NINTH REVISION

REVISED STATUTES

OF THE

STATE OF MAINE

1954

FIRST ANNOTATED REVISION

IN FIVE VOLUMES

VOLUME 3

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA

Chapter 100.

Miscellaneous Provisions Relating to Towns.

Town Hospitals. Sanatoriums.

Sec. 1. Town hospitals.—A town may establish therein one or more hospitals for the reception of persons having smallpox or other disease dangerous to the public health; or its local health officer may license any building therein as a hospital, which shall be under the control of said local health officer. (R. S. c. 88, § 1.)

Municipality maintaining hospital for public welfare not liable for negligence, unless action given by statute.—A municipality maintaining a hospital as provided by this section, only for the public welfare, is not liable to a private action for neglect to perform, or for the negligent performance of duties legislatively imposed on it, unless a right of action has been given by statute. Anderson v. Portland, 130 Me. 214, 154 A. 572.

But when public use descends to private profit, even incidentally, liability attaches.—Anderson v. Portland, 130 Me. 214, 154 A. 572.

Sec. 2. Physicians and others subject to regulations.—When a hospital is so established or licensed, the physicians, the persons who are infected, infectious or sick therein, the nurses, attendants and all who come within its limits,

and all furniture or other articles used or brought there shall be subject to the regulations made by the local health officer. (R. S. c. 88, § 2.)

Sec. 3. Hospital provided, on breaking out of infectious diseases; regulations.—When smallpox or other disease dangerous to the public health breaks out in a town, the local health officer shall immediately provide such hospital or place of reception for the sick and infected as he judges best for the accommodation and safety of the inhabitants; such hospitals and places are subject to his regulations the same as established hospitals; and he shall cause such sick and infected to be removed thereto, unless their condition will not permit it without imminent danger; in which case, the house or place where the sick are shall be deemed a hospital for every purpose aforesaid; and all persons residing in or in any way concerned with it are subject to hospital regulations. (R. S. c. 88, § 3.)

This section authorizes removal of sick to hospital, or impressment of house where the sick are.—This section is in the alternative. In case the condition of the sick will admit, they are to be removed to the hospital. If not in condition to be safely removed, authority is given to impress "the house or place where the sick are." Pinkham v. Dorothy, 55 Me. 135.

Officer to use most expedient mode of removal.—The officer under this section is to provide for the removal of the sick in such mode and manner as he judges most expedient. Pinkham v. Dorothy, 55 Me. 135.

But the section does not give power to impress means of removal.—Power is not given under this section to impress the means of removal, whether the removal be of the sick or of infected articles. The officer is to provide the means of removal; not to impress them. Pinkham v. Dorothy, 55 Me. 135.

Only trial justice or judge may impress building for hospital; municipality not otherwise liable for rent or damages.—The officers of a city, acting within the scope of their official duties as defined by the laws of the state, cannot bind the city to pay rent or damages by taking possession of a house and using it, under this section, for a hospital for smallpox patients. No power is given to the officers of a town or city to impress any building for a hospital—that power being conferred only upon the trial justice or judge of the municipal court. Lynde v. Rockland, 66 Me. 309.

Unless provision is made by contract.—This section contemplates provision to be made by the municipal officers, only in the ordinary mode, by contract. Lynde v. Rockland, 66 Me. 309.

Suit for compensation against municipality should be in assumpsit.—A plaintiff desiring compensation when his premises have been impressed under c. 25, § 78 should sue in assumpsit with the proper averments to establish the legal liability of the city to pay the rent or just compensation. No action of trespass against the city can be maintained in such a case. Lynde v. Rockland, 66 Me. 309.

This section makes safety of the people paramount to rights of individuals and property.—To accomplish the object of this section persons may be seized and restrained of their liberty or ordered to leave the state; private houses may be converted into hospitals and made subject to hospital regulations; buildings may be broken open and infected articles seized and destroyed, and many other things done which under ordinary circumstances would be considered a gross outrage upon the rights of persons and property. This is allowed upon the same principle that houses are allowed to be torn down to stop a conflagration. "The safety of the people is the supreme law" is the governing principle in such cases. Seavey v. Preble, 64 Me. 120.

Stated in Haverty v. Bass, 66 Me. 71.

Sec. 4. Precautions to prevent spread of such diseases.—When any disease dangerous to the public health exists in a town, the municipal officers shall use all possible care to prevent its spread and shall give public notice of infected places to travelers by displaying red flags at proper distances and by all other means most effectual, in their judgment, for the common safety. (R. S. c. 88, § 4.)

Section requires utmost vigilance to prevent spread of disease.—When the smallpox or any other contagious disease exists in any town or city this section requires the utmost vigilance to prevent its spread. Seavey v. Preble, 64 Me. 120.

And does not allow experiments to see if less degree of care will not answer. Seavey v. Preble, 64 Me. 120.

In case of doubt, the safest precaution should be pursued.—In all cases of doubt as to the extent of precaution required by this section the safest course should be pursued remembering that it is infinitely better to do too much than run the risk of doing too little. Seavey v. Preble, 64 Me. 120.

Town liable for expenses of physician if employed by officers.—Within the scope of this section towns are liable, primarily, for expenses incurred by the municipal officers. The employment of a physician would, without doubt, fall within their line of duty. But in order to render the town liable, the physician must be employed by the officers, for towns are under no other obligations, than those prescribed by statute, in relation to claims for compensation arising out of services rendered. Kellogg v. St. George, 28 Me. 255.

The fact of a physician's employment by the officers does not necessarily arise from their knowledge and assent. His services are not performed for the town, unless the physician is employed by its officers. Kellogg v. St. George, 28 Me. 255.

A physician is protected in ordering removal of wallpaper in sick rooms.—The mandate of this section is "use all possible care." Under this mandate, a physician is justified in advising the removal of the paper from the walls of the rooms in which the smallpox patients have been confined, and the law protects him in so doing. Seavey v. Preble, 64 Me. 120.

Sec. 5. Violation of regulations. — If any physician or other person in such hospitals or places of reception, attending, approaching or concerned therewith violates any lawful regulation in relation thereto, with respect to himself or his or another's property, he forfeits not less than $10 nor more than $100 for each offense. (R. S. c. 88, § 5.)

Sec. 6. Forfeitures.—All forfeitures mentioned in sections 1 to 5, inclusive, of this chapter and sections 62 and 63, 78 to 87, inclusive, 93 to 103, inclusive, and 150 to 156, inclusive, of chapter 25, except as otherwise provided, inure to the town where the offense is committed. (R. S. c. 88, § 6.)

In an action for a penalty under this section, strictness of allegation is required. The declaration must present a case strictly within the statute, directly averring every essential fact. Rockland v. Farnsworth, 87 Me. 473, 32 A. 1012.

Recovery of forfeiture is by action of debt.—In giving to the town, in compensation for a local duty, the forfeiture resulting from a local offense giving rise to that duty, and prescribing no mode of recovery, the legislature must be held to have given in this section, the right to recover the forfeiture by the customary form of action, debt, otherwise the gift would be unavailing. Rockland v. Farnsworth, 87 Me. 473, 32 A. 1012.

And the town, itself, can maintain the action.—The town can maintain an action of debt for the forfeiture under this section and need not leave it to be recovered for the city's benefit by the state by indictment. Rockland v. Farnsworth, 87 Me. 473, 32 A. 1012.

Sec. 7. Sanatorium or hospital for infectious diseases.—No person, firm or corporation shall establish or maintain within the populous districts of any city or town in this state any sanatorium or hospital designed for the treatment of persons suffering from tuberculosis or other infectious or contagious disease, unless approval has been obtained from the municipal officers of the city or town in question and from the department of health and welfare. Any person, firm or corporation found guilty of violating the provisions of this section shall be punished by a fine of not more than $1,000 or by imprisonment for not more than 11 months; and jurisdiction in equity to enjoin threatened violations of the provisions of this section is conferred upon the supreme judicial and superior courts. (R. S. c. 88, § 7.)

Public Dumping Grounds.

Sec. 8. Rat control on public dumping grounds. — Whenever a municipality shall maintain public dumping grounds, it shall be the duty of its municipal officers to see that such dumping grounds are treated at least once a year

with proper rat exterminating agents, such agents to be applied by competent persons properly trained in the use thereof.

At the request of the municipal officers of any municipality, the state bureau of health shall provide information as to the most effective methods and materials for the purpose of carrying out the provisions of this section. (1947, c. 263. 1949, c. 349, § 122.)

Dogs.

Sec. 9. Lists of all dogs; returns.—Assessors of taxes shall include in their inventories lists of all dogs 6 months old or over owned or kept by any inhabitants on the 1st day of April, setting the number and sex thereof opposite the names of their respective owners or keepers, and shall make returns to the clerks of their respective cities or towns and to the commissioner of agriculture or his authorized agent of such lists on or before the 15th day of June following.

The commissioner of agriculture or his authorized agent shall, on or before the 1st day of September of each year, report to the treasurer of state the number of dogs by sexes, the number of dogs reported killed, and the number of kennels found in each city or town, together with the amount due the state from each city or town for dog licenses.

The treasurer of state shall notify the municipal officers of each city or town before October 1st of each year of the amount due the state for dog licenses, on which amount he shall allow credit for all dogs reported killed.

If any city or town fails to remit to the treasurer of state on or before October 15 of each year a sum of money equal to the licenses required by sections 9 to 28, inclusive, on all dogs living on the 15th day of June preceding, such deficiency shall be added to the state tax of such delinquent city or town for the following year. (R. S. c. 88, § 8.)

See § 22, re penalty.

Sec. 10. Dog licenses; fee; suitable tag; duties of animal husbandry expert; kennels.—On or before the 1st day of April of each year, the owner or keeper of any dog 6 months old or over shall apply to the city or town clerk either orally or in writing for a license for each such dog owned or kept by him. Such application shall state the breed, sex, color and markings of such dogs and the name and address of the last previous owner.

A fee of 90c shall be paid the city or town clerk for each license issued on male dogs, and a fee of $4.90 shall be paid for all female dogs capable of bearing young. All female dogs shall be considered capable of producing young unless a certificate issued by the commissioner of agriculture and signed by a licensed veterinarian, or previous license record, is presented from a licensed veterinarian stating that such female was made incapable of bearing young by spaying by him. When such certificate accompanies the application, a fee of 90c shall then be paid on such spayed females. In addition to the amount paid for license and tag, each applicant shall pay the city or town clerk 25c for the recording and making a return to the commissioner of agriculture.

Such licenses shall be made in triplicate, the original copy shall be mailed to the commissioner of agriculture, 1 copy given to the person applying for the license and 1 copy retained by the city or town clerk.

A suitable tag showing the year such license is issued and bearing such other data as the commissioner of agriculture may prescribe shall be given with each license and must be securely attached to a leather or metal collar which must be worn at all times by the dog for which the license was issued and it shall be unlawful for any person to remove such tag or to place either collar or tag on any dog not described or for which the license was not issued.

Returns from clerks of cities, towns and plantations showing all licenses issued by them together with a correct report showing the total number of dogs in "both sexes" found by the city or town assessors and the number of dogs killed shall be made to the commissioner of agriculture not later than the 1st day of July each year.

All license blanks and tags shall be furnished by the commissioner of agriculture. The representatives of the department of agriculture in charge of animal husbandry shall be known as the animal husbandry specialist and the assistant animal husbandry specialist, and shall devote their time to the carrying out of the provisions of the dog licensing laws and the adjustment of claims for damages to livestock by dogs and wild animals, and to the promotion of animal husbandry within the state. The expense of furnishing the above-mentioned blanks and tags, and the necessary clerk hire and travel, and the salary of the animal husbandry specialist and the assistant animal husbandry specialist shall be paid from the funds received from the licensing of dogs; provided, however, that money is hereby appropriated out of the dog license receipts for the purposes of this section.

Any person becoming the owner or keeper of a dog after the 1st day of April, not duly licensed as herein required, shall, within 10 days after he becomes the owner or keeper of said dog, cause said dog to be described and licensed as provided above.

Every owner or keeper of dogs, kept for breeding purposes, may receive annually a special kennel license authorizing him to keep said dogs for said purpose, provided he keeps said dogs within a proper enclosure; and provided further, that such special kennel license shall permit such owner, keeper or authorized agent to transport under control and supervision said dogs to and from places of exhibition within or without the state. When the number of dogs so kept does not exceed 10, the fee for such license shall be $9.90, and in addition 25c for each such license as a fee for recording and making the return required by law; when the number of dogs so kept exceeds 10, the fee for such license shall be $19.90, and in addition 25c for each such license as a fee for recording and making the return required by law, and no fees shall be required for the dogs of such owner or keeper under the age of 6 months. Dogs covered by kennel license shall be exempted from the provisions of this section requiring registration, numbering and collaring. (R. S. c. 88, § 9. 1945, c. 183, §§ 1, 2, 3; c. 209. 1949, c. 261.)

Cross reference.—See § 22, re penalty.

This section does not preclude owner from registering after April 1.—As revenue appears to be one object of this section, it would seem that the owner who neglected to register on April 1, might do so later. Chapman v. Decrow, 93 Me. 378, 45 A. 295.

Sec. 11. Dog kennels.—The commissioner of agriculture or his authorized representative, or any humane agent, police officer or dog officer, within his jurisdiction upon complaint may at any time inspect or cause to be inspected any kennel licensed pursuant to the provisions of the preceding section, and if in their or his judgment, the same is not being maintained in a sanitary and humane manner or if the records required by law are not properly kept, such representative, police officer or dog officer shall make complaint to the commissioner of agriculture, setting forth conditions and irregularities complained of, a copy of which complaint shall be given to the licensee, owner or operator of said kennel either in person or by registered mail; whereupon the commissioner of agriculture shall appoint a time and place for hearing not less than 48 hours after the filing of said complaint, and if after hearing the allegations of said complaint are found true, said commissioner shall by order revoke or suspend such kennel license until said licensee shall give satisfactory evidence of full compliance with all provisions of law and regulations for humane treatment, protection and sanitation of said dogs and kennels.

For a second offense under the provisions of this section, the kennel license shall be permanently revoked. (1949, c. 314.)

See § 22, re penalty.

Sec. 12. Duty of clerks.—The clerks of cities and towns shall issue said licenses, receive the money therefor and pay the same to the treasurer of state, who shall credit the same to the general fund. Such clerks shall keep a record of all licenses issued by them, with the names of the owners or keepers of dogs li-

censed, and the sex, registered numbers and description of all such dogs; provided, however, that the sex, registered number and description shall not be required of dogs covered by a kennel license. (R. S. c. 88, § 10. 1949, c. 213, § 1.)

See § 22, re penalty.

Sec. 13. Keeping unlicensed dog.—Whoever keeps a dog contrary to the provisions of sections 9 to 28, inclusive, shall be punished by a fine of not more than $25 to be recovered by complaint before any trial justice or municipal court in the county where such owner or keeper resides. (R. S. c. 88, § 11.)

See § 22, re penalty.

Sec. 14. Unlicensed dogs; warrants; disposal.—The municipal officers of each city, town or plantation shall annually within 10 days from the 1st day of June issue a warrant, returnable on the 1st day of July following, to one or more police officers or constables, directing him or them to proceed forthwith to enter complaint and summons to court the owner or keeper of any unlicensed dog.

On the 1st day of July the municipal officers of cities, towns and plantations shall issue to one or more police officers or constables a warrant returnable on the 1st Monday of the following February, directing him or them to seek out, catch and confine all dogs within such city, town or plantation which are not licensed, collared and tagged or enclosed, as required by sections 9 to 28, inclusive, and to enter complaint and summons to court the owner or keeper of any such dog. Such court may order such police officers or constables to sell, give away, kill or cause to be killed each such dog which, after being detained by him or them for a period of 6 days, shall not have been licensed, collared and tagged. (R. S. c. 88, § 12. 1945, c. 343, § 1. 1953, cc. 240, 256.)

Cross references.—See § 22, re penalty; c. 25, § 43, re rabies or hydrophobia.

Only officer acting under warrant may kill unlicensed dogs.—This section provides only for the killing of unlicensed dogs by a constable or police officer under a warrant, and impliedly forbids killing by any other person. Chapman v. Decrow, 93 Me. 378, 45 A. 295.

Sec. 15. Offcers to make returns.—Each police officer or constable to whom the warrants named in the preceding section are issued shall return the same at the time specified. Such officers shall receive from the city, town or plantation the sum of $2 for each dog killed or otherwise disposed of, and for other services rendered under the provisions of sections 9 to 28, inclusive, they shall receive such compensation as the municipal officers may determine.

Provided, however, that in no case shall such officer be entitled to more than $2 as a fee for disposing of any dog. (R. S. c. 88, § 13. 1945, c. 343, § 2.)

See § 22, re penalty.

Sec. 16. Copies of law posted.—The commissioner of agriculture shall seasonably forward to the clerks of the several cities, towns and plantations copies of the 7 preceding sections, and each clerk shall annually, at least 20 days before the 1st day of April, post said copies in the usual places of posting notices of the annual municipal or town elections. (R. S. c. 88, § 14. 1947, c. 206. 1953, c. 308, § 99.)

See § 22, re penalty.

Sec. 17. Damage by dogs.—When a dog does damage to a person or his property, his owner or keeper, and also the parent, guardian, master or mistress of any minor who owns such dog, forfeits to the person injured the amount of the damage done, provided the said damage was not occasioned through the fault of the person injured; to be recovered by an action of trespass. (R. S. c. 88, § 15.)

Cross reference.—See § 22, re penalty.

This section makes the damage done by a dog a trespass, since a trespass action is prescribed as the remedy. A damage to

the person by a dog is a trespass to the person, as much so as an assault and battery. Carroll v. Marcoux, 98 Me. 259, 56 A. 848.

Which will survive.—While an action of trespass to recover damages for personal injuries does not survive at common law, it will survive under this section and by the provisions of c. 165, § 8. Prescott v. Knowles, 62 Me. 277.

A man is presumed to be the keeper of his own dog, under this section, except in so far as the contrary appears. Grant v. Ricker, 74 Me. 487.

And the fact that others with the owner may have had some part in taking charge of his dog does not prevent his being the keeper within the meaning of this section. Grant v. Ricker, 74 Me. 487.

Within the meaning of this section, one may be in the wrongful possession of a dog and still be his keeper. The question is whether a keeper or not, and not whether a rightful keeper. A person might even steal a dog and become his keeper. Mitchell v. Chase, 87 Me. 172, 32 A. 867.

But one cannot be charged as keeper of a dog, within the sense of this section, unless he has the care, custody and control of the dog. McCosker v. Weatherbee, 100 Me. 25, 59 A. 1019.

Owner of premises not necessarily keeper. —While it is true that a person, not the owner of a dog, may be liable as its keeper, the mere fact that the dog is kept by its owner on the premises of another, with the knowledge, or acquiescence, or permission of the owner of such premises, does not of itself make the owner of said premises, the keeper of the dog. McCosker v. Weatherbee, 100 Me. 25, 59 A. 1019.

Liability attaches regardless of exercise of care by keeper or disposition of dog.— This section makes the owner or keeper of a dog liable for damage done by it without regard to the disposition of the dog, or the owner or keeper's knowledge, or his care or want of care. Carroll v. Marcoux, 98 Me. 259, 56 A. 848.

And evidence of the character or disposition of the dog is not admissible in an action under this section. Carroll v. Marcoux, 98 Me. 259, 56 A. 848.

And that dog acted merely in play is immaterial.—The fact that the dog did the damage merely in play, in exuberance of good nature, is immaterial. The owner is nevertheless liable by the terms of this section. Carroll v. Marcoux, 98 Me. 259, 56 A. 848.

Trespass alone does not absolve keeper of liability.—The fact that the plaintiff wilfully and wantonly enters upon the defendant's premises without permission (such entry being the sole provocation of the dog's attack) does not alone outlaw the plaintiff from the protection of this section, for the wilfulness and wantonness are wholly in the plaintiff's mind. It is still only the visible, physical entry, not the plaintiff's thoughts or state of mind, which might provoke the dog. Carroll v. Marcoux, 98 Me. 259, 56 A. 848.

Damages not deemed excessive for reason of plaintiff's constitution.—While it may be true that the plaintiff has a naturally weak and delicate constitution, and was for that reason more likely to be seriously affected by wounds and shocks and frights, still, where the assault of the dog must have been the direct and proximate cause of much, if not the whole, of her subsequent sufferings and sickness, a large amount assessed by the jury will not for that reason be deemed excessive. Fitzgerald v. Dobson, 78 Me. 559, 7 A. 704.

"Fault" defined. — The primary lexical meaning of the word "fault" is defect or failing. Hence, in the language of the law and in the interpretation of this section, it is held to signify a failure of duty, and deemed to be equivalent of negligence. Milliken v. Fenderson, 110 Me. 306, 86 A. 174; Garland v. Hewes, 101 Me. 549, 64 A. 914.

Plaintiff must prove due care on his part. —It is incumbent on the plaintiff in an action under this section to prove that the injury received by him from the bite of the dog was not occasioned by any want of due care on his own part. This burden is necessarily implied in the obligation to prove that the act of the dog was the cause of the injury. If it was occasioned by the plaintiff's own fault, it is not, in a legal sense, caused by the act of the dog. Milliken v. Fenderson, 110 Me. 306, 86 A. 174; Garland v. Hewes, 101 Me. 549, 64 A. 914.

Child held only to degree of care commensurate with his years.—In determining the question of due care under this section, all the circumstances are to be taken into consideration, including the age and intelligence of the plaintiff. If the plaintiff is a child, he is not to be held to the same judgment and thoughtfulness as an adult, but only to such as a child of his age and intelligence ordinarily exercises under the same circumstances. The mere fact that he was old enough to know that striking the dog over the head and pulling his ears might cause the dog to bite him, would not bar his recovery if he was in the exercise of such care as would be due care in a boy of his age and intelligence. Gar-

land v. Hewes, 101 Me. 549, 64 A. 914; Milliken v. Fenderson, 110 Me. 306, 86 A. 174.

