NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 2

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 61.

Laws Relating to Liquor.

Editor's note.—Many of the cases appearing in the annotations to this chapter actually arose under the former prohibition law. However, that law contained many provisions similar to the present chapter and it is felt that the cases used are still of value.

Definitions.

Sec. 1. Definitions.—The following words and phrases, unless the context clearly indicates otherwise, shall have the following meanings when used in any statute or law relating to intoxicating liquor:

"Alcohol" shall mean that substance known as ethyl alcohol, hydrated oxide of ethyl or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, sugar, potatoes or other substances including all dilutions and mixtures of these substances.

"Apple cider" as used in section 16 shall mean "liquor" made from apples.

"Club" shall mean any reputable group of individuals incorporated and operating in a bona fide manner solely for objects of recreational, social, patriotic or fraternal nature and not for pecuniary gain. To qualify for license or any renewal thereof under the provisions of this chapter a club shall, for at least 2 years immediately preceding application therefor, have been in continuous operation and existence, regularly occupied as owner or lessee a suitable clubhouse or quarters for use of members, held regular meetings, conducted its business through officers regularly elected and charged and collected dues from elected members, except that any veterans' organization in the state having a charter from a national veterans' organization shall be exempt from the 2-year requirement, provided it has been established for not less than 3 months.

"Commission" shall mean the state liquor commission.

"Corporation" shall mean a corporation organized and incorporated under the laws of this state or authorized to transact business within this state.

"Dining cars" and "cars supplying food" shall mean and include cars in which food is prepared and served and also other cars, for accommodations in which an extra charge is made, in which food is served from a dining car or from a car supplying food in the same train.

"Hotel" shall mean any reputable place operated by responsible persons of good reputation, where the public, for a consideration, obtains sleeping accommodations and meals under one roof and which has a public dining room or rooms operated by the same management open and serving food during the morning, afternoon and evening, and a kitchen, apart from the public dining room or rooms, in which food is regularly prepared for the public on the same premises. Each such hotel shall be equipped with at least 10 adequate sleeping rooms when it is located in a municipality of 3,000 or less population, 20 such sleeping rooms when located in municipalities having population of from 3,000 to 7,500 and 30 such sleeping rooms when located in municipalities having more than 7,500 population. All such rooms shall be in addition to rooms used by the owner or his employees. Each such hotel shall be open for the convenience of the traveling public 7 days per week and a reasonable proportion of the gross income of each such hotel shall be derived from rental of rooms and sale of food. Increase in population as shown by the 1950 and any subsequent federal census shall not affect the eligibility for license of premises licensed prior to any such census.

No additional requirements imposed by the provisions of this section shall affect premises licensed on August 13, 1947, and nothing in this section shall be held to prevent the commission from issuing summer or part-time licenses to bona fide summer hotels where accommodations and meals are not provided under one roof, provided that such hotel can in no way be classed as overnight camps, and provided further, that no liquor shall be served or delivered by the licensee, his servants or agents to guests in rooms outside of the main building.

"Intoxicating liquor" shall have the same meaning as the word "liquor" herein defined.

"Licensee" shall mean and include both the person to whom a license of any kind is issued by the commission and the premises upon which the privileges of the license are to be exercised and includes all licenses issued by the commission.

"Liquor" shall mean and include any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquors, intended for human consumption, which contains more than 1% of alcohol by volume.

"Person" shall mean an individual, copartnership, corporation or voluntary association.

"Restaurant" shall mean a reputable place operated by responsible persons of good reputation and habitually and regularly used for the purpose of providing food for the public, and provided with adequate and sanitary kitchen and dining room equipment and capacity for preparing and serving suitable food for the public.

"Spirits" shall mean any liquor produced by distillation or if produced by any other process, strengthened or fortified by the addition of distilled spirits of any kind.

"Tavern" shall mean a reputable place for men only operated by responsible persons where no food is sold and no business is carried on except the sale of cigarettes and tobacco products and except the sale of malt liquor at a bar. There shall be no table, chairs or other seating accommodations and all persons served shall remain standing at the bar.

"Wholesaler" shall mean and include persons licensed by the commission to engage in the purchase and resale of malt or brewed beverages in the original containers, as prepared for the market by the manufacturer at the place of manufacture, but not for consumption on the premises of said wholesaler.

"Wine" shall mean any liquor produced by natural fermentation. (R. S. c. 57, § 1. 1947, c. 165, § 1; cc. 226, 246; c. 322, § 1. 1949, c. 349, § 96. 1951, c. 356, §§ 1, 2. 1953, c. 194.)

Quoted in part in State v. Bellmore, 144 Me. 231, 67 A. (2d) 531.

Cited in State v. Maine State Fair Ass'n, 148 Me. 486, 96 A. (2d) 229.

Local Option.

Sec. 2. Local option.—The aldermen of cities, the selectmen of towns and the assessors of plantations are empowered and directed to notify the inhabitants of their respective cities, towns and plantations to meet, in the manner prescribed by law for the calling and holding of biennial meetings of said inhabitants for the election of senators and representatives, at the time of holding such biennial meeting to give in their votes upon the following questions:

I. Shall state stores for the sale of liquor be operated by permission of the state liquor commission in this city or town?

II. Shall licenses be granted in this city or town for the sale herein of wine and spirits to be consumed on the premises? (1949, c. 349, § 97)

III. Shall licenses be granted in this city or town for sale herein of malt liquor (beer, ale and other malt liquors) to be consumed on the premises?

IV. Shall licenses be granted in this city or town for the sale herein of malt liquor (beer, ale and other malt liquors) to be consumed on the premises of taverns? (1947, c. 322, § 1-A)

V. Shall licenses be granted in this city or town for the sale herein of malt liquor (beer, ale and other malt liquors) not to be consumed on the premises?

Upon receipt of a petition of electors resident in that city or town in writing addressed to the secretary of state and signed by at least 15% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that city or town, which petition shall be filed with the secretary of state on or before the 1st day of July preceding the day of the biennial election, the ballots for that city or town shall carry in accordance with the petition any or all of the following additional questions:

VI. Shall licenses be granted in this city or town for sale herein of wines and spirits to be consumed on the premises of part-time hotels and clubs? (1949, c. 349, § 97. 1951, c. 356, § 16)

VII. Shall licenses be granted in this city or town for the sale herein of wine and spirits to be consumed on the premises of a club only? (1947, c. 273, § 1. 1949, c. 349, § 97)

VIII. Shall licenses be granted in this city or town for the sale herein of malt liquor (beer, ale and other malt liquors) to be consumed on the premises of a club only? (1947, c. 273, § 1. 1949, c. 349, § 97)

The secretary of state shall prepare and furnish to the several cities, towns and plantations ballots in manner and form as prescribed in section 5 of chapter 5 for constitutional amendment or other questions, together with all such other forms including those for instructions and returns as are prescribed in said chapter 5.

The inhabitants of the several cities, towns and plantations shall vote by ballot on said questions, those in favor voting "Yes" on their ballots and those opposed "No," and the ballots shall be received, sorted, counted and declared in open ward, town and plantation meetings and return made to the office of the secretary of state in the same manner as votes for governor and members of the legislature, and the governor and council shall canvass the same and the result shall be determined as provided in section 52 of chapter 5.

If a majority of the votes cast in a city or town in answer to question I is in

the affirmative, the commission may operate therein a state store or stores for the sale of liquor for the 2 calendar years next following, subject to all provisions of law.

If a majority of such votes in answer to question II is in the affirmative, the commission may issue licenses for the sale therein of wine and spirits for consumption on the premises for the 2 calendar years next following, subject to all provisions of law.

If a majority of such votes in answer to question III is in the affirmative, the commission may issue licenses for the sale therein of malt liquor to be consumed on the premises for the 2 calendar years next following, subject to all provisions of law.

If a majority of such votes in answer to question IV is in the affirmative, the commission may issue licenses for the sale therein of malt liquor to be consumed on the premises of a tavern therein for the 2 calendar years next following, subject to all provisions of law.

If a majority of such votes in answer to question V is in the affirmative, the commission may issue licenses for the sale therein of malt liquor not to be consumed on the premises for the 2 calendar years next following, subject to all provisions of law.

If a majority of the votes cast in a city or town in answer to question VI is in the affirmative, the commission may issue licenses for the sale of wines and spirits to be consumed on the premises of part-time hotels and clubs therein for the 2 calendar years next following, subject to all provisions of law.

If a majority of the votes cast in a city or town in answer to question VII is in the affirmative, the commission may issue licenses for the sale of wines and spirits to be consumed on the premises of a club only therein for the 2 calendar years next following, subject to all provisions of law.

If a majority of the votes cast in a city or town in answer to question VIII is in the affirmative, the commission may issue licenses for the sale of malt liquor (beer, ale and other malt liquors) to be consumed on the premises of a club only therein for the 2 calendar years next following, subject to all provisions of law.

If a majority of such votes cast on question I is in the negative, the operation of state stores in that city or town for the 2 calendar years next following shall be unlawful.

If a majority of such votes cast on question II is in the negative, licenses shall not be issued for the sale therein of wines and spirits for consumption on the premises for the 2 calendar years next following.

If a majority of such votes cast on question III is in the negative, licenses for the sale therein of malt liquor to be consumed on the premises shall not be issued for the 2 calendar years next following.

If a majority of such votes cast on question IV is in the negative, licenses shall not be issued for the sale therein of malt liquor to be consumed on the premises of taverns for the 2 calendar years next following.

If a majority of such votes cast on question V is in the negative, licenses for the sale therein of malt liquor not to be consumed on the premises shall not be issued for the 2 calendar years next following.

If a majority of the votes cast on question VI is in the negative, licenses shall not be issued for the sale of wines and spirits to be consumed on the premises of part-time hotels and clubs that operate therein for the 2 calendar years next following.

If a majority of the votes cast on question VII is in the negative, licenses shall not be issued for the sale of wines and spirits to be consumed on the premises of a club only therein for the 2 calendar years next following.

If a majority of the votes cast on question VIII is in the negative, licenses shall not be issued for the sale of malt liquor (beer, ale and other malt liquors) to be consumed on the premises of a club only therein for the 2 calendar years next following.

In case of a tie vote on any of the preceding questions, the law shall remain as it was before the voting.

Upon this ballot no other referendum question shall be printed. (R. S. c. 57, § 2. 1947, c. 273, § 1; c. 322, §§ 1-A, 1-B, 1-C. 1949, c. 349, § 97. 1951, c. 356, §§ 16, 17.)

Applied in Chapman v. Snow, 135 Me. 134, 190 A. 636.

Cited in Chavarie v. Robie, 135 Me. 244, 194 A. 404.

Commission; Powers and Duties.

Sec. 3. State liquor commission, appointment.—The state liquor commission, as heretofore established, shall consist of 3 members to be appointed by the governor, with the advice and consent of the council, to serve for 3 years and may after notice and hearing be removed for cause by the governor and council. The governor shall designate one of the members to be its chairman and not more than 2 members thereof shall belong to the same political party. Any vacancy shall be filled by appointment for a like term. (R. S. c. 57, § 3. 1947, c. 250.)

Sec. 4. Eligibility of members and employees.—No person shall be eligible for appointment as a member of the commission or as an employee of the commission in any capacity, including the business administrator and the director of licensing and enforcement, who has any connection with, official, professional or otherwise, or who owns any stock in a corporation interested either directly or indirectly in the manufacture or sale of liquor or who has been convicted of the breach of any state or federal law regulating the manufacture, sale or transportation of intoxicating liquor. (R. S. c. 57, § 4. 1953, c. 396, § 1.)

Sec. 5. Salaries and expenses.—The salary of the chairman of the commission shall be $7,000 per year and the salary of each of the other members shall be $5,000 per year, and in addition each member shall be allowed his reasonable expense incurred in the performance of his duties; provided, however, that such expense shall not include travel between his place of residence and the commission office, or board and lodging in the city or town where such office is located. (R. S. c. 57, § 5. 1945, c. 373. 1951, c. 412, § 16.)

Sec. 6. Business administrator.—The commission shall appoint a business administrator whose term of office shall be continuous, subject only to removal for cause by a majority vote of the governor, the individual members of the council and the commission, acting as one body, after notice and public hearing if requested by the administrator. The salary of the administrator shall be fixed by the governor and council.

In appointing a business administrator, consideration shall be given to the following qualifications: sound judgment, practical experience and ability in merchandising, executive administration, salesmanship and sound business principles. (1953, c. 396, § 2.)

Sec. 7. Director of licensing and enforcement.—The commission shall appoint a director of licensing and enforcement whose term of office shall be continuous, subject only to removal for cause by majority vote of the governor, the individual members of the council and the commission, acting as one body, after notice and public hearing if requested by the director. The salary of the director shall be fixed by the governor and council.

In appointing a director of licensing and enforcement, consideration shall be given to the following qualifications: sound judgment and practical experience in all phases of licensing, law enforcement and knowledge of the liquor laws. (1953, c. 396, § 2.)

Sec. 8. Powers and duties. — The commission shall have the following powers and duties:

I. To have general supervision of manufacturing, importing, storing, transporting and sale of all liquors. (1953, c. 396, § 3)

II. To have control and supervision of the purchase, importation, transportation and sale of alcohol; and to make rules and regulations for such purchase, importation, transportation and sale of same to any industrial establishment in this state for industrial uses, or schools, colleges and state institutions for laboratory use only, or to hospitals for medicinal use therein only, or to any licensed pharmacist in this state for use in the compounding of prescriptions and other medicinal use but not for sale by such pharmacists unless compounded with or mixed with other substances, or to any physician, surgeon, osteopath, chiropractor, optometrist, dentist or veterinarian for medicinal use only.

Quoted in State v. Schumacher, 149 Me. 298, 101 A. (2d) 196.

III. To adopt rules and regulations for the administration of the law relating to malt liquor and for the supervision and regulation of the manufacture, sale and transportation of malt liquor throughout the state; the manufacture, sale and transportation of which is permitted and authorized.

Power to make rules and regulations limited.—The liquor commission's power to make rules and regulations extends only to such details of administration as are necessary to carry out and enforce the mandate of the legislature. Anheuser-Busch, Inc. v. Walton, 135 Me. 57, 190 A. 297; MacDonald v. Sheriff, 148 Me. 365, 94 A. (2d) 555.

And commission cannot change law.—If changes are necessary for any reason whatsoever in the state liquor law and its administration, such changes must come from the legislature. They cannot be effected by rule or regulation of the liquor commission. MacDonald v. Sheriff, 148 Me. 365, 94 A. (2d) 555.

Commission cannot increase excise tax by regulation.—See note to § 22.

Regulation concerning tax on foreign manufacturer held invalid.—See note to § 20.

IV. To buy and have in their possession wine and spirits for sale to the public. Such wine and spirits shall be purchased by the commission directly and not through the state purchasing agent and shall be free from adulteration and misbranding. The commission shall in their purchases of liquors give priority, wherever feasible, to those made from the agricultural products of this state.

V. The commission at all times and with respect to all policies shall neither discriminate against nor in favor of any person, firm or corporation because of his residence or nonresidence in the state except as provided for in subsection IV of this section. (1951, c. 355)

VI. Before any item listed by the commission is discontinued or delisted or before the commission issues any order to stop purchases of any item listed they shall give the vendor of such items reasonable notice in writing of their intention to so delist or stop purchase of such items. (1953, c. 286)

VII. To sell at retail in state stores in original packages and for cash, either over the counter or by shipment to points within the state, wine and spirits of all kinds for consumption off the premises at state stores to be operated under the direction of the commission. (1953, c. 255, § 1)

VIII. To issue, renew, suspend and revoke all licenses provided for by this chapter and to hold hearings thereon.

The only person or agency authorized to issue licenses is the state liquor commission. This subsection gives the liquor commission the right to issue all licenses. State v. Schumacher, 149 Me. 298, 101 A. (2d) 196.

IX. To adopt rules, requirements and regulations, not inconsistent with this

chapter or other laws of the state, the observance of which shall be conditions precedent to the granting of any license to sell liquor, including malt liquor. In issuing or renewing licenses the commission shall give consideration to the character of any applicant, the location of the place of business and the manner in which it has been operated. The commission may refuse to issue licenses to corporations when any of its officers, directors or stockholders do not possess the qualifications required of unincorporated persons under the provisions of this section. (1949, c. 313. 1953, c. 253)

Quoted in Glovsky v. State Liquor Comm., 146 Me. 38, 77 A. (2d) 195.

X. To establish regulations for clarifying, carrying out, enforcing and preventing violation of all or any of the laws pertaining to liquor, which regulations shall have the force and effect of law unless and until set aside by some court of competent jurisdiction or revoked by the commission.

XI. To prevent the sale by licensees of wine and spirits to minors, persons under the influence of liquor or to an interdicted person.

Stated in State v. Koliche, 143 Me. 281, 61 A. (2d) 115.

XII. To assign to the business administrator under its supervision all powers and duties relating to all phases of the merchandising of liquor. (1953, c. 396, § 4)

XIII. To assign to the director of licensing and enforcement under its supervision all powers and duties relating to licensing, and to enforcement of the liquor laws. (1953, c. 396, § 4)

XIV. To act as a review board on the decisions of the administrator and on all appeals from the decisions of the director of licensing and enforcement, and municipal officers, and except as provided by section 57 the decisions of the commission shall be final. All decisions of the commission acting as a review board must be approved by at least 2 members. (1953, c. 396, § 4)

XV. To publish at least annually on or before June 30th in a convenient pamphlet form all regulations then in force and to furnish copies of such pamphlets to every licensee authorized by law to sell liquor.

XVI. To employ, subject to the provisions of the personnel law, such clerical and other assistants, and make such expenditures as may be necessary to carry into effect the purposes of this chapter.

XVII. To appoint, subject to the provisions of the personnel law, a chief inspector and as many inspectors as may from time to time be found necessary. The inspectors shall be under the direct supervision and control of the chief inspector. They shall have the same powers and duties throughout the several counties of the state as sheriffs have in their respective counties relating to liquor. Their power and duties shall include the duty to inquire into and arrest for violations of any of the provisions of this chapter, and to arrest for impersonation of or interference with liquor inspectors. (1947, c. 88. 1949, c. 246)

XVIII. A single commissioner may conduct hearings in any matter pending before the commission. He shall, after holding the hearing, file with the commission all papers connected with the case, a transcript of all the testimony and a report of his findings. The commission shall review the evidence and examine all papers and the findings of the single commissioner before rendering their decision.

XIX. Any member of the commission, the administrator and the director may administer oaths and issue subpoenas for witnesses and subpoenas duces tecum to compel the production of books and papers relating to any question in dis-

pute before them or to any matter involved in a hearing. Witness fees in all proceedings shall be the same as for witnesses before the superior court. Whoever, having been summoned as a witness by any member of the commission, the administrator or the director to appear before the commission, the administrator or the director, without reasonable cause fails to appear at the time and place designated in the subpoena or summons shall be punished, on complaint or indictment, by a fine of not more than $100 or by imprisonment for less than 1 year. (1945, c. 61. 1953, c. 396, § 5)

XX. To make an annual report to the governor of their activities and of the amount of malt liquor license fees collected together with such other information as they deem advisable or as the governor may require. (R. S. c. 57, § 6. 1945, c. 61. 1947, c. 88. 1949, cc. 246, 313. 1951, c. 355. 1953, c. 253; c. 255, §§ 1, 2; c. 286; c. 396, §§ 3, 4, 5.)

Sec. 9. Noncompliance with rules and regulations.—No person shall purchase, import, transport, manufacture, possess or sell alcohol in this state unless in accordance with the rules and regulations made by the commission under authority granted by subsection II of the preceding section or pursuant to license under the provisions of section 15. Whoever violates any of such rules and regulations shall be punished by a fine of not more than $200 or by imprisonment for not more than 6 months, or by both such fine and imprisonment. (R. S. c. 57, § 7. 1947, c. 245. 1953, c. 255, § 2-A.)

State Stores.

Sec. 10. State stores. — The commission is authorized to lease and equip in the name of the state, such stores, warehouses and other merchandising facilities for the sale of liquor as are necessary to carry out the provisions of this chapter but any lease or contract made pursuant hereto shall be approved by the attorney general before becoming effective. The state warehouse and wholesale store shall be located in a place designated by the state liquor commission. Leases may be for seasonal occupancy. No such store shall be established within 300 feet of any public or private school, church, chapel or parish house. (R. S. c. 57, § 8. 1947, c. 144. 1953, c. 330, § 1.)

Sec. 11. Special stores.—The commission shall have authority to establish in cities and towns which vote in favor of the operation of state stores under local option provisions and where there is no state store, special or temporary stores to be occupied exclusively for the purpose in such cities or towns of selling liquor in sealed bottles, containers or original packages for consumption off the premises under such regulations as they may determine. (R. S. c. 57, § 9.)

Sec. 12. Business hours; sale to minors, etc.—State stores shall not be open on Sundays, court holidays, or on the day of the holding of a general election or state-wide primary or between the hours of 8 P. M. and 9 A. M., except that in municipalities operating on daylight saving time, state liquor stores may be opened at 8 A. M., standard time, and also except on Saturdays when, if open, they may be kept open until 10 P. M., and the commission is authorized to regulate the opening and closing hours of each store within the provisions of this chapter. No sales shall be made therein to minors or persons under the influence of liquor. (R. S. c. 57, § 10. 1947, c. 95.)

Working Capital.

Sec. 13. Working capital. — The net profits of the commission shall be general revenue of the state. The commission is authorized to keep and have on hand a stock of wines and spirits for sale, the value of which, computed on less carload price quotations f. o. b. warehouse filed by liquor and wine vendors, shall

not at any time exceed the amount of working capital authorized. The maximum permanent working capital of the liquor commission is established at $3,000,000 and permanent advances up to this amount may be authorized by the governor and council upon recommendation of the commission with the approval of the commissioner of finance and administration. The permanent working capital of the commission may be supplemented by temporary loans from other state funds upon recommendation of the commission and by approval of the commissioner of finance and administration and the governor and council. At any time the total working capital exceeds the amount necessary to provide for a turnover of stock approximately 8 times annually, the governor and council upon recommendation of the commissioner of finance and administration may authorize the return of such excess to the general fund of the state. (R. S. c. 57, § 11. 1945, c. 92, § 1. 1953, c. 265, § 6.)

State Liquor Tax.

Sec. 14. Consumers' tax on spirituous and vinous liquor.—All spirits and wines shall be sold by the commission at a price to be determined by the commission which will produce a state liquor tax of not less than 61% based on the less carload cost f. o. b., state liquor commission warehouse, except that spirits and wines sold at wholesale under the provisions of section 43, may be sold at wholesale prices established pursuant to the provisions thereof and provided further, that prices for sale of spirits and wines bought by the commission from Maine licensees to manufacture liquor under the provisions of section 15 shall be based on minimum truck load delivery prices f. o. b. warehouse as the same are filed with the public utilities commission, and provided further, that special orders by the commission for unstocked merchandise shall be priced at not less than 61% over actual cost delivered f. o. b. warehouse. In all cases the commission is authorized to round off costs to the next highest 5 cents. Any increased federal taxes levied on or after April 1, 1941 shall be added to the established price without markup. All net revenue derived from such tax shall be deposited to the credit of the general fund of the state. (R. S. c. 57, § 12. 1953, c. 255, § 3.)

Liquor; Manufacture.

Sec. 15. Licenses to manufacture liquor; sales; transportation; fees.—The commission is authorized and empowered to issue manufacturers' licenses to distill, rectify, brew or bottle alcohol, or spirituous, vinous or fermented liquor to distillers, rectifiers, brewers, bottlers and wineries operating under federal law and federal supervision. The following license fees shall be charged:

I. DISTILLERS AND BREWERS using exclusively the agricultural products of this state as raw material for the production of alcohol or alcoholic liquors ..... $ 100.

DISTILLERS AND BREWERS using exclusively the agricultural products of other states as raw material ..... $3,000.

DISTILLERS AND BREWERS using in part agricultural products of this state and in part those of other states as raw material shall pay such fee as the commission may determine, to be directly proportioned as to the source and quantity of such raw material and based upon the foregoing differential. In case Maine agricultural products are not available for use as raw material by distillers and brewers in any particular year, the commission is authorized to make such adjustment in said fees as they deem just and equitable, resulting in a final computation of not less than $1,500.

All licensees to whom manufacturers' licenses are assigned for distilling and brewing shall pay with their application a base fee of $100 and make monthly reports to the commission of the kind, quantity and source of raw material used by them; and a final computation of the fee for each license year shall

be made by the commission as hereinbefore provided on the basis of said monthly reports and the final fees, as computed by the commission, shall be paid on December 31 of each license year.

II. RECTIFIERS' fee ..... $500.

III. BOTTLERS' fee ..... $500.

IV. WINERIES using exclusively the agricultural products of this state as raw material shall pay an annual license fee of ..... $ 50. WINERIES using in part the agricultural products of other states or foreign countries shall pay, in addition to such license fee of $50, an excise tax of 4¢ per gallon on liquid raw materials and 2¢ per pound on solid or semi-solid raw materials; the same being under the supervision of the commission, which shall make the necessary rules and regulations for their collection.

All licenses issued under the provisions of this section shall authorize the licensees to sell their finished product to the commission, to other licensed Maine manufacturers and to purchasers outside of the state. In the case of breweries, the license shall authorize sale to licensed Maine wholesalers; and all manufacturers' licenses shall authorize the transportation within the state for the purposes herein provided and to the state border for delivery to out of state purchasers. In the case of wine bottlers and wineries, the license shall authorize sale and delivery of wine to holders of sacramental wine permits issued by the commission.

No license shall be granted to a manufacturer under the provisions of this section until the applicant therefor has filed with the commission a bond to the state of Maine subject to the same obligations, conditions and provisions as relate to bonds of hotels, as set forth in section 45, except that the penal sum of bonds filed by applicants for distillers' licenses shall be $5,000 and applicants for all other classes of manufacturers' licenses shall file a bond in the penal sum of $2,500. (R. S. c. 57, § 13. 1947, c. 92. 1951, c. 356, § 3.)

See § 9, re penalty.

Apple Cider; Manufacture.

Sec. 16. Sale of apple cider; records; notice of quantity; containers; interstate shipment.—The commission is authorized and empowered to issue licenses under the provisions of this section for the manufacture of apple cider from apples grown in this state. The annual fee for such license shall be $100 and such license shall expire on August 31st of the year next ensuing.

The licensee or operator of an apple cider processing plant under the provisions of this section shall keep an accurate record in detail showing the date and number of bushels by weight of apples received at such apple cider processing plants, the number of gallons of apple cider manufactured therefrom, the name of the owner and the place in the state where such apples were grown, together with such other information as may be required by the commission, and process the same in conformity with the regulations of the commission.

On or before September 1 in each year, any person, firm or corporation, hereinafter called "owners," desiring to sell apples to said apple cider processing plants, shall notify the proprietors of said plants in writing of the estimated number of bushels of apples such owner will sell to said proprietors of such cider processing plants, and the locality wherein the apples from which such apple cider is to be manufactured are to be raised. Upon the acceptance by any proprietor of a cider processing plant, of the offer of such owner, such owner shall deliver to the apple cider processing plant the number of bushels of apples. The commission is authorized to issue regulations so that not less than 40% of the established wholesale price shall be given to all such owners. In case the offering for sale of apples in any year is greater than is needed by the apple cider processing plant, the purchase of the apples from the various owners shall be on a pro

rata basis. The commission shall notify the proprietors of the cider processing plants of the amount of apple cider that it intends to purchase, and the price per gallon that it will pay, and shall prorate its purchases from the apple cider processors according to the amounts offered for sale to the commission by the various apple cider processors.

All licenses issued by the commission for the sale of spirituous and vinous liquors shall contain an indorsement to the effect that the licensee is authorized to sell apple cider. The commission shall offer for sale at the various state liquor stores apple cider.

The commission shall cause each and every container taken from an apple cider processing plant for sale to be labeled, marked or branded as to the quantity contained in it, the place of origin and the approximate per cent of alcoholic content by volume.

The commission may authorize licensees and operators of cider processing plants to sell and ship apple cider to purchasers outside of the state of Maine under such rules and regulations as the commission may prescribe.

Whoever, other than the commission or the licensees as specified in this section, sells apple cider of more than 1% of alcoholic content by volume shall be punished by a fine of not less than $50 nor more than $200, or by imprisonment for not less than 30 days nor more than 90 days, or by both such fine and imprisonment. (R. S. c. 57, § 14. 1947, c. 165, § 2.)

Malt Liquor; Manufacture.

Sec. 17. Manufacturers and officers not interested in wholesalers; commercial credit.—No officer, director or stockholder of a corporation which is the holder of a manufacturer's certificate of approval shall in any way be interested, either directly or indirectly, as a director, officer or stockholder in any other corporation which is the holder of a wholesale license for the sale of malt liquor granted by this state; nor shall a manufacturer or holder of a certificate of approval, either directly or indirectly, loan any money, credit or equivalent thereof to any wholesaler for equipping, fitting out, maintaining or conducting, either in whole or in part, a business establishment where malt liquor is sold, excepting only the usual and customary commercial credit for malt liquor sold and delivered. (R. S. c. 57, § 15.)

Sec. 18. Certificate of approval; reports; fees.—No manufacturer or foreign wholesaler of malt liquor shall hold for sale, sell or offer for sale, in intrastate commerce, any malt liquor or transport or cause the same to be transported into this state for resale unless such manufacturer or foreign wholesaler has obtained from the commission a certificate of approval. The fee therefor shall be $100 per year, which sum shall accompany the application for such certificate.

All manufacturers or foreign wholesalers to whom certificates of approval have been granted shall furnish the commission with a copy of every invoice sent to Maine wholesale licensees.

All manufacturers or foreign wholesalers to whom certificates of approval have been granted shall furnish the commission with a copy of every invoice sent to Maine wholesale licensees, with the licensee's name and purchase number thereon. They shall also furnish a monthly report on or before the 10th day of each calendar month in such form as may be prescribed by the commission and, further, shall not ship or cause to be transported into this state any malt liquor until the commission has certified that the excise tax has been paid.

