or maliciously erases, effaces, or otherwise mutilates said can, measure, or other vessel so that any names, figures, or other marks placed thereon by a sealer of weights and measures shall become illegible shall be punished by a fine not exceeding fifty dollars.

Sec. 17. Milk cans to be cleansed and sterilized, storage room to be kept in sanitary condition; penalty. **R. S. c. 37, § 18.** All persons, firms, and corporations who shall purchase milk or cream for the purpose of reselling the same, either at wholesale or retail, shall thoroughly cleanse and sterilize all cans, vessels, and other utensils prior to their being used in the manufacture, transportation, storage, and sale of said milk or cream. All persons, firms, and corporations engaged in the business of retailing milk or cream, shall thoroughly cleanse and sterilize all vessels, jars, cans, and other utensils used in the manufacture, storage, and sale of milk or cream immediately before such vessels, jars, or cans are filled for distribution. And the place or room in which milk or cream is stored, bottled, or otherwise handled shall be kept in a clean and sanitary condition. Any person, firm or corporation violating this section shall be punished by fine not exceeding fifty dollars.

Sec. 18. Receptacles used for transportation of milk or cream products to be cleansed and sterilized; penalty. **R. S. c. 37, § 19. 1923, c. 189.** All cans or other receptacles used in the transportation of milk or cream shall be cleansed and sterilized before being forwarded to the producer or distributor of milk or cream for use. All cans or other receptacles used in the transportation of ice cream, sherbet, or frozen milk products shall be washed and cleansed with warm or cold water immediately upon the contents thereof being used, and before being returned and forwarded to the producer or distributor of such ice cream, sherbet, or frozen milk products for use. Whoever by himself, clerk, servant, or agent, ships or transports or causes to be shipped or transported any cans or other receptacles used in the transportation of milk or cream not cleansed and sterilized, or any cans or other receptacles used in the transportation of ice

cream, sherbet, or frozen milk not washed or cleansed as provided in this section shall be punished by a fine not exceeding fifty dollars for each offense.

Sec. 19. Capacity of milk bottles and jars. R. S. c. 37, § 20. 1927, c. 259, § 1. Glass bottles and jars used for the sale of milk or cream shall be of the capacity of one quart or one pint or one-half pint and shall be sealed as full measure under the provisions of section fourteen of chapter fifty-two of the revised statutes, or by the manufacturer, as provided in section twenty of this chapter. The following tolerances will be allowed: Four drams of excess and two drams of deficiency in the quart bottle, three drams of excess and one and one-half drams of deficiency in the pint, and two drams of excess and one dram of deficiency in the one-half pint. The use, for the distribution of milk or cream to the consumer, of glass bottles or jars of any other capacity than as herein provided is hereby prohibited and declared to be illegal. All dealers in milk or cream who use, for the distribution of milk or cream to consumers, glass bottles or jars which have not been sealed by the manufacturer, shall bring such bottles or jars to the office of their city or town sealer to be sealed as aforesaid. If a bottle or jar has once been sealed by a sealer of weights and measures, or by the manufacturer, it shall not in any case be necessary to have it sealed again at any time while it is used for the distribution of milk or cream to consumers. Glass bottles or jars sealed under the provisions of this section shall not be legal measures except for the distribution of milk or cream.

*125 Me. 123.

Note. Penalty for violation of this section, c. 52, § 29.

Sec. 20. Marking of bottles and jars sealed by manufacturer; bond of manufacturer. R. S. c. 37, § 21. Such bottles or jars as are sealed by the manufacturer shall be marked with the name, initials, or trade-mark of the manufacturer, and designating number, which designating number shall be different for each manufacturer and may be used in identifying the bottles. The designating number and the words "Maine Seal" shall be marked on the outside of the upper half of each bottle. The designating number shall be furnished by the state sealer of weights and measures upon application by the manufacturer, and upon filing by the manufacturer, with the treasurer of state, of a bond payable to the state in the sum of one thousand dollars, with sureties to be approved by the attorney-general, conditioned upon his conforming to the requirements of this section. A record of the bonds furnished, the designating numbers and to whom furnished, shall be kept in the office of the state sealer of weights and measures.

Sec. 21. Penalty for selling bottles not complying with law; penalty for using such bottles. R. S. c. 37, § 22. 1927, c. 259, § 2. Any manufacturer who sells milk or cream bottles to be used in this state that do not comply as to size and markings with the provisions of the two preceding sections, shall forfeit five hundred dollars, to be recovered by the attorney-general in an action upon the bond of such manufacturer. Any dealer who uses for the purpose of selling milk or cream jars or bottles purchased after the third day of July, nineteen hundred and twenty-seven, that do not comply with the requirements of section nineteen of this chapter as to markings and capacity shall be deemed guilty of using false or insufficient measures and punished by a fine not to exceed fifty dollars for each offense.

Sec. 22. County attorneys to give aid. R. S. c. 37, § 23. The county attorney for the county in which any violation of the preceding sections has occurred, shall when called upon to do so by the commissioner of agriculture or either of his duly authorized agents or assistants, give all the aid in his power to secure the enforcement thereof, and shall prosecute cases arising thereunder or under

CHAP. 41

other provisions relating to dairy products, substitutes therefor or imitations thereof.

Sec. 23. Court Jurisdiction. R. S. c. 37, § 24. Trial justices and municipal and police courts shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for violations of the preceding sections and of all other laws relating to the production, manufacture, transportation, storage, and sale of milk, cream, butter, cheese, and all other dairy products, substitutes therefor or imitations thereof.

See c. 140, §§ 2, 3, 6-13.

Sec. 24. Milk to be weighed and tested by Babcock test. R. S. c. 37, § 25. All milk or cream purchased by any person, firm, or corporation, for use in or to be resold by any creamery in this state, shall be weighed and shall be tested by the Babcock test to ascertain the amount of butter-fat per pound therein contained; and the value of the cream or milk thus purchased shall be determined by the amount of butter-fat per pound as thus ascertained. The test herein provided shall be made by the owners or operators of the creamery purchasing as aforesaid; but upon petition in writing, signed by twenty-five per cent or more of the patrons of any creamery and addressed to the commissioner of agriculture, or upon petition in writing signed by the owner or operator of any creamery and addressed to said commissioner, one or more tests shall be made by, or under the direction of said commissioner, and the finding of said commissioner shall be conclusive upon all parties therein concerned; provided, however, that when the total number of patrons of any one creamery exceeds one hundred then the number of petitioners herein required need not exceed thirty. All samples of cream tested by said test shall be weighed and the standard unit for testing shall be eighteen grams.

Sec. 25. Penalty. R. S. c. 37, § 26. Any person, firm, or corporation, or the servant or agent of any person, firm, or corporation, who violates the preceding section, shall be punished by fine not exceeding fifty dollars, or by imprisonment not exceeding thirty days.

Sec. 26. Semi-monthly payment for cream and milk; penalty. R. S. c. 37, § 27. *Every person, firm or corporation purchasing cream or milk for the purposes of reselling, or of manufacturing the same into other products, shall pay the producer, unless otherwise provided by written contract, semi-monthly; payment shall be made on the first day of each and every month for all cream or milk received prior to the fifteenth day of the preceding month, and payment shall be made on the fifteenth day of each and every month for all cream or milk received prior to the first day of the same month. Whoever violates the provisions of this section shall be punished by a fine of not less than ten, nor more than fifty dollars.*

Note. This section has been held to be in violation of the Fourteenth Amendment of the Federal Constitution. *115 Me. 176. The following is suggested as a substitute:

"Unless otherwise provided by contract, accounts for milk and cream purchased for manufacturing or reselling shall be payable on the first and fifteenth days of each month for the milk or cream received prior to the last preceding pay-day, provided, that notice of this section has been given to the purchaser."

Sec. 27. Bottles and glasses used to measure milk or cream to be tested for accuracy, and marked. R. S. c. 37, § 28. All bottles, pipettes, or other measuring glasses used by any person, firm, or corporation, or their agents or employees, at any creamery, butter factory, cheese factory, condensed milk factory, or elsewhere in this state, in determining by the Babcock test or any other test, the value of milk or cream received from different persons at such creameries or factories, shall be tested before such use, for accuracy of measurement and for accuracy of the per cent scale marked thereon. Such bottles, pipettes, or meas-

uring glasses shall bear in marks or characters ineffaceable the evidence that such test has been made by the authority named in the following section. No inaccurate bottles, pipettes, or other glasses shall bear such marks or characters.

See c. 48, § 12.

Sec. 28. Duty of director of Maine agricultural experiment station, to test and mark all bottles, etc. R. S. c. 37, § 29. The director of the Maine Agricultural Experiment Station, or some competent person designated by him, shall test the accuracy of all bottles, pipettes, or other measuring glasses used by persons, firms, or corporations in the state buying or pooling milk or cream, or apportioning butter or cheese, made from the same, by the contents of butter-fat contained therein. The said director, or the person designated by him, shall mark such bottles, pipettes, or other measuring glasses as are found correct, with marks or characters which cannot be erased, and which marks or characters shall stand as proof that they have been so tested. The said director shall receive for such service no more than the actual cost incurred, which shall be paid by the persons or corporations for whom it is done.

Sec. 29. Persons who manipulate test to be certified by superintendent of dairy school. R. S. c. 37, § 30. Any person, either for himself or in the employ of any other person, firm, or corporation, who manipulates the Babcock test or any other test, whether mechanical or chemical, for the purpose of measuring the contents of butter-fat in milk or cream for a basis of apportioning the value of such milk or cream, or of the butter or cheese made from the same, shall secure a certificate from the superintendent of the dairy school at the University of Maine that he is competent and well qualified to perform such work. The rules and regulations in the application for such certificate and in the granting of the same shall be such as the superintendent of that school may arrange, and the fee for issuing a certificate shall not exceed one dollar, and shall be paid by the applicant.

Sec. 30. Penalty for using sulphuric acid of less than required specific gravity; penalty for violations of §§ 27, 29. R. S. c. 37, § 31. Whoever uses, or has in his possession with intent to use, at any creamery, butter factory, cheese factory, or condensed milk factory, any sulphuric acid of less than one and eighty-two hundredths of specific gravity in the process known as the Babcock test or any other test for determining the butter-fat contents of milk or cream, shall be punished by a fine not exceeding twenty-five dollars for the first offense, and for a second offense not exceeding fifty dollars. Any person, firm, or corporation, violating the provisions of section twenty-seven, shall be punished by a fine not exceeding fifty dollars for the first offense, and for a second offense not exceeding one hundred dollars; and any person violating section twenty-nine shall be punished by a fine not exceeding ten dollars. Every inspector of milk, sheriff, deputy sheriff, and constable shall institute complaint against any person violating said provisions, and one-half of the fines shall go to the complainant and the balance to the state.

Protection of Milk Dealers in the Use of Containers.

Sec. 31. Dealers may file description of name and devices, and publish such description. R. S. c. 37, § 32. All persons and corporations engaged in buying, selling, or dealing in milk or cream in cans, jugs, bottles, or jars, with their names or other marks or devices, together with the word "Registered," branded, engraved, blown, or otherwise produced in a permanent manner in or upon such cans, jugs, bottles, or jars, may file in the office of the clerk of the city or town in which their principal place of business is situated, and in the office of the

CHAP. 41

secretary of state, a description of the name or names, mark or marks, device or devices so used by them, and cause such description to be published once each week for four weeks successively in a newspaper published in the city or town in which said description has been filed aforesaid; if there is no newspaper published in such city or town, then such publication may be made in any newspaper published in the county in which such city or town is situated.

See c. 48, § 30.

Sec. 32. Penalty for using any milk can, without consent of owner; possession constitutes prima facie evidence. R. S. c. 37, § 33. Whoever without the consent of the owner takes, detains, or uses in his business, sells, disposes of, buys, conceals, or traffics in any milk can, jug, bottle, or jar, the owner of which has complied with the provisions of the preceding section, shall be punished for the first offense by a fine not exceeding five dollars, or by imprisonment for a term not exceeding sixty days, for each can, jug, bottle, or jar so taken, detained, or used in his business, sold, disposed of, bought, concealed, or trafficked in; and for any subsequent offense by a fine not exceeding ten dollars, or by imprisonment for a term not exceeding six months, for each can, jug, bottle, or jar so taken, detained or used in his business, sold, disposed of, bought, concealed, or trafficked in as aforesaid. Possession by any person in the transaction of his business of any such article the owner of which has complied with the provisions of the preceding section shall constitute prima facie evidence of the unlawful taking, use, detention, possession of, or traffic in the same within the meaning of this section.

Sec. 33. Penalty for defacing or mutilating any can, jug, etc. R. S. c. 37, § 34. Whoever without the consent of any owner who has complied with the provisions of section thirty-one wilfully destroys, mutilates, or defaces any can, jug, bottle, or jar bearing such owner's name, mark, or device, or wilfully erases, mars, covers, or changes any word or mark branded, engraved, blown, or otherwise produced, in a permanent manner in or upon any such can, jug, bottle, or jar, shall be punished for the first offense by a fine not exceeding five dollars, or by imprisonment for a term not exceeding sixty days, for each can, jug, bottle, or jar so destroyed, mutilated, or defaced, or for each can, jug, bottle, or jar upon which any word or mark has been erased, marred, covered, or changed as aforesaid; and for any subsequent offense by a fine not exceeding ten dollars, or by imprisonment for a term not exceeding six months, for each can, jug, bottle, or jar, so destroyed, mutilated, or defaced, or for each can, jug, bottle, or jar upon which any word or mark has been erased, marred, covered, or changed as aforesaid.

Sec. 34. Penalty for placing any foul substance into any can, jug, etc. R. S. c. 37, § 35. 1919, c. 7. Whoever by himself, or by his servant, or agent, or as a servant or agent of any other person, firm, or corporation, sends, ships, returns, or delivers, or causes, or permits to be sent, shipped, returned, or delivered to any producer of, or dealer in milk and cream, any can, jar, bottle, measure, or other vessel used as a container for milk and cream, containing any offal, swill, kerosene, vegetable matter, rotten or putrid milk, or any other offensive material, shall be punished for the first offense by a fine of not less than one dollar nor more than five dollars for each can, jug, bottle, or jar so defiled; and for any subsequent offense by a fine of not less than two dollars nor more than twenty dollars for each can, jug, bottle, or jar so defiled.

Sec. 35. Search warrant may be issued for vessels held in wrongful possession. R. S. c. 37, § 36. Whenever any person or corporation having complied with the provisions of section thirty-one, or the agent of any such person or corporation, shall make oath before the judge of any municipal or police court,

or before any trial justice, that he has reason to believe and does believe that any person or corporation has wrongfully in possession, or is secreting any of his or its milk cans, jugs, bottles, or jars, marked and described as provided in section thirty-one, said judge or trial justice shall, if satisfied that there is reasonable cause for such belief, issue a search warrant to discover and obtain the same, and may also cause to be brought before him the person or an agent or employee of the corporation in whose possession such cans, jugs, bottles, or jars are found, and shall thereupon inquire into the circumstances of such possession; if said judge or trial justice finds that such person or corporation has been guilty of a wilful violation of sections thirty-two, thirty-three or thirty-four, he shall impose the penalty prescribed in the section or sections so violated, and shall also award to the owner possession of the property taken upon such search warrant.

See c. 144, § 13.

Sec. 36. Sale of condensed or evaporated milk which does not conform to certain standards, prohibited; can must bear name of manufacturer or jobber.

1925, c. 137, § 1. No person, firm or corporation shall by himself, his servant, or agent, or as the servant or agent of another manufacture, sell, exchange, distribute, offer, or expose for sale or distribution in the state any condensed or evaporated milk which shall not conform at least to the minimum standards established by regulation by the commissioner of agriculture or established by statute and which if contained in hermetically sealed cans does not bear stamped or labeled thereon the name and address of the manufacturer or jobber thereof.

Sec. 37. Sale of milk, cream, condensed milk, etc., to which has been added any fat or oil other than milk fat, prohibited. **1925, c. 137, § 2.** No person, firm, or corporation shall by himself, his servant, or agent or as the servant or agent of another manufacture, sell, distribute, offer or expose for sale or distribution in the state, or have in possession with intent to sell or exchange any milk, cream, skim milk, butter milk, condensed or evaporated milk, powdered milk, condensed skim milk, or any of the fluid derivatives of any of them to which has been added any fat or oil other than milk fat either under the name of said products or articles or the derivatives thereof or under any fictitious or trade name whatsoever.

Sec. 38. Containers of condensed, evaporated or powdered skim milk, how marked and branded. **1925, c. 137, § 3.** No person, firm, or corporation shall by himself, his servant or agent, or as the servant or agent of another, sell or exchange, or expose for sale or exchange, or offer or expose for sale or distribution, or have in possession with intent to sell or exchange any condensed or evaporated or powdered skim milk in containers holding less than ten pounds avoirdupois net weight unless said container shall bear the name and address of the manufacturer distinctly branded, labeled, or printed thereon together with the words "Condensed Skim Milk" or "Powdered Skim Milk," as the case may be, in Roman letters of a size at least as large as any other words or letters appearing on said brand or label.

Sec. 39. Penalty. **1925, c. 137, § 4.** Whoever violates any of the provisions of the foregoing section shall be punished by a fine not exceeding one hundred dollars for the first offense and by a fine not exceeding two hundred dollars for each subsequent offense.

Sec. 40. Commissioner may take samples from creameries, cheese, or condensed milk factories for purpose of testing butter fat contents; owner may require duplicate test. **1919, c. 170, § 1.** The commissioner of agriculture, or his deputy, may enter upon the premises of any creamery, cheese factory, condensary, or receiving station for milk or cream, and may take possession of any

CHAP. 41

or all samples of milk or cream drawn for the purpose of testing their butter fat contents, which are on the premises or in the possession of any employee, or may take samples from patrons' deliveries, and then and there test the same. The owner, operator, or manager of any creamery, cheese factory, condensary, or receiving station for milk or cream shall, if requested by said commissioner or his deputy, give him full access to all creamery records appertaining to the tests thereof, and said commissioner or his deputy may make transcripts therefrom. The results of the tests made by said commissioner or his deputy may, at the discretion of said commissioner, be communicated to the owner, operator, or manager or to any of the patrons of the creamery, cheese factory, condensary, or receiving station for milk or cream from which such samples have been taken and tested, or to all of them. The owner, operator, or manager of any creamery, cheese factory, condensary, or receiving station for milk or cream at which tests, under the provisions of this section, are made by said commissioner or his deputy, may require said commissioner or his deputy to take duplicate sealed sub-samples of all samples thus tested and to promptly forward the same to the Maine Agricultural Experiment Station for further test, in which case no communication of the results of the tests made by said commissioner or his deputy shall be made to the patrons of the creamery, cheese factory, condensary, or receiving station for milk or cream, unless the same shall substantially agree with the results of the test made by said Maine Agricultural Experiment Station, or unless the commissioner is notified by the Maine Agricultural Experiment Station that the samples were received in a condition unfit to analyze. The owner, operator, or manager of a creamery, cheese factory, condensary, or receiving station for milk or cream, who shall require the taking and forwarding of sub-samples shall pay in advance all the carriage charges thereon and said Maine Agricultural Experiment Station for all tests made under the provisions of this section at the rate of ten cents for each milk sample and fifteen cents for each cream sample. The money thus received shall be used to defray the expenses incurred by said agricultural experiment station in connection with this section, but any balance that may remain after paying said expenses shall be paid by the director of said Maine Agricultural Experiment Station to the state treasurer. Said Maine Agricultural Experiment Station shall report in duplicate to the commissioner of agriculture and to the owner, operator, or manager of any creamery, cheese factory, condensary, or receiving station for milk or cream, the results of all tests made by it. If samples are received in poor condition said Maine Agricultural Experiment Station shall not be required to analyze the same, but in such case the advance payments required by this section shall be returned to the party making the same.

Sec. 41. Commissioner may inspect testing apparatus and order same condemned. 1919, c. 170, § 2. The commissioner of agriculture, or his deputy, may enter the premises of any creamery, cheese factory, condensary, or receiving station for milk or cream, and may inspect all apparatus and materials used for making tests for the purpose of determining the accuracy of the same, and for ascertaining whether the provisions of sections twenty-seven, twenty-eight, twenty-nine, and thirty are being complied with. Said commissioner of agriculture may order any testing apparatus to be repaired or may condemn the same or any part thereof or any materials used in making tests, and may give such instructions regarding the making of tests as he deems proper.

Sec. 42. Penalty for false tests or impeding officer. 1919, c. 170, § 3. Any owner, operator, or manager of a creamery, cheese factory, condensary, or receiving station for milk or cream, wherein milk or cream are bought and paid

for on the basis of their butter fat contents, who credits any patron or patrons delivering milk or cream with a greater or less percentage of fat than is actually contained in the milk or cream so delivered, or who hinders, impedes, or obstructs said commissioner of agriculture, or his deputy, in the discharge of his duty under this act, or who refuses him access to his testing apparatus or his records of tests, or who neglects to follow the instruction given him by said commissioner of agriculture in accordance with the provisions of this act shall be fined not more than one hundred dollars nor less than twenty-five dollars for each offense.

CHAPTER 42.

Extermination of Insect Pests. Bee Industry.

Sections 1-13. Protection of Trees and Shrubs.

Sections 14-17. European Corn Borer.

Sections 18-19. Bee Industry.

Protection of Trees and Shrubs.

Sec. 1. State horticulturist, his appointment; term "nursery stock" defined. **R. S. c. 38, § 1. R. S. c. 38, § 14.** The commissioner of agriculture shall appoint a state horticulturist, and the division of the department of agriculture under which such officer performs his duties shall be known as the bureau of horticulture. The term "nursery stock" as used in this chapter, applies to all fruit and ornamental trees, shrubs and vines, and includes currant, gooseberry, blackberry, and raspberry bushes, and strawberry plants. The term "vegetation" as used in this chapter means any tree, shrub, vine, vegetable, or other plant, or the product or any other portion of the tree, shrub, vine, vegetable, or other plant.

Sec. 2. Gipsy and brown-tail moths public nuisances; duty of commissioner; penalty for obstructing commissioner or officer. **R. S. c. 38, § 2.** For the purposes of the ten following sections the gipsy and brown-tail moths in their different stages, are hereby declared public nuisances, and their suppression is authorized and required, but no owner or occupant of real estate infested by such nuisance shall by reason thereof be liable to an action civil or criminal except to the extent and in the manner and form herein set forth. The commissioner of agriculture shall disseminate information concerning brown-tail and gipsy moths, San Jose scale, and other injurious insects; and the entire work of suppressing the gipsy moth in all its forms shall be done under the direct charge of the commissioner. Any person who purposely resists or obstructs the commissioner or any person or persons under his employ, or any officer or agent of a city or town while engaged in the execution of the purposes of this section and the ten following sections, shall be punished by a fine not exceeding twenty-five dollars for each offense.

Sec. 3. Nurseries to be inspected annually. **R. S. c. 38, § 3.** All nurseries or places where trees, shrubs, vines and plants are grown or offered for sale, shall be inspected at least once a year by the state horticulturist or by some competent person acting under his direction, and if no dangerous insects or fungous diseases are found therein a certificate to that effect shall be given. If such pests are found therein, the owner of the stock shall take such measures

CHAP. 42

to destroy the same as the state horticulturist shall prescribe, and no certificate as aforesaid shall be given until the said horticulturist has satisfied himself that all such pests have been suppressed.

Sec. 4. State horticulturist may inspect any orchard, field, or garden; diseased trees or shrubs to be destroyed; penalty. R. S. c. 38, § 4. The state horticulturist, either personally or through competent assistants, may inspect any orchard, field, garden or roadside in public or private grounds, which he or they may know or have reason to suspect to be infested with the San Jose scale or any serious pest or infectious disease, when in his or their judgment such pests or infectious diseases are a menace to adjoining owners; and the state horticulturist may in writing order the owner, occupant or person in charge thereof, to properly spray or give other suitable treatment, or to cut and destroy any such diseased trees or shrubs, if in the opinion of the state horticulturist such action is necessary. If the owner of such orchard, field or garden neglects or refuses to comply with such written order, he shall be fined not less than ten, nor more than fifty dollars for each offense.

Sec. 5. Nursery stock shipped into state to bear certificate of inspection; further inspection; destruction or return of infested stock. R. S. c. 38, § 5. All nursery stock shipped into this state from any other state, country, or province shall bear on each box or package a certificate that the contents of said box or package have been investigated by a duly authorized inspecting officer, and that said contents appear to be free from all dangerous insects and diseases. The state horticulturist, or his competent assistants, may inspect, at the point of destination, all stock coming into the state, whether under certificate or not, and if such stock is found to be infested with any injurious insects or plant diseases, the state horticulturist shall cause it to be destroyed or returned • to the consignor at the consignor's expense, if he shall so elect.

Sec. 6. Transportation companies not to transport uninspected stock; penalty; notice to commissioner of agriculture of consignments. R. S. c. 38, § 6. No transportation company that shall bring into this state any nursery stock such as trees, shrubs, vines, cuttings, or buds, and no transportation company, owner, or owners of nursery stock, or persons selling nursery stock as thus defined, shall transport such stock or cause it to be transported within the state, the same not having attached to each box or package an unexpired official certificate of inspection which shall meet the requirements specified in section five. Whoever violates this provision shall be punished by fine not exceeding one hundred dollars for each offense. All transportation companies shall immediately, upon receiving consignments of such stock notify the commissioner of agriculture of the fact that such consignments are in their possession, or en route to some point within the state, and give the names and addresses of the consignor and consignee, destination of each shipment, the name of the transportation company bringing such stock, and the road or roads over which it is brought; and shall also make such further report relative to such shipments as the commissioner of agriculture may from time to time require.

Sec. 7. Agents and dealers in nursery stock to obtain a license; fee; disposition of fees; revocation of license; penalty. R. S. c. 38, § 7. No person, firm or corporation, excepting those growing all the nursery stock they sell, shall engage in, continue in, or carry on the business of selling or dealing in nursery stock, or solicit purchases of nursery stock within this state, either as owner thereof, or as agent of such owner, without first obtaining a license to carry on and conduct such business in this state. The form of license shall be prescribed by the state horticulturist, and the licenses shall be issued by him upon proper

application therefor, and shall be in force one year from date of issue. The license fee shall be five dollars a year for agents, dealers, salesmen, or solicitors. The license shall be issued in the name of the dealer, solicitor, salesman, or agent, as the case may be, and no license shall be assigned or transferred. Licenses of salesmen, dealers, agents, or solicitors shall show the name and location of nursery and place of business of the nurserymen or tree dealers whom they represent or from whom they purchase their stock. Each separate agent and each separate store acting under a general agent or store must have a license as provided in this section. Fees obtained from such licenses shall be paid into the state treasury and added to the appropriation of the bureau of horticulture, and shall be used exclusively for the inspection of nursery stock introduced into the state from outside the state. Such license may be revoked at any time for failure to comply with the aforesaid requirements, or for such other causes as may in the opinion of the commissioner of agriculture be sufficient. Any violation of this section shall be punishable by a fine of not less than ten, nor more than fifty dollars for each offense.

110 Me. 264.

Sec. 8. Notice to commissioner of agriculture of presence of insects; his duties; destruction of insects within public ways and parks. R. S. c. 38, § 8. If any person in the state suspects the presence of the brown-tail moth or San Jose scale preying upon trees, shrubs, or vines in his possession or within his knowledge, he shall forthwith notify the commissioner of agriculture to that effect; and said commissioner shall cause the said trees, shrubs, or vines to be inspected. If sufficient cause is found, the commissioner of agriculture shall forthwith notify the municipal officers of the city, town, or plantation where such pests have been found. Municipal officers thus notified shall immediately cause to be destroyed such of the above-named insects in their different stages as may be found within the limits of the public streets and parks; said limit shall extend to and include all trees whose branches overhang the highway. If the municipal officers neglect or fail to perform the duties herein imposed upon them within a reasonable time, the commissioner of agriculture shall order such city, town, or plantation to proceed to destroy the above-named insects in accordance with methods to be prescribed by him and to spend such an amount in the above-named work as he shall deem necessary. If any city, town, or plantation shall fail to comply with the directions of said commissioner in the performance of said work and the expenditure of such money within the time specified by him, the commissioner of agriculture shall cause the said work to be done and shall charge the actual expense of the same to said city, town, or plantation; such amount shall be collected as a state tax and credited to the appropriation for said purpose.

Sec. 9. Notice to owners of real estate to destroy insects; owner neglecting, town to destroy. R. S. c. 38, § 9. Whenever a city, town, or plantation is notified by the commissioner of agriculture of the presence of the brown-tail moth or San Jose scale, the mayor of each city, the selectmen of each town, and the assessors of each plantation shall notify each owner of real estate located therein, requiring him to destroy the above-named insects in his orchard and shade trees within a specified time. If the owner fails to destroy the above-named insects before the specified time, the city, town, or plantation, subject to the approval of the commissioner of agriculture, shall destroy them, and shall assess upon such aforesaid real estate the actual cost of so doing, to an amount, however, not exceeding one per cent of the assessed valuation of the above-named property. The amount so assessed shall be collected in the form of a tax.

CHAP. 42

Sec. 10. Towns may raise money; expenditure. R. S. c. 38, § 10. Cities and towns may raise the sums necessary to carry out the provisions of the preceding section in the same manner as money is raised for other necessary municipal purposes. Whenever any city or town shall appropriate or raise a sum of money and shall pay the same into the state treasury for the purpose of exterminating the gipsy moth within its borders, the commissioner of agriculture shall cause such amount to be expended in such city or town as herein provided, together with an equivalent amount from the appropriation made therefor; provided, however, that if the commissioner of agriculture finds it to be unnecessary or impracticable to expend such entire amount during the year following such payment to the treasurer of state, one-half the amount so remaining unexpended shall be reimbursed to such city or town.

Sec c. 5, § 78.

Sec. 11. Duties of municipal officers as to worthless trees along highways; penalty. R. S. c. 38, § 11. The municipal officers of cities and towns, shall, before the first day of June of each year, cut, burn and destroy all dead or worthless apple trees, and all wild cherry trees within the limits of the public ways, streets and parks of their respective towns and cities. For neglect or failure to perform the aforesaid duties each of such officers shall be punished by a fine of not less than fifty dollars.

Sec. 12. Jurisdiction; control of prosecutions. R. S. c. 38, § 12. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for violations of the eleven preceding sections. All prosecutions shall be instituted by the commissioner of agriculture and shall be directed by him; all penalties recovered for any violation of said sections shall be paid into the state treasury and are hereby appropriated for the use of the commissioner in the enforcement of said sections in addition to any specific appropriation made therefor, and may be drawn from the treasury in the same manner as such appropriation.

Sec. 13. Crop pest commission, its membership, duties and authority. R. S. c. 38, § 13. The Crop Pest Commission, consisting of the governor, the attorney-general, the commissioner of agriculture, the pathologist, and the entomologist of the Maine Agricultural Experiment Station, may direct the commissioner of agriculture to make such regulations as said commission deem necessary to prevent the introduction into the state, or the dissemination therein, of any insect, pest, or plant disease, seriously injurious to vegetation.

European Corn Borer.

Sec. 14. European corn borer declared a public nuisance; commissioner of agriculture directed to suppress. 1923, c. 134, § 1. The insect known as the European corn borer is in all its stages a public nuisance, and the commissioner of agriculture is authorized and directed to use all lawful methods for its control and suppression. He may act in cooperation with any person or organization, any other state, or the United States, in conducting investigations, gathering and distributing information concerning the said corn borer, and in enforcing the provisions of the following sections.

Sec. 15. Commissioner of agriculture may establish districts and quarantine same; notice of establishment to be published. 1923, c. 134, § 2. The commissioner of agriculture shall have authority to establish districts comprising that portion of the state known or suspected of being infested with the European corn borer, and to quarantine such districts against the further spread of the borer. He may alter the boundary lines of such district or establish new dis-

tricts as conditions may require, and he shall give notice of such establishment by publication in some newspaper published in such district, if any, otherwise in some paper published in Augusta.

Sec. 16. Persons in quarantined or infested districts to plow in or burn stubble; corn stalk fodder to be fed or destroyed by April 10th. 1923, c. 134, § 3. In such district or districts as the commissioner of agriculture may designate as being known or suspected of being infested with the European corn borer, any person growing corn of any kind, or other vegetation subject to infestation by the European corn borer, shall, not later than November first in the year in which said corn or other vegetation is grown, plow the land on which said corn or other vegetation was grown in a manner which shall be satisfactory to the said commissioner of agriculture or his duly authorized agents, or shall pull up said stubble and destroy it by burning. Any person who uses corn stalks as fodder and who stores them for that purpose shall feed or destroy all such corn stalks not later than the tenth day of April in the year following that in which the said corn shall have been grown.

Sec. 17. Penalty. 1923, c. 134, § 4. 1925, c. 6. Whoever violates any quarantine regulations established by the commissioner of agriculture under section fifteen and whoever neglects or refuses to comply with the requirements of section sixteen of the same shall be punished by a fine of not less than ten nor more than fifty dollars.

Bee Industry.

Sec. 18. State horticulturist to inspect bee hives to determine if bees are suffering from any disease; to instruct owner and may give public lectures. 1921, c. 74, § 1. The State Horticulturalist of Maine shall upon request of any keeper of bees in the state inspect the hives of bees for the purpose of discovering whether they are suffering from any disease. If he finds that the bees are infected, he shall furnish the owner of said bees full instructions as to the nature of the disease and method of treatment, without cost to the owner. The state horticulturist may by himself or another give lectures and demonstrations on the keeping of bees.

Sec. 19. Bee owners to notify state horticulturist of number of hives owned. 1921, c. 74, § 2. All persons owning bees within the state shall notify the state horticulturist of the number of hives owned by them and their location. The information shall be made on blanks furnished by the state horticulturist.

CHAPTER 43.

Principal, Factors, and Agents. Warehousemen. Partnerships.

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

Authority of Factors and Agents.

Sec. 1. How far shipper, factor, or agent shall be considered owner of goods under his control. R. S. c. 39, § 1. Every person in whose name merchandise is forwarded, every factor or agent entrusted with the possession of any bill of lading, custom house permit, or warehouse keeper's receipt for the delivery of such merchandise, and every such factor or agent not having the documentary evidence of title, who is entrusted with the possession of merchandise for the purpose of sale, or as security for advances to be made thereon, shall be deemed the true owner thereof, so far as to give validity to any lien or contract made by such shipper or agent with any other person for the sale or disposal of the whole or any part of such merchandise, money advanced, or negotiable instrument or other obligation in writing, given by such person upon the faith thereof.

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

Sec. 2. Title does not extend to prior demands against agent. R. S. c. 39, § 2. No person taking such merchandise in deposit from such agent as security for an antecedent demand shall thereby acquire or enforce any right or interest therein other than such agent could then enforce.

Sec. 3. Rights of the true owner in such cases. R. S. c. 39, § 3. But the true owner of such merchandise, upon repayment of the money so advanced, restoration of the security so given, or satisfaction of all legal liens, may demand and receive his property, or recover the balance remaining as the proceeds of the legal sale thereof, after deducting all proper claims and expenses thereon.

Public Warehouses and Warehousemen.

Sec. 4. Title to goods in possession of warehouseman passes to purchaser, or pledgee, by indorsement of warehouseman's receipt. R. S. c. 39, § 4. The title to merchandise stored in a public warehouse, or on the wharves and premises of the warehouseman, and in his possession, passes to a purchaser or pledgee, in good faith, by the indorsement to such purchaser, or pledgee, but not in blank, of the warehouseman's receipt therefor, signed by the person to whom the receipt was originally given, or by an indorsee of the receipt, and recorded in the books of the warehouseman with whom such merchandise is stored.

Sec. 5. Account of warehouse transactions to be kept. R. S. c. 39, § 5. Each warehouseman shall keep books in which shall be entered an account of all transactions relating to the warehousing, storing, and insuring of merchandise and the issuing and the indorsement of warehouseman's certificates, which books shall be open to the inspection of any person interested in the property stored in the warehouse.

Sec. 6. Goods attachable as goods of person receipted to, or as goods of last recorded indorsee. R. S. c. 39, § 6. Merchandise stored with a public warehouseman may be attached as the property of the person named in the warehouseman's receipt therefor, when no indorsement of such receipt has been recorded on the books of the warehouseman; and, where such indorsement has been recorded, may be attached as the property of the last indorsee of the receipt shown by the books of the warehouseman, by leaving at the warehouse where the merchandise is stored a copy of the writ, with a copy of so much of the officer's return thereon as relates to the attachment of such merchandise. And such attachment is valid against any transfer which was not recorded in the books of the warehouseman, when the copy of the writ was left.

Sec. 7. Penalty for disposing of warehouseman's certificate without disclosing attachment. R. S. c. 39, § 7. Whoever indorses or assigns, or otherwise disposes of a warehouseman's certificate, after his interest in the property described in such certificate has been attached, without disclosing the attachment thereof to the person to whom such certificate has been indorsed, assigned, or disposed of, if he has knowledge of such attachment, shall be punished by a fine not exceeding five thousand dollars or by imprisonment not exceeding three years.

Sec. 8. Public warehouseman, defined. R. S. c. 39, § 8. Any person, firm, or corporation advertising or offering to receive merchandise on storage for other parties shall be deemed a public warehouseman for the purposes of this chapter.

Sec. 9. Grain etc., stored in public warehouse becoming mixed. R. S. c. 39, § 9. When grain or other property is so stored in a public warehouse that different lots or parcels are mixed together, so that the identity of the same cannot be accurately preserved, the warehouseman's receipt for any portion thereof shall be deemed a valid title to so much thereof as is designated in said receipt, without regard to any separation or identification.

Sec. 10. Goods etc., remaining in warehouse may be sold at public auction; demand for payment of charges; notice of sale; disposal of proceeds. R. S. c. 39, § 10. Whenever goods, merchandise, or any articles of personal property shall remain in a public warehouse for one year after the expiration of the time for which the charges shall have been paid, or for six months after the charges thereon have been lawfully demanded and left unpaid, the same may be sold at public auction, subject to the following conditions; the warehouseman, in case such demand has not been made, shall first demand payment of the charges thereon by registered letter directed to the person who deposited such goods, merchandise, or articles of personal property in said warehouse, if such person left with the warehouseman his address to which the letter may be directed. After such demand, or in cases where no such demand is required or where no address was given to the warehouseman to which such letter may be directed, the warehouseman shall give thirty days' notice of the time and place of sale in a public newspaper published in the city or town where the warehouse is, or if no public newspaper shall be published in such city or town, then in any public newspaper published in the county in which such city or town is; said notices shall contain a brief description of the property to be sold, with such marks thereon as may serve to identify it, if it shall be so marked, together with the name of the person depositing such articles in said warehouse and the name of the owner thereof if known; and shall specify the time after the expiration of said thirty days, and the place, which shall be in the city or town where the warehouse is, at which the sale shall be made. The proceeds of such goods, merchandise, or articles of personal property so sold, after deducting the charges

CHAP. 43

thereon, including the cost of publishing such notice and sale, shall be placed to the credit of the owner of the goods, merchandise, or other articles of personal property sold, if known, otherwise to the credit of the person depositing said goods, merchandise or articles of personal property, in the books of the warehouseman making the sale, and shall be paid to the owner thereof on demand, and the warehouseman shall not be liable for any greater sum than shall be received from said sale, less said charges thereon.

*100 Me. 451.

Publicity of Mercantile Partnerships.

Sec. 11. Persons engaging in mercantile partnerships to file certificate; certificate of withdrawal. R. S. c. 39, § 11. Whenever two or more persons become associated as partners or otherwise for the purpose of engaging in any mercantile enterprise, they shall, before commencing business, deposit in the office of the clerk of the city or town in which the same is to be carried on, a certificate signed and sworn to by them, setting forth their names and places of residence, the nature of the business in which they intend to engage, and giving the name under which they are to transact business. Whenever any member of such partnership or association withdraws therefrom, he may certify under oath to the fact of such withdrawal, which certificate shall be deposited in the clerk's office where the partnership certificate is recorded; and he shall conclusively be presumed to be a member of the firm or association to the time of his depositing such certificate.

119 Me. 165.

Sec. 12. Sole proprietor to file certificate when adopting any business name, or style other than his own name. R. S. c. 39, § 12. Whenever any person intends to engage in such business as sole proprietor thereof, and to adopt any business name, style, or designation other than his own name exclusively, he shall, before commencing business, deposit in the office of the clerk of the city or town in which such business is to be carried on, a certificate signed and sworn to by him setting forth his name and place of residence, the name, style, or designation under which the business is to be conducted, and stating that he is the sole proprietor.

Sec. 13. Statement cannot be contradicted in judicial proceedings. R. S. c. 39, § 13. A person signing and making oath to any certificate deposited as provided by the two preceding sections shall not be permitted in any judicial proceeding to contradict the statements contained in such certificate. Whoever swears or affirms to any such certificate which is not true in fact shall be deemed guilty of perjury.

Sec. 14. Record. R. S. c. 39, § 14. The clerks of the several cities and towns shall record in suitable books, kept exclusively for the purpose, the certificates deposited under the provisions of sections eleven and twelve, and such books shall be open to public inspection.

Sec. 15. Penalty for neglect to file certificate. R. S. c. 39, § 15. Whoever fails to deposit seasonably the certificate required by sections eleven and twelve shall be punished by a fine of five dollars for each day he is in default.

Limited Partnerships.

Sec. 16. Organization for mercantile, mechanical, or manufacturing business. R. S. c. 39, § 16. Limited partnerships for the transaction of mercantile, mechanical, or manufacturing business, but not for banking or insurance, may be

formed upon the following conditions and liabilities, to consist of one or more persons, called general partners, who shall be jointly and severally responsible, as general partners are by law, and of one or more persons, who contribute a specific sum in actual cash payment, as capital, to the common stock, called special partners, who shall not be liable for the debts of the partnership beyond the sum so contributed by each.

Sec. 17. Certificate and particulars thereof. R. S. c. 39, § 17. Persons forming such a partnership shall sign a certificate, containing the following particulars:

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

- IV. The time when the partnership shall commence, and when it shall cease.