Section is remedial and declaration amendable.—The action under this section is remedial and not penal in the technical sense, and a declaration is amendable, if an amendment be considered desirable for a fuller statement of the plaintiff's claims in the case. Mitchell v. Chase, 87 Me. 172, 32 A. 867.

Nonjoinder no grounds of defense. — Where a dog is kept at a hotel owned and conducted by a firm, of which the defendant is a member, the nonjoinder of the other members of the firm as defendants in the action affords no ground of defense. Grant v. Ricker, 74 Me. 487.

Former provisions of section.—For a case concerning this section before the enactment of the provision denying liability where plaintiff was at fault, see Hussey v. King, 83 Me. 568, 22 A. 476.

For a case concerning a former provision of this section providing for double damages, see Mitchell v. Chase, 87 Me. 172, 32 A. 867.

Applied in Lyschick v. Wozneak, 149 Me. 243, 100 A. (2d) 424.

Cited in State v. Harriman, 75 Me. 562.

Sec. 18. Payment of damages done by dogs and wild animals; recovery from owner; keeping dogs that kill sheep.—Whenever any sheep, lambs, domestic rabbits properly enclosed or other domestic animals are killed or injured by dogs or wild animals, the owner, after locating such animal or animals or a sufficient part of each animal to identify the same, may make complaint thereof to the mayor of the city or to one of the municipal officers of the town or plantation where such damage was done within 24 hours after he has knowledge of the same. Thereupon the municipal officers shall investigate the complaint, and if satisfied that such damage was committed by dogs or wild animals within the limit of their city, town or plantation they shall, after viewing the evidence, estimate the value of such animals according to the purpose for which they were kept, whether as breeders or other purpose, together with damage to any other animals by being bitten, torn or chased until exhausted, and make returns on blank forms furnished by the commissioner of agriculture. Such returns shall be made in triplicate, the original and duplicate copies together with a bill from the claimant shall be mailed to the commissioner of agriculture or his duly authorized agent within 15 days from the date of investigation and the triplicate shall be kept by the town clerk as his record.

A full description of all evidence seen by the investigator shall be plainly printed or written in duplicate on all reports and recommendations, giving the number of sheep with their estimated value, and the number of domestic rabbits properly enclosed with their estimated value and the number of lambs, giving their ages, average live weight and actual estimated value, also any other information that will assist in making a fair adjustment.

If sheep, lambs, domestic rabbits properly enclosed or other domestic animals are kept in an unincorporated place, the owner may make complaint to the municipal officers of the nearest incorporated town adjoining, or the nearest incorporated town when there is none adjoining, who shall investigate the complaint.

Each report and recommendation must be signed by the investigator in the place provided for his or her signature. Such signature shall be construed to mean that the investigator has seen evidence legally establishing the liability of the state. Also, all reports and recommendations must be signed by a majority of the city or town officials.

The commissioner of agriculture or his duly authorized agent shall approve the bill or, if it seems advisable, investigate and adjust the claim.

When the claim is approved by the commissioner of agriculture or his duly authorized agent, the same shall be paid by the state to the person sustaining such damage.

All dogs doing such damage and found without leather or metal collar and tag as required by law shall be deemed to be unlicensed; provided, however, that if investigation shows such dog or dogs to have been legally licensed, the state shall accept liability and adjust the damage.

The state may maintain an action on the case against the owner or keeper of the dogs to recover the amount paid unless, before the final disposition of the case, the said owner or keeper of the said dog produces satisfactory evidence that the dog has been killed.

Any person who keeps a dog that kills or injures sheep, rabbits or lambs shall be punished by a fine of not more than $100 and costs unless, before the final disposition of the case, the said owner or keeper of the said dog produces satisfactory evidence that the dog has been killed. (R. S. c. 88, § 16. 1945, c. 378, § 72. 1949, c. 118, §§ 1, 2.)

Cross reference.—See § 22, re penalty.

Section construed according to common meaning of language.—This section is entirely free from technical words or phrases. It is therefore to be construed according to the common meaning of the language. Thurston v. Carter, 112 Me. 361, 92 A. 295.

"Domestic" means belonging to the house or household, living by habit or special training in association with man. Thurston v. Carter, 112 Me. 361, 92 A. 295.

And a cat is a domestic animal within the meaning of this section. Thurston v. Carter, 112 Me. 361, 92 A. 295.

Former provisions of this section.—For a case concerning former provisions of this section relating to investigation of damages by referees and liability of towns for such damages, see Andrews v. Hartford, 125 Me. 67, 130 A. 859.

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

Sec. 19. Damages to poultry by dogs or wild animals.—Whenever any properly enclosed poultry owned by a resident of this state is killed or injured by dogs, skunks, foxes, weasels, mink or coons, such owner may make complaint thereof to the mayor of the city or to one of the municipal officers of the town or plantation where such damage was done, within 24 hours after he has knowledge of the same. Thereupon the municipal officers shall investigate the complaint and, if satisfied that the said damage was committed by dogs or wild animals within the limit of their city, town or plantation, they shall estimate the damage thereof according to the actual value of such poultry and make returns of their findings together with the estimated damage, in triplicate. The original shall be sworn to by the investigator, and this and the duplicate, together with a bill from the claimant, which shall be sworn to, shall be mailed to the commissioner of agriculture or his duly authorized agent within 15 days from the date of investigation, and the triplicate shall be kept by the town clerk as his record.

If the poultry is kept in an unincorporated place, the owner may make complaint to the municipal officers of the nearest incorporated place, who shall investigate the complaint. The commissioner of agriculture or his duly authorized agent shall approve the bill or, if it seems advisable, investigate and adjust the claim and such adjustment by the commissioner of agriculture or his duly authorized agent shall be final in all cases. When the claim is approved by the commissioner of agriculture or his duly authorized agent it shall be paid by the state to the person sustaining such damage out of the appropriation made by the legislature.

Any person who keeps a dog that kills or injures poultry shall be subject to the same penalty as provided in section 18. (R. S. c. 88, § 17. 1947, c. 323. 1949, c. 213, § 2.)

See § 22, re penalty.

Sec. 20. Joint owners of dogs liable jointly and severally. — If any sheep, lambs or other domestic animals are killed or injured by two or more dogs at the same time, kept by two or more owners or keepers, the said owners or keepers of said dogs shall be jointly and severally liable for such damage. (R. S. c. 88, § 18.)

See § 22, re penalty.

Sec. 21. Expenditure of surplus money.—After the end of the fiscal year, any money in excess of receipts received by the state under the provisions of section 12 over the actual expenditures under the provisions of sections 9 to

28, inclusive, shall, if the governor and council deem it expedient, be paid to the several cities, towns and plantations in proportion to the amount each has paid into the state treasury under the provisions of sections 9 to 28, inclusive. (R. S. c. 88, § 19. 1945, c. 47, § 2. 1949, c. 213, § 3.)

See § 22, re penalty.

Sec. 22. Officer refuses or neglects duty.—Any mayor, selectman, clerk, constable or police officer who refuses or willfully neglects to perform the duties imposed by the 13 preceding sections shall be punished by a fine of not less than $10 nor more than $50, and costs. (R. S. c. 88, § 20. 1951, c. 266, § 106.)

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

Sec. 23. Stealing or killing registered dog. — Whoever steals or confines and secretes any registered dog, or willfully or negligently injures or willfully or negligently kills any such dog, except as provided in the following section and unless such killing be justifiable in the protection of persons, property or game, shall be liable to the owner in a civil action for the full value of the dog. (R. S. c. 88, § 21. 1953, c. 98.)

Sec. 24. Killing dogs chasing game or domestic animals or fowl. — Any inland fish and game warden, sheriff, deputy sheriff or constable may at any time lawfully kill any dog he may find in the act of hunting or chasing moose, caribou or deer, or he may find worrying, wounding or killing any domestic animal or fowl, when said dog is outside of the enclosure or immediate care of its owner or keeper. Any owner of sheep or fowl or any member of his family or any person to whom is entrusted the custody of any sheep or fowl shall have a right to kill any dog attacking any of said sheep or fowl. Any person having any evidence of any dog hunting or chasing moose, caribou or deer, or of any dog kept and used for that purpose, or of any dog worrying, wounding or killing any domestic animal or fowl, when said dog is outside of the enclosure or immediate care of his owner or keeper, may present said evidence to any trial justice or judge or recorder of any municipal court, which said trial justice, judge or recorder shall have power to issue a warrant against the owner of said dog, ordering him to appear before him and show cause why said dog should not be killed; and upon hearing the evidence in said case said court may order said dog killed. Any person may lawfully kill a dog which suddenly assaults him or another person when peaceably walking or riding. (R. S. c. 88, § 22. 1953, c. 223.)

Cross references.—See c. 25, § 43, re rabies or hydrophobia; c. 37, § 98, re dogs hunting wild animals.

Killing of dog and his proscribed act must occur at substantially same time.—Under this section it is not enough that the dog may have worried or killed a domestic animal before, nor that there is a belief or apprehension that he intends to do so, to justify the killing, but he must be in the act; the worrying and the shooting must be substantially at the same time. Chapman v. Decrow, 93 Me. 378, 45 A. 295.

Where a dog attacks a person, in order to justify shooting him he must be actually attacking the person at the time. Chapman v. Decrow, 93 Me. 378, 45 A. 295.

Cited in State v. Harriman, 75 Me. 562.

Sec. 25. Written complaint of dangerous dogs at large; treble damages and costs.—Whoever is assaulted by a dog when peaceably walking or riding or finds a dog strolling outside of the premises of its keeper and the said dog is not safely muzzled, may, within 48 hours thereafter, make written complaint before the municipal court having jurisdiction in the city or town where the owner or keeper resides or, in case there is no court, before a trial justice in said town, that he really believes and has reason to believe that said dog is dangerous and vicious, whereupon said court or trial justice shall order said owner or keeper to appear and answer to said complaint by serving said owner

or keeper of said dog with a copy of said complaint and order a reasonable time before the day set for the hearing thereon; and if, upon hearing, the court or trial justice is satisfied that the complaint is true, he shall order the dog to be killed or order said owner or keeper of said dog to muzzle the same, restrain the same, or confine said dog to the premises of said owner or keeper and the owner or keeper shall pay the costs. If the order of said court or magistrate is not complied with within the time fixed by such order, the court or magistrate making said order may, upon application by the complainant or other person, issue his warrant directed to the sheriff of the county or any of his deputies, or to any police officer or constable in the town where the dog is found, commanding such officer forthwith to kill said dog and to make return of his doings on said warrant to the court or magistrate issuing the same within 14 days from date thereof. The officer shall receive from the county treasury $2 for executing said warrant, together with his legal fees for travel, and the owner or keeper aforesaid shall be ordered to pay the costs of such supplementary proceedings.

If a dog whose owner or keeper refuses or neglects to comply with said order wounds any person by a sudden assault as aforesaid, or wounds or kills any domestic animal, the owner or keeper shall pay the person injured treble damages and costs, to be recovered by an action on the case. (R. S. c. 88, § 23.)

Cross reference.—See c. 25, § 43, re rabies or hydrophobia.

Cited in State v. Harriman, 75 Me. 562.

Sec. 26. Dogs in unorganized territories. — Dogs kept in unorganized territories shall be licensed by their owners or keepers in the oldest adjoining plantation or town. In case there is no adjoining town or plantation, said dogs shall be licensed in the nearest town or plantation. (R. S. c. 88, § 24.)

Sec. 27. Persons buying or selling dogs to keep record.—All persons or kennels engaged in buying or selling dogs must keep record of from whom bought and to whom sold, which record shall be open to inspection by local police officers or humane agents. (1949, c. 279.)

Sec. 28. Jurisdiction of courts; fines.—Trial justices shall have original and concurrent jurisdiction with municipal courts and the superior court of all violations of the 19 preceding sections. All fines imposed shall be paid into the treasury of the county where the offense is committed and shall accrue to and be used for the benefit of the town where the offense is committed unless otherwise provided. (R. S. c. 88, § 25. 1951, c. 266, § 107.)

See c. 25, § 43, re rabies or hydrophobia.

Innkeepers, Victualers and Lodginghouses.

Cross Reference.—See c. 2, § 3, re report of aliens in time of war.

Sec. 29. Licenses to innkeepers and victualers; revocation.—The municipal officers, treasurer and clerk of every town, hereinafter in sections 29 to 53, inclusive, called the "licensing board," shall meet annually on the 1st Monday of May or on the day succeeding, or both, and at such time and place in said town as they appoint, by posting notices in two or more public places therein, at least 7 days previously, stating the purpose of the meeting; and at such meeting they may license under their hands as many persons of good moral character, and under such restrictions and regulations as they deem necessary, to be innkeepers and victualers in said town, until the day succeeding the 1st Monday in May of the next year, in such house or other building as the license specifies; and at any meeting so notified and held, they may revoke licenses so granted, if in their opinion there is sufficient cause.

The licensing board may, at any other time, at a meeting specially called, and notified as aforesaid for the consideration of any application therefor to them

made, grant such license on like conditions; but all such licenses expire on the day aforesaid. (R. S. c. 88, § 26.)

The innholder has no natural right to pursue the business of innholding. It is an exceptional privilege which may or may not be conferred upon him by the public authority, and his chance for obtaining a license is dependent upon whether the licensing board decides his appointment to be necessary and that he sustains a good moral character. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

Such business is quasi-public and subject to legislative control. — Innholding, within the meaning of this section, has always been regarded in this country as a public or quasi-public business over which the legislature may rightfully exercise an unusual control. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

License may be granted only to persons of good moral character. — The officers may not at will grant a license under this section. Their duty is defined by this section, and they may issue licenses to such persons only as are of good moral character. The licensee must possess such character to be entitled to a license. Goodwin v. Nedjip, 117 Me. 339, 104 A. 519.

And to maintain the license provided under this section the licensee must continue to be of good moral character. Goodwin v. Nedjip, 117 Me. 339, 104 Me. 519.

The board is not required to keep a record of its proceedings under this section. The license itself, signed by the members of the board, is the evidence of qualification, and is delivered to the person licensed. State v. Crowell, 25 Me. 171.

Cited in Lord v. Jones, 24 Me. 439; State v. Woodward, 34 Me. 293.

Sec. 30. Bond. — No person shall receive his license as an innkeeper or victualer until he has given his bond to the treasurer, to the acceptance of the licensing board granting it, with one or more sureties in the penal sum of $300, in substance as follows, namely:

Know all men that we ....., as principal, and ....., and ....., as sureties, are held and stand firmly bound to ....., treasurer of the town (or city) of ....., in the sum of three hundred dollars, to be paid to him, or his successor in said office; to the payment whereof we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals. Dated the ..... day of ....., in the year nineteen hundred and .....

The condition of this obligation is such that, whereas the above bounden ..... has been duly licensed as a ..... within said town (or city) until the day succeeding the first Monday of May next; now if in all respects he shall conform to the provisions of law relating to the business for which he is licensed, and to the rules and regulations as provided by the licensing board in reference thereto, and shall not violate any law of the state relating to intoxicating liquors, then this obligation shall be void, otherwise shall remain in full force. (R. S. c. 88, § 27.)

Penal sum of bond not extreme.—The penal sum of the bond ($300) required by this section cannot be regarded as extreme at all when it is considered that the accompanying license would confer a right and privilege where none existed before. This requirement certainly cannot be regarded as prohibitory in its nature or effect. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

Sale of intoxicating liquor violates bond. —If, during the term of the license, the licensee engages in the unlawful sale of intoxicating liquor in this state, then he violates his license, and there is a breach of the bond for which both principal and sureties are liable. Goodwin v. Nedjip, 117 Me. 339, 104 A. 519.

Whether sold in the inn or anywhere in Maine.—It cannot be read into the language of the bond as provided by this section that the bond relates to the inn alone. The words are of broader scope and can mean only that the licensee will not unlawfully sell liquor anywhere in Maine during the term of his license. Goodwin v. Nedjip, 117 Me. 339, 104 A. 519.

Licensing board cannot take away immunities that license confers.—The board granting a license by the provisions of § 29 under bond as provided in this section, has no power to take away the immunities that the license legally confers. For it cannot be consistent with the policy of the law to enforce a contract, the object of which is to deprive a class of citizens of privileges, which the law has conferred

upon them, when licensed in pursuance of its requirements. Still less can this be permitted under color of official authority. Crosby v. Snow, 16 Me. 121.

Sec. 31. License fee and record.—Every person licensed as an innkeeper or victualer shall pay to the treasurer for the use of the town a fee of $1, and such additional amount as the town may by ordinance or by-law prescribe. Such ordinance or by-law may, for the purpose of fixing such fees, establish classifications of victualers according to the size, nature or other condition of business conducted and may prescribe for each of such classifications an appropriate fee which shall not in any case exceed the sum of $10 in towns of less than 10,000 population or the sum of $20 in towns over 10,000 in population, excepting any town wherein a larger fee was permitted by law on July 20, 1939. (R. S. c. 88, § 28.)

Cited in State v. Crowell, 25 Me. 171.

Sec. 32. Accommodations provided.—Every innkeeper shall, at all times, be furnished with suitable provisions and lodging for strangers and travelers, and he shall grant such reasonable accommodations as occasion requires to strangers, travelers and others. (R. S. c. 88, § 29.)

Unlicensed innkeeper subject to provisions of this section.—A person in the business of keeping an inn, though not licensed as required by § 29, is yet subject to all the common-law obligations of an innkeeper and to the provisions of this section. Atwater v. Sawyer, 76 Me. 539.

An innkeeper has the right to exclude from his inn all disorderly persons; all persons who come with an intent to make an assault, or to insult him or his customers; and he has the right to exclude such without waiting until the assault is made, or the affray begun, or the insult perpetrated, but he must have reasonable cause to apprehend such conduct. Atwater v. Sawyer, 76 Me. 539.

But a defendant innkeeper's claim that he could not distinguish between the plaintiff's and another and separate group of disorderly persons, merely because the two groups wore identical uniforms, cannot be admitted against the plaintiff's right to entertainment. Atwater v. Sawyer, 76 Me. 539.

Mere lack of food alone cannot relieve the obligation to be furnished with provisions.—Mere lack of food, without any evidence justifying such lack, cannot relieve an innkeeper from his obligation to "be at all times furnished with suitable provisions" as required by this section. Atwater v. Sawyer, 76 Me. 539.

Keeping of a bathhouse by an innkeeper held separate employment.—See Minor v. Staples, 71 Me. 316.

Cited in Hilton v. Adams, 71 Me. 19.

Sec. 33. Duties of victualers.—Every victualer has all the rights and privileges and is subject to all the duties and obligations of an innkeeper, except furnishing lodging for travelers. (R. S. c. 88, § 30.)

Cited in State v. Burr, 10 Me. 438; Crosby v. Snow, 16 Me. 121.

Sec. 34. Innkeepers and victualers to allow no gambling.—No innkeeper or victualer shall have or keep for gambling purposes about his house, shop or other buildings, yards, gardens or dependencies, any dice, cards, bowls, billiards, quoits or other implements used in gambling; or suffer any person resorting thither to use or exercise for gambling purposes any of said games or any other unlawful game or sport therein; and every person, who uses or exercises any such game or sport for gambling purposes in any place herein prohibited, forfeits $5. (R. S. c. 88, § 31.)

See c. 134, § 43, re gambling, business, etc., on the Lord's Day.

Sec. 35. No reveling, drunkenness, etc.—No innkeeper or victualer shall suffer any reveling or riotous or disorderly conduct in his house, shop or other dependencies; nor any drunkenness or excess therein. (R. S. c. 88, § 32.)

Sec. 36. Neglecting a license.—No person shall be a common innkeeper or

victualer without a license, under a penalty of not more than $50. (R. S. c. 88, § 33.)

A license does not change the character of the business of innkeeping. The possession of a license does not make, or the want of it prevent, a person from being an innkeeper, at common law; it is his business alone that fixes the status of a party in this respect. Randall v. Tuell, 89 Me. 443, 36 A. 910.

The violation of this section can be no legal excuse for violating § 32. Atwater v. Sawyer, 76 Me. 539.

This section does not make contracts of unlicensed innkeepers void. There is nothing in it by which such an intention of the legislature can even be implied. Forfeitures and confiscation of honest debts must be the result of express legislation; these are not to be implied. When a sale is an offense by reason of a violation of this section, but the act itself is not criminal, there is no implication from the mere infliction of the penalty that the contract is void. Randall v. Tuell, 89 Me. 443, 36 A. 910.

Punishment does not bar a second punishment for a second violation in same year.—Where an innkeeper is punished at one time during the year for violation of this section, such punishment will not be a bar to his being again punished for another violation of it at a subsequent time during the same year; the first punishment would not have the effect of a license to continue in wrongdoing in the future, and to the end of the year. State v. Johnson, 65 Me. 362.

Applied in State v. Stuart, 23 Me. 111.

Stated in Stanwood v. Woodward, 38 Me. 192.

Sec. 37. Prosecutions.—The licensing board shall prosecute for any violation of sections 29 to 36, inclusive, that comes to its knowledge, by complaint, indictment or action of debt; and all penalties recovered shall inure to the town where the offense is committed. Any citizen of the state may prosecute for any violation of the said sections in the same manner as the licensing board may prosecute. (R. S. c. 88, § 34.)

Prosecutions should be in name of the inhabitants of town. — The design of this section is to invest the town with the right to realize the penalty from those who presumed to exercise the employment noticed without being licensed, and the prosecution ought to be in the name of the inhabitants of the town, as the penalty is for their use. Wiscasset v. Trundy, 12 Me. 204.

Although this section says the licensing board shall prosecute for any violation, the town itself can sue directly for the penalty because it owns all of it. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

And citizens may prosecute only with consent of town.—One who claims to prosecute the suit as a citizen of Maine in the name of the town can only do so by the plaintiff town's consent. A citizen thus prosecuting is not a plaintiff, but stands rather in the position of an informer for the state or town, somewhat in the position of a complainant who obtains an indictment. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

For the town has the entire control of the action granted by this section and brought in its name and can repudiate it if it pleases, notwithstanding the action is instituted by a citizen of Maine, although the presumption is that it acquiesces in the proceedings, nothing appearing to the contrary. Dexter v. Blackden, 93 Me. 473, 45 A. 525.