The purposes of this section are to regulate the importation, transportation and sale of malt liquor, also in addition thereto, to regulate and control the collection of excise taxes.

The certificate of approval shall be subject to the rules and regulations which

the commission has or may make. Any violation of such rules and regulations shall be grounds for suspension or revocation of such certificate at the discretion of the commission.

The fees received under the provisions of this section shall be deposited in the general fund of the state. (R. S. c. 57, § 16. 1947, c. 96. 1949, c. 226. 1953, c. 255, § 3-A.)

Illegal Manufacture.

Sec. 19. Illegal manufacture.—Any person not licensed by the commission who manufactures for sale any liquor, and any person who sells any liquor so manufactured by him in this state, shall be punished by a fine of not less than $100 nor more than $1,000, and costs, and by imprisonment for not less than 2 months nor more than 6 months, and in default of payment of fine and costs, by imprisonment for not less than 60 days nor more than 6 months, additional.

All equipment and materials of every kind used in illegal manufacturing shall be seized by any officers seizing the liquors manufactured, and shall be libeled as is provided for the libeling of liquors and the vessels in which they are contained. (R. S. c. 57, § 17. 1949, c. 349, § 98. 1953, c. 255, § 3-B.)

History of section.—See Pease v. Foulkes, 128 Me. 293, 147 A. 212.

Applied in State v. Chemiesky, 124 Me. 45, 126 A. 17.

Cited in State v. Vermette, 130 Me. 387, 156 A. 807.

Malt Liquor. Wholesalers. Excise Tax.

Sec. 20. Licenses for wholesalers of malt liquor.—Licenses for the sale and distribution of malt liquor at wholesale under such regulations as the commission may prescribe may be issued by the commission upon an application in such form as they may prescribe and upon payment of an annual fee of $300 for the principal place of business, and $300 for each additional warehouse maintained by such wholesale licensee, except that the commission may issue special permits, upon application in writing, for the temporary storage of malt liquors under such terms and upon such conditions as the commission may prescribe.

Such wholesalers' licenses may be transferable as to premises in the town originally specified or to premises in another town. (R. S. c. 57, § 18.)

Cross reference.—See § 38, re peddling unlawful.

Regulation imposing tax held invalid.—A regulation of the commission which, in the face of this section fixing an annual fee of $300 on wholesalers of malt liquors in the state, puts an additional yearly tax of $200 on the foreign manufacturer for the issuance of a so-called certificate of approval, and attempts to force the payment of such exaction by threats of prosecution of wholesalers within this state who purchase from a foreign manufacturer who has not paid such tax and procured such certificate of approval, is invalid. Anheuser-Busch, Inc. v. Walton, 135 Me. 57, 190 A. 297.

Sec. 21. Interstate purchase or transportation of malt liquor by wholesalers.—No Maine wholesale licensee shall purchase or cause to be transported into this state any malt liquor from any person to whom a certificate of approval has not been granted by the commission.

All purchase order forms are to be furnished by the commission and all orders are to be executed in quintuplet. The original copy is to be sent direct to the brewery or foreign wholesaler. Three copies are to be mailed to the commission with a check for the amount of excise taxes required to cover the amount of the order. The commission shall mail one copy, after having certified thereon that the excise taxes thereon have been paid, to the brewery or foreign wholesaler with whom the order has been placed. One copy shall be mailed to the Maine wholesale licensee with a notation that the excise taxes have been paid. The brewery or foreign wholesaler may ship upon receipt of the original order upon being granted permission to do so by the commission.

No Maine wholesale licensee shall sell any malt liquor to another Maine whole-

sale licensee, which has not been purchased from a brewery or foreign wholesaler holding a certificate of approval.

Maine wholesale licensees shall furnish to the commission, in such form as may be prescribed, a monthly report, on or before the 10th day of each calendar month, of all malt liquor purchased and sold during the preceding month. (R. S. c. 57, § 19. 1953, c. 18.)

Sec. 22. Excise taxes; deficiency account; credits.—There shall be levied and imposed an excise tax on all malt liquor manufactured in this state of 5 1/3¢ per gallon to be paid by the manufacturer in addition to the fee provided by law. A wholesale licensee who imports malt liquor shall pay an excise tax on the following basis: case containing 24 12-ounce bottles, 36¢; case containing 24 16-ounce bottles, 48¢; case containing 12 24-ounce bottles, 36¢; case containing 12 32-ounce bottles, 48¢; $4.96 for a barrel; $2.48 for a half barrel; and $1.24 for a quarter barrel. All money received by the commission under the provisions of this section shall be forthwith turned over to the treasurer of state and shall be credited to the general fund of the state.

The commission shall open an excise tax account with all wholesale licensees.

The commission is authorized to give such proper credits and to make such proper tax adjustments as they may from time to time deem the wholesale licensee to be entitled to upon the filing of affidavits in such form as they may prescribe and shall refund all excise tax paid by the wholesale licensee on all malt liquor returned to the manufacturer in original containers, if credit is issued and allowed for same by the manufacturer, upon the filing of affidavits in such form as they may prescribe.

All taxes, excise and deficiency, on malt beverages imposed by the state shall not apply to malt beverages sold by wholesalers holding licenses from the commission to any instrumentality of the United States. (R. S. c. 57, § 20. 1945, c. 133. 1947, c. 195. 1949, c. 349, § 99.)

Regulation increasing tax void.—A regulation of the commission which seeks to increase the excise tax fixed by the legislature and attempts to force a compliance by providing by regulation that the brewery or foreign wholesaler may ship its product with the commission's permission, when the commission has been notified that the wholesale licensee within the state has paid such tax is void. Anheuser-Busch, Inc. v. Walton, 135 Me. 57, 190 A. 297.

Provisions for All Licensees.

Sec. 23. Liquor licenses in unincorporated places. — Upon petition signed by 20% or more of the persons resident in an unincorporated place as shown by returns to the state tax assessor provided for by section 104 of chapter 16, as amended, requesting a vote on local option questions, the secretary of state shall forthwith appoint a time and place, give public notice in the same manner as provided for notice in section 24 and cause a vote on such questions to be taken in such unincorporated place under his supervision and subject to such rules and regulations as he shall promulgate.

If a majority of the votes cast on any such question is in the affirmative, the commission may issue licenses in such unincorporated place of the type approved by such affirmative vote, subject to all the provisions of law. If a majority of the votes cast on any such question is in the negative, no new or renewal license shall be issued in such unincorporated place of the type disapproved by such negative vote.

The affirmative or negative vote, as hereinbefore cast, on each such local option question, shall prevail, in such unincorporated place, unless and until changed by another such local option vote, subsequently held, on petition to said secretary of state as hereinbefore provided. No such local option vote shall be taken more often than once in any 2-year period.

Provided, however, that if the total number of persons shown by returns of the state tax assessor in such unincorporated place is less than 20 or the number signing any petition for local option vote is less than 20, the secretary of state shall not hold any election in such unincorporated place and in event no such vote is taken, the county commissioners, if their approval of application is required, or the liquor commission may refuse approval of such application on the basis that such license is not warranted for any substantial public convenience, necessity or demand.

In no event shall the commission issue a license to any person when it appears to it that such person or any other person for his benefit has moved a store or restaurant into an unincorporated place from an organized or unincorporated place where a local option vote has resulted in his being unable to procure a liquor license. (1947, c. 372, § 1. 1951, c. 174, § 1.)

See § 32, re approval of county commissioners.

Sec. 24. Hearings on applications for liquor licenses; publication; appeal.—The municipal officers, or in case of unincorporated places, the county commissioners of the county wherein such unincorporated place is located, shall hold public hearing for the consideration of all applications for liquor licenses requiring their approval, after giving public notice at the applicant's expense, which shall be prepaid, by causing a notice, stating the name and business address of the applicant and the time and place of hearing, to be printed for at least 6 consecutive days prior to the date of hearing in a daily newspaper published in the city or town in which the premises proposed to be licensed are situated; or, if no daily newspaper is so published, the notice shall be printed for 2 consecutive weeks prior to the date of hearing in any newspaper published in such city or town; or, if no newspaper is published in such city or town the notice shall be printed for at least 6 consecutive days in a daily newspaper published in the county in which the premises are situated or for 2 consecutive weeks prior to the date of hearing in any newspaper published in that county.

Any applicant for license aggrieved by the refusal of municipal officers or county commissioners to approve any application for license requiring their approval or a transfer of location of licensed premises under the provisions of section 39 may appeal to the commission, who shall hold a public hearing thereon in the city, town or unincorporated place where such license is applied for and, if it finds the refusal arbitrary or without justifiable cause, it may issue license or transfer notwithstanding the lack of such approval. Upon notification of appeal as herein provided, the municipal officers or county commissioners refusing approval shall certify to the commission their reasons for refusal and evidence on such appeal shall be limited to the reasons specified. The commission shall furnish the appellant with a copy of such reasons for refusal and give adequate public notice of the time and place of such hearing. (R. S. c. 57, § 22. 1947, c. 75. 1951, c. 356, § 12.)

Municipality has no authority to grant license.—Under this chapter, the right to grant liquor licenses is given to the liquor commission. The town or city has no authority to grant a license. The municipal officers can only approve or disapprove of an application to the commission for a license. If the municipal officers approve, the commission may then issue. If the municipal officers refuse to approve and the commission, on appeal, decides that they acted arbitrarily or had no justifiable cause to refuse, the commission may then issue or may, for cause, refuse to issue. Glovsky v. State Liquor Comm., 146 Me. 38, 77 A. (2d) 195. See note to § 57, re no appeal from commission's action in upholding municipal officers' disapproval.

License issued without municipal officers' approval if their refusal was arbitrary or unjustifiable.—If the refusal to approve an application by the municipal officers is arbitrary or without justifiable cause, the state liquor commission, on appeal from the municipal officers, may issue the license without the approval. It is when refusal is

arbitrary or there is no justifiable cause, that the commission has authority to act against the decision of the municipal officers. Glovsky v. State Liquor Comm., 146 Me. 38, 77 A. (2d) 195.

Sec. 25. Notice of application for license published.—No new license for the sale of liquor shall be issued, except licenses for sale of malt liquor, until notice of application for same has been published by the commission in the official state paper and a 10-day period has elapsed from the date of such publication. (1947, c. 243. 1949, c. 191; c. 349, § 100. 1951, c. 266, § 81.)

Sec. 26. Premises for which licenses not granted; exception.—No new hotel, restaurant, tavern or club licenses shall be granted under the provisions of this chapter to new premises within 300 feet of a public or private school, school dormitory, church, chapel or parish house in existence as such at the time such new license is applied for, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel, except such premises as were in use as hotels or clubs on July 24, 1937; provided, however, that the commission may grant licenses to premises which are within 300 feet of a church, chapel or parish house, measured as aforesaid and which do not adjoin any of the same, when the application therefor has the unanimous approval of the members of the commission and also the written approval of a majority of the officers or the written approval of the officer, person or pastor in charge of such church, chapel or parish house. (1947, c. 197, § 1. 1949, c. 349, § 101.)

Sec. 27. Sale on certain days and hours.—No liquor shall be sold in this state on Sundays or on the day of holding a general election or state-wide primary and no licensee by himself, clerk, servant or agent shall between the hours of midnight and 6 A. M. sell or deliver any liquors, except no liquors shall be sold or delivered on Saturdays after 11:45 P. M.; provided, however, that liquor may be sold on January 1st of any year from midnight to 2 A. M. unless January 1st falls on Sunday; provided further, however, that the commission by rule and regulation may set hours for sale which will give effect to daylight saving time during times when the same is in effect. No licensee shall permit the consumption of liquors on his premises on Sundays or after 15 minutes past the hours prohibited for sale thereof, except by bona fide guests in their rooms. No liquor shall be sold in this state on May 30 prior to 12 noon Eastern standard time.

Any licensee by himself, clerk, servant or agent who sells liquor on Sunday shall be punished by a fine of not less than $100 nor more than $500, and costs, and a penalty of not less than 2 months nor more than 6 months, in jail, at the discretion of the court; and in default of fine and costs an additional penalty by imprisonment for 6 months. Any clerk, servant, agent or other person in the employment of a licensee, who violates or in any manner aids or assists in violating the law relating to Sunday sale of liquor, shall suffer like penalties. (1949, c. 349, § 102. 1951, c. 252. 1953, c. 261; c. 392, § 1.)

Cross reference.—See c. 14, § 38, re national guard on duty.

This section does not authorize the liquor commission to establish daylight saving time in any community by the promulgation of some rule of its own. MacDonald v. Sheriff, 148 Me. 365, 94 A. (2d) 555.

History of section.—MacDonald v. Sheriff, 148 Me. 365, 94 A. (2d) 555.

Sec. 28. Applications for license. — All applicants for license shall be required to file applications in such form as the commission shall require and every application shall disclose the complete and entire ownership in the establishment for which a license is sought and if applicant is a purchaser by contract, in addition, the terms of the contract. All questions required to be answered in applications for licenses shall be sworn to, and intentionally untruthful answers shall constitute the crime of perjury. All applications shall be signed by the

owner, if a natural person, who shall be at least 21 years of age, or in the case of a partnership by the partners thereof, or in the case of a corporation by an executive officer thereof or any person thereto specifically authorized by the corporation, except a bona fide prospective purchaser may apply. No applicant whose application is denied by the commission shall be eligible to apply for a liquor license of the same type again for a period of 6 months from the date of such denial unless the commission denial is overruled by the court under appeal provided by section 57.

Every hotel or club application shall contain a description of that part of the hotel or club premises for which the applicant desires a license, and shall set forth such other material information, description or plan of that part of the hotel or club premises where it is proposed to keep and sell liquor as may be required by the rules and regulations of the commission.

All retail store licensees must have and maintain an adequate stock of merchandise reasonably compatible with a stock of liquor in no case less than $1,000 wholesale value. (1949, c. 264, § 1. 1951, c. 356, § 4. 1953, c. 366.)

Sec. 29. Persons to whom licenses not granted.—No license shall be issued to any natural person unless such person is at least 21 years of age and is a citizen of the United States and of this state; provided, however, that a part-time or 6 months' license, as authorized by law, may be issued to any natural person who is at least 21 years of age and is a citizen of the United States. No license shall be issued to a partnership or to an association unless all persons having an interest therein are at least 21 years of age and are citizens of the United States and of this state; provided, however, that a part-time or 6 months' license, as authorized by law, may be issued to a partnership or association if all persons having an interest therein are at least 21 years of age and are citizens of the United States. No license shall be issued to any corporation unless it shall be incorporated under the laws of this state, or authorized to transact business in this state. No license shall be issued to a corporation any of the principal officers of which would not by reason of conviction of violation of any liquor laws or because of having had his license for sale of liquor revoked personally be eligible for a liquor license. No person unlicensed at the time of the offense, who is convicted of violating any of the laws of this state or of the United States with respect to the manufacture, transportation, importation, possession or sale of intoxicating liquor, shall be granted a license for the sale of liquor for a period of 5 years from the date of such conviction. No license shall be issued in which any law enforcement official benefits financially either directly or indirectly. (1949, c. 259, § 1. 1951, c. 87; c. 356, § 5. 1953, c. 64, § 1; c. 255, § 4.)

Sec. 30. Employment of certain persons. — No licensee shall employ as a manager or leave in charge of his licensed premises any person who by reason of conviction of violation of any liquor laws or because of having had his license for sale of liquor revoked would not himself be eligible for a liquor license. (1951, c. 88.)

Retail Sale of Liquor; Fees.

Sec. 31. Fees for retail licenses, renewals, filing fee.—

Hotel — Spirituous and vinous, in cities or towns having population of 10,000 or more $600.00

Hotel — Spirituous and vinous, in cities or towns having population of less than 10,000 ..... 300.00

Population shall be determined according to each federal decennial census as shown by any official report authorized by the federal census act and shall apply to the licensing period next following such official report.

Hotel — Malt liquor $200.00

Club — Spirituous and vinous 200.00

Club — Malt liquor	$100.00
Public service — Spirituous and vinous	200.00
Public service — Malt liquor	100.00
Restaurant — Malt liquor only	200.00
Restaurant — Vinous liquor only	200.00
Tavern — Malt liquor only	300.00
Retail store — Malt liquor only	100.00

Any club maintaining a public dining room and catering either privately or for functions to a group of nonmembers of the club, also any club with dining rooms letting rooms to nonmembers, must pay the same fee as required by a hotel located in the same municipality.

The commission may grant part-time licenses for a period not in excess of 6 months from May 1st to October 31st. The person so licensed shall not conduct any business on the licensed premises during the months from November to April, both inclusive.

Fees for part-time licenses shall be:

Part-time—Hotels and clubs—Spirituous and vinous—½ full-time fee at their location.

Part-time—Hotel or restaurant—Malt liquor only	$125.00
Part-time—Club—Malt liquor only	50.00
Part-time—Tavern—Malt liquor only	150.00

One public service license shall be sufficient to cover all steamboats and cars operated by any one owner.

All full-year licenses shall be issued for the license year and on a calendar year basis and the prescribed fee shall accompany the application for license.

Licenses may be renewed upon application therefor and payment of the annual fee, subject to commission rules and regulations.

Every applicant for an original or renewal malt liquor license shall remit with his application a filing fee of $10, except in unorganized places the filing fee of $10 shall be paid to the county treasurer of the county in which the unincorporated place is located. (1949, c. 85, § 1. 1951, c. 356, § 6. 1953, c. 373.)

Cited in Donahue v. Portland, 137 Me. 83, 15 A. (2d) 287.

Retail Sale of Malt Liquor; Licenses.

Sec. 32. Retail licenses.—Licenses for sale and distribution of malt liquor in retail stores may be issued by the commission upon application and under such regulations as the commission may prescribe. No such license shall be issued to any person who is not engaged in a bona fide retail business other than the sale of malt liquors at retail and no person licensed to sell malt liquor under the provisions of this section shall sell malt liquor for consumption on the premises where sold.

Provided, however, that licenses in an unincorporated place, where no local option vote is taken under the provisions of section 23, shall require the approval of the county commissioners of the county.

No licenses shall be issued to any retail establishment under the provisions of this section unless it has been in operation as such for a period of at least 3 months next prior to the date of the application, except that anyone who formerly held a Maine malt liquor license or who formerly was owner of a retail store within the state of Maine, shall not be subject to the provisions of this sentence. (R. S. c. 57, § 23. 1945, c. 245. 1947, c. 164; c. 372, § 2. 1949, c. 216. 1951, c. 13, § 2; c. 356, § 18. 1953, c. 255, § 5.)

Sec. 33. Licenses to hotels, restaurants, taverns and clubs. — No license to sell malt liquor to be consumed on the premises where sold shall be issued to any person for any premises except a bona fide hotel, restaurant, tavern

or club, nor unless the application therefor be approved by the municipal officers of the city or town where such hotel, restaurant, tavern or club is located, and if such hotel, restaurant, tavern or club is located in an unorganized place, the application shall be approved by the county commissioners of the county within which such unorganized place is located. No license shall be issued to a restaurant unless it has been in operation as such for a period of at least 3 months next prior to the application therefor, provided, however, that any honorably discharged member of the armed forces of the United States who formerly held a malt beverage license or who formerly was the owner of a restaurant shall not be subject to the provisions of this sentence, and provided further in the case of part-time premises that operation next prior to time of application shall be held to mean operation during the season when such part-time premise is ordinarily open for business. No licensee under the provisions of this section, except taverns, shall maintain a bar where malt liquor is consumed. Licenses issued under the provisions of this section shall specify the premises to which the license shall apply. (R. S. c. 57, § 28. 1945, cc. 159, 259. 1947, c. 197, § 2; c. 322, §§ 2, 5; c. 372, § 3. 1951, c. 13, § 3. 1953, c. 255, §§ 6, 11.)

Cited in Donahue v. Portland, 137 Me. 83, 15 A. (2d) 287.

Sec. 34. Public service corporations; malt liquor.—Licenses for the sale of malt liquor by railroad companies, Pullman companies or steamboat companies, in their cars or boats, under such regulations as the commission may prescribe, may be issued by the commission upon a written application in such form as they may prescribe, and upon payment of the fee of $100 per year, covering all steamboats and cars supplying food operated by any one owner. (R. S. c. 57, § 30.)

Sec. 35. Licenses displayed.—All licensees shall publicly display their licenses on the premises to which they apply. (R. S. c. 57, § 31.)

Sec. 36. Advertising alcoholic strength of malt liquor.—No licensee shall issue, publish, post or cause to be issued, published or posted any advertisement of a malt liquor including a label which shall refer in any manner to the alcoholic strength of the malt liquor manufactured, sold or distributed by such licensee or use in any advertisement or label such words as "full strength," "extra strength," "high test," "high proof," "prewar strength" or similar words or phrases which would indicate or suggest alcoholic content, or use in any advertisement or label any numerals unless adequately explained in type of the same size, prominence and color. It shall likewise be unlawful for any licensee to purchase, transport, sell or distribute any malt liquor advertised or labeled contrary to the provisions of this section. (R. S. c. 57, § 32.)

Sec. 37. Advertising or sale of malt liquor by trade name.—No licensee shall advertise or hold out for sale any malt liquor by trade name or other designation which would indicate the manufacturer or place of manufacture of malt liquor unless he actually has on hand and for sale a sufficient quantity of the particular malt liquor so advertised to meet requirements to be normally expected as the result of such advertisement or announcement.

No licensee shall furnish or serve any malt liquor from any faucet, spigot or other dispensing apparatus, unless the trade name or brand of the malt liquor served shall appear in full sight of the customer in legible lettering upon such faucet, spigot or dispensing apparatus. (R. S. c. 57, § 33. 1949, c. 201.)

Sec. 38. Unlawful to peddle.—It shall be unlawful for any wholesale or retail licensee of malt liquor, either directly or indirectly, by any agent or employee, to go from town to town or from place to place in the same town selling or bartering or carrying for sale or exposing for sale any malt liquor from any

vehicle. All sales of such malt liquor where transportation and delivery are required shall be made only upon orders actually received at the principal place of business or warehouse or distributing center, if licensed, of the seller prior to shipment thereof. An invoice stating the names of the purchaser and the seller and the kind and quantity of malt liquor ordered by the sale, together with the date of the sale, shall be carried by the driver or any other employee of the seller.

Whoever violates the provisions hereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 57, § 34.)

Sec. 39. Transfer of licenses. — The commission, upon application in writing, may transfer any retail liquor license from one place to another within the same municipality; provided such transfer shall only be made with the approval of municipal officers of such municipality in all cases except retail store licenses; but no such transfer shall be made to premises for which the license could not have been originally lawfully issued.

In the case of death, bankruptcy or receivership of any licensee, the license may be retained by the executor or administrator of the deceased licensee or the trustee or receiver of the bankrupt licensee or licensee in receivership, on appointment of a manager of the licensed premises who shall be approved by the commission, for a period limited to 6 months or for the balance of the license year, whichever is greater. Said manager shall be responsible for the conduct of the licensed premises in accordance with the laws and rules and regulations of the commission and shall furnish bond to the commission for the proper performance of said duties in the same amount and subject to the same provisions as the bond provided for by section 45 for hotels and clubs. At the end of the license year or 6 months from the death, bankruptcy or receivership of the licensee, whichever is greater, this license to operate under a manager as herein provided shall expire, unless a transfer of the licensed premises has been effected as hereinafter provided.

Such license may be transferred by the executor or administrator of the estate of the deceased licensee, or by the trustee in bankruptcy of the bankrupt licensee, or by the receiver of a licensee in receivership, subject to the discretion of the commission and only with the approval of the municipal officers, when required as herein provided, to a person other than the licensee.

Except as provided in this section no license privilege shall be transferred or assigned, and in case of sale or transfer of the business in connection with which the licensed activities are conducted, the license holder shall immediately submit to the commission a statement, under oath, showing the name and address of the purchaser and any other person directly or indirectly interested in the enterprise.

Any sale of stock of a corporate licensee which effects a change of control of the licensed premises shall be considered a transfer within the meaning of this section. (R. S. c. 57, § 35. 1945, c. 179. 1947, c. 90. 1951, c. 356, § 7. 1953, c. 255, § 7.)

See § 24, re appeal.

Sec. 40. Music, dancing or entertainment on licensed premises.— No licensee shall permit on the licensed premises, or premises contiguous or adjacent thereto, under his control, any music, except radio or other mechanical device, any dancing or entertainment of any sort unless the licensee shall have first obtained from the commission a special amusement permit for which he shall pay to the commission a fee of $10. The commission is authorized to make whatever rules and regulations governing such dancing and entertainment as it deems necessary. Such permit shall be valid only for the license year of the existing license for the sale of malt liquor. The commission shall not issue such

a permit unless the applicant shall have first obtained the approval of the municipal officers of the municipality in which the licensed premises are situated. (R. S. c. 57, § 37. 1945, c. 184. 1951, c. 356, § 8.)

Sale of Liquor to Be Consumed on the Premises; Licenses.

Sec. 41. Employment of minors.—No licensee for the sale of liquor to be consumed on licensed premises shall employ any person under the age of 21 years in the direct handling or selling of liquor on the premises where such liquor is sold.

Whoever violates any provision of this section shall be subject to a fine of not less than $50 nor more than $100, or to imprisonment for not less than 30 days nor more than 6 months, or to both such fine and imprisonment. (1947, c. 89. 1951, c. 356, § 9.)

Sec. 42. Licenses for consumption sale. — Licenses for the sale of spirituous and vinous liquor to be consumed on the premises where sold may be issued to clubs and to bona fide hotels, restaurants, steamboats and railroad dining cars on payment of the fees herein provided; subject, however, to the condition that the application therefor be approved by the municipal officers of the town or city in which such intended licensee, if operating a club, restaurant or hotel, is operating the same, and if said hotel, restaurant or club is located in an unorganized place said application shall be approved by the county commissioners of the county, within which such unorganized place is located, and subject to the further condition that licenses issued to restaurants shall be limited to malt liquor or wine. No licensee for the sale of liquor to be consumed on the premises where sold shall by himself, clerk, servant or agent, sell, give, furnish or deliver any liquor to be consumed elsewhere than upon the licensed premises, except, subject to the provisions of law and the rules and regulations of the commission, hotel licensees may sell liquor in the original packages to bona fide registered room guests. (R. S. c. 57, § 40. 1945, c. 185. 1947, c. 322, § 3; c. 372, § 4. 1949, c. 349, § 104; c. 419, § 1. 1951, c. 13, § 4; c. 266, § 82; c. 356, § 10. 1953, c. 308, § 82.)

Cross references.—See § 24, re public hearings by municipal officers or county commissioners; § 45, re bond; § 50, re records of licenses; § 51, re credit sales; § 52, re indebtedness of licenses, credit, etc.; § 53, re inducement sales.

Under this section there are only two ways in which a hotel liquor license may be granted: (1) if the municipal officers approve, then the commission may issue a license, (2) if the municipal officers disapprove, the commission may, on appeal, after hearing, if they find that the municipal officers' refusal was arbitrary and without justifiable cause, issue a license. Glovsky v. State Liquor Comm., 146 Me. 38, 77 A. (2d) 195. See § 24 and note. See also note to § 57, re no appeal from commissioner's action in upholding municipal officers' disapproval.

Sec. 43. Liquor bought from commission.—All persons, except public service corporations operating interstate, licensed to sell spirituous or vinous liquor shall purchase all such liquor from the commission. The commission shall sell to such licensees spirituous and vinous liquor for a price of 10% less than the retail price in state retail stores provided that such discount shall not apply to federal taxes levied on and after April 1, 1941. (R. S. c. 57, § 41. 1949, c. 200.)

See § 14, re state liquor tax.

Sec. 44. Certain clubs ineligible. — Clubs operated unlawfully or for another's profit shall not be licensed. A club spirituous and vinous liquor license shall not be granted to any group of persons, incorporated, which is organized or operated for the following objects and purposes:

I. For gambling or other illegitimate purposes.

II. For the sale of spirituous and vinous liquors, the profits from which accrue to an individual or corporation other than the applicant. (R. S. c. 57, § 44.)

Sec. 45. Bond for hotels, clubs and restaurants.—No spirituous or vinous license shall be granted to a hotel, club or restaurant until the applicant therefor has filed with the commission a bond to the state of Maine in the penal sum of $1,000 as liquidated damages in case of default as hereinafter mentioned. Such bond shall have as surety a duly authorized surety company or 2 individuals to be approved by the commission. All such bonds shall be conditioned for the faithful observance of all the laws relating to spirituous and vinous liquor. Such bonds shall be filed with and retained by the commission. Upon the revocation, for a 3-year period or more, of the license of any licensee in this section mentioned, the attorney general shall bring an action of debt in any county in the state, upon the bond given by such licensee, to recover the penal sum thereof as liquidated damages. (R. S. c. 57, § 46. 1951, c. 356, § 11. 1953, c. 64, § 2.)

The primary object of the bond is to secure the observance of the law and the penalty named is what the state exacts for failure to comply with the conditions under which the right to traffic in liquor has been given. If the conditions of the bond have been broken the amount of the recovery is fixed and absolute; if not, there is nothing due. State v. Calanti, 142 Me. 59, 46 A. (2d) 412.

Under this section, on breach of the conditions of the bond, the penal sum of the bond becomes due and payable as liquidated damages.—State v. Calanti, 142 Me. 59, 46 A. (2d) 412.

Violation of Commission's rule held default on bond.—It was held that a violation of the rules and regulations of the liquor commission, instigated by an inspector of the commission, is such a default on the bond that the state can recover the penal sum of one thousand dollars as liquidated damages, in State v. Calanti, 142 Me. 59, 46 A. (2d) 412.