Sec. 18. Certificate to be acknowledged and recorded. R. S. c. 39, § 18. Such partnership shall not be considered as formed, until such certificate is acknowledged by all the partners before a justice of the peace, and recorded in the registry of deeds for each county or registry district where such partnership is to have an established place of business, in a book kept for that purpose open to public inspection.

Sec. 19. Liability for any misstatement therein. R. S. c. 39, § 19. If any statement is made in such certificate, which misleads third persons, or is intentionally false, all the persons interested in such partnership are liable for all the engagements thereof, as general partners, to any person thereby deceived or injured.

Sec. 20. Publication of such partnership, and mode of renewing it. R. S. c. 39, § 20. After such registry, the partners shall cause a copy of the certificate above mentioned to be published in a newspaper printed in the county in which the principal place of business is situated, if any, otherwise in one printed in an adjoining county, or in the state paper, for six weeks successively, the first publication to be within twenty days thereafter; and if not so published, or if upon every renewal or continuance of such partnership beyond the time originally fixed for its duration, a certificate is not made, signed, acknowledged, recorded, and published, as aforesaid, it shall be deemed a general one.

Sec. 21. Special partners not to be named and not to act. R. S. c. 39, § 21. The business of the partnership shall be conducted under a firm, in which no names are used but those of the general partners, without the word "company," or any other general term; and the general partners only shall transact business; and if the name of any special partner is used in the firm with his consent and privity, or if he makes any contract respecting the concerns of the partnership with any person, except the general partners, he shall be deemed a general partner as to such contract.

Sec. 22. Capital not to be reduced below amount stated in certificate. R. S. c. 39, § 22. During the continuance of such partnership, no part of the capital stock shall be withdrawn therefrom, nor any division of interest or profits be made, so as to reduce the capital stock below the sum stated in the certificate above mentioned; and if during the continuance or at the termination of the partnership the property is not sufficient to pay the partnership debts, the special partners shall be severally answerable for all sums by them in any way received, withdrawn, or divided, with interest thereon from the time of withdrawal, notwithstanding the provision in the following section.

CHAP. 44

Sec. 23. Prosecution of suits relating to partnership business. R. S. c. 39, § 23. Suits respecting the business of such partnership shall be commenced and prosecuted by and against the general partners only, except in those cases in which provision is hereinbefore made, that special partners shall be deemed general partners, and special partnerships, general partnerships; in which cases all the partners deemed general partners may join or be joined in such suits.

Sec. 24. Voluntary dissolution, and notice thereof. R. S. c. 39, § 24. No voluntary dissolution of such partnerships shall take place before the time specified in the certificate before named, unless a notice thereof is recorded in each registry, in which the original certificate, or certificate of renewal or continuance, is recorded, and published in such paper, as is directed in section twenty.

Sec. 25. In cases not otherwise provided for herein, limited partners to be same as general. R. S. c. 39, § 25. 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 supreme judicial court may hear and determine, in equity, all questions between copartners in any partnership formed by virtue of this chapter, and between said copartners and any creditors of the firm.

CHAPTER 44.

Board of Accountancy. Notaries Public. Holidays and Days of Public Observance. Demand on Bills and Notes. Interest.

- Sections 1-10 State Board of Accountancy.
- Sections 11-19 Notaries Public and Protests.
- Sections 20-25 Holidays and Days of Public Observance.
- Section 26 Demand on Bills and Notes.
- Sections 27-33 Interest.

State Board of Accountancy.

Sec. 1. Appointment of board of accountancy. R. S. c. 40, § 1. The Maine Board of Accountancy as heretofore established shall consist of three members, who shall be citizens and residents of the state, appointed annually by the governor, with the advice and consent of the council, for terms of three years, as the terms of the several members expire. Vacancies occurring during a term shall be filled for the unexpired term. Two members of said board shall be skilled in the art of accounting and shall have been actively engaged in the profession of a public accountant; they shall be holders of certificates issued under the provisions of the first ten sections of this chapter; the other member shall be a practicing attorney in good standing in the courts of this state.

Sec. 2. Organization; powers and duties. R. S. c. 40, § 2. A majority of the board shall constitute a quorum for the transaction of its business. They shall annually elect a chairman and secretary. They may have and use a common seal and make such rules, by-laws, and regulations, not inconsistent with law, as they shall deem necessary to improve and promote the science and art of accounting, and to carry out the purposes and enforce the provisions of sections one to ten, both inclusive, of this chapter. The board shall promote the standard of general education; the standard of special education in the science

and art of accounting; the standard of moral character and general public experience as prescribed in said sections, in all examinations conducted hereunder. The secretary shall keep proper records of the doings of the board, and of his receipts and expenditures, and of all certificates issued and applications received by the board.

Sec c. 125, §§ 54, 55.

Sec. 3. Certificate as certified public accountant. R. S. c. 40, § 3. Any person who shall have received from the board a certificate of his qualifications to practice as a public accountant, as hereinafter provided, shall be styled and known as a certified public accountant, and no other persons shall assume such title or use the abbreviation C. P. A. or any other words, letters or figures to indicate that the person using the same is such certified public accountant.

Sec. 4. Examination; Issue of certificates. R. S. c. 40, § 4. 1919, c. 94. At such times as the board may fix, it shall hold meetings for the examination of applicants for certificates and shall give notice thereof by publication in a daily newspaper in each of the cities of Portland, Lewiston, Bangor, and Augusta, stating the time and place of such meetings, not less than twenty days prior to the date thereof. An exact copy of the examination questions shall be filed with the state librarian for public reference within thirty days after date of examination. At such meetings the board shall conduct examinations of applicants who have been residents of the state at least one year prior thereto, and of certified public accountants of any other state or foreign government which extends similar privileges to certified public accountants of this state, and who have paid the required fee. To those who have shown the required proficiency in the theory of accounts, practical accounting, auditing, business systems, and commercial law, and such other subjects as it deems necessary, and whom they believe to be of such character and fitness as to qualify them to act as public accountants, they shall issue a certificate over the signatures of the board and under its seal that the applicant is entitled to practice as a certified public accountant in accordance with the provisions of sections one to ten, both inclusive, of this chapter.

Sec. 5. Board may waive examination of persons holding certificates from other states. R. S. c. 40, § 5. The board may, in its discretion, waive the examination and the payment of fees and may issue a certificate for a certified public accountant to any person possessing the qualifications mentioned in the preceding section who is the holder of a certified public accountant's certificate issued under the laws of another state or foreign government which extends similar privileges to certified public accountants of this state; provided the requirements in the state or foreign government which has granted it to the applicant are, in the opinion of the board equivalent to those herein provided.

Sec. 6. Fee for examination; second examination. R. S. c. 40, § 6. Each applicant for examination shall pay to the secretary of the board a fee of twenty-five dollars at the time of filing his application and no other fees or costs shall be required to be paid by him. If the applicant fails to pass the examination the fee shall not be returned to him, but he shall be entitled to take another examination after one year, at any advertised meeting at which there are to be other applicants for examination. The fee shall be paid by every person to whom a certificate for a certified public accountant is issued by the board, except that where reciprocal certificates are issued the fees required shall be not less than, nor more than the fees charged to certified public accountants of this state for similar privileges.

Sec. 7. Certificates may be revoked. R. S. c. 40, § 7. The board may revoke any certificate issued by it, upon proof of bad moral character, dishonesty, con-

CHAP. 44

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

Sec. 8. List of persons certified to be filed in office of secretary of state. R. S. c. 40, § 8. Upon the granting of any certificate for a certified public accountant by the board, the secretary shall immediately file in the office of the secretary of state a certificate showing the name, residence, and post-office address, of the person to whom the certificate issued together with the date thereof and such other information as the board may deem advisable; the certificate so filed shall be open to inspection by all persons at all reasonable times.

Sec. 9. Advertising; use of certain designations, and practice of profession without certificate prohibited; use of terms by partnerships and corporations prohibited; penalty. R. S. c. 40, § 9. 1923, c. 12. No person shall advertise or issue any sign, card, or other indication designating himself as a certified public accountant or shall assume the title of a certified public accountant or use the abbreviation of C. P. A. or any other words, letters, or figures to represent that he is a certified public accountant, or shall practice as such without having received a certificate in accordance with the provisions of the eight preceding sections of this chapter, or, having received such a certificate shall so advertise or represent himself or practice after the revocation thereof. No partnership, unless all of its partners are holders of a certificate in accordance with the provisions of the eight preceding sections of this chapter, and no corporation, shall use the words certified public accountant in describing the partnership or corporation or the business thereof; provided, however, that any partnership or corporation may represent that a specified person holding a certificate in accordance with the provisions of the eight preceding sections of this chapter is a member of such partnership or is in the service or employ of such partnership or corporation. Any violation of this section shall be punished by a fine of not exceeding five hundred dollars.

Sec. 10. Annual report. R. S. c. 40, § 10. The board shall annually make a report to the governor and council showing its receipts and disbursements in detail, the names of persons to whom certificates have been issued, and the names of persons whose certificates have been revoked with the reasons therefor, during each fiscal year ending on the thirtieth day of June.

•

Notaries Public and Protests.

Sec. 11. Notary's seal; authority to administer oaths. R. S. c. 40, § 24. Every notary public shall constantly keep a seal of office, whereon is engraven his name, and the words "notary public" and "Maine" or its abbreviation "Me.," with the arms of state, or such other device as he chooses. When authorized by the laws of this state or of any other state or country, to do any official act, he may administer any oath necessary to the completion or validity thereof.

Sec. 12. Duty as to protests of losses, and record and copies thereof. R. S. c. 40, § 25. When requested, he shall enter on record all losses or damages sustained or apprehended by sea or land, and all averages, and such other matters, as, by mercantile usage, appertain to his office; grant warrants of survey on vessels; and all facts, extracts from documents, and circumstances, so noted, shall be signed and sworn to by all the persons appearing to protest; he shall note, extend, and record the protest so made; and grant authenticated copies

thereof, under his signature and notarial seal, to those who request and pay for them.

Sec. 13. Demand and notice on notes, bills, etc. R. S. c. 40, § 26. He may, in behalf of any person interested, present any bill of exchange or other negotiable paper for acceptance or payment to any party liable therefor; notify indorsers or other parties thereto; record and certify all contracts usually recorded or certified by notaries; and in general, do all acts which may be done by notaries public according to the usages of merchants, and authorized by law; he may do all things that justices of the peace are or may be authorized to do and shall have the same territorial jurisdiction; he shall record all mercantile and marine protests by him noted and done in his official capacity.

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

*113 Me. 391.

Sec. 14. Acts of notary who is interested in corporation; when unlawful. R. S. c. 40, § 27. Any notary public who is a stockholder, director, officer, or employee of a bank or other corporation, may take the acknowledgment of any party to any written instrument executed to or by such corporation, or may administer an oath to any other stockholder, director, officer, employee, or agent of such corporation, or may protest for non-acceptance or non-payment bills of exchange, drafts, checks, notes, and other negotiable instruments which may be owned or held for collection by such bank or other corporation: provided, that it shall be unlawful for any notary public to take the acknowledgment of an instrument by or to a bank or other corporation of which he is a stockholder, director, officer, or employee, where such notary is a party to such instrument, either individually or as a representative of such bank or other corporation, or to protest any negotiable instrument owned or held for collection by such bank or other corporation, where such notary is individually a party to such instrument. This selection shall apply to notaries public in office on the thirtieth day of June, nineteen hundred and eleven, and shall validate any acts theretofore done by them which would be valid hereunder.

Sec. 15. Copies, evidence. R. S. c. 40, § 28. The protest of any foreign or inland bill of exchange, or promissory note or order, and all copies or certificates by him granted shall be under his hand and notarial seal, and shall be received in all courts as legal evidence of such transactions, and as to the notice given to the drawer or indorser, and of all facts therein contained.

15 Me. 138; 16 Me. 43, 183, 260; 23 Me. 287, 554; *26 Me. 50; 41 Me. 304, 323;

43 Me. 154, 205; 49 Me. 27; 50 Me. 597; *53 Me. 411.

Sec. 16. When office vacated, records to be deposited with clerk of courts; penalty. R. S. c. 40, § 29. On the resignation or removal from office of any notary public, his records shall be deposited with the clerk of the judicial courts in the county for which he was appointed; and by a neglect for three months to comply with the above requisition on his part, or if he is deceased, on the part of his executor or administrator, for three months after the acceptance of his trust, either forfeits not less than fifty, nor more than five hundred dollars.

Sec. 17. Penalty for injuring or concealing such records. R. S. c. 40, § 30. Whoever knowingly destroys, defaces, or conceals such record, forfeits not less than two hundred, nor more than one thousand dollars; and is liable for damages to any person injured, in an action on the case.

Sec. 18. Duties of clerks relating thereto, and fees. R. S. c. 40, § 31. All clerks shall receive and safely keep all such records and papers lodged in their offices and give attested copies thereof, for which they shall receive the same fees as a notary; and such copies shall be as valid as if certified by notaries.

16 Me. 183.

Sec. 19. Fees for protest, and appropriation of penalties. R. S. c. 40, § 32.

CHAP. 44

For each protest of a bill or note, notifying parties, making his certificate thereof in due form and recording his proceedings, a notary public shall receive one dollar and fifty cents. All penalties provided in sections sixteen and seventeen accrue half to the state and half to the prosecutor.

Holidays and Days of Public Observance.

Sec. 20. Bank holidays. R. S. c. 40, § 33. 1923, c. 50, § 2. Any day of public thanksgiving, appointed by the governor and council or by the president of the United States, the first day of January, the twenty-second day of February, the nineteenth day of April, the thirtieth day of May, the fourth day of July, the first Monday of September, Armistice Day, November eleventh, and the twenty-fifth day of December are hereby declared to be bank holidays.

Sec. 21. Days of grace abolished; sight drafts excepted. R. S. c. 40, § 34. No days of grace, according to the custom of merchants, shall be allowed on any promissory note, draft, check, bill of exchange, bond, or other evidence of indebtedness made, drawn, or accepted after the first day of July, eighteen hundred and ninety-seven, unless expressly stipulated therein; but the same shall be due and payable as therein expressed, without grace; provided, that this section shall not apply to any draft or bill of exchange drawn payable at sight.

Sec. 22. Notes, etc., falling due on Sunday or bank holiday to be payable next succeeding business day. R. S. c. 40, § 35. Any promissory note, draft, check, acceptance, bill of exchange, bond, or other evidence of indebtedness made, drawn, or accepted after the first day of July, eighteen hundred and ninety-seven, that shall fall due on Sunday or any bank holiday, shall be payable and presentable for payment on the secular or business day next succeeding such Sunday or holiday. If a bank holiday falls on Sunday, the following Monday shall be deemed a bank holiday for the purposes of this chapter.

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

Sec. 23. Every Saturday afternoon, not a bank holiday, deemed a half holiday for certain purposes; exceptions. R. S. c. 40, § 36. 1923, c. 150, § 6. Every Saturday which is not a bank holiday according to law, from twelve o'clock noon until twelve o'clock midnight shall, for all purposes whatever as regards the presenting for payment or acceptance and the protesting and giving notice of dishonor of bills of exchange, drafts, bank checks, and promissory notes made after the twentieth day of March, eighteen hundred and ninety-seven, be treated as and deemed a half holiday; and all bills of exchange, drafts, bank checks and promissory notes which are liable to be protested for non-acceptance or non-payment at twelve o'clock noon on any Saturday which is not a bank holiday according to law, may be protested for non-acceptance or non-payment, as the case may be, on any such Saturday at any time after twelve o'clock noon, or on the next succeeding secular or business day. Nothing in any law of this state shall in any manner whatsoever affect the validity of, or render void or voidable, the payment, certification, or acceptance of a check or other negotiable instrument, or any other transaction by a bank in this state, because done or performed on any Saturday between twelve o'clock noon and midnight, provided such payment, certification, acceptance, or other transaction would be valid if done or performed before twelve o'clock noon on such Saturday; provided further that nothing herein shall be construed to compel any bank or trust company doing business in this state, which by law or custom is entitled to close at twelve o'clock noon on any Saturday, to keep open for the transaction of business or to perform any of the acts or transactions aforesaid, on any Saturday after such hour except at its own option.

Note. School holidays, c. 19, § 123. Days on which courts are not held, c. 90, § 53. Days on which arrests in civil actions may not be made, c. 94, § 87.

Sec. 24. Arbor Day. R. S. c. 40, § 37. The governor shall annually set apart a day in the spring as Arbor Day, and shall issue a proclamation recommending that it be observed by the people of the state in the planting of trees, shrubs, and vines, in the adornment of public and private grounds, places and ways, and in such other efforts and undertakings as shall be in harmony with the general character of a day so established.

Sec. 25. Old Home Week. R. S. c. 40, § 38. 1917, c. 14. The week commencing with the second Sunday in August of each year, or any week a town may designate, at its annual town meeting, is hereby designated and set apart as old home week.

Demand on Notes and Bills.

Sec. 26. Demand on note payable at time and place certain. R. S. c. 40, § 39. In an action on a promissory note payable at a place certain, either on demand, or on demand at or after a time specified therein, the plaintiff shall not recover, unless he proves a demand made at the place of payment prior to the commencement of the suit.

30 Me. 32; 43 Me. 559; 83 Me. 267; 94 Me. 395; 95 Me. 386, 388; 125 Me. 108.

Note. R. S. 1916, c. 40, § 40, relating to liability of banks on forged checks, has been transferred to chapter 52, § 123.

Interest.

Sec. 27. Legal rate of interest. R. S. c. 40, § 41. In the absence of an agreement in writing, the legal rate of interest is six per cent a year.

*66 Me. 219, 283; *68 Me. 526; 73 Me. 471; 122 Me. 434.

Sec. 28. Rate on loans on personal property limited. R. S. c. 40, § 42. *All loans contracted after the eleventh day of March, eighteen hundred and ninety-nine, for less than two hundred dollars, secured by mortgage, conveyance, or pledge of personal property, shall be dischargeable by the debtor upon payment or tender of the principal sum actually borrowed, and interest at the rate specified therein, which shall not exceed three per cent a month for a period not exceeding three months, and thereafter not exceeding the rate of fifteen per cent a year; no renewal thereof shall bear a greater rate than fifteen per cent a year. A sum not exceeding three dollars for the actual expense of making the loan and in securing the same may be charged and collected. And all loans made in violation hereof shall bear interest at the rate of six per cent only, and all payments made in excess of six per cent interest on loans so made in violation hereof shall be applied to the discharge of the principal; and, in case a greater sum has been paid by the borrower than the amount of the principal and interest at six per cent on loans so made in violation hereof, such excess may be recovered from the person loaning the money, whether principal or agent, by the borrower, in an action on the case.*

102 Me. 508; 100 Me. 426; 112 Me. 444.

Note. This section was specifically repealed by P. L. 1917, c. 298, § 19. If this was the intention of the legislature, it would seem to render inapplicable also the four succeeding sections. It is doubtful, however, whether an act of the limited scope of "the small loans agencies act" (found in this revision in chapter 56, §§ 140-157), was intended to supplant entirely provisions regulating general private business, although § 13 of that act, (§ 152 of c. 56 in this revision), apparently prohibits interest in excess of 12 per cent on small loans secured by personal property, unless the transaction is with one of that class of money lenders whose business the state has deemed it most necessary to regulate.

The commissioner recommends that §§ 28-32 of this chapter be modified to accord with §§ 140-157 of chapter 56, or if thought obsolete in view of "the small loans agencies act," that these sections be stricken out.

Sec. 29. Mortgages to be discharged and pledge restored, upon payment of amount due. R. S. c. 40, § 43. *When a loan for less than two hundred dollars is secured by mortgage or pledge of personal property the creditor shall discharge such mortgage and restore such pledge upon payment or tender to him*

CHAP. 45

of the amount due him under the preceding section, and such payment or tender may be made by the debtor or by any person having an interest in the property pledged or mortgaged.

Sec. 30. Mortgage on household furniture not valid unless it states amount of loan, etc. R. S. c. 40, § 44. *No mortgage of household furniture made to it states with substantial accuracy the amount of the loan, the time for which secure a loan under the provisions of section twenty-eight shall be valid unless the loan is made, the rate of interest to be paid and the actual expense of making and securing the loan.*

Sec. 31. Penalty for refusing to discharge mortgage or restore loan. R. S. c. 40, § 45. *Whoever refuses or neglects after a request, to discharge a mortgage or to restore the property held as a pledge as provided in section twenty-nine, shall be liable in an action of tort by the debtor or by any person having an interest in the property pledged or mortgaged for all damages resulting to him for any violation of said section twenty-nine.*

Sec. 32. Application of §§ 28-31 limited. R. S. c. 40, § 46. *The four preceding sections shall not be construed to apply to licensed pawnbrokers nor to affect section forty-one.*

Sec. 33. Acting as agent to evade usury laws in another state prohibited; loans in violation of this section voidable. R. S. c. 40, § 47. *No person, corporation or partnership shall engage within this state in the business of acting as the agent or attorney of non-resident borrowers of money in sums of three hundred dollars or less, with intent to evade the usury laws in force in the foreign state or territory in which the actual borrower has his residence when such loan, or any contract in connection therewith, is made. All such loans made, or contracted for, by such agent or attorney for a foreign principal, in violation of this section, shall be voidable at the option of the debtor, such option to be exercised by him in any foreign jurisdiction where any contract or promise made by him in connection with the making or procuring of such loan is attempted to be enforced.*

CHAPTER 45.

Auctions and Auctioneers. Itinerant Vendors.

Sections 1-10 Auctions and Auctioneers.

Sections 11-27 Itinerant Vendors.

Auctions and Auctioneers.

Sec. 1. License; fee. R. S. c. 41, § 1. *The municipal officers of any town may license any legal voter thereof, by a writing under their hands, to be auctioneer for one year, in every town in their county; and shall record every such license in a book kept by them for that purpose. Upon receipt of such license, said auctioneer shall pay two dollars to the treasurer of said licensing town for said town, and may be exempted from the deduction of two and one-half per cent from the gross amount of sales provided in section three.*

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

Sec. 2. Appeal to county commissioners in case of refusal. R. S. c. 41, § 2. *If such officers, after written application to them for a license, unreasonably refuse or neglect to grant it, the applicant, by giving them ten days' notice and a bond to pay all costs arising thereafter, may appeal to the county commis-*

sioners, who, after a hearing of the parties, may grant the license if they judge it reasonable.

Sec. 3. Auctioneers to keep account of goods sold; tax on goods of non-residents; penalty. R. S. c. 41, § 3. Every person licensed shall keep a fair and particular account of all goods and chattels by him sold, stating of whom received, and the price for which the same were sold; and unless otherwise authorized, if said goods are sold voluntarily for the benefit of parties residing out of the state, he shall deduct two and a half per cent from the gross amount of the sales for the use of the town where the sale is made, and pay the same to the treasurer thereof within ten days after the sale; and in default thereof, he shall be fined not less than fifty, nor more than three hundred dollars, and shall forfeit his license.

53 Me. 394.

Sec. 4. Penalty for allowing any person not a voter in town, to act under him. R. S. c. 41, § 4. No auctioneer shall allow any person, not a legal voter in the town from which he received his license, to act for or under him in any sales at public auction, under a penalty of fifty dollars for each offense; and any person so acting is subject to the same penalty.

Sec. 5. Penalty for receiving goods of minors or servants or selling before sunrise or after sunset; town officers may license to sell after sunset. R. S. c. 41, § 5. If an auctioneer receives goods for sale at public auction, of any servant or minor, knowing him to be such, or sells goods, before sunrise or after sunset, at public auction, he forfeits not less than fifty, nor more than one hundred and seventy dollars for each offense; but the municipal officers of any town may license any duly licensed auctioneer specially, to sell after sunset upon payment of a sum not exceeding twenty dollars.

Sec. 6. Real estate lying in two towns, how sold; penalty; blooded animals may be sold without license. R. S. c. 41, § 6. A parcel of real estate lying partly in one town and partly in another, may be sold by an auctioneer of either; but if an auctioneer sells or offers to sell real or personal property at public auction in any other towns than those authorized by his license, or if any person sells without a license, he forfeits not exceeding six hundred dollars; provided, however, that any person, employed by the owner of blooded animals may sell the same, as auctioneer, at public auction, whether licensed by municipal officers or not.

43 Me. 100.

Sec. 7. Penalty if occupant of building permits any person to sell therein contrary to law. R. S. c. 41, § 7. If the tenant or occupant of any building, having actual possession and control thereof, knowingly permits any person to sell any goods or chattels at public auction contrary to the first ten sections of this chapter, in such building, or in any apartment, or yard appurtenant thereto, he forfeits not more than six hundred, nor less than one hundred dollars.

Sec. 8. Exceptions as to sales by officers. R. S. c. 41, § 8. Nothing in the preceding sections extends to sales made by sheriffs, deputy sheriffs, coroners, constables, tax collectors, executors or administrators, or any other person authorized to sell goods, chattels, or lands, by order of any court or judge of probate.

Sec. 9. Fines, how recovered and appropriated. R. S. c. 41, § 9. All fines imposed by the preceding sections of this chapter may be recovered by indictment; and it is the special duty of city marshals and their deputies, sheriffs, constables, and police officers, to make immediate complaint for every offense against the provisions hereof.

Sec. 10. Town officers may grant special license to auctioneers to sell on in-

CHAP. 45

voice. R. S. c. 41, § 10. The municipal officers of any city or town, may, upon presentation of an invoice or inventory of the property to be sold, which shall be produced unless said municipal officers decide that the same is unnecessary, grant a special license to any auctioneer, a voter in the state, to sell at public auction, between the hours of seven in the forenoon and six in the afternoon, upon payment to such city or town of five dollars for each invoice or inventory.

Itinerant Vendors.

Sec. 11. Itinerant vendors not to sell without license; penalty. R. S. c. 41, § 11. 1919, c. 129. Any itinerant vendor who sells or exposes for sale, at public or private sale, any woods, wares, and merchandise without state and local licenses therefor, issued as hereinafter provided, shall be punished for each offense by fine not exceeding two hundred dollars or by imprisonment not exceeding ninety days, or by both such fine and imprisonment.

112 Me. 215.

Sec. 12. Penalty for advertising sale, before licenses are issued. R. S. c. 41, § 12. All persons, both principals and agents, who by circular, handbill, newspaper or in any other manner, advertise any such sales as those referred to in the preceding section, before proper licenses are issued to the vendor, shall be punished by fine not exceeding fifty dollars or imprisonment not exceeding sixty days, or by both such fine and imprisonment.

Sec. 13. Vendors to take out state and local licenses; rights of municipal officers unaffected. R. S. c. 41, § 13. Every itinerant vendor, whether principal or agent, before commencing business, shall take out a state license and local licenses in the manner hereinafter set forth, but nothing herein contained shall affect the right of any municipal officers to make such regulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter.

Sec. 14. Vendors to make deposit before procuring license; license not transferable; licensee may have assistants. R. S. c. 41, § 14. 1917, c. 263. Every itinerant vendor desiring to do business in this state shall deposit with the secretary of state the sum of five hundred dollars as a special deposit, and after such deposit, upon application in proper form and the payment of a further sum of one hundred dollars as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in the state in conformity with the provisions of this chapter for the term of one year from the date thereof. Every license shall set forth a copy of the application upon which it is granted. Such license shall not be transferable nor give authority to more than one person to sell goods as an itinerant vendor, either by agent or clerk or in any other way than in his own proper person, but any licensee may have the assistance of one or more persons in conducting his business, who may aid that principal but shall not act for or without him. No person shall be entitled to hold, or directly or indirectly receive the benefit of more than one state license at any one time, and any license obtained, held, or used in violation of this section is void.

112 Me. 217.

Sec. 15. Applications for state licenses to disclose name and residence of owner. R. S. c. 41, § 15. All applications for state licenses shall be sworn to, shall disclose the names and residences of the owners or parties in whose interests said business is conducted, and shall be kept on file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records both of the secretary of state and of the several towns rela-

tive to such licenses, shall be in convenient form, and open for public inspection.

Sec. 16. Local license to be obtained; proceedings. R. S. c. 41, § 16. Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering, or exposing for sale any goods in such town shall pay to the collector for the use of such town, as a further local license fee for such sale in such town, a sum to be computed as provided in the following section. A receipt for said local license fee when paid shall be indorsed by said collector on the back of such state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed, or offered for sale in such town. Every application for a local license shall be signed by the holder of the accompanying state license and shall specify the kind and line of goods then in stock in such town, the name of the town from which said goods were last shipped, and the name of the town in which said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each town respectively, in which said goods shall be successively offered or exposed for sale.

112 Me. 217.

Sec. 17. Assessors to examine stock and certify amount of local license fee; license restricted to goods described; vendor to pay additional fee when stock is increased; penalty. R. S. c. 41, § 17. The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by such applicant's state license shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application, and shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town, such goods, wares, and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, not exceeding in amount at any one time the valuation on which his local license fee for such town was computed; such license shall continue in force so long as such licensee shall in good faith continuously keep, offer, and expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the first day of April next following the date of application. Any itinerant vendor, who after applying or paying for a local license increases his stock kept, offered, or exposed for sale in the town for which such local license fee was paid above the valuation on which such local license fee was computed, without first making seasonable written application to the collector of such town for a supplemental license for such excess of stock shall be fined not less than twenty, nor more than fifty dollars, and for each day such excess of stock is kept, offered, or exposed for sale without payment of local license fee therefor shall be fined not less than twenty, nor more than fifty dollars, and forfeits his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees.

90 Me. 253.

Sec. 18. Penalty for neglect to apply for local license. R. S. c. 41, § 18. Whoever as proprietor or clerk, having in his care, custody, or keeping, any goods for the sale of which a local license is required, neglects or refuses to file the

CHAP. 45

application for local license required by law, or whoever makes a false or fraudulent representation or statement in any application for a local license, shall be fined not less than twenty, nor more than fifty dollars for each day such goods are kept, offered, or exposed for sale. The penalties provided herein are not to be construed as substitutes for payment of local license fees.

Sec. 19. Town has lien on goods, for license fee; collector may maintain action of debt for fee; officers charged with enforcement of law. R. S. c. 41, § 19. Every town in which is kept, exposed, or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock to be enforced by suit and attachment within ten days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section seventeen the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name, but for the benefit of such town. Tax collectors, police officers, and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license.

Sec. 20. Vendor to state to secretary of state all facts relating to sale. R. S. c. 41, § 20. No itinerant vendor shall advertise, represent, or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, testator's, executor's, administrator's, receiver's, wholesale, or manufacturer's, or closing out sale or as a sale of any goods damaged by smoke, fire, water, or otherwise, or in any similar form, unless he shall before so doing, state under oath to the secretary of state, either in the original application for a state license or in a supplementary application subsequently filed, and copy on the license all the facts relating to the reasons and character of such special sale so advertised or represented, including a statement of the names of the persons from whom the goods, wares, and merchandise were obtained, the date of delivery to the person applying for the license, and the place from which said goods, wares, and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares, and merchandise to be so sold.

Sec. 21. Penalty for making false statement. R. S. c. 41, § 21. Any false statement in an application, either original or supplementary, for a license, and any failure on the part of any licensee to comply with all the requirements of the last preceding section shall subject said itinerant vendor to the same penalty as if he had no license.

Sec. 22. State licenses to expire in one year. R. S. c. 41, § 22. All state licenses issued under section fourteen shall expire by limitation one year from the date thereof, and may be, if so desired, surrendered at any time prior thereto for cancelation.

Sec. 23. Upon expiration or surrender of license, duty of secretary of state. R. S. c. 41, § 23. Upon the expiration and return or surrender of each state license, the secretary of state shall cancel the same, indorse the date of delivery and cancelation thereon, and place the same on file. He shall then hold the special deposit of each licensee hereinbefore mentioned for the period of sixty days, and after satisfying any and all claims made upon the same under the following section, shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee depositing it.

Sec. 24. Deposits subject to attachment and execution; and to payment of fines and penalties incurred; claims satisfied in order in which notice of claim is

received; deposits not to be paid to licensees, so long as there are claims against them. R. S. c. 41, § 24. Each deposit made with the secretary of state shall be subject, so long as it remains in his hands, to attachment and execution in behalf of creditors whose claims arise in connection with business done in the state, and the secretary of state may be held to answer as trustee, under the trustee process, in any civil action in debt or case brought against any licensee, and the secretary of state shall pay over, under order of court, or upon execution, such sum of money as he may be chargeable with upon his answer or otherwise. Said deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violation of the thirteen preceding sections of this chapter, and the clerk or recorder of the court in which, or the trial justice by whom, such fine or penalty is imposed shall thereupon notify the secretary of state of the name of the licensee, against whom such fine or penalty is adjudged and of the amount of such fine or penalty, and the secretary of state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified to said clerk, recorder, or trial justice, and if the secretary of state shall not have a sufficient sum so deposited he shall make payment as aforesaid, of so much as he has in his hands. All claims upon the deposit shall be satisfied after judgment, fine or penalty in the order in which notice of the claim is received by the secretary of state, until all such claims are satisfied or the deposit exhausted, but no notice filed after the expiration of the sixty days' limit aforesaid shall be valid. No deposits shall be paid over by the secretary of state to the licensees so long as there are any outstanding claims or notices of claims against them, respectively, unless he is satisfied that such claims will not be prosecuted to final judgment or that no fine or penalty will be imposed.

Sec. 25. Construction of words, "Itinerant vendors"; vendor not exempt by associating himself with local trader. R. S. c. 41, § 25. 1919, c. 129. The words "itinerant vendors" for the purposes of this chapter shall be construed to mean and include all persons, both principals and agents, who engage in a temporary or transient business in this state, either in one locality or in traveling from place to place selling goods, wares, and merchandise, and who, for the purposes of carrying on such business, hire, lease or occupy any building or structure for the exhibition and sale of such goods, wares, and merchandise, or who sells goods, wares, and merchandise, at retail from a car, wagon or other conveyance, steamer or vessel. No itinerant vendor shall be relieved or exempted from the provisions and requirements hereof by reason of associating himself temporarily with any local dealer, trader, or merchant, or by conducting such temporary or transient business in connection with or as a part of the business of, or in the name of any local dealer, trader, or merchant.

112 Me. 215.

Sec. 26. Persons exempt. R. S. c. 41, § 26. 1919, c. 129. The provisions of the fifteen preceding sections shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares, and merchandise by sample for future delivery, nor to hawkers or peddlers on the streets or peddlers from vehicles, any of whom are bona fide residents of this state or of any other state or country whose laws impose no burden upon citizens of this state engaged in like business within their borders.

Sec. 27. Jurisdiction of prosecutions. R. S. c. 41, § 27. Municipal and police courts and trial justices shall have jurisdiction of all complaints and prosecutions under this chapter.

CHAPTER 46.

Pawnbrokers and Intelligence Offices.

Sections 1- 5 Pawnbrokers.
Sections 6-13 Intelligence Offices.

Pawnbrokers.

Sec. 1. Licenses of pawnbrokers; term; penalty. R. S. c. 42, § 1. The municipal officers of any town may grant licenses to persons of good moral character to be pawnbrokers therein for one year, unless sooner removed by said officers for violation of law; whoever carries on said business without a license, forfeits not exceeding one hundred dollars.

Sec. 2. An account of all business done to be kept; penalty. R. S. c. 42, § 2. Every pawnbroker shall keep a book, in which he shall enter the date, duration, amount, and rate of interest of every loan made by him; an accurate account and description of the property pawned, and the name and residence of the pawner, and, at the same time, shall deliver to said pawner a written memorandum signed by him, containing the substance of the above entry, and, at all reasonable times, shall submit said book to the inspection of any of the officers aforesaid; and for every violation of this section he forfeits twenty dollars.

Sec. 3. Rates of interest fixed; penalty. R. S. c. 42, § 3. No pawnbroker shall directly or indirectly receive a rate of interest greater than twenty-five per cent a year on a loan not exceeding twenty-five dollars, nor more than six per cent on a larger loan made upon property pawned, under a penalty of one hundred dollars for each offense.

See c. 44, § 32.

Sec. 4. Time and mode of selling pawned property, and notice thereof, fixed under a penalty. R. S. c. 42, § 4. No pawnbroker shall sell any property pawned, until it has remained in his possession for three months after the expiration of the time for which it was pawned; all such sales shall be at public auction by a licensed auctioneer, after notice of the time and place of sale, the name of the auctioneer, and a description of the property to be sold has been published in a newspaper in the town where the property is pawned, if any, and if not, after such notice has been posted in two public places therein at least two weeks before the sale; all sales of such property otherwise made, are void, and the pawnbroker, undertaking to make them, forfeits twenty dollars for every such offense.

Sec. 5. Penalty for not paying over proceeds. R. S. c. 42, § 5. After deducting from the proceeds of any sale as aforesaid the amount of the loan, the interest then due, and the proportional part of the expenses of the sale, such pawnbroker shall pay the balance to the person who would have been entitled to redeem such property if no sale had been made; and if not so paid on demand, the broker forfeits double the amount so retained, half to the pawner, and half to the state.

Intelligence Offices.

Sec. 6. Regulation of employment agencies; particulars of license; license not valid to protect another place; not to be located in certain places; affidavits; penalty. R. S. c. 42, § 6. 1917, c. 139. No person shall open, keep, or carry on any employment agency in the state, unless such person shall first procure a license therefor from the municipal officers of the city or town where such employment agency is to be located. Any person who shall open or conduct any such agency without first procuring such license shall be guilty of a misdemeanor and shall be punished by a fine of not less than fifty, nor more than three hundred dollars, or by imprisonment for not less than one month nor more than six months, or by both fine and imprisonment. Such license shall be granted upon the payment to the city or town treasurer, annually, of a fee of twenty-five dollars for the use of said city or town; the license shall be signed by a majority of the municipal officers, and shall continue in force from May first to May first of the succeeding year. Every license so granted shall contain the name of the person licensed, a designation of the city, street, and number of the house or building in which the licensee is authorized to carry on the employment agency, and the number and date of such license, and shall be exhibited in a public and conspicuous place in the office or place of business of the licensee. Such license shall not be valid to protect any other place than that designated therein, unless consent is first obtained from the municipal officers, nor until the written consent to such transfer, of the surety or sureties on the bond required by the following section is filed with the original bond. No such agency shall be located in a building or upon premises where intoxicating liquors are sold or dispensed contrary to law, or which or part of which is used as an inn, lodging house, or boarding house; nor shall any license be issued to any person, directly or indirectly interested in the sale of intoxicating liquors. The application for such license shall be filed with the municipal officers at least one week prior to the date of hearing thereon, and the municipal officers shall act upon any application within thirty days after the filing thereof. Each application shall be accompanied by the affidavits of two persons who have known the applicant, or the chief officers thereof, if a corporation, for two years at least, stating that the applicant is, or said officers are, of good moral character, and a resident, or residents, of the state and has, or have, been such for at least five years prior to the date of such application.

Sec. 7. Bond required of applicant; action on bond. R. S. c. 42, § 7. The municipal officers shall require such person to file with his application a bond to the inhabitants of the city or town wherein such application is made, in the penal sum of one thousand dollars, with one or more sureties, to be approved by said municipal officers, conditioned that the obligor will conform to and not violate any of the duties, terms, conditions, provisions, or requirements of the last eight sections of this chapter. Whoever is aggrieved by the misconduct of any such licensed person, may maintain an action in the name of the inhabitants of the city or town, to whom the bond was given, but for his own benefit, upon the bond of such person, in any court having jurisdiction, and shall be liable for costs in such action, and the inhabitants of such city or town shall not be liable.

Sec. 8. Licensee to keep register, which is to be open for inspection. R. S. c. 42, § 8. Every such licensee shall keep a register in which shall be entered in the English language the date of every accepted application for employment, name and address of the applicant to whom employment is offered or promised, written name and address of the person to whom applicant is sent for employment, and of the fee received. The aforesaid register of applicants for employ-

CHAP. 46

ment shall be open during office hours to inspection by any one or more of the municipal officers, their authorized agents, or any police officer when on duty. No licensee, or his employees, shall knowingly make any false entry in such register.

Sec. 9. Receipt to be given to applicants for employment; fee returned if no employment obtained. R. S. c. 42, § 9. Every licensee shall give to each applicant for employment from whom a fee or other valuable thing shall be received for procuring such employment, or to whom a charge is made therefor, which fee or other valuable thing shall in no case exceed the sum of one dollar if paid in advance, or one dollar and twenty-five cents if charged to the applicant, a receipt, if said fee is paid in advance, or a statement if it is charged, in which shall be stated the name of the applicant, the amount of the fee or other valuable thing, the date, the name or nature of the employment or situation to be procured, and the name and address of the person, firm, or corporation, to whom the applicant is referred or sent for work or employment. Such fee shall be in full compensation for all service of said licensee. If the applicant does not obtain a situation, or employment through the agency of such licensee within six days after the application as aforesaid, said licensee shall return to said applicant on demand the amount of the fee or other valuable thing so paid and delivered by said applicant to said licensee, or if a charge was made, said licensee shall cancel the same, provided that said person seeking employment through such agency does not break any agreement he may make with said licensee, relative to time of entering into the employment sought for. The man to be employed must be furnished with a duplicate card showing name, last residence, and name and residence of nearest relative or friend. No licensee shall by himself, agent, or otherwise, induce or attempt to induce any employee to leave his employment with a view to obtaining other employment through such agency.

Sec. 10. No person to be sent to place of bad repute; questionable characters not permitted to frequent agency. R. S. c. 42, § 10. No licensee shall send, or cause any female help or servant, or inmate, or performer, to be sent to any questionable place or place of bad repute, house of ill fame, or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, vice, or gambling, the character of which such licensee knows, either actually or by reputation. No licensee shall knowingly permit questionable characters, prostitutes, gamblers, intoxicated persons, or procurers to frequent such agency. No licensee shall accept any application for employment made by or on behalf of any child, or shall place or assist in placing any such child in any employment in violation of law.