No special averment as to whom penalty to go is required.—When the penalty goes to the town in which the offense is committed, as provided in this section, and the appropriation is made by a public statute of which the court can take judicial notice, and the indictment gives the name of the town in which the offense was committed, no other or further averment as to whom the penalty is to go is necessary. State v. Johnson, 65 Me. 362.

Inhabitants of prosecuting town are competent witnesses.—Witnesses in a prosecution of action of debt under this section are competent although they may be inhabitants of the town to which any penalties recovered shall inure. State v. Stuart, 23 Me. 111.

Burden on innkeeper to show license.—The license unrecorded, is a protection against the penalty prescribed in § 36. It is the best evidence, and is peculiarly within the knowledge of the person holding it. Therefore, it is not necessary, in a prosecution against an innkeeper, for the state to prove that he had no license but if he would avail himself of that defense, it is incumbent on him to prove that he was licensed. State v. Crowell, 25 Me. 171.

The record of the license as provided in § 31 is secondary evidence of authority to do the acts therein mentioned, as much as the record of a deed of real estate in the

county registry is secondary evidence of the contents of such deed. State v. Crowell, 25 Me. 171.

Applied in Goodwin v. Nedjip, 117 Me. 339, 104 A. 519.

Sec. 38. Liability of hotel keepers, etc.—No innkeeper, hotel keeper or boardinghouse keeper who constantly has in his inn, hotel or boardinghouse a metal safe or suitable vault, in good order and fit for the custody of money, bank notes, jewelry, articles of gold and silver manufacture, precious stones, personal ornaments, railroad mileage books or tickets, negotiable or valuable papers and bullion, and who keeps on the doors of the sleeping rooms used by guests suitable locks or bolts, and on the transoms and windows of said rooms suitable fastenings, and who keeps a copy of this section printed in distinct type constantly and conspicuously posted in not less than 10 conspicuous places in all in said hotel or inn, shall be liable for the loss of or injury to any articles or property of the kind above specified suffered by any guest, unless such guest has offered to deliver the same to the innkeeper, hotel keeper or boardinghouse keeper for custody in such metal safe or vault and the innkeeper, hotel keeper or boardinghouse keeper has omitted or refused to take said property and deposit it in such safe or vault for custody and to give such guest a receipt therefor; provided, however, that the keeper of any inn, hotel or boardinghouse shall not be obliged to receive from any 1 guest for deposit in such safe or vault any property hereinbefore described exceeding a total value of $300, and shall not be liable for any excess of such property, whether received or not. (R. S. cs. 88, § 35.)

This section and § 39 are complementary and must be read together to determine the liability of an innkeeper. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

Section uses "guest" in its ordinary lexical sense.—The legislature did not use the word "guest" in this section in the narrow sense which had been given to it at common law. It used the word in the sense that the dictionary gives to it as a person who lodges, boards or receives refreshment, for pay, at a hotel, boardinghouse, restaurant, or the like, whether permanently or transiently. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

The rights and liabilities which exist between the innkeeper and his guest are created by law, and grow out of the relation between them, and are in no degree dependent upon the purpose of the guest, who happens to be a peddler, to sell without a license the goods entrusted to the care of the innkeeper. Cohen v. Manuel, 91 Me. 274, 39 A. 1030.

When hotel keeper-guest relationship does not exist.—If a room is rented for a definite period under such circumstances that the occupant assumes full control over it and does not receive the ordinary services that the hotel offers to guests, the relationship of hotel keeper and guest does not exist within the meaning of this section and § 39. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

Innkeeper's liability limited to $300, notwithstanding non compliance with this section.—If the innkeeper does not comply with this section and § 39 he is left under the old common-law obligations as an insurer with this exception—that his liability is limited to $300 whether he receives the property or not. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728; Wagner v. Congress Square Hotel Co., 115 Me. 190, 98 A. 660.

Former provisions of section.—For a case concerning a former provision pertaining to liability of an innkeeper in case of loss of guest's property by fire, see Burnham v. Young, 72 Me. 273.

For cases concerning a former provision pertaining to liability of innkeepers for loss of property of guests in "reasonable amount" carried for "personal use," see Noble v. Milliken, 74 Me. 225; Noble v. Milliken, 77 Me. 359.

Sec. 39. Special arrangement to receive deposits. — Any such innkeeper, hotel keeper or boardinghouse keeper may, by special arrangement with a guest, receive for deposit in such safe or vault any property upon such terms as they may in writing agree to; and every innkeeper, hotel keeper or boardinghouse keeper shall be liable for any loss of the above enumerated articles of a guest in his inn, hotel or boardinghouse after said articles have been accepted for

deposit, if caused by the theft or negligence of the innkeeper, hotel keeper, boardinghouse keeper or any of his servants. (R. S. c. 88, § 36.)

Liability under this section is limited to $300.—The provisions of this section imposing the liability for theft or negligence apply to the articles enumerated in § 38 only after they have been received for deposit and the limitation of three hundred dollars governs, not only the liability imposed by § 38 for the omission or failure to accept the articles, but also the liability imposed by this section for their loss by theft or negligence after they have been received. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

Unless loss is by theft of the innkeeper.—The legislature may well have intended that the limitation of liability to $300 under this section and § 38 should apply to theft by an employee; but it does not follow that it applies in case of theft by the hotelkeeper himself if an individual, or in case of wrongful appropriation if the defendant is a corporation. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

Liability limitation is reasonable.—The hotel keeper is not in the business of operating a safe deposit vault except as an incident to operating a hotel; it is not unreasonable, therefore, under this section and § 38, to restrict his liability for such incidental services rendered to his guests within such limits as will meet their ordinary needs. Levesque v. Columbia Hotel, 141 Me. 393, 44 A. (2d) 728.

Sec. 40. Check or receipt given for property delivered for safekeeping.—Every guest and every person intending to be a guest of any hotel or inn in this state, upon delivering to the proprietor of such hotel or inn or to his servants, any baggage or other articles of property of such guest for safekeeping elsewhere than in the room assigned to such guest, shall demand, and such hotel proprietor shall give a check or receipt therefor in such case, to evidence the fact of such delivery; and no such proprietor shall be liable for the loss of or injury to such baggage or other article of property of this guest, unless the same shall have been actually delivered by such guest to such proprietor or to his servants for safekeeping, or unless such loss or injury shall have occurred through the negligence of such proprietor or of his servants or employees in such hotel or inn. (R. S. c. 88, § 37.)

Cited in Wagner v. Congress Square Hotel Co., 115 Me. 190, 98 A. 660.

Sec. 41. Liability that of depository for hire; limit of liability.—The liability of the keeper of any inn or hotel for loss of or injury to personal property placed by his guests under his care, other than that described in the 3 preceding sections, shall be that of a depository for hire, except that in case such loss or injury is caused by fire not intentionally produced by the innkeeper or his servants, such keeper shall not be liable; provided, however, that in no case shall such liability exceed the sum of $150 for each trunk and its contents, $50 for each valise and its contents and $10 for each box, bundle or package and contents, so placed under his care, and for all other miscellaneous effects including wearing apparel and personal belongings, $50, unless he shall have consented in writing with such guest to assume a greater liability; and provided further, whenever any person shall suffer his baggage or property to remain in any inn, hotel or boardinghouse after leaving the same as a guest, and after the relation of keeper and guest between such guest and the proprietor of such inn or boardinghouse or hotel has ceased, or shall forward the same to such inn, hotel or boardinghouse before becoming a guest thereof, and the same shall be received into such inn or boardinghouse or hotel, such innkeeper may at his option hold such baggage or property at the risk of such owner. (R. S. c. 88, § 38.)

This section includes only such articles as are not included in the three preceding sections. Wagner v. Congress Square Hotel Co., 115 Me. 190, 98 A. 660.

The words "other than that" in this section relate to the preceding word "property," and not to the more distant word "liability." Wagner v. Congress Square Hotel Co., 115 Me. 190, 98 A. 660.

A depositary for hire is liable only for failure to exercise ordinary care, within the meaning of this section, or as it is

sometimes expressed, such care as men of ordinary prudence usually exercise over their own property under like circumstances. Wagner v. Congress Square Hotel Co., 115 Me. 98 A. 660.

Where a guest left his goods in the defendant innkeeper's building at the latter's direction, there was a statutory delivery to the innkeeper within the meaning of this section. Cohen v. Manuel, 91 Me. 274, 39 A. 1030.

Sec. 42. Lien on baggage or other property deposited for safekeeping.—The keeper of any inn, boardinghouse or hotel shall have a lien on the baggage and other property in and about said premises belonging to or under the control of his guests or boarders, for the proper charges due him from such guests or boarders for the accommodation, board and lodging, and for all money paid for or advanced to them, and for such other extras as are furnished at their request, and said innkeeper, boardinghouse keeper or hotel keeper may detain such baggage and other property until the amount of such charges is paid, and such baggage and other property shall be exempt from attachment or execution until such keeper's lien and the cost of satisfying it are satisfied. (R. S. c. 88, § 39.)

Innkeeper must prove his character as an innkeeper.—An innkeeper cannot establish a lien, within the meaning of this section, which will enable him to retain the property of his guest to secure the charges due from such guest, without proof of his character as an innkeeper. Stanwood v. Woodward, 38 Me. 192.

Sec. 43. Enforcement of lien; notice of sale; proceeds.—The innkeeper, boardinghouse keeper or hotel keeper shall retain such baggage and other property upon which he has a lien for a period of 90 days, at the expiration of which time, if such lien is not satisfied, he may sell such baggage and other property at public auction, after giving 10 days' notice of the time and place of sale in a newspaper of circulation in the county where the inn, boardinghouse or hotel is situated, and also by mailing a copy of such notice addressed to said guest or boarder at the place of residence registered by him in the register of such inn, hotel or boardinghouse; after satisfying the lien and any costs that may accrue, any residue remaining shall, on demand within 6 months, be paid to such guest or boarder, and if not so demanded within 6 months from date of such sale, such residue shall be deposited by such innkeeper, boardinghouse keeper or hotel keeper with the treasurer of the county in which the inn, hotel or boardinghouse is situated, together with a statement of such keeper's claim and the cost of enforcing same, a copy of the published notice, and of the amounts received for the goods sold at said sale; said residue shall by said county treasurer be credited to the general revenue fund of said county, subject to a right of said guest or boarder or his representative to reclaim at any time within 3 years of date of deposit with said treasurer. (R. S. c. 88, § 40.)

Sec. 44. Fraud in obtaining food, etc.—Whoever obtains food, lodging or other accommodations at any hotel, inn, boardinghouse or eating house, with intent to defraud the owner or keeper thereof, shall be punished by a fine of not more than $100 or by imprisonment for not more than 3 months. (R. S. c. 88, § 41.)

Sec. 45. False show of baggage, etc., proof of fraudulent intent.—Evidence that lodging, food or other accommodations were obtained by false pretense, or by false or fictitious show or pretense of baggage or other property, or that the person refused or neglected to pay for such food, lodging or other accommodation on demand, or that he gave in payment for such food, lodging or other accommodation, negotiable paper on which payment was refused, or that he absconded without paying or offering to pay for such food, lodging or other accommodation, or that he surreptitiously removed or attempted to remove his baggage, shall be prima facie proof of the fraudulent intent mentioned in section 44; but this section and the preceding section shall not apply where there

has been an agreement in writing for delay in payment for a period exceeding 10 days. (R. S. c. 88, § 42.)

Sec. 46. Copies of law posted.—Every hotel keeper, innkeeper or boardinghouse keeper within this state shall keep a copy of sections 44, 45 and 46, printed in distinct type, posted in not less than 10 conspicuous places in his hotel, inn, boardinghouse or eating house. Trial justices shall have jurisdiction of all offenses arising under the provisions of sections 44 and 45, where the amount of which any such keeper of a hotel, inn, boardinghouse or eating house has been thus defrauded does not exceed the sum of $20. (R. S. c. 88, § 43.)

Sec. 47. Lodginghouses licensed; "lodginghouse" and "lodger" defined.—The municipal officers of cities and towns shall have authority to require by ordinance the granting of licenses to lodginghouses. The term "lodginghouse" shall not be deemed to include a house where lodgings are let to less than 5 lodgers, nor to the dormitories of charitable, educational or philanthropic institutions, nor to the emergency use of private dwelling houses at the time of conventions or similar public gatherings. The term "lodger" shall not be deemed to include persons within the 2nd degree of kindred to the person conducting a lodginghouse. (R. S. c. 88, § 44.)

See c. 25, § 160, et seq., re recreational camps and roadside places; c. 131, § 1 et seq., re burning of buildings.

Sec. 48. Licenses issued; term; no fee. — Licenses required by section 47 may be issued by the same persons issuing innkeepers' and common victualers' licenses, as provided in section 29, and shall be for the same period as provided in said section. All innkeepers' licenses shall be expressed to be subject to the provisions of sections 47 to 53, inclusive. No license fee shall be collected for a lodginghouse license. (R. S. c. 88, § 45.)

Sec. 49. Register; true names of guests; contents; open to inspection.—Every person conducting any hotel or lodginghouse shall at all times keep and maintain or cause to be kept and maintained therein a register in which shall be inscribed the true name of each and every guest or person renting or occupying a room or rooms therein. Such register shall be signed by the person renting such room or rooms, or by someone under his direction; and the proprietor of such hotel or lodginghouse or his agent, shall thereupon write opposite such name or names so registered the number of each room assigned to and occupied by each such guest, together with the date such room is rented. The proprietor of such hotel or lodginghouse, or his agent, shall also keep and preserve a record showing the date when the occupant of each room so rented shall quit and surrender the same. Such record may be made a part of the register, and both shall be kept available for a period of 2 years at all reasonable times to the inspection of any lawful agent of the licensing authority. Any person who willfully violates any provision of this section shall be punished by a fine of not less than $100 nor more than $500, or by imprisonment for not more than 90 days for each offense, or by both such fine and imprisonment. (R. S. c. 88, § 46.)

Sec. 50. All persons must register; true name.—No person shall write, or cause to be written, or if in charge of a register knowingly permit to be written in any register in any lodginghouse or hotel any other or different name or designation than the true name or names in ordinary use of the person registering or causing himself to be registered therein; nor shall any person occupying such room or rooms fail to register or fail to cause himself to be registered. Any person violating any provision of this section shall be punished by a fine of not less than $10 nor more than $25 for each offense. (R. S. c. 88, § 47.)

Sec. 51. License revoked or suspended; hearing; appeal.—A license

issued under the provisions of sections 29 to 54, inclusive, may be revoked if at any time the licensing authority shall be satisfied that the licensee is unfit to hold the license. It shall also have the right to suspend and make inoperative for such period of time as it may deem proper all the aforesaid licenses mentioned herein for any cause deemed satisfactory to it. The revocation and suspension shall not be made until after investigation and hearing, nor until the licensee shall have been given opportunity to hear the evidence in support of the charge against him and to cross-examine, by himself or through counsel, the witnesses, nor until the licensee shall have been given an opportunity to be heard. Notice of hearing shall be served on the licensee or left at the premises of the licensee not less than 3 days before the time set for the hearing. The licensing authority, as designated in sections 29 to 54, inclusive, is specifically charged with the duty of enforcing the provisions therein and of prosecuting all offenders against the same. Appeal from the decision of the licensing authority may be had to the superior court in and for the county in which the licensing authority is located, in the usual manner provided for appeals from municipal courts; courts of competent jurisdiction, for due cause shown, may issue temporary orders restraining the enforcement of such revocations and suspensions, and after full hearing may vacate such temporary orders or make the same permanent. (R. S. c. 88, § 48.)

Former provision of section.—For a case under this section relating to a former provision requiring a complaint as prerequisite to jurisdiction of board, see State v. Lamos, 26 Me. 258.

Sec. 52. Copy of §§ 49-50 posted near register. — All licensed innholders and all licensees under the provisions of sections 47 to 53, inclusive, shall post in a conspicuous place near the register, if required by the licensing authority, a notice to be furnished by it containing the provisions of sections 49 and 50, inclusive, relating to the entry of names in the register, together with the penalties herein provided for their violation. (R. S. c. 88, § 49.)

Sec. 53. Record of convictions transmitted.—The clerk of a court in which any person is convicted of a violation of any provision of sections 29 to 53, inclusive, shall forthwith send a copy of the record of the conviction to the licensing authority in the city or town where the offense occurred. (R. S. c. 88, § 50.)

Lunch Wagons.

Sec. 54. Lunch wagons licensed; revoked; objection of abutters.—The mayor and aldermen of any city or selectmen of any town may, if in their opinion public convenience so requires, license any reputable person, upon the payment of an annual license fee to be fixed by said licensing authority, to maintain a vehicle for the sale of food in such part of any public way and during such hours as the licensing authority may designate, provided that public travel is not incommoded thereby; and no other or further license shall be required for this purpose. Any such license may be revoked for reasonable cause, at any time, by the licensing authority. No such license, however, shall be granted to use any part of any public way, the fee in which is not owned by the city or town, against the objection of the owners of the land abutting on that part of the way. (R. S. c. 88, § 51.)

Public Exhibitions.

Sec. 55. Pageantry, etc., without license; museum excepted.—Whoever, for money or other valuable article, exhibits any images, pageantry, sleight of hand tricks, puppet show, circus, traveling amusement show, feats of balancing, wire dancing, personal agility, dexterity or theatrical performances, without a license therefor as hereinafter provided, forfeits for every offense not less than

$10 nor more than $100; but this prohibition does not extend to any permanently established museum. (R. S. c. 88, § 52.)

Sec. 56. Licenses; fees; prosecutions; traveling circuses or traveling amusement shows. — The municipal officers of towns may grant licenses for any of the exhibitions or performances described in the preceding section, on receiving for their town such sum as they deem proper, 24 hours or more being allowed for such exhibitions or performances as they may determine; and they shall prosecute, by complaint for the use of their town, all violations of the preceding section. No traveling circus or traveling amusement show shall exhibit any parade, show or entertainment in this state without first paying a state license of $500 in the case of a circus and $250 in the case of amusement shows for each calendar year. Application for such license shall be made to the insurance commissioner and shall contain the name of the person or corporation owning or operating said traveling circus or said traveling amusement show and a statement of the proposed territory within the limits of said state and the names of the cities and towns in which said traveling circus or said traveling amusement show is to exhibit. No traveling circus or traveling amusement show shall exhibit any parade, show or entertainment in this state without first furnishing the insurance commissioner in an amount to be determined by him a certificate of public liability insurance. Upon receipt of such application and accompanied by such certificate of public liability insurance and upon the payment of $500 or $250, as the case may be, a license shall issue, conditioned that no traveling amusement show shall operate, within 30 miles of the fairgrounds of any agricultural society, during the 2 weeks immediately preceding or during the time of any annual exhibition thereof.

The license shall be further conditioned that there shall be no display of advertising of licensee's circus or traveling amusement show contrary to the provisions of sections 137, 138 and 150 of chapter 23, and section 34 of chapter 131, relating to outdoor advertising; that the licensee shall at all times and at least once each week keep the commissioner informed of proposed changes in itinerary or location; and that the licensee shall conform to all lawful rules and regulations promulgated by the insurance commissioner relating to circuses and traveling amusement shows. The license shall be further conditioned that such licensee shall remove all displays of advertising within 4 days after leaving any town where such exhibitions or performances have been exhibited. Breach of any condition in the license shall be a cause for immediate suspension or revocation of the license, in the discretion of the commissioner.

The exhibiting of any parade, show or entertainment of any traveling circus or traveling amusement show without first taking out such license shall be deemed a misdemeanor, and the person, persons, firm or corporation owning or controlling such traveling circus or traveling amusement show, or the manager or officer in charge thereof within the state, shall be punished by a fine of not more than $1,000.

Municipal and superior courts in the counties where such traveling circus or traveling amusement show exhibits or parades shall have jurisdiction over said offense. (R. S. c. 88, § 53. 1945, c. 249. 1947, c. 133. 1953, c. 189.)

See c. 134, §§ 28, 29, re immoral exhibitions.

Public Dances.

Sec. 57. Public dances; license; fee.—No public dances at which minors are admitted shall be held in any pavilion, hall or other building unless there shall be on hand at all times, when such dances are being held, an officer of the law; and unless there shall be in such pavilion, hall or other building, separate toilets for men and women.

Whoever desires to use any building or parts thereof for dancing purposes,

either habitually or occasionally, shall make application to the insurance commissioner for a license for dancing in such building or parts thereof and upon receipt of said application the insurance commissioner shall inspect or cause to be inspected such building as to its entrances, exits, fire escapes and structural safety. If as a result of such inspection he is convinced that the specifications hereinafter provided are fully complied with and that the entrances, exits and fire escapes and structural safety of such buildings are in accordance with law and regulations he may issue a license to the person desiring to use such building or parts thereof for dancing, which license shall name the owner and name of the hall, the operator and capacity of the same. A fee for such license not exceeding $10 shall be fixed by the insurance commissioner and said fee shall lie to the town in which said building is located. The insurance commissioner will promulgate the necessary rules and regulations relative to fire protection, fire prevention and structural accident prevention governing such buildings and the insurance commissioner may revoke such license when evidence is presented sufficient to prove that such building licensed for dancing is being conducted in a manner not consistent with the public safety. The insurance commissioner shall in the case of social, fraternal, charitable, religious and educational organizations where the proceeds of admission fees are to be devoted to the use of said organization waive the license fee. The provisions of this section shall not apply to those cities and towns which have building codes if the building code requirements with respect to places used for dancing are equivalent to the requirements of this section and the rules and regulations promulgated thereunder. (1947, c. 272. 1949, c. 235. 1951, c. 60.)

Sec. 58. Violations.—Whoever, being an owner, lessee, tenant or licensee of a pavilion, hall or other building in which a dance is held in violation of any restriction imposed by the previous section, shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not more than $100 or by imprisonment for not more than 90 days, or by both such fine and imprisonment trial justices shall have concurrent jurisdiction with municipal courts of such offenses. (1947, c. 272.)

Circus Equipment.