Liability on bond not dependent on violation of law and revocation of license.—This section requires only that the bond "shall be conditioned for the faithful observance of all the laws relating to spirituous and vinous liquors." Liability does not depend on a violation of a law and a revocation of the license for any such violation. State v. Fitzgerald, 140 Me. 314, 37 A. (2d) 799.

And the revocation of the license by the commission does not in and of itself establish the liability of the parties to the bond. The findings of the commission are not conclusive proof of the facts on which such revocation was ordered. State v. Fitzgerald, 140 Me. 314, 37 A. (2d) 799.

A conviction in a criminal case is not evidence in a civil action under this section to establish the facts on which it is rendered. State v. Fitzgerald, 140 Me. 314, 37 A. (2d) 799.

Sec. 46. Bond of public service corporation licensees. — A public service spirituous and vinous liquor license shall not be issued to any railroad or steamship company until the applicant therefor has filed with the commission a surety bond similar in form and amount to that required to be filed by a hotel or club licensee, except that in the case of a railroad company or steamship company, one bond shall cover every dining car or steamboat of such company. (R. S. c. 57, § 48.)

Sec. 47. Licenses for railroad and steamboat corporations; restrictions.—A public service spirituous and vinous liquor license granted to any railroad corporation operating dining cars within the state shall authorize the holder thereof to sell spirituous and vinous liquors in such cars only after leaving and before reaching the terminal stops, to be consumed in such cars. Such licenses shall be good throughout the state.

Such license granted to any steamboat corporation operating boats within the state shall authorize the holder thereof to sell spirituous and vinous liquors in such boats on which food is served only after leaving and before reaching ports within the state. (R. S. c. 57, § 49.)

Sec. 48. Club registers.—Every club shall keep and maintain a register

which shall disclose the name, identity and address of each member of the club and shall be open for inspection at all reasonable times to any inspector or other authorized agent of the commission. Licensed clubs shall not sell liquor except to members and their guests accompanying them. (R. S. c. 57, § 51. 1953, c. 255, § 8.)

Sec. 49. Containers. — No club shall be permitted to sell spirituous or vinous liquors in the original container. (R. S. c. 57, § 52.)

Sec. 50. Licensee to keep record.—Every licensee shall keep for a period of at least 2 years complete records separate and apart from records relating to any other transactions engaged in by the licensee showing all transactions of the licensee in liquor and particularly showing the date of all purchases, the actual prices paid therefor and the fact that the licensee received cash for all liquor sold by him at the time of or prior to delivery of such liquor; also the name and address of every person from whom such liquor was purchased, and in the case of wholesalers, the name and address of every purchaser of malt liquor. All such records shall be open to the commission or its representatives at any time and the commission or its representatives shall have the right to make copies thereof.

No licensee shall refuse the commission or its representatives the right at any time completely to inspect the entire licensed premises or to audit the books and records of the licensee. (R. S. c. 57, § 54.)

Sec. 51. Credit sales; sales to certain persons.—No licensee by himself, clerk, servant or agent shall sell or offer to sell any liquor except for cash, excepting credits extended by a hotel or club to bona fide registered guests or members. No right of action shall exist to collect claims for credits extended contrary to the provisions of this section. Nothing herein contained shall prohibit a licensee from giving credit to a purchaser for the actual price charged for packages or original containers as a credit on any sale, or from paying the amount actually charged for packages or original containers.

No licensee by himself, clerk, servant or agent shall sell, offer to sell or furnish any liquor to any person on a passbook or store order, or receive from any person any goods, wares, merchandise or other articles in exchange for liquor, except only such packages or original containers as were originally purchased from such licensee by the person returning the same. No licensee, by himself, clerk, servant or agent entitled to sell malt liquor not to be consumed on the premises shall sell, furnish, give or deliver such malt liquor to any person visibly intoxicated, to any insane person, to a known habitual drunkard, to any pauper, to persons of known intemperate habits or to any minor under the age of 21 years. No licensee by himself, clerk, servant or agent shall sell, furnish, give, serve or permit to be served any liquor to be consumed on the premises to any person visibly intoxicated, to any insane person, to a known habitual drunkard, to any pauper, to persons of known intemperate habits or to any minor under the age of 21 years.

Whoever, being a minor, misrepresents his age with intent to procure liquor shall be punished by a fine of not more than $50. (R. S. c. 57, § 55. 1945, c. 194. 1949, c. 88. 1951, c. 77.)

It was the intent and purpose of the legislature to absolutely prohibit the sale to minors, regardless of the intent or knowledge with which the sale was made. Intent is not an essential element of the offense. The section contains no words indicative of a legislative purpose to make knowledge or intention a necessary element of the offense. The offense charged is not malum in se but malum prohibitum. No intent need be alleged or proved because the act is prohibited absolutely. State v. Koliche, 143 Me. 281, 61 A. (2d) 115.

The amendment to this section which added the provision making the minor guilty of an offense in misrepresenting his age for the purpose of obtaining liquor is not indicative of legislative purpose to make intent a necessary element of the offense of selling liquor to a minor. The amendment was designed for the protection of the licensee, not to relieve him from the

consequences of his own mistake in respect to the age of the minor, but as a restraint on the minor and a punishment for such false representation. State v. Koliche, 143 Me. 281, 61 A. (2d) 115.

And it is the duty of the vendor of intoxicating liquor to determine that the person to whom the sale is made is not a minor before a sale can be lawfully made to the vendee. The legislature has seen fit to place that burden upon the licensee. State v. Koliche, 143 Me. 281, 61 A. (2d) 115.

Sec. 52. Licensee not to be indebted, obligated or involved. — No person shall be issued a license or a renewal of a license if he shall be indebted in any manner, directly or indirectly, to any other person for liquor. It shall be unlawful for any licensee or any applicant for license, directly or indirectly, to receive any money, credit, thing of value, indorsement of commercial paper, guarantee of credit or financial assistance of any sort from any person, association or corporation within or without the state if such person, association or corporation shall be engaged, directly or indirectly, in the manufacture, distribution, sale, storage or transportation of liquor; or if such person, association or corporation shall be engaged in the manufacture, distribution, sale or transportation of any commodity, equipment, material or advertisement used in connection with the manufacture, distribution, sale, storage or transportation of liquor. No Maine retail liquor licensee shall have any interest, direct or indirect, in any Maine manufacturer's or wholesaler's license or certificate of approval issued to an out of state manufacturer or foreign wholesaler of malt liquor; and no out of state manufacturer or foreign wholesaler having a state certificate of approval, nor any state wholesale or manufacturing licensee, shall have any interest, direct or indirect, in any state retail liquor license. Minor investment in securities of a corporation engaged in liquor business not amounting to more than 1% shall not be held to be an interest forbidden by the foregoing sentence. This section shall not prohibit a wholesaler from receiving normal credits for the purchase of malt liquor from the manufacturer thereof within or without the state. (R. S. c. 57, § 56. 1951, c. 99.)

Sec. 53. Premiums and rebates.—No licensee shall, directly or indirectly, offer or give any liquor, or any price premium, gift or inducement of any sort to other trade or consumer buyers, except such advertising novelties of nominal value as the commission may approve.

No licensee shall offer to pay, make or allow, and no licensee shall solicit or receive any allowance, rebate, refund or concession, whether in the form of money or otherwise, in connection with the purchase of liquor dealt in by such licensee. (R. S. c. 57, § 57.)

Sec. 54. Advertising signs.—No person, except a wholesaler or manufacturer, shall advertise or permit to be advertised on the outside of any licensed premises, or on any building, ground or premises, under his control, contiguous or adjacent to the licensed premises, by more than 1 outside sign, the fact that the licensee has for sale any liquor, or any brand of such liquor, or the price at which liquor is sold by the licensee, or display on the outside of any licensed premises any other advertisement which would indicate any reference whatsoever to liquor.

No licensee shall display from the inside of any licensed premises where it may be seen from the outside any electrically lighted sign advertising the fact that the licensee has for sale any liquor unless the total area of such sign does not exceed 750 square inches and no licensee shall display more than one such sign from within any one window. (R. S. c. 57, § 58.)

Sec. 55. Advertising of liquor. — No advertising of liquor within the state shall be permitted except in such form as may be specifically authorized by the commission, provided that radio, television, billboards, signs, newspapers, magazines and periodicals may carry advertising subject to the regulations of the

commission; and provided further, that said commission may make reasonable regulations restricting the advertising of any type of alcoholic beverages by brand names in any municipality which has voted in any particular local option election against the sale of all types of alcoholic liquor during the period when such sales are prohibited. No picture or other form of representation of the state house shall be used or displayed for the advertising of liquor. (R. S. c. 57, § 59. 1951, c. 121. 1953, cc. 101, 191.)

See c. 133, § 29, re fraudulent advertising.

Licenses; Revocation.

Sec. 56. Revocation of licenses.—The commission may suspend or revoke licenses as hereinafter provided. Except as provided by paragraph M of subsection II, suspensions must be for a definite period of time. If the commission revokes a license they shall specify that no license shall issue to the person whose license is revoked for a period of not less than 1 nor more than 5 years from the date of such revocation.

I. Notice of hearings to be held by the commission shall be served on the licensee and shall state the place, day and hour thereof, and warn the licensee that he may then and there appear in person or by counsel at a hearing on the revocation of his license for the cause or causes in the notice alleged; service of such notice shall be sufficient, if sent by registered mail to the address given by the licensee at the time of his application for a license, 5 days at least before the day set for the hearing. Licensees ordered in for hearing as herein provided shall bring with them their licenses but the notice of hearing shall authorize the licensee to operate his licensed business the day of the said hearing, and all penalties imposed by the commission shall start the day following the hearing. (1953, c. 19; c. 255, § 9)

II. Licenses may be revoked or suspended at the discretion of the commission for the following causes:

A. Violation of any law relating to alcoholic beverages or substantial infraction of any rule or regulation issued by the commission;

B. Knowingly making a false material statement of fact in the application for the license;

C. Knowingly making inaccurate and misleading statements as to brands or labels; giving of rebates to a customer for the purpose of influencing a sale;

D. Making sales to persons under age as prohibited by law, except that licensees selling to minors furnishing fraudulent proof of age as provided by subsection I may be held not administratively liable at the discretion of the commission; (1953, c. 255, § 9)

E. Making sales after the permitted hours of sale; (1947, c. 163, § 1)

F. Making sales on Sunday; (1947, c. 163, § 1)

G. The making of sales by hotels, clubs and restaurants for off the premises consumption; (1947, c. 163, § 1)

H. Making sales of spirituous or vinous liquor on the day of the holding of a general election or state-wide primary; (1947, c. 163, § 1)

I. Conviction of violation of any law of the United States relating to the manufacture, possession, transportation or sale of intoxicating liquor; (1949, c. 192, § 1. 1953, c. 392, § 3)

J. Conviction of violation of any law of the United States relating to carrying on the business of a wholesale or retail dealer without a federal tax stamp; (1949, c. 192, § 1)

K. Conviction of the violation of the provisions of section 32 of the United States liquor taxing act of 1934 relating to having in possession distilled spirits in unstamped containers; (1949, c. 192, § 1)

L. Transferring, assigning or hypothecating a license; and (1949, c. 192, § 1)

M. Failure to have and maintain throughout the entire license period all of the requirements of definitions, laws, rules and regulations, necessary to qualify for a license. For this particular offense the commission shall be authorized to suspend licenses for an indefinite period of time until it is satisfied that the licensee has conformed to all qualifications required for licensing. (1953, c. 100)

III. Whenever violations by licensees occur in one year's license period and remain undiscovered or carry over into the next license year pending investigation or final disposition either in criminal courts or before the commission, any license issued subsequent to violation for a new license year may be suspended or revoked by the commission. (1947, c. 194. 1951, c. 266, § 83)

IV. Whenever it appears to the commission that a violation by a licensee is technical only, wholly unintentional and not careless, or that any penalty at all would be too harsh and unreasonable in the light of the offense committed, it may send the offending licensee a warning in lieu of ordering him to appear for hearing or, upon hearing, may place the case on file or suspend the operation of a suspension. (1953, cc. 99, 259)

In cases of ownership, direct or indirect, in more than one license, suspensions shall apply only to the premise where the violation occurs. The commission may order that a revocation shall apply to any premises in which the licensee is, directly or indirectly, interested.

In cases of corporations the officers, directors and substantial stockholders shall be treated in the same manner as though they were partners in a partnership. (R. S. c. 57, § 60. 1947, c. 163, §§ 1, 2, 3; c. 194. 1949, c. 192, §§ 1, 2. 1951, c. 38; c. 266, § 83. 1953, c. 19; c. 64, § 3; cc. 99, 100; c. 255, § 9; c. 259; c. 392, §§ 2, 3.)

Subsection II D stated in State v. Koliche, 143 Me. 281, 61 A. (2d) 115.

Sec. 57. Additional appeal.—A full and complete record shall be kept of all proceedings had before the commission involving the revoking, suspending or the issuance of any license either issued or to be issued by the commission.

If any person is aggrieved by the decision of the commission in revoking or suspending any license issued by the commission or by refusal of the commission to issue any license applied for, he may within 10 days thereafter appeal to any justice of the superior court, by presenting to him a petition therefor, in term time or vacation. Such justice shall forthwith fix a time and place for immediate hearing, which may be in vacation, and cause notice thereof to be given to the commission; and after hearing, such justice may affirm, modify or reverse the decision of the commission. Pending judgment of the court, the decision of the commission in revoking or suspending any license shall remain in full force and effect. Appeal by such aggrieved person to the law court from such decision may be taken as in equity cases. Upon such appeal the proceedings shall be the same as in appeals in equity procedure, and the law court may, after consideration, reverse or modify any decree so made by a justice based upon an erroneous ruling or finding of law. (1949, c. 419, § 2.)

Section not available where commission upholds municipal officers' disapproval.—A petitioner cannot invoke this section where municipal officers refused to approve the application for a hotel liquor license and petitioner prosecuted his appeal to the commission. The decision of the liquor commission denying the appeal ends the

matter. No further proceedings by appeal or otherwise could be taken by the applicant because the legislature did not grant an appeal under such circumstances. There was before the liquor commission not the question of refusing to issue a license but solely the question of whether or not the decision and findings of the municipal officers were arbitrary and without justifiable cause. The decision of the liquor commission upheld the decision and findings of the municipal officers and it would be unlawful and illegal for the liquor commission to make a further decree and refuse to grant the license. The action of the liquor commission could not, under these circumstances, be termed a refusal. Glovsky v. State Liquor Comm., 146 Me. 38, 77 A. (2d) 195.

Sec. 58. Appeals.—Any person, firm or corporation aggrieved by the decision of the director of licensing and enforcement by refusal to issue any license applied for may, within 5 days, request in writing a hearing and review without delay of such decision by the commission. Pending the review or appeal, the decision of the director shall remain in full force and effect. (1953, c. 396, § 6.)

Sale of Malt and Malt Syrup.

Sec. 59. Sale of malt and malt syrup.—Malt or malt syrup shall not be sold except for bakery or industrial purposes by any person, or sold as a beverage except as malt beverages already provided for by law or in any form of malt beverage which contains 1% or less of alcohol by volume.

Any person selling malt or malt syrup except for bakery or industrial purposes shall be punished by a fine of not more than $500 or by imprisonment for less than 1 year. (R. S. c. 57, § 61. 1949, c. 195.)

Salesmen.

Sec. 60. Salesmen.—All concerns selling liquor to the state shall furnish to the commission a list of all officers and directors, if a corporation, or a list of all partners, if a partnership, and also the name of the salesman representing the concern within the state.

Such salesman shall apply to the director of licensing and enforcement for a license disclosing the person, firm or corporation for whom he is employed. The license fee shall be $10 and shall expire on the last day of December of the year in which it is obtained. It may be renewed annually on payment of $10.

Licenses so issued by the director of licensing and enforcement shall be revoked for the violation of the liquor laws or any rule or regulation promulgated by the commission. (1953, c. 396, § 7.)

Sec. 61. Appeal.—If any person is aggrieved by the decision of the director of licensing and enforcement in revoking the license of the salesman, he may, within 10 days thereafter, appeal to the commission and the decision of the commission shall be final. Pending judgment of the commission, the decision of the director of licensing and enforcement in revoking such license shall remain in full force and effect. (1953, c. 396, § 7.)

Illegal Possession.

Sec. 62. Deposit, possession, etc., with intent of sale.—No person shall deposit or have in his possession any liquor with intent to sell the same in this state in violation of law, or with intent that the same shall be so sold by any person, or to aid or assist any person in such sale. Whoever violates any of the provisions of this section shall be punished by a fine of not less than $100 nor more than $500, and costs, and in addition thereto by imprisonment for not less

than 2 months nor more than 6 months, and in default of payment of fine and costs, by imprisonment for 6 months additional. (R. S. c. 57, § 62.)

History of section.—See State v. Dowdell, 98 Me. 460, 57 A. 846.

To "deposit" liquors is to put them into some warehouse, shop or other place. To "keep" them is to have possession of them. The words are intended to embrace every possible case. All liquors are deposited and kept. State v. Intoxicating Liquors, 50 Me. 506.

Section violates no fundamental element of liberty and justice.—This section provides for the prosecution of offenders and their punishment, derives its authority from the reserved powers of the state and violates none of the fundamental elements of liberty and justice which underlie our civil and political institutions. With reasonable certainty it defines what shall constitute infraction of the law. LeClair v. White, 117 Me. 335, 104 A. 516.

And does not deny equal protection of laws.—This section is not arbitrary. It is not partial. It deals to each his proper share, and fits alike the case of every person within the extent of its authority, who, since the enactment, has violated or may violate its inhibitions. It does not deny to any person within its jurisdiction the equal protection of the laws. LeClair v. White, 117 Me. 335, 104 A. 516.

Additional imprisonment for failure to pay fine not part of punishment.—This section fixes the duration of the imprisonment. The imprisonment for 6 additional months for failure to pay the fine is not a part of the punishment by imprisonment authorized as a penalty for the commission of the crime. Payment of the fine, and imprisonment for not paying it, cannot exist at the same time. Of his own elective preference, the convict remains in jail for failure to pay the fine. In effect, the section is that, if the malefactor fails or neglects to pay the fine and costs, then, after the expiration of the sentence to unconditional imprisonment, he shall continue imprisoned until payment shall be made, but not longer than six months. The crime under this section is not an infamous one. The section does not presume to authorize unconditional imprisonment for the term of one year. LeClair v. White, 117 Me. 335, 104 A. 516.

One who has authority to sell liquor can nevertheless commit the offense of this section and incur the penalty if he keeps or deposits the liquors with the intent to sell them within the state in violation of law. State v. Connelly, 63 Me. 212.

The offense set forth in this section consists of an act and an intent. The act is a depositing or keeping intoxicating liquors by the person named. The intent is a purpose on his part to sell, or that some other person should sell, or to aid in selling the same liquors in violation of law. This section does not say that it shall be an offense in an individual to deposit or keep liquors intended for unlawful sale in this state; but it must be with an intent on his part so to sell, etc. State v. Learned, 47 Me. 426.

The substance of the offense under this section is the keeping or depositing of intoxicating liquors at some place in this state with intent that the same shall be sold within the state in violation of law. Every such keeping or depositing is unlawful. State v. Connelly, 63 Me. 212.

Intent is essential element of offense.—The person charged as keeping liquors cannot be convicted simply from the fact that the liquors are found in his possession, or that they were intended for unlawful sale by somebody. He may be an innocent depositary. He can only be a guilty one, under this section, by having this possession with an intent on his part to sell the same in this state in violation of law, or with the intent that the same should be so sold by any person, or with intent to aid or assist any person in such unlawful sale. The intent is an essential element in the offense. State v. Learned, 47 Me. 426.

And must be charged in complaint.—When a person is on trial for a violation of this section he cannot be convicted unless he is proved to have had the possession of the liquors, with the unlawful intent. Such intent, by him, must be charged in the complaint. State v. Intoxicating Liquors, 50 Me. 506.

For possession without illegal intent no crime.—It is not a crime to be in possession of liquors, even if another person may intend to sell them unlawfully, if the depositary had no such intention himself, and no intent that they should be so sold by any person, or to aid in such selling. State v. Learned, 47 Me. 426.

The charge in a complaint under this section can only be made against the person who is declared to be the keeper or depositor, with the unlawful intent; and can only be sustained by proof that the liquors were found in his possession or deposit, and that he kept them with the unlawful intent named. State v. Learned, 47 Me. 426.

But not necessary that keeper intends

to make sale himself.—The offense prohibited by this section is the depositing or having in one's possession intoxicating liquors with the intent to sell them in this state in violation of law, or with intent that the same shall be so sold by any person, or to aid or assist any person in such sale thereon. It is not necessary that the keeper shall intend to make the unlawful sale himself. The offense is complete where there is a keeping with the intent that an unlawful sale shall be made in this state by any person, or with the intent to aid or assist in such unlawful sale. And this keeping is a substantive offense; not a matter of principal and accessory depending upon the question whether there is a personal intention to sell or only a design to aid someone else in the unlawful sale. The keeper is a principal offender; and the offense of keeping with such intent is the same, whether the sale is to be made by the keeper or someone else. State v. Kaler, 56 Me. 88.

And proposed means of execution of intent need not be alleged.—It was alleged that the defendant unlawfully did have in his possession intoxicating liquors "with intent that the same be sold in this state in violation of law," etc. This is a sufficient allegation of intent and it is not necessary to state whether the intent was that the liquor should be sold by the defendant himself, or by some other person, or to aid or assist some other person to sell. It is not necessary so to particularize. The gist of the offense is in the intent itself, the intent of unlawful sale, not in the proposed mode of execution. The offense, the intent, is the same whichever and whatever way it was to be carried out. It is the intent, not the execution of it, that constitutes the offense. State v. Rigley, 105 Me. 161, 73 A. 1003.

Unlawful intent inferred from possession of large quantities of liquor. — Unexplained, the possession of large quantities of intoxicating liquor is sufficient evidence of intended unlawful sale by the accused. State v. Buckley, 125 Me. 301, 133 A. 433.

But such inference does not shift burden of proof.—Such inference or presumption of unlawful intent from the possession of large quantities of liquor, however, does not shift the burden of proof, which remains upon the state throughout the trial to prove the guilt of the respondent beyond a reasonable doubt. The respondent is not bound to prove his own innocence. He may rely on the presumption of his innocence which the law affords him to rebut the inference or presumption of fact arising from the quantity of liquor found in his possession, and sit silent. If he does, the jury must still be satisfied of his guilt beyond a reasonable doubt. If he permits such prima facie proof of his unlawful intent to remain with the jury unexplained, he hazards an adverse verdict which his explanation might have avoided. State v. Buckley, 125 Me. 301, 133 A. 433.

Evidence of previous violation of liquor law admissible on question of intent.—In a prosecution under this section, evidence, confined within reasonable limits, as to a previous breach of the liquor laws by the defendant is admissible with regard to the unlawfulness of his possession of the particular liquor. The offense charged being in its nature a continuing one, sales by the defendant before, after and at the time of the alleged keeping might be shown to the limited extent of shedding light upon an intent to sell the especial liquor. State v. O'Toole, 118 Me. 314, 108 A. 99.

Place where liquor kept or deposited must be alleged.—A complaint cannot be held to charge the offense of keeping and depositing intoxicating liquors under this section where there is no allegation of the place at which the liquor is kept and deposited. State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

The possession of the servant or agent is the possession of the principal. A person may not only have the unlawful intent, he may be guilty of the unlawful act, without having actual, personal possession of the liquors. State v. Intoxicating Liquors, 50 Me. 506.

And principal may be convicted for agent's possession.—As a person may be convicted of unlawfully selling liquors, himself, upon evidence of a sale by his agent (§ 66), so he may be convicted of having them in his possession, with intent to sell, though they are in the possession and custody of his agent, he, the owner, intending to sell the same, either by himself or by his agent. State v. Intoxicating Liquors, 50 Me. 506.

If the liquors are in the possession of an agent, both he and the owner may be convicted, if both have the unlawful intent. If the agent has no unlawful intent, he cannot be convicted; but the owner, if known, may be. State v. Intoxicating Liquors, 50 Me. 506.

Prosecution on search and seizure warrant precludes prosecution by indictment. —See note to § 84.

But acquittal on charge of illegal possession does not absolve from charge of ille-

gal transportation.—See note to § 64, sub-§ I.

Evidence sufficient to support conviction under this section.—See State v. Clancy, 121 Me. 362, 117 A. 304.

Former provision of section.—For a case under a former provision of this section concerning previous convictions, see State v. Dolan, 69 Me. 573.

Applied in State v. McCann, 59 Me. 383; State v. Striar, 121 Me. 519, 118 A. 377; State v. Gauthier, 121 Me. 522, 118 A. 380; State v. Beaudette, 122 Me. 44, 118 A. 719; Cote v. Cummings, 126 Me. 330, 138 A. 547; State v. Bushey, 126 Me. 363, 138 A. 566; State v. Rist, 130 Me. 163, 154 A. 178.

Quoted in State v. Intoxicating Liquors & Vessels, 101 Me. 161, 63 A. 666.

Cited in State v. Miller, 48 Me. 576; State v. Dunphy, 79 Me. 104, 8 A. 344; Kalloch v. Newbert, 105 Me. 23, 72 A. 736; State v. Intoxicating Liquors & Vessels, 118 Me. 198, 106 A. 711.

Illegal Importation, Transportation and Delivery.

Sec. 63. Importation of liquors.—No person, other than the state liquor commission, shall import spirituous or vinous liquor into this state. Any person importing, or causing to be shipped into the state, or transporting spirituous or vinous liquor into the state, shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment; provided, however, it shall be lawful for an individual to transport into this state and to transport from place to place within the state such spirituous or vinous liquor for his personal use in a quantity not to exceed 3 quarts; provided further, that the commission, in its discretion and by its written authorization, may permit and authorize the importation of spirituous or vinous liquors into this state and the transportation of the same from place to place within this state to the following:

I. To industrial establishments for use as an ingredient in the manufacture of food products, or for use as an ingredient in the manufacture of commodities which by reason of their nature cannot be used for beverage purposes, or for use in the manufacture of commodities unfit for beverage purposes;

II. To duly licensed distillers and manufacturers of spirituous or vinous liquors in this state for use as an ingredient in distilling or manufacturing spirituous or vinous liquors;

III. Said commission, in its discretion and by its written authorization, may permit and authorize the importation of wine into this state and the transportation of the same from place to place within this state to churches or to the respective pastor of any church for sacramental purposes or like religious rites.

IV. The commission may authorize hospitals and state institutions to import, for medicinal purposes only, liquor made available to them from stocks of liquor seized by the federal government. (1953, c. 250, § 1)

The commission shall have the right and power to prescribe such conditions as it deems necessary or advisable as conditions precedent to granting permission and authority to import spirituous and vinous liquors into this state and to transport the same within this state under the provisions of subsections I, II, III and IV and to make rules and regulations for clarifying and carrying out said provisions and preventing violation of the laws relating to liquor. (R. S. c. 57, § 63. 1953, c. 250, § 1.)

Sec. 64. Transportation of intoxicating liquor and malt liquor; prima facie evidence of.—

I. No person shall knowingly transport from place to place in this state any intoxicating liquor with intent to sell the same in this state in violation of law, or with intent that the same shall be so sold by any person, or to aid any person in such sale, and no person shall transport any spirituous or vinous liquor

in this state in a greater quantity than 3 quarts, unless such liquor was purchased from a state store or the state liquor commission. Provided, however, that the commission in its discretion may grant to an individual, upon his application, a permit to transport liquor purchased for his own personal use. It shall be lawful for common carriers and contract carriers duly authorized as such by the public utilities commission to transport liquor to state stores, to state warehouses, to licensees of the state liquor commission, to purchasers of liquor at state stores and from manufacturers to state warehouses, state stores and to the state line for transportation outside the state; for licensees of the commission to transport liquor from state stores to their places of business; and for manufacturers to transport within the state to state warehouses and state stores and to the state line for transportation outside the state. Whoever knowingly violates any of the provisions of this subsection shall be punished by a fine of not less than $100 nor more than $1,000, and costs, and by imprisonment for not less than 2 months nor more than 6 months, and in default of payment of fine and costs, by imprisonment for not less than 2 months nor more than 6 months, additional.

Complaint must charge liquor transported "knowingly." — A complaint does not charge the offense of illegal transportation if the word "knowingly" used in this subsection is wholly omitted. State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

Transportation must be from place to place in state.—The state, in order to convict for illegally transporting under this section, must show that the accused knowingly transported "from place to place in the state." State v. Mooers, 129 Me. 364, 152 A. 265.

And moving from point to point on same premises not an offense.—This section did not contemplate making a crime out of the mere act of an owner or one in possession of intoxicating liquor moving it from point to point on his own premises. State v. Mooers, 129 Me. 364, 152 A. 265.

The decided weight of authority is that a transferring of intoxicating liquor from one place to another on the same premises does not constitute a transportation. State v. Mooers, 129 Me. 364, 152 A. 265.

It is not every possible removal of spirituous liquor which will make a person employed by the owner to do it guilty of a criminal offense. If the removal were only upon the premises of the owner, or from one to another of his warehouses, or from one to another part of his shop, this would constitute no offense and would be no violation of law. State v. Mooers, 129 Me. 364, 152 A. 265.

Evidence which merely shows that the respondent carried the liquor from his garage to his stable, even assuming that he undertook to hide it there, is not sufficient to bring him within the legislative intent to make it a crime for any person to knowingly transport "from place to place" in this state any intoxicating liquor under certain circumstances. State v. Mooers, 129 Me. 364, 152 A. 265.

In the absence of any evidence that the owner or the one in possession of intoxicating liquor has it in his possession for the purpose of illegal sale, such owner or person in possession is not guilty of illegal transportation under the provisions of this section, if he merely personally carries or conveys such intoxicating liquor from one portion or part to another portion or part of the premises of which he is the owner, lessee or tenant. State v. Mooers, 129 Me. 364, 152 A. 265.