Sec. 11. Enforcement; complaints for violation, how and to whom made; notice of hearing; revocation of license. R. S. c. 42, § 11. The enforcement of sections six to thirteen, both inclusive, shall be entrusted to the municipal officers during their term of office and until the qualification of their successor or successors. Complaints of the violation of any provision of said sections shall be made orally or in writing to said municipal officers, and reasonable notice thereof, and of the time and place of hearing, not less than twenty-four hours, shall be given in writing to such licensee by serving upon him a concise statement of the facts constituting the complaint; the hearing shall be had before said municipal officers at such time and place as they may designate, within one week from the date of such service, and no adjournment shall be taken for a period longer than one week. The result of such hearing shall be announced within one week from the date thereof. The municipal officers may refuse to issue and may revoke any license for good cause shown within the meaning and purpose of

said sections; and when it is shown to the satisfaction of a majority of said municipal officers that any person is guilty of any immoral, fraudulent, or illegal act or conduct in connection with said business, said municipal officers shall revoke the license of such person; but notice of such charges shall be presented in writing signed by the party making the same and reasonable opportunity shall be given such licensee to defend himself in the manner heretofore provided in this section. Whenever said municipal officers shall refuse to issue or shall revoke any license of an employment agency, their decision shall be final. Whenever for any cause such license shall be revoked, such revocation shall take effect upon announcement of the decision, and such revocation shall be considered good cause for refusing to issue another license to said person or his representative, or to any person with whom he is to be associated in the business of furnishing employment or help.

Sec. 12. Penalty. R. S. c. 42, § 12. Whoever violates any provision of sections six to thirteen, both inclusive, of this chapter, except as is otherwise provided, shall be punished by a fine not exceeding twenty-five dollars with costs of prosecution. Judges of municipal and police courts, and trial justices shall have jurisdiction of such offenses, and in default of payment may commit the respondent to the county jail or house of correction for a period not exceeding thirty days. Any municipal officer may institute criminal proceedings to enforce the provisions of said sections.

Sec. 13. Definitions. R. S. c. 42, § 13. The term "person" in the six preceding sections shall include persons, company, society, association, firm or corporation, and the term "employment agency" shall include the business of keeping an intelligence office, employment bureaus, or other agencies for procuring work or employment for persons seeking employment, or for acting as agents for procuring such work or employment, where a fee or other valuable thing is exacted, charged, or received, or for procuring or assisting to procure employment, work, or situation of any kind or for procuring or providing hereby for any person; but said sections shall not apply to the employment of seamen nor to teachers' agencies or charitable institutions.

CHAPTER 47.

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

| | | |
|----------|-------|-------------------------------|
| Sections | 1- 4 | Pilots. |
| Sections | 5- 6 | Ship Owners. |
| Sections | 7-17 | Wrecks and Shipwrecked Goods. |
| Sections | 18-22 | Lighters and Harbors. |
| Sections | 23-31 | Port Wardens. |

Pilots.

Sec. 1. Appointment and bond of pilots. R. S. c. 43, § 1. The governor, with the advice and consent of the council, may appoint pilots for any port, in which a majority of the ship owners and masters apply in writing therefor and recommend suitable persons; and shall give to each of them branches or warrants for the execution of the duties of his office; and such pilots shall, before

CHAP. 47

entering upon said duties, give bond to the treasurer of state in the sum of five thousand dollars for the faithful performance thereof.

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

Sec. 2. Their duty; master may pilot his own vessel. R. S. c. 43, § 2. Such pilots shall take charge of all vessels drawing nine feet of water and upwards, bound into, and of all such vessels, except coasting and fishing vessels, bound to sea out of any of said ports, and shall pilot them into or out of the port assigned them, first showing to the master thereof their branch and informing him of their fees; but any master may pilot his own vessel without being subject to pay therefor.

Sec. 3. Governor and council to fix; fees, hear complaints, suspend or remove pilots. R. S. c. 43, § 3. The governor and council may fix the fees of pilotage; specify the same in the branch of each pilot; transmit to each collector of customs in said ports a schedule thereof, to be hung up by him for public inspection; hear and determine all complaints against such pilots for misconduct, and suspend or remove them and appoint others in their places.

Sec. 4. Liability for damage caused by their fault. R. S. c. 43, § 4. If any vessel, while under the charge of such pilot, is lost, run aground, or cast away, through his fault, he is liable to pay the owner or insurer a just compensation for any damage thereby sustained.

Ship Owners.

Sec. 5. Ship owners' liability to freighters. R. S. c. 43, § 5. No ship owner is answerable beyond the amount of his interest in the vessel and freight, for the embezzlement, loss, or destruction, by the master and mariners, of any property put on board of such vessel; nor for any act of theirs without his privity or knowledge; but if several owners or property on the same voyage suffer damage as aforesaid, and the whole vessel and her freight for the voyage are not sufficient to compensate each of them, they shall be compensated by the owner of the vessel in proportion to their respective losses, and for that purpose, they or the owner of the vessel, or any of them, may prosecute a bill in equity for discovery and payment of the sum, for which said owner is liable to the parties entitled thereto.

65 Me. 545.

Sec. 6. Charterer deemed the owner, and responsible to real owner. R. S. c. 43, § 6. For the purposes of the preceding section the charterer of any vessel, navigating the same at his own expense, shall be deemed the owner; and if loss happens to any person from the causes therein mentioned, and it is compensated from the freight or vessel, the owner thereof may recover the amount from the charterer.

65 Me. 545.

Wrecks and Shipwrecked Goods.

Sec. 7. Appointment and bond of commissioners of wrecks; remedy on bond. R. S. c. 43, § 7. The governor, with the advice and consent of the council, may appoint in counties where needed, commissioners of wrecks and shipwrecked goods, removable at pleasure; each shall give bond to the judge of probate for his county for the faithful discharge of his duties; and any person interested may have the same remedy for the breach of such bond, as on administrator's bonds.

See Const. of Me. Art. ix, § 1.

Sec. 8. Their powers and duties. R. S. c. 43, § 8. Every such commissioner,

immediately on receiving information of any shipwreck, or of the finding of any shipwrecked property of any kind to the amount of one hundred dollars on any of the shores or waters within his county, shall immediately repair to the place where the property is, and if the same is not in the custody of any owner or agent, he shall take charge of it, and secure and preserve the same for the owner.

Sec. 9. Authority of commissioner; penalty for disobeying orders. R. S. c. 43, § 9. The commissioner, in such case, may employ as many persons as he thinks necessary to assist in preserving the property; appoint guards to receive it; suppress all tumults and disorders; and any person who disobeys any of his lawful orders forfeits for each offense not exceeding ten dollars, to be recovered for the town in an action on the case in the name of the commissioner.

Sec. 10. All property to be inventoried and delivered to owner. R. S. c. 43, § 10. The commissioner shall, on every such occasion, take an inventory of all the property coming into his possession; and when required by any person interested, make oath thereto; and shall deliver a copy thereof, if required, together with all such property, to the person lawfully authorized to receive it; provided, that there is first paid or secured to him a reasonable compensation for his services, and such custom-house duties and other charges, if any, as he has paid, or become liable to pay, on account of the property in question.

Sec. 11. Commissioner to decide compensation of other persons. R. S. c. 43, § 11. No person interested in any such property shall be held to pay to any person, other than a commissioner, any compensation for services or expenses in taking or securing any property, except property taken or secured before the arrival of the commissioner; in which case the commissioner shall, upon due hearing of all parties interested, determine the amount of compensation by his award in writing; which shall be final, unless the sum awarded to any party exceeds fifty dollars.

Sec. 12. Appeal to Judge of Probate, who may finally decide, and enforce decision. R. S. c. 43, § 12. If the commissioner and the party interested disagree respecting the commissioner's charges, or if the award aforesaid exceeds fifty dollars, any party aggrieved may appeal to the judge of probate for the county where the property is situated; who shall, either in vacation or term time, on due notice, decide the case in a summary manner, and issue, under the seal of the court, any process necessary to carry his decision into effect.

Sec. 13. Penalty for intermeddling with property after arrival of commissioner. R. S. c. 43, § 13. Whoever after the arrival of the commissioner and without his direction or that of some person interested, takes, detains, or intermeddles with any such property, forfeits not exceeding one thousand dollars for each offense, to be recovered in an action of debt by the commissioner or any person interested, to his own use.

Sec. 14. Commissioner to publish particulars of wreck; penalty for neglect. R. S. c. 43, § 14. The commissioner shall, as soon as practicable, publish all the facts and particulars of the shipwreck and of the property found, in such manner as shall be best for the information of all parties; and in case of neglect, he forfeits fifty dollars to the interested party first suing therefor in an action of debt.

Sec. 15. Property may be sold. R. S. c. 43, § 15. He may dispose of so much of the property by public auction within thirty days after taking it, as is necessary to pay the duties thereon at the custom-house; and whenever necessity requires it, may, in the same way sell such as is perishable, giving reasonable public notice, and if practicable, in a public newspaper.

CHAP. 47

Sec. 16. Property to be accounted for to treasurer of state; liability for neglect. R. S. c. 43, § 16. If no person interested appears within one year after such property is taken into custody, and establishes his claim thereto, the commissioner shall present under oath to the treasurer of state an inventory of the property; and if sold, an account of the sales, with an account of all moneys paid by him as duties and expenses thereon; and pay and deliver to the treasurer the balance of such accounts, with all the property remaining in his hands for the use of the state; and if he neglects to do so for sixty days after the expiration of such year, the treasurer shall cause a suit therefor to be commenced in behalf of the state.

Sec. 17. Treasurer to allow commissioner's pay. R. S. c. 43, § 17. The treasurer may make to the commissioner on the settlement of his account as aforesaid, a just compensation for his services and expenses, to be ascertained in case of a disagreement between them, as provided in section twelve.

Lighters and Harbors.

Sec. 18. Lighters to be marked; marks to be inspected and renewed. R. S. c. 43, § 18. Every boat or lighter employed in carrying stones, sand, or gravel shall be marked at light water-mark, and at least at five other places, with the figures four, twelve, sixteen, twenty-four, and thirty, legibly made on the stem and stern-post thereof; expressing the weight which such boat or lighter is capable of carrying, when the lower part of the respective numbers touches the water in which it floats; and such marks shall be inspected yearly, and when found illegible in whole or in part, they shall be renewed.

Sec. 19. Penalty for using lighters without marks and for falsely marking. R. S. c. 43, § 19. The master or owner who uses his craft without such marks and any person who falsely marks any such boat or lighter forfeits fifty dollars to be recovered by any prosecutor in an action of debt.

Sec. 20. Municipal officers to appoint inspectors and regulate fees. R. S. c. 43, § 20. The municipal officers of every town where boats and lighters are employed for the purposes aforesaid shall annually, in April or May, appoint some suitable person who shall be sworn, to examine and ascertain the capacities of all such boats and lighters, and mark them as above prescribed; and said officers shall establish and regulate the fees therefor.

Sec. 21. To be remarked if capacity altered. R. S. c. 43, § 21. When such inspector thinks that the burden or capacity of any such boat or lighter is altered by repairs or otherwise he shall forthwith ascertain the same anew, and mark it accordingly.

Sec. 22. Penalty for throwing ballast into roadstead, port, or harbor; or taking stone from shore or island without consent. R. S. c. 43, § 22. No master of any vessel shall throw overboard ballast in any road, port, or harbor, under penalty of sixty dollars; and no person shall take any stone or other ballast from any island, beach, or other land, without consent of the owner, under a penalty not exceeding seven dollars for each offense, to be recovered in an action of debt by any prosecutor, half for himself and half for the town where the offense is committed.

Port Wardens.

Sec. 23. Port wardens, election of. R. S. c. 43, § 23. Port wardens shall be elected in any city or town situated on navigable waters, upon the petition of ten or more citizens engaged in commercial pursuits therein.

As to appointment of harbor masters, see c. 5, § 180.

Sec. 24. By board of trade or by town officers. R. S. c. 43, § 24. If in such city or town there is a board of trade duly incorporated, said board shall annually elect the port warden; otherwise the municipal officers thereof shall annually elect them.

Sec. 25. Removal; vacancies. R. S. c. 43, § 25. Said boards of trade, by their managers, or said municipal officers, shall forthwith, on complaint of any person aggrieved, after hearing, remove for cause, any port warden by them elected, and all vacancies shall be filled by said authorities.

Sec. 26. Qualification and term of office. R. S. c. 43, § 26. Port wardens shall be men of commercial or nautical experience, and shall hold office one year from each election and until others are qualified in their stead, except when removed for cause, or when elected to serve out an unexpired term; and they shall be sworn faithfully to perform their duties.

Sec. 27. Record. R. S. c. 43, § 27. They shall make a record of their doings and keep the same in their office for inspection at any time, free of charge, by any person interested therein.

Sec. 28. Duty of port warden on arrival of vessel. R. S. c. 43, § 28. When requested by any person interested, port wardens shall proceed on board of any vessel on her arrival in port, and survey her hatches, and notice if they are properly caulked and secured; and if they have been opened by some person not a port warden, that fact shall also be noticed, and all the facts in relation to the hatches of said vessel shall be entered in the official record. They shall also examine the condition and stowage of the cargo of any vessel, and if any portion of it is found to be damaged, they shall inquire into and ascertain the cause thereof, and make a memorandum of the same, noting particularly the marks and numbers of each damaged package, and shall enter the same in full in the records of their office; and for the purpose of ascertaining the extent of said damage, they shall examine goods, wares, or merchandise of any description, in any warehouse or store, or on any wharf or at any place where the same are; provided, that said goods, wares, or merchandise are part of the cargo, and are claimed to be damaged; and they shall note particularly the marks and numbers of every package examined by them and the extent of the damage received, and all the facts in relation thereto shall be entered in the records of their office.

Sec. 29. Duty of port warden in case of vessel arriving in distress. R. S. c. 43, § 29. When requested in writing by any person interested, port wardens shall also survey the cargo of any vessel arriving in port in distress; and shall make and record in the books of their office, a full and particular report of the condition of said cargo, and of their recommendations in relation to the disposal of such portions of the same as in their judgment may not be in condition for reshipment, reference being had to the best interests of all concerned.

Sec. 30. In case of wrecked or damaged vessel. R. S. c. 43, § 30. When requested in writing by any person interested, they shall also survey any vessel which may have suffered wreck or damage, or which may be deemed unseaworthy; and such port wardens shall call to their assistance one merchant and one shipwright, both of whom shall be competent and disinterested persons and shall be sworn faithfully to perform their duties in the examination and survey; and said surveyors and port wardens shall examine the hull, spars, sails, rigging, and all the appurtenances of said vessel, and make and record in the books of the port wardens' office a full and particular report of all the surveys by them held on said vessel, specifying what damage she has sustained and what repairs in their opinion are necessary to render her again seaworthy; and the aforesaid report shall be presumptive evidence of the necessity of such repairs and of the sufficiency of the same when made.

Sec. 31. Jurisdiction; penalty for performing duties of port wardens without authority. R. S. c. 43, § 32. In the cities and towns for which they are elected, port wardens shall have exclusive jurisdiction in all matters pertaining to their duties, as specified in this chapter; and any other person who performs or attempts to perform any such duties in any city or town wherein there is a port warden, forfeits for each offense one hundred dollars, to be recovered in an action of debt by any prosecutor.

CHAPTER 48.

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

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

Inspection of Flour.

Sec. 1. Inspectors of flour, their appointment. R. S. c. 44, § 1. The municipal officers of towns may appoint annually in their towns, one or more suitable persons not interested in the manufacture and sale of flour to be inspectors thereof for one year from the date of appointment.

Sec. 2. Oath; certificate of appointment. R. S. c. 44, § 2. Such inspector, before entering upon his duties, shall be sworn to the faithful and impartial discharge thereof before the town clerk, who, upon payment of fifty cents, shall give him a certificate of his appointment and qualification, to be exhibited on the demand of any person interested in any inspection made by him.

Sec. 3. Inspection; duties of inspectors; record. R. S. c. 44, § 3. Inspection of flour shall be for the purpose of ascertaining its soundness; every package inspected shall be opened sufficiently to allow a trier to be passed through it, and a sample of the whole length of the passage shall be taken out and examined by the inspector, who shall mark upon each package with a brand or stencil, the word, "Sound" or "Unsound," as the quality of the flour contained in each is found, and his name, residence, office, and the year of inspection. He shall keep a record of all flour inspected by him, in a suitable book which he shall exhibit to any person requiring it.

Sec. 4. Penalty for fraudulent marks. R. S. c. 44, § 4. If an inspector falsely and fraudulently marks any package of flour, he shall be fined five dollars for every such package, and forfeits to any person injured thereby three times the amount of damage, in an action of debt.

Sec. 5. Penalty for alteration, etc., of inspection marks. R. S. c. 44, § 5. Whoever, with intent to defraud, alters, obliterates or counterfeits the marks of an inspector, and whoever, with such intent, places upon any package of flour, marks falsely purporting to be inspection marks, shall be fined not exceeding

fifty dollars for each offense and on conviction of placing such false marks on as many as ten packages at one time, shall also be imprisoned not exceeding ten months.

Sec. 6. Purchasers of flour may require inspection before delivery. R. S. c. 44, § 6. The purchaser may require flour to be inspected before delivery.

Note. Inspection fee. R. S. c. 126.

Sec. 7. Duties of inspectors in relation to sample packages. R. S. c. 44, § 7. Inspectors shall, when required, determine whether the flour conforms to and equals the sample furnished, and shall mark, with some distinct and intelligible mark, the packages that are found like the sample.

Note. Additional fee for this service. R. S. c. 126.

Sec. 8. Contract for sale of uninspected flour not prohibited. R. S. c. 44, § 8. Nothing herein contained prohibits any contract for the manufacture or sale of uninspected flour, when inspection is not required by the buyer or the seller.

Inspection of Leather.

Sec. 9. Inspectors of sole leather, appointment, duties; fees to be determined by the municipal officers. R. S. c. 44, § 9. The municipal officers of each town, when they deem it expedient, may appoint one or more suitable inspectors of sole leather, who shall receive such fees from their employer, as said officers establish; and when paid by the seller, to be repaid to him by the buyer; when requested, they shall go to any place in their town to inspect any sides of sole leather, which have not been inspected in this state according to law.

See Const. of Me. Art. ix, § 1.

Sec. 10. Mode of inspection and stamping sole leather; penalty. R. S. c. 44, § 10. Each inspector shall provide himself with a proper apparatus, with which he shall weigh and stamp every side of sole leather inspected by him, with the weight thereof, his surname, and the name of his town; and on all sole leather made of good hides, and in the best manner, the word "best," shall be stamped; on all made of such hides in a merchantable manner, the word "good;" and on all other, the words, "second quality," "third quality," "damaged," or "bad," according to the fact; and whoever counterfeits, alters or defaces such mark, forfeits twenty dollars for each offense, half to the town and half to the prosecutor.

Use of Trade-Marks and Trade Names.

Sec. 11. Manufacturer of leather, boots, and shoes, may stamp his name thereon; effect; penalty for counterfeiting stamp. R. S. c. 44, § 11. Every manufacturer of leather, and of boots and shoes, of any description, has the exclusive right of stamping them with the initials of his christian name, and the whole of his surname; and such stamping is a warranty that the article is merchantable, and well made of good materials; and if any person fraudulently stamps any such articles with the name or stamp of any other person, he shall be fined not exceeding twenty dollars, or imprisoned not exceeding six months.

Sec. 12. Use of another's trade mark prohibited. R. S. c. 44, § 12. When a person uses any peculiar name, letters, marks, device, or figures, cut, stamped, cast or engraved upon, or in any way attached to or connected with any article manufactured or sold by him to designate it as an article of a peculiar kind, character, or quality, or as manufactured by him, no other person shall use, without his consent, the same or any similar names, letters, marks, devices, or

CHAP. 48

figures, for the purpose of falsely representing any articles to have been manufactured by him, or to be of the same kind, character, or quality, as that manufactured or sold by the party rightfully using the same.

Sec. 13. Damages for violation. R. S. c. 44, § 13. Whoever violates the provisions of the preceding section, is liable to any party aggrieved thereby, for all damages actually incurred, to be recovered in an action on the case.

Sec. 14. Business names, unauthorized use of, prohibited. R. S. c. 44, § 14. No one shall assume, or continue to use in his business, either alone, or in connection with his own or any other name, or designation, the name of any person formerly connected with him in partnership, without the written consent of such person or his legal representative.

Sec. 15. Injunctions. R. S. c. 44, § 15. The supreme judicial court may restrain, by injunction, any use of trade-marks or names, in violation of the foregoing provisions.

Sec. 16. Proprietor of trade-mark may file certificate with secretary of state; its contents. R. S. c. 44, § 16. Any person, entitled to the exclusive use of any trade-mark, or who intends to adopt and use any trade-mark not previously adopted or used by another, may file for record in the office of the secretary of state a certificate setting forth his name, residence and place of business; the class of merchandise and the particular description of goods comprised in such class to which such trade-mark has been or is to be appropriated; a description thereof, and of the mode in which it is to be applied and used; the date when it was first used or adopted; that he has a right to the use of it; and that no other person, firm or corporation has the right to such use, either in the identical form, or having such near resemblance thereto as is calculated to deceive. A facsimile of such trade-mark shall be incorporated in or annexed to said certificate, and a duplicate shall be filed therewith, to be pasted or bound into the record book, if practicable. Such certificate shall be signed and sworn to by such person, or his agent.

Sec. 17. Penalty for perjury; if secretary of state believes certificate untrue, he may decline to record it; mandamus to compel recording. R. S. c. 44, § 17. Whoever wilfully swears or affirms falsely to any such certificate, is guilty of perjury, and shall pay treble damages to every party injured thereby. If the secretary of state has reason to apprehend, on the filing of such certificate, that any statement therein contained is untrue, he may decline to record the same, unless the party filing it obtains a writ of mandamus to compel him. Such writ may be granted by any proper court, but without costs to the secretary, on proof that all the statements in such certificate are true, but no final hearing on the application therefor shall be had until such notice thereof as said court orders has been advertised in one or more newspapers published in the county where the party filing said certificate resides; and any persons who desire may appear and intervene as parties defendant, and oppose the granting of such writ, and shall be liable to judgment for any costs occasioned by such intervention.

Sec. 18. Exclusive right to use trade-mark; rights assignable. R. S. c. 44, § 18. Every party entitled to make and file such certificate and affidavit, upon recording the same in said office, becomes entitled to the exclusive use of the trade-mark therein described, so long as he or his assigns continue to be engaged in the manufacture or sale of the merchandise or description of goods to which it is appropriated; and such right is assignable in writing; but all assignments thereof are good only against the assignor and his personal representatives, until lodged for record in said office.

Sec. 19. Certificates and assignments recorded; copies evidence. R. S. c. 44,

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

See c. 126, § 13.

Sec. 20. Counterfeiting trade-marks, and sale of goods with such counterfeits thereon prohibited; penalty. R. S. c. 44, § 20. Whoever knowingly and wilfully counterfeits, or causes to be counterfeited, any private stamps, labels, or trade-marks, used by a mechanic or manufacturer about the sale of his goods, with intent to defraud the purchaser or manufacturer; or sells such goods with such counterfeit stamps, labels, or trade-marks thereon, knowing them to be counterfeit, without disclosing the fact to the purchaser, shall be punished by imprisonment for less than one year, or by a fine not exceeding two hundred dollars.

Sec. 21. Penalty for counterfeiting recorded trade-marks. R. S. c. 44, § 21. Whoever reproduces, copies, counterfeits, or imitates any such recorded trade-mark, knowing the same to have been recorded, and affixes such reproduction, copy, counterfeit, or imitation to goods resembling, or designed to resemble, those to which such trade-mark is so appropriated, shall pay to the owner of such trade-mark double damages, besides such sum, not exceeding five hundred dollars, as the court before which the action is brought orders to be added to the damages found by the verdict or judgment.

Sec. 22. Penalty for fraudulent use of such trade-marks. R. S. c. 44, § 22. Whoever fraudulently and with intent to deceive affixes any trademark recorded under section nineteen, or any such imitation thereof as is calculated to deceive, to any goods, receptacle, or package similar in descriptive properties to those to which such trade-mark is appropriated, or who fraudulently and with intent to deceive, places in any receptacle or package to which is lawfully affixed a recorded trade-mark, goods, other than those which said trade-mark is designed and appropriated to protect; or who fraudulently and with intent to deceive, deals in or keeps for sale any goods with a trade-mark fraudulently affixed, as above described, or any goods contained in any package or receptacle having a lawful trade-mark, but not being such goods as said trade-mark was designed and appropriated to protect, shall be fined not more than five hundred dollars, or imprisoned not more than thirty days.

Sec. 23. Rights to existing trade-marks not abridged. R. S. c. 44, § 23. This chapter does not abridge rights to any existing trade-marks, whether the same are hereafter recorded or not, nor any remedies or rights of action otherwise or heretofore existing in favor of owners of trade-marks.

Note. Labels of Workmen's Unions protected, c. 53, §§ 43-49.

Oils.

Sec. 24. Pure sperm-oil defined; penalty for adulteration. R. S. c. 44, § 24. All oils sold under the names of sperm, summer, fall and winter oils, are deemed to be sold for pure sperm-oil, the test of which is Southworth's oleometer. Whoever sells under said names, any oils which are adulterated by the mixture of an inferior article, without disclosing the full extent of adulteration to the purchaser, forfeits to the prosecutor fifteen dollars for each offense; and the oil so sold shall be deemed whale-oil, and the seller is liable to the purchaser for the difference between pure sperm and whale-oil, to be recovered in an action on the case.

Inspection of Petroleum, Coal-oil and Burning Fluid.

Sec. 25. Inspectors of petroleum, their appointment and duties; compensation to be fixed by municipal officers. R. S. c. 44, § 25. In towns containing two thousand inhabitants or more, the municipal officers, on or before the first day of May annually, shall appoint one or more persons, and fix their compensation, to be inspectors of petroleum, coal-oil, and burning-fluid, who, when requested, shall inspect such oils and burning-fluids by applying the fire test with G. Tagliabue's pyrometer or some other accurate instrument, to ascertain the igniting or explosive point thereof in degrees of Fahrenheit's thermometer, and they shall cause every vessel or cask thereof by them so inspected to be plainly marked by the name of such inspector, the date of inspection, and the igniting or explosive point of the contents thereof.

See Const. of Me. Art. ix, § 1.

Sec. 26. Casks which shall be marked "unsafe for illuminating purposes;" penalty for false marking. R. S. c. 44, § 26. When a cask or vessel of such oil or fluid will not bear the fire test of at least one hundred and twenty degrees Fahrenheit without ignition or explosion, the same shall be marked as aforesaid, and also "Unsafe for illuminating purposes." If an inspector knowingly puts false marks upon such casks or vessels inspected by him, he shall be fined not exceeding five hundred dollars, or be imprisoned six months.

Sec. 27. Penalty for neglect of such inspection and marking. R. S. c. 44, § 27. Every person and corporation engaged in manufacturing petroleum, coal-oil, or burning-fluid, shall cause every cask or other vessel thereof to be so inspected and marked, by a sworn inspector. Whoever manufactures or sells such oil or burning-fluid not so inspected and marked in this state, or that has been so inspected and marked as unsafe for illuminating purposes, shall pay a fine not exceeding five hundred dollars, or be imprisoned six months.

See c. 30, § 20.

Sec. 28. Rights and duties of town and police officers. R. S. c. 44, § 28. The municipal officers of towns, and the police of cities, may at all times examine all such oils and fluids kept in their towns for sale, and cause them to be inspected and tested; and they shall do so in all cases where they are informed or believe that the same are kept for sale in violation of law; and cause the keeper and seller to be prosecuted therefor.

Sec. 29. Persons engaged in sale of oil may file with town clerk and publish description of marks used on cans. R. S. c. 44, § 29. All persons or corporations engaged in the sale of kerosene, refined petroleum, gasoline, or other burning or illuminating oils or fluids, in cans of a capacity of not less than five gallons, with their names, or other marks or devices branded, stamped, engraved, etched, impressed, or otherwise produced upon such cans or anything connected therewith or appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid, used by them, and cause the same to be published once a week for three successive weeks, in any newspaper published in the county in which said notice may have been filed as aforesaid.

Marks on Syphons, Bottles, and Cans.

Sec. 30. Protection of marks on containers used for soda-water and similar beverages. R. S. c. 44, § 30. All persons or corporations engaged in the manufacture or sale of soda-water, mineral, and aerated waters, ginger ale, small beer, spruce beer, white beer, or other similar beverages, in syphons, boxes, cans,

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

Sec. 31. Unlawful use, or defacing of containers marked as provided in §§ 29 and 30; penalty. R. S. c. 48, § 31. Whoever knowingly and wilfully, without the written consent of an owner who has complied with the provisions of the preceding section or of section twenty-nine, uses, buys, sells, fills, or traffics in any such syphon, box, can, bottle, keg, or other vessel, or any such can of a capacity of not less than five gallons, used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, so marked as aforesaid, or defaces, covers up, or obliterates the names, marks, or devices thereon, with intent to use, fill, buy, sell, dispose of, or traffic therein, or to convert the same to his own use, shall, on complaint, be punished by imprisonment for not more than thirty days, or by fine of not more than twenty dollars, and fifty cents additional for each such syphon, box, can, bottle, keg, or other vessel or such can of a capacity of not less than five gallons, so used, bought, sold, filled, trafficked in, or disposed of, or by both such imprisonment and fine in the discretion of the magistrate hearing the complaint; and the said magistrate on finding such person or persons guilty, shall impose the punishment herein prescribed and shall award possession of the property taken to the owner thereof.

Sec. 32. Search warrant may issue to search for such containers. R. S. c. 44, § 32. Whenever any person in his own behalf or in behalf of any corporation shall make complaint on oath to any magistrate or court authorized to issue warrants in criminal cases, that he has reason to believe and does believe that any of his or said corporation's syphons, boxes, cans, bottles, kegs, or other vessels, or any of his or said corporation's cans of a capacity of not less than five gallons, used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, a description of the names, marks, or devices whereon has been so filed and published as aforesaid, are being unlawfully used, filled, bought, sold, disposed of, or trafficked in, or unlawfully had by any person or corporation, manufacturing or selling said beverages, oils, fluids, or liquids, or by any junk dealer or dealer in second-hand articles, or by any vendor of such syphons, boxes, cans, bottles, kegs, or other vessels, or cans of a capacity of not less than five gallons used for the purposes aforesaid, the said magistrate shall thereupon issue a search warrant to search therefor.

Sale of Lightning-Rods.

Sec. 33. Manufacturer selling lightning-rods to be licensed. R. S. c. 44, § 33. No manufacturer, whether a person, firm, or corporation, shall sell or offer for sale material used for the protection of buildings from damage by lightning until licensed so to do by the insurance commissioner, as hereinafter provided.

Sec. 34. Conditions of license; bond; guarantee. R. S. c. 44, § 34. No such license shall be issued until the insurance commissioner has approved of the material made by such manufacturer for protection from lightning, and of the manner and system of installing such material, nor until such manufacturer has filed a bond with the insurance commissioner in the penal sum of ten thousand

CHAP. 48

dollars, with surety or sureties satisfactory to the insurance commissioner, conditioned for fulfilling the guarantee agreement provided for by this section, together with a written stipulation that legal process affecting such manufacturer or his agent, served upon the insurance commissioner for the time being, shall have the same effect as if personally served upon such manufacturer or his agent within the state. The manufacturer shall also file with the insurance commissioner a copy of the guarantee agreement to be issued by him, which shall be in a form approved by the insurance commissioner and must provide in substance that in the event of damage by lightning to property equipped by said manufacturer or his agent, any money paid for the equipment of said building shall be returned to the owner thereof, or the damage to said building repaired. When the manufacturer has complied with the foregoing requirements, and the insurance commissioner is satisfied that the manufacturer is safe and reliable as to assets, business standing, and methods, and is entitled to confidence, the insurance commissioner shall issue a license to such manufacturer, to continue in force one year from date of issue. The license may be revoked at any time by the insurance commissioner for good cause, after a hearing.

Sec. 35. Agent's license. R. S. c. 44, § 35. 1921, c. 67. 1923, c. 39. Upon written notice from a manufacturer licensed under the preceding section, of the appointment of a suitable person, who must be a resident of the state, to act as his agent in this state, and upon the presentation of a certificate of the good reputation and moral character of such person, signed by the mayor or selectmen of the city or town of which he is a resident, the insurance commissioner may, if he is satisfied that the appointee is a suitable person and a resident of this state, issue to him a license as such agent. For the purposes of this act "such agent" shall be construed to mean the duly licensed resident of this state who purchases, sells and installs such lightning rod material. Such license shall continue in force until the thirty-first day of December following the date of issue, but may be revoked at any time by the insurance commissioner for good cause, after a hearing.

Sec. 36. Agent to exhibit license when requested by public officer; penalty. R. S. c. 44, § 36. Every agent shall, upon demand, exhibit his license to any mayor, selectman, sheriff or his deputy, constable, or police officer, and to any person to whom he sells or offers to sell lightning-rods, and shall furnish a copy of sections thirty-three to thirty-eight, both inclusive, to every person to whom he sells such lightning-rods. If he neglects or refuses to do so, he shall be liable to the penalty provided by the following section for acting as such agent without a license.

Sec. 37. Penalty for selling without license. License not transferable. R. S. c. 44, § 37. Whoever sells or offers for sale such lightning-rods or other material, without being licensed as provided by section thirty-four or section thirty-five, shall be punished by a fine of not more than two hundred dollars, or by imprisonment for six months for each offense. The licenses provided for by sections thirty-four and thirty-five are valid for only one person, firm or corporation, and are not transferable.

Sec. 38. Holder of guarantee agreement may bring suit on bond. R. S. c. 44, § 38. The holder of any guarantee agreement issued under the provisions of section thirty-four may bring suit in the name of the insurance commissioner upon the bond provided by said section, and have the same procedure and remedies thereon as in the case of official bonds of sheriffs, but the amount of damages need not be first ascertained. Whenever legal process against such manufacturer is served upon the commissioner, he shall take such action as is

provided in the case of the service of legal process against foreign insurance companies.

See c. 93, §§ 17-20.

Sale of Firearms.

Sec. 39. Record to be kept of all firearms sold; penalty for not keeping record, or for giving false name to dealer. R. S. c. 44, § 39. No dealer shall sell, let, or loan any firearm to any person without first recording in a book kept for the purpose, the name or make, calibre, and number, if any, of said firearm, also the name and address of the purchaser or recipient of said firearm. Said record shall be made before said firearm is delivered, and shall be open to the inspection of any sheriff, deputy sheriff, police officer, constable, game warden, or prosecuting attorney. Any dealer who fails to keep such record or refuses to show the same to any officer named above, shall be punished by a fine not exceeding fifty dollars. Whoever gives a false or fictitious name to said dealer shall be punished by a fine not exceeding fifty dollars. This section shall not apply to wholesalers, who sell only to other dealers, or to manufacturers who sell only at wholesale.

Note. Sale or use of firearms fitted with device to deaden sound prohibited, c. 37, § 60.

Assayers of Ores and Metals.

Sec. 40. Assayers, their appointment, duties, and compensation. R. S. c. 44, § 40. The governor, with the advice and consent of the council, may appoint one or more suitable persons to be assayers, who shall assay such ores, metals, and other substances, requiring chemical analysis, as are offered for that purpose, and shall give a certificate thereof; they shall receive a reasonable compensation from their employers.

See Const. of Me. Art. ix, § 1.

CHAPTER 49.

Sea and Shore Fisheries.

| | |
|----------------|---|
| Sections 1-7 | Sea and Shore Fisheries Commission. |
| Sections 8-19 | Inspection of Fish. |
| Sections 20-50 | Regulation of Lobster Industry. |
| Sections 51-52 | Fish Packing. |
| Sections 53-55 | Fish Culture and Development of Fishing Industry. |
| Sections 56-71 | Regulation of Shell-Fish Industry. |
| Sections 72-88 | Use of Seines, Weirs, Nets, and Artificial Flies. |
| Sections 89-99 | General Provisions. |

Sea and Shore Fisheries Commission.

Sec. 1. Terms defined. 1917, c. 293, § 1. The word "commission" as used in this chapter shall mean the sea and shore fisheries commission. The word "commissioner" as used in this chapter shall mean a member of the commission above defined. The word "director" as used in this chapter shall mean the executive officer of the commission provided for by section three of this chapter.

Sec. 2. Sea and shore fisheries commission; appointment, qualifications, tenure, removal, vacancies, power, duties, etc.; rules and regulations; penalty

CHAP. 49

for violating same. 1917, c. 293, §§ 3, 4, 6. 1921, c. 82. The sea and shore fisheries commission shall consist of three persons who shall not all be members of the same political party and who except as hereinafter provided shall be chosen from the two political parties casting the largest number of votes for governor at the last preceding election. They shall be appointed by the governor, with the advice and consent of the council, in successive years upon expiration of the terms of the present commissioners, and each commissioner shall hold office for a term of three years unless sooner removed. Commissioners may at any time be removed from office for cause by the governor with the advice and consent of the council after notice and hearing. In case of a vacancy the governor, with the advice and consent of the council, shall appoint a person of the same political party as the retiring commissioner, who shall hold office for the remainder of the unexpired term. The sea and shore fisheries commission shall have general supervision of the sea and shore fisheries and shell-fish regulated by this chapter. They shall exercise supervision over all the fisheries and their products taken from the tide waters within the state, including the proper enforcement of all laws relating to the catching, packing, curing, manufacturing, selling, branding, and transportation of all kinds of pickled, salt, smoked, fresh, canned, or frozen shell or other fish. They shall have authority to make rules and regulations governing the time, manner, and conditions of taking fish, shell-fish, and lobsters and may declare a close time on such varieties and in such localities as they may determine; but such rules and regulations shall be made and such close time declared only after hearing, reasonable notice of which shall have been given by publication or otherwise to all parties interested. Rules and regulations so made and close time so declared shall be held to take precedence over any then existing provisions of statute inconsistent therewith.

Whoever violates the rules and regulations so made or the close time so declared shall be liable to the same fines and penalties as are provided in section twenty of this chapter relating to engaging in the lobster business without a license.

*121 Me. 450.

Note. This section has been consolidated and redrafted. Compensation. See c. 125.

Sec. 3. Director of sea and shore fisheries; powers and duties. 1917, c. 293, § 7. 1923, c. 207. The commission shall appoint a director of sea and shore fisheries who may be removed by them at their pleasure. He may employ, subject to the approval of the commission, one or more clerks and may also incur a reasonable expense for traveling expenses, office rent, postage, printing, stationery, telephone, and express. He shall have and exercise personal supervision of the work of the department and of the enforcement of the laws relating to sea and shore fisheries by the wardens and shall himself possess all the powers of a warden, [and shall possess all the powers and perform all the duties hereinafter specified in this chapter.] He shall make a detailed biennial report in the month of December, showing the amount of capital invested in, number of persons employed in, value of products of, and any other information that he may be able to obtain relating to the sea and shore fisheries. He shall keep a record of all prosecutions for violations of the laws relating to the sea and shore fisheries, the names of persons or firms prosecuted, the fines imposed and collected in each case and the final disposition of the same, and submit the same in his report, which shall be made to the commission and by them transmitted to the governor and council, with such additional statement as they may see fit to make.

Note. Compensation. see c. 125.

Sec. 4. Fish wardens, appointment; powers; bond. R. S. c. 45, § 2. 1917, c. 293, § 8. Fish wardens shall be appointed by the director of sea and shore fisheries, and shall be removable by him at pleasure. They shall enforce all laws and the rules and regulations relating to sea and shore fisheries; arrest all violators thereof and prosecute all offenses against the same; they shall have the same power to serve criminal processes against such violators and be allowed the same fees as sheriffs for like services. They shall have the same right as sheriffs to require aid in executing the duties of their office. They shall, before being qualified to discharge the duties required by this chapter, give bond with two good and sufficient sureties or with a surety company authorized to do business in the state, as surety, in the penal sum of two thousand dollars, approved by the director of sea and shore fisheries, to the treasurer of state, conditioned for the faithful performance of the duties of their office, provided that in case of emergency, under direction of the director of sea and shore fisheries, they may discharge their official duties for a period not exceeding two weeks after their appointment and before the filing and approval of said bond.

99 Me. 229; *107 Me. 349.

Sec. 5. Authority of director and wardens in enforcing laws relating to sea and shore fisheries; use of search warrants. R. S. c. 45, § 3. Fish wardens shall be held to be officers with all the powers of sheriffs within the meaning of that term as used in the general law, and shall have jurisdiction and authority in all the counties of the state, and in all the waters within the jurisdiction of the state. They shall enforce all laws relating to the sea and shore fisheries, and may enforce any provisions of law relating to the lobster industry, either with or without a warrant, but shall obtain a warrant thereafter within twenty-four hours. The director of sea and shore fisheries and fish wardens may, with or without a warrant arrest any person whom they may have reasonable grounds to believe guilty of violating any of the provisions of this chapter, and may with or without a warrant, but subject to the provisions of section forty-five, enter upon, open, and search any vessel, boat, building, car, trap, or other receptacle or place where they have reasonable grounds to believe that fish or lobsters liable to seizure are to be found, and seize and carry away all fish or lobsters liable to seizure found therein, and any lobster car, trap, net, barrel, box, or package in which the same are found or which are liable to seizure under any of the provisions of this chapter, the fish, lobsters, or other property thus seized to be disposed of according to law; but no dwelling-house or hotel shall be searched without a warrant issued for that purpose, and then only in the day time. Any magistrate may issue warrants to search within his jurisdiction any dwelling-house or hotel in the day time, or any building, vessel, boat, or receptacle for fish or lobsters, or any place or places used therefor to the director of sea and shore fisheries, or fish warden appointed and qualified as provided in this chapter. Such warrants shall issue subject to the requirements of section fourteen of chapter one hundred and forty-four.

*94 Me. 132.

Sec. 6. Concurrent jurisdiction with commissioner of inland fisheries and game over migratory fish. 1923, c. 213. All sea salmon, shad, alewives, and smelts that migrate from the ocean into fresh water shall be under the concurrent jurisdiction of the sea and shore fisheries and the inland fish and game commission wherever found.

See c. 37.