Sec. 59. Circus equipment; requirements; rules and regulations.—The tents and equipment of circuses and traveling amusement shows are required to be constructed of fire-resisting and flameproofed materials. Such equipment is required to be set up and arranged in such a way that it will provide safe means of egress in case of fire or other emergency. The insurance commissioner is authorized and directed to promulgate rules and regulations to carry out the provisions of this section, and all regulations so made shall have the force of law in so far as they are not inconsistent with this section. (1947, c. 291. 1949, c. 349, § 123.)

Motor Vehicle Racing Structures.

Sec. 60. Motor vehicle racing structures. — The insurance commissioner shall make, amend or rescind, after public hearing thereon, notice of which has been duly advertised in the state paper, reasonable rules and regulations with respect to the location, erection, construction and maintenance of grandstands, bleachers, stadiums, arenas, fences, safety barriers or other like structures intended primarily to support or protect spectators during any type of motor vehicle racing.

Such rules and regulations shall become effective when approved in writing by the governor and council and when a certified copy thereof has been filed with the secretary of state. Any person aggrieved by any such rule or regulation or the reasonableness of same, or any act or order of the insurance com-

missioner in enforcing any such rule or regulation, may appeal to a justice of the superior court by presenting to him a petition therefor in term time or vacation, and he shall fix a time and place of hearing which may be at chambers or in vacation, and cause notice thereof to be given to the commissioner; and after the hearing, the justice may affirm or reverse the rule, regulation, act or order of the commissioner, and the decision of such justice shall be final.

Said commissioner may waive the requirements of any such rules or regulations to cover any special circumstances, conditions or localities.

No person shall locate, erect, construct or maintain any such structure except as prescribed in such rules and regulations, unless waived by the commissioner as hereinbefore provided. Any violation of such rules and regulations shall be punished by a fine of not less than $20 nor more than $100 for each offense.

The provisions of this section shall not apply to motorcycle racing. (1951, c. 322. 1953, c. 228.)

Bowling Alleys and Billiard Rooms.

Sec. 61. Unlicensed alleys and billiard rooms. — Whoever keeps a bowling alley, shooting gallery, pool, bagatelle or billiard room without a license forfeits $10 for each day that such alley, gallery or room is so kept. (R. S. c. 88, § 54.)

For a case before the enactment of this section concerning the character of bowling alleys as nuisances, see State v. Haines, 30 Me. 65.

Sec. 62. License.—Municipal officers of towns may license suitable persons to keep bowling alleys, shooting galleries, pool, bagatelle and billiard rooms therein, in any place where it will not disturb the peace and quiet of a family, for which the person licensed shall pay $10 to such town; such licenses expire on the 1st day of May after they are granted, unless sooner revoked. (R. S. c. 88, § 55.)

A shooting gallery is not per se a nuisance. It is not a nuisance if licensed by competent public authority under this section. Silverman v. Usen, 128 Me. 349, 147 A. 421.

License not transferable.—The license provided in this section is not transferable. Only the person to whom a license is issued can keep the business specified under that license. Rumford v. Boston Grocery Co., 111 Me. 116, 88 A. 394.

Sec. 63. Bond.—Every person so licensed under the provisions of section 62 shall, at the time he receives his license, give bond to the town with 2 good and sufficient sureties, in a sum of not less than $100, conditioned that he will not permit gambling or drinking of intoxicating liquors in or about his premises; or any minor to play, shoot or roll therein without the written consent of his parent, guardian or master; or his alley, gallery, pool, bagatelle or billiard room to be opened or used between 10 o'clock in the evening and sunrise. (R. S. c. 88, § 56.)

Cross references.—See § 65, re penalty; § 66, re licensed places may be kept open until midnight.

Bond effective so long as license remains in effect.—The bond given in compliance with this section remains alive so long as the license is alive and being used. The bond is to secure the performance of the conditions of the license while, and so long as, the business specified in § 62 is kept under the license. Rumford v. Boston Grocery Co., 111 Me. 116, 88 A. 394.

And business is continued.—If the licensee ceases to keep the business, he no longer acts under the license, and the purpose for which the bond was given ceases, so that a bond given under this section by the keeper of a pool room, when he receives his license, remains in force only so long as he continues to keep the room under his license, and he ceases so to keep it, if he actually rents the room to another party, reserving no interest in it. Rumford v. Boston Grocery Co., 111 Me. 116, 88 A. 394.

Period of bond specified in license.—The

bond itself under this section does not specify the period during which it shall remain in force. That period is specified in the license. Rumford v. Boston Grocery Co., 111 Me. 116, 88 A. 394.

Sec. 64. Bond violated, license revoked.—On proof that any person, so licensed under the provisions of section 62 has violated any condition of his bond, said officers shall revoke his license and enforce payment of his bond to their town; and no such person shall afterwards be licensed therein for such purpose. (R. S. c. 88, § 57.)

Sec. 65. Violation of bond, etc.—The keeper of any bowling alley, shooting gallery, pool, bagatelle or billiard room, who violates any condition of his bond, forfeits $10 for the first offense and $20 for each subsequent offense; and any marshal, sheriff, police or other officer may at any time enter said alley, gallery, pool, bagatelle or billiard room or rooms connected therewith, to enforce this or any other law; and whoever obstructs his entrance forfeits not less than $5 nor more than $20. (R. S. c. 88, § 58.)

Sec. 66. Licensed places kept open until midnight.—Any person licensed to own, keep and operate a bowling alley or bowling alleys, shooting gallery, pool, bagatelle or billiard rooms under the provisions of this chapter may be granted permission by the municipal officers of the town or city where such alley or alleys, shooting gallery, pool, bagatelle or billiard rooms are situated, to keep the same open to the public until midnight, when in the opinion of such municipal officers no person or persons residing in the immediate neighborhood will be disturbed thereby. In such case the condition of the bond required by section 63 shall be varied accordingly. (R. S. c. 88, § 59.)

Roller-skating Rinks.

Sec. 67. License.—Every person who keeps a roller-skating rink or room shall obtain a license from the municipal officers of the city or town where such rink is located and shall pay therefor such sum as said municipal officers may deem proper. Any person keeping a roller-skating rink without such license shall be punished by a fine of $10 for each day it is so kept. (R. S. c. 88, § 60.)

Sec. 68. Hours for closing rinks.—Every person so licensed under the provisions of section 67 shall keep such rink closed between 10 o'clock in the evening and sunrise, unless express permission in writing to keep it open a longer time is obtained from the municipal officers of the city or town where such rink is located. Any person violating the provisions of this section shall be punished by a fine of $10 for every such offense. (R. S. c. 88, § 61.)

Steam-riding Galleries.

Sec. 69. License.—No merry-go-round, power or steam operated, ferris wheel, roller coaster, riding gallery or other mechanical ride shall operate within this state without first obtaining a license from the insurance commissioner and all such devices shall be operated in accordance with rules and regulations promulgated by the insurance commissioner.

Subject to the foregoing provisions, municipal officers of any town, upon payment of a sum of not more than $50, may grant a license to operate and run merry-go-rounds, ferris wheels, roller coasters, riding galleries or other mechanical rides.

No license under the provisions of this section shall exempt the operator from complaint to the superior court for maintaining a nuisance under the provisions of section 8 of chapter 141. (R. S. c. 88, § 62. 1947, c. 44.)

Sec. 70. Operating without license. — Whoever operates or runs a

merry-go-round or steam-riding gallery in any town without such license as required by section 69 shall be punished by a fine of $5 for each and every day that he so operates or runs such merry-go-round or steam-riding gallery. (R. S. c. 88, § 63.)

Sec. 71. Jurisdiction.—Trial justices, in their respective counties, shall have jurisdiction of all offenses arising under the provisions of sections 55 to 79, inclusive, except as provided in section 56 relating to state license for traveling circuses, and all penalties herein provided, except that specified in said section 56, shall be recovered by complaint for the use of the town where incurred. (R. S. c. 88, § 64.)

Cinematograph and Moving Pictures.

Sec. 72. License.—No cinematograph or similar apparatus shall be kept, used or exhibited in any building, place of public assemblage or place or building used for entertainment, whether such place or building has been licensed for public entertainment or not, unless a license or permit shall have been first obtained from the insurance commissioner. Said cinematograph or similar apparatus shall be placed in an enclosure or booth constructed of a steel frame covered with sheet asbestos or other fireproof material approved by the insurance commissioner or constructed and located in accordance with the specifications hereinafter provided, and the entrances, exits and fire escapes connected with such public building, place of public assemblage or place or building shall be erected in accordance with law; provided that the manufacturer of such cinematograph or similar apparatus shall apply for and receive the approval of the insurance commissioner and no such cinematograph or similar apparatus shall be used where an admission fee is charged, except in social, fraternal, charitable, religious and educational organizations where the machine so used is owned by said organization and used in the city or town where said organization is located, and the proceeds of such admission fees are to be devoted to the uses of said organization. (R. S. c. 88, § 65. 1947, c. 50.)

See § 76, re exceptions; § 78, re penalties.

Sec. 73. Application for license; enclosure and machine inspected; fees.—Whoever desires to keep, exhibit or use any cinematograph or similar apparatus in any place or building described in section 72 shall make application to the insurance commissioner for a license to keep, exhibit or use such cinematograph or similar apparatus, and upon receipt of said application the insurance commissioner shall inspect or cause to be inspected the enclosure or housing provided for such cinematograph or similar apparatus and shall also inspect or cause to be inspected the entrances, exits and fire escapes. If, as a result of such inspection, he is convinced that the specifications hereinafter provided are fully complied with and such cinematograph or similar apparatus is found to be in a safe and suitable condition to be stored, exhibited or used and that the entrances, exits, fire escapes and structural condition of such public buildings, place of public assemblage or place or building are in accordance with law, he may issue a license to the person desiring to keep, use or exhibit such cinematograph or similar apparatus, which license shall state the name of the makers, trade name and number and the serial number of such cinematograph and the place in which it is to be kept, used or exhibited. A fee for such inspection not exceeding $10 shall be fixed by the insurance commissioner. A fee for such license not exceeding $10 shall be fixed by the insurance commissioner. No license shall be granted under the provisions of this section for any cinematograph or similar apparatus operated by oxyhydrogen gas so called or by lime light. (R. S. c. 88, § 66. 1947, c. 54.)

See § 78, re penalties.

Sec. 74. Operate without a license; operator to be 18 years of age and thoroughly skilled; fee. — No person shall operate any cinematograph or similar apparatus in any city or town until he has received a license or permit to do so from the insurance commissioner; no such license to operate a cinematograph or similar apparatus shall be granted to any person under 18 years of age nor until the applicant shall have satisfied the insurance commissioner that he is thoroughly skilled in the mechanical and electrical apparatus or devices used in the operation of a cinematograph or similiar apparatus. A fee therefor of not more than $5 shall be fixed by the insurance commissioner for the examination; and a fee in an amount not in excess of $5 shall be fixed by the insurance commissioner for each license. Provided, however, that any person desiring to learn to be an operator may, with the consent of the theatre owner and under supervision of a licensed operator, be in a booth for the purpose of receiving instruction, upon payment to the commissioner of a fee of $2 for an apprentice's license, and such license shall be valid for 1 year. (R. S. c. 88, § 67. 1947, c. 51. 1953, c. 229.)

See § 78, re penalties.

Sec. 75. Specifications of booth or enclosure; exits. — The construction of the booth or enclosure for any such cinematograph or similar instrument must conform substantially to the following specifications: all booths or enclosures must be at least 7 feet high and the floor space to vary according to the number of machines used in said booth or enclosure. At least 48 square feet of floor space shall be provided for 1 machine and 24 square feet for each additional machine. The material used in the construction of such booths or enclosures shall be steel or asbestos-wood sheets supported by a skeleton frame of structural steel; the asbestos-wood sides and tops shall not be less than ¼ inch thick, and the floor space not less than ⅜ of an inch thick. Said structural steel frame shall be made of angles of tee shape not less than 1½ inches by 1½ inches by 3/16 of an inch. The door of said booth or enclosure shall be made of asbestos-wood and iron and shall be so contrived that it shall be kept closed at all times. The booth shall also be provided with a ventilator pipe not less than 12 inches in diameter leading to the outer air or to a chimney, with an electric fan installed so as to create at all times when the machine or machines are in operation a forced draft through said ventilator for the purpose of carrying off all gases and smoke which may arise from accidental ignition of the film. Shutters made of ¼ inch asbestos-wood shall be provided for closing the windows in the booth or enclosure which must be so contrived as to close automatically in case of accidental ignition of the film. The enclosure or housing provided for such cinematograph, moving-picture machine or other similar apparatus shall be located above the main floor of the hall, room or building where such cinematograph, moving-picture machine or similar apparatus is located. There shall be a sufficient number of exits and fire escapes leading into a street, lane or passageway, with no obstruction to free exit. Nothing herein, however, shall preclude the use of any other fire resisting material approved by the insurance commissioner. (R. S. c. 88, § 68.)

See § 78, re penalties.

Sec. 76. Ordinances of cities or towns to apply.—The provisions of sections 72 to 75, inclusive, shall not apply in cities having a population of over 18,000 having ordinances or by-laws, duly enacted under enabling statutes, which are at least equal from the standpoint of safety to the requirements of said sections, unless the insurance commissioner shall have evidence of the fact that such ordinance or by-law is not equal from the standpoint of safety to the requirements of said sections or unless the insurance commissioner shall have evidence that such ordinance or by-law is not being adequately enforced. In case of either of these exceptions, the insurance commissioner shall advise the municipal offi-

cers of such city or town of such evidence of inadequacy, and shall apply the requirements of said sections 72 to 75, inclusive, to such city or town until such time as an adequate ordinance or by-law and adequate enforcement thereof shall be provided. (R. S. c. 88, § 69.)

See § 78, re penalties.

Sec. 77. Asbestos booth used for moving-picture machine in open air or tents.—For exhibition of moving pictures in the open air or in a tent, a portable asbestos booth may be used, provided such booth meets the specifications hereinafter set forth and while in use shall be located not less than 300 feet from any building or woods.

I. Size of booth. The portable asbestos booth shall be at least 6 feet 6 inches in height by 5 feet square, and is designed for use for 1 picture machine only. The frame shall be of standard pipe, angle ventilator trap and fittings, and shall conform to the specifications herein set forth. The 4 corner posts shall be of ¾ inch standard pipe, the 8 horizontal members of ½ inch standard pipe and the 8 corner fittings of malleable iron or bronze casting with braced corners. The ventilator trap shall be made of 1 inch by 1 inch by ⅛ inch angles on all sides, shall extend the full width of the top and 2 inches beyond the front of the top pipe, shall be securely hinged 1 foot 10 inches from the front and the corners shall be braced with ⅛ inch gusset plate bolted to each angle with 3/16 inch bolts.

II. Specifications. The sides shall be of plain commercially pure asbestos cloth weighing not less than 2 pounds to the square yard, which shall be in 1 piece, long enough to lap over not less than 2 feet where it comes together around the booth and shall be not less than 7 feet 6 inches in width so as to lap on the floor; it shall be held in place by substantial metal hooks over the top pipe and with snap catches or asbestos cord on the bottom pipe, such hooks, bottom catches or cord to be not more than 8 inches on centers. The top shall be covered with asbestos cloth of the same quality as the sides, which shall be of sufficient size to hang down on all sides at least 8 inches; it shall be provided with metal hooks or asbestos cord which shall hook or lace onto the pipe to hold it in place. The floor shall be covered with an asbestos mat of the same material not less than 1 foot larger than the booth on all sides and held in place when in use with heavy thumb tacks.

III. Entrance and exit. The overlapping sides shall form the entrance and exit of the booth. All raw edges of asbestos cloth shall be bound or hemmed at least 1 inch deep.

IV. Ventilation. The angle ventilator described in this section shall be so arranged that it may be raised at least 1 foot above the top pipe of the booth, and held by a toggle joint, or other approved device whereby, in case of accident, it can be instantly dropped.

V. Apertures. The apertures, 2 in number, one for the machine not more than 6 inches in height by 12 inches in width, and one for the operator not more than 12 inches in height by 6 inches in width, shall be provided with shutters sewed to curtain at the top of opening, and the lower edges of the same shall be weighted with ⅜ inch gas pipe, which shall be long enough to go the whole horizontal length of the shutter, and provided with cord and fusible link, as specified for the standard booth, running through a screw eye, or a ring attached to the pipe frame over the openings. All shutters shall be of size to lap over curtain at least 1½ inches on all sides. (R. S. c. 88, § 70.)

See § 78, re penalties.

Sec. 78. Violations.—Whoever keeps, uses or operates any cinematograph

or similar apparatus contrary to the provisions of the 6 preceding sections shall be punished by a fine of not less than $25 nor more than $500, to be recovered on complaint or indictment to the use of the city or town in which any such violation occurs. (R. S. c. 88, § 71.)

Sec. 79. Unincorporated places. — County commissioners within their counties and counties with their limits shall respectively exercise over unincorporated places all the powers of municipal officers and towns under the provisions of sections 55 to 79, inclusive. (R. S. c. 88, § 72.)

Closing-out Sales.

Sec. 80. License.—No person shall offer for sale a stock of goods, wares or merchandise under the designation of "closing-out sale," "going-out-of-business sale," "discontinuance-of-business sale" or other designation of like meaning unless he shall have obtained a license to conduct such a sale from the municipal officers of the city or town in which he proposes to conduct such sale. (1951, c. 227.)

Sec. 81. Application for license; fee; extension.—A person desiring such license shall make application therefor to such municipal officers, in writing and under oath, setting forth a complete inventory of all items to be included in such sale, which inventory shall include only goods, wares or merchandise actually in the place of business wherein or whereat such sale is to be conducted at the opening of the sale; thereupon such municipal officers shall issue a license to the applicant, upon his paying a license fee of $25, authorizing such applicant to sell such goods, wares or merchandise during a period of 60 days; provided, however, if the licensee shall furnish an affidavit to the effect that all goods, wares or merchandise listed in said inventory have not been disposed of and that no stock has been added, an extension of 60 days may be granted upon the payment of an additional license fee of $25. (1951, c. 227.)

Sec. 82. Limitation.—Sections 80 to 83, inclusive, shall not apply to sales conducted or made by sheriffs, deputy sheriffs, constables, collectors of taxes, executors, administrators, guardians, conservators, receivers, assignees under voluntary assignments for the benefit of creditors or insurers, or by any other person required by law to sell personal property. (1951, c. 227.)

Sec. 83. Penalty.—Whoever violates any provision of sections 80 to 82, inclusive, shall be punished by a fine of not more than $100 or by imprisonment for not more than 30 days, or by both such fine and imprisonment, and each day on which a sale is conducted in violation of any of said provisions shall constitute a separate offense. (1951, c. 227.)

Auctions and Auctioneers.

Sec. 84. Resident licenses.—Every resident person, firm or corporation, desiring to do business in this state as an auctioneer, upon application in proper form and the payment of a sum of $10 as a state license fee, shall receive and the secretary of state shall issue to such applicant a license to conduct auctions in any city, town, plantation or unorganized territory in the state. (R. S. c. 88, § 73. 1953, c. 239.)

Former provision of section.—For a case concerning a former provision of this section relating to the licensing of auctioneers by the selectmen of towns, see Waterhouse v. Dorr, 4 Me. 333.

Sec. 85. Nonresident auctioneers; deposit; fees.—Every nonresident person, firm or corporation, licensed to conduct public auctions by any other state, desiring to do business in this state as an auctioneer, shall deposit with

the secretary of state the sum of $100 as a special deposit, and shall name the secretary of state agent upon whom service may be made in any action at law or in equity which may be brought against said applicant, to the same effect and in the same manner as upon a resident defendant, and after compliance with the foregoing, upon application in proper form and the payment of a further sum of $50 as a state license fee, the secretary of state shall issue to such applicant a license to conduct auctions in any city, town, unincorporated township or plantation in the state, in the same manner and to the same legal effect as a legal voter of a city or town, licensed as an auctioneer of such city or town, might do.

Such license shall be for a term of 1 year from the date of its issuance and may be renewed from year to year by the payment of a state license fee of $10 for each renewal. Every license shall set forth a copy of the application upon which it is granted, including renewals thereof. Such license shall not be transferable nor give authority to more than 1 person, firm or corporation to conduct an auction sale, but each licensee may have the assistance of one or more persons in conducting any auction sale, who may aid that principal, but shall not act for or without that principal.

If such licensee is a firm or corporation, only 1 person of any firm or 1 agent of any corporation may conduct any auction sale, and all acts of any such person acting in behalf of such firm or corporation shall be the acts of the principal, so that in the event of suit against the principal for any acts of omission or commission, proof of such agency shall not be required as a requisite to the maintenance of such action. (R. S. c. 88, § 74. 1953, c. 239.)

Sec. 86. Application for state license. — All applications for state licenses shall be sworn to and shall disclose the name, age and residence of the applicant, if an individual; if a firm, the names, ages and residences of each firm member and the address at which such firm conducts its business; and if a corporation, its name, residence, state of incorporation and the name and residences of the officers and their official capacities; which shall be kept on file by the secretary of state, together with a record of all licenses issued upon such applications. All files and records, both of the secretary of state and of the several cities and towns relative to the issuance of local licenses as hereinafter provided, shall be in convenient form and open for public inspection. (R. S. c. 88, § 75. 1953, c. 239.)

Cited in Opinion of the Justices, 123 Me. 573, 121 A. 902.

Sec. 87. Application for local license; fee. — Every nonresident auctioneer licensed by the state, intending to conduct an auction sale in any city or town, shall offer his state license for examination by and shall make an application for a local license with the clerk of the city or town where such auctioneer shall desire to conduct an auction sale, before entering upon any such sale. Such application for a local license shall set forth the name and residence of the owner of the property, a general description of the property to be sold, the location of the same and the time and place of sale; and if the licensee is a firm or a corporation, it shall give the name and residence of the member of the firm or the name and residence of the agent of the corporation who is to conduct said sale. Thereupon, and upon the payment of a license fee of $5 to the use of the city or town, the clerk of such city or town may forthwith issue to such licensee a license to conduct any such sale.