Complaint must designate from what place to what place liquor transported. Where a complaint contains no allegation designating from what place or to what place in the state of Maine the liquors were transported, the complaint is too indefinite to afford to the defendant the requisite information, to which the law entitles him, or to identify it, in case another and subsequent prosecution for the same offense should be instituted. State v. Lashus, 79 Me. 541, 11 A. 604.

But reasonable designation is all that is required.—A reasonable degree of certainty in the description of the offense so that the accused may know the locality in which the unlawful transportation is alleged to have taken place is all that is requisite. State v. Harvey, 124 Me. 226, 127 A. 275.

And allegation of from "place to place" in named city is sufficient.—An allegation of from place to place in the state of Maine, or from place to place in a given county, is too indefinite to reasonably inform a respondent of the offense with which he is charged, or to identify it in case a subsequent prosecution for the same offense should be instituted. But where the place in which the act was committed is set out

by alleging that the liquor was transported from place to place in a named city, the respondent is afforded, by this allegation of the place of the offense, the requisite information to which the law entitles him. State v. Harvey, 124 Me. 226, 127 A. 275.

II. No person, other than a wholesale licensee of the commission under and subject to the provisions of this chapter, shall transport or cause to be transported malt liquor into this state in a greater quantity than 1 case, unless said malt liquor was legally purchased in the state; and all shipments of malt liquor transported or caused to be transported by wholesale licensees into this state shall be accompanied by an invoice with the wholesale licensee's name and purchase number thereon. No person, other than a licensee of the commission, shall transport malt liquor from place to place in this state unless the same is purchased from a retail store licensee of the commission. However, it shall be lawful for common carriers and contract carriers, duly authorized as such by the public utilities commission, to transport malt liquor both into and within the state to licensees of the state liquor commission and to purchasers of malt liquor from licensees of the state liquor commission and to the state line for transportation outside the state. Whoever is convicted of illegal transportation of malt liquors into or illegal transportation from place to place within the state shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. [1949, c. 359]. (R. S. c. 57, § 64. 1949, c. 359.)

Purpose of section.—The obvious purpose of the legislature in enacting this section was to interpose the most effectual impediments in the way of the illegal traffic in spirituous liquors. State v. Mooers, 129 Me. 364, 152 A. 265.

Allegations charging unlawful possession not necessarily in prosecution under this section.—Terms in a complaint appropriate for a charge of unlawfully having in possession intoxicating liquors, are wholly unnecessary in alleging unlawful transportation. But these allegations may be rejected as surplusage. State v. Chorosky, 122 Me. 283, 119 A. 662.

Acquittal on charge of illegal possession does not absolve defendant from prosecution under this section.—The fact that the defendant was previously acquitted on a charge of illegal possession of the same liquor, will not absolve him from prosecution for violation of this section, if his act was one prohibited by the intent of the section. State v. Mooers, 129 Me. 364, 152 A. 265.

Provision of § 73 applicable to prosecution under this section.—The provision of § 73 that the penalty of any recognizance shall not be remitted nor the surety be discharged is applicable to a prosecution for illegal transportation of liquor. See State v. Leo, 128 Me. 441, 148 A. 563.

Constitutionality of former provision of section.—For a case concerning the constitutionality of this section when it prohibited the transportation of liquor without a federal permit, see State v. Webber, 125 Me. 319, 133 A. 738.

Applied in Violette v. Macomber, 125 Me. 432, 134 A. 561; State v. Beaudoin, 131 Me. 31, 158 A. 863.

Cited in State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

Sec. 65. Delivery of liquor.—No person shall knowingly transport to, or cause to be delivered to any person, other than the state liquor commission, unless upon written permission of the commission, any spirituous or vinous liquor, except liquors purchased from a state store or the state liquor commission. Any officer of any transportation company, express company, carrier for hire or other person who knowingly transports or delivers liquor contrary to the provisions hereof shall be punished by a fine of not more than $500 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (R. S. c. 57, § 65.)

Illegal Sales.

Sec. 66. Illegal sale of liquor.—Any person by himself, his clerk, servant or agent who sells liquor within the state without a license shall be punished for the 1st offense by a fine of not less than $300 and costs nor more than $500 and costs, which fine and costs shall not be suspended, and an additional penalty

of not more than 30 days in jail at the discretion of the court; and for a 2nd offense by a fine of not less than $500 and costs nor more than $1,000 and costs, which fine and costs shall not be suspended, and an additional penalty of not more than 60 days in jail at the discretion of the court; and for all subsequent offenses a fine of not less than $1,000 and costs and 60 days in jail, which fine and costs and jail sentence shall not be suspended, and an additional penalty of 4 months in jail at the discretion of the court. Any clerk, servant, agent or other person in the employment or on the premises of another, who violates or in any manner aids or assists in violating any provision of law relating to intoxicating liquors, is equally guilty with the principal and shall suffer like penalties. (R. S. c. 57, § 66. 1951, c. 137. 1953, c. 392, § 4.)

Cross references.—See c. 137, § 2, re sale of unwholesome drinks; c. 149, § 1, re respondent to pay costs; note to § 97, form No. 1, re sufficiency of complaint.

The crime under this section is the unlawful sale of intoxicating liquor, even though the section used the word "liquor" and omits the word "intoxicating". State v. Bellmore, 144 Me. 231, 67 A. (2d) 531; State v. Maine State Fair Ass'n, 148 Me. 486, 96 A. (2d) 229. See note to § 97, form No. 1, re necessity of alleging sale of intoxicating liquor in complaint.

Intent is not element of offense.—The actual sale of intoxicating liquor (without a license), under this section, is a malum prohibitum, and intent is not an ingredient of the offense charged. Proof of a sale, regardless of the intent, is sufficient to establish a violation of the section. State v. Douglass, 121 Me. 137, 116 A. 28.

Nor is violation of purchaser's rights.—The gravamen of the offense of illegally selling intoxicating liquor is in selling it. The fact of the sale implies that there was a purchaser. The violation of the individual rights of the purchaser does not enter into the essence of the offense. State v. Haapanen, 129 Me. 28, 149 A. 389.

Evidence of sale by servant sufficient to show guilt of master.—By this section the liability of the master equally accrues whether the sale is made by him, his clerk, agent or servant. Being master he is responsible for those in his employ. A sale by a servant in the shop of his master is prima facie a sale by the master. The facts that the defendant was in possession of the shop, that he was the owner of the liquors sold and that the sale was made by his servant furnish evidence which, unexplained, is amply sufficient to authorize a jury to find the master of the shop guilty. State v. Wentworth, 65 Me. 234.

Former provisions of section.—For cases concerning a former provision of this section wherein certain enumerated products were declared to be intoxicating when sold "for tippling purposes, or as a beverage," see State v. McNamara, 69 Me. 133; State v. Piche, 98 Me. 348, 56 A. 1052; State v O'Connell, 99 Me. 61, 58 A. 59; State v. Frederickson, 101 Me. 37, 63 A. 535; State v. Intoxicating Liquors & Vessels, 118 Me. 198, 106 A. 711; State v. Douglass, 121 Me. 137, 116 A. 28; State v. Sayers, 121 Me. 339, 117 A. 235; State v. Vino Medical Co., 121 Me. 438, 117 A. 588; State v. Gauthier, 121 Me. 522, 118 A. 380; State v. Littlefield, 122 Me. 162, 119 A. 113.

For case concerning liability of purchaser of liquor under this section when it absolutely prohibited the sale of liquor, see State v. Parady, 130 Me. 371, 156 A. 381.

Applied in State v. McNaughton, 132 Me. 8, 164 A. 623; State v. Schumacher, 149 Me. 298, 101 A. (2d) 196.

Cited in State v. Intoxicating Liquors, 50 Me. 506; State v. Wallace, 121 Me. 83, 115 A. 609; State v. Fletcher, 126 Me. 153, 136 A. 908; State v. Wombolt, 126 Me. 351, 138 A. 527.

Sec. 67. Employment or permitting assistance of children in illegal keeping or sale of liquors.—Whoever by himself, his clerk, servant or agent, directly or indirectly, employs or permits any child under the age of 16 years to aid or assist him in the illegal keeping or the illegal sale of liquors, shall be punished, in addition to the penalties otherwise provided against the illegal keeping for sale or illegal sale of intoxicating liquors, by a fine of not less than $100 or by imprisonment for not less than 60 days. (R. S. c. 57, § 67.)

See § 62, re illegal possession.

Sec. 68. Common sellers.—No person shall be a common seller of liquor. Whoever violates the provisions of this section shall be punished by a fine of not

less than $100 nor more than $500, and costs; and in addition thereto, by imprisonment for not less than 2 months nor more than 6 months, and in default of payment of fine and costs, by imprisonment for 6 months additional. (R. S. c. 57, § 68.)

Cross references.—See § 84, re notice of liquor for sale prima facie evidence of common sellers; c. 149, § 1, re respondent to pay costs.

An indictment charging a person with being a common seller of liquors, does not charge more than one offense. The result is, that a charge of being a common seller includes a charge of making actual sales. State v. Day, 37 Me. 244.

A person making a plurality of sales of intoxicating liquors is a common seller. State v. Douglass, 121 Me. 137, 116 A. 28.

And no specific number of sales is necessary or conclusive on the question of what constitutes a common seller, but it is for the jury to determine from all the evidence whether the respondent could be said to be habitually and continually engaged in selling liquor in distinction from individual sales. State v. Lamont, 124 Me. 267, 127 A. 906.

And the elements which constitute a common seller may be proven without any evidence of actual sales; or one or more sales under the surrounding or accompanying circumstances may be sufficient to warrant a jury in finding a respondent guilty of this offense. State v. Lamont, 124 Me. 267, 127 A. 906.

The offense of being a common seller of intoxicating liquors may be established by the acts of the party done on a single day. And where the offense is alleged to have been committed on a particular day "and continually thereafter up to the day of the finding of this indictment" such allegations may be supported by proof of the commission of the offense on the particular day named or during any part of the period covered by the continuando. State v. Jones, 115 Me. 200, 98 A. 659.

Evidence of 3 sales held sufficient to support conviction. — Evidence of three different sales is sufficient to authorize a conviction for being a common seller. And all the sales may be made on the same day. State v. Day, 37 Me. 244.

Delivery sufficient proof of sale.—See note to § 76.

Applied in State v. Hatch, 94 Me. 58, 46 A. 796; State v. O'Connell, 99 Me. 61, 58 A. 59; State v. Simpson, 113 Me. 27, 92 A. 898; State v. Holland, 124 Me. 333, 128 A. 561.

Sec. 69. Furnishing liquor to persons in confinement. — Whoever gives or delivers any liquor to a person confined in any jail, house of correction or other place of confinement, or to a person in custody of any officer qualified to serve criminal process, or has in his possession, within the precincts of any jail, house of correction or other place of confinement, any such liquor, with intent to convey or deliver the same to any person confined therein, unless under the direction of the physician appointed to attend such prisoner, or of the officer in charge of such place of confinement, shall be punished by a fine of not more than $20 or by imprisonment for not more than 30 days. (R. S. c. 57, § 69.)

Cross reference.—See c. 149, § 1, re sentences.

Cited in Sawyer v. Androscoggin County Com'rs, 116 Me. 408, 102 A. 226.

Sec. 70. Procuring liquor for certain persons.—Whoever knowingly procures or in any way aids or assists in procuring liquor for a minor who may not legally purchase liquor for himself or for any intoxicated person, pauper, insane person or person of known intemperate habits, except that this provision shall not apply to liquor served to a minor in the home, shall be punished by a fine of not more than $100 or by imprisonment for not more than 11 months, or by both such fine and imprisonment. (1951, c. 78.)

Enforcement.

Sec. 71. Jurisdiction of courts.—In prosecutions under the provisions of this chapter, except when otherwise expressly provided, trial justices within their county shall have, by complaint, jurisdiction concurrent with municipal courts and the superior court. In appeals from any judgment or sentence before such court or magistrate, the penal sum in every recognizance shall be not less

than $500. No recognizance, before such court or magistrate, shall be in a sum less than $500. In no case shall the penal sum of the recognizance be reduced after being fixed by the court. (R. S. c. 57, § 71.)

Former provision of section.—For consideration of a former provision of this section which specified certain prosecutions to be by indictment, see Pease v. Foulkes, 128 Me. 293, 147 A. 212.

Quoted in part in State v. Intoxicating Liquors, 54 Me. 564.

Stated in State v. Haapanen, 129 Me. 28, 149 A. 389.

Cited in LeClair v. White, 117 Me. 335, 104 A. 516; State v. Beaudette, 122 Me. 44, 118 A. 719.

Sec. 72. Continuance for sentence.—When a person has been convicted in the superior court of a violation of any of the provisions of this chapter, the county attorney shall move for sentence at the same term, unless for reasons satisfactory to the court the case is continued for sentence for 1 term, but no longer. (R. S. c. 57, § 73.)

Sec. 73. Appeal; affirmation of judgment; penalty not remitted nor surety discharged by surrender of principal after default, unless sentenced.—In appeals, the proceedings shall be the same in the appellate court as they would be in the court below, and shall be conducted therein by the attorney for the state. The jury shall find specially under the direction of the court on all facts necessary to determine the adjudication thereof; and if a claimant or other respondent fails to appear for trial in the appellate court, the judgment of the court below, if against him, shall be affirmed. No portion of the penalty of any recognizance taken under the provisions of this chapter shall be remitted by any court in any suit thereon, nor shall a surety in any such recognizance be discharged from his liability therein by a surrender of his principal in court after he has been defaulted upon his recognizance unless the principal has been actually sentenced upon the indictment or complaint on which the recognizance was taken. The appeals of claimants provided for in section 86 shall be entered as all other appeals in criminal cases, and be subject to the requirements of law appertaining to them. (R. S. c. 57, § 74.)

Cross references.—See c. 147, §§ 24, 25, re remitting penalty of recognizance does not apply to provisions of that chapter; c. 147, § 26, re suit on recognizance may be dismissed.

Provision as to remittance of recognizance and discharge of surety strictly construed.—A provision so highly penal in its nature as that respecting the remittance of the penalty of the recognizance and the discharge of the surety, affecting not only persons charged with offenses, but sureties also, is to be strictly construed, and not extended by construction to cases not clearly falling within its terms. State v. Crowley, 60 Me. 103.

And applies only to recognizances specially provided for in this chapter.—The recognizance "taken under the provisions of this chapter," spoken of in this section, must mean the recognizances specially provided for in the chapter. Other recognizances, though taken in the course of proceedings under the chapter, cannot be said to be taken under its provisions. They are taken under the common-law authority vested in the court to compel parties to answer to its process, civil or criminal, and of certain constitutional and statutory provisions conferring and regulating the power to require them. State v. Crowley, 60 Me. 103.

Default fixes liability of surety.—The court has no inherent power to remit the penalty of the bond or discharge the surety. Under this section, upon the default of a recognizance taken in a liquor case, the liability of the surety is fully and finally fixed, and a surrender of the body of the principal thereafter, alive or dead, will not authorize any exoneration of the surety. State v. Leo, 128 Me. 441, 148 A. 563.

Provision concerning affirmance of judgment in case of default constitutional.—The provision of this section that the judgment below be affirmed in case of default in the appellate court violates no constitutional guaranty and there is no reason why it is not within the legislative power. Wallace v. White, 115 Me. 513, 99 A. 452.

And such provision is permissive.—It does not require affirmation of the judgment. Wallace v. White, 115 Me. 513, 99 A. 452.

No limitation as to term at which judgment may be affirmed.—This section contains no limitation that the judgment can be lawfully affirmed only at the term to which the appeal is taken and at which it is entered. Sweetland, Petitioner, 124 Me. 58, 126 A. 42.

"Judgment" affirmed on default includes sentence imposed.—This section provides that in appeals in cases of violation of the liquor law, "if a claimant or other respondent fails to appear for trial in the appellate court, the judgment of the court below, if against him, shall be affirmed." The word "judgment," in this connection, refers not only to the adjudication of guilt, but also to the sentence imposed, the entire judgment. Wallace v. White, 115 Me. 513, 99 A. 452.

But provision does not relate to cumulative sentences.—The provision of this section expressly empowering the court to affirm the judgment of the court below upon the default of the defendant in appealed cases was not designed to have, and cannot reasonably be construed to have, any relation whatever to the question of cumulative sentences. Breton, Petitioner, 93 Me. 39, 44 A. 125.

And does not authorize increase of sentence even by amount of costs.—This section, authorizing the appellate court to affirm a sentence, does not authorize it to add to it or in any way change it. And where the appellant is not brought into court the sentence cannot be increased by the amount of the costs. To that extent, the appellate court exceeds its authority. Wallace v. White, 115 Me. 513, 99 A. 452.

This section merely authorizes the court to affirm the judgment below in the absence of the appellant. It is silent on the matter of costs. Wallace v. White, 115 Me. 513, 99 A. 452.

But such increase does not invalidate entire sentence.—The imposition of additional costs in the appellate court where the appellant does not appear is in excess of that court's jurisdiction, but this excess is clearly severable from the sentence affirmed. The sentence is not wholly void, but void only for the excess, and the appellant is not entitled to be discharged on habeas corpus. Wallace v. White, 115 Me. 513, 99 A. 452.

This section, authorizing affirmation of the sentence, presupposes that the respondent is not in court, and that he is to be taken and committed. The issuing of proper process to carry the judgment of the court into effect is a ministerial act. It is the duty of the clerk to issue the mittimus as a matter of course. Wallace v. White, 115 Me. 513, 99 A. 452.

Section applicable to prosecution for illegal transportation.—See note to § 64.

Applied in State v. Robinson, 33 Me. 564; State v. Gurney, 37 Me. 156; State v. McCann, 61 Me. 116.

Cited in State v. Robinson, 49 Me. 285.

Sec. 74. Bail after commitment for illegal manufacture or sale.—In any prosecution for violation of the statutes relating to manufacture or sale of intoxicating liquor a respondent therein who has failed to comply with the term of any recognizance entered into by him in such case shall not again be admitted to bail in such case or upon arrest on any capias issued therein, except by a justice of the court in which such prosecution is pending. (R. S. c. 57, § 75.)

Sec. 75. Action not maintainable upon promise to pay for liquor.—No action shall be maintained upon any claim or demand, promissory note or other security contracted or given for liquor sold in violation of any of the provisions of this chapter, or for any such liquor purchased out of the state with intent to sell the same or any part thereof in violation thereof; but this section shall not extend to negotiable paper in the hands of a holder for a valuable consideration and without notice of the illegality of the contract. (R. S. c. 57, § 76.)

History of section.—See Hamilton v. Goding, 55 Me. 419.

The provisions of this section were not intended to act retrospectively. Torrey v. Corliss, 33 Me. 333.

And do not impair obligation of contract.—This section would undoubtedly have the effect of impairing the obligation of contracts, if it was retroactive in its effect, but it is not. And a statute cannot impair the obligation of a contract, within the meaning of the constitution, that was made subsequent to the enactment of the statute. Corbin v. Houlehan, 100 Me. 246, 61 A. 131.

This section is valid and is not in conflict with the federal constitution. Boehm v. Allen, 102 Me. 217, 66 A. 474.

It does not violate the commerce clause. —This section, which prohibits the maintenance of an action in the courts of this state to recover for intoxicating liquors bought in another state with intention to sell the same in this state in violation of law, is not in violation of that clause of the federal constitution which gives congress the power to regulate commerce between the states. Corbin v. Houlehan, 100 Me. 246, 61 A. 131.

This section is not in conflict with the interstate commerce clause of the federal constitution. It does not regulate or interfere with interstate commerce. It does not, and of course could not, affect the validity of the contract of sale made in a place where such sale is valid. It does not prohibit or interfere with the importation of liquors from another state into this, although they were intended for illegal sale here. It in no way directly interferes with or attempts to regulate commercial transactions between citizens of different states. It is, of course, true that it may indirectly have a tendency to interfere with, or to diminish the number and extent of contracts of sale between a resident of another state and of this, upon credit, since a dealer in liquors in another state might, because of this section, decline to sell to a purchaser here upon credit and to depend for his chance of obtaining payment upon the voluntary act of the purchaser. Corbin v. Houlehan, 100 Me. 246, 61 A. 131.

This section forbids a remedy in the state courts to certain suitors, under the conditions named, even if they were innocent in making the contract of sale which placed in the possession of the purchaser the means of violating state laws and established policy. The legal effect of this section is simply to limit the application of the principle of comity, and to extend the well established principle that courts will not enforce a contract made by both parties with the view and for the purpose of violating the laws of the state of the forum, to the case of a contract where one of the parties only to the contract, the purchaser, had that purpose in view. This enactment was within the discretion of the law making power of the state, and is not in violation of the interstate commerce clause of the federal constitution. Corbin v. Houlehan, 100 Me. 246, 61 A. 131.

Or the 14th amendment.—By this section all persons are treated alike. It forbids the maintenance of a suit in the courts of this state, under the conditions named both by residents and nonresidents of the state alike, and does not violate the 14th amendment to the federal constitution. Corbin v. Houlehan, 100 Me. 246, 61 A. 131.

This section is explicit, and it is one which it was entirely competent for the legislature to enact. Knowlton v. Doherty, 87 Me. 518, 33 A. 18.

Under this section, a claim for intoxicating liquors, purchased with intent to sell the same in violation of law, cannot be enforced. Such a claim creates no debt: no legal liability which the law will enforce. It matters not that the liquors are purchased out of the state. If purchased with intent to sell the same in violation of law within the state, an action for their price cannot be maintained. McGlinchy v. Winchell, 63 Me. 31; Knowlton v. Doherty, 87 Me. 518, 33 A. 18.

A vendor who makes a sale of intoxicating liquors in another state, where such sale is not prohibited, to a purchaser who intends to sell them in this state in violation of law cannot recover the purchase price therefor in the courts of this state. Knowlton v. Doherty, 87 Me. 518, 33 A. 18.

Nor can action be maintained for the price of liquors sold in violation of law. The ignorance of the parties of the provisions of this section will not vary the result. Webster v. Sanborn, 47 Me. 471.

And trustee suit not maintainable for price of liquor purchased with unlawful intent.—A person is not chargeable as trustee for the price of intoxicating liquor, purchased out of the state with intent to sell the same in violation of law within the state. To allow a trustee suit to succeed would be an evasion of this section. What the seller could not collect in his own name he could easily collect in the name of some friendly creditor. McGlinchy v. Winchell, 63 Me. 31.

Seller's knowledge of illegal intent of purchaser immaterial. — This section makes the fact that the liquors were purchased with the intention of selling them in violation of law, and not the seller's knowledge of the fact, the criterion by which to determine whether the contract will support an action in this state or not. The purchaser's intention, and not the seller's knowledge, is the point of inquiry. When dealing with citizens of this state, the seller must ascertain at his peril that the purchaser does not intend to sell the liquors here in violation of law. Meservey v. Gray, 55 Me. 540; Knowlton v. Dotherty, 87 Me. 518, 33 A. 18.

Under this section, it makes no difference whether the seller knew or did not know of the purchaser's intention to vio-

late the law. Pollard v. Allen, 96 Me. 455, 52 A. 924; Taber v. Barton, 108 Me. 338, 80 A. 836.

This section does not make a participation by the vendor in the purchaser's illegal purpose, or even his knowledge of the purchaser's illegal purpose, necessary to prevent his resorting to the courts. Corbin v. Houlehan, 100 Me. 246, 61 A. 131; Boehm v. Allen, 102 Me. 217, 66 A. 474.

It is immaterial whether the vendor had any knowledge for what purpose the liquor was purchased if they were in fact intoxicating liquors and intended by the purchasers for illegal sale in this state. Heintz v. LePage, 100 Me. 542, 62 A. 605.

Renewal notes not enforceable where consideration for original was illegal.— Where notes are given in renewal of the original invalid note and were afterwards indorsed to the plaintiff who is not a holder for value, although there may have been a new and independent consideration for the renewal notes, yet the old consideration remains. The illegality is not purged. Oakes v. Merrifield, 93 Me. 297, 45 A. 31.

And plaintiff must show he was holder of original note for value. — In an action by the holder of the note, the plaintiff has the burden of showing that he is a holder of the original note for a valuable consideration. Oakes v. Merrifield, 93 Me. 297, 45 A. 31.

Note given only partially for liquor not enforceable. — If a sale includes intoxicating liquors later sold in violation of law and other items for an entire purchase price, notes given back for a portion thereof are in part for intoxicating liquors sold in violation of the law, and, by this section cannot be enforced by the plaintiffs if they had knowledge of the original transaction. Gould v. Leavitt, 92 Me. 416, 43 A. 17.

And price of vessels sold with liquor not recoverable.—If the liquor and bottles containing it were sold together and the provisions of this section are applicable, the plaintiff cannot recover the price of either one. The thing sold was an entirety, and methods of bookkeeping cannot change its nature. Where the contract of sale includes both legal and illegal elements neither can be recovered. Where intoxicating liquors and vessels are illegally sold, the contract is indivisible, and the price of the vessels cannot be recovered. Wirth v. Roche, 92 Me. 383, 42 A. 794.

Section need not be specially pleaded.— It is not necessary to plead this section specially in defense of an action for the recovery of the purchase price of intoxicating liquors intended for unlawful sale. It is true that the phraseology of this section is not unlike that of the general statute of limitations, which must be pleaded specially. But it must be remembered that this section was not designed, like the statute of limitations, as a statute of repose, nor to afford protection against stale claims. This section is a police regulation. It was not enacted for the benefit of the parties, nor for simplifying litigation, nor for narrowing issues, nor for giving notice of intended defenses. It was enacted for the assumed good of the public. Its sole purpose is to aid in the prohibition of the unlawful traffic in intoxicating liquors in Maine. The court has no right to disregard its mandatory provisions, when they are called to its attention. Neglect to plead the section does not change its prohibitive character. Considering the character and the purpose of the section, one who sues for the price of intoxicating liquor in this state must come into court prepared to meet the defense afforded by the section whether it is pleaded or not. Taber v. Barton, 108 Me. 338, 80 A. 836.

Section does not forbid payment of liquor debt.—While this section makes a claim, demand or promissory note given for intoxicating liquors uncollectible under certain circumstances, except in the case of a note in the hands of a holder for a valuable consideration and without notice of the illegality of the contract, it does not forbid the payment of such indebtedness. A debtor may pay indebtedness of that character either in money or by the transfer of any property or chose in action. Certainly, one who has given his note for a legal and valuable consideration cannot avoid payment because the payee has transferred it in payment of a debt which the law would not have compelled him to pay. Gould v. Leavitt, 92 Me. 416, 43 A. 17.

The provisions of this section do not extend to negotiable paper in the hands of any holder for a valuable consideration, and without notice of the illegality of the contract. From this limitation in the section it follows that negotiable paper given for intoxicating liquors, in the hands of an indorsee, is subject to the same principles of law as are applicable to any other negotiable paper to which there is a defense in the hands of the payee. Baxter v. Ellis, 57 Me. 178.

It is no defense to an action on a negotiable promissory note that it was given in whole or in part for intoxicating liquors

sold in violation of law, when the action is brought by an indorsee, who is the holder of the note for a valuable consideration and without notice of the illegality of the contract. Hapgood v. Needham, 59 Me. 442.

And such holder need not take paper before it is due.—The effect of this section is that its defense shall not extend to negotiable paper in the hands of any holder for a valuable consideration, and without notice of the illegality of the contract. This protection is not limited to such holders as take the paper before it is due; it is extended in terms to any holder for a valuable consideration, and without notice of the illegality. In the trial of such an issue, the fact that the paper was or was not overdue when the plaintiff took it, seems to be immaterial. The question is not whether the paper was or was not overdue, but whether the plaintiff is a holder for value and without notice of the illegality of the contract. If he prevails upon these points, he brings himself within the terms of the section, and is entitled to its protection. Field v. Tibbetts, 57 Me. 358.

Under this section, the defense that the note was given for intoxicating liquors cannot prevail against any holder for a valuable consideration without notice of the illegality of the contract; and it makes no difference whether such holder acquired the note before or after its maturity. Wing v. Ford, 89 Me. 140, 35 A. 1023.

As the fact that a note is overdue is not notice, express or implied, that it was given for intoxicating liquors. Field v. Tibbetts, 57 Me. 358; Wing v. Ford, 89 Me. 140, 35 A. 1023.

Indorsee must have had actual knowledge of illegality.—It is not sufficient to defeat his recovery that the indorsee took the note under circumstances that ought to excite suspicion in the mind of a prudent man. It is simply a question as to whether or not the indorsee had actual knowledge. Wing v. Ford, 89 Me. 140, 35 A. 1023.

Purchaser succeeds to rights of innocent holder for value.—This section does not preclude an action on a note by a bank which discounted the note in good faith, before its maturity, for a valuable consideration and without notice of any illegality. And if the bank sells the note the purchaser is not precluded even though he had been notified of the illegality before the purchase. Dillingham v. Blood, 66 Me. 140.

Except when original payee purchases.—The original payee, who has fraudently put the note upon the market, is the only person who cannot by purchase, succeed to the rights of the first innocent holder. Dillingham v. Blood, 66 Me. 140.

The indorsee is presumed to be an innocent holder for value until the contrary is proved, or fraud or illegality in the consideration is shown. Baxter v. Ellis, 57 Me. 178.

Burden on plaintiff when illegality shown.—Where this section is invoked as a defense to an action on promissory notes, it is first incumbent upon the defendant to prove that the notes were given for liquors sold in violation of law, or for liquors purchased without the state with the intention to sell the same, or some part thereof, in violation of law. If the defendant succeeds in proving either of these propositions, then the burden is upon the plaintiff to show that the indorsee was a holder for a valuable consideration, without notice of the illegality of the contract. Wing v. Martel, 95 Me. 535, 50 A. 705.