Sec. 7. Wardens to make monthly report. R. S. c. 45, § 4. Each warden shall make a detailed monthly report to the director of sea and shore fisheries of all that has come to his knowledge relating to the fisheries within his county.

CHAP. 49

or in any county where he has rendered services, from the first day of one month to the first day of the following month, in such manner and on such blanks as the commissioner may prescribe and furnish, and shall do such other acts as the commissioner may require for the purpose of gaining information and for the proper enforcement of the law.

Inspection of Fish.

Sec. 8. Appointment of inspectors of fish; term. R. S. c. 45, § 5. In each town where pickled fish are cured or packed for exportation, the governor, with the advice and consent of the council, shall, from time to time, as occasion requires, appoint one or more persons skilled in the quality of the same, to be inspectors of fish, who shall hold their office for five years, unless sooner removed by the governor and council.

Sec. 9. Inspectors to give bond. R. S. c. 45, § 6. Every such inspector, before entering upon his duties, shall give bond with sufficient sureties to the treasurer of the town for which he is appointed, to the satisfaction of the municipal officers thereof, in the penal sum of not less than five hundred, nor more than five thousand dollars, for the faithful performance of his official duties; and such officers shall, at least once a year, examine the bonds given by said inspectors, and if that of any inspector is not in their opinion sufficient they shall forthwith notify him, and if for thirty days thereafter he neglects to give satisfactory bond, they shall give information thereof to the governor who shall remove him from office.

See Const. of Me. Art. ix, § 1.

Sec. 10. Inspectors to make returns annually of all fish inspected. R. S. c. 45, § 7. Every inspector shall, by the thirtieth day of November, annually, make a return into the office of the director of sea and shore fisheries of all fish by him inspected during the year preceding the thirtieth day of such November, designating the quantities, kinds and qualities of pickled fish, and said director shall embody the substance thereof in his next official report.

Sec. 11. Any person injured by neglect of inspector may bring action on bond. R. S. c. 45, § 8. Any person injured by the neglect or misdoings of an inspector, on tendering to such treasurer a reasonable indemnity against the costs may bring an action on such inspector's bond in the name of the treasurer, for his own use, and may have a copy of the bond therefor; and if judgment is rendered thereon for the plaintiff, execution shall issue for the sum found due to the person for whose use such action is brought, and the sum awarded in damages shall be entered by the clerk of the court on the original bond, to remain in the custody of the treasurer.

Sec. 12. Duty of inspector as to inspection and packing of fish. R. S. c. 45, § 9. Every inspector who inspects any kind of fish that are split and pickled for packing, shall see that they are, in the first instance, free from taint, rust, or damage, and well struck with salt or pickle; and such of said fish as are in good order and of good quality, shall be pickled in barrels, half barrels, quarter barrels, and tenths of barrels or kits; each barrel containing two hundred pounds, and so on in that proportion; and the same shall be packed in good, clean, coarse salt, sufficient for their preservation; and then each cask shall be headed up and filled with clear, strong pickle, and shall be branded by the inspector with the name and quality of the fish therein.

Sec. 13. Mackerel to be branded. R. S. c. 45, § 10. Mackerel of the best quality, not mutilated, measuring, when split, not less than thirteen inches from the extremity of the head to the crotch or fork of the tail, free from taint, rust,

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

Sec. 14. Quality of casks and how made; dimensions. R. S. c. 45, § 11. All barrels and casks used for packing pickled fish, shall be made of sound, well-seasoned white oak, white ash, spruce, pine, chestnut, or poplar staves with heading of either of such kinds of wood, sound, well planed and seasoned, and when of pine, free from sap, and the barrels hooped with at least three strong hoops on each bilge, and three also on each chime; the barrel staves shall be twenty-eight inches in length, and the heads not less than sixteen and one-half inches between the chimes, and made in workmanlike manner, to hold pickle. The barrels shall contain from twenty-eight to thirty gallons each, and the aliquot parts of a barrel in the same proportion.

Sec. 15. Pickled alewives and herring, how prepared and packed. R. S. c. 45, § 12. Every inspector who inspects pickled alewives or herring, or other small fish, packed whole or round, shall see that they are struck with salt or pickle, and then put in good casks of the size and material aforesaid, packed closely therein, and well salted, and the casks filled with fish and salt, putting no more salt with the fish than is necessary for their preservation; and the inspector shall brand or stencil all such casks with the name of the inspected fish as aforesaid.

Sec. 16. Fees for inspection and branding. R. S. c. 45, § 13. The fees for inspection and branding, exclusive of cooperage, are for each barrel seven cents, and all such fees shall in the first instance be paid by the original owners of the fish, who may recover the amount thereof from the party buying or receiving the same, under the marks and brand aforesaid, and in addition to the price thereof.

Sec. 17. Penalty for selling or exporting uninspected or damaged fish. R. S. c. 45, § 14. Whoever sells in the state, or exports therefrom any fish in barrels or boxes, not inspected, packed, and branded, as aforesaid, except good and wholesome fish packed in kegs of less than ten gallons, or pickled, dry, or smoked fish imported into the state from some other state or country lawfully inspected and branded there, and whoever sells or exports unlawfully any fish known by him to be tainted or damaged, unless sold as such, forfeits ten dollars for every hundredweight thus sold or exported.

Sec. 18. Penalty for attempting to export uninspected fish; warrant for seizure; penalty for refusing to aid officer. R. S. c. 45, § 15. Whoever ships or receives on board any vessel or other carriage for transportation from the state, any pickled fish in barrels, parts of barrels, or casks, not inspected and branded or stenciled as aforesaid, forfeits not less than fifty dollars for each offense; and any trial justice may issue his warrant to the proper officer, directing him to seize and secure such prohibited fish, and convey it to any inspector within a convenient distance for inspection; and whoever refuses to give necessary aid in the service of such warrant when required by the officer, forfeits five dollars

CHAP. 49

to the prosecutor in an action of debt; and such inspector shall open, inspect, pack and brand such fish according to law, and detain the same until all lawful charges of seizure and inspection are paid.

Sec. 19. Penalty for intermixing inspected fish; for fraud of inspector. **R. S. c. 45, § 16.** If any person takes from a cask or barrel any pickled fish lawfully inspected and branded, and substitutes therefor or fraudulently intermixes other fish; or if any inspector marks any cask or barrel out of his own town, or which he has not inspected, packed, and himself prepared according to law; permits other persons unlawfully to use his brands, or wilfully and fraudulently uses the same himself after the expiration of his commission, he forfeits one dollar for each cask or barrel so dealt with; but an inspector may, after a satisfactory examination, brand such packages, thereby becoming responsible for the quality of the contents as represented by his brand.

Regulation of Lobster Industry.

Sec. 20. Lobster fishing, transportation, and sale without license prohibited; exceptions; penalty. **R. S. c. 45, § 17. 1917, c. 182. 1919, c. 184, § 1. 1921, c. 98, § 1.** No person, firm, or corporation, either by themselves as principal or by their servants or agents, shall, at any time, catch, take, hold, buy, ship, transport, carry, give away, remove, sell, or expose for sale, or have in his or its possession, except for immediate consumption of himself and family, any lobster from any of the waters within the jurisdiction of this state, or place, set, keep, maintain, supervise, lift, raise, or draw in from any of said waters, or cause to be placed, set, kept, maintained, supervised, lifted, raised, or drawn in or from any of said waters any pot, trap, trawl, car, boat, smack, vessel, or other contrivance designed or adapted for the catching, taking, holding, or for removal or transportation of lobsters unless licensed to do so as hereinafter provided; except that common carriers engaged in carrying general freight on fixed schedules may without license, transport within or without the state lobsters legally caught; provided that said lobsters are received by said common carriers at one of their regular established places of business upon land for receiving freight, and provided the receptacle containing said lobsters is plainly marked showing the contents to be lobsters together with full and correct name and address of both consignor and consignee. Every person, firm, or corporation who shall violate any of the provisions of this section, or aid in doing so, upon conviction in any court of competent jurisdiction, as defined in section thirty-four, shall be fined twenty-five dollars for the first offense; for the second offense, fifty dollars; and for any subsequent offense, fifty dollars, and shall be sentenced to imprisonment for thirty days, in addition to said fine. No person, firm, or corporation convicted of any violation of any law relating to lobsters shall either by themselves, their servants, or agents be entitled to a renewal of said license for the period of one year from such convictions.

Note. The amendment of 1917, c. 182 seems to have been disregarded in subsequent amendments.

Sec. 21. License issuance; fees. **R. S. c. 45, § 18. 1917, cc. 23, 233. 1919, c. 184, § 11. 1921, c. 98, § 2. 1923, c. 87.** The director of sea and shore fisheries shall grant and issue licenses in the lobster industry. Such licenses shall be divided into four classes, namely: First class, Fishermen's Licenses; second class, Selling Licenses; third class, Shipping Licenses; and fourth class, Smackmen's Licenses. Licenses of the first class, Fishermen's Licenses, shall be issued only to citizens of the state or to any person who has resided within the state continuously for one year, immediately preceding the date of application for

license. Licenses of the second class, Selling Licenses, shall be issued only to persons, firms, or corporations conducting hotels, restaurants, or boarding houses, or to persons, firms, or corporations engaged in the business of buying and selling lobsters. Licenses of the third class, Shipper's Licenses, shall be issued only to persons, firms, or corporations engaged in the lobster business in this state or other states to buy, sell, and ship lobsters. Licenses of the fourth class, Smackmen's Licenses, shall be issued only to smackmen to buy, sell and transport lobsters by smack or boat. All licenses now outstanding shall become void on the passage of this act and new licenses must be obtained under the conditions herein set forth. Applications for licenses shall be made upon special forms provided by the director of sea and shore fisheries. Violations of the agreements of the application shall render the license thereon void. Dumping, destroying, or removing any bag, box, or other receptacle after command of the director of sea and shore fisheries or his wardens, or when pursued by the director of sea and shore fisheries or his wardens shall be evidence of violation of the agreement of his application and the license of such person shall be revoked. The said director shall keep the clerks of various cities, towns, and plantations bordering on the sea shore and other clerks who request them, supplied with blank applications; said clerk shall keep a supply of them on hand and furnish them to applicants. All applications when filled out shall be forwarded to the office of said director together with fees for same. Such licenses shall be granted to expire on the last day of June next succeeding the granting of same, unless sooner revoked, as provided in section twenty. The director in his biennial report shall state the number of licenses granted. He shall issue to each person, firm, or corporation licensed as aforesaid a certificate, stating the name of the person, firm, or corporation to whom such license shall be granted, the number of said license and the date of expiration of said license.

Sec. 22. Employment of person whose license has been revoked prohibited; penalty. R. S. c. 45, § 19. 1921, c. 98. 1923, c. 80. If any person, firm, or corporation to whom such license shall be granted shall be incapacitated for any reason, except for the violation of the laws of the state relating to the lobster industry, from using said license, said person, firm, or corporation may permit his agent or employee, if a citizen of this state, to perform such duties under the license as may be necessary during the period of his or its incapacity; provided that said agent or employee shall, when performing said duties so licensed, exhibit upon demand of any authorized person, the certificate issued to his superior, as provided in the preceding section. No person whose license has been revoked or suspended shall assist in the catching of lobsters in any way. Every person who shall violate the provisions of this section shall upon conviction be subject to the fines and penalties provided in section twenty.

Sec. 23. Revocation and suspension of licenses. R. S. c. 45, § 20. 1919, c. 184, § 2. 1921, c. 98, § 4. If any person, firm, or corporation, their servants or agents, licensed as provided in this chapter, shall be adjudged guilty of violation of any law relating to lobsters, the director of sea and shore fisheries may revoke the license of such person, firm, or corporation so adjudged guilty and upon such revocation all rights under the license so revoked shall cease, and no such person, firm, or corporation so adjudged guilty shall be entitled of right to receive a license for the period of one year, and the license shall be suspended from the date of complaint or indictment until the final determination by the court. The director of sea and shore fisheries in his discretion may, before conviction, suspend the license of any person, firm, or corporation whenever he has evidence that such person has violated any of the laws relating to lobsters. Upon the suspension of license all traps, cars, gear, and all devices used in con-

CHAP. 49

nection with catching lobsters shall be taken from the water within five days after suspension. Any person with traps, cars, or any other device remaining in the water, after the expiration of the five days, shall be fined five dollars per day for each trap, car, or other device remaining in the water, and any car, smack, vehicle, or other device used in the holding, carrying, or transporting lobsters by any person whose license has been revoked or suspended shall be forfeited and become the property of the state.

*122 Me. 450.

Sec. 24. Director may restore licenses; on refusal, application to court. R. S. c. 45, § 21. The director may, in his discretion, on sufficient evidence, restore a license revoked by him, and, if he refuses so to do, the license may be restored by any justice of the supreme judicial or superior courts; provided the said justice finds that said director erred in his conclusion of facts, and application is made to the said justice within ten days after the refusal of the said director to restore said license.

Sec. 25. Licenses revoked to be surrendered; licenses issued through fraud or error void; penalty for fraud. R. S. c. 45, § 22. 1919, c. 184, § 3. Any license which has been revoked for the violation of any law of this state relating to the lobster industry shall be void, and shall immediately be surrendered to the officer who serves the warrant or indictment, or who secures the conviction of the offender; said officer shall forthwith forward said license to the director of sea and shore fisheries, who shall cancel the same. Any license issued to any party through error or fraud, shall be void, and shall be surrendered on demand of any officer authorized to enforce any law governing the lobster industry in this state, and any party who fraudulently obtains a license under sections twenty to thirty-seven, both inclusive, shall be fined one hundred dollars and imprisonment sixty days in addition, for each offense.

Sec. 26. Penalty for refusing to show certificate. R. S. c. 45, § 23. Each person, firm, or corporation licensed under the provisions of section twenty-one, shall, at all times while engaged in the pursuit so licensed, exhibit, upon demand of any authorized person, the certificate issued to him or them, as provided in said section. Every person, firm, or corporation violating this section shall, for each offense, upon conviction, be fined twenty-five dollars.

Sec. 27. Certificate of director of sea and shore fisheries admissible in evidence. R. S. c. 45, § 24. 1917, c. 99. Any certificate of the director of sea and shore fisheries in regard to the records of his office, shall be admissible in evidence in all prosecutions under this chapter.

Sec. 28. Traps on trawls, permission to be obtained; penalty. R. S. c. 45, § 25. 1927, c. 36. When pots or traps are set on trawls, when conditions make it impossible to set otherwise, buoys plainly marked, as provided in the laws of this state, governing the lobster industry, shall be set at both ends of the trawls; but permission for setting such trawls must be obtained from the director of sea and shore fisheries, and so stated on the licenses issued under section twenty-one. Whoever violates the provisions of this section shall pay a fine of not more than twenty-five dollars and costs.

Sec. 29. Method of marking pots, traps, boats, and other contrivances; penalty. R. S. c. 45, § 26. No person, firm, or corporation licensed under section eighteen or section thirty shall use any pots, traps, boats, trawls, or other contrivance used for the catching or taking of lobsters, or cars or other contrivance used for holding or keeping lobsters before transporting or selling, unless the same and the buoys attached thereto are plainly marked, as provided by the laws of the state governing the lobster industry, with the name or names of the owners thereof, or the person or persons using the same. In each instance

the surname with initials shall be marked together with the license number or numbers of such party or parties. Every person, firm, or corporation violating the provisions of this section shall be fined, upon conviction, twenty dollars, or imprisoned not more than thirty days; the license shall be suspended pending the decision of the court, and, on conviction, the license shall be forfeited, and the respondent shall not be entitled to receive a new one for the period of one year from date of conviction; all pots, traps, cars, buoys, trawls, and other contrivance, together with the contents thereof, used contrary to the provisions of the laws of this state governing the lobster industry, shall be seized by any officer engaged in the enforcement of said laws and disposed of as provided by law.

Sec. 30. Only owner or authorized person to interfere with contrivances. **R. S. c. 45, § 27.** No person, except the director of sea and shore fisheries and his wardens or other officers qualified to enforce the laws of the state governing the lobster industry, shall lift or raise any pot or trap, car, trawl, or other contrivance used in the lobster industry belonging to any person, firm, or corporation licensed under section twenty-one, and set for catching or taking and holding lobsters, except with the permission of the owners thereof.

Sec. 31. Right of search and seizure; licensees may be appointed wardens without pay. **R. S. c. 45, § 28. 1917, cc. 180, 293, § 11.** For the purpose of enforcing the provisions relating to the protection of lobsters, as provided by the laws of the state, relating to the lobster industry, the director of sea and shore fisheries and his wardens may search, at any time in suspicious places, including buildings of every description, or any pot, trap, trawl, car, boat, smack, vessel, or other vehicle that they may believe is used in the catching, taking, holding, or transporting of lobsters, and may seize and remove lobsters taken, held, or offered for sale in violation of the provisions of any law of the state relating to the lobster industry. But nothing herein shall be held to confer the right to search a dwelling house without a warrant. The director may appoint as many persons as he wishes, who hold licenses under section twenty-one as wardens but so long as they hold licenses they shall serve without pay.

See § 5.

Sec. 32. Lobsters bought for shipment out of state must conform to law. **R. S. c. 45, § 29.** No person shall acquire any property in lobsters caught in the waters under the jurisdiction of this state, for the purpose of shipping the same beyond the limits of this state, unless such lobsters conform to the law, and are shipped in accordance with the provisions of sections twenty to thirty-seven, both inclusive.

Sec. 33. Transportation of lobsters; licenses of smacks and vessels; bonds; regulations; forfeitures. **R. S. c. 45, § 30. 1919, c. 184, § 4.** No person, firm, or corporation by itself, its servants, or agents, save common carriers as provided in section twenty of this chapter, shall transport or cause to be transported lobsters beyond the limits of this state, unless licensed and having given bond as herein provided. The owner or owners of any smack, vessel, or other means of transportation shall make written application for license to the director of sea and shore fisheries who is hereby authorized to grant licenses to purchase and transport lobsters within and beyond the limits of this state. The application shall state the name of the smack, vessel or other means of transportation together with a description sufficient to identify it, the name and address of the owner or owners, the name and address of the master, the port of enrollment and registry. The application shall further contain agreements by the applicant therein: to load the smack, vessel, or other means of transportation in the waters over which this state has jurisdiction, and there only between sunrise and sunset, to allow without let or hindrance, inspection and search of such smack, vessel,

CHAP. 49

or other means of transportation by the director of sea and shore fisheries or his wardens, to stop when underway and return to harbor on command of the director of sea and shore fisheries or his wardens, to return to the waters of the state when so ordered by the director of sea and shore fisheries or his wardens, to abide by all the laws of this state relating to lobsters. The application shall further contain an agreement that the full penal sum of the bond herein provided for shall be forfeited to the state on breach of any term in said application. The license issued on said application shall state the terms on which the license is issued and that it is issued in consideration of the agreements of the application. Before said license is issued, the applicant shall file with the director of sea and shore fisheries a bond with surety approved by the director of sea and shore fisheries in the penal sum of five thousand dollars conditioned that said sum shall be forfeited to the state upon breach of any agreement in the application and license. The fee for issuing said license shall be five dollars and a record shall be kept of the same, similar to that provided for other licenses in section eighteen. In addition to the statement of the terms on which the license is issued, the license shall bear the date of the taking effect and the termination thereof, which last named date shall be the last day of November next after it becomes effective. The license shall give no authority to purchase or transport in any smack, vessel, or other means of transportation except that named in the license but the name of the smack, vessel, or other means of transportation may be changed by the licensee upon application to said director within the license period without further charge. Conviction of the licensee of violation of any statute of Maine relating to lobsters or breach of any agreement of application and license shall render the license void and make the full penal sum of the bond due to the State of Maine, and no licensee so convicted shall be entitled of right to license during the remainder of license year. The director of sea and shore fisheries may revoke said license when he has evidence that such owner or owners have violated any of the provisions of the law relating to lobsters.

No person shall act as master or captain of any smack, vessel, or other means of transportation engaged in transporting lobsters without the state unless licensed and having given bond as herein provided. The master or captain of any smack, vessel, or other means of transportation shall make written application for license to the director of sea and shore fisheries, who is hereby authorized to grant licenses to such captain or master to purchase and transport lobsters within and beyond the limits of this state. The application shall state the name of the smack, vessel, or other means of transportation together with a description sufficient to identify it, the name and address of the owner or owners, the name and the address of the master or captain, the port of enrollment or registry. The application shall further contain agreements by the applicant therein: to load the smack, vessel, or other means of transportation in the waters under which this state has jurisdiction, and there only between sunrise and sunset, to allow, without let or hindrance, inspection and search of such smack, vessel, or other means of transportation by the director of sea and shore fisheries or his wardens, to stop when under way and return to harbor on command of the director of sea and shore fisheries or his wardens, to return to the waters of the state when so ordered by the director of sea and shore fisheries or his wardens, to abide by all the laws of this state relating to lobsters. The application shall further contain an agreement that the full penal sum of the bond herein provided for shall be forfeited to the state on breach of any term in said application. The license issued on said application shall state the terms on which the license is issued and that it is issued on consideration of the agreements of

the application. Before said license is issued, the applicant shall file with the director of sea and shore fisheries a bond with surety approved by the director of sea and shore fisheries in the penal sum of five hundred dollars conditioned that said sum shall be forfeited to the state upon breach of any agreement in the application and license. The fee for issuing said license shall be five dollars and a record shall be kept of the same, similar to that provided for other licenses in section twenty-one. In addition to the statement of the terms on which the license is issued, the license shall bear the date of taking effect and the termination thereof, which last named date shall be the last day of November next after it becomes effective. The license shall give no authority to purchase or transport in any smack, vessel, or other means of transportation except that named in the license but the name of the smack, vessel, or other means of transportation may be changed by the licensee upon application to said director within the license period without further charge. Conviction of the licensee of violation of any statute of Maine relating to lobsters or breach of any agreement of application and license shall render the license void and make the full penal sum of the bond due to the State of Maine. And no licensee so convicted shall be entitled of right to license during the remainder of license year. The director of sea and shore fisheries may revoke said license when he has evidence that such master or captain has violated any of the provisions of the law relating to lobsters and no new license shall be issued for a period of one year to any party whose license has become void because of conviction or has been revoked by the director of sea and shore fisheries.

*115 Me. 142; *117 Me. 269.

Sec. 34. Penalty for violation of § 33 by one not licensed. R. S. c. 45, § 31. 1919, c. 184, § 5. Whoever, as master or owner, transports lobsters without the state, not having obtained the license provided in the preceding section shall be punished by a fine of not less than fifty nor more than five hundred dollars, and both the owner and the master shall become indebted to and pay to the state the sum of five thousand dollars, which sum shall be a lien upon said smack, vessel, or other contrivance, the lien to be enforced in the name of the state by appropriate process.

115 Me. 142.

Sec. 35. Penalty for violation of § 33 by one having license. R. S. c. 45, § 32. 1919, c. 184, § 6. Any owner or master, licensed to transport lobsters without the state as provided in section thirty-three who shall either load said smack, vessel, or other contrivance between sunset and sunrise or hinder or obstruct the director of sea and shore fisheries or his wardens either directly or by refusal to stop and commit search, or violate any of the state laws relating to lobsters, shall be punished by a fine of not less than fifty nor more than five hundred dollars. And loading said smack, vessel, or other contrivance outside the waters over which the state has jurisdiction or refusal to return to the jurisdictional waters of the state on the order of the director of sea and shore fisheries or his wardens shall be deemed a violation of the terms of the bond provided in section thirty-three and evidence of violation of the laws of the state relating to lobsters.

Sec. 36. Money received from fines and forfeited bonds, how expended. R. S. c. 45, § 33. All fines collected and money received from bonds forfeited shall be turned over to the director of sea and shore fisheries, who shall forward the same to the treasurer of state; which amounts shall be credited to and be a part of the funds used for operating expenses in the department of sea and shore fisheries.

Sec. 37. Jurisdiction of courts; notices; trial to be in nearest court; when;

appeal. R. S. c. 45, § 34. 1919, c. 184, § 7. The several municipal and police courts shall have concurrent jurisdiction with the supreme judicial court and superior courts over all offenses against the laws of the state relating to lobsters and to the full extent of the penalties therein specified. In case any warrant is issued or indictment found against any licensee under section thirty-three, and any officer qualified to serve said warrant or indictment shall certify to the court from which it is issued that he has made diligent search and has been unable to locate the respondent, the court shall cause a written notice to be sent to the respondent at the address given in the application for license setting forth the fact that said warrant or indictment has been issued against him and naming a time and place for hearing on the same, which shall not be less than fourteen nor more than thirty days from the date of mailing said notice; and the notice shall state that, in the event of his failure to appear, his bond given to the state shall be forfeited. If he appears, the court will proceed under the warrant or indictment as though he had been apprehended. In the event that he does not appear, the court shall order his bond forfeited; but the order of the court forfeiting said bond shall not otherwise affect the warrant or indictment. Any warrant issued by any such court shall cover offenses occurring in the county where said court is established or in any adjoining county, but no party shall be tried in an adjoining county, unless the court in such adjoining county is nearer the place where the crime was committed than the court of the county where the offense is alleged to have been committed. Parties defendant, however, have the same right of appeal from the sentences of said inferior courts as is now provided by law in other criminal cases.

*118 Me. 86.

Sec. 38. Legal size of lobsters and method of measurement; penalty; prohibitions; penalties. R. S. c. 45, § 35. 1919, c. 184, § 8. 1921, c. 98, § 5. No person shall buy, or sell, give away, or expose for sale, or possess for any purpose any lobsters less than three and one-half inches in length, alive or dead, cooked or uncooked, measured from the rear of the eye socket along a line parallel to the center line of the body shell to the rear end of the body shell; and any lobster shorter than the prescribed length when caught shall be immediately liberated alive at the risk and cost of the parties taking it, under a penalty of five dollars for each lobster so caught, bought, sold, given away, exposed for sale, or in possession. The possession of mutilated lobsters, cooked or uncooked, shall be prima facie evidence that they are not of the required length. Measures for determining the legal length of lobsters shall be provided by the state and may be obtained from the director of sea and shore fisheries at cost. No evidence shall be received in any of the courts of the state in any matter in which the length of a lobster is in question unless such length has been determined by such a measure. All lobsters or parts of lobsters sold for use in this state or for export therefrom must be sold or delivered in the shell under a penalty of twenty dollars for each offense; and whoever ships, transports, carries, buys, gives away, sells, or exposes for sale lobster meat after the same shall have been taken from the shell, shall be liable to a penalty of ten dollars for each pound of meat so shipped, transported, carried, bought, given away, sold, or exposed for sale. Any person or corporation in the business of common carrier of merchandise who shall knowingly carry or transport from place to place lobster meat after the same shall have been taken from the shell, shall be liable to a penalty of fifty dollars upon each conviction thereof. All lobster meat so illegally shipped, carried, bought, given away, sold, or exposed for sale shall be liable to

seizure and may be confiscated. Nothing herein contained shall be held to prohibit the sale of lobsters that have been legally canned.

79 Me. 55; 80 Me. 87; 83 Me. 180; 85 Me. 121; 87 Me. 109; 93 Me. 420; 94 Me. 129; 99 Me. 227; 101 Me. 351; *118 Me. 233; *119 Me. 45; 129 Me. 9.

Sec. 39. Lobsters with eggs attached may be purchased by director; limit of price; lobsters to be liberated; property of state; penalty. R. S. c. 45, § 36. 1917, c. 255. The director of sea and shore fisheries may purchase at the rate of fifteen per cent above market price, lobsters with eggs attached, caught in the waters of this state. Whoever catches any lobsters with eggs attached may safely store the same in lobster cars, or traps used for that purpose only, and may keep them separate from other lobsters until such time as the director or some person or persons designated by him can gather and pay for them. The director or his agent shall liberate any lobsters so purchased in the vicinity where they were caught, after having marked such lobsters by punching a hole in the middle flipper. Such lobsters shall be deemed the property of the state, and, if again caught shall immediately be returned to the waters by the person catching them. The possession of any such marked lobster or mutilated lobster shall be deemed prima facie evidence of violation of this chapter. Any person violating the provisions of this section shall be fined fifty dollars.

Sec. 40. Close time on female lobsters; penalty. R. S. c. 45, § 37. No person shall destroy, catch, buy, sell, expose for sale, or possess any female lobsters in spawn or with eggs attached at any season of the year, under a penalty of ten dollars for each lobster so destroyed, caught, bought, sold, exposed for sale or possessed, provided, however, if it appears that it was intended to dispose of them in accordance with the preceding section, or to liberate them in accordance with the provisions of this chapter, the person having such lobsters in possession shall not be liable to any of the penalties herein provided, though he may have failed, for any cause not within his control, to so liberate them.

Sec. 41. Canning of short lobsters prohibited; penalty. R. S. c. 45, § 38. No person shall can lobsters less than three and one-half inches in length, alive or dead, measured in accordance with section thirty-eight; and for every lobster canned contrary to the provisions of this section, every person, firm, association or corporation so canning shall be liable to a penalty of one dollar for every lobster so canned, and a further penalty of three hundred dollars for every day on which such unlawful canning is carried on.

Note. The length of the lobster has been changed in this section to correspond with section thirty-eight.

Sec. 42. Shipment of lobsters regulated; notice to director of location. R. S. c. 45, § 39. Every person, firm, association or corporation, that hereafter opens a place of business in this state for shipping lobsters, or that changes said place of business after once it is established, shall thirty days before shipping any lobsters therefrom notify the director of sea and shore fisheries, of such location from which lobsters are to be shipped, or change of location, together with the information as to where and how said lobsters are to be kept before packing, by what carrier the shipments are to be made, and the customary hours of said shipments.

Sec. 43. Arrangement for inspection; lobsters subject to inspection in transit. R. S. c. 45, § 40. 1917, c. 281, § 1. Whenever the director shall receive from any person, firm, association, or corporation that now has or hereafter may open such place of business, or that changes said place of business after once it is established, the notice referred to in the preceding section, he shall, if in his judgment it is practicable to do so, arrange with said person, firm, association, or corporation for the suitable inspection of lobsters before shipment from said

place of business, and cause such lobsters to be inspected; but unless such arrangements are made all lobsters shall be subject to examination in transit.

Sec. 44. Lobster shipping cases, how marked. R. S. c. 45, § 41. All lobsters to be shipped shall be packed in barrels, boxes, or packages marked with the word "Lobsters" in capital letters at least one inch in length, together with the full name of the shipper, and said marking shall be place in a plain and legible manner on the outside of said barrels, boxes, or other packages.

Sec. 45. Inspected packages to bear mark prescribed by director; if so marked, not to be opened for inspection in transit without consent of shipper. R. S. c. 45, § 42. 1917, c. 281, § 2. All lobsters so packed shall be open to the inspection of the director or his wardens, at or before the time of the packing thereof, and if inspected each barrel, box, or package containing lobsters so inspected shall bear some mark to be prescribed by the director indicative of such inspection; but after the same are packed and marked, as required by the preceding section, if bearing the mark indicative of inspection prescribed by the director and by the shipper delivered to the transportation company the said barrels, boxes, or packages shall not be opened for inspection by anyone without the consent of the shipper; and in case of seizure by any duly authorized officer, of any barrels, boxes, or other packages in transit, containing lobsters which are not so marked as required by the provisions of the preceding section, or in case of seizure by such officer, of barrels, boxes, or other packages, containing lobsters, other than the prescribed length, such lobsters as are alive and other than the prescribed length shall be liberated, and all such lobsters as are of the prescribed length, found in such barrels, boxes, or packages shall be forfeited and disposed of under the provisions of section forty-nine.

83 Me. 211.

Sec. 46. Penalty for shipping lobsters not properly marked; penalty on common carriers. R. S. c. 45, § 43. Every person, firm, association, or corporation who ships lobsters without having the barrels, boxes, or other packages in which the same are contained, marked as prescribed in section forty-four, shall upon conviction be punished by a fine of twenty-five dollars, and upon subsequent conviction thereof by a fine of fifty dollars; and any person or corporation in the business of a common carrier of merchandise, who shall carry or transport from place to place lobsters in barrels, boxes, or other packages not so marked, shall be liable to a penalty of fifty dollars upon each conviction thereof.

Sec. 47. Traps not to be set near fish weir; penalty. R. S. c. 45, § 45. No person shall set any lobster trap within three hundred feet of the mouth or outer end of the leaders of any fish weir, under a penalty of ten dollars for each offense.

Sec. 48. Penalty for interference with lobster traps; does not apply to unmarked traps. R. S. c. 45, § 46. Whoever, except as provided in sections two and thirty-one of this chapter, takes up, or attempts to take up, or in any way knowingly and wilfully interferes with any lobster trap while set for use, without the authority of the owner thereof, shall be punished by a fine of not less than twenty, nor more than fifty dollars; provided, however, that no action, complaint, or indictment shall be maintained under this section unless the name of the owner of all such traps shall be carved or branded in legible letters, not less than three-fourths of an inch in length, on all the buoys connected with such traps.

Sec. 49. Lobsters; seizure, disposal, libel, contents; procedure; disposal of proceeds; appeal; fees and costs. R. S. c. 45, § 47. When any lobsters are seized by virtue of the provisions of this chapter, the officer making such seizure shall cause such lobsters, so seized, as he is not required by law to liberate, to

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

⁹⁴ Me. 133.

Sec. 50. Close time on lobsters in certain waters; penalties. It shall be unlawful to take, catch, kill, destroy, or set any lobster trap or other device for the purpose of taking, catching, killing, or destroying any lobster, or lobsters, within the following described limits:

P. & S. L. 1921, c. 58. Within two miles of the shore of Monhegan Island between the twenty-fifth day of June of each year and the first day of November following;

P. & S. L. 1923, c. 110, § 1. In any of the waters of Winter Harbor in Hancock county inside of a direct line from Schoodic Island whistling buoy, thence northwest by west to Egg Rock whistling buoy, and thence northeast by north to Jordan's Island bar between the first day of July and nine o'clock in the forenoon August thirty-first of each year, under a penalty of five dollars for each trap, or other device, set;

P. & S. L. 1921, c. 108. In any of the waters of Hancock county between

CHAP. 49

a line on the east, extending due north and south through Egg Rock Light in Frenchman's Bay and a line on the west and south, beginning at the extreme southwestern point of Mt. Desert Island known as Lopaus Point; thence in a northerly direction along the west side of Mt. Desert Island to the western point of High Head, thence in a westerly direction to the northern point of Bartlett's Island, thence in a westerly direction to the southern point of Newberry Neck, thence in a northwesterly direction to the southern end of Woods Point, thence in a southerly direction to the north end of Long Island, thence along the easterly side of said island to its southern point, thence in a southerly direction to the north end of Tinkers Island, thence along the east side of said island, to its eastern point, thence in a southerly direction and in a direct line to the western end of Little Gotts Island, thence in a due southeast course three nautical miles, thence due northeast to a line running due south through Egg Rock Light, between the first day of July and the first day of September in each year, under a penalty of one dollar for each lobster so taken and under a penalty of five dollars for each lobster trap so set;

Within the waters commencing at Woods Pond point on the west side of Pigeon Hill bay; thence easterly to the Nubble on Little Boishubert island; thence by the shore to the head of Boishubert island; thence northerly to Joe Dyer's point, so-called; thence to the head of Pigeon Hill bay, aforesaid, thence by the shore to the first mentioned bound (P. & S. L. 1923, c. 27), and the waters beginning at Bear Cove, on the western side of Petit Manan point, thence in a straight line to Little Black Ledge; thence in a straight line in a southwesterly direction to Schoodic Island whistling buoy (P. & S. L. 1925, c. 14), and the waters commencing at Township rock in said town of Cutler, thence running south southwest, two and three-fourths miles; thence south southeast, one-half mile; thence south by west three-fourths west, to the three mile limit; thence running along said three mile limit to a point three miles southeast from West Quoddy Head (P. & S. L. 1925, c. 19), and within the waters commencing at Jordan's Island channel in the town of Gouldsboro, thence running southwest by south to the eastern head of Egg Rock so-called, thence in a straight line to Whistling Buoy, south of Egg Rock, thence due south two miles; thence in a straight line to Stone Beacon on east Bunker Ledge; thence in a straight line to Seal Harbor Head; thence following the shore of Mount Desert Island in an easterly and northerly direction to Mount Desert Bridge; thence in a north direction to towns of Trenton, Lamoine, Hancock, Sullivan, Sorrento and Gouldsboro to place of beginning (P. & S. L. 1923, c. 29), and in the waters within the easterly line beginning at a point where the dividing line between the towns of Machiasport and Whiting strikes the shore of Holmes Bay, and continuing on said dividing line to Township Rock, so-called, in said Holmes Bay; thence running south southwest two and three-fourths miles; thence south southeast one-half mile; thence south by west three-fourths west to the three mile limit; thence by said three mile limit, to a point three miles due south from the easternmost point of Camp Island otherwise known as The Brothers; the westerly line beginning at Fan Island at the mouth of the Little Kennebec River, and running southerly to Hickeys Island; thence southerly to the easternmost point of Camp Island, otherwise known as The Brothers, and continuing thence due south for a distance of three miles (P. & S. L. 1923, c. 28), and in any of the waters of Jonesboro and Roque Bluffs in Washington county (P. & S. L. 1923, c. 30), and within the limits commencing at the spindle in Pleasant river and running southwest by south, three and three-fourths miles, abreast the buoy on Barton's ledge; thence south by west one-fourth west, five and one-third miles; thence east southeast, eight and one-fourth miles; thence east three-fourths

north to the whistling buoy off Moosepeak; thence northeast, seven and three-fourths miles, to a point half the distance from Scabby Island ledge to The Brothers; thence north by west three-fourths west, one and one-half miles; thence northwest, two and two-thirds miles; thence northwest by west two miles; thence north by east, three-fourths miles; thence west by north one-half north to the head of Mason's Bay (P. & S. L. 1923, c. 31), between the first day of July and nine A. M. August thirty-first of each year, under a penalty of five dollars for each trap or other device so set;

(P. & S. L. 1923, c. 36) In the waters of Pigeon Hill Bay so-called, between July first and nine A. M. August thirty-first of each year, under a penalty of ten dollars for each trap or other device so set.

Fish Packing.

Sec. 51. Rules governing sale or packing of herring; penalty; enforcement by director. R. S. c. 45, § 48. 1925, c. 94. Whoever takes, preserves, sells, or offers for sale between the first day of December and the fifteenth day of the following April, any herring for canning purposes less than eight inches long, measured from one extreme to the other, or packs or cans sardines of any description, between the first day of December and the fifteenth day of the following April, forfeits twenty dollars for every hundred cans so packed or canned, and for every hundred herring so taken. All cans shall be decorated, stamped or labeled with quality, packer's name and place of business, or merchant's name for whom the same are packed, except sardines packed in plain cases and shipped for buyers' labels or cartons. Whoever sells or offers for sale any sardines in cans not so decorated or labeled, shall forfeit one dollar for every can so sold or offered for sale, to be recovered by complaint, indictment or action of debt. No person shall use in the herring fishery, in any of the waters of this state except in so much of Sheepscot bay as is comprised within the following lines: beginning at the northerly point of Green island, thence southerly by the coast line to the Cuckolds light station; thence westerly to Pond Island light station, thence northeasterly by the coast line to the northerly point of MacMahan island, thence easterly to the point of beginning, torches or any artificial light, of any kind, for the purpose of catching herring, under a penalty of ten dollars for each offense. The director of sea and shore fisheries shall insist upon the strict observance of the provisions of this section and enforce the penalties for violation thereof.

^{98 Me. 547.}

Sec. 52. Size of smoked herring boxes regulated. R. S. c. 45, § 49. No person, firm, or corporation engaged in the state in buying, selling, and packing of smoked herring, shall sell or offer for sale smoked herring in boxes of less than the following dimensions, viz: two inches in depth, six inches in width, inside measure, and twelve inches in length, outside measure. Whoever packs, sells, or offers for sale, smoked herring in boxes in violation of this section shall forfeit twenty-five cents for each box so packed, sold or offered for sale; but this section does not apply to boxes of boneless herring.

Fish Culture and Development of Fishing Industry.

Sec. 53. Commission of sea and shore fisheries may take land; not to exceed two acres in one location; proceedings; by lease etc. may acquire more than two acres. R. S. c. 45, § 50. 1917, c. 293, § 12. The commission of sea and shore fisheries may, for the purposes of this and the following section, take any shore rights, flats, and waters not exceeding an area of two acres in extent

at any one location, and hold the same for a period not exceeding ten years; such location when so taken may be used by said commission, or by the United States commission of fish and fisheries, in the prosecution of the work of fish culture and scientific research relative to shell-fish, or other fish over which said commission now has supervision; and whenever said commission shall deem it necessary in the furtherance of the objects and purposes of this and the following section to take any such shore rights, flats and waters, it shall proceed in accordance with the provisions of section five of chapter thirty-seven; and in addition thereto shall cause a copy of so much of the proceedings as will show the character and extent of the shore rights, flats, and waters taken, and also the location thereof, and time for which taken, to be posted near the location, and shall also cause suitable marks or ranges to be set upon the adjacent upland so as to define, as far as practicable, the limits and boundaries of the location to be used in such experiments; and shall cause public notice of the taking of such shore rights, flats, or waters to be given by publishing the fact of such taking once a week for three successive weeks in a newspaper published in the county where the shore rights, flats, or waters are situated. Said commission may, by agreement, lease, or grant, and under such terms and conditions as may be agreed upon with the owner thereof, take possession of suitable shell-fish grounds, flats, waters, and water-rights, not limited to two acres in area, with necessary shore rights, and may use and operate the same under the provisions of and for the purposes of this section.