If such auction sale is to be conducted in an unorganized township or in a plantation, the application to conduct such sale shall be directed to the secretary of state, and the same information required to be furnished to the clerk of a city or town for a local license shall be furnished the secretary of state, together with the same fee of $5, who thereupon may issue such license for such auction sale. (R. S. c. 88, § 76. 1953, c. 239.)

Sec. 88. Limitation on sale of property.—Any auction sale conducted under the provisions of the preceding section shall not include any property brought in for such purpose from any other city or town within the state, or from without the state, whether or not owned by the same person for whom the auction is to be conducted. (R. S. c. 88, § 77. 1953, c. 239.)

Sec. 89. Suit against and service on nonresident licensee; revocations.—If suit is brought against any nonresident licensee by any resident of the state aggrieved by such licensee, service of any legal process may be made upon the secretary of state as agent for such licensee, and the courts of the state shall have orginial jurisdiction over any action at law or in equity, as also the parties, to the same effect as if said licensee were a resident of the state. If suit is brought in a municipal court or a trial justice court, such licensee shall be considered to be a resident of the county in which the plaintiff resides. Upon service of any process upon the secretary of state, he shall forthwith forward a certified copy thereof to such licensee, by registered mail, to the last known address of such licensee, which shall constitute service on such licensee; and the secretary of state shall deduct from the deposit on file with him the sum of $10 to the use of the state. The licensee shall, within 30 days thereafter, deposit with the secretary of state $10, otherwise his license shall be revoked and the balance of said deposit shall be forfeited to the use of the state.

Any nonresident not licensed in accordance with the provisions of sections 84 to 90, inclusive, or whose license has been revoked, conducting any sale in any city or town, unincorporated township or plantation in the state, shall be subject to a fine of not less than $50 nor more than $300, and prosecution for such offense shall be maintained in the county where it occurred. (R. S. c. 88, § 78. 1953, c. 239.)

Sec. 90. Return of deposit; limitation of action.—If any licensee shall desire to surrender his license or shall desire not to renew the same, he may so notify the secretary of state, who, at the end of 1 year from the date thereof, shall return to such licensee his deposit of $100, and the right to make service of any legal process upon the secretary of state, as hereinbefore provided, shall then terminate. (R. S. c. 88, § 79. 1953, c. 239.)

Sec. 91. Blooded animals may be sold without state license. — The provisions of sections 84 to 90, inclusive, shall not prohibit any person employed by the owner of blooded animals from selling the same as auctioneers at public auction whether licensed by the state or not. (R. S. c. 88, § 80. 1953, c. 239.)

Sec. 92. Auctions by charitable and nonprofit organizations exempt. —The provisions of sections 84 to 90, inclusive, shall not apply to sales at auctions held by charitable, educational, religious or other nonprofit organizations. (R. S. c. 88, § 81. 1953, c. 239.)

Electrical Installations.

Sec. 93. Application. — The provisions of sections 93 to 102, inclusive, shall apply to all installations of electrical conductors, fittings, devises and fixtures, hereinafter referred to as "electrical equipment," made after August 6, 1949, within or on public and private buildings and premises, with the following general exceptions which are applicable to all provisions of sections 93 to 102, inclusive:

I. Any person, firm or corporation under jurisdiction of the public utilities commission of this state or of the federal communications commission;

II. The electrical work and equipment employed in connection with the construction, installation, operation, repair or maintenance of any utility by a utility corporation in rendering its authorized service, or in any way incidental thereto;

III. Any electrical equipment and work including construction, installation, operation, maintenance and repair in or about industrial or manufacturing plants;

IV. Also any electrical equipment and work, including construction, installation, operation, maintenance and repair in, on or about other properties, equipment or buildings, residential or of any other kind, owned or controlled by the operators of industrial or manufacturing plants, provided such work is done under the supervision of an electrical engineer in the employ of said operator;

V. The electrical work and equipment in mines, pipe line systems, ships, railway rolling stock or automotive equipment, or the operation of portable sound equipment;

VI. Any electrical installations or equipment involved in the manufacture, test or repair of electrical equipment in the manufacturer's plant;

VII. Installations in suitable laboratories of exposed electrical wiring for experimental purposes only.

As used in sections 93 to 102, inclusive, "reasonably safe to persons and property" as applied to electrical installations and electrical equipment, means reasonably safe to use in the service for which the installation or equipment is intended without unnecessary hazard to life, limb or property. (1949, c. 376. 1951, c. 266, §§ 108, 109.)

Sec. 94. Standards for installation.—All installations of electrical equipment shall be reasonably safe to persons and property and in conformity with the applicable statutes of the state and all applicable ordinances, orders, rules and regulations of any city or town, not in conflict herewith.

Conformity of installations of electrical equipment with applicable regulations set forth in the National Electrical Code, National Electrical Safety Code or electrical provisions of other safety codes which have been approved by the American Standards Association, shall be prima facie evidence that such installations are reasonably safe to persons and property.

The insurance commissioner may authorize installations of special wiring for purposes of obtaining field experience under controlled conditions in territory where electrical inspection is provided. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 95. Standards for electrical equipment.—All electrical equipment installed or used shall be reasonably safe to persons and property and in conformity with the applicable statutes of this state.

Conformity of electrical equipment with applicable standards of Underwriters' Laboratories, Inc., shall be prima facie evidence that such equipment is reasonably safe to persons and property.

The insurance commissioner may authorize installations of special wiring for purposes of obtaining field experience under controlled conditions in territory where electrical inspection is provided. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 96. Local electrical inspectors.—The governing body of any city or any town, at a town meeting duly called therefor, may provide by resolution or ordinance for the inspection of electrical installations within the limits of such municipality and may appoint an electrical inspector who shall enforce the provisions of sections 93 to 102, inclusive, and any applicable resolution or ordinance within his jurisdiction. Any city or town may join with one or more other cities or towns in paying for the services of said electrical inspector, provided said cities or towns have duly authorized the appointment of such inspector. Said ordinance or resolution shall declare whether the electrical inspection in said town or city shall be applicable to all or any of the following:

I. Original installations of electrical equipment;

II. Alteration or addition to existing electrical equipment;

III. All the territory of said town or city; or

IV. Such section or sections of said town or city as may be described. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 97. Authority.—The electrical inspector having jurisdiction shall have the right during reasonable hours to enter any building or premises in the discharge of his official duties, or for the purpose of making any inspection, reinspection or test of the electrical equipment contained therein or its installation. When any electrical equipment which is subject to the provisions of sections 93 to 102, inclusive, is found by a duly authorized electrical inspector to be dangerous to persons or property because it is defective or defectively installed, the person, firm or corporation responsible for the electrical equipment or its installation shall be notified in writing and shall make any changes or repairs required to place such equipment in reasonably safe condition. In cases of emergency, where immediately necessary for safety to persons or property, the said electrical inspector having jurisdiction shall have the authority to immediately disconnect or cause the disconnection of any electrical equipment. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 98. Permits.—In any city or town in the state which has provided by resolution or ordinance for electrical inspection in accordance with the provisions of sections 93 to 102, inclusive, if said resolution or ordinance so provides, no electrical equipment shall be installed within or on any building, structure or premises, publicly or privately owned, nor shall any alteration or addition be made in any such existing equipment without first securing a permit therefor from the electrical inspector, except minor repair work, including the replacement of lamps, replacement of fuses, installation of additional outlets, replacement of existing switches, sockets and lamps, repairs to entrance service equipment, repairs or installation of radio and low voltage equipment.

Application for such permit shall be made in writing to the electrical inspector by the person, firm or corporation installing the work. The application shall be accompanied by a general description of the electrical work to be done. If the electrical inspector shall require it, plans, specifications and schedules that may be necessary to determine whether the installation, as described, will be in conformity with the requirements of sections 93 to 102, inclusive, shall be filed, and if the applicant has complied with all the provisions of sections 93 to 102, inclusive, a permit for such installation shall be issued.

No major deviation may be made from the installation described in the permit without the written approval of the electrical inspector. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 99. Fees. — Any city or town in the state which has provided for electrical inspection in accordance with the provisions of sections 93 to 102, inclusive, may establish license fees which shall be paid by the applicant for a permit, before the permit is issued. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 100. Inspection and certificates of approval.—Upon the completion of any installation of electrical equipment which has been made under a permit, it shall be the duty of the person, firm or corporation making the installation to notify the electrical inspector having jurisdiction, who shall inspect the work within a reasonable time.

Where the inspector finds the installation to be in conformity with the provisions of sections 93 to 102, inclusive, he shall issue to the person, firm or corporation making the installation a certificate of approval.

If, upon inspection, any installation is not found to be fully in conformity with the provisions of sections 93 to 102, inclusive, and all applicable local ordinances, rules and regulations, the electrical inspector making the inspection shall at

once forward to the person, firm or corporation making the installation a written notice stating the defects which have been found to exist. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 101. Penalty.—Any person, firm or corporation who shall violate any of the provisions of sections 93 to 102, inclusive, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than $5 nor more than $50 for each offense. (1949, c. 376. 1951, c. 266, § 108.)

Sec. 102. Effect on by-laws or ordinances. — No existing by-law or ordinance now in effect in any city or town shall be in any way affected by the provisions of sections 93 to 102, inclusive. (1949, c. 376. 1951, c. 266, § 108.)

Itinerant Vendors.

Sec. 103. License.—Any itinerant vendor who sells or exposes for sale, at public or private sale, any goods, wares and merchandise without state and local licenses therefor, issued as hereinafter provided, shall be punished for each offense by a fine of not more than $200 or by imprisonment for not more than 90 days, or by both such fine and imprisonment. (R. S. c. 88, § 83.)

When a sale is not that of an itinerant vendor.—Goods taken to a town to be delivered to parties there who had ordered them and for whom they had been shipped from another state, and the sale of them, when the persons on whose orders they had been shipped did not come for them, is a mere incident of a lawful business of interstate commerce, and not the business of an itinerant vendor within the meaning of this section. State v. Littlefield, 112 Me. 214, 91 A. 945.

Applied in State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 104. Advertising sale before licenses issued. — All persons, both principals and agents, who by circular, handbill, newspaper or in any other manner advertise any such sales as those referred to in the preceding section, before proper licenses shall have been issued to the vendor, shall be punished by a fine of not more than $50 or by imprisonment for not more than 60 days, or by both such fine and imprisonment. (R. S. c. 88, § 84.)

Sec. 105. State and local licenses; rights of municipal officers unaffected.—Every itinerant vendor, whether principal or agent, before commencing business shall take out a state license and a local license in the manner hereinafter set forth, but nothing herein contained shall affect the right of any municipal officers to make such regulations relative to itinerant vendors as may be permissible under the general law or under any municipal charter. (R. S. c. 88, § 85.)

Stated in Wolf v. Runnels, 90 Me. 253, 38 A. 100.

Sec. 106. Deposit before procuring license; license not transferable; licensee may have assistants.—Every itinerant vendor desiring to do business in this state shall deposit with the secretary of state the sum of $500 as a special deposit, and after such deposit, upon application in proper form and the payment of a further sum of $100 as a state license fee, the secretary of state shall issue to him an itinerant vendor's license, authorizing him to do business in the state in conformity with the provisions of sections 103 to 119, inclusive, for the term of 1 year from the date thereof. Every license shall set forth a copy of the application upon which it is granted. Such license shall not be transferable nor give authority to more than 1 person to sell goods as an itinerant vendor, either by agent or clerk or in any other way than in his own proper person, but any licensee may have the assistance of one or more persons in conducting his business, who may aid that principal but shall not act for or without him. No person shall be entitled to hold or directly or indirectly receive the benefit of more

than 1 state license at any 1 time, and any license obtained, held or used in violation of the provisions of this section is void. (R. S. c. 88, § 86.)

Cross reference.—See § 114, re licenses expire 1 year from date of issue.

"Business" means employment for livelihood.—"Business", in the sense of this section, is that which occupies the time, attention and the labor of men for the purposes of livelihood or for profit; a calling for the purpose of a livelihood. It signifies and denotes the employment or occupation in which a person is engaged to procure a living. State v. Littlefield, 112 Me. 214, 91 A. 945.

Tax required by this section cannot be imposed so as to burden interstate commerce.—The soliciting of orders for goods to be shipped from another state, their shipment from another state to this state, and the delivery of the goods to the persons who ordered them are interstate commerce, and the state cannot burden interstate commerce by compelling persons engaged in that commerce to pay a special tax, such as that provided by this section, for the privilege of engaging in such commerce. State v. Littlefield, 112 Me. 214, 91 A. 945.

Stated in State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 107. State license; proceedings.—All applications for state licenses shall be sworn to, shall disclose the names and residences of the owners or parties in whose interests said business is conducted, and shall be kept on file by the secretary of state, and a record shall be kept by him of all licenses issued upon such applications. All files and records, both of the secretary of state and of the several towns relative to such licenses, shall be in convenient form and open for public inspection. (R. S. c. 88, § 87.)

Sec. 108. Local license; proceedings.—Every itinerant vendor intending to sell goods in any town shall file his state license and an application for a local license with the collector of taxes for such town, and before selling, offering or exposing for sale any goods in such town, shall pay to the collector for the use of such town, as a further local license fee for such sale in such town, a sum to be computed as provided in the following section. A receipt for said local license fee when paid shall be indorsed by said collector on the back of such state license, which shall remain on file with such collector so long as such sale shall continue or such goods be kept, exposed or offered for sale in such town. Every application for a local license shall be signed by the holder of the accompanying state license and shall specify the kind and line of goods then in stock in such town, the name of the town from which said goods were last shipped, and the name of the town in which said goods were last exposed or offered for sale. Such local license fee shall be computed and collected in each town respectively in which said goods shall be successively offered or exposed for sale. (R. S. c. 88, § 88.)

Goods moved into town not to be sold until license procured.—This section means that whenever a stock of goods is moved into a town for the purpose of being put upon sale and sold in the town, the owner or person having them in possession for that purpose must obtain the license specified by this chapter before he engages in the business of selling them. State v. Littlefield, 112 Me. 214, 91 A. 945.

The words "in stock", as used in this section, mean on hand for sale. The words do not include goods on hand and already bargained for and sold. State v. Littlefield, 112 Me. 214, 91 A. 945.

Stated in Wolf v. Runnels, 90 Me. 253, 38 A. 100.

Cited in State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 109. Assessors to examine stock and certify amount of local license fee; license restricted to goods described; vendor to pay additional fee when stock increased. — The collector of taxes for any town upon receiving an application in due form as provided in the preceding section, accompanied by the applicant's state license, shall forthwith give notice thereof to the assessors of said town. Said assessors, or a majority of them, shall as soon as practicable examine the stock of goods described in such application and

shall compute and certify to said collector the amount of said applicant's local license fee for such intended sale in said town, which shall be a percentage on the full value of said stock of goods equal to the rate per cent of the last preceding taxation in said town. The payment of said local license fee to said collector shall authorize such applicant who has complied with all other requirements of law to sell within the limits of said town such goods, wares and merchandise as are described in his application, and for that purpose to carry in stock in said town, goods only of the kind or line specified in his application, not exceeding in amount at any 1 time the valuation on which his local license fee for such town was computed; such license shall continue in force so long as such licensee shall in good faith continuously keep, offer or expose for sale the same kind or line of goods specified in his application, except that such license and authority shall in any event terminate and expire on the 1st day of April next following the date of application. Any itinerant vendor who, after applying or paying for a local license, increases his stock kept, offered or exposed for sale in the town for which such local license fee was paid, above the valuation on which such local license fee was computed, without first making seasonable written application to the collector of such town for a supplemental license for such excess of stock, shall be punished by a fine of not less than $20 nor more than $50, and for each day such excess of stock is kept, offered or exposed for sale without payment of local license fee therefor shall be punished by a fine of not less than $20 nor more than $50, and shall forfeit his state license. Supplemental licenses shall be applied for, and the fees therefor shall be computed, certified and collected in the manner provided for local license fees. (R. S. c. 88, § 89.)

License contemplates continuous keeping of business.—The local license continues in force so long as the licensee in good faith "continuously" keeps, offers and exposes for sale, as provided in this section, the same kind or line of goods specified in his application, but not longer than the first day of April following. Should the plaintiff close his store and remove his stock of goods from the city, he thereby abandons all rights under his local license, and if later, during the same municipal year, he again desires to do business in the same place it will be necessary for him to again procure a new license in the manner required by § 108. Wolf v. Runnels, 90 Me. 253, 38 A. 100.

Cited in Opinion of the Justices, 123 Me. 573, 121 A. 902; State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 110. Neglect to apply for local license.—Whoever as proprietor or clerk, having in his care, custody or keeping any goods for the sale of which a local license is required, neglects or refuses to file the application for the local license required by law, or whoever makes a false or fraudulent representation or statement in any application for a local license, shall be punished by a fine of not less than $20 nor more than $50 for each day such goods are kept, offered or exposed for sale. The penalties provided herein are not to be construed as substitutes for payment of local license fees. (R. S. c. 88, § 90.)

Sec. 111. Lien for license fee; action of debt.—Every town in which is kept, exposed or offered for sale an itinerant vendor's stock of goods has a lien on such goods for the amount due such town for local license fee on such stock, to be enforced by suit and attachment within 10 days from the time such goods were first publicly offered or exposed for sale in such town. When any person liable therefor neglects or refuses to pay the local license fee provided in section 109, the tax collector of the town to which such license fee is due may maintain an action of debt by writ of attachment or trustee process therefor in the name of such town or in his own name for the benefit of such town. Tax collectors, police officers and constables shall prosecute for violations of the provisions hereof relating to itinerant vendors, in their respective towns, and shall report such violations promptly to the assessors for the purpose of computing and certifying such local license. (R. S. c. 88, § 91.)

Sec. 112. Vendor to state to secretary of state all facts relating to sale.—No itinerant vendor shall advertise, represent or hold forth any sale as an insurance, bankrupt, insolvent, assignee's, trustee's, testator's, executor's, administrator's, receiver's, wholesale or manufacturer's, or closing-out sale or as a sale of any goods damaged by smoke, fire, water or otherwise, or in any similar form, unless he shall before doing so state under oath to the secretary of state, either in the original application for a state license or in a supplementary application subsequently filed, and copy on the license all the facts relating to the reasons and character of such special sale so advertised or represented, including a statement of the names of the persons from whom the goods, wares and merchandise were obtained, the date of delivery to the person applying for the license, and the place from which said goods, wares and merchandise were last taken, and all details necessary to exactly locate and fully identify all goods, wares and merchandise to be so sold. (R. S. c. 88, § 92.)

Sec. 113. Making false statement.—Any false statement in an application, either original or supplementary, for a license and any failure on the part of any licensee to comply with all the requirements of section 112 shall subject said itinerant vendor to the same penalty as if he had no license. (R. S. c. 88, § 93.)

Sec. 114. State licenses to expire in 1 year.—All state licenses issued under the provisions of section 106 shall expire by limitation 1 year from the date thereof, and may be, if so desired, surrendered at any time prior thereto for cancellation. (R. S. c. 88, § 94.)

Cited in Tobey v. Quick, 149 Me. 306, 101 A. (2d) 187.

Sec. 115. Upon expiration of surrender of license, duty of secretary of state.—Upon the expiration and return or surrender of each state license, the secretary of state shall cancel the same, indorse the date of delivery and cancellation thereon and place the same on file. He shall then hold the special deposit of each licensee mentioned in section 106 for the period of 60 days, and after satisfying any and all claims made upon the same under the provisions of the following section, shall return said deposit or such portion of the same, if any, as may remain in his hands, to the licensee depositing it. (R. S. c. 88, § 95.)

Sec. 116. Deposits subject to claims; satisfied in order of receipt.—Each deposit made with the secretary of state shall be subject, so long as it remains in his hands, to attachment and execution in behalf of creditors whose claims arise in connection with business done in the state, and the secretary of state may be held to answer as trustee, under the trustee process, in any civil action in debt or case brought against any licensee, and the secretary of state shall pay over, under order of court or upon execution, such sum of money as he may be chargeable with upon his answer or otherwise. Said deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violation of any of the provisions of the 13 preceding sections, and the clerk or recorder of the court in which or the trial justice by whom such fine or penalty is imposed shall thereupon notify the secretary of state of the name of the licensee against whom such fine or penalty is adjudged and of the amount of such fine or penalty, and the secretary of state if he has in his hands a sufficient sum deposited by such licensee shall pay the sum so specified to said clerk, recorder or trial justice; and if the secretary of state shall not have a sufficient sum so deposited, he shall make payment as aforesaid of so much as he has in his hands. All claims upon the deposit shall be satisfied after judgment, fine or penalty, in the order in which notice of the claim is received by the secretary of state, until all such claims are satisfied or the deposit exhausted, but no notice filed after the expiration of the 60 days' limit aforesaid shall be valid. No deposits shall be paid over by the secretary of state to the licensees so long as there are any outstanding

claims or notices of claims against them, respectively, unless he is satisfied that such claims will not be prosecuted to final judgment or that no fine or penalty will be imposed. (R. S. c. 88, § 96.)

Sec. 117. "Itinerant vendors" defined. — The words "itinerant vendors" for the purposes of sections 103 to 119, inclusive, shall be construed to mean and include all persons, both principals and agents, who engage in a temporary or transient business in this state, either in one locality or in traveling from place to place selling goods, wares and merchandise, and who, for the purposes of carrying on such business, hire, lease or occupy any building or structure for the exhibition and sale of such goods, wares and merchandise, or who sell goods, wares and merchandise at retail from a car, wagon or other conveyance, steamer or vessel. No itinerant vendor shall be relieved or exempted from the provisions and requirements hereof by reason of associating himself temporarily with any local dealer, trader or merchant, or by conducting such temporary or transient business in connection with or as a part of the business of, or in the name of any local dealer, trader or merchant. (R. S. c. 88, § 97.)

Traveling "from place to place" includes traveling from place to place in the same town within the meaning of this section. Wherever, therefore, a person can travel in the state, for the purpose of vending goods, wares and merchandise within the prohibition, there he may incur the penalty provided by the sections of this chapter pertaining to itinerant vendors. Andrews v. White, 32 Me. 388.