When a person sells intoxicating liquor in this state in violation of law and receives therefor the negotiable promissory note of the purchaser, the seller can maintain no action thereon in his own name against the will of the maker. But the owner of a negotiable promissory note indorsed in blank may bring an action thereon in the name of any person who consents thereto. Therefore, when the seller of intoxicating liquor takes the note of his purchaser, it is presumed that he would dispose of it and place it in the hands of another person to sue upon it. And for this reason, when an action is brought against the maker of a note by an indorsee, and at the trial the defendant proves that it was given for liquor sold in this state in violation of law, the plaintiff cannot recover, until it is made to appear that he is a "holder for a valuable consideration and without notice of the illegality of the contract." Cottle v. Cleaves, 70 Me. 256.

But lack of knowledge of illegality presumed from indorsement for value.—Whenever a defendant sets up and proves as a defense that the note was given for an illegal consideration under this section, it becomes incumbent upon the plaintiff to prove that he is a holder for value without notice of the illegality of the contract. The holder makes out a prima facie case by proving that the note was indorsed to him for value, and can rely upon a presumption arising from his having given value for the note, that he obtained it

without notice of the illegality, until this presumption is overcome by rebutting evidence; but where there is evidence upon both sides as to the several propositions necessary to be proved by the plaintiff, then the general burden of proof is upon him to make them out. Wing v. Ford, 89 Me. 140, 35 A. 1023.

And defendant must prove knowledge.—If the defendant avers that the note was given in whole or in part for intoxicating liquors sold in violation of law, the burden of proof is upon him. If the plaintiff replies that he is a holder for a valuable consideration, and without notice of the illegality, the burden of proof with respect to the first branch of the proposition, namely, that he is a holder for value, is upon him; but the burden is not upon him to prove the latter branch of the proposition, namely, that he did not have notice of the illegality of the contract; for that would be to require him to prove a negative, which, with a few exceptions, of which this is not one, the rules of evidence forbid. If the defendant would avail himself of the fact that the plaintiff had notice of the illegality of the consideration of the note when he took it, he (the defendant) must prove it. Hapgood v. Needham, 59 Me. 442.

The burden of proof is upon the defendant to show that the plaintiff is not an innocent holder. Baxter v. Ellis, 57 Me. 178.

Competency of parties to note to prove illegal origin.—Parties to the note are not competent witnesses to prove its illegal origin, until notice of that illegality, or its equivalent, is brought home to the holder. Baxter v. Ellis, 57 Me. 178.

Conclusion of intended unlawful sale from purchase of large quantity without state.—The purchase of a large quantity of liquor without the state, by a person not authorized to sell liquor within the state, warrants the conclusion that the liquor was intended to be unlawfully sold. Oakes v. Merrifield, 93 Me. 297, 45 A. 31.

That note payable in Maine does not warrant finding of illegal sale or intent.—From the fact alone that notes are made payable in this state a jury would not be warranted in finding that the liquors were sold in violation of our law, or were intended, when purchased without the state, for unlawful sale in this state. Wing v. Martel, 95 Me. 535, 50 A. 705.

Former statute.—For a consideration of a former statute prohibiting an action "of any kind * * * for intoxicating liquors sold," see Preston v. Drew, 33 Me. 558; Banchor v. Cilley, 38 Me. 553; Lord v. Chadbourne, 42 Me. 429; Robinson v. Barrows, 48 Me. 186.

Applied in Wright v. Wheeler, 72 Me. 278.

Stated in State v. Intoxicating Liquors, 110 Me. 178, 85 A. 499.

Cited in Barnard v. Field, 46 Me. 526; Boyd v. Partridge, 94 Me. 440, 47 A. 911.

Sec. 76. Evidence of sale; duty of officials to prosecute; previous convictions alleged; amendment of process.—Whenever an unlawful sale is alleged and a delivery proved, it is not necessary to prove a payment, but such delivery is sufficient evidence of sale. A partner in business is liable for the unlawful keeping or selling by his copartner, done in the copartnership business, or by any other person in any shop, store or other place of business of such copartnership with his knowledge or assent. A principal and his agent, clerk and servant may all be included in the same complaint and process. The mayor or municipal officers of cities, or selectmen of towns or assessors of plantations may cause a suit to be commenced on any bond or recognizance given under the provisions of this chapter in which the city, town or plantation is interested, and the same shall be prosecuted to final judgment unless paid in full with costs. The mayor, aldermen, selectmen, assessors and constables in every city, town and plantation shall make complaint and prosecute all violations and shall promptly enforce the provisions of this chapter; and the willful or corrupt neglect or refusal of any of such officials to enforce the said provisions shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months. If a municipal officer, after being furnished with a written notice of a violation of the provisions of this chapter, signed by 2 persons competent to be witnesses in civil suits, and containing the names and residences of the witnesses to prove such offense, willfully neglects or refuses to institute proceedings therefor, he shall be punished by a fine of not less than $20 nor more than $50, to be recovered by indictment. The oath required of any such officer to the complaint may be, in substance, that from a written notice signed by 2 persons competent to be wit-

nesses in civil suits, he believes the complaint signed by him to be true. If an execution or other final process, issued in any civil or criminal action instituted under the provisions of this chapter, is placed in the hands of any proper officer to be by him executed and he unreasonably neglects or refuses to do so, an action may be commenced against him by any voter in the county and prosecuted to final judgment, which shall be for the full amount of the judgment and interest on such execution; and if it is a process that requires him to take and commit an offender to prison, the damages shall not be less than $50 nor more than $500. In suits, complaints, indictments or other proceedings for a violation of any provision of this chapter, other than for a first offense, it is not requisite to set forth particularly the record of a former conviction, but it is sufficient to allege briefly that such person has been convicted of a violation of a particular provision or as a common seller, as the case may be, and such allegation in any criminal process, legally amendable in any stage of the proceedings before final judgment, may be amended without terms and as a matter of right. Any process civil or criminal, legally amendable, may, in any stage of the proceedings, be amended in any matter of form, without costs, on motion at any time before final judgment. (R. S. c. 57, § 77.)

Section constitutional.—The legislature may make changes in the rules of evidence such an is done by this section without a violation of any provision of the constitution. State v. Day, 37 Me. 244.

Delivery is sufficient evidence of sale.—In liquor prosecutions, a provision that constitutional and valid. State v. Hurley, 54 Me. 562.

Delivery is sufficient evidence of sale.—Under this section, the government is not required to make proof of payment. The sale may be on credit. The fact of delivery is to be deemed sufficient, if not explained by the circumstances accompanying the delivery, or if the inference is not negatived by disproof. State v. Hurley, 54 Me. 562.

The meaning and purpose of the provision of this section that delivery shall be sufficient evidence of sale is obvious. In liquor prosecutions, difficulties early arose from the reluctance of witnesses to testify to all the facts attending the sale, and from the frequency of evasion on the part of unwilling witnesses. The legislature saw fit to dispense with the proof of payment, and to enact that "delivery is sufficient evidence of sale." State v. Hurley, 54 Me. 562.

And delivery sufficient proof of sale in prosecution for being common seller.—The provision of this section making delivery sufficient proof of the sale is applicable when proof of actual sales is required to convict one of the offense of being a common seller. State v. Day, 37 Me. 244.

But the fact of delivery is open to disproof from every source. It may be explained by the attendant circumstances. The party delivering is not estopped by the fact of delivery. State v. Hurley, 54 Me. 562.

Distinction between civil and criminal processes abrogated as to ammendments.—By this section, virtually the same authority exists in regard to amendments in matters of form in proceedings legally amendable as in relations to actions of a civil nature. The section is broad in its terms, allowing amendments at any time before final judgment. Whatever distinction there may be existing between civil and criminal processes, as to amendments even in matters of form, this section has abrogated in this particular class of cases. Such amendments are within the discretion of the court, and authorized by positive enactment. State v. Hall, 78 Me. 37, 2 A. 546.

Warrant under § 84 omitting direction to officer amendable.—A warrant for search and seizure under § 84, served by an officer legally authorized to serve such process, but to whom no direction has been given in the warrant, is legally amendable at any time before final judgment, under this section, the omission of such direction being only matter of form. State v. Hall, 78 Me. 37, 2 A. 546.

The common-law technicalities of pleading are very considerably abrogated under this section. State v. Gorham, 65 Me. 270; State v. Dolan, 69 Me. 573.

And the legislature does not require technical accuracy in alleging a prior conviction. State v. Wentworth, 65 Me. 234; State v. Dolan, 69 Me. 573; State v. Welch, 79 Me. 99, 8 A. 348.

It was the purpose of this section to obviate the technical objections which might otherwise be made as to the manner of al-

leging a former conviction. Dolan v. Hurley, 69 Me. 573; State v. Welch, 79 Me. 99, 8 A. 348.

Applied in State v. Robinson, 39 Me. 150; State v. Smith, 54 Me. 33.

Cited in State v. Reed, 67 Me. 127.

Sec. 77. Persons engaged in liquor traffic not to sit on jury. — No person engaged in the unlawful traffic in liquor is competent to sit as a juror in any case arising under the provisions of this chapter; and when information is communicated to the court that a member of any panel is engaged in such traffic, or that he is believed to be so engaged, the court shall inquire of the juryman of whom such belief is entertained; and no answer which he makes shall be used against him in any case arising under the provisions of this chapter; but if he answers falsely, he shall be incapable of serving on any jury; but he may decline to answer, in which case he shall be discharged by the court from all further attendance as a juryman. (R. S. c. 57, § 78.)

See c. 116, § 7, re others exempted from serving as jurors.

Sec. 78. Special duty of sheriffs, deputies and county attorneys; refusal or neglect.—Sheriffs and their deputies and county attorneys shall diligently and faithfully inquire into all violations of law within their respective counties and institute proceedings in case of violations or supposed violations of law, and particularly the law against the illegal sale of liquor, gambling houses or places and houses of ill fame; sheriffs and their deputies shall promptly enter complaints before a magistrate and execute the warrants issued thereon, or shall furnish the county attorney promptly and without delay with the names of alleged offenders and of the witnesses. Any sheriff, deputy sheriff or county attorney, who shall willfully or corruptly refuse or neglect to perform any of the duties required by this section, shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months. (R. S. c. 57, § 79.)

Cross references.—See § 8, re powers of inspectors of commission; c. 134, §§ 12-14, re houses of ill fame and prostitution.

Sheriff presumed to know law and his duties.—A sheriff is presumed to know the statute relating to the illegal sale of intoxicating liquors and his duties touching its enforcement. Moulton v. Scully, 111 Me. 428, 89 A. 944.

Purpose of penalty for nonfeasance.—The plain object of the amendment to this section which added a penalty for nonfeasance was to prevent neglect or refusal by officers to enforce the law. Moulton v. Scully, 111 Me. 428, 89 A. 944.

The words of this section creating the offense are not general, but specific, alleging one specific offense and no more. No other case could fall within its literal terms. No other charge could be brought under it. The only offense specified is a failure to act as the section commands. It is a single, continuing habitual offense; purely statutory; malum prohibitum; unknown to the common law; embraces a single charge; and neither concerns nor is concerned with any other provision of the statute. Moulton v. Scully, 111 Me. 428, 89 A. 944.

Allegations need not particularize offense.—The offense of nonfeasance, described in this section, falls within a special line of decisions which are peculiarly adapted to this class of cases, touching the manner of pleading the charge. It will be readily seen that there is a marked difference between describing misfeasance and nonfeasance; one a definite act which the law forbids; the other a failure to act, where the law commands an act. The former consists in doing something; the latter consists in doing nothing; in the former there is some act to specify; in the latter no act to specify. There is no act of any kind. There is habitual and continued omission to act; a course of conduct; a habit of willful or corrupt refusal to perform the duties required by the statute. It is readily apparent that it is impossible to particularize a continual course of nonaction. What a person does not do, can be described only in general terms, in a negative way. Moulton v. Scully, 111 Me. 428, 89 A. 944.

And allegation in words of section sufficient.—An allegation that the sheriff did willfully or corruptly refuse or neglect to perform the duties required by this section is sufficient. No allegation of anything more than these words, ex vi terminorum, is necessary to show that the sheriff committed the statutory offense. Moulton v. Scully, 111 Me. 428, 89 A. 944.

This section sets forth with precision and certainty all the elements of the offense of refusing to perform the duties required by the section, and charges in its language are sufficiently specific to sustain an indictment. Moulton v. Scully, 111 Me. 428, 89 A. 944.

Records of enforcement sufficient defense.—Enforcement is a specific, active performance of which the sheriff must have not only absolute knowledge but in most cases, record evidence. All that is necessary for him to do, when charged with nonfeasance under this section covering a definite space of time, is to bring forth his records of enforcement, from every part of the county covering the period, with all other evidence showing just what he has done, and his defense is all in. Moulton v. Scully, 111 Me. 428, 89 A. 944.

Removal of officer by address proceedings.—For a case involving the removal of a sheriff by address proceedings under Art. 9, § 5, Me. Const., for failure to perform the duties required by this section, see Moulton v. Scully, 111 Me. 428, 89 A. 944.

Quoted in part in State v Freeman, 122 Me. 294, 119 A. 668; Watts Detective Agency v. Sagadahoc, 137 Me. 233, 18 A. (2d) 308.

Stated in State v. McCann, 67 Me. 372; State v. Giles, 101 Me. 349, 64 A. 619; Norris v. McKenney, 111 Me. 33, 87 A. 689.

Sec. 79. Attorney general to take charge of investigations before grand jury under certain conditions.—The attorney general shall take charge of all investigations before the grand jury in case of refusal or neglect of any sheriff, deputy sheriff or county attorney to perform any of the duties required by the preceding section and, in case of the finding of an indictment, shall conduct all subsequent proceedings in court in behalf of the state as prosecuting attorney. In all such prosecutions the attorney general shall act in place of the county attorney, and he is invested with all the rights, powers and privileges of the county attorney for that purpose, the powers of the county attorney with respect to prosecutions under the provisions of this section being suspended. (R. S. c. 57, § 80.)

Sec. 80. Compensation of deputy sheriff.—For services under the 2 preceding sections, a deputy sheriff acting under the direction of the sheriff shall receive the same per diem compensation as is now allowed for attendance on the superior court and the same fees for travel as for the service of warrants in criminal cases, together with such necessary incidental expenses as are just and proper; bills for which shall be audited by the county commissioners and paid from the county treasury; but they shall not allow any per diem compensation to deputies for any day for which they are entitled to fees or compensation for attendance at or service in any court. The provisions of this section as to compensation of deputy sheriffs and the provisions of section 150 of chapter 89 shall not apply to the deputies of the sheriff of Cumberland county, acting under the provisions of this section. (R. S. c. 57, § 81.)

Cross references.—See c. 89, § 149, re salaries of sheriffs; c. 89, § 150, re fees of sheriffs and their deputies; c. 89, § 189, re special deputies in Cumberland County.

"Fees" and "compensation" used synonomously.—That the legislature has not clearly distinguished between "fees" and "compensation" is shown by the use of the language "but they shall not allow any per diem compensation to deputies for any day for which they are entitled to fees or compensation for attendance at or service in any court." Here the use of the expression, "fees or compensation for attendance at or service in any court," shows that the legislature not only did not distinguish between the words "fees" and "compensation" but used them as synonomous words. Norris v. McKenney, 111 Me. 33, 87 A. 689, construing the provisions of P. L. 1907, Chapter 138, which provided for the fees to be paid sheriffs and deputies but also provided that the fees paid for services under § 78 were to remain as established.

Sec. 81. Duty of county attorneys. — County attorneys shall cause promptly to be summoned before the grand jury all witnesses whose names have been furnished them by any sheriff or his deputies, as provided in section 78, and shall faithfully direct inquiries before that body into violations of law, prose-

cute persons indicted and insist upon the prompt sentence of convicts. (R. S. c. 57, § 82.)

Quoted in Watts Detective Agency v. Sagadahoc, 137 Me. 233, 18 A. (2d) 308.

Search and Seizure.

Sec. 82. Seizure and forfeiture of vehicles containing liquor.—All automobiles, trucks, wagons, boats or vessels, and vehicles of every kind, not common carriers, containing liquors intended for illegal sale shall be seized by any officers seizing the liquors transported therein, and shall be libeled as is provided for the libeling of liquors and the vessels in which they are contained, and shall be declared forfeited by the court and sold in the same manner as is provided for the sale of vessels containing liquors. (R. S. c. 57, § 83.)

This section is in aid of § 64, forbidding the transportation knowingly from place to place in the state of intoxicating liquors intended for unlawful sale within the state. State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

Exception as to common carrier must be negatived in complaint.—Where there is no allegation in the complaint that the person using the automobile for the transportation of intoxicating liquors was not a common carrier the complaint is fatally defective. The exception being in the enacting clause of the section, and not introduced as a proviso, it must be negatived in that part of the complaint which makes the automobile a subject of seizure. State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

Automobile cannot be seized for past unlawful transportation. — An automobile cannot be seized under this section because the week before it was used to unlawfully transport intoxicating liquors. State v. Chorosky, 122 Me. 283, 119 A. 662.

But it can be seized after its destination reached if liquor remains therein.—An automobile can be seized which admittedly has been engaged in the unlawful transportation of intoxicating liquors, but has reached its destination as defined in the complaint, the liquors still remaining in the car. State v. Chorosky, 122 Me. 283, 119 A. 662.

Applied in State v. Paige Touring Car, 120 Me. 496, 115 A. 275; State v. Automobile, 122 Me. 280, 119 A. 666; Parker & Parker v. W. E. Soule Co., 123 Me. 524, 124 A. 321.

Cited in Cobb v. Cumberland County Power & Light Co., 117 Me. 455, 104 A. 844; Harvey v. Roberts, 123 Me. 174, 122 A. 409.

Sec. 83. Claim of title of person other than person in possession of vehicle or boat substantiated by proof that use was without his knowledge or consent.—Any right, title or interest of any person other than the person or persons in possession or control of any such automobile, truck, wagon, boat, vessel or vehicle shall also be forfeited unless its use for the transportation of liquors as aforesaid was without his knowledge or consent. Any claimant of any right, title or interest in such automobile, truck, wagon, boat, vessel or vehicle must allege and prove that its use for the transportation of liquors was without his knowledge or consent; and the court or magistrate may determine in the proceeding on such claim the right, title or interest, if any, of such claimant. (R. S. c. 57, § 84.)

By this section, the legislature intended to protect innocent parties to the extent of their right in the vehicles. State v. Paige Touring Car, 120 Me. 496, 115 A. 275.

The interests of a guilty party in a vehicle used by him in the illegal transportation of intoxicating liquor are subject to forfeiture and sale, but the rights of an innocent claimant therein are protected provided he establishes his claim. State v. Packard Motor Car Co., 121 Me. 185, 116 A. 260.

But rights of offending party not protected.—The legislature, by throwing a shield of protection around the rights of the innocent party, did not intend that it might also be used to protect the rights of the guilty from forfeiture. While it is clear that the legislature intended to protect the rights of innocent parties, it is equally clear that the real purpose of § 82 and this section was to subject the property of the guilty to forfeiture. State v. Paige Touring Car, 120 Me. 496, 115 A. 275.

And his interest forfeited.—The interests of the offending party are forfeited whether his rights are those of a mortgagor, or a purchaser under a conditional sale, lease or note. Such as they are, they were liable to forfeiture and sale, subject to the rights of an innocent claimant provided he establishes his claim in court. State v. Paige Touring Car, 120 Me. 496, 115 A. 275.

Claimant must prove lack of knowledge and consent.—Under this section, the burden is upon the claimant to prove that the illegal use of the vehicle was without his knowledge and consent. In the absence of any evidence on that point, such use is prima facie presumed to be with his knowledge and consent. State v. Packard Motor Car Co., 121 Me. 185, 116 A. 260.

In case no claimant appears, the interest of the person unlawfully using the vehicle must be presumed to be absolute. State v. Paige Touring Car, 120 Me. 496, 115 A. 275; Parker & Parker v. W. E. Soule Co., 123 Me. 524, 124 A. 321.

Sec. 84. Warrants for search and seizure; fluids poured out to prevent seizure; notice of liquors for sale, prima facie evidence of common sellers. — If any person competent to be a witness in civil suits makes sworn complaint before any judge of a municipal court or trial justice that he believes that liquors are unlawfully kept or deposited in any place in the state by any person and that the same are intended for sale in violation of law, such magistrate shall issue his warrant directed to any officer having power to serve criminal process, commanding him to search the premises described and specially designated in such complaint and warrant, and if such liquors are there found, to seize them, with the vessels in which they are contained, and safely keep the same until final action thereon and to make immediate return of the warrant. The name of the person so keeping such liquors, if known to the complainant, shall be stated in the complaint, and the officer shall be commanded by the warrant if he finds such liquors to arrest the person so named and hold him to answer as keeping such liquors intended for unlawful sale. In all cases where an officer may seize liquors or the vessels containing them, upon a warrant, he may seize them without a warrant and keep them in some safe place for a reasonable time until he can procure such warrant. Any person who may be suspected of selling from, or keeping for illegal sale in his pockets, liquors, may be searched in the same manner and by the same process as is provided for the search of places, and if liquors are found upon his person, he may be held to answer as though they were kept and deposited by him in any place. If fluids are poured out or otherwise destroyed by the tenant, assistant or other person when premises are about to be searched, manifestly for the purpose of preventing their seizure by officers authorized to make such search and seizure, such fluids may be held to have been intended for unlawful sale, and the penalties shall be the same as if they had been seized. If the name of the person keeping such liquors is unknown to the complainant, he shall so allege in his complaint, and the magistrate shall thereupon issue his warrant as provided in the first sentence of this section. If, upon trial, the court is of opinion that the liquors were so kept and intended for unlawful sale by the person named in the complaint or by any other person with his knowledge or consent, he shall be found guilty thereof and shall be punished by a fine of not less than $100 nor more than $500, and costs, and in addition thereto, by imprisonment for not less than 2 months nor more than 6 months, and in default of payment of said fine and costs, by imprisonment for 6 months additional. Notice of any kind in any place or resort, indicating that liquors are there unlawfully kept, sold or given away shall be held to be prima facie evidence that the person or persons displaying such notice are common sellers of liquors, and that the premises so kept by them are common nuisances. (R. S. c. 57, § 85.)

I. General Consideration.

II. Complaint.

A. In General.

B. Contents.

III. Warrant.
A. In General.
B. Issuance.
C. Execution.
D. Return.
IV. Liability of Officer Acting under Warrant.
V. Seizure of Liquor Not Liable to Forfeiture.
VI. Seizure without Warrant.

Cross references.

See § 68, re common sellers; c. 149, § 1, re respondent to pay costs.

I. GENERAL CONSIDERATION.

History of section.—See State v. Intoxicating Liquors & Vessels, 101 Me. 161, 63 A. 666.

Purpose of section.—The principal purpose of this section and of the process issued under it is the seizure of whatever intoxicating liquors are found and the bringing of them before the court for determination whether they were intended for unlawful sale. Boston & Maine R. R. v. Small, 85 Me. 462, 27 A. 349.

This section does not violate any of the provisions of the constitution. Gray v. Kimball, 42 Me. 299.

The provisions of this section, authorizing the seizure of intoxicating liquors, upon warrants duly issued therefor, are not in conflict with the constitution of this state. State v. Miller, 48 Me. 576. See this note, analysis line VI, re constitutionality of provision authorizing seizure without a warrant.

Section affords complete basis for prosecution.—This section sufficiently declares that liquors are "unlawfully kept" when they are intended for sale in the state in violation of law; and if a person is found guilty of keeping such liquors for unlawful sale, he shall suffer the penalty there provided. It describes the offense and specifies the penalty. It seems to afford in itself a complete basis for a prosecution. State v. Dowdell, 98 Me. 460, 57 A. 846.

And guilt established when liquors kept for unlawful purpose are seized.—If some of the liquors mentioned in the complaint and warrant were found and seized in the place therein described, and were kept there by the defendant intended for unlawful sale, he was guilty of the charge. It makes no difference that other liquors were described in the complaint, or were seized by the officer and included in his return, so far as this proceeding is concerned, provided that some of the liquors mentioned in the complaint and warrant were found and seized, or had been previously found and seized by the officer, before obtaining the warrant, in the place described in the complaint. State v. Bradley, 96 Me. 121, 51 A. 816.

The search and seizure process should strictly follow the express requirements of this section. A failure to follow the requirements of the section renders the warrant not merely voidable, but absolutely void. State v. Intoxicating Liquors, 110 Me. 260, 85 A. 1060.

Prosecution on search and seizure process precludes prosecution under § 62.—Where a person has been prosecuted under this section on a search and seizure warrant for illegal possession of liquor, he cannot again be prosecuted on indictment for violation of § 62. The offenses remain unchanged in nature,—the unlawful possession of the same liquor, at the same place and time, being the gist in each instance. The statute defines a single crime and two methods of proceeding. One method is by an indictment or complaint seeking nothing else but the punishment of the offender; the other looks to the punishment of the wrongdoer and the confiscation of his liquor. The accused must be considered to have been once put in jeopardy, by the trial on the search and seizure process, for the same offense for which he is indicted. State v. Beaudette, 122 Me. 44, 118 A. 719.

The search and seizure statutes are aimed against a present, and not the past, possession of liquors. The person is liable, who, at the date of the complaint, has liquors, and not the person, who, before that time, has had them in his possession, with intent to sell. State v. Howley, 65 Me. 100. See State v. Dunphy, 79 Me. 104, 8 A. 344; State v. Intoxicating Liquors, 85 Me. 304, 27 A. 178.

In a proceeding under this section, an owner of liquors cannot be arrested for a past but only for a present offense. State v. Riley, 86 Me. 144, 29 A. 920.

Prosecution under this section and libel under § 85 different proceedings and result of one not dependent on other.—This section authorizes the usual process against both the person and the thing. But from this point the proceedings immediately di-

verge into two channels. The officer seizes the liquors, and libels them as forfeited under § 85. He arrests the person, and he is put on trial, under this section. The proceedings in the two matters are entirely distinct. The result in one is not affected at all by the other. The charge in the libel is different from that in the complaint. The evidence upon the trial must be different. If tried by a jury, the verdict must be different. Though the liquors are forfeited, the person may be acquitted. State v. Intoxicating Liquors, 50 Me. 506.

When an officer seizes intoxicating liquors, upon a warrant issued therefor, he is required also to arrest the person in whose custody they are alleged in the complaint to be. At this point the proceedings are divided and constitute, thenceforth, two distinct cases. The person is put on trial for having had such liquors in his possession, with intent to sell the same in this state, in violation of law. And the liquors are libelled under § 85, as intended for illegal sale, whether by one person or another, it is immaterial. The acquittal of the person does not entitle him to a restoration of the liquors; nor does a condemnation of the liquors necessarily result in a conviction of the person. The two cases are entirely separate. State v. Miller, 48 Me. 576.

And appeal from both constitutes independent cases in appellate court.—If the person arrested claims the liquors under the libel, and the magistrate decides against him upon the complaint, and also upon the libel, and he appeals from both decisions, they constitute two independent cases in the appellate court, in which different verdicts would be rendered. Upon the complaint, the jury would find the personal guilt or innocence of the appellant, upon the plea of "not guilty." Upon the libel, they would find whether the liquors were intended by any person for unlawful sale, and if not, whether the claimant had the right to the custody of any part of them. State v. Miller, 48 Me. 576.

But foundation is same for both proceedings.—By the procedure of search and seizure prosecutions under this section, two trials are to be had, one against the liquors, and the other against the person in whose possession the liquors are found. But there is but one process to start with, and that must be a legal process. The foundation for what is first a single and then a duplicate prosecution is that liquors have been legally seized. State v. Riley, 86 Me. 144, 29 A. 920. See Adams v. Allen, 99 Me. 249, 59 A. 62.

Judgment on libel not arrested for officer's failure to take keeper into custody.—Judgment will not be arrested in case of libel under this chapter because the officer did not, in accordance with the requirements of the search and seizure warrant, arrest, or give any reason for not arresting, the person in whose possession the liquors were found. Heath v. Intoxicating Liquors, 53 Me. 172.

"Place" does not include valise in possession of defendant.—The word "place" in this section cannot by any reasonable interpretation be construed as broad enough to cover the search for and seizure of liquors in a valise alleged merely to be in the possession of the defendant, but not alleged to be in any definite and fixed locality or place. State v. Fezzette, 103 Me. 467, 69 A. 1073.

Person carrying mail may be arrested under this section.—A person who is at the time engaged in carrying the United States mail is liable to arrest, by an officer duly qualified and holding a warrant for his arrest under this section. Penny v. Walker, 64 Me. 430.

But liquors sold in U. S. territory not subject to seizure.—Liquors sold in territory ceded to the United States cannot be considered sold in violation of the laws of this state, and are not subject to seizure under this section. State v. Intoxicating Liquors, 78 Me. 401, 6 A. 4.

Former statutory provisions.—Under a former provision of this section, it was held that the want of an averment in the complaint that the liquors were intended for sale in the town where they were kept and deposited was fatal. See State v. Gurney, 33 Me. 527; State v. Robinson, 33 Me. 564.

For a case holding that this section, as it formerly read, did not authorize a search of the person, see State v. Grames, 68 Me. 418.

For a case under this section when it did not authorize the seizure of the vessels containing the liquors, see Black v. McGilvery, 38 Me. 287.

For a consideration of a former provision of this section which declared that payment of a special federal tax as a liquor seller was prima facie evidence that the one paying the tax was a common seller, see State v. Intoxicating Liquors, 80 Me. 57, 12 A. 794; State v. Morin, 102 Me. 290, 66 A. 650.

For a case concerning the applicability of this section to liquor in possession of municipal agents under former statutes, see State v. Intoxicating Liquors & Vessels, 101 Me. 161, 63 A. 666.