Sec. 54. Shores and flats set apart for shell-fish industry; proceedings. R. S. c. 45, § 51. 1917, c. 293, § 12. The commission, upon the application of any person or corporation interested or engaged in scientific research relating to shell-fish, or other fish over which the commission has supervision, or in the cultivation and development of the shell-fish industry for economic purposes, setting forth their desire to make experiments relative to the cultivation and conservation of shell-fish, or such other fish over which the commission now has supervision, shall, after being satisfied of the facts set out in said application, and that the applicant either owns or has the consent, so far as the same can be granted, of the owner of the flats, shore rights, and waters where such work is to be undertaken, and that the granting of such rights will not unreasonably interfere with navigation, give notice of a hearing on such application, by causing the same to be published at least two weeks in some newspaper published in the county where the proposed location is situated, and stating therein the time and place where such hearing will occur; and if, upon such hearing, the commission is satisfied that the interests of the state will be promoted by such experiments, he shall issue a certificate setting apart so much of such shores, flats, and water privileges, not exceeding one acre in extent, to any one of such applicants, and for such length of time, not exceeding the period of six years, as in his judgment may be necessary and proper to accomplish the ends sought to be obtained. Such certificate shall be recorded in the registry of deeds of the county or registry district in which the location is situated, and the applicant shall also cause public notice of the issuance of such certificate to be given by publishing the same in a newspaper published in the county where such location is situated, and by posting in a conspicuous place near said location a copy of such certificate, and also by placing stakes or other monuments upon the adjoining upland, so as to designate the locations so set apart, as the commission shall in its certificate specify.

Sec. 55. All persons forbidden to take fish on shores taken; penalty. R. S. c. 45, § 52. No person shall, during the period that such shores, flats, and

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

Regulation of Shell-Fish Industry.

Sec. 56. Towns may grant licenses for propagation and cultivation of clams; license may be assigned. R. S. c. 45, § 53. Upon application in writing, the mayor and aldermen of a city or the selectmen of a town shall grant a written license, to any person who has resided in the state or who has been a taxpayer in the city or town for not less than one year preceding the date of his application, for the purposes of planting and cultivating clams upon and in not exceeding one-fourth of the flats and creeks of their respective cities and towns and within the limits to be specified in the license, for a term of not more than ten, nor less than five years; all such licenses shall be subject to such rules and regulations as are approved by the city council of the city, or by the voters of the town at an annual or special town meeting, and may be assigned by the licensee to any person who has been a resident of the state or a taxpayer in the city or town for not less than one year preceding the date of the assignment, but shall not be assigned or transferred without the written consent of the mayor and aldermen of such city or the selectmen of such town.

Sec. 57. Proceedings before licenses shall be granted; preference to be given to riparian owner of adjacent property. R. S. c. 45, § 54. No license shall be granted if the exercise thereof would materially obstruct navigable water, nor until after a public hearing, due notice of which has been posted in three or more public places, and published in a newspaper, if there be any, published in the city or town in which the premises are situated, at least ten days before the time fixed for the hearing, stating the name and residence of the applicant, the date of the filing of the application, and the location, area, and description of the grounds applied for. In granting said licenses preference shall be given to the riparian proprietors of the adjacent property, when there are two or more applicants for the same territory and the adjacent riparian proprietor is one of them.

Sec. 58. Survey and plan of territory covered by license to be made; territory to be marked. R. S. c. 45, § 55. Before granting any license, the mayor and aldermen of a city or the selectmen of a town shall cause a survey and plan of the territory within which licenses are to be granted, to be made, and shall cause the territory covered by any license issued by them to be marked upon a copy of such plan to be kept in the office of the city or town clerk. The licensee upon receiving his license shall cause the territory covered thereby to be plainly marked out by stakes, buoys, ranges, or monuments which shall be maintained by him during the term of the license. Failure to place or maintain the same shall be sufficient cause for revocation of the license by the authority granting the same.

Sec. 59. License to describe territory covered; to be recorded; records open to public inspection. R. S. c. 45, § 56. A license granted hereunder shall describe by metes and bounds the waters, flats, and creeks, to which the license is applicable, and shall have no force until it is recorded with the clerk of the

CHAP. 49

city or town granting the same, in a book to be kept for the purpose in the office of the clerk of the city or town, and such books shall be open to public inspection; the licensee shall pay annually to the city or town a fee of not less than one dollar nor more than five dollars per acre for the license, as the mayor and aldermen of the city and the selectmen of the town may determine. Forms for licenses and for assignments shall be provided by the mayor and aldermen of a city or the selectmen of a town at the expense of the city or town.

Sec. 60. Taking of clams on licensed territory except by license prohibited; licensee to have exclusive use of territory covered by license; penalty. R. S. c. 45, § 57. No person, except the licensee or his agents or assignees, shall dig or take clams or clam seed within the territory covered by a license granted hereunder, or remove the same from said territory. The licensee, his heirs or assignees shall for the purposes described in the license have the exclusive use of the territory described therein during the term of the license and may in an action of tort recover treble damages of any person who, without his or their consent, digs or takes clams or other shell-fish in the territory covered by the license or removes the same therefrom. Whoever so digs, takes, or removes clams or other shell-fish shall, in addition, be subject to a penalty of twenty dollars for each offense.

Sec. 61. Proceedings if licensee fails to occupy and use territory covered by license. R. S. c. 45, § 58. Whenever it appears to the mayor and aldermen of a city or selectmen of a town who have granted such a license, that the licensee or his assignee does not actually occupy and use in good faith for the purposes specified in sections fifty-six and fifty-seven, the territory covered by the license, they shall petition the supreme judicial court or the superior court in the county where the territory is situated, to appoint a commission to investigate and report to the court, as to the use and occupancy of such territory; the court shall appoint a commission of one or more persons who, after twelve days' notice to the petitioners and the respondent, shall hear the petitioners and respondent and shall transmit their findings to the court. If it shall appear to the court that the said territory is not used and occupied in good faith for the purposes stated in the license, the court may order that use of the territory shall revert to the city or town and that all stakes or buoys and other appliances marking the same shall be removed. Costs upon said petition may be recovered in the discretion of the court.

122 Me. 450.

Sec. 62. Towns to regulate taking of clams; penalty for taking clams contrary to municipal regulations. R. S. c. 45, § 59. Any town may at its annual meeting, fix the times in which clams may be taken within its limits, and the prices for which its municipal officers shall grant permits therefor; and unless so regulated by vote, residents of the town may take clams without written permit. But without permit, any inhabitant within his own town, or transient persons therein, may take clams for the consumption of himself and family. This section does not apply to hotel keepers taking clams for the use of their hotels, nor does it interfere with any law relating to the taking of shell-fish for bait by fishermen. Whoever takes clams contrary to municipal regulations authorized by this section, shall, for each offense, be fined not more than ten dollars, or imprisoned not more than thirty days. This section shall not be construed to effect the repeal of any special privileges enjoyed by the inhabitants of certain towns by virtue of any public or private and special law in force at the date of adoption of these statutes; but any town to which any such law

applied may in addition have all the advantages of this section if such town shall so vote.

89 Me. 543; 98 Me. 388; 102 Me. 231; 103 Me. 329; *105 Me. 81.

Note. Special privileges: Scarborough, P. & S. L. 1903, c. 317, (see P. & S. L. 1905, c. 386). North Haven, P. & S. L. 1905, c. 351. Phippsburg, P. & S. L. 1905, c. 372. 1919, c. 41. Yarmouth, North Yarmouth, and Cumberland, P. & S. L. 1907, c. 276. 1921, c. 115. York, P. & S. L. 1913, c. 161. Harpswell, P. & S. L. 1915, c. 26. Lamoine, P. & S. L. 1915, c. 134. Newcastle and Damariscotta, P. & S. L. 1917, c. 29. Swan's Island, P. & S. L. 1919, c. 39. Capitol Island Village corp., P. & S. L. 1919, c. 88. Sorrento, P. & S. L. 1923, c. 48. Machiasport, P. & S. L. 1923, c. 63; P. & S. L. 1925, c. 86. Roque Bluffs, P. & S. L. 1923, c. 65. Kennebunkport, P. & S. L. 1923, c. 87. Perry, P. & S. L. 1925, c. 26. Addison, Public Laws 1927, c. 9. Cutler, Public Laws 1927, c. 10. Wells, Public Laws 1927, c. 46.

Sec. 63. Clam hoe to be used in town of Wells; penalty. 1927, c. 46, §§ 3, 4. No clams shall be dug within the limits of the town of Wells, in the county of York, other than with a clam hoe. Whoever violates the provisions of this section, for each offense, shall be punished by a fine not exceeding twenty-five dollars, or by imprisonment not exceeding thirty days.

Sec. 64. Size of bait barrels; penalty. R. S. c. 45, § 60. In all contracts relating to the sale of clam bait, fresh or salt, by the barrel, and clam bait barrels, such barrel shall be twenty-five and one-fourth inches long and fifteen and one-half inches, head diameter, outside measure. Whoever violates this provision shall be liable to a penalty not exceeding fifty dollars for each offense.

Sec. 65. Close time for clams for canning, packing and barreling; penalty. R. S. c. 45, § 61. The canning, packing, and barreling of clams, either fresh or in salt, and the digging of clams for the purpose of canning, packing, or barreling, between the first day of June and the fifteenth day of September following, is hereby prohibited under a penalty of one dollar a bushel in the shell. But this section shall not apply to the barreling of clams in the shell for consumption in this state.

Sec. 66. Transportation of clams; penalty. R. S. c. 45, § 62. The shipping or transportation of clams in any manner beyond the limits of the state, between the first day of June and the fifteenth day of September following, except clams which had been canned, packed, or barreled between the fifteenth day of September and the first day of June, is hereby prohibited under a penalty of three dollars for each bushel so shipped or transported.

Sec. 67. Planting of oysters by inhabitants of state; exclusive rights; penalty for trespassing. R. S. c. 45, § 63. Any inhabitant of the state, with consent of the adjacent riparian proprietors, may plant oysters below low-water mark in any navigable waters, in places where there is no natural oyster-bed; enclose such ground with stakes, set at suitable distances, and extending at least two feet above high-water mark, but so as not to obstruct the free navigation of such waters; and have the exclusive right of taking such oysters. Whoever trespasses on such enclosure or injures such oyster-beds, is liable in an action of trespass for all damages; and if he takes any oysters therein without the consent of the owner, he shall forfeit not less than twenty, nor more than fifty dollars, or be imprisoned not exceeding three months.

101 Me. 354.

Sec. 68. Authorized selection of proper locations for experiments in propagation of shell-fish. R. S. c. 45, § 64. 1917, c. 293, § 12. The commission of sea and shore fisheries may from time to time, as its judgment may determine, select proper locations below low-water mark on the coast of Maine for the propagation of oysters and quahaugs, and between high and low-water mark for the propagation of clams, cause the same to be properly stocked with oysters, quahaugs, and clams, and erect proper and sufficient marks or bounds to indicate the locations thus made. But this section shall not be construed to authorize the taking of flats, which by the colonial ordinance of sixteen hundred and forty-

CHAP. 49

one are possessed by the adjacent upland owners, without the consent of such owners and the payment of proper damages to such owners for such taking.

Sec. 69. Locations protected for three years. R. S. c. 45, § 65. 1917, c. 293, § 12. No person shall dig, fish for, take, or carry away any oysters, quahaugs, or clams within any location so selected, for a period of three years after such location was stocked as aforesaid, without the permission in writing of the commission of sea and shore fisheries; nor shall any person wilfully injure, deface, destroy, or remove any such bounds or marks, nor tie or fasten any boat or vessel thereto.

Sec. 70. Penalty for violating §§ 68, 69. R. S. c. 45, § 66. Whoever violates any provision of the two preceding sections shall be punished by a fine not exceeding one hundred dollars or by imprisonment not exceeding sixty days, or by both fine and imprisonment.

Sec. 71. Close time on scallops; penalty; boat and equipment may be seized and detained; prima facie evidence of violation; scallops taken outside waters of state excepted. R. S. c. 45, § 67. 1917, c. 22. 1923, cc. 83, 130. 1927, c. 15. No person shall catch, buy, or sell, expose for sale, give away, or have in his possession for any purpose, any scallops, shelled or in the shell, between the fifteenth day of April and the first day of November of each year, or in the waters of Bagaduce river to a point at the mouth of said river marked by a line and bound, extending from Dice's Head in Castine through the southernmost point of Nautilus Island to the Brooksville shore, between the fifteenth day of April and the first day of January next following of each year. It shall be unlawful to ship scallops so taken out of the state. Whoever violates this section shall be liable to a penalty of fifty dollars, and in addition shall pay a penalty of five dollars for each and every gallon or part thereof of shelled scallops, so bought, sold, exposed for sale, given away, or in his possession; and shall pay a penalty of five dollars for each one hundred scallops or any part thereof, in the shell, so bought, sold, exposed for sale, given away, or in his possession; and any boat with its equipment, engaged and used in such unlawful catching or selling of scallops may be seized and detained by an officer or warden, not exceeding twenty-four hours, in order that it may be attached or taken by due process of law, to satisfy any judgment that may be recovered; but said boat and equipment shall be released at any time on payment of penalty and costs legally due. Scallop gear found on board any boat in close time shall be prima facie evidence of a violation of this section. So much of this section as relates to buying or selling or exposing for sale or the possession of scallops shall not apply to scallops taken outside of the waters of the state of Maine.

Note. Swelling of scallop meats by artificial means forbidden, c. 140, § 13.

Use of Seines, Weirs, Nets, and Artificial Flies.

Sec. 72. Use of purse or drag seines in certain waters, prohibited; regulation of fishing therein; penalty. R. S. c. 45, § 68. 1927, c. 92. No person shall use any purse or drag seines in the following waters: In Casco bay north of a line drawn easterly from Prince's point in the town of Yarmouth to Bear Island in the town of Phippsburg, excepting for smelts, bluebacks and spurling; in Kennebec river above a line drawn across said river from Fort Popham in the town of Phippsburg to a point opposite at the lower end of Long Island in the town of Georgetown; in Sheepscot river above a bridge leading from Wiscasset to Edgecomb; in Damariscotta river above a line drawn from Farnham's head in the town of Boothbay to a point opposite on the shore in the town of Bristol, excepting the use of drag seines between the above line and The Ledges, for

all fish excepting alewives; in Medomak river, above a line drawn from Martin's point in the town of Friendship, westerly by the northeast end of Hog island to a point opposite in the town of Bremen, or take smelts in said river and its tributaries in any other way than by hook and line; in Georges river, above a line drawn from Hooper's point in the town of St. George, westerly past the northerly end of Caldwell's island to a point opposite on the shore in the town of Cushing, or take smelts in said river and its tributaries in any other way than by hook and line, or dip-nets, and no individual shall take more than one-half bushel of smelts within a period of twenty-four hours with dip-net; in all bays, inlets, rivers and harbors east of the west shore of the Penobscot bay and river where any entrance to the same or any part thereof from mainland to mainland is not more than three nautical miles in width, but purse and drag seines may be used for the purpose of taking smelts in these waters, except in Bluehill bay. The taking of herring, or fishing therefor, by the use of purse or drag seines and all other seines, except the use of seines in weirs, from the first day of June to the first day of November in the waters of Machias bay and its approaches inside of or to the northward of a direct line drawn straight from the highest summit of the island called The Brothers, easterly to a point one-half mile distant and due south from Libby island lighthouse, thence from said point easterly to the southerly extremity of the southern island called Double Head Shots, is hereby prohibited. The use of purse or drag seines within a distance of one-half of a nautical mile from any fish weir in any of the waters of the state east of White Head on the west shore of Penobscot river is hereby prohibited; but such seines may be used for the taking of smelts and for the purpose of taking fish in weirs, but shall not be used in any water in which their use is prohibited by special or general law. Whoever violates any provision of this section shall be liable to a penalty not exceeding five hundred dollars for each offense, to be recovered by complaint, indictment, or action of debt.

85 Me. 192.

Sec. 73. Regulation of places and times of taking salmon, shad, and alewives in certain rivers; penalty. R. S. c. 45, § 69. No salmon, shad, or other migratory fish shall be taken or fished for within five hundred yards of any fishway, dam, or mill race; nor in the Penobscot river between the mouth of the Kenduskeag stream and the water-works dam at Treat's falls on said river, nor between the Augusta highway bridge over the Kennebec river and the Augusta dam; (P. & S. L. 1909, c. 305, § 1. P. & S. L. 1921, c. 99); any alewives in Patten's Pond stream and Floods stream in the town of Surry, Hancock county, nor (P. & S. L. 1913, c. 36. P. & S. L. 1917, c. 36, § 1) other than by seines and weirs in the waters of Patten's bay in the town of Surry in Hancock county westerly of a line running from the southern extremity of Weymouth point to Brown's point, so-called, on the eastern side of Newbury neck including the whole of that portion of Patten's bay, with the exception of Patten's pond stream; (Note: Special privileges, Surry, P. & S. L. 1917, c. 36, § 2); nor in Mill river, a tributary of Georges river, in Thomaston, Maine, between said Georges river and the old dam at head of tide waters in said Mill river; nor (P. & S. L. 1901, c. 401. P. & S. L. 1909, c. 351. P. & S. L. 1919, c. 56) any salmon, alewives, or smelts in Pleasant river, Washington county, within fifty feet of any dam or fishway nor any salmon or alewives between the fifteenth day of September and the first day of March; nor any salmon five hundred feet above Ferry point bridge on the St. Croix river in Calais, between the first days of April and November, except by the ordinary mode of angling with single hook and line or artificial flies; nor shall hook and line or artificial flies be used at any time within one hundred yards of any fishway, dam or mill race; but this

CHAP. 49

section shall not apply to the taking of alewives by the town of Warren in the Georges river, and by the town of Waldoboro in Medomak river, under the authority granted said towns by a private and special law of Massachusetts, passed the sixth day of March, eighteen hundred and two, and amendments thereof, passed by the legislature of this state; nor shall it apply to the taking of alewives by the town of Woolwich in Nequasset stream; nor shall it apply to the taking of alewives by the West Harbor Ice Company in the water below its fishway, erected under authority given by chapter one hundred forty of the private and special laws of nineteen hundred five. Fly-fishing shall be allowed up to the bridge across the Denny's river at Lincoln's mill, but not between said bridge and Lincoln's mill dam. This section shall not apply to the Laconia falls and the Lower falls, so called, of the Saco river, located at Biddeford and Saco; and upon the first three days of each week, from the first of June to the first of September of each year, all persons may dip for salmon, shad and alewives at the falls last named above. Any person may take any salmon, shad or alewives in the waters of Orange river, in the town of Whiting, in the county of Washington, up to one hundred and thirty yards of the fishway at the lower dam in said river, and (P. & S. L. 1921, c. 54) for alewives and shad during open season in Edmunds and Dennysville in the county of Washington up as far as the lower side of the Upper Bridge near the mill, so-called; subject, however, to all the laws of the state, and laws regulating the taking of such fish in said river. The penalty for any violation of this section is a fine of not more than fifty, nor less than ten dollars for each offense, and a further fine of ten dollars for each salmon and one dollar for each shad [alewife, or other migratory fish] so taken.

78 Me. 394.

Note. Special privileges, Thomaston, St. George, and Cushing, P. L. 1844, c. 126, § 1. 1917, c. 142.

Special privileges repealed unless towns have acted. P. L. 1923, c. 128.

Sec. 74. Taking of alewives in Damariscotta river regulated; penalty. R. S. c. 45, § 81. Whoever shall construct, set, maintain or use any net, weir, seine or other device, in the waters of the Damariscotta river, northerly of the bridge between the villages of Newcastle and Damariscotta, for the purpose of taking or catching alewives, or whoever shall take or catch any alewives within said limits, except by hook and line, shall be punished by a fine of two hundred dollars for each offense; all nets, weirs, seines, or other machines or devices, prohibited as aforesaid, shall be deemed forfeited and contraband, and any member of the fish committee of the towns of Newcastle and Nobleborough finding them in such use, may destroy them. But nothing in this section shall be construed to abridge or affect in any manner, the rights and privileges now held by law, by said towns of Newcastle and Nobleborough in the alewife fishery in the said Damariscotta river.

Sec. 75. Taking of alewives about Pemaquid falls and other fishing regulated. R. S. c. 45, § 82. All fishing for alewives at or about Pemaquid falls below the mill dam, shall be restricted to four day in each week, and the fishing season shall be from the first day of April to the fifteenth day of July of each year, for the term aforesaid, and all fishing shall be under such regulations and further restrictions as the fish committee of the town of Bristol shall decide upon.

Sec. 76. Persons not authorized forbidden to disturb alewives in Pemaquid river; penalty. R. S. c. 45, § 83. No person not authorized by the fish committee of the town of Bristol, shall be allowed to catch or disturb any alewives in Pemaquid river above the flow of the tide, and no person unless authorized by said fish committee, shall set traps, or use any other contrivance, for catching

eels, or any other fish, that shall in any way interfere with the passage, either way, of alewives old or young; whoever violates this section shall be subject to a fine of twenty-five dollars and one dollar for each fish so taken or destroyed.

Sec. 77. Protection of weirs; penalty. R. S. c. 45, § 70. No person shall set any net or seine within one thousand feet of the mouth of any weir under a penalty of fifty dollars for each offense.

101 Me. 354.

Sec. 78. Owner may use. R. S. c. 45, § 71. The owner or person in charge of any weir is hereby permitted to use nets and seines in such weir.

Sec. 79. Close time for salmon; penalty. R. S. c. 45, § 72. From the fifteenth day of July to the first day of April following, there shall be a close time for salmon during which no salmon shall be taken or killed in any manner, under a penalty of not more than fifty, nor less than ten dollars, and a further penalty of ten dollars for each salmon so taken or killed. Provided, however, that between the fifteenth days of July and September it is lawful to fish for and take salmon by the ordinary mode, with rod and single line, but not otherwise. But any person may take salmon by weirs on the Saint Croix river below the breakwater at the ledge between the fifteenth day of May and the first day of September.

Sec. 80. Weekly close time for salmon, shad, alewives, and bass, how observed; penalty; exceptions. R. S. c. 45, § 73. Between the first day of April and the fifteenth day of July there shall be a weekly close time of forty-eight hours from sunrise on each Saturday morning to sunrise on the following Monday morning, during which no salmon, shad, alewives, or bass, shall be taken. During the weekly close time all seines, nets, and other movable apparatus shall be removed from the water. Every weir shall have, in that part where the fish are usually taken, an opening three feet wide, extending from the bottom to the top of the weir, and the netting or other material which closes the same while fishing, shall be taken out, carried on shore and there remain during the weekly close time, to the intent that during said close time the fish may have a free and unobstructed passage through such weir or other structure, and no contrivance which tends to hinder such fish shall be placed in any part thereof. If the enclosure where the fish are taken is furnished with a board floor, an opening extending from the floor to the top of the weir is equivalent to one extending from the bottom to the top. The penalty for the violation of this section is twenty dollars for each offense. This section does not apply to the Kennebec, Androscoggin or Penobscot rivers or their tributaries, or to the Saint Croix river below the breakwater at the ledge. Provided, however, that the weekly close time on the Damariscotta river below the bridge at Damariscotta shall be from sunset on each Saturday night to twelve o'clock on the following Sunday night.

78 Me. 394; 81 Me. 395.

Sec. 81. Regulation of smelt fishing; penalty. R. S. c. 45, § 74. 1919, c. 71. 1923, c. 132. 1925, cc. 32, 89, 120. No smelts shall be taken or fished for in any of the tidal waters of the state not covered by private or special laws between the first day of April and the first day of October of each year except by hook and line. Anyone violating any provision of this act shall be punished by a fine of one hundred dollars for each offense. Nothing in this act shall apply to smelts taken in fish weirs or traps maintained and operated for the catching of sardines and herrings. And this section shall not apply to smelts taken in Casco bay between the first day of September and first day of October of each year.

It shall be lawful to fish for and take smelts from the tide waters of the Penobscot river and its tributaries between the first day of October and the first

CHAP. 49

day of May. Any fish so taken from said waters may be offered for sale and sold within the state or shipped to such places out of the state as the owner may designate.

Sec. 82. Special regulations for smelts in certain waters; penalty. P. & S. L. 1917, cc. 9, 54. 1923, c. 71. 1925, cc. 152, 157, 158. All persons are prohibited from taking or fishing for smelts in any other way than by hook and line in the waters of Egypt Bay, Franklin Bay, Taunton Bay and river and their tributaries lying above a line drawn from the Mount Desert Ferry steamboat wharf easterly to the northern end of Ingall's Island and continuing in a straight line to the town of Sorrento in the towns of Hancock, Franklin, Sullivan, and Sorrento; and in the Saco river or in Saco Bay inside a line drawn from the most easterly point of Basket Island, in the city of Biddeford, to the mouth of Goose Fair brook, said Goose Fair brook being the dividing line between the town of Old Orchard and the city of Saco; and in the Damariscotta river above a line drawn from Farnham's Head in the town of Boothbay to a point opposite on the shore in the town of South Bristol; and in the Passagassawaukeag river above a line two thousand feet below and parallel with the present location of the so-called "Memorial Bridge" at Belfast, to a point known as Holmes Mill; and in the tidal waters of Eastern river, a river lying in the counties of Lincoln and Kennebec; and in the tidal waters of Cathance river above the iron bridge in the village of Bowdoinham in the county of Sagadahoc, except that they may be taken and fished for in said Cathance river with nets of two-inch mesh or more. Whoever violates the provisions of this section shall pay a fine of one hundred dollars for each offense.

Note. As to protection of smelts in inland waters, above tide-waters, see c. 37, § 26.

Sec. 83. Special regulation for tom cod; penalty. P. & S. L. 1919, c. 78. It shall be unlawful to fish for or take any tom cods, except by hook and line or gaff, between the first day of October and the first day of May, each year, in the following waters in Hancock and Washington counties: In all the waters of Whitten Parritt stream, in town of Gouldsboro, Hancock county, in the waters of Tunk stream and in all the waters tributary to, or which empty into Steuben bay and Joys bay, above the Lobster island narrows, so-called, at Rogers point in the town of Steuben, in Washington county.

Whoever violates the provisions of this section shall upon conviction be punished by a fine of not less than twenty dollars nor more than fifty dollars for each offense.

Sec. 84. Stationary contrivances regulated; penalty; exceptions. R. S. c. 45, § 78. No weir, hedge, set-net or any other contrivance for the capture of fish, which is stationary while in use, shall extend into more than two feet of water at ordinary low water, under a penalty of not more than one hundred, nor less than fifty dollars, and forfeiture of all apparatus and material so unlawfully used. This provision applies to any seine or drift-net which is at any time attached to a stationary object, but not to fykes or bag-nets used in the winter fishery for smelts and tomcods, nor to any implements lawfully used above the flow of tide, nor to any portion of Penobscot river, bay or tributaries, nor to the Saint Croix river five hundred feet above Ferry's point, in Calais.

85 Me. 121, 164.

Sec. 85. Depth of weirs, how measured; standard for low water on the Kennebec river. R. S. c. 45, § 79. The limit of depth prescribed for weirs in the preceding section shall be measured at the entrance of the weir, provided that no part of the weir known as the leader, is in more than two feet of water at low-water mark. Weirs may exceed the limit of two feet in depth, measured

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

Sec. 86. Forfeitures. R. S. c. 45, § 80. All boats, implements and materials used and all fish taken in violation of the two preceding sections are liable to forfeiture.

Sec. 87. Use of trawls of more than 4000 hooks in certain waters prohibited; penalty. P. & S. L. 1919, c. 91. 1921, c. 105. The use of more than four thousand hooks of trawl or more than ten nets by the crew of any foreign dory, boat or vessel in one day within the following line is hereby prohibited: Inside of a direct line drawn from Little River Head to Cummings Head, Great Wass Island; from Cummings Head to Schoodic Point; and from Schoodic Point to east head of Isle au Haut; from east head of Isle au Haut to Pemaquid Point; from Pemaquid Point to Cape Elizabeth and from said point following the federal coast line to its destination at the state boundary line.

Sec. 88. Use of beam trawls in Sedgwick harbor prohibited; penalty. 1923, c. 34. The use of beam trawls or any similar device is hereby prohibited in Sedgwick Harbor, known as Benjamin's river, under a penalty of not less than five or more than fifty dollars; provided, however, that this section shall not be construed as prohibiting the taking of smelts in the usual manner by the use of purse seines during the time when the use of seines for this purpose is lawful in other waters of the state.

General Provisions.

Sec. 89. Dead or injured fish not to be cast on shore nor released in harbors; penalty. R. S. c. 45, § 84. No person shall cast or deposit upon the shores, or release and deposit in the bays, harbors, or rivers of this state any dead fish, or fish that have been smothered or injured so that they will die. Whoever wilfully violates this section, or aids therein, shall be punished by fine of one hundred dollars, or by imprisonment not exceeding thirty days, or by both fine and imprisonment.

Sec. 90. Shooting seals in Casco bay prohibited; penalty. R. S. c. 45, § 85. No person shall during the months of June, July, and August destroy seals in the waters of Casco bay by shooting with rifle or other long-range weapon, which might endanger human life, under a penalty of fifty dollars for each offense.

Sec. 91. Use of dynamite or poisonous substance for destroying fish, prohibited; sale of such fish and carrying such substances in boat prohibited; penalty. R. S. c. 45, § 86. No person shall use dynamite or any poisonous or stupefying substance whatever, for the purpose of destroying or taking any kind of fish in tidal waters. No person shall buy, sell, give away or expose for sale, or possess for any purpose, any fish taken by use of dynamite or any poisonous

CHAP. 49

or stupefying substance; and no person while engaged in fishing shall carry in his fishing-boat or vessel, any dynamite or other explosives, or any poisonous or stupefying substance. Whoever violates any provision of this section shall be punished by fine of one hundred dollars and costs, and in addition thereto shall be imprisoned for a term of sixty days.

Sec. 92. Persons deriving special benefit from protected waters to post notices of such protection. R. S. c. 45, § 87. All persons who derive special benefits from legislation for the protection of fish in any waters of this state, in excess of what is or may be derived by others, shall publish such protection by posting and maintaining notices substantially as hereinafter provided. Said notices shall be placed on the banks or shores of such protected waters not more than ten feet nor less than six feet above the ground, in a conspicuous position; and if on running water such notices shall be not more than one-half mile apart on the banks of such waters; and if on a pond or lake, not more than one mile apart on the shores of such pond or lake.

78 Me. 486.

Sec. 93. Form of such notices; no liability unless notices posted. R. S. c. 45, § 88. Said notices shall be painted on wood in black Roman letters not less than two inches in length and not less than one-half inch in breadth, so that such letters shall be plainly legible, and such notices shall state the number of the act and the date of the same giving the said protection to such waters. In case no notices as herein provided are posted and maintained on waters that are protected by any special law, no one violating such law shall be liable thereunder to any penalties therein set forth.

Sec. 94. Mutilation of such notices prohibited; penalty. R. S. c. 45, § 89. Any one mutilating or destroying such notices, shall be subject to the same penalties as set forth in section thirty-four of chapter one hundred and thirty-five.

Sec. 95. Application of §§ 92-94. R. S. c. 45, § 90. The three preceding sections shall not apply to towns which by special act have acquired vested rights in any fishery in said towns.

Sec. 96. Vessels owned by non-residents liable for unlawful fishing. R. S. c. 45, § 91. All vessels, boats, craft, owned and officered by non-residents, and apparatus of every kind, employed in unlawful fishing, or having on board any fish unlawfully taken, are liable for all fines and costs herein provided for; and any officer may seize and detain said property not exceeding twenty-four hours, in order that it may be attached and taken by due process of law to satisfy any judgment that may be recovered, but it shall, at any time be released on payment, by the owner or master, of the fine, costs, and reasonable expenses.

Sec. 97. Jurisdiction of offenses. R. S. c. 45, § 92. 1919, c. 184, § 10. In all prosecutions under this chapter municipal and police judges and trial justices have by complaint original and concurrent jurisdiction with the supreme judicial and superior courts. Any warrant issued by such court shall cover offenses in the county where said court is established or any adjoining county, but no party shall be tried in an adjoining county, unless the court in such adjoining county is nearer the place where the crime was committed than the court of the county where the offense is alleged to have been committed.

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

Sec. 98. Fines and penalties, how recovered; settlement of offenses; commission to report to treasurer of state. R. S. c. 45, § 93. 1923, c. 219. All fines and penalties under this chapter may be recovered by complaint, indictment or action of debt made or brought in the county where the offense was committed. The action of debt shall be brought in the name of the state of Maine. All fines, penalties, and collections under this chapter, except when otherwise

expressly provided, shall forthwith be paid to the commission of sea and shore fisheries and by them the same shall be paid to the treasurer of state to be added to and made a part of the appropriation for sea and shore fisheries. And the said commission shall report to the treasurer of state the amount of each fine, penalty and collection itemized, and the name of the party paying the same which shall be kept on record in the treasurer's office.

See § 55. 87 Me. 206; 89 Me. 42; *99 Me. 229; 101 Me. 352.

Sec. 99. Boats and vehicles transporting lobsters caught or possessed illegally may be seized. 1921, c. 98, § 6. All automobiles, boats, vehicles, or other contrivances used for holding, carrying, transporting, conveying, or removing lobsters caught or possessed illegally, shall be forfeited to the state.

Note. Notices on petition to legislature for special legislation relating to fish, c. 2, § 54.

Use of dynamite or other explosives or any poisonous or stupefying substance, for purpose of destroying or taking fish forbidden, c. 37, § 24.

Cultivation of fish for purposes of science by commissioners of inland fisheries and game, c. 37, § 5.

Cultivation of useful fishes by riparian proprietors, c. 37, § 33.

Trespass on islands in salt water for purpose of hunting thereon, c. 108, §§ 12-15.

Penalty for swelling scallop meats by artificial means, c. 140, § 13.

Sea food protective commission. P. L. 1919, c. 183.

CHAPTER 50.

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

Sections 1- 5 Wood and Bark.

Sections 6- 9 Charcoal.

Sections 10-12 Coal.

Sections 13-24 Boards, Plank, and Other Lumber.

Sections 25-27 Logs.

Wood and Bark.

Sec. 1. Dimensions of a cord of wood; penalty. R. S. c. 46, § 1. 1919, c. 74. All cord wood offered for sale shall be four feet long including half the scarf, and well and closely laid together. A cord of wood or bark shall measure eight feet in length, four feet in width, and four feet in height, or otherwise contain one hundred and twenty-eight cubic feet; the measurer shall make due allowance for refuse or defective wood and bad stowage. Any person or persons exposing for sale as a cord of wood anything less shall be fined not less than ten dollars nor more than fifty dollars for each offense. Cities and towns by ordinance may assign location for teams to sell said cord wood and bark.

See c. 5, § 134, ¶ v; 14 Me. 406; 82 Me. 318.

Sec. 2. Penalty for selling wood or bark before survey. R. S. c. 46, § 2. If any fire-wood or bark, brought into any town by land, is sold and delivered, unless otherwise agreed to by the purchaser, before it is measured by a sworn measurer, and a ticket signed by him and given to the driver, stating the quantity that the load contains, the name of the driver, and the town in which he resides, such wood or bark is forfeited, and may be libeled and disposed of according to law.

72 Me. 119; 82 Me. 574.

Sec. 3. Measure of cord-wood brought by water; penalty. R. S. c. 46, § 3. All cord-wood brought by water into any town for sale shall be corded on the

CHAP. 50

wharf or land, on which it is landed, in ranges making up in height what is wanting in length; then it shall be so measured and a ticket given to the purchaser, who shall pay the stated fees; and no such wood shall be carried away by any wharfinger or carter, before it has been so measured, under a penalty of one dollar for every load.

Sec. 4. Ticket required, and penalty for not showing it. R. S. c. 46, § 4. Persons, carrying fire-wood from a wharf or landing for sale, shall be furnished by the owner or seller with a ticket stating the quantity, and the name of the driver; and if such fire-wood is carried away without such ticket, or any driver refuses to exhibit such ticket to any sworn measurer on demand, or does not consent to have the same measured, when in the opinion of the measurer the ticket certifies a greater quantity of wood than the load contains, such wood shall be forfeited, and may be seized and libeled by said measurer according to law.

Sec. 5. Penalty for fraudulent stowage. R. S. c. 46, § 5. When any wood, bark, or charcoal, sold by the cord, foot, or load, is so stowed as to prevent the surveyors from examining the middle of the load, and it appears on delivery, that it was stowed with a fraudulent intent of obtaining payment for a greater quantity than there was in fact, the seller or owner thereof forfeits ten dollars to the county.

Charcoal.

Sec. 6. Measure and sale of charcoal. R. S. c. 46, § 6. Charcoal brought into a town for sale may be measured and sold by the cord or foot, estimating the cord at ninety-six bushels, when the purchaser and seller agree to the same; and the measurers before named shall be measurers of charcoal also.

Sec. 7. Coal baskets to be sealed; dimensions; penalty for using smaller baskets. R. S. c. 46, § 7. All baskets for measuring charcoal brought into a town for sale shall be sealed by the sealer of the town where the person using them usually resides, and shall contain two bushels and be of the following dimensions, viz: nineteen inches in breadth in every part, and seventeen inches and a half deep, measuring from the top of the basket to the highest part of the bottom; and in measuring charcoal for sale, the basket shall be well heaped. Whoever measures charcoal for sale, in any basket of less dimensions, or not sealed, forfeits, for each offense, five dollars.

Sec. 8. Seizure of unlawful baskets. R. S. c. 46, § 8. The municipal officers of towns may appoint some suitable person to seize and secure all baskets used for measuring coal, not according to the provisions hereof.

Sec. 9. Penalty for refusing to give certificate. R. S. c. 46, § 9. Any measurer of wood, bark, or charcoal, who neglects or refuses to give to the owner or purchaser a certificate of the contents of a load, forfeits five dollars for each offense; and all the penalties hereinbefore provided may be recovered by action of debt or complaint, half to the town where the offense is committed, and half to the prosecutor.

Coal and Coke.

Sec. 10. Coal and coke put up in bags or packages to have net weight marked on outside; penalty. R. S. c. 46, § 10. 1919, c. 74, § 2. 1921, c. 77. Anthracite, bituminous, and all mineral coal or coke shall be sold by weight and two thousand pounds shall constitute a ton. Coal or coke put up in bags or package form shall have marked on the bag in a plain and conspicuous manner the net weight. For each violation of this section there shall be a fine of not less than twenty-five nor more than one hundred dollars.

Sec. 11. Weighers of coal and coke; duties of weighers; penalty. R. S. c. 46, § 11. 1919, c. 74, § 3. 1921, c. 43. The municipal officers shall annually elect or appoint weighers of coal and coke. Weighers must give slips either in writing or printing to every purchaser of coal when not in bags or packages, showing the gross, tare, and net weight for each and every load so delivered. The slips so given must have stamped, printed, or written thereon the full name of the weigher. For each violation of this section there shall be a fine of not less than ten nor more than twenty dollars.

See Const. of Me. Art. ix, § 1. *121 Me. 221.

Sec. 12. Coal sold by weight, certificate required. R. S. c. 46, § 12. Unless coal is sold by the cargo, the seller shall, on request of the purchaser, cause it to be weighed by a sworn weigher, who shall make a certificate of the weight; and he shall deliver such certificate to the buyer, before commencing a suit against him for the price of such coal.

65 Me. 138, 139; 68 Me. 268; *121 Me. 221.

Boards, Planks, and Other Lumber.

Sec. 13. Towns to elect surveyors of lumber. R. S. c. 46, § 13. Every town, at its annual meeting, shall elect one or more surveyors of boards, plank, timber, and joist; one or more surveyors of shingles, clapboards, staves and hoops; and every town containing a port of delivery whence staves and hoops are usually exported shall also elect two or more viewers and cullers of staves and hoops; and the municipal officers of a town may, if they deem it necessary, appoint not exceeding seven surveyors of logs.

See c. 5, §§ 12, 14; see Const. of Me. Art. ix, § 1.

Sec. 14. Lumber to be surveyed before delivery. R. S. c. 46, § 14. All boards, plank, timber, and joist, offered for sale, shall, before delivery, be surveyed by a sworn surveyor thereof, and if he has doubts of the dimensions, he shall measure the same, and mark the contents thereon, making reasonable allowance for rots, knots, and splits, drying and shrinking; pine boards three-fourths of an inch thick when fully seasoned, and in that proportion when partly seasoned, shall be considered merchantable; and no pine boards, except sheathing boards, shall be shipped for exportation beyond the United States, but such as are square edged, and not less than seven-eighths of an inch thick, nor less than ten feet long, under penalty of forfeiture to the town whence shipped.

77 Me. 500; 82 Me. 318; 90 Me. 295.

Sec. 15. Dimensions and quality of shingles. R. S. c. 46, § 15. All shingles, packed for exportation beyond the state, shall be sixteen inches long, free from shakes and worm-holes, and at least three-eighths of an inch thick at the butt end when green, and if of pine, free from sap. They shall be four inches wide on an average, not less than three inches wide in any part, hold their width three-fourths of the way to the thin end, well shaved or sawed, and be denominated "number one;" but shingles intended for sale within the state, if of inferior quality or of less dimensions, may be surveyed and classed accordingly, under the denominations of "number two," and "number three."

Sec. 16. Manner of sawing and packing shingles; forfeiture. R. S. c. 46, § 16. All shingles shall be split or sawed crosswise the grain; each bundle shall contain two hundred and fifty shingles, and if in square bundles, twenty-five courses, and be twenty-two inches and a half at the lay; and when packed to be surveyed as "number one," or for exportation, if in any bundle there are five shingles deficient in the proper dimensions, soundness, or number, to make two hundred and fifty merchantable shingles, or if any shingles are offered for sale, before they are surveyed and measured by a sworn surveyor of some town

CHAP. 50

in the county where they were made, and the quality branded on the hoop or band of the bundle, unless the parties otherwise agree, they are forfeited to the town where the offense is committed.

77 Me. 592.

Sec. 17. Dimensions and quality of clapboards. R. S. c. 46, § 17. All clapboards exposed for sale or packed for exportation shall be made of good sound timber, free from shakes and worm-holes, and if of pine, clear of sap; and they shall be at least five-eighths of an inch thick on the back or thickest part, five inches wide, and four feet six inches long, and straight and well shaved or sawed.