Retail distinguished from wholesale selling.—Where one goes from shop to shop, carrying for sale and exposing to sale, and selling and delivering, the goods, wares and merchandise he carries, selling from opened packages still smaller packages adapted to the temporary wants of his customers, such sales cannot be found to be at wholesale, but are retail within the meaning of this section. State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 118. Persons exempt.—The provisions of the 15 preceding sections shall not apply to sales made to dealers by commercial travelers or selling agents in the usual course of business, nor to bona fide sales of goods, wares and merchandise by sample for future delivery made by those who sell goods, wares and merchandise at retail from a car, wagon or other conveyance, steamer or vessel, nor to hawkers or peddlers on the streets or peddlers from vehicles. (R. S. c. 88, § 98. 1949, c. 434, § 2.)

Meaning of "peddler."—In order to constitute a person a peddler, within the meaning of this section, he must not only be an itinerant person, but must be engaged in vending or selling the articles mentioned in the prohibitory statute as a business or occupation. It is not, however, necessary that it should be his sole business, or even his principal business, but it must, nevertheless, be a considerable part of his occupation, business or vocation. State v. Littlefield, 112 Me. 214, 91 A. 945.

Former provision of section.—For cases concerning the constitutionality of a former provision of this section discriminating between peddlers who are citizens of Maine and peddlers from other states, see State v. Montgomery, 92 Me. 433, 43 A. 13; State v. Montgomery, 94 Me. 192, 47 A. 165; State v. Mitchell, 97 Me. 66, 53 A. 887; State v. Cohen, 133 Me. 293, 177 A. 403.

Sec. 119. Jurisdiction.—Trial justices shall have jurisdiction of all complaints and prosecutions under the provisions of the 16 preceding sections. (R. S. c. 88, § 99.)

Quoted in Tobey v. Quick, 149 Me. 306, 101 A. (2d) 187.

Itinerant Photographers.

Sec. 120. License; "regularly established place of business" defined.—It is declared that it is in the public interest to require the licensing of persons desiring to practice the profession of an itinerant photographer; and an itinerant photographer is defined to be a person, partnership or corporation hav-

ing no regularly established place of business in this state who personally or by agents or servants goes from town to town or from place to place within a town soliciting the making of photographic pictures or reproductions with a view to selling the same to the persons solicited; and it shall be unlawful for any person to practice as an itinerant photographer until such person shall have been licensed as hereinafter provided. The words "regularly established place of business" are defined to mean a place of business open to the public at least 5 days a week for not less than 6 hours daily and having one or more persons in charge thereof. (1949, c. 434, § 3. 1951, c. 168, § 1.)

Sec. 121. Fees.—Any person who practices the profession of an itinerant photographer in this state, whether as principal, agent or servant, and whether engaged in soliciting or in one or more of the operations involved in the making of photographic pictures or reproductions, shall obtain a license as hereinafter provided, paying therefor an annual fee of $100. Such license shall be issued by the secretary of state. Each license shall contain a statement of the name, place of residence and address of the licensee, his place of birth and his nationality, and shall contain his description and such additional information as the secretary of state may prescribe, and shall be numbered and memorandum thereof recorded by the secretary of state in a book kept for that purpose. (1949, c. 434, § 3.)

Sec. 122. Application. — Application for an itinerant photographer's license shall be made in writing to the secretary of state upon blanks prepared by him for that purpose. In case of persons, the application shall contain the name, age, residence and address, and the name and address of the principal place of business of his employer or principal. In case of corporations, the application shall contain the name, address of principal place of business, names of the officers, and further shall state that it does not have a regularly established business within the state. The license fee shall be paid when the application is filed. Upon complaint of any person to the secretary of state that any other person, firm or corporation is in the business of photography without having a regularly established place of business within the state, the secretary of state shall make inquiry and the person, firm or corporation complained of shall forthwith notify the secretary of state as to the location of the claimed regularly established place of business. (1949, c. 434, § 3. 1951, c. 168, § 2.)

Sec. 123. Refusal and revocation.—The secretary of state shall have the right to refuse a license when he has reason to believe that the applicant is not of good moral character or not financially responsible, or when in his judgment the applicant is not a suitable person to have such a license, and may for reasonable cause revoke the license of any itinerant photographer. (1949, c. 434, § 3.)

Sec. 124. Time of expiration.—Each license granted under the provisions of sections 120 to 130, inclusive, shall, unless sooner revoked, expire on December 31st of the year in which it is issued. (1949, c. 434, § 3.)

Sec. 125. State license.—A license to practice as an itinerant photographer shall not be valid unless signed by the secretary of state or his deputy, and no license shall be issued or granted by the officials of any municipality to any person who has not received a license issued by the secretary of state according to the provisions of sections 120 to 130, inclusive. (1949, c. 434, § 3.)

Sec. 126. Violation of §§ 120-130.—Any person who violates any of the provisions of sections 120 to 130, inclusive, or who practices as an itinerant photographer without being licensed as provided in section 121, or who makes a false statement in or in connection with an application for such license, 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. 434, § 3.)

Sec. 127. Showing license.—Any person licensed to practice as an itiner-

ant photographer who refuses to show his license upon request shall be punished by a fine of not more than $25. (1949, c. 434, § 3.)

Sec. 128. Local license.—The mayor and aldermen of any city or selectmen of any town may grant licenses to persons desiring to practice as itinerant photographers within their respective municipalities, and fix the fee therefor, and may revoke such licenses when in their judgment the public interests require it. (1949, c. 434, § 3.)

Sec. 129. Penalty. — Any person who practices as an itinerant photographer in any town or city without having first obtained a license from the municipal officers, if one is required, shall be punished by a fine of not more than $100. (1949, c. 434, § 3.)

Sec. 130. Construction.—The provisions of sections 120 to 130, inclusive, shall not be construed as repealing or affecting any law applicable to a particular town, city or village heretofore enacted or any ordinance or by-law heretofore adopted in conformity with such law. (1949, c. 434, § 3.)

Pawnbrokers and Junk Dealers.

Sec. 131. License. — The municipal officers of any town may grant licenses to persons of good moral character to be pawnbrokers therein for 1 year, unless sooner revoked by said officers for violation of law. Whoever carries on said business without a license forfeits not more than $100. (R. S. c. 88, § 100.)

Sec. 132. Account of business done.—Every pawnbroker shall keep a book in which he shall enter the date, duration, amount and rate of interest of every loan made by him, an accurate account and description of the property pawned, and the name and residence of the pawner; and at the same time shall deliver to said pawner a written memorandum signed by him, containing the substance of the above entry, and at all reasonable times shall submit said book to the inspection of any of the municipal officers aforesaid; and for every violation of the provisions of this section he forfeits $20. (R. S. c. 88, § 101.)

Sec. 133. Junk dealers to keep records; "junk" defined. — Every dealer in junk, as herein defined, shall keep a record of the name of every person selling such junk to said dealer and also the registration number of the motor vehicle used by such seller in the delivery of such junk. These records shall be open for the inspection of any officer of the law. Whoever fails to make such record as provided by this paragraph shall be punished by a fine of not more than $100.

The word "junk" as herein used shall mean old iron, chains, brass, copper, tin, lead or other base metals, old rope, old bags, rags, waste paper, paper clippings, scraps of woolens, clips, bagging, rubber and glass, and empty bottles of different kinds when less than 1 gross, and all articles discarded or no longer used as a manufactured article composed of any one or more of the materials mentioned. (R. S. c. 88, § 102.)

Sec. 134. Rates of interest.—No pawnbroker shall directly or indirectly receive a rate of interest greater than 25% a year on a loan not exceeding $25, nor more than 6% on a larger loan made upon property pawned, under a penalty of $100 for each offense. (R. S. c. 88, § 103.)

Sec. 135. Time and mode of selling pawned property; notice.—No pawnbroker shall sell any property pawned until it has remained in his possession for 3 months after the expiration of the time for which it was pawned. All such sales shall be at public auction by a licensed auctioneer, after notice of the time and place of sale, the name of the auctioneer, and a description of the property to be sold has been published in a newspaper in the town where the property

is pawned, if any, and if not, after such notice has been posted in 2 public places therein at least 2 weeks before the sale. All sales of such property otherwise made are void, and the pawnbroker undertaking to make them forfeits $20 for every such offense. (R. S. c. 88, § 104.)

Sec. 136. Not paying over proceeds. — After deducting from the proceeds of any sale under the provisions of the preceding section the amount of the loan, the interest then due and the proportional part of the expenses of the sale, such pawnbroker shall pay the balance to the person who would have been entitled to redeem such property if no sale had been made; and if not so paid on demand, the broker forfeits double the amount so retained, ½ to the pawner and ½ to the state. (R. S. c. 88, § 105.)

Automobile Junk Yards.

Sec. 137. Purpose. — Automobile junk yards or so-called "auto graveyards" have been steadily expanding and frequently encroach upon highways. These graveyards have become a nuisance and a menace to safe travel on public ways, often detracting the attention of drivers of motor vehicles because it appears cars are parked on the highway or that an accident has occurred. It is declared that such automobile graveyards are properly subject to police regulation and control. (R. S. c. 88, § 106.)

Sec. 138. Establishment and maintenance of automobile junk yards. —No automobile junk yard or "automobile graveyard" so called, where 3 or more unserviceable, discarded, worn-out or junked automobiles or bodies or engines thereof are gathered together, shall be established, operated or maintained, or permitted by the owner of any land to be established, operated or maintained without first obtaining a nontransferable permit to do so from the municipal officers of the city or town wherein said yard is to be established, operated or maintained, or from the county commissioners of the county in which said yard is to be established, operated or maintained in an unorganized township, which permit shall be valid only until the 1st day of the year following. (R. S. c. 88, § 107.)

Sec. 139. Hearings.—Municipal officers or county commissioners as provided for in section 138 shall, before granting a permit to establish, operate or maintain such automobile junk yard, hold a public hearing, notice of which shall be posted at least 7 days prior to and not more than 14 days prior to said hearing, in not less than 3 public places in said city or town or unorganized territory, and in 1 newspaper of general circulation in said city or town or unorganized territory wherein such yard is to be established, operated or maintained. Before the municipal authorities or county commissioners, as provided for in section 138, shall post or publish notice of a hearing, they shall collect from the applicant for said permit a fee of $10 plus the costs of posting and publishing said notice. (R. S. c. 88, § 108.)

Sec. 140. Limitations on granting permits for initial establishment. —No permit shall be granted for such automobile junk yard to be established within an unreasonable distance, and in no case less than 500 feet, from any state or state aid highway now or hereafter designated as such highway by the state highway commission, if within view from said highway, except upon condition that the area to be occupied by said automobiles or parts thereof be kept entirely screened to ordinary view by those passing upon said highway, by natural objects or well constructed and properly maintained fences at least 6 feet high, acceptable to said municipal officers or county commissioners and so specified in said permit; nor if said area is within a radius of 300 feet of any public park, public playground, public bathing beach, school, church or cemetery, which shall have been established prior to the establishment of such yard and which is within

ordinary view thereof; except that the provisions of this section and section 141 shall not be mandatory when such junk yard is located in the built up portions of any city, town or village as defined by section 113 of chapter 22; provided further, that the municipal officers may in their discretion insert like or lesser restrictions, limitations and conditions in a permit to establish an automobile junk yard adjacent to any public way, road or street in the built up portion of the city, town or village, but shall impose no more stringent restrictions, limitations or conditions. (R. S. c. 88, § 109. 1951, c. 237.)

Sec. 141. If within 100 feet of a highway.—Notwithstanding the provisions of section 139, no permit shall be granted for such automobile junk yard to be established within 100 feet of any state or state aid highway, except upon compliance with the provisions of section 140 and upon payment of an annual fee of $500 to the city or town, or to the county treasurer for the use of the county in the case of unorganized territory, within which limits the automobile junk yard is to be established, operated or maintained. (R. S. c. 88, § 110.)

Sec. 142. Limitations on granting permits for existing establishments.—No permit shall be granted for such automobile junk yard established prior to January 1, 1943 and on said date maintained or operated, unless said yard shall conform to the provisions of section 140. (R. S. c. 88, § 111.)

Sec. 143. Penalty. — Whoever violates any provision of sections 137 to 144, inclusive, shall be guilty of a misdemeanor and shall be punished by a fine of not less than $100 nor more than $500, and it shall be the duty of the state police as well as local and county officers of the law to enforce the provisions of said sections. In case of default in payment of the fine imposed herein, the violator shall be punished by imprisonment for not more than 90 days. (R. S. c. 88, § 112.)

Sec. 144. Chapter 141, § 6, not affected.—Nothing contained in sections 137 to 143, inclusive, shall be construed as in any way repealing, invalidating or abrogating the provisions of section 6 of chapter 141, or limiting the right of prosecutions thereunder, and violation of the provisions of sections 137 to 143, inclusive, in the establishment, maintenance or operation of any such automobile junk yard shall constitute prima facie evidence that said yard is a nuisance as therein defined. (R. S. c. 88, § 113.)

Employment Offices.

Cross Reference.—See c. 149, § 1, re respondent to pay costs.

Sec. 145. Employment agencies; license.—No person shall open, keep or carry on any employment agency in the state, unless such person shall first procure a license therefor from the municipal officers of the city or town where such employment agency is to be located. Any person who shall open or conduct any such agency without first procuring such license shall be guilty of a misdemeanor and shall be punished by a fine of not less than $50 nor more than $300, or by imprisonment for not less than 1 month nor more than 6 months, or by both such fine and imprisonment. Such license shall be granted upon the payment to the city or town treasurer, annually, of a fee of $25 for the use of said city or town; the license shall be signed by a majority of the municipal officers, and shall continue in force from May 1st to May 1st of the succeeding year. Every license so granted shall contain the name of the person licensed, a designation of the city, street and number of the house or building in which the licensee is authorized to carry on the employment agency, and the number and date of such license, and shall be exhibited in a public and conspicuous place in the office or place of business of the licensee. Such license shall not be valid to protect any other place than that designated therein, unless consent is first obtained from the municipal

officers, nor until the written consent to such transfer of the surety or sureties on the bond required by the following section is filed with the original bond. No such agency shall be located in a building or upon premises where intoxicating liquors are sold or dispensed contrary to law, or which or part of which is used as an inn, lodging house or boardinghouse; nor shall any license be issued to any person directly or indirectly interested in the sale of intoxicating liquors. The application for such license shall be filed with the municipal officers at least 1 week prior to the date of hearing thereon, and the municipal officers shall act upon any application within 30 days after the filing thereof. Each application shall be accompanied by the affidavits of 2 persons who have known the applicant, or the chief officers thereof if a corporation, for 2 years at least, stating that the applicant is or said officers are of good moral character and a resident or residents of the state and has or have been such for at least 5 years prior to the date of such application. (R. S. c. 88, § 114.)

Sec. 146. Bond.—The municipal officers shall require such person to file with his application under the provisions of section 145 a bond to the inhabitants of the city or town wherein such application is made, in the penal sum of $1,000, with one or more sureties to be approved by said municipal officers, conditioned that the obligor will conform to and not violate any of the duties, terms, conditions, provisions or requirements of sections 145 to 152, inclusive. Whoever is aggrieved by the misconduct of any such licensed person may maintain an action in the name of the inhabitants of the city or town to whom the bond was given, but for his own benefit, upon the bond of such person, in any court having jurisdiction, and shall be liable for costs in such action and the inhabitants of such city or town shall not be liable. (R. S. c. 88, § 115.)

Sec. 147. Register.—Every such licensee shall keep a register in which shall be entered in the English language the date of every accepted application for employment, name and address of the applicant to whom employment is offered or promised, written name and address of the person to whom applicant is sent for employment, and of the fee received. The aforesaid register of applicants for employment shall be open during office hours to inspection by any one or more of the municipal officers, their authorized agents or any police officer when on duty. No licensee or his employees shall knowingly make any false entry in such register. (R. S. c. 88, § 116.)

Sec. 148. Receipt given to applicants for employment; fee returned if no employment obtained.—Every licensee shall give to each applicant for employment from whom a fee or other valuable thing shall be received for procuring such employment, or to whom a charge is made therefor, which fee or other valuable thing shall in no case exceed the sum of $1 if paid in advance, or $1.25 if charged to the applicant, a receipt, if said fee is paid in advance, or a statement if it is charged, in which shall be stated the name of the applicant, the amount of the fee or other valuable thing, the date, the name or nature of the employment or situation to be procured, and the name and address of the person, firm or corporation to whom the applicant is referred or sent for work or employment. Such fee shall be in full compensation for all service of said licensee. If the applicant does not obtain a situation or employment through the agency of such licensee within 6 days after the application as aforesaid, said licensee shall return to said applicant on demand the amount of the fee or other valuable thing so paid and delivered by said applicant to said licensee, or if a charge was made, said licensee shall cancel the same, provided that said person seeking employment through such agency does not break any agreement he may make with said licensee relative to time of entering into the employment sought for. The person to be employed must be furnished with a duplicate card showing name, last residence and name and residence of nearest relative or friend. No licensee shall by himself, agent or otherwise induce or attempt to induce any employee to leave his

employment with a view to obtaining other employment through such agency. (R. S. c. 88, § 117.)

Sec. 149. No person sent to place of bad repute; questionable characters not permitted to frequent agency.—No licensee under the provisions of section 145 shall send, or cause any female help or servant, or inmate or performer to be sent to any questionable place or place of bad repute, house of ill fame or assignation house, or to any house or place of amusement kept for immoral purposes, or place resorted to for the purpose of prostitution, vice or gambling, the character of which such licensee knows, either actually or by reputation. No licensee shall knowingly permit questionable characters, prostitutes, gamblers, intoxicated persons or procurers to frequent such agency. No licensee shall accept any application made by or on behalf of any child for, or shall place or assist in placing any child in, any employment in violation of law. (R. S. c. 88, § 118.)

See c. 134, re crimes against morality, etc.; c. 139 re gambling.

Sec. 150. Enforcement; complaints for violation; hearing; revocation of license.—The enforcement of the provisions of sections 145 to 152, inclusive, shall be entrusted to the municipal officers during their term of office and until the qualification of their successor or successors. Complaints of the violation of any provision of said sections shall be made orally or in writing to said municipal officers, and reasonable notice thereof and of the time and place of hearing, not less than 24 hours, shall be given in writing to such licensee by serving upon him a concise statement of the facts constituting the complaint; the hearing shall be had before said municipal officers at such time and place as they may designate within 1 week from the date of such service, and no adjournment shall be taken for a period longer than 1 week. The result of such hearing shall be announced within 1 week from the date thereof. The municipal officers may refuse to issue and may revoke any license for good cause shown within the meaning and purpose of said sections; and when it is shown to the satisfaction of a majority of said municipal officers that any person is guilty of any immoral, fraudulent or illegal act or conduct in connection with said business, said municipal officers shall revoke the license of such person; but notice of such charges shall be presented in writing signed by the party making the same and reasonable opportunity shall be given such licensee to defend himself in the manner hereinbefore provided in this section. Whenever said municipal officers shall refuse to issue or shall revoke any license of an employment agency, their decision shall be final. Whenever for any cause such license shall be revoked, such revocation shall take effect upon announcement of the decision, and such revocation shall be considered good cause for refusing to issue another license to said person or his representative, or to any person with whom he is to be associated in the business of furnishing employment or help. (R. S. c. 88, § 119.)

Sec. 151. Penalty and jurisdiction.—Whoever violates any provision of sections 145 to 152, inclusive, except as is otherwise provided, shall be punished by a fine of not more than $25 with costs of prosecution. Trial justices shall have jurisdiction of such offenses, and in default of payment may commit the respondent to the county jail or house of correction for a period of not more than 30 days. Any municipal officer may institute criminal proceedings to enforce the provisions of said sections. (R. S. c. 88, § 120.)

Sec. 152. Definitions. — The term "person" in the 7 preceding sections shall include a person, company, society, association, firm or corporation; and the term "employment agency" shall include the business of keeping an intelligence office, employment bureau or other agency for procuring work or employment for persons seeking employment or for acting as agent for procuring such work or

employment, where a fee or other valuable thing is exacted, charged or received, or for procuring or assisting to procure employment, work or situation of any kind or for procuring or providing for any person; but said sections shall not apply to the employment of seamen, nor to teachers' agencies, nor to nurses' associations nor charitable institutions. (R. S. c. 88, § 121. 1947, c. 62.)

Dairy Products.

Sec. 153. Municipal officers to prosecute violations.—The mayor and aldermen, selectmen, assessors, city marshal, chief of police and constables in every city and town shall make complaint and prosecute all violations of the provisions of sections 92 and 93 of chapter 32, and promptly enforce all laws against illegal sale and transportation of dairy products. (R. S. c. 88, § 122.)

See c. 32, §§ 88-91, re duties of commissioner of agriculture.

Sec. 154. Inspectors.—The municipal officers of cities and towns containing not less than 3,000 inhabitants, and the municipal officers of all other towns on application of 10 voters therein, shall appoint annually one or more persons to be inspectors of milk, cream, butter and all other dairy products, substitutes therefor and imitations thereof, who, before entering upon their duties, shall give notice of their appointment by publishing the same for 2 weeks in a newspaper published in their towns, if any, otherwise by posting such notice in 2 or more public places therein; and they may receive such fees as said officers establish. (R. S. c. 88, § 123.)

Sec. 155. Duties.—Inspectors appointed by the municipal officers of cities and towns shall keep an office and books for the purpose of recording the names and places of business of all persons selling milk or other dairy products within their jurisdiction. They shall have access at all reasonable hours to all places of business, factories or carriages, cans or other vessels used in the production, handling or sale of milk or any other dairy product, substitute therefor or imitation thereof, and, upon tendering the market price of a sample of milk or other dairy product, substitute therefor or imitation thereof, may take such sample from any person, firm, corporation or association; cause it to be analyzed or otherwise satisfactorily tested and preserve the result as evidence. The inspectors shall, if the owner of the product inspected so requests, leave with the owner a sealed specimen of the product examined by them, which shall be marked in the same manner as the specimen taken at that time by the inspector; and they shall prosecute for all violations of the provisions of sections 101 and 110 of chapter 32. (R. S. c. 88, § 124.)