Applied in State v. Smith, 54 Me. 33; State v. Gorham, 67 Me. 247; State v. Garland, 67 Me. 423; State v. Woods, 68 Me. 409; State v. Murdoch, 71 Me. 454; State v. Hall, 78 Me. 37, 2 A. 546; Getchell v. Page, 103 Me. 387, 69 A. 624; State v. Rigley, 105 Me. 161, 73 A. 1003; State v. Ouelette, 107 Me. 92, 77 A. 544; State v. Soucie, 109 Me. 251, 83 A. 700; State v. Intoxicating Liquors, 112 Me. 138, 91 A. 175; Wallace v. White, 115 Me. 513, 99 A. 452.

Stated in part in Preston v. Drew, 33 Me. 558.

Cited in State v. Martel, 103 Me. 63, 68 A. 454; State v. Intoxicating Liquors & Vessels, 118 Me. 198, 106 A. 711; Harvey v. Roberts, 123 Me. 174, 122 A. 409.

II. COMPLAINT.

A. In General.

Only one person is necessary to make the complaint for a warrant of search and seizure. State v. McCann, 59 Me. 383.

And complaint may be made by affirmation. — One conscientiously scrupulous of taking an oath may lawfully make a complaint by affirmation under this section. State v. Welch, 79 Me. 99, 8 A. 348.

Inasmuch as the word "oath includes an affirmation when affirmation is allowed," (c. 10, § 22, Rule XIII) a "sworn complaint," within the meaning of this section, includes one made on affirmation, when the complaint is allowed to affirm. State v. Welch, 79 Me. 99, 8 A. 348.

Complaint and warrant considered one transaction.—The warrant refers to the complaint, whereby they become one and the same instrument. The whole must be considered as one transaction. Guptill v. Richardson, 62 Me. 257.

Illegal arrest does not affect validity of complaint and warrant.—If an arrest was illegal, it can in no way affect the validity of the complaint and warrant, and it cannot be taken advantage of by a respondent charged with having intoxicating liquors in his possession for an unlawful purpose, either before or after conviction. State v. Bradley, 96 Me. 121, 51 A. 816.

Complaint and warrant for keeping liquor in place no justification for prosecution for having liquors on person.—A complaint and warrant against intoxicating liquors in a place, will not authorize a prosecution for having such liquors upon the person. If it is sought to prosecute one for unlawfully having intoxicating liquors upon his person, the complaint and warrant should be directed against that offense. State v. Therrien, 86 Me. 425, 29 A. 1117.

Where the charge of the complaint and process are for having unlawfully kept and deposited intoxicating liquors in his "shop and its appurtenances," and the proof is of unlawfully having such liquors upon his person, the variance is evident and fatal. State v. Therrien, 86 Me. 425, 29 A. 1117.

B. Contents.

Complaint should be in present tense.— In making a complaint for a warrant to search a place for liquors before the search is made, the allegations must be made in the present tense, to wit: that they "are unlawfully kept and deposited" and that they "are intended for sale within the state in violation of law." In such cases, the provisions of the section are aimed against a present and not a past possession of liquors. State v. Dunphy, 79 Me. 104, 8 A. 344. See this note, analysis line VI, re complaint after seizure without warrant to be in past tense.

The search, seizure and confiscation provisions of this section are aimed at the present conditions of the liquors and the present intent of the keeper and not of the past. A complaint under the section which, after describing the place to be searched, alleges that the liquors therein kept were intended to be sold in this state in violation of law on a date prior to the date of the complaint would be bad. State v. Intoxicating Liquors, 85 Me. 304, 27 A. 178.

But the want of an averment of the day when the alleged offense was committed in a complaint under this section is fatal. State v. Dondis, 111 Me. 17, 87 A. 478.

In proceedings under this section, the statements made in the complaint as to matters of belief are not issuable facts. The inquiry is not whether the complainant was right in testifying to the facts which led to the search and upon the search to the finding and seizure of the liquors. The question to be tried is whether the liquors so found are liable to forfeiture and the person keeping them to the penalty established by the section. State v. Plunkett, 64 Me. 534.

And complaint need not aver probable cause for complainant's belief.—It is not necessary that the complaint under this section contain an averment that the complainant "has probable cause to believe" that the defendant keeps liquors with the intent to sell them in violation of law. It is enough for the complainant to state that he does in fact believe that intoxicating liquors are thus kept by the defendant. It is not necessary for him to

add that his belief is a reasonable one. State v. Nowlan, 64 Me. 531.

The complaint need not allege that the complainant "has probable cause to suspect, and does suspect," as it is sufficient to follow the language of this section. State v. Bennett, 95 Me. 197, 49 A. 867.

Under this section, an affidavit for search and seizure made merely upon the belief of the affiant is sufficient, and a warrant for search and seizure issued thereon is valid. State v. Mallett, 123 Me. 220, 122 A. 570.

And guilt not changed though some allegations not well founded.—The guilt of the respondent is not converted into innocence, though the belief of the complainant as to some of the allegations in the complaint were not well founded, or the officer, in its service, exceeded his authority. State v. Plunkett, 64 Me. 534; State v. Schoppe, 113 Me. 10, 92 A. 867.

Complaint must name person keeping liquors or allege that person unknown.—Where the requirements of this section that the name of the person keeping the liquors if known to the complainant shall be stated in such complaint, and if not known to him that he shall so allege in his complaint, were not complied with the seizure was illegal and void. State v. Intoxicating Liquors, 110 Me. 260, 85 A. 1060.

And the statement of a fictitious name is not the equivalent of an allegation that the real name of the keeper of the liquors is unknown. State v. Intoxicating Liquors, 110 Me. 260, 85 A. 1060.

But such statement harmless if person described.—When a precept contains a sufficient description of the real person against whom it is issued, the fact that he is also referred to therein by a fictitious name, or that his name is stated to be unknown, is harmless. State v. Intoxicating Liquors, 110 Me. 260, 85 A. 1060.

Complaint need not allege by whom liquors intended for sale to authorize forfeiture.—In a complaint that intoxicating liquors are kept at a certain place intended for sale contrary to law, it is sufficient to authorize the forfeiture of the liquors, if it is shown that they are there kept with such intent, although it is not alleged or proved by whom they are so intended for sale. State v. Learned, 47 Me. 426.

It is not required that the complaint under this section state by whom the intended sale is to be made, but only that the liquors are kept and deposited in some place in this state by some person or persons and that they are intended for sale within the state in violation of law. State v. Kaler, 56 Me. 88.

But must allege intent of keeper to authorize his conviction. — The person charged as keeping liquors in a complaint under this section cannot be convicted, unless it is alleged and proved that they were by him unlawfully deposited or intended for sale in violation of law. State v. Learned, 47 Me. 426.

Where it is alleged in the complaint that the liquors were in the possession of the defendants, and were intended for unlawful sale, but it is not alleged that the liquors were intended by them for sale in violation of law, the complaint charges nothing against the defendants except the possession of the liquors. The allegations may all be true, therefore, and the defendants be entirely innocent. State v. Miller, 48 Me. 576.

Variance between allegation and proof as to person by whom defendant intends sale to be made is immaterial.—It is sufficient, in cases of this sort, if there is an allegation and proof against the defendant of a keeping of intoxicating liquors, with an intention that the same shall be sold within this state in violation of law; and a variance between the allegation and the proof, as to the particular person by whom the defendant intends the sale shall be made, is an immaterial variance. State v. Kaler, 56 Me. 88.

An averment that the respondent had the liquors, intending them for illegal sale, charges an offense under this section. State v. Longley, 79 Me. 52, 7 A. 902. See notes to §§ 62, 64, 82, re sufficiency of complaints to charge offenses under those sections.

Place where liquors kept must be sufficiently described.—A complaint cannot be sustained as a charge of unlawfully having in possession intoxicating liquors if the place where the liquors are alleged to have been kept is insufficiently described. State v. Chorosky, 122 Me. 283, 119 A. 662.

But description not subject to technical rules applicable to criminal pleading.—The description of the place to be searched is merely preliminary, and does not constitute a description of the offense alleged to have been committed, nor does it describe the elements of which the offense is composed, and hence does not fall within those strict technical rules which apply to criminal pleading. State v. Bartlett, 47 Me. 388.

And if complaint and warrant together designate place to be searched this is sufficient.—The complaint and warrant must be construed together and, if the descrip-

tive words are perfectly clear and designate the place to be searched, that is all the law requires. State v. Comolli, 101 Me. 47, 63 A. 326.

The complaint and warrant must be construed together and, if the descriptive words are sufficiently clear to designate the place to be searched, independent of repugnant words, the latter will be rejected. State v. Bartlett, 47 Me. 388.

Laying of venue no part of designation.—This section requires that the complaint contain a special designation of the place to be searched. But the laying of venue is no part of such designation, and the fact that it names another place in the same county is immaterial. It is well settled that in a mere statement of venue one place may be alleged and another proved, provided that both are within the jurisdiction of the court. State v. Sobel, 124 Me. 35, 125 A. 258.

Description held sufficient.—See State v. Bartlett, 47 Me. 388; Flaherty v. Longley, 62 Me. 420; State v. Knowlton, 70 Me. 200; State v. Bennett, 95 Me. 197, 49 A. 867; State v. Sheehan, 111 Me. 503, 90 A. 120; State v. Pio, 111 Me. 506, 90 A. 120.

Description held not sufficient.—See State v. Robinson, 33 Me. 564.

III. WARRANT.

A. In General.

The warrant authorizes a seizure in the place only in which it commanded the search be made. Flaherty v. Longley, 62 Me. 420. See this note, analysis line II A, re complaint and warrant for keeping liquor in place no justification for prosecution for having liquor on person.

And where liquor is not seized in the place described and specially designated in the complaint and warrant, the seizure is illegal. Flaherty v. Longley, 62 Me. 420.

A warrant merely to search the premises of a person would not authorize the search of a dwelling house. State v. Comolli, 101 Me. 47, 63 A. 326. See § 87 and note, re warrant for search of dwelling house.

But designation of dwelling house sufficient to authorize search of outbuilding.—The designation in the warrant of a certain dwelling house and appurtenances occupied by the respondent, is sufficient to authorize the officer to search an outbuilding on the same lot with the house, and near to it, but separate from it by an open space or passage way, when such outbuilding is occupied by the respondent mainly as a wood shed for the use of the house. And the respondent may be convicted of keeping the liquors seized in such outbuilding with intent to sell the same in violation of law. State v. Burke, 66 Me. 127.

Complaint and warrant considered one transaction.—See this note, analysis lines II A, II B.

Warrant amendable to show direction to officer serving it.—See note to § 76.

Illegal arrest does not affect validity of complaint and warrant.—See this note, analysis line II A.

Warrant to command arrest.—When the name of the person keeping the liquors is stated in the complaint, the officer shall be commanded by the warrant to arrest him. State v. Dunphy, 79 Me. 104, 8 A. 344.

And failure renders warrant illegal.—This section declares that "the officer shall be commanded by the warrant if he finds such liquors to arrest the person so named" etc. A warrant which does not contain such a command is clearly illegal. State v. Leach, 38 Me. 432.

Even if accused had actual notice of proceedings.—The command to arrest is intended for the protection of the rights of the individual as well as of those of society. Arrest is actual notice of the proceedings. A warrant which contains no such command is void, and the fact that the accused may have had actual notice of the proceedings does not cure the omission in the warrant. Adams v. Allen, 99 Me. 249, 59 A. 62.

Sufficiency of such command.—It is not essential that the warrant should contain a command to the officer to arrest the respondent, if he shall have reason to believe said respondent has concealed said liquors about his person; provided the officer is therein commanded to arrest the respondent, if he shall find said liquors, and he does find the liquors. State v. Burke, 66 Me. 127.

Warrant after seizure without one.—See this note, analysis line VI.

B. Issuance.

Issuance of warrant is mandatory.—This section declares that, "if any person, competent to be a witness in civil suits, makes sworn complaints before any judge of a municipal, or police court, or trial justice, * * * such magistrate shall issue his warrant." This was undoubtedly intended to be a mandatory provision requiring the magistrate to issue a warrant whenever a sworn complaint should be made reciting the prescribed state of facts, without any judicial inquiry or the exercise of any discretion on his part. He is only to satisfy himself that

the complaint is, "competent to be a witness in a civil suit." State v. LeClair, 86 Me. 522, 30 A. 7.

Provided complaint made by competent person.—Under this section, it is mandatory that the warrant be issued upon sworn complaint based upon the belief of the affiant, provided he is a person competent to be a witness in civil suits. State v. Mallett, 123 Me. 220, 122 A. 570.

And issuance not of judicial character.—The mere power to receive complaints and issue warrants, without any right or authority to hear or try the parties cannot be considered an exercise of jurisdiction on the part of a magistrate. It partakes more of a ministerial than a judicial character. State v. LeClair, 86 Me. 522, 30 A. 7.

Under this section, in the matter of issuing the warrant, there is nothing judicial to be done by the magistrate, nothing left to his judgment or discretion. The section is mandatory, and the act of the magistrate ministerial. State v. Conwell, 96 Me. 172, 51 A. 873.

Clerk of municipal court may issue warrant if authorized by statute.—See State v. LeClair, 86 Me. 522, 30 A. 7.

Warrant should be promptly issued.—Nothing in the complaint or warrant, or in the law concerning them, indicates that, after complaint is made, the warrant is to be held by the magistrate or officer as a weapon to be used at his discretion. The very nature of the search warrant indicates that when complaint is made, the warrant should be promptly issued. The purpose is to seize the thing, alleged to be at that time in the place to be searched, to prevent its removal or further concealment. State v. Guthrie, 90 Me. 448, 38 A. 368.

C. Execution.

Warrant should be executed immediately.—The legislature has recognized the necessity of immediate execution of the warrant in liquor prosecutions, and has commanded it. The officer is expressly directed by the warrant and the statute to make immediate return of said warrant. In view of the nature and history of this peculiar process, this language of the legislature fairly indicates the intention that the warrant should be executed immediately and forthwith, and not in the unlimited discretion of the officer. State v. Guthrie, 90 Me. 448, 38 A. 368.

But the officer is not held to more than reasonable promptness. The time he may take, the reasonable time, necessarily varies with the circumstances. The hour in the day of making the complaint, the distance of the place to be searched, the state of the weather, the condition of the roads, the lack of facilities for travel, the obstructions met and other circumstances may make a long delayed service practically immediate and forthwith, and hence within a reasonable time. State v. Guthrie, 90 Me. 448, 38 A. 368.

A search warrant for intoxicating liquors must be served within a reasonable time after issuance or be abandoned. State v. Guthrie, 90 Me. 448, 38 A. 368.

And what is reasonable time is question of law.—What is a reasonable time within which the service of such a warrant can lawfully be made is a question of law for the court. State v. Guthrie, 90 Me. 448, 38 A. 368.

Unexplained delay of 3 days held unreasonable.—An unexplained delay of three days in serving a warrant under this section seems clearly needless, unreasonable and hence unlawful, and destructive of the power of the warrant. State v. Guthrie, 90 Me. 448, 38 A. 368.

Warrant may be served at night without special direction.—There is no requirement in this section that the magistrate who issues a warrant to search for liquors in the nighttime, shall insert therein an express direction for that purpose; and in the absence of any statute prohibiting it, no reason is apparent why any process, civil or criminal, may not be legally served in the nighttime as well as in the daytime, or why a general direction in a warrant to serve it, without any limitation as to the hour of the day when it shall be served, may not properly be considered authority to serve it in the nighttime as well as in the daytime. State v. Bennett, 95 Me. 197, 49 A. 867.

A general direction to enter and search for the liquors without any restriction as to time, is sufficient authority to make the search in the nighttime as well as in the daytime. State v. Bennett, 95 Me. 197, 49 A. 867.

D. Return.

Warrant may be returned to magistrate other than one issuing it.—Section 97 provides the form (No. 6) for warrants in cases of seizure, and that form commands the officer to bring the defendant "before me the subscriber or some other trial justice within and for said county," so that although this section might seem to require such warrant to be returnable before the magistrate who issued it only, such is not its real meaning. State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403.

Return admissible in evidence.—The offi-

cer's return upon search and seizure process is admitted in evidence. There could be no conviction in such a proceeding without the return. It is a part of the proceeding, without which an arraignment cannot be made. State v. Lang, 63 Me. 215.

But fact that liquors found in place searched not proved by return.—The right of the officer to arrest the owner or keeper depends upon the fact that the liquors described in the complaint are found in his possession in the place to be searched; but that fact is to be proved before the magistrate by competent evidence, under oath, and not by the return of the officer. State v. Stevens, 47 Me. 357.

Return not required for article taken as evidence under § 90.—See note to § 90.

IV. LIABILITY OF OFFICER ACTING UNDER WARRANT.

A warrant issued under this section is a justification to the officer making the seizure. Wall v. Farnham, 46 Me. 525.

If issued by competent authority.—A warrant cannot be a justification to the officer unless issued by a court or magistrate of competent jurisdiction, which must appear upon the face of the process. Guptill v. Richardson, 62 Me. 257.

And officer's authority not dependent on result of search.—The result of a search under a search warrant, in liquor cases at least, is not the test of the authority to make the search under the warrant. The validity of the warrant and the authority of the officer under it, to enter upon the prescribed premises does not depend upon what he finds after entry. The prior authority, or want of authority, in an officer to begin the execution of a search warrant is fixed when he begins. State v. Guthrie, 90 Me. 448, 38 A. 368.

But failure to obey command to seize renders officer trespasser.—The intentional omission by the officer "to seize and safely keep," &c., the intoxicating liquors found on the premises in the process of his search invalidates his authority under the warrant and leaves him a trespasser. Boston & Maine R. R. v. Small, 85 Me. 462, 27 A. 349. See this note, analysis line VI, re failure to procure warrant after seizure renders officer trespasser.

And liable for injury done.—If an officer serving a search warrant under this section omits to seize the intoxicating liquors he finds upon the premises prescribed in his warrant, he forfeits the protection of his warrant, and is liable for any injury done by him to person or property while undertaking to execute such warrant. Boston & Maine R. R. v. Small, 85 Me. 462, 27 A. 349.

V. SEIZURE OF LIQUOR NOT LIABLE TO FORFEITURE.

Liquor not liable to forfeiture may be seized.—Liquors not intended for sale and not liable to forfeiture may be seized by virtue of a warrant under this section, when found in the same building or place in which those intended for unlawful sale are deposited. State v. Robinson, 33 Me. 564.

Although liquor might not have been intended for unlawful sale, the officer might lawfully seize it under a proper warrant. Flaherty v. Longley, 62 Me. 420.

Warrant gives officer no discretion to determine what liquor to seize.—The command in a warrant under this section to seize the liquors is plain. The officer's duty is plain. He is given no discretion; no power to determine what intoxicating liquors he will, or will not seize. Boston & Maine R. R. v. Small, 85 Me. 462, 27 A. 349.

And that the liquor found was not liable to forfeiture would not excuse the officer for disobedience to his precept. Whether it was or was not thus liable, must depend upon the testimony introduced in the subsequent judicial investigation and the judgment of the court thereon, and is not a matter upon which the officer would have any authority to adjudicate. Guptill v. Richardson, 62 Me. 257.

Notwithstanding officer's good faith.—The good faith of the officer and his strong belief that the intoxicating liquor he found was not intended for unlawful sale, is no excuse for his not seizing the liquor and does not mitigate the penalty. That the liquor was not liable for forfeiture would not excuse the officer for disobedience to his precept. Boston & Maine R. R. v. Small, 85 Me. 462, 27 A. 349.

Deterioration in value of liquors so seized borne by owner.—Intoxicating liquors may be lawfully kept and owned. While so kept they may be seized by an officer under the provisions of this section. Any deterioration in value while lawfully kept by the officer must be borne by the owner, although he is guilty of no violation of law. Weston v. Carr, 71 Me. 356.

VI. SEIZURE WITHOUT WARRANT.

Section authorizes seizure without warrant.—By this section an officer may seize liquors without a warrant; but in such case he must "keep" them till a warrant can be obtained; so that, when a warrant is procured, the officer can take the liquors

thereupon. The warrant is usable nunc pro tunc. State v. Howley, 65 Me. 100.

Purpose of such authorization.—Experience suggested the necessity of the provision that authorizes an officer, whenever he can seize the property with a warrant, to do it without one and hold it in some safe place, "for a reasonable time, until he can procure such warrant," for not infrequently liquors liable to seizure and seen by an officer who does not then have a warrant, are not readily found after a complaint and warrant have been made and obtained. Hence, to meet this emergency, this provision was enacted to allow an officer, as in analogous cases, by virtue of his official capacity, to act at once, by taking the liquors into his possession and keeping them until he can procure a warrant for their seizure, provided he obtains one within a "reasonable time." State v. Dunphy, 79 Me. 104, 8 A. 344.

Provision so authorizing construed strictly.—The power given by this section to an officer to seize property at pleasure, without a warrant, is an extraordinary one, and can only be justified on the ground that the public good and the prevention of crime require it. The section should be construed strictly. Weston v. Carr, 71 Me. 356; Adams v. Allen, 99 Me. 249, 59 A. 62.

And does not violate constitutional guaranty against unreasonable searches.—The provision of this section authorizing seizure without a warrant, does not violate any constitutional guaranty against unreasonable searches. State v. Mallett, 123 Me. 220, 122 A. 570.

As no new or additional right to search is granted.—By the provision of this section authorizing a seizure without a warrant, no new or additional authority is given to search. It is only to seize. It is to seize what the officer may be enabled to seize, without the unreasonable searches prohibited by the constitution. The act, to this extent, is constitutional. State v. McCann, 59 Me. 383; State v. LeClair, 86 Me. 522, 30 A. 7; State v. Bradley, 96 Me. 121, 51 A. 816; State v. Schoppe, 113 Me. 10, 92 A. 867.

This section authorizes an officer to "seize" intoxicating liquors illegally kept, without a warrant, but not to "search" without such precept. Caffinni v. Hermann, 112 Me. 282, 91 A. 1009.

Officer held to strict compliance with requirements of law.—The officer who resorts to such drastic measures as the seizure of property without a warrant should be held to a strict compliance with all the requirements of the law authorizing such proceedings. Adams v. Allen, 99 Me. 249, 59 A. 62.

Requirement that officer procure warrant is mandatory.—The requirement of this section that the officer shall procure a warrant within a reasonable time, where he has made a seizure without one, is mandatory. State v. Riley, 86 Me. 144, 29 A. 920.

And warrant necessary for further action after seizure.—After the officer has taken possession of the liquors and their vessels and put them in a safe place, he can do nothing more with them until he procures a warrant, on which the officer might have searched for and seized the liquors in the place where he found them. State v. Dunphy, 79 Me. 104, 8 A. 344.

Such warrant used nunc pro tunc.—By this section, an officer may seize liquors without a warrant; but in such a case he must keep them until a warrant can be obtained, so that, when a warrant is procured, the officer can take the liquors thereupon. The warrant is used nunc pro tunc. The officer's return, therefore, is correct, that he seized the liquors mentioned in the complaint "by virtue of the warrant." State v. Dunphy, 79 Me. 104, 8 A. 344.

Officer to use due diligence in procuring warrant—Delay should not exceed 24 hours absent reason therefor.—The words of the section imply that the officer cannot keep the liquors longer than is necessary, in the use of due diligence, for the procurement of a warrant. The language is, "for a reasonable time until he can procure such warrant." Here "reasonable time" is defined and limited by what follows, and the officer must use due diligence, if he would protect himself in the discharge of his duty. What is a reasonable time to enable the officer to procure a warrant must be determined by the facts of the case; but when no sufficient reason is given for longer delay, it should not exceed twenty-four hours from the time of seizure. Weston v. Carr, 71 Me. 356. See State v. Dunphy, 79 Me. 104, 8 A. 344; Woods v. Perkins, 119 Me. 257, 110 A. 633.

Waiting eight days after a seizure is made before process is obtained whereby to justify the seizure is unreasonable. State v. Riley, 86 Me. 144, 29 A. 920.

And unreasonable delay renders officer trespasser.—An officer who has seized liquors without a warrant, and delays for more than twenty-four hours to procure a warrant therefor, without reasonable excuse for the delay, is liable as a trespasser to the owner of the liquors for their value. State v. Riley, 86 Me. 144, 29 A. 920. See

this note, analysis line IV, re failure to seize under warrant renders officer trespasser.

Where an officer seizes property without a warrant, if he fails to obtain a legal warrant within a reasonable time after the seizure of the property, he becomes a trespasser ab initio. Adams v. Allen, 99 Me. 249, 59 A. 62.

And precludes conviction of owner of liquors.—An owner of liquors which were seized from him by an officer without a warrant, and kept eight days before a warrant was obtained, without any justification for the delay, cannot be held in criminal proceedings instituted against him personally for having such liquors in his possession for illegal sale. The officer became a trespasser by the delay and the seizure was void. State v. Riley, 86 Me. 144, 29 A. 920.

How warrant obtained. — This section provides that "in all cases where an officer may seize intoxicating liquors, or the vessels containing them, upon a warrant, he may seize the same without a warrant, and keep them in some safe place for a reasonable time until he can procure such warrant." This is sometimes called a "seizure" warrant, in distinction from a "search and seizure" warrant. In order to obtain such a warrant, it is necessary for the officer, after seizing the liquors without a warrant, to make complaint setting out that he has already seized and is holding the liquors, and also in apt terms that he was, when he seized the liquors, an officer authorized by law to seize, upon a warrant, liquors intended for unlawful sale. Such an officer only can obtain a "seizure" warrant, and his authority must be alleged. State v. Holland, 104 Me. 391, 71 A. 1095.

Complaint after seizure should be in past tense.—A complaint by an officer after seizure should not allege that the liquors are still kept and deposited when they have been previously seized and are in the custody of the officer and not in that of the defendant. State v. McCann, 59 Me. 383. See this note, analysis line II B, re complaint before seizure to be in present tense.

When an officer has taken liquor into his possession for safekeeping without a warrant and then proceeds to make the necessary complaint to procure a warrant, the allegations must be changed to the past tense—that they were unlawfully kept and deposited in the place when and where the officer found them when he took them and that they were then and there intended for sale within this state in violation of law. After being taken by the officer even for safekeeping only, it can no longer be consistently alleged that they still "are kept" and "are intended for unlawful sale." State v. Dunphy, 79 Me. 104, 8 A. 344.

Warrant held served within reasonable time after seizure without warrant.—See State v. Nadeau, 97 Me. 275, 54 A. 725.

Sec. 85. Duty of officer on seizure; proceedings.—When liquors and vessels are seized as provided in the preceding section, the officer who made such seizure shall immediately file with the court or magistrate before whom the warrant is returnable, a libel against such liquors and vessels, setting forth their seizure by him, describing the liquors and their place of seizure, and that they were deposited, kept and intended for sale in violation of law, and shall pray for a decree of forfeiture thereof. Such court or magistrate shall thereupon fix a time for the hearing on such libel and shall issue his monition and notice thereof to all persons interested, citing them to appear at the time and place appointed and show cause why such liquors and the vessels in which they are contained should not be declared forfeited, by causing a true and attested copy of the libel and monition to be posted in 2 public and conspicuous places in the town or place where such liquors were seized 10 days at least before the day to which the libel is returnable. (R. S. c. 57, § 86.)

Purpose of section.—The liquors seized under § 84 may be owned by other parties, who are ignorant of any charge having been made against them. To the end, therefore, that all parties interested may have knowledge of the proceedings against such liquors and an opportunity to defend their rights, this section requires that the officer seizing such liquors, shall, immediately after seizure, libel the same, and that the magistrate, before whom the warrant is returnable, shall thereon issue his monition and notice of the libel, therein giving notice to all parties interested, of the charges against the liquors, and of the time and place appointed for the trial of the question whether said liquors were intended for unlawful sale or otherwise. State v. Bartlett, 47 Me. 396.

The same officer who takes the intoxicating liquor is required immediately to file his libel. Guptill v. Richardson, 62 Me. 257.

No provision is made by this section for a libel as an original proceeding. The liquors must first be seized. State v. Intoxicating Liquors, 50 Me. 506.

Libel distinct proceeding.—Libels under this section, of liquors and vessels seized on search warrants under § 84, although resulting from search and seizure process, are separate and distinct proceedings to determine whether the liquors are forfeit as intended for unlawful sale in this state. State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403. See note to § 84.

Libel filed with magistrate before whom warrant returnable.—Libels under this section must be filed with the magistrate before whom the search warrant upon which the liquors were seized is returnable. State v Intoxicating Liquors, 80 Me. 91, 13 A. 403.

And libel filed with clerk held void.—A libel, which, instead of being filed with the court or magistrate before whom the warrant was returnable, was filed with the clerk, with nothing whatever to show his authority for receiving it, except the allegation "the judge being occupied in court," is insufficient and void. Guptill v. Richardson, 62 Me. 257.

An averment that the search and seizure warrant was issued by the magistrate with whom the libel was filed is sufficient. The law required it to be returnable before himself as well as all other trial justices in the county (see note to § 84), so that the averment as to who issued the warrant is equivalent to an averment that it was returnable before himself, and shows a case within the jurisdiction of the magistrate. State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403.

This section requires public notice to be given of the time and place, when and where any person claiming the liquors may appear and show cause why the same should not be decreed forfeit. State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403.

Libel and notice should notify interested persons of identity of liquors and circumstances of seizure.—The libel, monition and notice are required to give notice to all parties interested that the liquors have been seized under a charge that they were intended for sale in violation of law. This libel and notice should be so specific in its description of the process on which the seizure was made, of the liquors seized, of the charge against them, and of the time and place of seizure, that a person interested may thereby be notified with reasonable certainty of their identity, and the circumstances under which they are held. If the libel and notice should not be sufficient for these purposes, and the liquors should be decreed forfeited, because no claimant appeared, it might admit of a doubt whether the owner would be bound by such a decree. State v. Bartlett, 47 Me. 396.