Sec. 18. Dimensions and quality of staves, and how enumerated. R. S. c. 46, § 18. Staves packed for sale or exportation shall be well and proportionably split, and of the following dimensions, viz.:

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

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

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

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

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

Sec. 19. Dimensions and quality of hogshead hoops; how packed, and forfeiture for deficiency. R. S. c. 46, § 19. All hogshead hoops exposed for sale or packed for exportation shall be from ten to thirteen feet in length, and of oak, ash or walnut, and of good and sufficient substance, well shaved; if of oak or ash, at least one inch broad, and, if of walnut, three-quarters of an inch at the smaller end; the different lengths shall be made up in bundles by themselves; each bundle shall contain twenty-five hoops, four bundles shall make one hundred, and ten hundred hoops, one thousand; and every bundle, packed for sale or exportation, found to be deficient in number or dimensions, is forfeited to the town where it is exhibited.

85 Me. 284.

Sec. 20. Manufactured lumber, not to be offered for sale until surveyed and branded; penalty; shipmaster also liable. R. S. c. 46, § 20. No person shall deliver on sale, or ship, or attempt to ship for exportation, any boards, plank, timber, joists, shingles, clapboards, staves, or hoops, before they have been surveyed, measured, viewed, or culled, as the case may be, and branded by the proper officer, and a certificate thereof given by him, specifying the number, quality, and quantity thereof, under a penalty of two dollars a thousand, by quantity or tale, as such article is usually sold, half to the town where the offense is committed, and half to the prosecutor; and in addition thereto, the master or owner of any vessel exporting any of the articles aforesaid beyond the limits of the United States contrary to law shall, for the first offense, forfeit two hundred dollars to the town whence said articles are exported; and if after conviction

he commits a second offense in the same vessel, he forfeits the same sum, and the vessel is also forfeited to the town.

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

Sec. 21. Failure to survey lumber and give certificate not to defeat action for price. R. S. c. 46, § 21. In any action hereafter brought for the price of boards, plank, timber, joists, shingles, clapboards, staves, or hoops, unless sold by the cargo, any failure to survey, measure, view, or cull and brand the same and to give certificate thereof as required by section twenty, shall not defeat recovery in such action, unless it appears that before delivery the purchaser requested such survey, measurement, view, or culling, and branding and certificate.

90 Me. 295.

Sec. 22. Master or owner to produce surveyor's certificate before clearance, with affidavit thereto. R. S. c. 46, § 22. The master or owner of any vessel having any of the lumber or other articles mentioned in section twenty on board, for exportation as aforesaid, shall, before the vessel is cleared at the custom-house, produce to the collector a certificate from the proper officer, that the same have been duly surveyed, measured, viewed, or culled, as the case may require; and such master or owner shall likewise make oath before the collector, or a justice of the peace, whose certificate shall be returned to the collector, that the articles so shipped for exportation are the same articles thus surveyed, measured, viewed, or culled, that he has no others on board of the like description, and that he will not take any others.

Sec. 23. Penalty, if surveyor or culler neglects duties or practices fraud in his office. R. S. c. 46, § 23. If any person, duly elected a surveyor, measurer, viewer, or culler of any of said articles under this chapter, and duly qualified, unnecessarily refuses or neglects to attend to the duties of his office when requested, he forfeits three dollars; and if he connives at or willingly allows any breach of the provisions hereof, or practices any other fraud or deceit in his official duties, he forfeits thirty dollars to the use aforesaid.

Sec. 24. Recovery of penalties; jurisdiction of courts. R. S. c. 46, § 24. 1919, c. 74, § 4. All pecuniary penalties aforesaid may be recovered by action of debt, indictment, or complaint, and all other forfeitures, by a libel filed by the treasurer or any inhabitant of the town interested. Where the violation of any of the provisions of this chapter is made an offense with a fine attached, the municipal courts and trial justices shall have concurrent jurisdiction of such offenses with the superior courts and supreme judicial courts.

Logs.

Sec. 25. Duty of surveyors of logs. R. S. c. 46, § 25. Surveyors of logs may inspect, survey, and measure all mill logs floated or brought to market or offered for sale in their towns, and divide them into several classes, corresponding to the different quality of boards and other sawed lumber, which may be manufactured from them; and they shall give certificates under their hands of the quantity and quality thereof to the person, at whose request they are surveyed.

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

Sec. 26. Method of scaling logs. R. S. c. 46, § 26. Unless the parties otherwise agree, in the scaling or measurement of unmanufactured logs and timber the cubic foot shall be the unit of measure, to be determined by mathematical calculation or by such cubic rules as the parties may agree upon.

Sec. 27. Round timber to be scaled. R. S. c. 46, § 27. Any person measuring round timber, the quantity of which is estimated by the thousand, shall scale the same and mark upon each log surveyed by him the contents thereof, unless otherwise agreed by the parties contracting.

CHAPTER 51.

Timber Upon Rivers, Streams, and Adjacent Lands.

Sec. 1. Penalty for unlawful conversion of lumber. R. S. c. 47, § 1. Whoever takes, carries away, or otherwise converts to his own use, without the consent of the owner, any log suitable to be sawed or cut into the boards, clapboards, shingles, joists, or other lumber, or any mast or spar the property of another, whether the owner is known or unknown, lying in any river, pond, bay, stream, or inlet, or on, or near the bank or shore thereof, or cuts out, alters, or destroys any mark made thereon, without the consent of the owner, and with intent to claim the same, forfeits for every such log, mast, or spar, twenty dollars, to be recovered on complaint; half for the state, and half for the complainant.

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

Sec. 2. Such unlawful conversion declared larceny. R. S. c. 47, § 2. Whoever fraudulently and wilfully takes and converts to his own use, either by himself or by another in his employment, any such log, mast, or spar, lying, as aforesaid, for the purpose of being driven to a market or place of manufacture, is guilty of larceny, and shall be punished accordingly.

See c. 131, §§ 1, 8; *64 Me. 443.

Sec. 3. Presumptive evidence of guilt; double damages recoverable. R. S. c. 47, § 3. In prosecutions under sections one and two, if such log, mast, or spar is found in the possession of the accused partly destroyed, partly sawed or manufactured, or with the marks cut out or altered, not being his property, it is presumptive evidence of his guilt; and the burden of proof is then on him; and whoever is guilty of the offense described in either section is also liable to the owner, in an action of debt, for double the value of the log, mast, or spar so dealt with.

*64 Me. 442.

Sec. 4. Right of owner to search mill, boom, or raft, for lost logs; penalty for obstructing. R. S. c. 47, § 4. The owner of such logs, masts, or spars, may at any time, by himself or his agent, enter in a peaceable manner upon any mill, mill-brow, boom or raft of logs, or other timber, in search of such lost property; and whoever wilfully prevents or obstructs such search forfeits for each offense not less than twenty, nor more than fifty dollars, to the person by whom or on whose account such entry was claimed, to be recovered in an action of debt.

Sec. 5. Logs or timber in Saco river or tributaries; special provisions. R. S. c. 47, § 5. If any boom on the Saco river, or any of the waters connected therewith, is so placed or constructed, as to prevent the free and usual passage of timber down the river, the owner or occupant thereof, at his own expense, shall release and turn out the timber so detained, when requested to do so by the owner thereof, if it can be done with safety; and if for two days after request, he neglects or refuses to do so, he is liable to the owner of the timber, in an action on the case, for all damages by him sustained.

Sec. 6. Logs and timber of different owners intermixed, how driven; lien for expenses; libel. R. S. c. 47, § 6. Any person whose timber in any waters of the state is so intermixed with the logs, masts, or spars of another, that it cannot be conveniently separated for the purpose of being floated to the market

or place of manufacture, may drive all timber with which his own is so intermixed, toward such market or place, when no special and different provision is made by law for driving it; and is entitled to a reasonable compensation from the owner, to be recovered after demand therefor on said owner or agent, if known, in an action on the case; he has a prior lien thereon until thirty days after it arrives at its place of destination, to enable him to attach it; and if the owner cannot be ascertained, the property may be libeled according to law, and enough of it disposed of to defray the expenses thereof; the amount to be determined by the court hearing the libel.

*46 Me. 365; 71 Me. 39; 78 Me. 274; *88 Me. 415, 423; 93 Me. 525; *116 Me. 107.

Sec. 7. Logs or timber lodged on banks, forfeiture; advertisement. R. S. c. 47, § 7. Logs or other timber carried by freshets, or otherwise lodged, upon lands adjoining any waters, are forfeited to the owner or occupant thereof, after they have so remained for two years, if such lands, during that time were improved; otherwise after six years; provided, that such owner or occupant, within one year after the same were found so lodged, advertises, as nearly as practicable, the number of pieces of timber, the time when lodged, together with the marks thereon, and the place where found, three weeks successively in some newspaper in the county, if any, otherwise in the state paper.

*110 Me. 16.

Sec. 8. Owner may remove timber on tender of damages; otherwise, damages for land owner. R. S. c. 47, § 8. The owner of said timber may enter on said land and remove it at any time before forfeiture, having previously tendered to the owner or occupant thereof, a reasonable compensation for all damages occasioned by the lodging, remaining, or removal of said timber, and the expense of advertising it; but if the timber is removed by the owner, or otherwise, without such tender, the owner of the land may recover, in an action of trespass, the damages aforesaid.

31 Me. 24; *57 Me. 276; 62 Me. 44; *76 Me. 386; *110 Me. 16; *114 Me. 251.

Sec. 9. Penalty for unlawful conversion of railroad sleepers; ship knees, or cedar lumber on ponds and streams; double damages. R. S. c. 47, § 9. Whoever wilfully and fraudulently takes, carries away, or otherwise converts to his own use, any railroad sleeper, knee, or other ship timber, or cedar for shingles or other purposes, the property of another, whether known or not, without his consent, lying in any river, stream, pond, bay, or inlet, or on or near the shore thereof; or cuts out, alters, or destroys any mark thereon, forfeits ten dollars for each offense, to be recovered and appropriated as in section one; and is liable to the owner in double the amount thereof in an action of debt; and such owner has all the rights and is subject to all the liabilities provided for the owner of logs, masts, and spars, in the six preceding sections.

57 Me. 9.

Note. Maliciously driving nails into logs intended for manufacture, penalty, c. 139, § 13. Letting loose rafts or logs, c. 139, § 14.

CHAPTER 52.

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

| | |
|----------------|---|
| Sections 1- 7 | State Sealer of Weights and Measures. |
| Sections 8-32 | Local Sealers of Weights and Measures. |
| Section 33 | Measurers of Salt, Corn, and Grain. |
| Sections 34-35 | Standard Weight and Measure. |
| Section 36 | Sale of Ice by Weight. |
| Sections 37-42 | Meridian Lines and Standards of Length. |

State Sealer of Weights and Measures.

Sec. 1. State sealer of weights and measures; standards. R. S. c. 48, § 1. The commissioner of agriculture shall be the state sealer of weights and measures.

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

Sec. 2. Standards, how kept and certified. R. S. c. 48, § 2. The standards adopted by the state shall be kept at the state house under the supervision of the state sealer and shall not be removed or used except for the adjustment of a set of working standards that are copies of the original standards or for scientific purposes or to be verified by the national bureau of standards. The state sealer shall maintain the state standards in good order and shall submit them at least once in ten years to the national bureau of standards for certification. He shall at least once in five years cause the standards of the several cities and towns to be compared and corrected to conform with the state standards.

Sec. 3. State sealer to establish tolerances; other powers and duties. R. S. c. 48, § 3. The state sealer of weights and measures shall after consultation with, and with the advice of, the national bureau of standards, establish tolerances for use in this state and said tolerances shall be the legal tolerances of the state. He shall have general supervision of the weights and measures, and weighing and measuring devices of the cities and towns of the state, and cause the enforcement of all laws pertaining to weights and measures in use in the state and may appoint such agents as he desires to assist in the enforcement.

^{125 Me. 124.}

Sec. 4. State sealer to enforce provisions of law; deputy and inspectors. R. S. c. 48, § 4. 1919, c. 6. He shall enforce the provisions of law requiring municipal officers to procure and maintain standards of weights and measures, and the appointing of a sealer of weights and measures. He may appoint a deputy who shall have the authority conferred by the two following sections, and may appoint inspectors with authority to perform any part or all of the duties provided in sections five and six.

Sec. 5. State sealer or deputy to inspect work of local sealers. R. S. c. 48, § 5. He or his duly appointed deputy shall visit the various cities and towns in

the state in order to inspect the work of the local sealers, and may at all times inspect and test the weights, measures, and balances of any person, firm, association, or corporation used, or to be used, in purchasing from or selling to the public any goods, wares, merchandise, or other commodities; if any such weights, measures, or balances are found to be inaccurate or defective, he shall forthwith cause the same to be corrected or condemned.

Sec. 6. May test commodities offered for sale; may have access to buildings. R. S. c. 48, § 6. He, or his duly appointed deputy may, at irregular intervals, examine commodities sold or offered for sale and test them for correct weight, measure, or count, and bring complaint for violations of sections eight to thirty-one, both inclusive, of this chapter. He, or his duly appointed deputy may for the purpose stated above, and in the general performance of his or their official duties, have access without formal warrant to any stand, place, building, or premises, or may stop any vendor, pedler, junk dealer, coal wagon, ice wagon, or any person for the purpose of making the proper tests.

Sec. 7. Record and annual report. R. S. c. 48, § 7. He shall keep a record in detail of the work of his office and shall annually, on or before the first day of December, make a written report of the work and the expenses of his office to the governor and council.

Local Sealers of Weights and Measures.

Sec. 8. Municipal officers to elect sealer of weights and measures for indefinite term; removable only for neglect; penalties. R. S. c. 48, § 8. 1917, c. 61. The municipal officers of each town shall elect a sealer of weights and measures, also a deputy sealer if necessary, not necessarily a resident therein, and said sealer and deputy shall hold office during their efficiency and the faithful performance of their duties and shall be removed by said officers only for neglect of duty. The state sealer of weights and measures shall have jurisdiction over said sealer or deputy sealer, and any vacancy caused by death or resignation shall be filled by election by said municipal officers within thirty days; for each month that said municipal officers neglect their duty they severally shall forfeit ten dollars. Within ten days after each such election the clerk of each city or town shall communicate the name of the person so elected to the state sealer of weights and measures, and for neglect of this duty shall forfeit ten dollars. Such sealer of weights and measures in any town may be sealer for several towns if such is the pleasure of the municipal officers therein, provided such action received the approval of the state sealer of weights and measures.

Sec. 9. Powers of local sealers of weights and measures. 1917, c. 33. All local sealers of weights and measures and their deputy sealers in cities and towns shall have the same power that is given the state sealer of weights and measures and deputy state sealer by section six.

Sec. 10. Treasurers of each town to keep town standards. R. S. c. 48, § 9. The treasurers of each town, at the expense thereof, or jointly with the treasurers of adjacent towns, shall constantly keep as town standards a set of beams and weights and measures subject to the approval of the state sealer and conformable to the state standards. Said treasurers shall cause all beams and weights and measures belonging to their towns to be proved and sealed by the state standards once in five years, beginning the first day of January, nineteen hundred thirteen.

Sec. 11. Cities may own scales; appoint weighers and deputy sealers. R. S. c. 48, § 10. Any city may purchase and keep for use scales for weighing hay and other articles, appoint weighers, and fix their fees, to be paid by the pur-

CHAP. 52

chaser. The municipal officers of cities and towns may appoint a deputy sealer of weights and measures to hold office during their pleasure and fix his compensation. Such deputy shall act under the direction of the sealer of weights and measures in the municipality, and shall have the same authority as the sealer in the performance of his duties.

Sec. 12. City and town sealers to keep records of weights and measures sealed; to make annual report. R. S. c. 48, § 11. The several city and town sealers and other persons authorized to inspect weights and measures shall keep records of all weights and measures, balances, and measuring devices inspected, sealed, or condemned by them, giving the name of the owner or agent, the place of business, the date of inspection, and kind of apparatus so inspected, sealed, or condemned. He shall make an annual report, duly sworn to, on or before the first day of November of each year, to the state sealer, giving in addition to the above an inventory of the standards and apparatus in his possession, and such other information as he may deem important, or as the state sealer may require.

Sec. 13. Duty of sealer to receive and receipt for standards. R. S. c. 48, § 12. The person appointed as provided in section eight, shall receive the standards and seal from the treasurer, giving a receipt therefor, describing them and their condition, and therein engaging to re-deliver them at the expiration of his office in like good order; and he shall be accountable for their due preservation while in his possession.

68 Me. 470.

Sec. 14. Sealers to give notice of times and places for sealing weights and measures. R. S. c. 48, § 13. The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement, or by posting in one or more public places in their respective cities and towns notices to all inhabitants or persons having usual places of business therein and who use weights, measures, or balances for the purpose of selling any goods, wares, merchandise, or other commodities or for public weighing to bring in their weights, measures, and balances to be adjusted and sealed. Such sealers shall attend in one or more convenient places and shall adjust, seal, and record all weights, measures, and balances so brought in.

125 Me. 124.

Sec. 15. Sealers to visit persons who neglect to comply. R. S. c. 48, § 14. After giving said notice the said sealers shall go to the houses, stores, and shops of persons who neglect to comply therewith, and having entered the same with the assent of the occupants thereof, shall adjust and seal their weights, measures, and balances.

Sec. 16. To visit annually owners of hay, coal, and platform scales and test same. R. S. c. 48, § 15. Said sealers shall go once a year, and oftener if necessary, to every hay and coal scale, to every platform balance within their respective cities and towns that cannot be easily or conveniently removed, and shall test the accuracy of and adjust and seal the same.

Sec. 17. All scales, weights, and measures may be tested any time. R. S. c. 48, § 16. All persons using any scales, weights, or measures for the purpose of buying or selling any commodity, may, when they desire it, have the same tested and sealed by the sealers of weights and measures at the office of any of said sealers.

Sec. 18. If sealer cannot seal any weight, etc., he may mark to show inspection; use of weights, etc., that cannot be adjusted by sealers forbidden. R. S. c. 48, § 17. In case a sealer of weights and measures cannot seal any weights, measures, and balances in the manner before provided, he may mark

them with a stencil, or by other suitable means so as to show that they have been inspected; but he shall in no case seal or mark as correct any weights, measures, or balances which do not conform to the standards. If such weights, measures, or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall affix to such weights, measures, or balances a notice, forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards.

Sec. 19. Sealers to be furnished with appliances for testing weights, etc. R. S. c. 48, § 18. A sealer when visiting the place of business of any person for the purpose of testing any weights, measures, or balances, may use for that purpose such weights, measures, or balances as he can conveniently carry with him, and each city and town shall furnish its sealer with one or more duplicate sets of weights, measures, and balances, which shall at all times be kept to conform to the standards furnished by the state, and all weights, measures, and balances so sealed shall be deemed to be legally sealed the same as if tested and sealed with the standard weights, measures, and balances.

Sec. 20. False weights and measures may be seized. R. S. c. 48, § 19. A sealer of weights and measures may seize without a warrant such weights, measures, or balances as may be necessary to be used as evidence in cases of violation of the law relating to the sealing of weights and measures, such weights, measures, or balances to be returned to the owners, or forfeited as the court may direct.

Sec. 21. Proceedings, when complaint is made that incorrect weights, etc., are being used. R. S. c. 48, § 20. When a complaint is made to a sealer of weights and measures by any person that he has reasonable cause to believe or when such sealer himself has reasonable cause to believe that a weight, measure, or balance used in the sale of any commodity within his city or town is incorrect, the said sealer shall go to the place where such weight, measure, or balance is and shall test the same, and mark it according to the result of the test applied thereto; and if the same is incorrect and cannot be adjusted, the said sealer shall attach a notice thereto, certifying that fact, and forbidding the use thereof until it has been made to conform to the authorized standard.

Sec. 22. How incorrect weights, etc., shall be stamped; penalty. R. S. c. 48, § 21. All weights, measures, and balances that cannot be made to conform to the standard shall be stamped "condemned" or "CD" by the sealer, and no person shall thereafter use the same under the penalties provided in the case of the use of false weights and measures.

Sec. 23. Scales to be sealed before use. R. S. c. 48, § 22. Before any weights, measures, scales, steelyards, beams, or balances are used, they shall be sealed by a public sealer of weights and measures.

68 Me. 470.

Sec. 24. Sales by gross weight. R. S. c. 48, § 23. Such articles as are sold or exchanged in any market or town in the state by gross or avoirdupois weight, shall be sold or exchanged as follows: twenty-five avoirdupois pounds constitute one quarter; four quarters, one hundred; and twenty hundreds, one ton; and all other articles, usually sold by tale, shall be sold by decimal hundred.

Sec. 25. Sealer or his deputy may examine commodities sold or offered for sale and test weights and measures. R. S. c. 48, § 24. 1917, c. 207. Every seller of weights and measures (or his duly appointed deputy) who has reasonable cause to believe that a weight, measure, scale, balance, or beam has been altered since it was last adjusted and sealed shall enter the premises in which it is kept or used and shall examine the same. A sealer, or his duly appointed deputy, may examine commodities sold or offered for sale and test them for

CHAP. 52.

correct weight, measure, or count, and bring complaint for violations of sections eight to thirty-one, both inclusive, of this chapter. He, or his duly appointed deputy, may, for the purpose stated above, and in the general performance of his or their official duties, have access without formal warrant to any stand, place, building, or premises, or to any sales slip, record of sale, or weight slip, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon, or any person for the purpose of making the proper tests.

Sec. 26. Scales and weighing devices not to be sold until standard approved. 1919, c. 159. It shall be unlawful to sell, offer for sale, or give away any scale or other weighing or measuring device until a scale or measuring device of the same manufacture, type, and kind shall have been approved by the National Bureau of Standards in Washington, D. C., and until a certificate of said approval shall have been filed with the state sealer of weights and measures in Augusta, which certificate shall state the name and manufacturer of said scale or other measuring device, the place where manufactured and that the same has been approved by said bureau of standards. This act shall not apply to liquid or standard dry measures.

Sec. 27. Sealer may be paid salary and fees paid into treasury. R. S. c. 48, § 27. The city council of a city may by ordinance, and a town may by by-law, provide that the sealer of weights and measures for their city or town shall be paid by a salary, and that he shall account for and pay into the treasury of the city or town the fees received by him by virtue of his office; and where such salary is paid no fees shall be charged for services rendered under section fourteen.

Sec. 28. Weighers and measurers not to give certificate of weight or measure until qualified; penalty; jurisdiction of courts. 1919, c. 124. It shall be unlawful for any weigher of coal, hay, straw, junk, or other articles offered to be weighed, or for any measurer of wood, bark, or charcoal to give a certificate of weight or measure until said weigher or measurer shall have qualified by taking oath for the faithful performance of the duties of his office. Whoever violates the provisions of this section shall be punished by a fine of not less than ten dollars or more than twenty-five dollars for each offense and trial justices and municipal courts shall have concurrent jurisdiction with the supreme judicial court of all prosecutions for violations of this section.

Sec. 29. Penalty for using false, altered, or condemned scales, weights, measures, etc. R. S. c. 48, § 24. 1917, c. 207. Whoever by himself, or by his servant, or as the agent or servant of another, shall use or retain in his possession any false scales, weight, or measure, or weighing or measuring device in the buying or selling of any commodity or thing, or whoever after a weight, measure, scale, balance, or beam has been adjusted and sealed, shall alter it so that it does not conform to the public standard and shall fraudulently make use of it, or whoever shall dispose of any condemned scales, weight, measure, or weighing or measuring device, contrary to law, or remove any tag, stamp, or mark placed thereon by the sealer; or whoever by himself, or by his agent or servant, or as agent or servant of another, shall sell, offer, or expose for sale less than the quantity he represents, or whoever by himself, or by his agent or servant, or as the agent or servant of another, shall, sell, offer for sale, or have in his possession for the purpose of selling, any false scales, weight, or measures, or any device or instrument to be used or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall for the first offense be punished by a fine of not more than fifty dollars; for the second offense by a fine of not less than twenty, nor more than two hundred dollars, and for any

subsequent offense by a fine of fifty dollars and by imprisonment for not less than thirty, nor more than ninety days. The possession or use by any person of any false weight, measure, or other apparatus for determining the quantity of any commodity or article of merchandise is presumptive evidence of knowledge by such person of the falsity of such weight, measure, or other apparatus.

Any person refusing to exhibit any sales slip, record of sale, or weight slip in his possession, or to allow proper tests for correct weight, measure, or count, or refusing to proceed to a proper and convenient place for the making of any such test, shall be punished by a fine not exceeding ten dollars.

See § 22.

Sec. 30. Penalties. R. S. c. 48, §§ 9, 12, 17, 20. 1919, c. 159. For every neglect of duty prescribed by section ten of this chapter, the treasurers of each town shall forfeit one hundred dollars.

The sealer of weights and measures appointed as provided by section eight of this chapter shall, for every neglect of duty prescribed by this chapter, forfeit ten dollars.

Whoever removes the notice prescribed by section eighteen of this chapter, without consent of the officer affixing same, shall for each offense forfeit the sum of not less than ten, and not exceeding fifty dollars.

Any person using a weight, measure, or balance, after the sealer has demanded permission to test same and has been refused such permission, shall be liable to a penalty of not less than ten, nor more than one hundred dollars.

Whoever violates section twenty-six of this chapter shall upon conviction be punished by a fine of not less than twenty dollars nor more than fifty dollars for each offense.

Sec. 31. Penalty for using weights, etc., which have not been sealed. R. S. c. 48, § 25. Whoever sells by any other weights, measures, scales, beams, or balances than those which have been sealed as before provided, shall forfeit a sum not exceeding twenty dollars for each offense, and when by the custom of trade such weights, measures, scales, beams, or balances are provided by the buyer, he shall, if he purchases by any other, be subject to a like penalty to be recovered by an action of tort to the use of the complainant.

See c. 41, § 15.

Sec. 32. Jurisdiction of courts. R. S. c. 48, § 26. Municipal and police courts and trial justices shall have original jurisdiction, concurrent with the supreme judicial court and superior courts, of prosecutions for all offenses against the laws pertaining to weights and measures.

Note. Sealers of weights and measures shall annually seal all measures used for sale of milk, c. 41, § 15, duties of, as to charcoal baskets, c. 50, § 7; fees of, c. 126, § 23.

Measurers of Salt, Corn, and Grain.

Sec. 33. Appointment and fees of measurers. R. S. c. 48, § 28. The municipal officers of towns annually may appoint measurers of salt, corn, and grain therein, who shall receive such fees from the purchaser as said officers establish; and, in every contract made in the state for the sale of salt by the hogshead, such hogshead shall consist of eight bushels; and, when the buyer or seller requests, salt, corn, or grain bought or sold in places where such measurers live shall be measured by them.

Standard Weight and Measure.

Sec. 34. Standard weight fixed; penalty. R. S. c. 48, § 29. The standard weight of a bushel of potatoes is sixty pounds; of apples, forty-four pounds; of dried apples, twenty-five pounds; of wheat, sixty pounds; of corn or rye, fifty-six pounds; of cracked corn, feed, or meal of any kind except oatmeal, fifty pounds; of barley or buckwheat, forty-eight pounds; of carrots or English turnips, fifty pounds; of onions, fifty-two pounds; of rutabaga, sugar beets, mangel-wurzel, turnip and other beets, sixty pounds; of parsnips, forty-five pounds; of beans, sixty pounds; of Lima beans, fifty-six pounds; of shell beans, twenty-eight pounds; of soy beans, fifty-eight pounds; of scarlet or white runner pole beans, fifty pounds; of string beans, twenty-four pounds; of Windsor (broad) beans, forty-seven pounds; of beet greens, dandelions, kale or spinach, twelve pounds; of parsley, eight pounds; of peas, sixty pounds; of unshelled green peas, twenty-eight pounds; of wrinkled peas, fifty-six pounds; of rough rice, forty-four pounds; of oats, thirty-two pounds; of green peanuts, twenty-two pounds; of roasted peanuts, twenty pounds; of Turk's Island or other coarse grades of salt, seventy pounds; of Liverpool or other fine grades of salt, sixty pounds; of lime, seventy pounds; of hair used in masonry, well dried and cleaned, eleven pounds; of strawberries, raspberries or blackberries, forty pounds; of blueberries, forty-two pounds; of currants, forty pounds; of cranberries, thirty-two pounds; of peaches, forty-eight pounds; of pears, fifty-eight pounds; of dried peaches, thirty-three pounds; of sweet potatoes, fifty-four pounds; of quinces, forty-eight pounds; of tomatoes, fifty-six pounds; all to be in good order and fit for shipping or for market; the measure of each of these articles shall be determined as aforesaid at the request of the vendor or vendee; and if either party refuses so to do he forfeits twenty cents for each bushel, to the person prosecuting therefor within thirty days.

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

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

Sec. 35. Sale of fruit, nuts, and vegetables, by measure, regulated; penalty. R. S. c. 48, § 30. All fruits, nuts, and vegetables, if sold by measure, shall be sold by dry measure, United States standard, and shall be measured by level measure. Baskets or other receptacles holding one quart or less which are to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, huckleberries, raspberries, or gooseberries, shall be of the capacity of one quart, one pint, or one-half pint, United States standard, dry measure. Whoever sells or offers for sale or has in possession with intent to sell, any of the aforesaid fruits in any basket or other receptacle holding one quart or less which does not conform to said standard, or conforming to said standard is not level measure, shall be punished by a fine of ten dollars for each offense. Said baskets or other receptacles shall not be required to be tested and sealed as provided by this chapter, but any sealer or health officer may test the capacity of any

basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and if the same is found to contain less than the standard measure, or if the quantity of such fruit is otherwise less than as herein provided, he shall seize the same and make complaint against the vendor.

Sale of Ice by Weight.

Sec. 36. Sale of ice by weight, when requested; penalty. R. S. c. 48, § 31. A dealer in ice who on request of the purchaser of ice refuses or neglects to weigh the same when delivered or gives false weight shall for each offense be punished as provided in section twenty-nine of this chapter. Whoever, having charge of the delivery of ice from a wagon, not being a dealer in ice, refuses on the request of the purchaser of ice to weigh the same when it is delivered, or gives false weight, shall be punished by a fine of not more than ten dollars.

Meridian Lines and Standards of Length.

Sec. 37. County commissioners to erect and maintain meridian line; record to be kept by clerk of courts. R. S. c. 48, § 32. The county commissioners, at the expense of their several counties, shall erect and forever maintain therein, at such place or places remote from electrical disturbances as the public convenience requires, a true meridian line to be perpetuated by stone pillars with brass or copper points firmly fixed on the tops thereof, indicating the true range of such meridian; and shall protect the same and provide a book of records to be kept by the clerk of courts, or by a person appointed by them nearer to such structure, and accessible to all persons wishing to refer thereto.

Sec. 38. Care and custody. R. S. c. 48, § 33. Such structures shall be under the care and custody of such clerks; and any surveyor residing in said county or engaged in surveying therein, shall have free access thereto for the purpose of testing the variation of the magnetic needle.

Sec. 39. Surveyors to annually verify compass; to record declination of needle, etc., and to enter same in field note-book; penalty for neglect. R. S. c. 448, § 34. When such meridian lines have been established and completed every land surveyor shall, at least annually, before making any survey, test and verify his compass, or other instrument using the magnetic needle, by the meridian line so established in the county where his surveys are to be made, and shall enter the declination of such needle from the true meridian in the book mentioned in section thirty-seven, together with the style and make of such instrument and its number, if any, and the date and hour of observation, and subscribe his name thereto for future reference; and shall insert corresponding entries as to date and declination, in his field note-books, which field note-books shall also show dates at which his surveys are made. Neglect or refusal to comply with this section shall render such surveyor liable to a penalty of twenty-five dollars for each neglect, to be recovered on complaint in the county where any survey is made, half to the complainant and half to the county. The provisions of this section shall not apply to such surveys as are made by angles from some fixed, permanent line, or by a solar instrument and independent of the magnetic needle.

Sec. 40. County commissioner to erect and maintain standard of length; description thereof; their care and custody; duty of surveyors to verify tape or chain and record results; penalty for neglect. R. S. c. 48, § 35. The county commissioners at the expense of the several counties shall also erect and forever maintain therein, at such place or places as the public convenience may require,

CHAP. 52

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

Sec. 41. Governor to appoint commissioner to verify meridians. R. S. c. 48, § 37. When such meridian line or standard of length is established, repaired, or rebuilt in any county, the governor with the advice and consent of the council, shall appoint a competent commissioner, not necessarily a resident of this state, to inspect and verify the same. Such commissioner shall in case of a meridian line verify the same by astronomical observation, and in his report shall give an accurate description of such structures, its latitude and longitude, and the declination of the needle at the time; and in case of a standard of length shall give a description of the structure, its location and exact length as determined by comparison with some authentic standard from the United States Bureau of Weights and Measures. All such reports shall be full and accurate and be deposited in the office of the secretary of state, and a certified copy shall be filed and recorded in the office of the clerk of courts in the county where such structure is situated. Such commissioner shall receive from the state such just compensation as the governor and council shall allow.

Sec. 42. Penalty for injuring meridian lines. R. S. c. 48, § 36. Whoever wilfully displaces, alters, defaces, breaks, or otherwise injures any of the pillars or points, plates, enclosures, bars, locks, bolts, or any part of the structure of any meridian line or standard of length shall forfeit not exceeding one hundred dollars, to be recovered by indictment, half to the prosecutor and half to the county, and shall also be liable in an action of debt for the amount necessarily expended in repairing damages caused by his act.

CHAPTER 53.

Provisions Relating to Labor.

| | |
|----------------|--|
| Sections 1-8 | State Board of Arbitration and Conciliation. |
| Sections 9-17 | Department of Labor and Industry. |
| Sections 18-36 | Labor of Women and Children. |
| Section 37 | Seats for Female Employees. |
| Section 38 | Custodians of Elevators. |
| Sections 39-40 | Weekly Payment of Wages. |
| Sections 41-42 | Preference to Maine Workmen and Contractors. |
| Sections 43-49 | Labels of Workingmen's Unions. |

State Board of Arbitration and Conciliation.

Sec. 1. Appointment and qualification of state board of arbitration and conciliation; duties, authority to make rules; report. R. S. c. 49, § 1. The state board of arbitration and conciliation as heretofore established shall consist of three members appointed by the governor, with the advice and consent of the council, from time to time upon the expiration of the terms of the several members, for terms of three years. One member shall be an employer of labor or selected from some association representing employers of labor, and another shall be an employee or an employee selected from some bona fide trade or labor union and not an employer of labor. Vacancies occurring during a term shall be filled for the unexpired term. The board shall hold a meeting on the third Wednesday of September in each year and shall organize by choosing from its members a chairman and secretary. It shall be the duty of the board to endeavor to settle disputes, strikes and lockouts between employers and employees. The board shall from time to time make such rules of procedure as it deems necessary, and shall annually, on or before the first day of December, make a report to the governor and council, which shall be incorporated in and printed with the biennial report of the department of labor and industry.

See Const. of Me. Art. ix, § 1.

Sec. 2. Board to be notified of strike, or threatened strike; proceedings in settlement of strike; governor may request state board to investigate. R. S. c. 49, § 2. Whenever it appears to the mayor of a city or the selectmen of a town that a strike is seriously threatened, or a strike actually occurs, he or they shall at once notify the state board of arbitration and conciliation and such notification may also be given by the employer or employees actually concerned in the strike or lockout. If, when such strike is threatened or actually occurs, it appears that as many as ten employees are directly concerned therein, the state board of arbitration and conciliation shall, as soon as may be, communicate with such employer and employees and endeavor by mediation to obtain an amicable settlement or endeavor to persuade such employer and employees to submit the matter in controversy to a local board of arbitration and conciliation or to the state board. If the matter be submitted, the board to which it is submitted shall investigate such controversy and ascertain which party is mainly responsible or blameworthy for the existence of the same, and the board may make and publish a report finding such cause and assigning such responsibility or blame. The

CHAP. 53

state board shall, upon request of the governor, investigate and report upon any controversy if in his opinion it threatens to affect the public welfare.

Sec. 3. Board may make inquiry into cause of controversy, hear parties, and make written decision; effect of decision. R. S. c. 49, § 3. In any controversy where not less than ten employees are directly concerned the board shall, upon application as hereinafter provided, and as soon as practicable, visit the place where the controversy exists and make careful inquiry into its cause, and the board may, with the consent of the governor, conduct such inquiry beyond the limits of the state. The board shall hear all persons interested who come before it, advise the respective parties what ought to be done or submitted to by either or both to adjust said controversy, and make a written decision thereof, which shall at once be made public, shall be open to public inspection, and shall be recorded by the secretary of the board; said decision shall for six months be binding on the parties who join in the application or until the expiration of sixty days after either party has given notice to the other in writing of his intention not to be bound thereby; such notice may be given to the employees by posting it in three conspicuous places in the shop, factory, yard, or other place where they work.

Sec. 4. Application for inquiry; secretary to give notice of time and place of hearing. R. S. c. 49, § 4. The application for such inquiry may be signed by the employer or by a majority of the employees in the department of the business in which the controversy exists or by their duly authorized agent or by both parties, and, if signed by an agent claiming to represent a majority of the employees, the board shall satisfy itself that he is duly authorized to do so. The application shall contain a statement of the matter in controversy and a promise to continue in business or at work without any strike or lockout until the decision of the board, if such decision is made within three weeks after the date of filing the application. The secretary of the board shall forthwith after such filing cause public notice to be given of the time and place of hearing on the application, unless both parties join in the application and present therewith the written request that no public notice shall be given. If such request is made, notice shall be given to the parties in such a manner as the board shall order, and the board may give public notice notwithstanding such request.

Sec. 5. Authority to summon witnesses and require production of books. R. S. c. 49, § 5. The board may summon as witnesses any operative or any person who keeps the record of wages earned in the department of business in which the controversy exists and may require the production of books which contain the record of wages paid. Summonses may be signed and oaths administered by any member of the board. Witnesses summoned by the board shall be allowed the same fees as are paid to witnesses in the supreme judicial court; these fees together with all necessary expenses of the board shall be paid by the treasurer of state on warrants drawn by the governor and council.

Sec. 6. Controversy may be submitted to local board of arbitration; decision. R. S. c. 49, § 6. The parties to any controversy described in section three may submit such controversy to a local board of arbitration and conciliation which may be either mutually agreed upon or may be composed of three persons, one of whom shall be designated by the employer, one by the employees or their duly authorized agent; the third, who shall be chairman, by the other two; such board shall have all the powers exercised by the state board, and its decision shall have the same effect as that of the state board. The decision of said board shall be rendered within ten days after the close of any hearing held by it and shall at once be filed with the clerk of the municipality where the controversy arose, and a copy thereof shall be filed with the secretary of the

state board by the clerk of the said municipality. Each of said arbitrators shall be entitled to receive three dollars for each day of actual service, to be paid by the treasurer of state on a warrant drawn by the governor and council.

Sec. 7. Advertisements during strike or disturbance, regulated; when provision not operative. R. S. c. 49, § 7. If an employer, during the continuance of a strike among his employees, or during the continuance of a lockout or other labor trouble among his employees, publicly advertises in newspapers, or by posters or otherwise, for employees, or by himself or his agents solicits persons to work for him to fill the places of strikers, he shall plainly and explicitly mention in such advertisements or oral or written solicitations that a strike, lockout, or other labor disturbance exists. The provisions of this section shall cease to be operative when the state board of arbitration and conciliation shall determine that the business of the employer, in respect to which the strike or other labor trouble occurred, is being carried on in the normal and usual manner and to the normal and usual extent. Said board shall determine this question as soon as may be, upon the application of the employer.

Sec. 8. Penalty for violation. R. S. c. 49, § 8. Whoever, whether a person, firm, association, or corporation, violates the preceding section shall be punished by a fine of not less than twenty-five, nor more than fifty dollars.

Department of Labor and Industry.

Sec. 9. Appointment of commissioner; deputy; salaries and expenses to be audited; unexpended balance. R. S. c. 49, § 9. 1919, c. 231, § 1. A state department of labor and industry shall be maintained under the direction of an officer whose title shall be commissioner of labor and industry, and state factory inspector. He shall be appointed by the governor, with the advice and consent of the council, for a term of three years, and shall hold office until his successor is appointed and qualified. He shall have an office in the state capitol. He shall appoint a deputy who shall be clerk of the department, and deputy state factory inspector, and shall hold office during the pleasure of the commissioner; he shall also appoint a stenographer for the department and a woman factory inspector, and may employ special agents and such other assistants as may be required for the work of the department. The special agents and other assistants shall work under the supervision and direction of the commissioner and shall be paid for their services such compensation as he may deem proper, not exceeding five dollars a day and necessary traveling expenses. All expenses of the department shall be audited by the state auditor and shall be payable upon proper vouchers certified by the commissioner.

Sec. 10. Work of department; enforcement of laws relating to employment of minors and women; bulletins. R. S. c. 49, § 10. The department shall collect, assort and arrange statistical details relating to all departments of labor and industrial pursuits in the state; to trade unions and other labor organizations and their effect upon labor and capital; to the number and character of industrial accidents and their effect upon the injured, their dependent relatives and upon the general public; to other matters relating to the commercial, industrial, social, educational, moral, and sanitary conditions prevailing within the state, including the names of firms, companies, or corporations, where located, the kind of goods produced or manufactured, the time operated each year, the number of employees classified according to age and sex, and the daily and average wages paid each employee; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the industries of the state. The commissioner of labor and industry shall cause to be enforced all laws regu-

CHAP. 53

lating the employment of minors and women; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads and in other places; all laws regulating the payment of wages, and all laws enacted for the protection of the working classes. He shall, on or before the first day of January, biennially, report to the governor, and may make such suggestions and recommendations as he may deem necessary for the information of the legislature. He may from time to time, cause to be printed and distributed bulletins upon any subject that shall be of public interest and benefit to the state.

Sec. 11. Authorized to gather facts and statistics; to have a seal; may take testimony; sources of information to be confidential. R. S. c. 49, § 11. The commissioner may furnish a written or printed list of interrogatories for the purpose of gathering such facts and statistics as are contemplated herein, to any person, or the proper officer of any corporation operating within the state, and may require full and complete answers thereto under oath; the commissioner shall have a seal, and may take and preserve testimony, issue subpoenas, administer oaths, and examine witnesses under oath in all matters relating to the duties herein required of said department of labor and industry; such testimony shall be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses summoned and testifying before the commissioner shall be paid, from any funds at the disposal of the department, the same fees as witnesses before the supreme judicial court. In the report of said department no use shall be made of the names of individuals, firms, or corporations supplying the information called for by this section, unless by written permission, such information being confidential and not for the purpose of disclosing personal affairs.