Sec. 156. Interference with inspector.—Whoever in any way interferes with an inspector appointed under the provisions of section 154 in the performance of his duties, by refusing entrance to a place he is authorized to enter or access to a receptacle to which he is authorized to have access, or by refusing to deliver to him a sample which he is authorized to take, or in any other way interferes with said inspector in the performance of his duties, shall be punished by a fine of not less than $10 nor more than $50, or by imprisonment for not less than 10 days nor more than 30 days. (R. S. c. 88, § 125.)

See c. 137, §§ 2-5, re unwholesome provisions and drinks.

Flour.

Sec. 157. Inspectors of flour.—The municipal officers of towns may appoint annually in their towns one or more suitable persons not interested in the manufacture and sale of flour to be inspectors thereof for 1 year from the date of appointment. (R. S. c. 88, § 126.)

Sec. 158. Oath; certificate of appointment.—An inspector of flour, before entering upon his duties, shall be sworn to the faithful and impartial discharge thereof before the town clerk, who, upon payment of 50c, shall give him a certificate of his appointment and qualification, to be exhibited on the demand of any person interested in any inspection made by him. (R. S. c. 88, § 127.)

Sec. 159. Inspection; duties; record.—Inspection of flour shall be for the purpose of ascertaining its soundness; every package inspected shall be opened sufficiently to allow a trier to be passed through it, and a sample of the whole length of the passage shall be taken out and examined by the inspector, who shall mark upon each package with a brand or stencil the word "Sound" or "Unsound," as the quality of the flour contained in each is found, and his name, residence, office and the year of inspection. He shall keep a record of all flour inspected by him in a suitable book which he shall exhibit to any person requiring it. (R. S. c. 88, § 128.)

Sec. 160. Fraudulent marks. — If an inspector falsely and fraudulently marks any package of flour, he shall be punished by a fine of $5 for every such package and forfeits to any person injured thereby 3 times the amount of damage, in an action of debt. (R. S. c. 88, § 129.)

Sec. 161. Alteration, etc., of inspection marks.—Whoever, with intent to defraud, alters, obliterates or counterfeits the marks of an inspector, and whoever, with such intent, places upon any package of flour marks, falsely purporting to be inspection marks, shall be punished by a fine of not more than $50 for each offense and, on conviction of placing such false marks on as many as 10 packages at one time shall also be imprisoned for not more than 10 months. (R. S. c. 88, § 130.)

Sec. 162. Purchasers of flour may require inspection before delivery.—The purchaser may require flour to be inspected before delivery. The inspector's fees shall be 5c a package for lots of less than 10; for lots of more than 10 and not exceeding 20, 2c a package; and for every package exceeding twenty, 1c; to be paid by the person demanding inspection. (R. S. c. 88, § 131.)

Sec. 163. Duties of inspectors in relation to sample packages.—Inspectors of flour shall, when required, determine whether the flour conforms to and equals the sample furnished, and shall mark, with some distinct and intelligible mark, the packages that are found like the sample, and for this service they may charge an additional compensation of ½c a package. (R. S. c. 88, § 132.)

Sec. 164. Contract for sale of uninspected flour.—Nothing contained in sections 157 to 163, inclusive, prohibits any contract for the manufacture or sale of uninspected flour when inspection is not required by the buyer or the seller. (R. S. c. 88, § 133.)

See c. 32, §§ 194-198, re enrichment of flour and bread.

Wood and Bark.

Sec. 165. Dimensions of a cord of wood.—All cordwood offered for sale shall be 4 feet long including ½ the scarf, and well and closely laid together. A cord of wood or bark shall measure 8 feet in length, 4 feet in width and 4 feet in height, or otherwise contain 128 cubic feet; the measurer shall make due allowance for refuse or defective wood and bad stowage. Any person or persons exposing for sale as a cord of wood anything less shall be punished by a fine of not less than $10 nor more than $50 for each offense. Cities and towns by ordinance may assign location for teams to sell said cordwood and bark. (R. S. c. 88, § 136.)

Cross reference.—See c. 91, § 86, sub-§ V, re by-laws and ordinances.

Former provision of section.—For a case holding it lawful to sell wood other than

as prescribed in this section, such case arising prior to the addition of the provision for a fine, see Coombs v. Emery, 14 Me. 404.

Sec. 166. Measurers of wood and bark.—Measurers of firewood and bark shall receive such fees for their services as the municipal officers of the town designate, to be paid by the driver, and repaid by the buyer when brought by land, and by the wharfinger when brought by water. (R. S. c. 88, § 137.)

Sec. 167. Selling wood or bark before survey.—If any firewood or bark brought into any town by land is sold and delivered, unless otherwise agreed to by the purchaser, before it is measured by a sworn measurer and a ticket signed by him and given to the driver stating the quantity that the load contains, the name of the driver and the town in which he resides, such wood or bark is forfeited and may be libeled and disposed of according to law. (R. S. c. 88, § 138.)

This section relates to sales only.—This section and §§ 165, 166, 168 which require sworn officers to make surveys and measurements, distinctly and in terms relate to sales only and do not apply to work done upon cords of wood. Bruce v. Sidelinger, 82 Me. 318, 19 A. 824.

But does not apply to sales of lumber trimmings by cartload.—This section does not apply to the trimmings of lumber, consisting of pieces of various lengths, when sold under a contract by cartloads, for such a contract clearly implies an agreement on the part of the buyer to take the wood without the statute survey. Duren v. Gage, 72 Me. 118.

Although the term used in this section is "fire wood," it means cordwood of the usual length, and the dimensions of which are described in § 165. It never could have been the intention of the legislature that chips or the trimmings of lumber, which are sold by the load and not by the cord, should be surveyed. Duren v. Gage, 72 Me. 118.

Sec. 168. Measure of cordwood brought by water. — All cordwood brought by water into any town for sale shall be corded on the wharf or land on which it is landed, in ranges, making up in height what is wanting in length; then it shall be so measured and a ticket given to the purchaser, who shall pay the stated fees; and no such wood shall be carried away by any wharfinger or carter before it has been so measured, under a penalty of $1 for every load. (R. S. c. 88, § 139.)

Cited in Coombs v. Emery, 14 Me. 404.

Sec. 169. Ticket required.—Persons carrying firewood from a wharf or landing for sale shall be furnished by the owner or seller with a ticket stating the quantity and the name of the driver; and if such firewood is carried away without such ticket, or any driver refuses to exhibit such ticket to any sworn measurer on demand, or does not consent to have the same measured, when in the opinion of the measurer the ticket certifies a greater quantity of wood than the load contains, such wood shall be forfeited and may be seized and libeled by said measurer according to law. (R. S. c. 88, § 140.)

Sec. 170. Fraudulent stowage.—When any wood, bark or charcoal, sold by the cord, foot or load, is so stowed as to prevent the surveyors from examining the middle of the load, and it appears on delivery that it was stowed with the fraudulent intent of obtaining payment for a greater quantity than there was in fact, the seller or owner thereof forfeits $10 to the county. (R. S. c. 88, § 141.)

Sec. 171. Sale of wood by the load. — Fitted wood, not exceeding 16 inches in length, sold by the load in the loose shall contain: if sold as a load, not less than 144 cubic feet; if sold as a ¾ load, not less than 108 cubic feet; if sold as ½ load, not less than 72 cubic feet; if sold as ¼ load, not less than 36 cubic feet. Whoever violates the provisions of this section shall be punished by a fine of not more than $20 or by imprisonment for not more than 30 days. (R. S. c. 88, § 142.)

Coal and Coke.

Sec. 172. Net weight marked on bag.—Anthracite, bituminous and all mineral coal or coke shall be sold by weight and 2,000 pounds shall constitute a ton. Coal or coke put up in bags or package form shall have marked on the bag in a plain and conspicuous manner the net weight. For each violation of the provisions of this section there shall be a fine of not less than $25 nor more than $100. (R. S. c. 88, § 147.)

Sec. 173. Sellers and weighers of coal and coke; duties.—The municipal officers shall annually elect or appoint weighers of coal or coke who shall be sworn in accordance with the statute. Unless coal or coke are sold by the cargo, or put up in bags or package form and the weight marked thereon as provided in section 172, the seller shall cause it to be weighed by a sworn weigher who shall give a certificate by him signed showing thereon the gross, tare and net weight of each load. Such certificate of weight shall be delivered by the seller to the person in charge of the load for delivery and such person shall give such certificate to the consumer-purchaser or his agent upon delivery of such load of coal or coke. Whoever violates any of the provisions of this section, or whoever is guilty of fraud or deceit as to the weighing, selling or delivering of coal or coke, or whoever by himself or by his servant, agent or employee sells or delivers, or attempts to sell or deliver, coal or coke which is short in weight of that represented to the purchaser, shall be punished by a fine of not more than $50 or by imprisonment for not more than 30 days, or by both such fine and imprisonment. (R. S. c. 88, § 148. 1945, c. 50.)

Cross reference.—See Me. Const., Art. 9, § 2, re oath.

Former provision of section.—For cases concerning this section before the deletion of a provision for weighing on request of purchaser, see Mac Hatton v. Dufresne, 121 Me. 221, 116 A. 449; James v. Josselyn, 65 Me. 138.

Boards, Plank and Lumber. Logs. Fees.

Sec. 174. Surveyors of lumber.—Every town, at its annual meeting, shall elect one or more surveyors of boards, plank, timber and joist; one or more surveyors of shingles, clapboards, staves and hoops; and every town containing a port of delivery whence staves and hoops are usually exported shall also elect two or more viewers and cullers of staves and hoops; and the municipal officers of a town may, if they deem it necessary, appoint not exceeding 7 surveyors of logs. (R. S. c. 88, § 149.)

Cross reference.—See Me. Const., Art. 9, § 1, re oath.

Stated in Gilman v. Perkins, 32 Me. 320.
Cited in Ayer v. Sawyer, 32 Me. 163.

Sec. 175. Lumber surveyed before delivery.—All boards, plank, timber and joist offered for sale shall, before delivery, be surveyed by a sworn surveyor thereof, and, if he has doubts of the dimensions, he shall measure the same and mark the contents thereon, making reasonable allowance for rots, knots and splits, drying and shrinking; pine boards ¾ of an inch thick when fully seasoned, and in that proportion when partly seasoned, shall be considered merchantable; and no pine boards, except sheathing boards, shall be shipped for exportation beyond the United States, but such as are square edged and not less than ⅞ of an inch thick nor less than 10 feet long, under penalty of forfeiture to the town whence shipped. (R. S. c. 88, § 150.)

Cross reference.—See Me. Const., Art. 9, § 1, re oath.

Surveyor must be disinterested. — The provisions of this section are for the protection of the purchaser. To discharge such duty, honest, unbiased judgment is imperative. Disinterestedness of the surveyor is essential to that. Knight v. Burnham, 90 Me. 294, 38 A. 168.

And survey by seller is not compliance with section.—A survey by the owner and seller of the lumber, even if he is a duly

qualified surveyor of lumber is not a compliance with this section according to its intent, scope and meaning. Knight v. Burnham, 90 Me. 294, 38 A. 168.

Sale of enough boards to make a number of boxes at stated price per box is not within the section.—Where the plaintiff agrees to sell the defendant boards sufficient to make a number of boxes for a stated price per box, the sale does not fall within the scope of this section or § 181. For the contract is not for any definite quantity of boards, nor is the price dependent upon the contents as ascertained by a survey. Rogers v. Humphrey, 39 Me. 382.

Nor is a contract to procure joists for a buyer.—Where the plaintiff procures on contract a number of joists for the defendant and delivers them, there is no sufficient offering for sale to bring the contract within the scope of this section or § 181. See Abbott v. Goodwin, 37 Me. 203.

Stated in Jones v. Knowles, 30 Me. 402.

Sec. 176. Dimensions and quality of shingles. — All shingles, packed for exportation beyond the state, shall be 16 inches long, free from shakes and wormholes and at least ⅜ of an inch thick at the butt end when green, and if of pine, free from sap. They shall be 4 inches wide on an average, not less than 3 inches wide in any part, hold their width ¾ of the way to the thin end, well shaved or sawed, and be denominated "number one"; but shingles intended for sale within the state, if of inferior quality or of less dimensions, may be surveyed and classed accordingly, under the denominations of "number two" and "number three". (R. S. c. 88, § 151.)

Sec. 177. Manner of sawing and packing shingles; forfeiture.—All shingles shall be split or sawed crosswise the grain; each bundle shall contain 250 shingles and, if in square bundles, 25 courses, and be 22½ inches at the lay; and when packed to be surveyed as "number one" or for exportation, if in any bundle there are 5 shingles deficient in the proper dimensions, soundness or number to make 250 merchantable shingles, or if any shingles are offered for sale before they are surveyed and measured by a sworn surveyor of some town in the county where they were made and the quality branded on the hoop or band of the bundle, unless the parties otherwise agree, they are forfeited to the town where the offense is committed. (R. S. c. 88, § 152.)

The same rule of survey before sale must apply to shingles, under this section, as to other lumber. The reason for the rule would seem to be as forcible in the one case as in the other. Richmond v. Foss, 77 Me. 590, 1 A. 830.

Sec. 178. Clapboards.—All clapboards exposed for sale or packed for exportation shall be made of good sound timber, free from shakes and wormholes, and if of pine, clear of sap; and they shall be at least ⅝ of an inch thick on the back or thickest part, 5 inches wide and 4½ feet long, and straight and well shaved or sawed. (R. S. c. 88, § 153.)

Stated in Jones v. Knowles, 30 Me. 402.

Sec. 179. Staves.—Staves packed for sale or exportation shall be well and proportionably split, and of the following dimensions, viz.:

White oak butt staves, at least 5 feet in length, 5 inches wide and 1¼ inches thick on the heart or thinnest edge and every part thereof;

White oak pipe staves, at least 4 feet and 8 inches in length, 4 inches broad in the narrowest part and not less than ¾ of an inch thick on the heart or thinnest edge;

White or red oak hogshead staves, at least 42 inches long, and not less than ½ an inch thick on the least or thinnest edge;

White or red oak barrel staves for a market out of the United States, 32 inches long; if for use within the United States, 30 inches long; and in either case, ½ an inch thick on the heart or thinnest edge;

All white or red oak hogshead or barrel staves, at least, one with another, 4 inches in breadth, and no one less than 3 inches in breadth in the narrowest part; those of the breadth last mentioned shall be clear of sap; and 2 staves shall be

sold as 1 cast, 50 casts, 1 hundred of staves; and 10 hundreds of staves, 1 thousand. (R. S. c. 88, § 154.)

Stated in Gilman v. Perkins, 32 Me. 320.

Sec. 180. Hogshead hoops. — All hogshead hoops exposed for sale or packed for exportation shall be from 10 to 13 feet in length, and of oak, ash or walnut, and of good and sufficient substance, well shaved; if of oak or ash, at least 1 inch broad, and if of walnut, ¾ of an inch at the smaller end; the different lengths shall be made up in bundles by themselves; each bundle shall contain 25 hoops, 4 bundles shall make 1 hundred and 10 hundreds of hoops, 1 thousand; and every bundle, packed for sale or exportation, found to be deficient in number or dimensions, is forfeited to the town where it is exhibited. (R. S. c. 88, § 155.)

This section in terms applies to hogshead hoops only. There is no statute fixing the size or quality of barrel hoops, or the size and kind of package in which they shall be sold. Fitch v. Wood, 85 Me. 284, 27 A. 148.

Sec. 181. Manufactured lumber, not offered for sale until surveyed and branded.—No person shall deliver on sale, or ship or attempt to ship for exportation any boards, plank, timber, joists, shingles, clapboards, staves or hoops before they have been surveyed, measured, viewed or culled, as the case may be, and branded by the proper officer, and a certificate thereof given by him, specifying the number, quality and quantity thereof, under a penalty of $2 per 1,000, by quantity or tale, as such article is usually sold, ½ to the town where the offense is committed and ½ to the prosecutor; and in addition thereto, the master or owner of any vessel exporting any of the articles aforesaid beyond the limits of the United States contrary to law shall, for the 1st offense forfeit $200 to the town whence said articles are exported; and if after conviction he commits a 2nd offense in the same vessel, he forfeits the same sum and the vessel is also forfeited to the town. (R. S. c. 88, § 156.)

Cross references.—See note to § 175, re contracts not within this section or § 175.

This section requires its own method of survey to prevent fraud.—On account of the opportunities for fraud possessed by the seller, the law, by this section, refuses to trust any method but its own for the ascertainment of the quantities or qualities of lumber. Experts must be employed. Richmond v. Foss, 77 Me. 590, 1 A. 830.

Lumber may be sold in lump or by quantity, without necessity of survey within the meaning of this section. Goodrich v. Coffin, 83 Me. 324, 22 A. 217.

There can be no doubt that, under this section, lumber can be sold in bulk or lump, so much payable for the whole, and no survey be necessary. There would be no need of the statutory protection in such case. Richmond v. Foss, 77 Me. 590, 1 A. 830.

Section applies only to lumber specified in preceding sections.—The prohibition in this section applies only to the sale of the different sorts of lumber mentioned in the preceding sections, for surveying, measuring, viewing or culling of which, rules and dimensions are given. Upon the sale of staves of a description, the statute has not imposed any restriction. Gilman v. Perkins, 32 Me. 320.

Its language is general and comprehensive, except as to staves. — Although this section is limited in its application to particular kinds of staves, yet, in reference to other lumber mentioned, its language is sufficiently general and comprehensive to embrace all varieties of materials of which it may be composed. Gilman v. Perkins, 32 Me. 320.

And requires survey of hoops only as to those specified in § 180.—There is no universal or common standard of length, width or quality for all kinds of hoops. Without statute rules for the culling and branding of the various kinds of hoops, none is required. Therefore, the provisions of this section prohibiting the sale of hoops not culled or branded, only applies to such hoops as § 180 has given a standard by which the cull shall be governed. Fitch v. Wood, 85 Me. 284, 27 A. 148.

For cases before enactment of § 182, holding that a contract in contravention of this section cannot be enforced, see Jones v. Knowles, 30 Me. 402; Nutter v. Bailey, 32 Me. 504; Durgin v. Dyer, 68 Me. 143; Richmond v. Foss, 77 Me. 590, 1 A. 830.

Cited in Abbott v. Goodwin, 37 Me. 203; Rogers v. Humphrey, 39 Me. 382; Knight v. Burnham, 90 Me. 294, 38 A. 168.

Sec. 182. Failure to survey lumber and give certificate not to defeat action for price.—In any action brought for the price of boards, plank, timber, joists, shingles, clapboards, staves or hoops, unless sold by the cargo, any failure to survey, measure, view or cull and brand the same and to give certificate thereof as required by section 181 shall not defeat recovery in such action, unless it appears that before delivery the purchaser requested such survey, measurement, view or culling and branding and certificate. (R. S. c. 88, § 157.)

Sec. 183. Master or owner to produce surveyor's certificate before clearance.—The master or owner of any vessel having any of the lumber or other articles mentioned in section 181 on board for exportation as aforesaid shall, before the vessel is cleared at the customhouse, produce to the collector a certificate from the proper officer that the same have been duly surveyed, measured, viewed or culled, as the case may require; and such master or owner shall likewise make oath before the collector, or a justice of the peace whose certificate shall be returned to the collector, that the articles so shipped for exportation are the same articles thus surveyed, measured, viewed or culled, that he has no others on board of the like description, and that he will not take any others. (R. S. c. 88, § 158.)

Sec. 184. Duty of surveyors of logs.—Surveyors of logs may inspect, survey and measure all mill logs floated or brought to market or offered for sale in their towns, and divide them into several classes, corresponding to the different quality of boards and other sawed lumber which may be manufactured from them; and they shall give certificates under their hands of the quantity and quality thereof to the person at whose request they are surveyed. (R. S. c. 88, § 159.)

Logs inspected so as to determine quality of sawed lumber.—It is the duty of the surveyor under this section so to inspect the logs he is called upon to survey as to enable him to determine the quality of boards and other sawed lumber which may be manufactured from them. Berry v. Reed, 53 Me. 487.

A surveyor, within the meaning of this section, is expected to do something more than merely ascertain the number of feet each log may contain. He would be expected to ascertain whether it is of one class or another; whether it is clear, refuse or merchantable; and if a log were split or rotten for some small space on one side, to make an allowance such as would bring it within one of the known classes; or, if it were so badly defective as to be useless as board lumber, to reject it altogether. Robinson v. Fiske, 25 Me. 401.

Certificate of surveyor conclusive in absence of fraud.—The certificate of the surveyor, as provided by this section, in the absence of fraud, or anything tending to show unfairness on the part of the plaintiff in procuring the result, should be conclusive between the parties who chose the surveyor. Robinson v. Fiske, 25 Me. 401; Berry v. Reed, 53 Me. 487; Bailey v. Blanchard, 62 Me. 168; Nadeau v. Pingree, 92 Me. 196, 42 A. 353.

This section does not require a surveyor to keep a record. What minutes he may make for convenience are not evidence. Ayer v. Sawyer, 32 Me. 163.

Sec. 185. Method of scaling logs.—Unless the parties otherwise agree, in the scaling or measurement of unmanufactured logs and timber the cubic foot shall be the unit of measure, to be determined by mathematical calculation or by such cubic rules as the parties may agree upon. (R. S. c. 88, § 160.)

Sec. 186. Round timber scaled.—Any person measuring round timber, the quantity of which is estimated by the thousand, shall scale the same and mark upon each log surveyed by him the contents thereof, unless otherwise agreed by the parties contracting. (R. S. c. 88, § 161.)

Sec. 187. Surveyor or culler neglects duties or practices fraud in office.—If any person, duly elected a surveyor, measurer, viewer or culler of any of said articles under the provisions of sections 165 to 188, inclusive, and duly qualified, unnecessarily refuses or neglects to attend to the duties of his office when requested, he forfeits $3; and if he connives at or willingly allows any breach

of the provisions of sections 165 to 188, inclusive, or practices any other fraud or deceit in his official duties, he forfeits $30 to the use of the town. (R. S. c. 88, § 162.)