Defective notice waived by general appearance.—Where a claimant appears under § 86 and duly files his claim, and thereupon is admitted to defend, and is heard upon the libel and the claim, which hearing involves all questions as to the legality of the original seizure, he then has availed himself of all the rights and privileges which the law contemplates. He may not be obliged to come in on an insufficient notice. But the notice being designed for his benefit, he may waive any defects therein, if he chooses so to do. By appearing generally, and filing his claim, he thereby elects to waive defects in the notice. State v. Bartlett, 47 Me. 396.

Officer making seizure not responsible for failure of magistrate to give proper notice.—The duty of the officer seizing the liquors, except to keep them until the final decree, ceases upon the filing of the libel. It then becomes the duty of the magistrate to give the proper notice "by causing a true and attested copy of said libel and monition to be posted in two public and conspicuous places," etc. If there is a failure in this respect, the seizing officer is not in any way responsible therefor. Guptill v. Richardson, 62 Me. 257.

Applied in State v. Smith, 54 Me. 33.

Quoted in part in State v. Robinson, 33 Me. 564.

Stated in part in State v. Learned, 47 Me. 426; State v. Miller, 48 Me. 576; State v. Intoxicating Liquors, 61 Me. 520.

Cited in King v. Hayes, 80 Me. 206, 13 A. 882; State v. Chorosky, 122 Me. 283, 119 A. 662; Harvey v. Roberts, 123 Me. 174, 122 A. 409.

Sec. 86. Forfeiture in case no claimant appears; proceedings when claimant appears.—If no claimant appears, such court or magistrate shall, on proof of notice as aforesaid, declare the same forfeited to the county in which they were seized. If any person appears and claims such liquors or any part thereof, as having a right to the possession thereof at the time when they were seized, he shall file with the court or magistrate his claim in writing, stating specifically the right so claimed and the foundation thereof, the items claimed,

the time and place of the seizure and the name of the officer by whom they were seized, and in it he shall declare that they were not kept or deposited for unlawful sale as alleged in the libel and monition, and shall also state his business and place of residence and shall sign and make oath thereto before such court or magistrate. If any person so makes claim, he shall be admitted as a party to the process; and the court or magistrate shall proceed to determine the truth of the allegations in the libel and claim, and may hear any pertinent evidence offered by the libellant or claimant. If the court or magistrate is, upon the hearing, satisfied that such liquors were not kept or deposited for unlawful sale, and that the claimant is entitled to the custody of the whole or any part thereof, he shall give him an order in writing, directed to the officer having them in custody, commanding him to deliver to the claimant the liquors to which he is so found to be entitled within 48 hours after demand. If the court or magistrate finds the claimant entitled to no part of such liquors, he shall render judgment against him for the libellant for costs, to be taxed as in civil cases before such court or magistrate, shall issue execution thereon and shall declare such liquors forfeited to the county where seized. The claimant may appeal and shall recognize with sureties as on appeals in civil cases. (R. S. c. 57, § 87.)

The statute contemplates that liquors may be found in the custody of one person, but may be owned and intended to be used for lawful or unlawful purposes by other persons. It therefore provides for the punishment of persons who keep or have in their possession liquors with intent to sell the same unlawfully. It also provides by this section that the owner of the suspected liquors, or those entitled to their possession, may come in and defend them against the charge of being intended for sale in violation of law. These two proceedings, though originating in the same preliminary charge, are, in the end, entirely distinct; one terminating in a judgment in which the status of the liquors is determined; the other, in a judgment, in which the guilt or innocence of the party having such liquors in custody is determined. State v. Bartlett, 47 Me. 396. See notes to §§ 84, 85.

Liquors subject to foreiture only when intended for unlawful sale at time of seizure.—Forfeiture follows only when liquors have been seized upon a warrant issued on a complaint such as is described in § 84. It necessarily follows, then, that intoxicating liquors are subject to forfeiture only when intended, at the time of seizure, for sale "in violation of law." State v. Intoxicating Liquors & Vessels, 101 Me. 161, 63 A. 666. See note to § 84.

When the liquors seized are libelled and claimed by a claimant, the issue made up by the pleadings under this section is whether the claimant owns them and had no intent to sell them in violation of law when the complaint was made. State v. Intoxicating Liquors, 85 Me. 304, 27 A. 178.

Liquors intended for unlawful sale by person in wrongful possession not forfeited.—If one not the owner obtains possesssion of liquors wrongfully, his intent to sell them unlawfully will not render them liable to forfeiture, if such owner is innocent, and claims them, in case of seizure. The unlawful intent must be that of the owner, or of his clerk, servant, or agent, or of someone having possession by his consent. State v. Intoxicating Liquors, 50 Me. 506.

Though the proceeding against the liquors is in rem, it is of a criminal nature. The gravamen of the charge is, that they were intended for unlawful sale. The libel is but a continuation of proceedings. And the statute (§ 73) itself provides that appeals "shall be entered as all other appeals in criminal cases." State v. Robinson, 49 Me. 285.

And rules applicable to criminal cases apply.—The proceedings upon the libel and claim are of a criminal nature, and the rules applicable to criminal cases apply. State v. Intoxicating Liquors, 80 Me. 91, 13 A. 403.

And process being a criminal one, the party prosecuting is the state. The libel is really in behalf of the state. Any person claiming the liquors must make a written statement of the foundation of his claim, denying the allegations in the libel. The issue is between him and the state. State v. Robinson, 49 Me. 285.

County acquires no greater right than person unlawfully using or consenting thereto.—In case of forfeiture of property under this section, or any interest therein, the county to which it is forfeited acquires no greater rights by forfeiture than the person or persons unlawfully using the property or consenting to its unlawful use

had at the time of the seizure, and may, after title is acquired by forfeiture, be divested of any interest it so obtains in the same manner as the person whose interests it thereby acquires. State v. Automobile, 122 Me. 280, 119 A. 666.

If the person arrested becomes the claimant under the libel, the matter is entirely distinct from the hearing upon the complaint. The hearing may be at the same time, for convenience; but there must be a separate decree and judgment in each. And either one may be appealed without the other. State v. Miller, 48 Me. 576. See note to § 84.

The forfeiture may be prosecuted to final judgment, although the person charged may be acquitted. The ground of forfeiture of the liquors is that they are intended for unlawful sale in this state, by some person named or not named, known or unknown. If there is sufficient evidence that the liquors are intended for unlawful sale in the state, it is not necessary to prove by whom, or by what individual the sale is intended. State v. Learned, 47 Me. 426. See note to § 84.

Right to make claim not limited to person named in complaint.—The right to claim, or to contest on the question of forfeiture of the liquors, is not confined to the person named in the complaint. This right may be claimed by any and all persons who duly become parties. State v. Learned, 47 Me. 426.

A stranger to the original process may claim the liquors under the libel. State v. Miller, 48 Me. 576.

Filing the claim under this section does not prove the right. It merely entitles the claimant to be heard. State v. Intoxicating Liquors, 112 Me. 138, 91 A. 175.

In order to secure an order for the return of the liquors under this section, two things must be found to be true: that the liquors were not kept or deposited for unlawful sale, and that the claimant is entitled to their custody. State v. Intoxicating Liquors, 112 Me. 138, 91 A. 175.

By this section the claimant must have a right to the possession of the liquors at the time when seized. State v. Intoxicating Liquors, 73 Me. 278.

And right remains same as at time of seizure.—As against the state, the right of a claimant must be held to remain the same as at the time of the seizure. State v. Automobile, 122 Me. 280, 119 A. 666.

Claim not allowed unless claimant entitled to custody.—When liquors that have been seized and libelled are claimed by any person, his claim cannot be allowed unless it appears that he is entitled to the custody thereof. This cannot appear, unless he is the owner, or an agent of the owner. As a mere stranger he can have no right of custody. State v. Intoxicating Liquors, 50 Me. 506.

It is only a person who is found to be "entitled to the custody of any part" of the seized goods who can be regarded a lawful claimant under this section. If a claim is sustained, it must be on the ground that he is either the owner or has a right to the possession of the property, which shall thereupon be taken from the custody of the officer and delivered to him. Such delivery could not be made to a stranger. State v. Intoxicating Liquors, 110 Me. 178, 85 A. 499, wherein the claim was based on the claimant's right of stoppage in transitu and it was held that, under the facts of the case, such right did not exist.

A claimant under this section may be the owner, or the agent or representative of the owner, or one having a special property in the goods which gives a legal right to their custody as against one having no right. State v. Intoxicating Liquors, 119 Me. 1, 109 A. 257.

And carrier has sufficient right to enter claim.—A common carrier has a special title which gives a legal right to the custody of the liquors, before delivery to the consignee, as against one having no right, and such title is sufficient to give the carrier the right to claim the liquor under this section. State v. Intoxicating Liquors, 83 Me. 158, 21 A. 840. See State v. Intoxicating Liquors, 119 Me. 1, 109 A. 257.

As does buyer of liquor shipped C. O. D.—See State v. Intoxicating Liquors, 73 Me. 278.

A claimant under this section is limited to such right as he has set forth in his claim. Where he asserts no title but as owner, if he is not the owner, he has no right whatever to the liquors seized, or to any portion of the same, or to the possession. State v. Intoxicating Liquors, 61 Me. 520.

But this section does not require a statement of the place where, the person of whom or the time when the purchase was made, by which the claimant acquired his title. The fact of ownership, with the further statement that the goods "were not so kept and deposited for unlawful sale as alleged in the libel," etc., is a specific statement of his right to the possession of the goods seized. State v. Intoxicating Liquors, 69 Me. 524.

Legal seizure is essential to jurisdiction.—A legal seizure is essential to jurisdiction of a proceeding in rem by libel for the forfeiture of intoxicating liquors, containing vessels, and, under § 82, of vehicles. State v. Ford Touring Car, 117 Me. 232, 103 A. 364.

And if there was no legal seizure of the property, there can be no judgment of forfeiture. The very foundation of the judgment of forfeiture is a legal seizure and until this is had no further proceedings are authorized. Guptill v. Richardson, 62 Me. 257; State v. Intoxicating Liquors, 110 Me. 260, 85 A. 1060.

But see State v. Plunkett, 64 Me. 534, wherein it was held that, if the liquors were kept in violation of law, they were none the less liable to forfeiture, because the possession of them was wrongfully or illegally obtained.

But claimant must still prove right to custody.—It is not enough under this section to show that the seizure was invalid. It must be shown that the claimant is the party entitled to the custody. And the burden on this issue is on the claimant. It might show that it was the owner, or that it was a carrier, still responsible for the liquors to the shipper or consignee, or it might show any other facts which would entitle it to the custody. But it must show them. No matter who else might be wronged by an invalid seizure, the wrongs of others cannot be redressed at the suit of the claimant, if it has no right to custody, on its own account. The injured party must seek his own redress. State v. Intoxicating Liquors, 112 Me. 138, 91 A. 175.

Specific findings of fact need not be placed on record.—In proceedings under this section, it is not necessary that the presiding justice should place on record specific findings of facts. His order of judgment of forfeiture means, and it must be so assumed, that he found for the state upon all issues of fact necessary to sustain the libel. State v. Intoxicating Liquors, 112 Me. 138, 91 A. 175.

Enforcement of rights of mortgagee or conditional vendor not within scope of proceedings under this section.—The enforcement of the rights of a mortgagee against the mortgagor, or of a vendor under a conditional sale agreement against his vendee is not within the scope of proceedings under this section, which are instituted solely for the purpose of determining whether the property in question was at the time of the seizure being used in violation of the statute and, if an innocent claimant appears, whether the person so using has an interest therein which is subject to forfeiture. State v. Automobile, 122 Me. 280, 119 A. 666.

Judgment on libel not arrested for officer's failure to take keeper into custody.—See note to § 84.

Applied in State v. Smith, 54 Me. 33; State v. Intoxicating Liquors, 54 Me. 564; Perro v. State, 113 Me. 493, 94 A. 950.

Cited in State v. McCann, 59 Me. 383; Flaherty v. Longley, 62 Me. 420; Harvey v. Roberts, 123 Me. 174, 122 A. 409.

Sec. 87. Warrant to search dwelling house.—No warrant shall be issued to search a dwelling house occupied as such, unless it or some part of it is used as an inn or shop or for purposes of traffic, or unless the magistrate before whom the complaint is made is satisfied by evidence presented to him, and so alleges in the warrant, that liquors are kept in such house or its appurtenances intended for sale in violation of law. (R. S. c. 57, § 88.)

Magistrate acts judicially under this section.—In hearing complaints and issuing warrants under this section, the magistrate necessarily makes an examination involving the exercise of discretion and judgment on his part, and performs an act possessing a certain judicial quality. State v. LeClair, 86 Me. 522, 30 A. 7.

It is only by the express provisions of this section that a magistrate is authorized to issue his warrant to seach a dwelling house occupied as such, and in two contingencies: (1) That some part of it is used as an inn or shop, or for purposes of traffic; or (2) unless he is satisfied by evidence presented to him and so alleged in the warrant that intoxicating liquor is kept in such house or its appurtenances intended for sale in this state, in violation of law. State v. Whalen, 85 Me. 469, 27 A 348; State v. Commolli, 101 Me. 47, 63 A. 326.

And warrant must show on its face the jurisdictional requisites.—Under this section, it is essential that the warrant allege the dwelling house, or a part of it, was used as an inn or shop, or for purposes of traffic, or that the magistrate state in the warrant that he was satisfied by evidence that intoxicating liquor was kept in the dwelling house intended for unlawful sale. Faloon v. O'Connell, 113 Me. 30, 92 A. 932.

A magistrate does not have jurisdiction to issue warrants to search dwelling houses indiscriminately. He has jurisdiction to

issue a warrant to search a dwelling house only when it, or some part of it, is complained of as being used as an inn or shop or for purposes of traffic, or when he is satisfied by evidence, and so states in the warrant, that intoxicating liquor is kept in the house intended for unlawful sale. These are jurisdictional facts, and a statement of one or the other of these contingencies must appear on the face of the warrant. Faloon v. O'Connell, 113 Me. 30, 92 A. 932.

Warrant for search of entire building no authority for search of dwelling quarters absent jurisdictional facts.—A building may constitute an entire block, consisting of separate and independent tenements, one of which may be occupied for a dwelling house and another for a store, and between which there may be no communication. Spirituous liquors unlawfully kept in the latter would not authorize a search in the former, and a warrant cannot direct search to be made in both, that is, in the building, when it does not appear that a shop or other place is kept for the sale of liquors in that part of the building used as a dwelling house, without which allegation in the complaint, no warrant can be issued to search the dwelling house unless the evidence satisfies the magistrate as prescribed in this section. State v. Spencer, 38 Me. 30.

Proceedings which do not comply with the requirements of this section are void. These requirements are indispensable and preliminary to issuing the warrant. State v. Staples, 37 Me. 228.

And a failure to follow the requirements of this section renders the warrant not merely voidable, but absolutely void. State v. Whalen, 85 Me. 469, 27 A. 348.

The language of this section is prohibitory. The right of procedure is granted conditionally. The requirements of the section are absolutely essential to the validity of a warrant to search a dwelling house, and the requirements must be affirmatively alleged in the warrant, otherwise it is void. State v. Whalen, 85 Me. 469, 27 A. 348.

Where neither the complaint nor the warrant contains any express allegation, nor any allegation from which, by necessary inference or intendment, it appears that a dwelling house therein described, or any part of it, is used as an inn or shop, or for purposes of traffic, nor did the magistrate before whom the complaint was made allege in the warrant that he was satisfied by evidence presented to him that intoxicating liquor was kept in the dwelling house or its appurtenances intended for illegal sale, a demurrer to the complaint and warrant should be sustained. State v. Soucie, 109 Me. 251, 83 A. 700.

And such failure not waived by general appearance.—That the requirements of this section were not met prior to the issuance of the warrant is not waived by a general appearance before the magistrate and there pleading to the complaint. It is only to matters of form, and not to jurisdictional defects, that the rule applies. Jurisdictional defects apparent upon the face of the process render it absolutely void. State v. Whalen, 85 Me. 469, 27 A. 348.

"Satisfactory evidence being presented" not sufficient allegation.—Where the only language contained in a warrant from which an inference that the magistrate was satisfied, or that any evidence was presented to him, can be drawn is in these words—"satisfactory evidence being presented," etc., this is not sufficient to meet the explicit requirement of this section that the magistrate shall allege that he is "satisfied by evidence presented to him." State v. Whalen, 85 Me. 469, 27 A. 348.

But the words "being satisfied by evidence presented to me," etc., used by a magistrate in a warrant under this section are sufficient to meet the requirement of the section. "Being satisfied" imports the meaning of "since I am satisfied," or "inasmuch as I am satisfied," and the fact that the magistrate was satisfied is thereby expressed with as much clearness and certainty as it would have been if the fact had been stated in the form of a declarative sentence. State v. Davis, 106 Me. 399, 76 A. 709.

Applied in State v. Spirituous Liquor, 39 Me. 262; Small v. Orne, 79 Me. 78, 8 A. 152.

Quoted in part in Flaherty v. Longley, 62 Me. 420; State v. Schoppe, 113 Me. 10, 92 A. 867.

Cited in State v. Bennett, 95 Me. 197, 49 A. 867.

Sec. 88. Disposal of forfeited liquors.—All liquors declared forfeited by any court or magistrate under the provisions of this chapter shall, by order of the court or magistrate rendering final judgment thereon, be turned over to the liquor commission for distribution upon request to hospitals and state institutions for medicinal purposes only. Any such liquor held undistributed by the commission for a period of 6 months may be destroyed on order of the com-

mission in the same manner as herein provided for destruction of liquor by order of court. If any liquor is determined by the court or magistrate to be unfit or unsatisfactory for distribution to such hospitals and state institutions, the court or magistrate may order such liquor to be destroyed by any officer competent to serve the process on which it was forfeited, and he shall make return accordingly to such court or magistrate. Such liquors shall be destroyed by pouring them upon the ground or into some public sewer. (R. S. c. 57, § 89. 1953, c. 250, § 2; c. 255, § 10.)

Cited in State v. Automobile, 122 Me. 280, 119 A. 666.

Sec. 89. Warrant, when to issue against claimant. — If complaint is made upon oath to any court or magistrate against any claimant under the provisions of this chapter, alleging that the liquors claimed by him were, prior to and at the time when they were seized, kept or deposited by him or by some person by his authority, and were intended for unlawful sale in this state either by him or by such person, the court or magistrate shall issue his warrant against such claimant so charged, who shall be arrested thereon and be brought before the court or magistrate, and if convicted, he shall be punished as is provided in section 84. (R. S. c. 57, § 90.)

See c. 146, § 1 et seq., re uniform criminal jurisdiction of municipal courts; c. 149, § 1, re respondent to pay costs.

Sec. 90. Destruction of liquors to prevent seizure; proceedings; arrest of owner; appliances and evidences seized.—If an officer, having a warrant issued under the provisions of this chapter directing him to seize any liquors and to arrest the owner or keeper thereof, is prevented from seizing the liquors by their being poured out or otherwise destroyed, he shall arrest the alleged owner or keeper named in the warrant and bring him before the court or magistrate, and make return upon the warrant that he was prevented from seizing such liquors by their being poured out or otherwise destroyed, as the case may be, and in his return he shall state the quantity so poured out or destroyed, as nearly as may be, and the court or magistrate shall put the owner or keeper so arrested upon trial; and if it is proved that such liquors as were described in the warrant were so poured out or destroyed, and that they were so kept or deposited and intended for unlawful sale, and that the person so arrested was owner or keeper thereof, he shall be punished in the same manner as if the liquors described in the warrant and in the return had been seized on the warrant and brought before the court or magistrate by the officer. All dumps or appliances for concealing, disguising or destroying liquors so that the same cannot be seized or identified, found in the possession or under the control of any person or persons, shall be taken by the officer making the search or seizure, so far as may be practicable, together with all bottles and drinking glasses or vessels found in the possession or under the control of any such person or persons, and they, together with all evidences of such dumps or appliances for concealing, disguising or destroying liquors, shall be presented to the next grand jury sitting in the county where the search and seizure is made for their consideration, and they shall thereafter be subject to the order of the court or magistrate issuing the warrant for such search and seizure. (R. S. c. 57, § 91.)

The return need not be made preliminary to, and as authority for, the arrest under this section. Such is not the requirement of the section, nor would it be a reasonable provision. The officer, with a legal warrant in his hands, is making search for liquors described in his precept. His object is to seize such liquors, if found, but he is prevented by their destruction before his face by their owner or keeper. His duty then is, at once, to arrest the keeper and have him before the magistrate, and his return will give the reason why he does not also have the

liquors in custody, to wit: because they have been destroyed. State v. Stevens, 47 Me. 357.

And the return provided for in this section is not the evidence on which the owner is to be tried. The fact that the liquors were poured out or destroyed furnishes a basis which authorizes the arrest, which fact must be proved, as other facts, by competent testimony on oath. State v. Stevens, 47 Me. 357.

The rights of the defendant do not depend upon the return, but upon other evidence. And it is not for the defendant, who, by violence, prevented the officer from seizing the liquors found on his premises by their destruction, and thereby rendered it impossible for him to determine with certainty their quality, to object that his return is not sufficiently certain. He cannot be permitted thus to set the officers of the law at defiance, and then come into a court of justice and take advantage of his own wrongful acts. If he will voluntarily, and by violence, obstruct and resist the ministers of the law in the legal discharge of their duties, he must not complain if he is dragged before the constituted tribunals to answer for his unlawful conduct. State v. Stevens, 47 Me. 357.

Articles which may be taken not limited to those listed.—The last sentence of this section is not exclusive. It was not intended to cover the whole ground and the right of an officer to take articles of personal property to be used as evidence is not limited by the section to the various kinds of articles named therein. Getchell v. Page, 103 Me. 387, 69 A. 624.

The provisions contained in the last sentence of this section are in affirmation of the common-law duty of officers, and are not exclusive. Getchell v. Page, 103 Me. 387, 69 A. 624.

The last sentence of this section was not intended to narrow the common-law power of officers and impliedly forbid them to take articles of evidence not expressly named. Getchell v. Page, 103 Me. 387, 69 A. 624.

Return not required on articles taken as evidence.—When an officer acts on a warrant issued under § 84, he is not required to make return on his warrant of articles taken as evidence under this section. Getchell v. Page, 103 Me. 387, 69 A. 624.

Cited in State v. Howley, 65 Me. 100.

Sec. 91. Death of officer making seizure.—If any deputy sheriff, after having executed a warrant by a seizure, dies or goes out of office before final execution in the proceedings is done, the liquors shall be held in the custody of the sheriff or of another deputy. If any other officer dies or goes out of office under like circumstances, the court or magistrate before whom the proceedings were commenced shall designate in writing some officer lawfully authorized to execute such a warrant, who shall hold such liquors in his custody until final judgment and order of the court thereon. (R. S. c. 57, § 92.)

Sec. 92. Liquors and vessels seized not repleviable pending proceedings.—Liquors seized, as hereinbefore provided, and the vessels containing them shall not be taken from the custody of the officer by a writ of replevin or other process while the proceedings hereinbefore provided are pending; and final judgment in such proceedings shall be in all cases a bar to any suit for the recovery of any liquors seized or of their value, or for damages alleged to have been sustained by reason of the seizure and detention thereof. (R. S. c. 57, § 93.)

Applied in Adams v. McGlinchy, 62 Me. 533; Ring v. Nichols, 91 Me. 178, 40 A. 329.

Sec. 93. Limitation of power of certain police officers in stopping motor vehicles.—No sheriff, deputy sheriff, constable, municipal or state police officer shall between 1 hour after sunset and the following sunrise, for the purpose of enforcing the laws against the illegal sale, transportation or possession of intoxicating liquor, stop any motor vehicle lawfully using any of the highways in the state, unless said officer be in uniform or unless said officer has reasonable grounds to believe and does believe that said motor vehicle is being operated or occupied by a person violating some provision of said law or unless said officer be acting under a warrant in his hands for service. (R. S. c. 57, § 94.)

Intoxication.

Sec. 94. Intoxication and disturbance.—Whoever is found intoxicated in any street, highway or other public place shall be punished for the first offense by a fine of not more than $10 or by imprisonment for not more than 30 days, or by both such fine and imprisonment, and upon any subsequent conviction by a fine of not more than $50 or by imprisonment for not more than 90 days, or by both such fine and imprisonment, except that in any county where a county farm for the reformation of inebriates has been established, any male person who has been previously convicted of intoxication may be sentenced to such farm for a period of not less than 90 days nor more than 11 months. Whoever is found intoxicated in his own house or in any other building or place, disturbing the peace of his own or any other family or the public peace, shall be punished for the first and any subsequent conviction as provided in the preceding clause of this section. Any such intoxicated person shall be taken into custody by any sheriff, deputy sheriff, liquor inspector, constable, marshal, police officer or watchman and committed to the watchhouse or police station or restrained in some other suitable place, until a complaint can be made and a warrant issued against him, upon which he may be arrested and tried. (R. S. c. 57, § 95. 1945, c. 11 1947, c. 145.)

Cross references.—See c. 37, § 75, re intoxication while hunting; c. 46, § 64, re penalty for intoxication on part of engineer, conductor, brakeman, motorman or switchman on railroad; c. 46, § 70, re disorderly conduct on public conveyances.

This section is designed to prevent the evil of drunkenness in public. State v. Lawrence, 146 Me. 360, 82 A. (2d) 90.

Elements of offense.—The elements of an intoxication charge under this section are the condition of intoxication and the finding of the defendant in such condition "in a street, highway, or other public place." State v. Lawrence, 146 Me. 360, 82 A. (2d) 90.

Without the element of being "found" there is no violation of the intoxication statute. State v. Lawrence, 146 Me. 360, 82 A. (2d) 90.

This section creates two classes of offenses: (1) Being found intoxicated in any street or highway; and (2) Being intoxicated in one's own house, or in any other building or place, and disturbing the public peace, or that of his own or any other family. State v. McLoon, 78 Me. 420, 6 A. 601.

Offense under this section not same as driving under the influence and defendant may be prosecuted for both offenses.—See note to c. 22, § 150.

Intoxication in place other than those named no offense.—Merely being found intoxicated otherwise than in the public or private places enumerated is not an offense in this state. State v. McLoon, 78 Me. 420, 6 A. 601.

And complaint must set out place where defendant found intoxicated. — A complaint under this section must set out the place in which the defendant was alleged to have been found intoxicated. It is not sufficient to allege simply that he was found intoxicated in a named city or town, without specifying whether in the street, highway, building, or other particular locality. State v. McLoon, 78 Me. 420, 6 A. 601.

Inclusion of costs as part of sentence left to discretion of magistrate. — No power is expressly conferred to impose the payment of costs, upon conviction of a violation of this section, as a part of the sentence, though in other sections of this chapter, it is not only provided that they may be included in the sentence, but it is made imperative that they be so included (See, for example, §§ 62, 64, 66, 68). The omission to require that costs of prosecution should constitute a part of the sentence, when it was made obligatory to do so in other sections of the same chapter, shows that therein it was designed to be submitted to the discretion of the magistrate to include them or not in the sentence. Downing v. Herrick, 47 Me. 462.

Cited in Gosselin, Petitioner, 141 Me. 412, 44 A. (2d) 882; State v. Demerritt, 149 Me. 380.

Sec. 95. Responsibility for injuries by drunken persons.—Every wife, child, parent, guardian, husband or other person, who is injured in person, property, means of support or otherwise by any intoxicated person or by reason of the intoxication of any person, shall have a right of action in his own name against

anyone who, by selling or giving any intoxicating liquors or otherwise, in violation of law, has caused or contributed to the intoxication of such person; and in such action the plaintiff may recover both actual and exemplary damages. The owner, lessee or person renting or leasing any building or premises, having knowledge that intoxicating liquors are sold therein contrary to law, is liable, severally or jointly, with the person selling or giving intoxicating liquors as aforesaid. In actions by a wife, husband, parent or child, general reputation of such relationship is prima facie evidence thereof, and the amount recovered by a wife or child shall be her or his sole and separate property. (R. S. c. 57, § 96.)

This section gives a new cause of action where none existed before at common law. Campbell v. Harmon, 96 Me. 87, 51 A. 801.

Section construed so as to give true meaning.—While this section, which gives a remedy unknown to the common law, should not be enlarged, it should be so construed, where the language is clear and explicit, as to give it its true meaning, having in view its purpose. Gardner v. Day, 95 Me. 558, 50 A. 892.

And effect beneficent purpose.—This section is aimed at the suppression of a great evil, and while no effort should be made by a forced interpretation to extend its meaning beyond what was fairly intended, it should be liberally construed so as to effect the beneficent purpose for which it was enacted. Currier v. McKee, 99 Me. 364, 59 A. 442.

Section not confined to unlawful sales.—This section in its terms is very broad. It is not confined to unlawful sales but the giver equally with the seller is made liable for the injurious consequences of his act. Currier v. McKee, 99 Me. 364, 59 A. 442.

Action under this section is for tort.—In an action under this section, there is no question growing out of a contract or a breach of one. It is an action of tort, purely and entirely so. McGee v. McCann, 69 Me. 79.

And for personal wrong and injury.—The cause of action granted by this section is not only for a tort, but for a personal wrong and injury, as much so as that for an assault and battery. McGee v. McCann, 69 Me. 79.

Loss of support not dependent on legal right.—In an action under this section for loss of support, it is not necessary that the loss should depend upon a legal right. It is sufficient if the support was voluntarily rendered. McGee v. McCann, 69 Me. 79.

Furnishing of liquor need not have been proximate cause of injury.—This section does not require that the furnishing of the liquor by the defendant should be the proximate cause of the plaintiff's injury, but only that it should have contributed to the intoxication and that the intoxication should have been the proximate cause of the injury. Currier v. McKee, 99 Me. 364, 59 A. 442.

And defendant need not have intended or expected injurious act.—The defendant in a suit under this section need not have intended that the person to whom he unlawfully sold or gave the liquor would commit the act from which the plaintiff's injury resulted, or even have expected it or the injury which followed. It is enough if, according to human experience, it was to be apprehended that such results were likely to happen from the intoxication. Currier v. McKee, 99 Me. 364, 59 A. 442.