Sec. 12. Powers of commissioner or agent to enter manufacturing establishment. R. S. c. 49, § 12. The commissioner, as state factory inspector, and any authorized agent of the department of labor and industry, may enter any factory or mill, workshop, private works, or state institutions which have shops or factories, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this section and the two preceding sections, and may examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places, and may make a record of such inspection.

Sec. 13. Duty when conditions are found unsanitary, unsafe, or injurious to health. R. S. c. 49, § 12. If the commissioner as state factory inspector, or any authorized agent of the department of labor and industry, shall find upon such inspection that the heating, lighting, ventilation, or sanitary arrangement of any workshops or factories is such as to be injurious to the health of the persons employed or residing therein or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs, and machinery in such workshops and factories are located or are in a condition so as to be dangerous to employees and not sufficiently guarded, or that vats, pans, or any other structures, filled with molten metal or hot liquids, are not surrounded with proper safeguards for preventing accidents or injury to those employed at or near them, he shall notify, in writing, the owner, proprietor, or agent of such workshops or factories to make, within thirty days, the alterations or additions by him deemed necessary for the safety and protection of the employees.

See c. 34, § 46.

Sec. 14. Terms defined. R. S. c. 49, § 13. The following terms used in the five preceding sections shall have the following meanings: The word "person" means an individual, corporation, partnership, company or association.

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

Sec. 15. Municipal officers required to furnish information. R. S. c. 49, § 14. All state, county, city, and town officers are hereby directed to furnish the commissioner of labor and industry upon his request, such statistical or other information contemplated by sections ten, eleven, twelve, and thirteen as shall be in their possession as such officers.

Sec. 16. Reports of deaths, accidents, and injuries to be made to commissioner of labor. R. S. c. 49, § 15. The person in charge of any factory, workshop, or other industrial establishment shall within ten days after the occurrence, report in writing to the commissioner of labor and industry all deaths, accidents, or serious physical injuries sustained by any person therein or on the premises, stating as fully as possible the cause of the death or the extent and cause of the injury, and the place where the injured person has been sent, with such other or further information relative thereto as may be required by said commissioner, who may investigate the causes thereof and require such precautions to be taken as will prevent the recurrence of similar happenings. No statement contained in any such report shall be admissible in evidence in any action arising out of the death or accident therein reported. The term "serious physical injuries," as used in this section, shall be construed to mean every accident which results in the death of the employee or causes his absence from work for at least six days thereafter.

Sec. 17. Penalties. R. S. c. 49, §§ 11, 12, 13, and 16. Whoever, being duly summoned under the provisions of section eleven, wilfully neglects or refuses to attend, or refuses to answer any question propounded to him concerning the subject of such examination as provided in said section eleven, or whoever being furnished by the commissioner with a written or printed list of interrogatories, neglects or refuses to answer and return the same under oath, shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, or by imprisonment in the county jail not exceeding thirty days, or by both such fine and imprisonment; provided, however, that no witness shall be compelled to go outside the county in which he resides to testify.

Whoever refuses to admit or unreasonably delays the commissioner, or any authorized agent of the department of labor and industry, in entering any factory, mill, workshop, private works, or state institution described in section twelve for the purpose of carrying out the provisions of said section twelve, or refuses to give the information required by said commissioner or authorized agent, shall be punished by a fine of not exceeding one hundred dollars, or by imprisonment for not more than ninety days, or by both such fine and imprisonment.

CHAP. 53

Any proprietor, owner, or agent of any factory, mill, workshop, private works or state institution, described in section twelve, who fails to make the alterations or additions required by the commissioner as state factory inspector, or any authorized agent of the department of labor and industry within thirty days from the date of the written notice specified in section thirteen or within such time as said alterations or additions can be made with proper diligence shall be punished by a fine of not less than twenty-five, nor more than two hundred dollars, or by imprisonment not more than thirty days, or by both such fine and imprisonment.

Any person in charge of properties as described in the preceding section, where accidents shall have occurred, who fails or refuses to send such notices and statements and otherwise comply with the provisions of said section, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars.

Labor of Women and Children.

Sec. 18. Employment of children under fifteen years of age, regulated. R. S. c. 49, § 20. 1919, c. 190, § 1. 1927, c. 137, § 1. 1927, c. 171, § 1. No child under fourteen years of age shall be employed, permitted, or suffered to work in, about, or in connection with any manufacturing or mechanical establishment, bowling alley, or poolroom. No child under fifteen years of age shall be employed, permitted, or suffered to work at any business or service for hire, whatever, during the hours that the public schools of the town or city in which he resides are in session. No minor under sixteen years of age shall be employed as usher or attendant in any theater or moving picture house.

^{122 Me. 45.}

Sec. 19. Regulations for employment of minors between the ages of fourteen and sixteen years of age; issuance of work permits. R. S. c. 49, § 21. 1917, c. 146. 1919, c. 190, § 2. 1927, c. 127, § 2. 1927, c. 171, § 2. No minor between the ages of fourteen and sixteen years shall be employed, permitted, or suffered to work in any of the aforementioned occupations unless the person, firm, or corporation employing such child procures and keeps on file accessible to any attendance officer, factory inspector, or other authorized officer charged with the enforcement of sections eighteen to thirty-six, both inclusive, of this chapter, a work permit issued to said child by the superintendent of schools of the city or town in which the child resides, or by some person authorized by him in writing. The person authorized to issue a work permit shall not issue such permit until such child has furnished such issuing officer a certificate signed by the principal of the school last attended showing that the child can read and write correctly simple sentences in the English language and that he has satisfactorily completed the studies covered in the first eight yearly grades of the elementary public schools, or their equivalent; in case such certificate cannot be obtained, then the officer issuing the work permit shall examine such child to determine whether he can meet the educational standard specified and shall file in his office a statement setting forth the result of such examination; nor until he has received, examined, approved, and filed satisfactory evidence of age showing that the child is fourteen years old or upwards; such evidence shall consist of a certified copy of the town clerk's record of the birth of said child, or a certified copy of his baptismal record, showing the date of his birth and place of baptism, or a passport showing the date of birth. In the event of the minor being unable to produce the evidence heretofore mentioned, and the person authorized to issue the work permit being satisfied of that fact, the said work permit may be issued on other documentary evidence of age satisfactory to the person authorized to

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

115 Me. 300.

Sec. 20. Permits for work during summer vacation. R. S. c. 49, § 22. Vacation permits shall be issued by the local superintendent of schools, or by some person authorized by him in writing, to minors between fourteen and sixteen years of age, on satisfaction of the same requirements, with the exception of the educational qualifications, as for the regular work permits, and shall entitle their holders to work during the summer school vacation. These permits shall be void after the first Monday of September following. They shall be known as vacation permits, shall be of different color from the work permits, and shall state plainly the date after which they are void.

Sec. 21. Females not to be employed more than nine hours a day; minors under sixteen years of age not to be employed more than eight hours a day; exceptions. 1915, c. 350, § 1. 1923, c. 198. No female shall be employed in any workshop, factory, manufacturing or mechanical establishment, or laundry more than nine hours in any one day; except when a different apportionment of the hours of labor is made for the sole purpose of making a shorter day's work for one day of the week; and in no case shall the hours of labor exceed fifty-four in a week. And no minor under sixteen years of age shall be employed in any of the said establishments or occupations more than eight hours in any one day.

Sec. 22. Hours of labor of children under sixteen years of age regulated. 1915, c. 350, § 2. 1919, c. 191. No minor under sixteen years of age shall be employed or permitted to work in or in connection with any of the establishments or occupations named in section twenty-one, or in any bowling alley or pool room, before the hour of six-thirty o'clock in the morning or after the hour of six o'clock in the evening of any one day.

Sec. 23. Minors under sixteen and females not to be employed more than fifty-four hours in any one week; exceptions. 1915, c. 350, § 3. No male minor under sixteen years of age and no female shall be employed in any telephone exchange employing more than three operators or in any mercantile establishment, store, restaurant, telegraph office, or by any express or transportation company in the State of Maine more than fifty-four hours in any one week. The provisions of this section shall not apply between the seventeenth day of December and the twenty-fourth day of December both inclusive, and shall not apply during the eight days prior to Easter Sunday to persons employed in millinery shops or stores. In cases of emergency, in which there is danger to property, life, public safety, or public health and in cases of extraordinary public requirement the provisions of sections twenty-one to twenty-seven inclusive shall not apply to employers engaged in public service.

CHAP. 53

Sec. 24. No female to be employed more than six hours continuously; exceptions. 1915, c. 350, § 4. No female shall, except in cases of emergency or extraordinary public requirement as provided in section twenty-three, be employed or permitted to work for more than six hours continuously at one time in any establishment or occupation named in sections twenty-one and twenty-three in which three or more such females are employed, without an interval of at least one hour; except that such female may be so employed for not more than six and one-half hours continuously at one time if such employment ends not later than half-past one o'clock in the afternoon and if she is then dismissed for the remainder of the day.

Sec. 25. Employers to keep posted printed notices, stating hours of labor for females and minors for each day of the week. 1915, c. 350, § 5. Every employer, except those hereinafter designated, shall post and keep posted in a conspicuous place in every room in any establishment or place of occupation named in sections twenty-one and twenty-three in which females or male minors under sixteen years of age are employed, a printed notice stating the number of hours such females or male minors are required or permitted to work on each day of the week, the hours of beginning and ending, and the recess allowed for meals; provided, however, that every employer engaged in furnishing public service or in any other kind of business in respect to which the state department of labor and industry shall find that public necessity or convenience requires the employment of women or male minors as aforesaid by shifts during different periods or parts of the day shall post in a conspicuous place in every room in which such persons are employed, a printed notice stating separately the hours of employment for each shift or tour of duty, and the amount of time allowed for meals. The printed form of such notice shall be furnished by the commissioner of labor and industry and state factory inspector.

The employment of any such female or male minor for a longer time in any day than that stated in the printed notice, or, in case the hours named in such notice are less than as provided in sections twenty-one and twenty-three, the employment of any such female or male minor for a longer time in any day than as provided in sections twenty-one and twenty-three shall be deemed a violation of the provisions of this section except in cases of emergency or extraordinary public requirement as provided in section twenty-three, and in such cases no employment in excess of the hours authorized under the provisions of this chapter shall be considered as legalized until a written report of the day and hour of its occurrence and its duration is sent to the commissioner of labor and industry and state factory inspector. Whenever the nature of the business makes it impracticable to fix the recess allowed for meals at the same time for all females or male minors employed, the commissioner of labor and industry and state factory inspector may issue a permit dispensing with the posting of the hours when the recess allowed for meals begins and ends, and requiring only the posting of the total number of hours which females or male minors are required or permitted to work on each day of the week, and the hours of beginning and stopping such work. Such permit shall be kept by such employer upon such premises, and exhibited to the commissioner of labor and industry and state factory inspector, his deputy, or any authorized agent of the labor department, who is hereby authorized to enforce this chapter.

Sec. 26. Employers to keep a record of hours of work by each female and minor under sixteen years of age on each day of the week. 1915, c. 350, § 6. Every employer shall keep a time book or record for every female, and every male minor under sixteen years of age employed in any establishment or occu-

pation named in sections twenty-one and twenty-three of this chapter, stating the number of hours worked by each female and each male minor under sixteen years of age on each day of the week. Such time book or record shall be opened at all reasonable hours to the inspection of the commissioner of labor and industry and state factory inspector, his deputy, or any authorized agent of the labor department. Any employer who fails to keep such record as required by this section or makes any false entry therein, or refuses to exhibit such time book or record, or makes any false statement to the commissioner of labor and industry and state factory inspector, his deputy, or any authorized agent of the labor department, in reply to any question put in carrying out the provisions of this chapter shall be liable for a violation thereof.

Sec. 27. Exceptions. 1915, c. 350, § 7. Nothing in the six preceding sections shall apply to any manufacturing establishment or business, the materials and products of which are perishable and require immediate labor thereon to prevent decay thereof or damage thereto.

Sec. 28. Blanks to be furnished by commissioner of labor; duplicate permits to be filed with commissioner; surrender and cancellation of permits. R. S. c. 49, § 23. 1919, c. 190, § 3. The blank work permit and other papers required by sections nineteen and twenty shall be formulated by the commissioner of labor and industry, and furnished by him to the persons authorized to issue work permits. The forms of such permits and other papers shall be approved by the attorney general. Every work permit and every vacation permit shall be made out in duplicate. All duplicates, accompanied by the original papers on which such permits were issued, shall be forwarded to the department of labor and industry, by the officer issuing same, within twenty-four hours of the time that said permit was issued. Said department shall examine said papers and promptly return them to the officer who sent them. Said original papers upon which said permits were issued shall be filed by said officer and preserved for such time as said permits are outstanding, or until the minor arrives at the age of sixteen. They shall be at all times accessible to the commissioner of labor and industry or any authorized agent of his department. Said officer shall return to said child all papers with him filed in proof of age, upon a surrender of the work permit. All permits thus surrendered shall be marked cancelled by the officer receiving them. Whenever there is reason to believe that a work permit was improperly issued the commissioner of labor and industry, and state factory inspector, his deputy, or agent, shall notify the local superintendent of schools of the place in which said certificate was issued. The local superintendent shall cancel such permit when directed so to do by the commissioner of labor and industry.

Sec. 29. Blank employment certificates to be prepared; notice to commissioner when employment is terminated. R. S. c. 49, § 24. Employment certificates, to be formulated by the commissioner of labor and industry, approved by the attorney-general, and supplied by the department of labor, shall be prepared by the employer of said child and mailed within twenty-four hours to the office of the commissioner to be kept on file by him. When such child lives such employment, the employer shall return to the child the work permit by him filed, and immediately notify the commissioner of labor and industry that such child has left his employ.

Sec. 30. Record of age to be received as evidence. R. S. c. 49, § 25. Any record of age, as provided under section nineteen to determine whether or not a work permit may be issued to any child shall be received as evidence of the age of such child in any prosecution under sections eighteen to thirty-six, both inclusive, of this chapter.

CHAP. 53

Sec. 31. Work permit conclusive evidence in behalf of employer; officer may demand documentary evidence of age of child employed. R. S. c. 49, § 26. A work permit in regular form signed by a duly authorized officer, for all minors between the ages of fourteen and sixteen years, shall be conclusive evidence of age and educational attainment, in behalf of the employer of any child, upon any prosecution for violation of the provisions of the law relating to the employment of children. An inspector of factories, attendance officer, or other officer charged with the enforcement of sections eighteen to thirty-six, both inclusive, of this chapter, may make demand on any employer in or about whose place or establishment a minor apparently under the age of sixteen years is employed, permitted, or suffered to work, that such employer shall either furnish him within ten days documentary evidence of age as specified in section nineteen, or shall cease to employ, permit, or suffer such child to work in such place or establishment.

Sec. 32. Penalty for employer for violation of law. R. S. c. 49, § 27. 1915, c. 350. Any person, firm, or corporation, agent, or manager of any firm or corporation, who, either for himself or for some other firm or corporation, or by himself, or through agents, servants, or foremen, employs, permits, or suffers any child to be employed, or to work in violation of any of the provisions of sections eighteen to thirty-one, both inclusive, of this chapter, or otherwise fails to comply with any of the provisions of said sections, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for the first offense; for the second offense by a fine of not less than fifty nor more than two hundred dollars; for a third offense and every subsequent offense by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars.

Sec. 33. Penalty for parent, guardian, or custodian of child for violation of law. R. S. c. 49, § 28. Whoever, having any child under his control as parent, guardian, custodian, or otherwise, permits or suffers such child to be employed or to work in violation of any of the provisions of sections eighteen to thirty-five, both inclusive, of this chapter, or whoever presents, or permits or allows any child under his control to present, to any employer, owner or superintendent, overseer or agent as required under section nineteen any work permit containing any false statements as to the date of birth or age of such child, knowing them to be false, shall be punished by a fine of not less than ten, nor more than fifty dollars for each offense.

Sec. 34. Penalty for failure to perform duty. R. S. c. 49, § 29. Whoever being authorized to issue a work permit, knowingly fails to perform the duties of his office as required by the provisions of sections eighteen to thirty-five, both inclusive, of this chapter, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense.

Sec. 35. Penalty for testifying to false statements. R. S. c. 49, § 30. Whoever being authorized to sign the foregoing work permit, or whoever signing any certified copy of a town clerk's record of birth, or certified copy of a child's baptismal record, or a physician's certificate, knowingly testifies to any false statement therein, shall be punished by a fine of not less than twenty-five, nor more than fifty dollars for each offense.

Sec. 36. Enforcement of penalties and fines. R. S. c. 49, § 31. All fines or penalties provided for by the terms of the eighteen preceding sections may be recovered or enforced by complaint or indictment, and in all prosecutions under this chapter and amendments and additions thereto, trial justices and judges of the municipal and police courts within their counties shall have by complaint original and concurrent jurisdiction with the supreme judicial court and superior courts.

Seats for Female Employees.

Sec. 37. Chairs in shops, etc., for women or girls. R. S. c. 49, § 32. The proprietor, manager, or person having charge of any mercantile establishment, store, shop, hotel, restaurant, or other place where women or girls are employed as clerks or help therein in this state shall provide chairs, stools, or other contrivances for the comfortable use of such female employees for the preservation of their health and for rest when not actively employed in the discharge of their respective duties. Whoever violates this section shall be punished by a fine of not less than ten, nor more than one hundred dollars.

Custodians of Elevators.

Sec. 38. Employment of minors on elevators, regulated; penalty. R. S. c. 49, § 33. 1927, c. 171. No person, firm, or corporation shall employ or permit any person under fifteen years of age to have the care, custody, management, or operation of any elevator, or shall employ a person under sixteen years of age to have the care, custody, management or operation of any elevator running at a speed of over two hundred feet a minute, or shall employ any minor under sixteen years of age to have the care, custody, management, or operation of any elevator in any hotel, lodging house, or apartment house. Whoever violates this section shall be punished by a fine of not less than twenty-five, nor more than one hundred dollars, for each offense.

109 Me. 450; 114 Me. 213.

Weekly Payment of Wages.

Sec. 39. Weekly payment of wages; state, county, city, and town employees; exceptions; penalty. R. S. c. 49, § 34. Every corporation, person, or partnership, engaged in a manufacturing, mechanical, mining, quarrying, mercantile, street railway, telegraph, or telephone business; in any of the building trades; upon public works, or in the construction or repair of street railroads, roads, bridges, sewers, gas, water, or electric light works, pipes or lines; every incorporated express company or water company; and every steam railroad company or corporation shall pay weekly each employee engaged in his or its business the wages earned by him to within eight days of the date of said payment, but any employee, leaving his or her employment, shall be paid in full on the following regular pay-day, provided, that when an employee is discharged he shall be paid the wages due him on demand; and the state, its officers, boards, and commissions shall so pay every mechanic, workman, and laborer who is employed by it or them, and every county and city shall so pay every employee who is engaged in its business the wages or salary earned by him, unless such mechanic, workman, laborer, or employee requests in writing to be paid in a different manner; and every town shall so pay each employee in its business if so required by him; but an employee who is absent from his regular place of labor at a time fixed for payment shall be paid thereafter on demand. The provisions of this section shall not apply to an employee engaged in cutting and hauling logs and lumber, nor the driving of same until it reaches its place of destination for sale or manufacture; nor to an employee of a cooperative corporation or association if he is a stockholder therein unless he requests such corporation to pay him weekly. No corporation, contractor, person, or partnership shall by a special contract with an employee or by any other means exempt himself or itself from the provisions of this section. Whoever violates the

provisions of this section shall be punished by a fine of not less than ten, nor more than fifty dollars.

*114 Me. 256.

Sec. 40. Contracts requiring notice of intention to quit work or discharge employee; forfeiture for violation. R. S. c. 49, § 35. Any person, firm, or corporation engaged in any manufacturing or mechanical business, may contract with adult or minor employees to give one week's notice of intention on such employee's part, to quit such employment under a penalty of forfeiture of one week's wages. In such case, the employer shall be required to give a like notice of intention to discharge the employee; and on failure, shall pay to such employee, a sum equal to one week's wages. No such forfeiture shall be enforced when the leaving or discharge of the employee is for a reasonable cause. Provided, however, that the enforcement of the penalty aforesaid, shall not prevent either party from recovering damages for a breach of the contract of hire.

91 Me. 61; 114 Me. 256.

Preference to Maine Workmen and Contractors.

Sec. 41. In awarding certain contracts, preference to be given to residents of the state; invitations for bids to be advertised; section not applicable to certain work. R. S. c. 49, § 36. The state, counties, cities, and towns, and every charitable or educational institution which is supported in whole or in part by aid granted by the state or by any municipality, shall in the awarding of contracts for constructing, altering, repairing, furnishing, or equipping its buildings or public works, give preference to workmen and to bidders for such contracts who are residents of this state, provided the bids submitted by such resident bidders are equally favorable with bids submitted by contractors from without the state. Invitations for bids for such work or material shall be advertised in at least three daily newspapers in the state, one at least of which is published within the county where the work is to be done, provided a daily newspaper is published in such county, otherwise in a weekly newspaper published in such county; and specifications and plans for the same shall be provided and be accessible for figuring, for at least thirty days before the opening of the bids; if the bidders have conformed to all the requirements called for in the advertisements for bids, and the lowest bidder is financially responsible and able to furnish proper bonds for the fulfilment of his contract, such contract for work or materials shall be awarded by the proper officers of the state, county, city, or institution, to such bidder; provided the bid submitted by the lowest bidder is equally favorable with bids submitted by any contractors residing without the state, as above provided. This section shall not apply to construction or repairs amounting to less than one thousand dollars, or to emergency work, or to state road work.

Sec. 42. Proposal and bids to be recorded. R. S. c. 49, § 37. Every institution and municipality calling for bids as above provided shall enter proposals and bids upon its books, showing the name, residence of each bidder, and the amount and terms of each bid, and to whom the work or contract was awarded; and the same shall be open to the inspection of the governor and council.

Labels of Workingmen's Unions.

Sec. 43. Unlawful to counterfeit labels, trade-marks, etc., of any association or union of workingmen. R. S. c. 49, § 38. No person shall counterfeit or imitate any label, trade-mark, device, or form of advertisement, adopted or used

by any association or union of workingmen, to indicate that goods to which such label, trade-mark, device, or form of advertisement may be attached or affixed, or on which the same may be printed, painted, stamped, or impressed were manufactured, or produced, packed, or put on sale by such association or union, or by any member or members thereof, or use such label, trade-mark, device or form of advertisement without the consent or authority of the association or union so having adopted and used it; provided, that such label, trade-mark, device, or form of advertisement was not, before such adoption and use, lawfully adopted, owned, and used by another; but any association or union, desiring to adopt and use such label, trade-mark, device, or form of advertisement previously adopted, owned and used by another, may acquire from such owner the right to so adopt and use it.

Sec. 44. Labels and trade-marks to be filed and recorded in office of secretary of state; certificate of record, proof of adoption; label closely resembling one already in use not to be recorded. R. S. c. 49, § 39. Every such association or union adopting a label, trade-mark, device, or form of advertisement as aforesaid, shall file the same for record in the office of the secretary of state, by leaving two copies, counterparts, or fac-simile thereof, with the secretary of state, together with a statement in writing, signed and sworn to by some person for and in behalf of such association or union, stating when and by whom so far as he knows and believes, said label, trade-mark, device, or form of advertisement was adopted or used, in what manner and for what purpose the same is to be used and by what right the same is claimed, and such other particulars as shall serve to identify the same; said secretary shall deliver to such association or union, so filing the same, a duly attested certificate of the record of the same. Such certificate of record, in all suits and prosecutions under this chapter, shall be sufficient proof of the adoption of such label, trade-mark, device, or form of advertisement. Whoever wilfully swears or affirms falsely to any such statement in writing is guilty of perjury. No label, trade-mark, device, or form of advertisement, so closely resembling one already recorded as to be liable to be mistaken therefor, shall be recorded, and when in the judgment of the secretary of state, such resemblance exists he may refuse to record such label, trade-mark, device, or form of advertisement, and thereupon proceedings may be had for a writ of mandamus, upon the application of any such association or union, as provided in section seventeen of chapter forty-eight.

Sec. 45. Union using lawful trade-mark may enjoin manufacture and use of counterfeit; counterfeits to be destroyed. R. S. c. 49, § 40. Every such association or union that has adopted and uses a label, trade-mark, device, or form of advertisement, as aforesaid, which has been recorded in the office of the secretary of state as hereinbefore provided, may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof, or of any goods to which such counterfeits or imitations shall be affixed or attached, or on which the same shall be printed, painted, or impressed, and all courts having jurisdiction thereof shall grant injunctions to restrain such manufacture, use, display, or sale, and shall award the complainant in such suit, such damages resulting from such wrongful manufacture, use, display, or sale as may by said court be deemed reasonable, and shall require the defendants to pay such association or union the profits derived from such wrongful manufacture, use, display, or sale; and said court shall also order that all such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.

Sec. 46. Penalty for counterfeiting label or trade-mark. R. S. c. 49, § 41.

CHAP. 54

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

Sec. 47. Penalty for wilful use of genuine trade-mark in manner not authorized. R. S. c. 49, § 42. Whoever wilfully uses or displays the genuine label, trade-mark, device, or form of advertisement of any such association or union, in any manner not authorized by such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense, shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 48. Penalty for wilful, unauthorized use of name or seal. R. S. c. 49, § 43. Whoever in any way wilfully uses the name or seal of any such association or union, or officer thereof, in and about the sale of goods or otherwise, without the authority of such association or union, shall be punished by imprisonment for not more than six months, or by a fine not exceeding one hundred dollars; and, for a second offense shall be punished by imprisonment for not less than thirty days nor more than one year, or by fine of not less than fifty, nor more than three hundred dollars.

Sec. 49. Prosecution of suits. R. S. c. 49, § 44. In all cases where such association or union is not incorporated, suits and proceedings hereunder may be commenced and prosecuted by an officer or member of such association or union, for and in behalf of and for the benefit of such association or union.

CHAPTER 54.

Compensation for Personal Injury to Employees.

Sections 1-49 The Workmen's Compensation Act.

Sections 50-58 The Employers' Liability Law.

The Workmen's Compensation Act.

Sec. 1. Title; Words and phrases defined. R. S. c. 50, § 1. 1919, c. 238, § 1. 1921, c. 222, § 1. 1927, c. 158. The first forty-nine sections of this chapter shall be known, and may be cited, and referred to in proceedings and agreements thereunder, as "The Workmen's Compensation Act;" the phrase "this act," as used in said sections, refers thereto.

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

I. "Employer" shall include corporations, partnerships, natural persons, the state, counties, water districts, and all other quasi-municipal corporations of a similar nature, cities and also such towns as vote to accept the provisions of this act, and if employer is insured, it includes the insurer unless the contrary intent is apparent from the context or it is inconsistent with the purposes of this act.

II. "Employee" shall include every person in the service of another under any contract of hire, express or implied, oral or written, except: (a) farm laborers; (b) domestic servants; (c) masters of and seaman on vessels engaged in interstate or foreign commerce; (d) person whose employment is but casual, or is not in the usual course of the trade, business, profession, or occupation of his employer; (e) officials of the state, counties, cities, towns, or water districts and other quasi-municipal corporations of a similar character. Policemen and firemen shall be deemed employees within the meaning of this act. If, however, any policeman or fireman claims compensation under this act, there shall be deducted from such compensation any sum which such policeman, fireman, or other person may be entitled to receive from any pension or other benefit fund to which the state or municipal body may contribute; (f) except that any town or city may, in lieu of the compensation and insurance provided by this act, continue any member of the fire department or police force in said town, who may have been injured in the course of his duties, on the payroll at full pay, if such full pay exceeds the maximum compensation provided for employees under this act. Any reference to an employee who has been injured shall, when the employee is dead, also include his legal representatives, dependents, and other persons to whom compensation may be payable; (g) all persons employed by the state or under the direction and control of any department of the state shall be entitled to the benefits of this act. Upon order of the governor and council such compensation, as shall be finally allowed and such medical and hospital bills as shall be allowed, shall be paid from the appropriation, or fund, of the department which employed, directed, or controlled the person injured, out of which such person has received or may receive salary or wages.

III. "Assenting employer" shall include all employers who have complied with the provisions of section six hereof, and to whom a certificate authorized by said section has been issued, but only so long as such certificate remains in force.

IV. "Commissioner" shall mean the commissioner of labor and industry of the State of Maine. "Commission" shall mean the industrial accident commission created by section twenty-nine hereof.

V. "Industrial Accident Insurance Policy" shall mean a policy in such form as the insurance commissioner of the State of Maine approves, issued by any stock or mutual casualty insurance company that may be now or hereafter authorized to do business in this state, which in substance and effect guarantees the payment of the compensation, medical and hospital services, and expense of sickness and burial herein provided for, in such installments, at such time or times, and to such person or persons and upon such conditions as in this act provided. Whenever a policy or certificate of renewal thereof is filed as herein provided, a copy of such policy certified by the insurance commissioner of the State of Maine or his deputy, shall be admissible as evidence in any legal proceeding wherein the original would be admissible.

VI. "Insurance Company" shall mean any casualty insurance company authorized to do business in the State of Maine, which may issue policies conforming to the provisions of the paragraph next preceding. Whenever in this act

CHAP. 54

relating to procedure the words "insurance company" are used it shall be held to apply only to cases in which the employer has elected to file such policy, instead of furnishing satisfactory proof of his ability to pay compensations and benefits hereinafter provided direct to his employees.

VII. "Representatives" may include executors, administrators, and the dependents of deceased employees. Payments may be made to dependents directly, or to executors or administrators. If payments are made to the latter, they shall forthwith pay the same to the dependents as the same are hereinafter defined.

VIII. "Dependents" shall mean members of the employee's family or next of kin, who are wholly or partly dependent upon the earnings of the employee for support at the time of the injury. The following persons shall be conclusively presumed to be wholly dependent for support upon a deceased employee:

(a) A wife upon a husband with whom she lives, or from whom she was living apart for a justifiable cause, or because he had deserted her or upon whom she is dependent at the time of the accident.

(b) A husband upon a wife with whom he lives, or upon whom he is dependent at the time of the accident.

(c) A child or children, including adopted and step-children under the age of eighteen years (or over said age, but physically or mentally incapacitated from earning) upon the parent with whom he is or they are living, or upon whom he is or they are dependent at the time of the death of said parent, there being no surviving dependent parent. In case there is more than one child thus dependent, the compensation shall be divided equally among them.

In all other cases questions of entire or partial dependency shall be determined in accordance with the fact, as the fact may have been at the time of the accident. If there is more than one person wholly dependent, the compensation shall be divided equally among them, and persons partly dependent, if any, shall receive no part thereof during the period in which compensation is paid to persons wholly dependent. If there is no one wholly dependent and more than one person partly dependent, the compensation shall be divided among them according to the relative extent of their dependency. If a dependent is an alien residing outside of the United States, or of the Dominion of Canada, the compensation paid to any such dependent shall be one-half that hereinafter provided in case of the death of an employee.

IX. "Average weekly wages, earnings, or salary," of any injured employee shall be computed as follows:

(a) If the injured employee has worked in the same employment in which he was working at the time of the accident, whether for the same employer or not, during substantially the whole of the year immediately preceding his injury, his "average weekly wages" shall be three hundred times the average daily wages, earnings, or salary which he has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two. But where the employee is employed regularly during the ordinary working hours concurrently by two or more employers, for one of whom he works at one time and for another he works at another time, his "average weekly wages" shall be computed as if the wages, earnings, or salary received by him from all such employers, were wages, earnings, or salary earned in the employment of the employer for whom he was working at the time of the accident.

(b) If the injured employee has not so worked in such employment during substantially the whole of such immediately preceding year, his "average weekly

wages" shall be three hundred times the average daily wages, earnings, or salary which an employee of the same class working substantially the whole of such immediately preceding year in the same or a similar employment, in the same or a neighboring place, has earned in such employment during the days when so employed and working the number of hours constituting a full working day in such employment, divided by fifty-two.

(c) In cases where the foregoing methods of arriving at the "average weekly wages, earnings, or salary" of the injured employee cannot reasonably and fairly be applied, such "average weekly wages" shall be taken at such sum as, having regard to the previous wages, earnings, or salary of the injured employee and of other employees of the same or most similar class, working in the same or most similar employment in the same or a neighboring locality, shall reasonably represent the weekly earning capacity of the injured employee at the time of the accident in the employment in which he was working at such time.

(d) Where the employer has been accustomed to pay to the employee a sum to cover any special expense incurred by said employee by the nature of his employment, the sum so paid shall not be reckoned as part of the employee's wages, earnings, or salary.

(e) The fact that an employee has suffered a previous injury or received compensation therefor, shall not preclude compensation for a later injury or for death; but in determining the compensation for the later injury or death, his "average weekly wages" shall be such sum as will reasonably represent his weekly earning capacity at the time of the later injury, in the employment in which he was working at such time, and shall be arrived at according to and subject to the limitations of the previous provisions of this section.

In the sections of this act relating to notices and procedure, all powers and rights granted to, or duties and obligations imposed upon employers or employees, shall inure to the benefit of and may be exercised by guardians of minors or other incapacitated persons and the legal representatives of deceased persons.

(f) The "average weekly wages, earnings, or salary" of employees who work seven days per week shall be computed by increasing the average daily wage the employee was receiving at the time of the accident by one-sixth and then multiplying by three hundred and dividing by fifty-two.

116 Me. *82; 117 Me. *436; 118 Me. 136, 330; 119 Me. 24, *336, 513, 565; 120 Me. 56, 330, 459; 121 Me. 446, *455, 486; 122 Me. *11, 479; 123 Me. *361, *363, *368, 402, 424; 124 Me. *14, *49, 68, 305, *405; 125 Me. *147, 313, *362; 126 Me. 360; 127 Me. 249.

Note. In reference to act as a whole see 120 Me. *76, 80; 122 Me. 205.

Sec. 2. Defenses not permitted. R. S. c. 50, § 2. 1919, c. 238, § 2. In an action to recover damages for personal injuries sustained by an employee in the course of his employment, or for death, resulting from personal injury so sustained, it shall not be a defense (a) that the employee was negligent; (b) that the injury was caused by the negligence of a fellow employee; (c) that the employee had assumed the risk of the injury.

118 Me. *330, *334; 120 Me. 460; 121 Me. 484; 122 Me. 201; 125 Me. 100.

Sec. 3. Section two not applicable to certain employers. R. S. c. 50, § 3. 1919, c. 238, § 3. The provisions of section two shall not apply to employers who employ five or less workmen or operatives regularly in the same business, and in case of the employer being engaged in more than one kind of business, in one of which he employs five or more workmen or operatives regularly, and in another employs five or less workmen or operatives, the fact that he elects to become subject to the provisions of this act shall not bring him within the provisions of it as to any such business in which he employs five or less work-

CHAP. 54

men or operatives, and at the time of electing to become subject to the provisions of this act, if engaged in more than one kind of business, he shall specify the business or businesses in which he is engaged and concerning which he desires to come under the provisions hereof.

118 Me. 330, 335; 120 Me. 190, 457, 560; 122 Me. 11; 124 Me. *59, 344; 126 Me. 350.

Sec. 4. Not applicable to persons engaged in domestic service, agriculture, or logging. R. S. c. 50, § 4. 1919, c. 238, § 4. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees engaged in domestic service or agriculture, or in the work of cutting, hauling, rafting, or driving logs.

118 Me. 335; 121 Me. 537; *122 Me. 201; 124 Me. 237; 125 Me. 16; 126 Me. 349.

Sec. 5. Section two not to apply to assenting employers; such employers exempt from other suits. R. S. c. 50, § 5. 1919, c. 238, § 5. The provisions of section two shall not apply to actions to recover damages for personal injuries or for death resulting from personal injuries sustained by employees of an employer who has elected to become subject to this act in the manner provided in section six hereof. In the case of personal injury sustained by an employee in the course of his employment or of death resulting from personal injury so sustained, assenting employers shall be exempt from suits either at common law or under section nine of chapter one hundred, or under sections fifty-two to fifty-eight, both inclusive, of this chapter.

*118 Me. 330; 120 Me. 460; 126 Me. 350.

Sec. 6. Employer may become assenting employer; procedure; penalty. R. S. c. 50, § 6. 1919, c. 238, § 6. I. Any employer desiring to become an assenting employer as herein provided may file with the commission, at its office in Augusta, his written assent in such form as the commission approves and also file with said commission a copy of an industrial accident insurance policy in any stock or mutual insurance company or association authorized to do business in the State of Maine, said policy being stamped with the approval of the insurance commissioner of said State of Maine.

The insurance commissioner may require the filing of specific rates for workmen's compensation insurance including classifications of risks, experience, or any other rating information from insurance companies, authorized to transact such insurance in Maine, and may make or cause to be made such investigations as may be deemed necessary to satisfy himself that such rates are correct and proper before giving his approval and permitting such rates to be promulgated for the use of said companies.

Any insurance company issuing policies covering the payment of compensation provided for in this act shall file with the insurance commissioner a copy of the form thereof, and no such policy shall be issued until said insurance commissioner has approved the same. Every such insurance company shall file with the insurance department its classification of risks and premiums relating thereto, and any subsequent proposed classifications or premiums, none of which shall take effect until the insurance commissioner has approved the same as adequate for the risks to which they respectively apply. The insurance commissioner may withdraw his approval of any classification of risks or premium rates relating thereto, and he may at any time approve a revised classification of risks and premium rates relating thereto. Such written assent when once filed shall continue in force without renewal during the life of said original policy or during the life of any subsequent policy or policies filed in renewal of said original policy previous to the expiration of any immediately preceding policy, so that there shall be no interim between policies. In case there shall

be such an interim, then a new acceptance must be filed with the policy terminating the interim.

II. Any employer desiring to become an assenting employer as herein provided, may file with the commission his written assent in such form as said commission approves after furnishing satisfactory proof to the commission of his solvency and financial ability to pay the compensation and benefits herein provided, and upon the deposit of cash, satisfactory securities or a bond, as the commission may determine, such bond to run to the treasurer of state, and his successor in office, in such sum as said commission may determine and to be conditional upon the faithful performance of all the provisions of this act relating to the payment of compensations and benefits to any injured employee. In case of cash being deposited it shall be placed at interest by the treasurer of state and the accumulation of interest on said cash or securities so deposited shall be paid to the employer depositing the same. Provided, however, that the commission may at any time in their discretion deny to an assenting employer the right to continue in the exercise of the option granted by this paragraph.

III. Upon the filing of such assent and complying with the provisions of paragraph I or II of this section, the commission shall issue to such employer a certificate stating that such employer has conformed to the provisions of this act, and setting forth the date on which the policy filed under paragraph I expires. The certificate thus issued shall remain in full force until the date of the expiration of such policy or renewal thereof or until withdrawn as provided in paragraph II, or until the employer assenting under paragraph II shall notify the commission that he withdraws his assent, or file an industrial accident policy in place of the securities so deposited by him.

IV. Subject to the approval of the commission, any employer may continue with his employees in lieu of the compensation and insurance provided by this act the system of compensation, benefit, or insurance which was used by such employer on the first day of January, nineteen hundred and fifteen. No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this act, nor if it requires contributions from the employees, unless it confers benefits in addition to those provided under this act at least commensurate with such contributions. Such substitute system may be terminated by the commission on reasonable notice and hearing to the interested parties if it shall appear that the same is not fairly administered, or if its operation shall disclose latent defects threatening its solvency, or if for any substantial reason it shall fail to accomplish the purposes of this act. An employer who is authorized to substitute a plan under the provisions of this section shall give his employees notice thereof in a form to be prescribed by the commission, and a statement of the plan approved shall be filed with the commission.

V. A notice in such form as the commission approves, stating that the employer has conformed to the provisions of this act, and the date of the expiration of the policy filed, together with such further matters as the commission determines, shall be posted by the employer and kept posted by him at some place in each of his mills, factories or place of business, conspicuous and accessible to his employees. For wilful failure to post such notices, the employer shall be subject to a penalty of ten dollars per day for every day of such wilful neglect, to be recovered by complaint or indictment. Such failure to so post notices shall not, however, affect the rights or liabilities of the employer or the employee hereunder.

CHAP. 54

Sec. 7. Employee subject to this act waives right of action at common law, unless notice is given; requisites of notice. R. S. c. 50, § 7. 1919, c. 238, § 7. 1921, c. 222, § 2. An employee of an employer who shall have elected to become subject to the provisions of this act as provided in section six of this act shall be held to have waived his right of action at common law to recover damages for personal injuries; also under section nine of chapter one hundred or under sections fifty to fifty-eight, both inclusive, of this chapter, if he shall not have given his employer at the time of his contract of hire notice in writing that he claimed such right, and within ten days thereafter have filed a copy thereof with the commission or, if the contract of hire was made before the employer so elected, if the employee shall not have given the said notice and filed the same with said commission within ten days after notice by the employer, as above provided, of such election, and such waiver shall continue in force for the term of one year, and thereafter without further act on his part, for successive terms of one year, each, unless such employee shall at least sixty days prior to the expiration of such first or any succeeding year, file with the said commission a notice in writing to the effect that he desires to claim his said right of action at common law and within ten days thereafter shall give notice thereof to his employer. A minor working at an age legally permitted under the laws of this state shall be deemed sui juris for the purpose of this act and no other person shall have any cause of action or right to compensation for an injury to such minor employee except as expressly provided in this act; but if said minor shall have a parent living or a guardian, such parent or guardian, as the case may be, may give the notice and file a copy of the same as herein provided by this section, and such notice shall bind the minor in the same manner that adult employees are bound under the provisions of this act. In case no such notice is given, such minor shall be held to have waived his right of action at common law, or under the statutes above referred to, to recover damages for personal injuries. Any employee, or the parent or guardian of any minor employee, who has given notice to the employer that he claimed his right of action at common law, or under the statutes above referred to, may waive such claim by a notice in writing which shall take effect five days after the delivery to the employer or his agent.

118 Me. 330; 119 Me. 176; 120 Me. 37.

Sec. 8. Injury or death caused by wilful intention or intoxication not to be compensated for. R. S. c. 50, § 8. 1919, c. 238, § 8. No compensation shall be allowed for the injury or death of an employee where it is proved that his injury or death was occasioned by his wilful intention to bring about the injury or death of himself or of another, or that the same resulted from his intoxication while on duty. This provision as to intoxication shall not apply, if the employer knew or in the exercise of ordinary care might have known that the employee was intoxicated or that he was in the habit of becoming intoxicated while on duty.

Sec. 9. Compensation begins on eighth day. R. S. c. 50, § 9. 1919, c. 238, § 9. 1921, c. 222, § 3. 1927, c. 252, § 1. No compensation except medical, surgical, and hospital services, nursing, and medicines, and mechanical surgical aids as provided in section ten of this act shall be paid thereunder during the first seven days after the accident. If incapacity exists at the expiration of seven days, compensation shall begin on the eighth day. If incapacity arises after seven days, compensation shall begin on the date such incapacity begins. In computing the seven-day waiting period, so-called, the day of the accident shall be counted as one.

123 Me. 432.

Sec. 10. Employer to furnish medical aid during first thirty days. R. S. c. 50, § 10. 1919, c. 238, § 10. During the first thirty days after the accident the employer shall promptly furnish reasonable medical, surgical, and hospital services, nursing, and medicines and mechanical surgical aids when they are needed. The amount of such medical, surgical, and hospital services, nursing, medicines, and mechanical surgical aids shall not exceed one hundred dollars unless a longer period or a greater sum is allowed by the commission which, in their discretion, they may allow when the nature of the injury or the process of recovery requires it. In case the incapacity does not begin at the time of the accident the thirty-day period shall commence at the time such incapacity begins. Whenever the employer and the employee are unable to agree upon the amount to be allowed for such medical, surgical, and hospital services, nursing, medicines, and mechanical surgical aid the amount shall be fixed by the commission upon petition of either party setting forth the facts. In case of emergency or for other justifiable cause the employee shall have the right to select a physician other than the one provided by the employer, and the reasonable cost of his services shall be paid by the employer subject to the approval of the industrial accident commission. Such approval shall be granted only when the commission finds that there was such emergency or justifiable cause and in all cases, that the services were adequate and necessary and the charges reasonable.

*117 Me. 179; 124 Me. 33; 125 Me. 246, *429; 126 Me. 107, *217.

Sec. 11. Action for injury of employee not having given notice. R. S. c. 50, § 11. 1919, c. 238, § 11. If an employee who has not given notice of his claim of common law or statutory rights of action, or who has given such notice and has waived the same, as provided in section seven of this act, receives a personal injury by accident arising out of and in the course of his employment, he shall be paid compensation as hereinafter provided, by the employer who shall have elected to become subject to the provisions of this act.

*120 Me. 236; 121 Me. 410, 506; 122 Me. 325; 123 Me. 86, 193, 359, 497, *402;
124 Me. 129, 145, 195, 295; 125 Me. *1, 135, 168, 389, 444; 126 Me. *159, 359, 381;
127 Me. 254.

Sec. 12. Employer's liability for death. R. S. c. 50, § 12. 1919, c. 238, § 12. 1921, c. 222, § 4. 1925, c. 201, § 1. If death results from the injury, the employer shall pay the dependents of the employee, wholly dependent upon his earnings for support at the time of his injury, a weekly payment equal to two-thirds his average weekly wages, earnings, or salary, but not more than eighteen dollars nor less than six dollars a week, for a period of three hundred weeks from the date of the injury, and in no case to exceed four thousand dollars; provided, however, that if the dependent of the employee to whom the compensation shall be payable upon his death is the widow of such employee, upon her death or remarriage the compensation thereafter payable under this act shall be paid to the child or children of the deceased employee, including adopted and step-children, under the age of eighteen years or over said age, but physically or mentally incapacitated from earning, who are dependent upon the widow at the time of her death or remarriage. In case there is more than one child thus dependent, the compensation shall be divided equally among them. If the employee leaves dependents only partly dependent upon his earnings for support at the time of his injury, the employer shall pay such dependents for a period of three hundred weeks from the date of injury, a weekly compensation equal to the same proportion of the weekly payments herein provided for the benefit of persons wholly dependent as the amount contributed annually by the employee to such partial dependents bears to the annual earnings of the deceased at the time of the injury. When weekly payments have been made to an injured

CHAP. 54

employee before his death, the compensation to dependents shall begin from the date of the last of such payments, but shall not continue more than three hundred weeks from the date of the injury. Provided, however, that if the deceased leaves no dependents at the time of the injury the employer shall not be liable to pay compensation under this act except as specifically provided in the following section.

*116 Me. 82; 120 Me. 56; *124 Me. 108; 125 Me. *285, 362, *409; 126 Me. 106, 349.

Sec. 13. Compensation when employee has no dependents. R. S. c. 50, § 13. 1919, c. 238, § 13. 1927, c. 252, § 2. If the employee dies as a result of the injury, leaving no dependents at the time of the injury, the employer shall pay, in addition to any compensation provided for in this act, the reasonable expense of burial, which shall not exceed two hundred dollars. Provided, however, if dependents appear before the commission within one year after the death of the said employee, and prove that they are entitled to compensation as provided for by this act, and such compensation is decreed to be paid to the said dependents, the reasonable expenses of burial as aforesaid shall be deducted from the amount allowed to the said dependents.

*126 Me. 215.

Sec. 14. Compensation for total disability; how determined. R. S. c. 50, § 14. 1919, c. 238, § 14. 1921, c. 222, § 5. 1925, c. 201, § 2. 1927, c. 252, § 3. While the incapacity for work resulting from the injury is total, the employer shall pay the injured employee a weekly compensation equal to two-thirds his average weekly wages, earnings, or salary, but not more than eighteen dollars, nor less than six dollars a week; and in no case shall the period covered by such compensation be greater than five hundred weeks from the date of incapacity, nor the amount more than six thousand dollars; and if the employee shall die before having received compensation to which he is entitled or which he is receiving as provided in this act, the same shall be payable to the dependents of the said employee for the specified period, and the said dependents shall have the same rights and powers under this act as the said employee would have had if he had lived. In the following cases it shall, for the purposes of this act, be conclusively presumed that the injury resulted in permanent total disability, to wit: The total and irrevocable loss of sight in both eyes, the loss of both feet at or above the ankle, the loss of both hands at or above the wrist, the loss of one hand and one foot, an injury to the spine resulting in permanent and complete paralysis of the legs or arms, and an injury to the skull resulting in incurable imbecility or insanity.

118 Me. 98; 122 Me. 344, 387, 440; *123 Me. 501; 125 Me. 285.

Sec. 15. Compensation for partial disability. R. S. c. 50, § 15. 1919, c. 238, § 15. 1921, c. 222, § 6. 1925, c. 210. 1927, c. 252, § 3. While the incapacity for work resulting from the injury is partial, the employer shall pay the injured employee a weekly compensation equal to two-thirds the difference between his weekly wages, earnings, or salary, before the injury and the weekly wages, earnings, or salary which he is able to earn thereafter, but not more than eighteen dollars a week; and in no case shall the period covered by such compensation be greater than three hundred weeks from the date of the injury. The rate of wages before the injury shall be determined by dividing the whole amount of wages or salary earned by the injured employee during the immediately preceding year, whether for the same employer or not, by the full number of days employed during the same period, provided the injured employee has worked substantially the whole of the immediately preceding year at similar work. If the employee has not so worked, the weekly wages, earnings, or salary of an employee working substantially the whole of such immediately preceding year

at similar work shall be used in determining the amount of partial compensation due the injured employee.

121 Me. 500; 122 Me. 109, 291, 340, 388, 440; 123 Me. 430; 124 Me. 14; 126 Me. 173.

Sec. 16. Compensation for specified accidents. R. S. c. 50, § 16. 1919, c. 238, § 16. 1921, c. 222, § 7. 1927, c. 252, § 3. In cases included in the following schedule the disability in each such case shall be deemed to be total for the period specified and after such specified period, if there be a total or partial incapacity for work resulting from the injury specified, the employee shall receive compensation while such total or partial incapacity continues under the provisions of sections fourteen and fifteen respectively, but in no case shall compensation continue more than three hundred weeks after the injury. The compensation to be paid for the injuries hereinafter specified shall be as follows, to wit:

For the loss of a thumb, two-thirds the average weekly wages during fifty weeks.

For the loss of the first finger, commonly called the index finger, two-thirds the average weekly wages during thirty weeks.

For the loss of the second finger, two-thirds the average weekly wages during twenty-five weeks.

For the loss of the third finger, two-thirds the average weekly wages during eighteen weeks.

For the loss of the fourth finger, commonly called the little finger, two-thirds the average weekly wages during fifteen weeks.

The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of said thumb or finger and the compensation shall be one-half the amount above specified. The loss of more than one phalange shall be considered as a loss of the entire thumb or finger; provided, however, that in no case shall the amount received for the loss of more than one finger exceed the amount specified in this schedule for the loss of a hand.

For the loss of the great toe, two-thirds the average weekly wages during twenty-five weeks.

For the loss of one of the toes other than the great toe, two-thirds the average weekly wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of said toe and the compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of an entire toe.

For the loss of a hand, two-thirds the average weekly wages during one hundred twenty-five weeks.

For the loss of an arm, or any part at or above the wrist, two-thirds the average weekly wages during one hundred fifty weeks.

For the loss of a leg, or any part at or above the ankle, two-thirds the average weekly wages during one hundred fifty weeks.

For the loss of a foot, two-thirds the average weekly wages for one hundred twenty-five weeks.

For the loss of an eye or the reduction of the sight of an eye, with glasses, to one-tenth of the normal vision, two-thirds the average weekly wages during one hundred weeks.

The amounts specified in this section are all subject to the same limitations

CHAP. 54

as to maximum and minimum amounts, that is, of not more than eighteen and not less than six dollars a week, as provided for total or partial disability.

In all cases in this class where the usefulness of a member or any physical function thereof is permanently impaired, the compensation shall bear such relation to the amount stated in the above schedule as the incapacity shall bear to the injuries named in this schedule and the commission shall determine the extent of the incapacity.

*118 Me. 96; 119 Me. 322, 504, *552; *120 Me. 133; *121 Me. 502; 122 Me. 100, *276, 341, *387; 123 Me. *29, 480, *501, 521, 527; 125 Me. *285, 350, *395; 126 Me. 176.

Sec. 17. Notice of injury to be given employer. R. S. c. 50, § 17. 1919, c. 238, § 17. No proceedings for compensation for an injury under this act shall be maintained unless a notice of the accident shall have been given to the employer within thirty days after the happening thereof; and unless the claim for compensation with respect to such injury shall have been made within one year after the occurrence of the same, or, in case of his physical or mental incapacity, within one year after death or the removal of such physical or mental incapacity.

121 Me. 217, 502, 509; 122 Me. *136, 492; 123 Me. 428; 124 Me. 173; 125 Me. 245, 375; 126 Me. 365.

Sec. 18. Form and contents of notice of injury. R. S. c. 50, § 18. 1919, c. 238, § 18. Such notice shall be in writing and shall state in ordinary language the nature, time, place, and cause of the injury, and the name and address of the person injured, and shall be signed by the person injured, or by a person in his behalf, or, in the event of his death, by his legal representatives, or by a dependent, or by a person in behalf of either.

125 Me. 247.

Sec. 19. Service of notice of injury to employer. R. S. c. 50, § 19. 1919, c. 238, § 19. Such notice shall be served upon the employer, or upon one employer, if there are more employers than one, or, if the employer is a corporation, upon any officer or agent upon whom process may be served, or by leaving it at his last known residence or place of business, or by sending it by registered mail addressed to the person to be served, or in the case of a corporation, to the corporation itself, at his or its last known residence or place of business; and such mailing of the notice shall constitute a completed service.

117 Me. 176.

Sec. 20. Notice not void for mere inaccuracy of statement; when notice unnecessary. R. S. c. 50, § 20. 1919, c. 238, § 20. A notice given under the provisions of this act shall not be held invalid or insufficient by reason of any inaccuracy in stating the nature, time, place, or cause of the injury, or the name and address of the person injured, unless it is shown that it was the intention to mislead and the employer was in fact misled thereby. Want of notice shall not be a bar to proceedings under this act, if it be shown that the employer or his agent had knowledge of the injury, or that failure to give such notice was due to accident, mistake, or unforeseen cause.

*117 Me. 175; 121 Me. *217, 502, 508; 122 Me. 492; 125 Me. 247, *374; *126 Me. 365.

Sec. 21. Employee to submit to examination by physician or medical examiner. R. S. c. 50, § 21. 1919, c. 238, § 21. The employee shall after the injury, at all reasonable times during the continuance of his disability, if so requested by his employer, submit himself to an examination by a physician or surgeon authorized to practice medicine under the laws of this state, to be selected and paid by the employer. The employee shall have the right to have a physician or surgeon selected and paid by himself, present at such examination of which right the employer shall give him notice when requesting such examination.

The chairman or associate legal member of the commission may at any time after the injury appoint a competent and impartial physician or surgeon to act as a medical examiner, and the reasonable fees of such medical examiner shall be fixed and paid by the commission.

Such medical examiner being first duly sworn to the faithful performance of his duties before any justice of the peace, or any clerk of the supreme judicial court, shall thereupon and as often as the chairman of the commission may direct, examine such injured employee in order to determine the nature, extent, and probable duration of the injury. Such medical examiner shall file a report of every examination made of such employee in the office of the commission, and a copy thereof certified by the clerk of said commission may be produced in evidence in any hearing or proceedings to determine the amount of compensation due said employee under the provisions of this act. If such employee refuses to submit himself to examination provided for in this act, or in any way obstructs any such examination, his rights to compensation shall be suspended and his compensation during such period of suspension may be forfeited.

120 Me. 78.

Sec. 22. Savings or insurance shall not be taken into consideration. R. S. c. 50, § 22. 1919, c. 238, § 22. No savings or insurance of the injured employee, independent of this act, shall be taken into consideration in determining the compensation to be paid hereunder, nor shall benefits derived from any other source than the employer be considered in fixing the compensation under this act.

Sec. 23. Guardian may exercise right of claim in case of injured minors or incompetents. R. S. c. 50, § 23. 1919, c. 238. In case an injured employee is mentally incompetent, or, where death results from the injury, in case any of his dependents entitled to compensation hereunder are mentally incompetent or minors at the time when any rights, privilege, or election accrues to him or them under this act, his guardian, or next friend, or some disinterested person designated by the commission may, in his behalf, claim and exercise such right, privilege, or election, and no limitation of time in this act provided shall run so long as such incompetent or minor has no guardian. In case the commission shall have reasonable grounds for believing that compensation paid under this act, either in weekly installments or in a lump sum, will be squandered or wasted by the injured employee or his dependents, the commission may designate in writing some disinterested person to act as trustee for the said injured employee or said dependents, and the said trustee shall file an account at least once a year with the said commission showing the amounts of receipts and expenditures in behalf of said injured employee or said dependents.

124 Me. 404.

Sec. 24. Waiver of rights to compensation not valid; claims not assignable. R. S. c. 50, § 24. 1919, c. 238. No agreement by an employee, except as provided in section thirty, to waive his rights to compensation under this act shall be valid. No claims for compensation under this act shall be assignable, or subject to attachment, or liable in any way for debt.

124 Me. 110.

Sec. 25. Agreement that remedies under this act exclusive, in case of employment out of state; presumption. R. S. c. 50, § 25. 1919, c. 238. Employers who hire workmen within this state to work outside of the state, may agree with such workmen that the remedies under this act shall be exclusive as regards injuries received outside this state by accident arising out of and in the course of such employment; and all contracts of hiring in this state shall be presumed to include such an agreement.

CHAP. 54

Sec. 26. Liability created in person other than employer; subrogation of employer to rights of employee. R. S. c. 50, § 26. 1919, c. 238, § 26. 1921, c. 222. When any injury for which compensation is payable under this act shall have been sustained under circumstances creating in some other person than the employer a legal liability to pay damages in respect thereto, the injured employee may, at his option, either claim compensation under this act or obtain damages from or proceed at law against such other person to recover damages; and if compensation is claimed and awarded under this act, any employer having paid the compensation or having become liable therefor shall be subrogated to the rights of the injured employee to recover against that person, provided, if the employer shall recover from such other person damages in excess of the compensation already paid or awarded to be paid under this act, then any such excess shall be paid to the injured employee less the employer's expenses and costs of action.

Settlement of such claims and the distribution of the proceeds therefrom must have the approval of the court wherein litigation is pending, or if not in suit, of the chairman of the commission. The beneficiary shall be entitled to reasonable notice and opportunity to be present in person or by counsel at the approval proceedings.

The failure of the employer or compensation insurer in interest to pursue his remedy against the third party within ninety days after written demand by a compensation beneficiary, shall entitle such beneficiary or his representatives to enforce liability in his own name accounting for the proceeds to be made on the basis above provided.

*119 Me. 20; 120 Me. 419; 121 Me. 461; 124 Me. 119, 400.

Sec. 27. Claims under this act entitled to preference over unsecured debt. R. S. c. 50, § 27. 1919, c. 238, § 27. The claim for compensation under this act, and any decree on any such claim, shall be entitled to a preference over the unsecured debts of the employer hereafter contracted to the same amount as the wages of labor are now preferred by the laws of this state, but nothing herein shall be construed as impairing any lien which the employee may have acquired.

Sec. 28. Commutation of payments to lump sum. R. S. c. 50, § 28. 1919, c. 238, § 28. In case payments have continued for not less than six months, either party may, upon due notice to the other party petition the commission for an order commuting the future payments to a lump sum. Such petition shall be considered by the commission and may be summarily granted where it is shown to the satisfaction of the commission that the payment of a lump sum in lieu of future weekly payments will be for the best interest of the person or persons receiving or dependent upon such compensation, or that the continuance or weekly payments will, as compared with lump sum payments, entail undue expense or undue hardship upon the employer liable therefor, or that the person entitled to compensation has removed or is about to remove from the United States. Where the commutation is ordered, the commission shall fix the lump sum to be paid at an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at five per centum per annum with annual rests. Upon payment of such amount the employer shall be discharged from all further liability on account of the injury or death, and be entitled to a duly executed release, upon filing which, or other due proof of payment the liability of such employer under any agreement, award, findings, or decree shall be discharged of record, and the

employee accepting the lump sum settlement as aforesaid shall receive no future compensation under the provisions of this act.

*125 Me. 427.

Sec. 29. Commission to consist of four members; appointment of chairman and associate legal member; tenure, removal, and appointment of successor; appointment of clerk; authority of commission. R. S. c. 50, § 29. 1919, cc. 206, 238, § 29. 1921, c. 222. The industrial accident commission of the State of Maine shall consist of four members, two of whom, to be designated as the chairman and associate legal member, respectively, shall be men learned in the law and members in good standing of the bar of this state; the third, the commissioner of labor and industry, and the fourth, the commissioner of insurance. The chairman and associate legal member shall be appointed by the governor, the former for the term of four years and the latter for the term of two years upon the first appointment under this act, all successive appointments to be for the term of three years. The chairman and associate legal member shall hold office for the terms aforesaid, unless removed as herein provided, and until their successors are appointed and qualified. They shall be sworn and for inefficiency, wilful neglect of duty, or for malfeasance in office may after notice and hearing be removed by the governor and council. In case of a vacancy occurring through the death, resignation, or removal, the governor shall appoint a successor for the whole term of three years, subject to removal as aforesaid.

The commission shall have a clerk appointed and removable by it. The salary of the clerk of the commission shall be fixed by the governor and council upon recommendation of the commission.

The associate legal member shall have the same authority, powers, and duties as the chairman, but shall only exercise said authority, powers and duties when requested in writing to do so by the chairman.

In case the office of chairman becomes vacant through death, resignation, or removal, the associate legal member shall act as chairman until the governor makes an appointment to fill such vacancy.

The sum of twenty-eight thousand two hundred dollars shall be annually appropriated for the payment of salaries, clerical and other assistance, physicians, witness fees, traveling, and other expenses.

The commission shall have a seal bearing the words "Industrial Accident Commission of Maine." It shall have its office and keep its records in the state house in Augusta, but may hold sessions at any place within the state. The commission shall have general supervision over the administration of this act, and shall have powers:

I. To make rules and regulations not inconsistent with this act or other laws of the state for the purpose of carrying out the provisions hereof.

II. To issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers and photographs relating to any questions in dispute before it.

III. The chairman or the associate legal member at any hearing under the provisions of this act may issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any matters involved in the hearing. Witness fees in all proceedings under this act shall be the same as for witnesses before the supreme judicial court.

IV. The commission may, when the interests of any of the parties or when the administration of the provisions of this act demand, appoint a person in that part of the state where an accident has happened, to make a full investigation of

CHAP. 54

the circumstances surrounding said accident, and report the same without delay to the office of the said commission.

V. Depositions taken for the causes and in the manner hereinafter mentioned, may be used in all hearings before the industrial accident commission.

The chairman of the industrial accident commission or the associate legal member may issue commissions to take depositions to any United States consul, United States vice consul, any judge of any court of record in the United States or any foreign country, or to any notary public or justice of the peace in the State of Maine, for either of the following causes:

1. When the deponent resides out of, or is absent from the state.
2. When the deponent is bound to sea, or is about to go out of the state.
3. When the deponent is so aged, infirm, or sick as to be unable to attend at the place of hearing.

Such deposition shall be taken by written interrogatories to be filed with the chairman, and the adverse party shall have ten days after written notice of such filing to him or his attorney, in which to file cross-interrogatories thereto, and if cross-interrogatories are not so filed within ten days after such notice, the right of cross-examination shall be considered waived.

The deponent shall be duly sworn and after his answers have been written out, the deposition shall be signed and sworn to by the deponent before the commissioner authorized to take it, and shall by him be sealed up and sent to the chairman of the industrial accident commission at Augusta.

*117 Me. 180.

Sec. 30. Memorandum of agreement as to compensation; proceedings upon failure to agree or when agreement is not approved. R. S. c. 50, § 30. 1919, c. 238, § 30. 1921, c. 222, § 10. If the employer and the employee reach an agreement in regard to compensation under this act a memorandum of such agreement signed by the parties shall be filed in the office of the commission. If the commissioner finds that such agreement is in conformity with the provisions of this act, he shall approve the same. In case the commissioner shall find that any such agreement is not in conformity with the provisions of this act and shall refuse to approve the same, or if the employer and employee fail to reach an agreement in regard to compensation under this act, either employer or employee, and when death has resulted from the injury and the dependents of the deceased employee entitled to compensation are, or the apportionment thereof among them is, in dispute, any person in interest, may file in the office of the commission a petition setting forth the names and residences of the parties, the facts relating to the employment at the time of the injury, the cause, extent, and character of the injury, and the knowledge of the employer or notice of the occurrence of the injury, and, if an agreement had been reached between the parties which had not been approved by the commissioner, the form of such agreement, and such other facts as may be necessary and proper for the determination of the matter in dispute, and shall state the matter in dispute and the claims of the petitioner with reference thereto.

*119 Me. 507; 120 Me. 76, 251; 121 Me. 502; 122 Me. 114, 203, 276, 341; 123 Me.

*29, 46, 74; 124 Me. 404; 125 Me. 222; 126 Me. 174.

Sec. 31. Notice on petitions. R. S. c. 50, § 31. 1919, c. 238, § 31. Within four days after the filing of the petition, a copy thereof attested by the clerk of the commission shall be mailed, postage prepaid, to the other parties named in the petition, or notice be given in such other manner as the commission may determine.

120 Me. 251; 122 Me. 341.

Sec. 32. Proceedings as to answers. R. S. c. 50, § 32. 1919, c. 238, § 32.

Within ten days after the filing of such petition, all the other parties interested in opposition to the petition shall file an answer to said petition and furnish a copy thereof to the petitioner, which answer shall state the claims of the opponents with reference to the matter in dispute as disclosed by the petition. The chairman or associate legal member may grant further time for filing answer and allow amendments to said petition and answer at any stage of the proceedings. If any party opposing such petition does not file an answer within the time limited, the hearing shall proceed upon the petition. If any party be an infant or person under disability, either parent or a guardian or a guardian ad litem for such infant or person under disability may file the petition or answer required by this section.

120 Me. 251; 121 Me. 460; 122 Me. *136, 341; 124 Me. 163; *125 Me. 409; 126 Me. 176.

Sec. 33. Chairman or associate legal member to fix time for hearing on petitions; place of hearing; reimbursement of claimant. R. S. c. 50, § 33. 1919, c. 238, § 33. 1921, c. 222, § 11. The whole matter shall then be referred to the chairman or associate legal member of said commission who shall fix a time for hearing upon the request of either party, upon a three days' notice given to the other party. All hearings shall be held in the town where the accident occurred but the commission may with the consent of said claimant, hold said hearing in some other place, in which case the commission may reimburse the claimant for the actual traveling expenses incurred in attending the hearing; any sum of money paid for such expenses to be charged to the appropriation of the industrial accident commission under the heading "expenses of administration."

120 Me. 251; 122 Me. 342.

Sec. 34. Proceedings at hearing; decisions; decree by justice of supreme judicial court; appeal; modification of decree. R. S. c. 50, § 34. 1919, c. 238, § 34. If from the petition and answer there appear to be facts in dispute, the chairman or associate legal member of the commission shall then hear such witnesses as may be presented, or by agreement the claims of both parties as to the facts in dispute may be presented by affidavits. From the evidence thus furnished the chairman or associate legal member shall, in a summary manner, decide the merits of the controversy. His decision, findings of fact, and rulings of law, and any other matters pertinent to the questions raised at the hearing, shall be filed in the office of the commission, and a copy thereof certified by the clerk of the commission mailed forthwith to all parties interested. His decision in the absence of fraud, upon all questions of fact shall be final.

Any party in interest may present copies, certified by the clerk of the commission of any order or decision of the commission, or of its chairman or associate legal member, or of any memorandum of agreements approved by the commissioner, together with all papers in connection therewith, to the clerk of courts for the county in which the injury occurred; whereupon any justice of the supreme judicial court shall render a decree in accordance therewith and notify all parties. Such decree shall have the same effect and all proceedings in relation thereto shall thereafter be the same as though rendered in a suit in equity duly heard and determined by said court, except there shall be no appeal therefrom upon questions of fact found by said commission, or its chairman or associate legal member, or where the decree is based upon a memorandum of agreement approved by the commissioner. Upon any appeal therefrom the proceedings shall be the same as in appeals in equity procedure and the law court may, after consideration, reverse or modify any decree made by a justice, based upon an erroneous ruling or finding of law. There shall be no appeal

CHAP. 54

from a decree based upon any order or decision of the commission or of its chairman or associate legal member, or upon any memorandum of agreement approved by the commissioner, which has not been certified and presented to the court within twenty days after the notice of the filing thereof by the commission or its chairman or associate legal member. Upon the presentation to it of a certified copy of any decision of the chairman or associate legal member terminating, diminishing, increasing, or modifying any payments under the provisions of section thirty-six, or under any decision of said chairman or associate legal member or any agreement approved by the commissioner the court shall revoke or modify a decree, if any has been based thereon, to conform to such decision.

116 Me. 82; 117 Me. *176, 436; 118 Me. *172, 334; 119 Me. 504; 120 Me. *52, 251, 398, 460; 121 Me. 20, *40, 72, 76, 282; 122 Me. 116, 477, 494; 123 Me. 36, 255; 124 Me. 51, 163, 295, 424; 125 Me. 246, 362; 126 Me. 34.

Sec. 35. Agreement or decision of a chairman or associate legal member to have same effect as judgment of court. R. S. c. 50, § 35. 1919, c. 238, § 35. Any agreement between employer and employee filed with the commission and approved by the commissioner or any decision of the chairman or associate legal member of said commission under the provisions of section thirty-four, shall have the same effect as the judgment of a court, and a copy thereof certified to by the clerk of said commission and filed with the clerk of the court of the county in which either the employer or employee resides, or where the business of the employer is located, shall be enforceable by the supreme judicial court by any suitable process including execution against the goods, chattels, and real estate, and including proceedings for contempt for wilful failure or neglect to obey the orders or decrees of the court, or in any other manner that decrees in equity may be enforced.

119 Me. 504; 122 Me. 388; 124 Me. 55; 125 Me. 222; 126 Me. 175.

Sec. 36. Agreement, award, findings, or decree may be reviewed. R. S. c. 50, § 36. 1919, c. 238, § 36. At any time before the expiration of two years from the date of the approval of an agreement by the commissioner, or the entry of a decree fixing compensation, but not afterwards, and before the expiration of the period for which compensation has been fixed by such agreement or decree, but not afterwards, any agreement, award, findings, or decree may be from time to time reviewed by the chairman or associate legal member upon the application of either party, after due notice to the other party, upon the grounds that the incapacity of the injured employee has subsequently ended, increased, or diminished. Upon such review the said chairman or associate legal member may increase, diminish, or discontinue the compensation from the date of the application for review, in accordance with the facts, or make such other order as the justice of the case may require, but shall order no change of the status existing prior to the application for review. The finding of the said chairman or associate legal member upon such review shall be served on the parties and filed with the clerk of the commission and may be certified to the court in like time and manner and subject to like disposition as in the case of original decrees; provided that an agreement for compensation may be modified at any time by a subsequent agreement between the parties approved by the commissioner in the same manner as original agreements in regard to compensation are required to be approved by the provisions of section thirty of this act.

119 Me. 504; 120 Me. 73, *253; 121 Me. *41, *44, 75, 503, 504; 122 Me. *108, 291, 340, 437; 123 Me. 28, *39, 74, 479, 517; 124 Me. 56, *84; *126 Me. 401.

Sec. 37. Commission may prescribe forms and make suitable orders of procedure; construction of act. R. S. c. 50, § 37. 1919, c. 238, § 37. The com-

mission may prescribe forms and make suitable orders as to procedure adapted to secure a speedy, efficient, and inexpensive disposition of all proceedings under this act; and interpreting this act it shall construe it liberally and with a view to carrying out its general purpose. The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this act. It may provide blank forms of notice, agreements, and other forms required under this act.

117 Me. 177; 117 Me. 444; 119 Me. 504; 122 Me. 276; 123 Me. 409.

Sec. 38. Proceedings not to abate because of death. R. S. c. 50, § 38. 1919, c. 238, § 38. No proceedings under this act shall abate because of the death of the petitioner, but may be prosecuted by his legal representative or by any person entitled to compensation by reason of said death, under the provisions of this act.

Sec. 39. Agreement or petition to be made within two years. R. S. c. 50, § 39. 1919, c. 238, § 39. An employee's claim for compensation under this act shall be barred unless an agreement or a petition as provided in section thirty shall be filed within two years after the occurrence of the injury, or, in case of the death of the employee, or in the event of his physical or mental incapacity, within two years after the death of the employee or the removal of such physical or mental incapacity.

120 Me. 73; 121 Me. 76, 502; 122 Me. 343, 440; 123 Me. *46, 479, 527; 124 Me. 404; 126 Me. *173.

Sec. 40. Compulsory upon state, county, cities, and quasi-municipal corporations. R. S. c. 50, § 40. 1919, c. 238, § 40. This act shall be compulsory as to the state, counties, cities, water districts, and other quasi-municipal corporations of a similar nature. The provisions of section six of this act shall not apply to the state, counties, cities, water districts, and other quasi-municipal corporations of a similar nature or to any towns voting to accept the provisions of this act.

Sec. 41. Assenting employers to make report of accidents; copy of receipts in final settlement filed with commission; penalty for neglect. R. S. c. 50, § 41. 1919, c. 238, § 41. All assenting employers shall make prompt report to the commission of all accidents to their employees in the course of employment, with the average weekly wages or earnings of such employee, together with such other particulars as the commission may require and shall also report whenever the injured employee shall resume his employment and the amount of his wages or earnings.

Whenever any final settlement is made with an injured employee, either by the employer or insurance company, a copy of the receipt or final agreement showing the total amount of money paid to such injured employee, shall be filed with the commission, but shall not be binding without the approval of the commission, or of its chairman or associate legal member. Any employer or insurance company that shall wilfully neglect or refuse to make such reports or file any receipts or agreements required to be filed under this act shall be liable to a forfeiture of ten dollars for each day of such wilful neglect or refusal, to be enforced by the commission in an action of debt in the name of the state. All sums so recovered shall be paid into the state treasury and credited to the appropriation made for the administration of this act.

124 Me. 100; 126 Me. 174.

Sec. 42. Insurance companies to furnish information to insurance commissioner; penalty for refusal. R. S. c. 50, § 42. 1919, c. 238, § 42. Any insurance company insuring employers under this act shall fill out any blanks and answer all questions submitted to them, that may relate to policies, premiums,

CHAP. 54

amount of compensation paid, and such other information as the commission or the insurance commissioner may deem important, either for the proper administration of this act or for statistical purposes. Any insurance company which shall refuse to fill out such blanks or answer such questions shall be liable to a forfeiture of ten dollars for each day of such refusal, to be enforced by the commission in an action of debt in the name of the state. In case the employer or insurance company liable for any payment under this act shall fail to make the same within ten days after notification by the commission that said failure to make such payment is deemed by said commission to be unreasonable, then for each day after the said ten days, the said employer or the said insurance company, shall be liable to a forfeiture of ten dollars each day for such failure or refusal, to be enforced by the commission in an action of debt in the name of the state. All moneys so recovered shall be paid into the state treasury and credited to the appropriation for the administration of this act.

Sec. 43. Commission to make biennial report. R. S. c. 50, § 43. 1919, c. 238, § 43. The commission shall make a report for the biennial period ending June thirtieth of an even year giving such full statistical information as may be contained in its department in relation to the administration of this act, particularly with reference to the number of employees affected, the number injured, the amount of compensations received and the cost of the same to the employers.

Sec. 44. Applicability to persons engaged in commerce. R. S. c. 50, § 44. 1919, c. 238, § 44. This act shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise only so far as the same is permissible under the laws of the United States.

*122 Me. 310.

Sec. 45. Payments to be made monthly to non-residents. R. S. c. 50, § 45. 1919, c. 238, § 45. If an employee receiving a weekly payment under this act shall cease to reside in the state, or, if his residence at the time of the accident is in an adjoining state, the commission upon application of either party may, in its discretion, having regard to the welfare of the employee and the convenience of the employer, order such payment to be made monthly or quarterly instead of weekly.

Sec. 46. Unconstitutionality of any part not to affect whole. R. S. c. 50, § 46. 1919, c. 238, § 46. If any part or section of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of the act as a whole, or any part thereof, which can be given effect without the part so decided to be unconstitutional or invalid.

Sec. 47. Penalty for making false statements. R. S. c. 50, § 47. 1919, c. 238, § 47. If for the purpose of obtaining any benefit or payment under the provisions of this act, either for himself or for any other person, any one wilfully makes a false statement or representation he shall be guilty of a misdemeanor and liable to a fine of not exceeding fifty dollars, and shall forfeit all right to compensation under this act after conviction for such offense.

Sec. 48. Penalty for making false representations. 1919, c. 238, § 48. No person other than a member of the commission or its duly authorized subordinates and employees shall in any manner directly or indirectly represent the commission and procure settlement of any claim arising under this act, or in any manner directly or indirectly hold himself out to any employee, dependent, or other person interested in his claim to have any authority to act for said commission for any purpose under this act. Any person violating the pro-

visions of this section shall be punished by a fine not exceeding two hundred dollars, or by imprisonment not to exceed sixty days, or by both.

Sec. 49. Not applicable to injuries sustained prior to January, 1st, 1916. R. S. c. 50, § 48. 1919, c. 238, § 49. The provisions of this act shall not apply to injuries sustained or accidents which occur prior to the first day of January, A. D. nineteen hundred sixteen.

The Employers' Liability Law.

Sec. 50. Employers' liability defined. R. S. c. 50, § 49. If personal injury is caused to an employee, who, at the time of the injury, is in the exercise of due care, by reason of:

First, a defect in the condition of the ways, works, or machinery connected with or used in the business of the employer, which arose from, or had not been discovered or remedied in consequence of, the negligence of the employer or of a person in his service who had been entrusted by him with the duty of seeing that the ways, works or machinery were in proper condition; or,

Second, the negligence of a person in the service of the employer who was entrusted with and was exercising superintendence and whose sole or principal duty was that of superintendence, or in the absence of such superintendent, of a person acting as superintendent with the authority or consent of such employer;

Third, the negligence of a person in the service of the employer who was in charge or control of a signal, switch, locomotive engine, or train upon a railroad;

The employee or his legal representatives, shall, subject to the provisions of the eight following sections, have the same rights to compensation and of action against the employer as if he had not been an employee, nor in the service, nor engaged in the work, of the employer.

A car which is in use by, or which is in possession of, a railroad corporation shall be considered as a part of the ways, works, or machinery of the corporation which uses or has it in possession, within the meaning of clause one of this section, whether it is owned by such corporation or by some other company or person. One or more cars which are in motion, whether attached to an engine or not, shall constitute a train within the meaning of clause three of this section, and whoever, as a part of his duty for the time being, physically controls or directs the movements of a signal, switch, locomotive engine, or train shall be deemed to be a person in charge or control of a signal, switch, locomotive engine, or train within the meaning of said clause.

108 Me. 361; 110 Me. 376.

Sec. 51. Actions for damages for death in addition to those for injury. R. S. c. 50, § 50. If the injury described in the preceding section results in the death of the employee, and such death is not instantaneous or is preceded by conscious suffering, and if there is any person who would have been entitled to bring an action under the provisions of the following section, the legal representatives of said employee may, in the action brought under the provisions of the preceding section, recover damages for the death in addition to those for the injury.

Sec. 52. Actions for damages by widow or next of kin. R. S. c. 50, § 51. If, as the result of the negligence of an employer himself, or of a person for whose negligence an employer is liable under the provisions of section fifty, an employee is instantly killed, or dies without conscious suffering, his widow or, if he leaves no widow, his next of kin, who, at the time of his death, were dependent upon his wages for support, shall have a right of action for damages against the employer.

Sec. 53. Damages for death, how sustained. R. S. c. 50, § 52. If, under the provisions of either of the two preceding sections, damages are awarded for the death, they shall be assessed with reference to the degree of culpability of the employer or of the person for whose negligence the employer is liable.

The amount of damages which may be awarded in an action under the provisions of section fifty for a personal injury to an employee, in which no damages for his death are awarded under the provisions of section fifty-one, shall not exceed four thousand dollars.

The amount of damages which may be awarded in such action, if damages for his death are awarded under the provisions of section fifty-one, shall not exceed five thousand dollars for both the injury and the death, and shall be apportioned by the jury between the legal representatives of the employee and the persons who would have been entitled, under the provisions of section fifty-two, to bring an action for his death if it had been instantaneous or without conscious suffering.

The amount of damages which may be awarded in an action brought under the provisions of section fifty-two shall not be less than five hundred nor more than five thousand dollars.

109 Me. 585.

Sec. 54. Notice of injury in writing within sixty days; action within one year. R. S. c. 50, § 53. No action for the recovery of damages for injury or death under the provisions of sections fifty to fifty-three, both inclusive, shall be maintained unless notice of the time, place, and cause of the injury is given to the employer within sixty days and the action is commenced within one year after the accident which causes the injury or death. Such notice shall be in writing, signed by the person injured, or by a person in his behalf; but if from physical or mental incapacity it is impossible for the person injured to give the notice within the time provided in this section, he may give it within ten days after such incapacity has been removed, and if he dies without having given the notice and without having been for ten days at any time after his injury of sufficient capacity to give it, his executor or administrator may give such notice within sixty days after his appointment. A notice given under the provisions of this section shall not be held invalid or insufficient solely by reason of an inaccuracy in stating the time, place or cause of the injury, if it is shown that there was no intention to mislead, and that the employer was not in fact misled thereby.

If a notice given under this section is claimed by the employer to be insufficient for any reason he shall so notify in writing the person giving it within ten days, stating the insufficiency claimed to exist, and thereupon the person whose duty is to give the notice may, within thirty days, give a new notice with the same effect as if originally given.

Sec. 55. Liability of employer not barred by entering into contract with independent contractor. R. S. c. 50, § 54. If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract with a sub-contractor to do all or any part of the work comprised in such contractor's contract with the employer, such contract or sub-contract shall not bar the liability of the employer for injuries to the employees of such contractor or sub-contractor, caused by any defect in the condition of the ways, works, machinery, or plant, if they are the property of the employer or are furnished by him, and if such defect arose, or had not been discovered or remedied, through the negligence of the employer or of some person entrusted by him with the duty of seeing that they were in proper condition.

Sec. 56. Employee has no right of action for damages, if he knew of defect or negligence and failed to give notice. R. S. c. 50, § 55. An employee or his legal representatives shall not be entitled under the provisions of sections fifty to fifty-three, both inclusive, to any right of action for damages against his employer if such employee knew of the defect or negligence which caused the injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer, or to some person superior to himself in the service of the employer who was entrusted with general superintendence.

Sec. 57. Application of §§ 50-56 limited. R. S. c. 50, § 56. The provisions of the seven preceding sections shall not apply to injuries caused to domestic servants or farm laborers by fellow employees, or to those engaged in cutting, hauling, or driving logs. Nothing in said sections shall be construed to abridge any common law rights or remedies which the employee may have against his employer, but a judgment recovered under the provisions of said sections, or a settlement of any action commenced or claim made for death or injury, under the provisions thereof, shall be a bar to any claim made or action begun to recover for the same injury or the same death, under the provisions of the common law or under the provisions of any other statute.

110 Me. 376; *114 Me. 208.

Sec. 58. Special contracts prohibited. R. S. c. 50, § 57. No person shall, by a special contract with his employees, exempt himself or another person from liability which he may be under to them, for injuries suffered by them in his employment and resulting from the negligence of the employer or such other person, or of a person in his employ.