Cause of action is contribution to intoxication.—Under this section, the cause of action against the defendants is that he caused or contributed to the intoxication by selling the intoxicating liquor, by reason of which the plaintiff was damaged. Chase v. Kenniston, 76 Me. 209.

The wrongful act which constitutes the ground of the action is the illegal sale of the liquor causing the intoxication from which the injury results. Gardner v. Day, 95 Me. 558, 50 A. 892.

And defendant must have contributed in appreciable degree.—Under a fair construction of this section, the plaintiff must satisfy the jury that the defendant contributed to the intoxication in some appreciable or essential degree. Chase v. Kenniston, 76 Me. 209.

But liquor furnished by defendant need not have been sole cause of intoxication.—Under this section, it is not necessary that the intoxicating liquor furnished by the person sued should have been the sole cause of the intoxication. It is sufficient if it "contributed" to it in an appreciable degree. Currier v. McKee, 99 Me. 364, 59 A. 442.

Question of contribution is one of fact.—The section gives a right of action to any person as therein specified against any person or persons who shall, by unlawfully selling or giving any intoxicating liquors, or otherwise, have caused or con-

tributed to the intoxication of the person doing the injury. Whether the defendants caused or contributed to the intoxication is a question of fact for the jury. Chase v. Kenniston, 76 Me. 209.

Owner's liability on same ground as that of seller.—Under the provisions of this section, the liability of the owner of the premises is evidently put upon the same ground as that of the seller, which is that each has caused or contributed to the intoxication, in different ways perhaps, but each working to the same result. The causing or contributing to the intoxication is the cause, and the only cause, of action provided for, and makes the guilty party liable, whatever be the means resorted to. McGee v. McCann, 69 Me. 79.

And knowledge of unlawful use of premises must be alleged. — There is under this section no cause of action against the owner, unless it appears that his building, with his knowledge, was used for the sale of intoxicating liquors in violation of law. As this fact must appear, it must be alleged. McGee v. McCann, 69 Me. 79.

But not necessary that owner knew of sale to particular person.—It is not necessary that the owner should know that the liquor was unlawfully, or in any way, sold to the particular person causing the injury. It is sufficient for him to know that intoxicating liquors were unlawfully sold in his building. McGee v. McCann, 69 Me. 79.

Selling or giving must be to person causing the injury.—The causing or contributing to the intoxication of the person by whom an injury has been done refers to the direct and immediate result of the selling or giving the intoxicating liquors by which the intoxication was caused. The liability attaches to the person selling or giving and to no one else. The selling or giving must be to the person intoxicated by whom the injury to the person or property was done and must cause his intoxication. Bush v. Murray, 66 Me. 472.

The seller or giver of intoxicating liquors to one other than the person doing the injury cannot within any reasonable construction of this section be regarded as having caused or contributed to the intoxication of the person doing the injury. Bush v. Murray, 66 Me. 472.

Injury to plaintiff must be alleged and proved.—Under this section, the right of the plaintiff alleged to have been violated is not simply by a contribution to the intoxication, but connected with it an injury to her person, property or means of support as the result of such intoxication. It is as necessary to make out the injury as the intoxication and the contribution. The action must fail if there is a failure in the allegation and proof of either. Gilmore v. Mathews, 67 Me. 517.

Thus, allegation of marriage not sufficient in action for loss of support. — In an action under this section by a wife for loss of support, it is not sufficient that she alleges a marriage. Whether, as a matter of fact, the husband ever did render any support, or that the wife was in any way dependent upon him must be alleged also. If she did not rely upon him, or if in fact he did not or could not assist in her maintenance without any habits of intoxication, then his drunkenness would hardly be an injury to that which she never had, or which she was deprived of by other causes. Gilmore v. Mathews, 67 Me. 517.

Injurious act by intoxicated person need not have been caused by intoxication.—Under this section a right of recovery is given for injuries produced in two ways, first, "by any intoxicated person," and second, "by reason of the intoxication of any person." When the injury is caused by an intoxicated person, it need not be shown that the intoxication caused the injurious act. In such case it is sufficient if, while in a state of intoxication, to which liquors furnished by the defendant contributed, such intoxicated person commits the act which results in injury to the "person, property, means of support or otherwise" of the plaintiff. Currier v. McKee, 99 Me. 364, 59 A. 442.

The legislature seems to have regarded intoxicating liquor as dangerous to society, and to have intended that whoever, by unlawfully furnishing liquor, contributed to the intoxication of any person should be held responsible for injuries inflicted by him while in that condition, without placing upon the sufferer the burden of showing that the injury was due to the intoxication. Currier v. McKee, 99 Me. 364, 59 A. 442.

Section gives remedy for loss of support when husband dies as result of intoxication.—Where a wife has been deprived of her means of support by the death of her husband resulting from intoxication, she has a right of action under this section. Gardner v. Day, 95 Me. 558, 50 A. 892.

If the injury which had resulted to the deceased in consequence of his intoxication had disabled him for life, or to such an extent as to incapacitate him for labor and for earning a support for his family,

it would no doubt be embraced within the meaning and intent of the statute. That death ensued in consequence thereof furnishes much stronger ground for a claim for a loss of means of support; and a different rule in the latter case would make provision for the lesser and temporary injury, while that which was greatest and most serious would be without any remedy or means of redress. Gardner v. Day, 95 Me. 558, 50 A. 892.

There is no legal distinction, except in degree, between the temporary injury to a wife's means of support through the husband's inability to provide support by reason of some accident sustained while intoxicated, and the permanent injury suffered by her of the same nature by reason of the husband's death resulting from his intoxication. In either case, the injury is to her means of support by reason of his intoxication. Gardner v. Day, 95 Me. 558, 50 A. 892.

A wife cannot recover under this section for the death of her husband, nor for her mental suffering caused thereby, nor for any of the consequences of his death, except for the injury to her means of support by reason of his intoxication. But, if his death is the proximate result of such intoxication, she is none the less injured in her means of support thereby, within the meaning of the section. Gardner v. Day, 95 Me. 558, 50 A. 892.

But the death of her husband alone as the result of intoxication is not a cause of action. There must be connected with it an injury to person, or property, or means of support; and the allegations must show distinctly and directly that such an injury occurred to the plaintiff. Gilmore v. Mathews, 67 Me. 517.

Under this section, the master would be held liable for a sale made by those in his employ. Bush v. Murray, 66 Me. 472.

Cause of action under this section not assignable.—Since claims for personal injuries cannot be transferred, a cause of action under this section cannot be assigned. There is nothing upon which an assignment can be based. The claim is not for any particular thing, but for damages to be recovered. McGee v. McCann, 69 Me. 79.

General law applicable to joint actions under this section.—There is nothing in this section which in any degree tends to change the ordinary principles of law as applicable to the maintenance of an action of this kind. Hence a joint action in the name of two can be maintained only when their joint interest is invaded, or where they are jointly interested in the damages to be recovered. McGee v. McCann, 69 Me. 79.

And parents deprived of their means of support cannot bring a joint action under this section. The injury to the one and the amount to be recovered might be very different from that of the other, for both the real and the exemplary damages might be very different. McGee v. McCann, 69 Me. 79.

Complaint alleging loss of support may be amended to show assault.—Where a complaint under this section alleges that, due to the intoxication of the complainant's husband, she has been deprived of her means of support, it is not error to allow an amendment to the complaint which adds allegations of damages by assault resulting from the intoxication. The amendment does not allege a new cause of action. See Chase v. Kenniston, 76 Me. 209.

Damages may be exemplary.—In an action under this section, the damages to be recovered do not depend entirely upon the actual injury, but may be exemplary as well. McGee v. McCann, 69 Me. 79.

Where the evidence shows a wilful and wanton violation of the law in selling liquor, reckless and illegal acts and conduct, in utter disregard of the consequences which may follow, punitive damages may be allowed, for the benefit of the community and as an example to others. Campbell v. Harmon, 96 Me. 87, 51 A. 801.

But governed by same rules as damages in other tort cases.—By providing that in actions under this section both actual and exemplary damages may be recovered, the legislature did not intend to make any change in the rules governing the recovery of exemplary damages. It did not intend that such damages might be recovered in all such actions, without regard to the circumstances attending and accompanying the wrongful act of the defendant; but simply to place this new class of wrongs, created and defined by the section, upon the same footing and subject to the same rules of damages as other actionable torts. Campbell v. Harmon, 96 Me. 87, 51 A. 801.

And actual damages must be shown before those which are exemplary can be recovered. Hence, allegations as to the death of the husband and of such matters as may increase the exemplary damages are not alone sufficient ground for an action, even if well pleaded. Gilmore v. Mathews, 67 Me. 517.

Drinking in Public Places.

Sec. 96. Drinking in public places; definition.—

I. Any person taking a drink of liquor or offering a drink of liquor to another or any person in charge of a public place as hereinafter defined knowingly permitting drinking at or in a public place, except places licensed for on-premise sale of liquor, or any person taking a drink of liquor or offering a drink of liquor in any vehicle not licensed for sale of liquor shall be punished by a fine of not more than $50.

II. "Public place" as used in this section shall mean: any common carrier, dance, entertainment, amusement or sport or grounds adjacent thereto and used in conjunction therewith or any highway, street or lane, to which the public is invited or has access. (1947, c. 363.)

Forms.

Sec. 97. Forms; costs.—The forms herein set forth, with such changes as adapt them for use in cities, towns and plantations, are sufficient in law for all cases arising under the foregoing provisions to which they purport to be adapted; and the costs to be taxed and allowed for a libel shall be 50c; for entering the same, 30c; for trying the same, $1; for a monition, 50c; for posting notices and return, $1; for order to restore or deliver, 25c; for executing the order, 50c.

Form of Complaint for Single Sale.

STATE OF MAINE

"...., ss.—To ...., esquire, a trial justice within and for the county of .....

A. B., of ...., in said county, on the .... day of ...., in the year of our Lord one thousand nine hundred ...., in behalf of said state, on oath .... complains, that ...., of ...., in said county, on the .... day of ...., 19.., at said ...., in said county of ...., did then and there sell a quantity of intoxicating liquors, to wit: one .... of intoxicating liquor to one ....," (or if the individual is unknown, "to some person to said complainant unknown,") "against the peace of said state, and contrary to the form of the statute in such case made and provided. A. B.

On the .... day of ...., 19.., said .... makes oath, that the above complaint, by .... subscribed, is true.

Before me,

.... Trial Justice."

This form does not preclude the use of other suitable language to properly describe a single sale. State v. Bellmore, 144 Me. 231, 67 A. (2d) 531.

Complaint should charge sale of "intoxicating" liquor.—A complaint charging the defendant with the unlawful sale of "liquor" does not sufficiently charge the crime under Art. 1, § 6 of the Maine Constitution, notwithstanding the provision of § 1 of this chapter that wherever the word "liquor" is used, it shall mean "intoxicating liquor" since the crime is the unlawful sale of intoxicating liquor. State v. Bellmore, 144 Me. 231, 67 A. (2d) 531; State v. State Fair Ass'n, 148 Me. 486, 96 A. (2d) 229. See note to § 66.

It is better practice to name the buyer in a complaint for a single sale or allege that his name is to the complainant unknown. The form of the complaint which this section prescribes does not so require but certainly so intends. State v. Haapanen, 129 Me. 28, 149 A. 389.

Complaint need not allege defendant not within § 8, sub-§ II.—It is not necessary for a complaint to contain a negative allegation that defendant was not a "physician, surgeon, osteopath .... etc.," within the meaning of § 8, sub-§ II, since the words "against the peace of the state, and contrary to the form of the statute in such case made and provided" are equivalent to an allegation that the act was unlawfully done. State v. Schumacher, 149 Me. 298, 101 A. (2d) 196.

Allegation held sufficient.—A complaint charging defendant "did sell a .... quan-

tity of intoxicating liquors .... the said (defendant) not having then and there a license therefor issued by the State Liquor Commission as provided by the laws of the State of Maine, ..." is a sufficient allegation under this section. State v. Schumacher, 149 Me. 298, 101 A. (2d) 196.

Form of Warrant upon Complaint for Single Sale

STATE OF MAINE

"...., ss.—To the sheriff of our said county of ...., or either of his deputies, or either of the constables of the town of ...., or of either of the towns in said county. Greeting.

[L. S.] Whereas, A. B., of ...., on the .... day of ...., in the year of our Lord one thousand nine hundred ...., in behalf of said state, on oath .... complained to me, the subscriber, one of the trial justices within and for said county of ...., that ...., of ...., in said county, on the .... day of ...., 19.., at said ...., in said county of ...., did sell a quantity of intoxicating liquors, to wit: one .... of intoxicating liquor to one ...., against the peace of said state and contrary to the form of the statute in such case made and provided.

Therefore, in the name of the state of Maine, you are commanded forthwith to apprehend said ...., if he may be found in your precinct, and bring him before me, the subscriber, or some other trial justice within and for said county, to answer to said state upon the complaint aforesaid.

Witness, my hand and seal at .... aforesaid, this .... day of ...., in the year of our Lord nineteen hundred .....

.... Trial Justice."

Form of Recognizance in Case of a Single Sale

"Be it remembered, that at a justice court held by me, the subscriber, one of the trial justices within and for the county of ...., at my office in ...., in said county, on the .... day of ...., in the year of our Lord one thousand nine hundred ...., personally appeared ...., ... and ...., and severally acknowledged themselves to be indebted to the state of Maine, in the respective sums following, to wit:

The said ...., as principal, in the sum of .... dollars, and the said .... and ...., as sureties, in the sum of .... dollars each, to be levied of their respective goods, chattels, lands or tenements, and in want thereof of their bodies, to the use of the state, if default is made in the condition following:

The condition of this recognizance is such, that whereas said .... has been brought before said court, by virtue of a warrant duly issued upon the complaint on oath .... of ...., charging him, said ...., with having sold at said ...., one .... of intoxicating liquor to one ...., against the peace of said state, and contrary to the form of the statute in such case made and provided. And said ...., having pleaded not guilty to said complaint, but having been by said court found guilty of the same, and been sentenced to ....; and said .... having appealed from said sentence to the superior court, next to be held at ...., within and for the said county of ...., on the .... Tuesday of ...., in the year of our Lord nineteen hundred .....

Now therefore, if said .... shall appear at the court aforesaid, and prosecute his said appeal with effect, and abide the order and judgment of said court, and not depart without license, then this recognizance shall be void; otherwise shall remain in full force and virtue.

Witness, ..., Trial Justice."

Form of Mittimus

STATE OF MAINE

"County of ...., ss.—To the sheriff of the county of ...., or either of his

deputies, or either of the constables of the town of ...., and to the keeper of the jail in ...., in our said county, Greeting.

[L. S.] Whereas, E. F., of ...., in our county of ...., now stands convicted before me, A. B., esquire, one of the trial justices in and for the said county of ...., on complaint of ...., who, on his oath .... complains that" .... (here insert the substance of the complaint) "against the peace of the state, and contrary to the form of the statute in such case made and provided, for which offense, he, the said E. F., is sentenced to pay a fine to the state, of .... dollars, and costs of prosecution, taxed at .... dollars and .... cents, (and to stand committed until the sentence is performed, all which sentence said E. F., now before me, the said justice, fails and refuses to comply with and perform).

These are therefore, in the name of the state of Maine, to command you, the said sheriff, deputies and constables and each of you, forthwith to convey said E. F. to the common jail in ...., in the county aforesaid, and to deliver him to the keeper thereof, together with this precept. And you the keeper of the said jail in .... aforesaid, are hereby in like manner commanded, in the name of the state of Maine, to receive said E. F. into your custody, in said jail, and him there safely to keep until he shall comply with said sentence, or be otherwise discharged by due course of law.

Given under my hand and seal, this .... day of ...., A. D. .....

A. B., Trial Justice."

Form of Complaint in Case of Seizure

STATE OF MAINE

"...., ss.—To A. B., esquire, one of the trial justices within and for the county of .....

A. B., of ...., in said county, competent to be a witness in civil suits, on the .... day of ...., in the year nineteen hundred ...., in behalf of said state, on oath complains, that he believes, that on the .... day of ...., 19.., at said ...., intoxicating liquors were, and still are kept and deposited by ...., of ...., in said county, in ...." (here describe with precision the place to be searched,) "and that said liquors then and there were, and now are intended by said .... for sale in violation of law, against the peace of the state and contrary to the form of the statute in such case made and provided.

I therefore pray, that due process be issued to search the premises hereinbefore mentioned, where said liquors are believed to be deposited, and if there found, that said liquors and vessels be seized and safely kept until final action and decision be had thereon, and that said .... be forthwith apprehended and held to answer to said complaint, and to do and receive such sentence as may be awarded against him. A. B.

...., ss.—On the .... day of ...., 19.., said A. B. made oath that the above complaint by him signed is true.

Before me, ..., Trial Justice."

Form does not deprive accused of constitutional rights.—There can be no question that it was competent for the legislature to prescribe this form, as no essential ingredient of the crime is omitted and the accused is not deprived of any constitutional rights. State v. Bennett, 95 Me. 197, 49 A. 867.

Form not adapted to seizure without warrant.—This form for a "complaint in case of seizure" was prepared before the passage of the act authorizing seizure without a warrant (§ 84) and does not "purport to be adapted" to the seizure without a warrant there authorized. This change in the statute obviously requires such change in the form of the process as will bring it into conformity with the facts. State v. LeClair, 86 Me. 522, 30 A. 7.

Form of Warrant in Case of Seizure

STATE OF MAINE

".... ss.—To the sheriff of our said county of ...., or either of his deputies, or either of the constables of the town of ...., or of either of the towns within said county.

[L. S.] Whereas A. B., of ...., in said county, competent to be a witness in civil suits, on the .... day of ...., in the year nineteen hundred ...., in behalf of said state, on oath complained to the subscriber, one of the trial justices within and for said county, that he believes, that on the .... day of ...., 19.., at said ...., intoxicating liquors were and still are deposited and kept by ...., of ...., in said county, in ...." (here follows a precise description of the place to be searched,) "and that said .... then and there intended and now intends that the same shall be sold, in violation of law as fully appears by the complaint hereunto annexed, and prayed that due process be issued to search the premises hereinbefore mentioned, where said liquors are believed to be deposited, and, if there found, that said liquors and vessels be seized and safely kept until final action and decision be had thereon, and that said .... be apprehended and held to answer to said complaint, and to do and receive such sentence as may be awarded against him:—

You are therefore required in the name of the state, to enter the .... before named, and therein to search for said liquors, and, if there found, to seize and safely keep the same, with the vessels in which they are contained, until final action and decision is had on the same; and to apprehend said .... forthwith, if he may be found in your precinct, and bring him before me, the subscriber, or some other trial justice within and for said county, to answer to said complaint, and to do and receive such sentence as may be awarded against him.

Witness, ..., esquire, at .... aforesaid, this .... day of ...., in the year of our Lord nineteen hundred .....

...., Trial Justice."

This form is a legislative interpretation of the meaning of the word "place" in § 84. It commands the officer to "enter" the place or premises before named and "therein" to search for said liquors. State v. Fezzette, 103 Me. 467, 69 A. 1073.

Warrant not returnable only to magistrate who issues it.—See note to § 84.

Form of Recognizance in Case of Seizure

"Be it remembered, that at a justice court held by me, the subscriber, one of the trial justices within and for the county of ...., at my office in said ...., on the .... day of ...., in the year of our Lord nineteen hundred ...., personally appeared A. B., C. D. and E. F. and severally acknowledged themselves to be indebted to the state of Maine, in the respective sums following, to wit:

The said ...., as principal, in the sum of .... dollars, and the said .... and ...., as sureties, in the sum of .... dollars each, to be levied of their respective goods, chattels, lands or tenements, and in want thereof, of their bodies, to the use of the state, if default is made in the condition following:

The condition of this recognizance is such, that whereas said .... has been brought before said court, by virtue of a warrant duly issued upon the complaint on oath, of G. H., of ...., a competent witness in civil suits, charging him, said ...., with having at ...., in the said county of ...., on the .... day of ...., 19.., kept and deposited certain intoxicating liquors in ...." (here describe the place where the same are deposited) "with intent that the same should be sold in violation of law; and a search warrant having been issued upon said complaint, and said liquors above described, having been seized thereon, and said .... arrested thereon; and said .... having pleaded not guilty to said complaint, but having been by said court found guilty of the same, and been sentenced to ..... And said ...., having appealed from said sentence to the

superior court, next to be held at ...., within and for said county of ...., on the .... Tuesday of ...., in the year of our Lord nineteen hundred ....:

Now therefore, if said .... shall appear at the court aforesaid, and prosecute his said appeal with effect, and abide the order and judgment of said court, and not depart without license; then this recognizance shall be void; otherwise shall remain in full force and virtue.

...., Trial Justice."

Form of Libel

STATE OF MAINE

"County of ...., ss.—To A. B., a trial justice, in and for said county:

The libel of C. D., of ...., shows that he has, by virtue of a warrant duly issued on the .... day of ...., A. D. 19.., by ...., esquire, a trial justice in and for said county, seized certain intoxicating liquors and the vessels in which the same were contained, described as follows: ...." (here follows a description of the liquors,) "because the same were kept and deposited at ...." (describing the place) "in the said county of ...., and were intended for sale, in violation of law. Wherefore he prays for a decree of forfeiture of said liquors and vessels, according to the provisions of law in such case made and provided.

Dated at ...., in said county, this .... day of ...., in the year of our Lord nineteen hundred .....

(Signed.) ...."

Form of Monition and Notice

STATE OF MAINE

"County of ...., ss.

[L. S.] To all persons interested in ...." (here insert the description of the liquors, as in the libel).

"The libel of C. D., hereunto annexed, this day filed with me, A. B., esquire, a trial justice, in and for said county, shows that he has seized said liquors and vessels because" (insert as in the libel), "and prays for a decree of forfeiture of the same according to the provisions of law in such case made and provided.

You are, therefore, hereby notified thereof, that you may appear before me, the said justice, at ...., in said county, on the .... day of ...., 19.., and then and there show cause why said liquors and the vessels in which they are contained should not be declared forfeited.

Given under my hand and seal at ...., on the .... day of ...., in the year of our Lord nineteen hundred .....

...., Trial Justice."

Form of Complaint in Case of Seizure of Automobile

STATE OF MAINE

"...., ss.—To the Judge—Recorder—of our Municipal Court for the City of ...., in the County of ....:

A. B., of ...., in the said county, competent to be a witness in civil suits, on the .... day of ...., A. D., 19.., in behalf of said state, on oath complains, that he believes that on the .... day of .... in said year, at said ...., in said county, a certain automobile, hereinafter described, was knowingly used for the illegal transportation of intoxicating liquors and intoxicating liquors were kept and deposited by persons unknown .... of .... in said automobile, situated on .... street, in said ...., in said county, near number .... on said street in said ...., and occupied by said persons unknown .... said persons unknown .... not being then and there authorized by law to transport liquors within said state, and that the said liquors were then and there knowingly being transported within said state, in violation of law, against the peace of said state, and contrary to

the form of the statute in such case made and provided; and that the said liquors were then and there intended by said persons unknown .... for sale in violation of law, against the peace of said state and contrary to the form of the statute in such case made and provided.

And the said .... on oath further complains that he, the said .... at said .... on the .... day of ...., A. D., 19.., being then and there an officer, to wit, a deputy sheriff, within and for said county, duly qualified and authorized by law to seize automobiles used for the illegal transportation of intoxicating liquors and intoxicating liquors kept and deposited for unlawful sale and the vessels containing them, by virtue of a warrant therefor issued in conformity with the provisions of the law, did find upon the above described premises, one ...., bearing engine number ...., and the 19.. license number plates numbered ...., which said automobile then and there contained ...., which said automobile was not then and there a common carrier, and which said automobile was not then and there engaged in the business of a common carrier; and which said automobile was then and there in the possession, care and control of the said .... and which said automobile was then and there knowingly used by the said .... for the illegal transportation of intoxicating liquors from place to place in said .... with intent that the said intoxicating liquors should be sold in violation of law; and which intoxicating liquors as aforesaid, and the vessels containing the same, were then and there kept, deposited and intended for unlawful sale as aforesaid, and said automobile was then and there being used for the illegal transportation of said liquors as aforesaid, within said state by the said persons unknown, and did then and there by virtue of this authority as a deputy sheriff as aforesaid, seize the above described automobile, intoxicating liquors and the vessels containing the same, to be kept in some safe place for a reasonable time, and hath since kept and does still keep said automobile, liquors and vessels to procure a warrant to seize the same.

He therefore prays, that due process be issued to seize said automobile, liquors and vessels, and them safely keep until final action and decision be had thereon, and that said persons unknown .... be forthwith apprehended and held to answer to said complaint, and to do and receive such sentence as may be awarded against them.

On the .... day of ...., the said .... makes oath that the above complaint by him signed is true.

Before me, ..., Said Judge—Recorder."

Form of Warrant in Case of Seizure of Automobile

STATE OF MAINE

"...., ss.—To the sheriff of our county of ...., or either of his deputies, or either of the constables or police officers of the City of ...., or of either of the towns within said county:

[L. S.]

In the name of said state you are commanded to seize the automobile, liquors and vessels containing the same, named in the foregoing complaint of the said .... and now in his custody as set forth in said complaint, which is expressly referred to as a part of this warrant, and safely keep the same, until final action and decision be had thereon, and to apprehend the said persons unknown .... forthwith, if they .... may be found in your precinct, and them .... bring before said court, holden at the municipal court room in said ...., to answer to said complaint, and to do and receive such sentence as may be awarded against them.

Witness, ..., ... esquire, our said Judge—Recorder—at ...., aforesaid, this .... day of ...., A. D., 19.."

Form of Libel for Automobile

STATE OF MAINE

".... , ss.—To the Judge—Recorder of our municipal court for the City of .... , in the county of .... :

The libel of .... shows that he has by virtue of a warrant duly issued by the Judge—Recorder—of the municipal court for the city of .... , seized on the .... day of .... , A. D., 19.., a certain automobile, intoxicating liquors and the vessels in which the same were contained, described as follows:

One .... bearing engine number .... and the 19.. license number plates numbered .... , which said automobile then and there contained .... , which said automobile was not then and there a common carrier, and which said automobile was not then and there engaged in the business of a common carrier; and which said automobile was then and there in the possession, care and control of the said .... , and which said automobile was then and there knowingly used by the said .... for the illegal transportation of intoxicating liquors from place to place in said .... , and because the same were then and there kept, and deposited on the .... day of .... , A. D., 19.., on .... street, in said .... , in said county, near number .... on said street, in said .... , and because said automobile was being knowingly used for the illegal transportation of said liquors, within the state in violation of law. Wherefore he prays for a decree of forfeiture of said automobile, liquors and vessels, according to the provisions of law in such case made and provided.

Dated at .... , in said county, the .... day of .... , A. D., 19...

(Signed.) .... , Deputy Sheriff."

Form of Monition and Notice Case of Automobile

STATE OF MAINE

".... , ss.

[L. S.] To all persons interested in the automobile, liquors and vessels described in the foregoing libel:

The libel of .... hereunto annexed, this day filed with the Judge—Recorder—of our municipal court for the City of .... , in the County of .... , shows that he has seized said automobile, liquors and vessels because the same were used, kept and deposited as set forth in said libel, and said automobile was then and there knowingly used for the illegal transportation of intoxicating liquors, and prays for a decree of forfeiture of the same, according to the provisions of law in such case made and provided.

You are, therefore, hereby notified thereof, that you may appear before said court, at the municipal court room, in said .... , on the .... day of .... , A. D., 19.., at .... o'clock, A. M. and then and there show cause why said automobile, liquors and vessels in which they are contained should not be declared forfeited.

Witness, ... , ... , Esquire, our said Judge—Recorder—at .... aforesaid, this .... day of .... , A. D., 19..."

(R. S. c. 57, § 97.)

Cross reference.—See c. 68, § 31, re narcotic drugs.

This section does not require the use of these forms. It simply provides them, to be used if preferred. State v. Learned, 47 Me. 426.

The provision of this section is not that all forms shall literally follow those set out, but that "the form shall be deemed sufficient in law." State v. Reed, 67 Me. 127.

Nor does it negative other forms, which may be appropriate and which set forth all the necessary facts to constitute the offense charged. State v. McCann, 59 Me. 383.

The forms set out in this section are declared to be sufficient. They are not, however, inclusive. State v. Haapanen, 129 Me. 28, 149 A. 389.

It is not imperative that the statute form of complaint should be used. The

legislature did not so provide. It declared only that the "forms herein set forth .... are sufficient in law." The provision of the section that the averments in the forms set forth "are sufficient in law" does not preclude the government from using other averments that are sufficient in law to constitute a good complaint. State v. Jones, 115 Me. 200, 98 A. 659.

Charge against defendant must be clearly set out.—It is well settled in this state that while the legislature may modify and simplify the forms in criminal proceedings, and may authorize the omission of allegations in indictments which do not serve any useful purpose, either by enabling the court to see without going out of the record what crime has been committed, if the facts alleged are true, or of apprising the accused of the precise crime with which he is charged, so as to enable him to meet it in his defense, it cannot deprive a person accused of crime of such rights as are essential to his protection, and which have been guaranteed to him by the constitution of the state. One of the most important of these rights, is that the accusation against him shall be formally, fully and precisely set forth, so that he may know of what he is accused and be prepared to meet the exact charge against him. State v. Bartley, 92 Me. 422, 43 A. 19.

Applied in State v. Intoxicating Liquors, 80 Me. 91; State v. Mallett, 123 Me. 220, 122 A. 570.

Cited in State v. Connelly, 63 Me. 212; State v. Wentworth, 65 Me. 234; State v. Gorham, 65 Me. 270; State v. Dolan, 69 Me. 573; State v. Schoppe, 113 Me. 10, 92 A. 867; State v. Burgess, 123 Me. 393, 123 A. 178.