Sec. 188. Penalties; jurisdiction. — All pecuniary penalties in sections 165 to 188, inclusive, may be recovered by action of debt, indictment or complaint, and all other forfeitures by a libel filed by the treasurer or any inhabitant of the town interested. Where the violation of any of the provisions of sections 165 to 188, inclusive, is made an offense punishable by a fine, trial justices within their county shall have jurisdiction of such offenses concurrent with municipal courts and the superior court. (R. S. c. 88, § 163.)

Sec. 189. Fees of surveyors of lumber.—Surveyors of boards, plank, timber and joist shall receive, for viewing only, 6c a thousand feet; for measuring and marking the same, 6c more; and in that proportion for any part of a thousand, to be paid by the buyer.

Surveyors of shingles and clapboards shall receive, for surveying and telling, 6c a thousand to be paid by the buyer.

Viewers and cullers of staves and hoops shall receive, for barrel staves, 25c a thousand, and for hogshead and butt staves, 33c a thousand, whether refuse or merchantable; the merchantable to be paid for by the buyer, the refuse by the seller; and the culler of hoops shall be allowed 40c a thousand.

Surveyors shall receive at the rate of 4c a thousand feet board measure for viewing and inspecting mill logs, and 2c a thousand in addition for measuring and marking the quantity and quality of the logs, and making out and delivering certificates of the same, to be paid by the buyer. (R. S. c. 88, § 164.)

Oils.

Sec. 190. Description of marks filed.—All persons or corporations engaged in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, in cans of a capacity of not less than 5 gallons, with their names or other marks or devices branded, stamped, engraved, etched, impressed or otherwise produced upon such cans or anything connected therewith or appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid, used by them, and cause the same to be published once a week for 3 successive weeks in any newspaper published in the county in which said notice may have been filed as aforesaid. (R. S. c. 88, § 165.)

See §§ 204, 205, re penalty for unlawful use, etc.

Sec. 191. Regulation of sale of certain oils.—No person shall sell or keep for sale, except for remanufacture or as hereinafter provided, kerosene, range oil, fuel oil or other burning oil for illuminating, heating or cooking purposes which will flash at a temperature of less than 115 degrees Fahrenheit, to be ascertained by the application of any standard approved closed cup tester. Nothing herein contained shall prohibit the sale or keeping for sale of gasoline or naphtha as such for fuel or illuminating purposes. (R. S. c. 88, § 166.)

See c. 97, § 43, re regulations by insurance commissioner.

Sec. 192. Pure sperm oil defined; adulteration.—All oils sold under the names of sperm, summer, fall and winter oils are deemed to be sold for pure sperm oil, the test of which is Southworth's oleometer. Whoever sells under said names any oils which are adulterated by the mixture of an inferior article, without disclosing the full extent of adulteration to the purchaser, forfeits to the prosecutor $15 for each offense; and the oil so sold shall be deemed whale oil, and the

seller is liable to the purchaser for the difference between pure sperm oil and whale oil, to be recovered in an action on the case. (R. S. c. 88, § 167.)

Sec. 193. Deception; adulteration or misbranding.—It shall be unlawful for any person, firm or corporation within this state to store, sell, distribute, transport, expose for sale or offer for sale, distribution or transportation any internal combustion engine fuels, lubricating oils or other similar products in any manner whatsoever so as to deceive or tend to deceive the purchaser as to the nature, quality, price and identity of the product so sold or offered for sale or which is adulterated or misbranded within the meaning of sections 193 to 201, inclusive. (R. S. c. 88, § 168. 1953, c. 298, § 1.)

Sec. 194. Names and symbols on distributing devices to show true contents and identity of the manufacturer or distributor.—It shall be unlawful for any person, firm or corporation to store, keep, expose for sale, offer for sale or sell from any tank or container or from any pump or other distributing device or equipment, any internal combustion engine fuels, lubricating oils or other similar products than those indicated by the name, trade name, symbol, sign or other distinguishing mark or device of the manufacturer or distributor appearing upon the tank, container, pump or other distributing equipment from which the same are sold, offered for sale or distributed, and all tanks, containers, pumps or other distributing equipment containing internal combustion engine fuels, lubricating oils or other similar products shall be plainly designated by the name, trade-mark, symbol, sign or other distinguishing mark or device of the manufacturer or distributor, and any person, firm or corporation desiring to engage in the business of distribution of internal combustion engine fuels, lubricating oils or other similar products at wholesale shall apply to the state tax assessor for certificate allowing such distribution, and such applicant shall submit with such application to the state tax assessor samples or specifications of such fuels or oils as he desires to distribute. When such application, accompanied by such samples, has been received by the state tax assessor, he shall issue a certificate or permit to enable such person, firm or corporation to sell or distribute its products. (R. S. c. 88, § 169.)

Sec. 195. Trade names not imitated.—It shall be unlawful for any person, firm or corporation to disguise or camouflage his or their own equipment by imitating the design, symbol or trade name of the equipment under which recognized brands of internal combustion engine fuels, lubricating oils and similar products are generally marketed. (R. S. c. 88, § 170.)

Sec. 196. Dealers not to sell, mix or adulterate fuels or oils sold under trade name.—It shall be unlawful for any person, firm or corporation to expose for sale, offer for sale or sell under any trade-mark or trade name in general use any internal combustion engine fuels, lubricating oils or other like products except those manufactured or distributed by the manufacturer or distributor marketing internal combustion engine fuels, lubricating oils or other like products under such trade-mark or trade name, or to substitute, mix or adulterate the internal combustion engine fuels, lubricating oils or other similar products sold, offered for sale or distributed under such trade-mark or trade name. (R. S. c. 88, § 171.)

Sec. 197. Unlawful to place in tank any other fuel or oil than mark signifies.—It shall be unlawful for any person, firm or corporation to aid or assist any other person, firm or corporation in the violation of the provisions of sections 193 to 201, inclusive, by depositing or delivering into any tank, receptacle or other container, any other internal combustion engine, fuels, lubricating oils or like products than those intended to be stored therein and distributed therefrom as indicated by the name of the manufacturer or distributor, or the

trade-mark or trade name of the product displayed on the container itself, or on the pump or other distributing device used in connection therewith. (R. S. c. 88, § 172.)

Sec. 198. "Internal combustion engine fuel" defined; expenses. — For the purposes of sections 190 to 201, inclusive, the term "internal combustion engine fuel" shall mean motor fuel, commonly called and known as gasoline, benzol or other product to be used in the operation of an internal combustion engine. The term "misbranded" shall apply to all internal combustion engine fuel, the package, label, pump, tank or container of which shall bear any statement, design or device regarding such article or the ingredient or substance contained therein which shall be false or misleading in any particular or which is falsely branded in any particular.

Gasoline shall be held to be "adulterated":

I. If it contains water or tar-like matter;

II. If it contains more than 4% by weight of residue after being distilled at a temperature of 437° Fahrenheit;

III. If the maximum temperature of the vapor on distillation without pressure exceeds 437° Fahrenheit.

The methods of testing to be used shall be those in general use in the petroleum refining industry. (R. S. c. 88, § 173.)

Sec. 199. Director of Maine Agricultural Experiment Station to analyze samples; state tax assessor to enforce; expenses to be covered by gasoline tax.—The director of the Maine Agricultural Experiment Station shall analyze or cause to be analyzed such samples of internal combustion engine fuels, lubricating oils and other like products at such time and to such extent as the state tax assessor may determine. It shall be the duty of the state tax assessor in person, or by deputy, to enforce the provisions of sections 193 to 201, inclusive, and for that purpose the state tax assessor in person, or by deputy, shall have full access, ingress and egress at all reasonable hours to any place or building wherein internal combustion engine fuels, lubricating oils and other like products are stored, transported, sold, offered or exposed for sale. He may also in person or by deputy open any case, package or other container, tank, pump, tank car or storage tank, and enter upon any barge, vessel or other vehicle of transportation and may, upon tendering the market price, take samples for analysis. The expense of such analysis and of the administration of sections 193 to 201, inclusive, shall be included in the expense of the administration of the tax on gasoline provided for by chapter 16 and shall be deducted from the proceeds of said tax. (R. S. c. 88, § 174.)

Sec. 200. Deception as to price prohibited.—Every retail dealer in internal combustion engine fuel advertising the price of such engine fuel on any sign shall include in the price shown on such sign all taxes imposed with respect to the manufacture or sale of the motor fuel offered for sale, and every such sign shall either contain a statement of the taxes included in said price, or, without specifying the amount thereof, shall state that such taxes are included in said price. All figures, including fractions, upon said signs, other than figures and fractions used in any price computing mechanism constituting a part of any pump or dispensing device, shall be of the same size. (1953, c. 298, § 2.)

Sec. 201. Penalty.—Any person, firm or corporation or any officer, agent, servant or employee thereof, who shall violate any of the provisions of sections 193 to 201, inclusive, shall be punished by a fine of not more than $100 for the 1st offense and by a fine of not more than $200 for each subsequent offense, or by imprisonment for 90 days, or by both such fine and imprisonment, and each

separate sale or attempt to sell in violation of the provisions of sections 193 to 201, inclusive, shall be deemed a separate offense. (R. S. c. 88, § 175.)

Local Sealers of Weights and Measures.

Cross Reference.—See c. 32, §§ 101, 104, 105, re measure and testing of milk containers.

Sec. 202. Local sealers of weights and measures. — The municipal officers of each town shall elect a sealer of weights and measures, also a deputy sealer if necessary, not necessarily a resident therein, and said sealer and deputy shall hold office during their efficiency and the faithful performance of their duties. On complaint being made to said officers of the inefficiency or neglect of duty of a sealer or deputy sealer, the said officers shall set a date for and give notice of a hearing, to the complainant, sealer complained of and the state sealer. If the evidence satisfies the said officers that the said sealer or deputy sealer has been inefficient or has neglected his duty, they may remove him from office and appoint another in his stead. The state sealer of weights and measures shall have jurisdiction over said sealer or deputy sealer, and any vacancy caused by death or resignation shall be filled by election by said municipal officers within 30 days; for each month that said municipal officers neglect their duty they severally shall forfeit $10. Within 10 days after each such election the clerk of each city or town shall communicate the name of the person so elected to the state sealer of weights and measures, and for neglect of this duty shall forfeit $10. Such sealer of weights and measures in any town may be sealer for several towns if such is the pleasure of the municipal officers therein, provided such action received the approval of the state sealer of weights and measures. (R. S. c. 88, § 176.)

To warrant forfeiture the neglect must be "unreasonable, corrupt, or willfully oppressive."—Under this section the municipal officers are not subject to forfeiture for neglect of duty unless such neglect shall be "unreasonable, corrupt, or wilfully oppressive," in the language of c. 5, § 97. See Harlow v. Young, 37 Me. 88.

Sec. 203. Powers.—All local sealers of weights and measures and their deputy sealers in cities and towns shall have the same power that is given the state sealer of weights and measures and deputy state sealer by section 317 of chapter 32. (R. S. c. 88, § 177.)

Sec. 204. Town standards kept.—The treasurer of each town, at the expense thereof, or jointly with the treasurers of adjacent towns, shall constantly keep as town standards a set of beams and weights and measures subject to the approval of the state sealer and conformable to the state standards. Said treasurers shall cause all beams and weights and measures belonging to their towns to be proved and sealed by the state standards once in 5 years. For each neglect of said duties by any treasurer, he shall be punished by a fine of $100. (R. S. c. 88, § 178.)

Cited in Harlow v. Young, 37 Me. 88.

Sec. 205. Cities and towns may own scales; weighers and deputy sealers.—Any city or town may purchase and keep for use scales for weighing hay and other articles, appoint weighers and fix their fees, to be paid by the purchaser. The municipal officers of cities and towns may appoint a deputy sealer of weights and measures to hold office during their pleasure, and fix his compensation. Such deputy shall act under the direction of the sealer of weights and measures in the municipality, and shall have the same authority as the sealer in the peformance of his duties. (R. S. c. 88, § 179. 1951, c. 153.)

Sec. 206. City and town sealers to keep records of weights and measures sealed; annual report. — The several city and town sealers and

other persons authorized to inspect weights and measures shall keep records of all weights and measures, balances and measuring devices inspected, sealed or condemned by them, giving the name of the owner or agent, the place of business, the date of inspection and kind of apparatus so inspected, sealed or condemned. Each sealer shall make an annual report, duly sworn to, on or before the 1st day of June of each year, to the state sealer, giving in addition to the above an inventory of the standards and apparatus in his possession and such other information as he may deem important or as the state sealer may require. (R. S. c. 88, § 180.)

Cited in Washington Ice Co. v. Webster, 68 Me. 449.

Sec. 207. Duty of sealer to receive and receipt for standards. — The sealer shall receive the standards and seal from the treasurer, giving a receipt therefor, describing them and their condition, and therein engaging to redeliver them at the expiration of his office in like good order; and he shall be accountable for their due preservation while in his possession. For each neglect of any duty prescribed in sections 202 to 228, inclusive, such sealer shall be punished by a fine of $10. (R. S. c. 88, § 181.)

Cited in Washington Ice Co. v. Webster, 68 Me. 449.

Sec. 208. Sealers to give notice and to seal or condemn weights and measures.—The sealers of weights and measures in the several cities and towns shall annually give public notice by advertisement or by posting in one or more public places in their respective cities and towns notices to all inhabitants or persons having usual places of business therein and who use weights or measures, or who use weighing devices, measuring devices or weighing or measuring devices having a device for indicating or registering the price as well as the weight or measure of a commodity for the purpose of buying or selling goods, wares, merchandise or other commodities or for public weighing, or for hire or reward, to bring them in to be tested. Such sealers shall attend one or more convenient places, and shall seal or condemn such devices in accordance with the result of their test, and shall make a record thereof. (R. S. c. 88, § 182.)

Cross reference.—See § 221, re sealer may be paid salary.

Cited in Old Tavern Farm v. Fickett, 125 Me. 123, 131 A. 305.

Sec. 209. Sealers to visit persons who neglect to comply with law. —After giving said notice, said sealers shall go once a year or oftener, on request of the owner or on complaint, to the stores, houses, places of business and vehicles of persons not complying therewith, and shall test and seal or condemn in accordance with the result of their tests the weighing or measuring devices, or the devices which register or indicate the price as well as the weight or measure of such persons, provided that when a vehicle tank used in the buying or selling of commodities by liquid measures has once been sealed, it shall not be necessary to seal it again while it remains in the same condition as when first sealed. When a vehicle tank is subdivided into two or more compartments, each compartment, for the purposes of this section, shall be considered as a separate tank. (R. S. c. 88, § 183.)

Sec. 210. All scales, weights and measures tested any time. — All persons using any scales, weights or measures for the purpose of buying or selling any commodity may, when they desire it, have the same tested and sealed by the sealers of weights and measures at the office of any of said sealers. (R. S. c. 88, § 184.)

Sec. 211. Mark to show inspection; weights that cannot be adjusted. — In case a sealer of weights and measures cannot seal any weights,

measures and balances in the manner before provided, he may mark them with a stencil or by other suitable means so as to show that they have been inspected; but he shall in no case seal or mark as correct any weights, measures or balances which do not conform to the standards. If such weights, measures or balances can be readily adjusted by such means as he has at hand, he may adjust and seal them; but if they cannot be readily adjusted, he shall affix to such weights, measures or balances a notice forbidding their use until he is satisfied that they have been so adjusted as to conform to the standards. Whoever removes said notice, without consent of the officer affixing the same, shall for each offense be punished by a fine of not less than $10 nor more than $50. (R. S. c. 88, § 185.)

Sec. 212. Sealers furnished with appliances for testing weights, etc.—A sealer, when visiting the place of business of any person for the purpose of testing any weights, measures or balances, may use for that purpose such weights, measures or balances as he can conveniently carry with him, and each city and town shall furnish its sealer with one or more duplicate sets of weights, measures and balances, which shall at all times be kept to conform to the standards furnished by the state, and all weights, measures and balances so sealed shall be deemed to be legally sealed the same as if tested and sealed with the standard weights, measures and balances. (R. S. c. 88, § 186.)

Sec. 213. False weights and measures seized.—A sealer of weights and measures may seize without a warrant such weights, measures or balances as may be necessary to be used as evidence in cases of violation of the law relating to the sealing of weights and measures, such weights, measures or balances to be returned to the owners or forfeited as the court may direct. (R. S. c. 88, § 187.)

Sec. 214. Complaint that incorrect weights, etc., being used.—When a complaint is made to a sealer of weights and measures by any person that he has reasonable cause to believe or when such sealer himself has reasonable cause to believe that a weight, measure or balance used in the sale of any commodity within his city or town is incorrect, the said sealer shall go to the place where such weight, measure or balance is and shall test the same, and mark it according to the result of the test applied thereto; and if the same is incorrect and cannot be adjusted, the said sealer shall attach a notice thereto, certifying that fact and forbidding the use thereof until it has been made to conform to the authorized standard. Any person using a weight, measure or balance after a sealer has demanded permission to test the same, and has been refused such permission, shall be punished by a fine of not less than $10 nor more than $100. (R. S. c. 88, § 188.)

Sec. 215. How incorrect weights, etc., stamped.—All weights, measures and balances that cannot be made to conform to the standard shall be stamped "condemned" or "CD" by the sealer, and no person shall thereafter use the same under the penalties provided in the case of the use of false weights and measures. (R. S. c. 88, § 189.)

Sec. 216. Scales sealed before use.—No person, firm or corporation shall use any weights, measures, scales, steelyards, beams or other weighing or measuring device or balances, or any weighing or measuring devices having a device for indicating or registering the price as well as the weight or measure of a commodity, except meters for measuring water, gas or electricity supplied by companies subject to regulation by the public utilities commission, until they are sealed by a public sealer of weights and measures. Whoever violates any of the provisions of this section shall be punished by the penalties provided for in section 218. (R. S. c. 88, § 190.)

Cited in Washington Ice Co. v. Webster, 68 Me. 449.

Sec. 217. Sales by gross weight.—Such articles as are sold or exchanged in any market or town in the state by gross or avoirdupois weight shall be sold or exchanged as follows: 25 avoirdupois pounds constitute 1 quarter; 4 quarters, 1 hundred; and 20 hundreds, 1 ton; and all other articles, usually sold by tale, shall be sold by decimal hundred. (R. S. c. 88, § 191.)

Sec. 218. Using false, altered or condemned scales, weights, measures, etc. — Whoever by himself, or by his servant, or as the agent or servant of another, shall use or retain in his possession any false scales, weight or measure, or weighing or measuring device in the buying or selling of any commodity or thing, or whoever, after a weight, measure, scale, balance or beam has been adjusted and sealed, shall alter it so that it does not conform to the public standard and shall fraudulently make use of it, or whoever shall dispose of any condemned scales, weight, measure or weighing or measuring device contrary to law, or remove any tag, stamp or mark placed thereon by the sealer; or whoever by himself, or by his agent or servant, or as agent or servant of another, shall sell, offer or expose for sale less than the quantity he represents, or whoever by himself, or by his agent or servant, or as the agent or servant of another, shall sell, offer for sale or have in his possession for the purpose of selling, any false scales, weight or measure, or any device or instrument to be used or calculated to falsify any weight or measure, shall be guilty of a misdemeanor and shall for the 1st offense be punished by a fine of not more than $50; for the 2nd offense by a fine of not less than $20 nor more than $200; and for any subsequent offense by a fine of $50 and by imprisonment for not less than 30 days nor more than 90 days. The possession or use by any person of any false weight, measure or other apparatus for determining the quantity of any commodity or article of merchandise is presumptive evidence of knowledge by such person of the falsity of such weight, measure or other apparatus.

Any person, refusing to exhibit any sales slip, record of sale or weight slip in his possession, or to allow proper tests for correct weight, measure or count, or refusing to proceed to a proper and convenient place for the making of any such test, shall be punished by a fine of not more than $10.

Every sealer of weights and measures, or his duly appointed deputy, who has reasonable cause to believe that a weight, measure, scale, balance or beam has been altered since it was last adjusted and sealed, shall enter the premises in which it is kept or used and shall examine the same. A sealer, or his duly appointed deputy, may examine commodities sold or offered for sale and test them for correct weight, measure or count, and bring complaint for violations of the provisions of sections 202 to 223, inclusive. He, or his duly appointed deputy, may, for the purpose stated above and in the general performance of his or their official duties, have access without formal warrant to any stand, place, building or premises, or to any sales slip, record of sale or weight slip, or may stop any vendor, peddler, junk dealer, coal wagon, ice wagon or any person for the purpose of making the proper tests. (R. S. c. 88, § 192.)

Sec. 219. Fees.—The fees of sealers of weights and measures, for testing and adjusting scales, weights and measures by the town standard, to be paid by the persons for whom the service is rendered, are as follows: for testing railroad track scales of 40,000 pounds capacity and upwards, $4; elevator scales of 20,000 pounds capacity and upwards, $1.50; platform scales of 5,000 pounds capacity and upwards, $1; dormant scales of less than 5,000 pounds capacity, 50¢; dormant beef track scales, 50¢; platform scales of less than 5,000 pounds capacity, 50¢; beam scales of over 1,000 pounds capacity, 50¢; wagon or auto truck scales, $2; computing scales, 50¢; platform scales of less than 1,000 pounds capacity, 50¢; platform counter scales, 50¢; counter balance or trip scales, 50¢; spring balance scales, 50¢; automatic-indicating scales, 50¢; weights, each, 3¢; measures, wet and dry, each 3¢; yardsticks, each, 5¢; coal baskets, each, 10¢; milk

cans, large size, 5¢ each; milk cans, small size, 3¢ each; milk bottles, in lots of 1 gross or less, 1¢ each, in lots from 1 to 2 gross, ¾¢ each, in lots of more than 2 gross and not over 4 gross, ½¢ each, in lots greater than 4 gross, ¼¢ each; for testing gasoline pumps of not over 5 gallon capacity, 75¢; for testing gasoline pumps of not over 10 gallon capacity, $1; for testing gasoline meters, 75¢; for fabric measuring devices, 25¢; for testing fuel oil meters, $1; for testing wholesale fuel oil or gasoline meters, $2; for testing vehicle tanks, $1 for 1st 100 gallons or less and 50¢ for each additional 100 gallons or fractional part thereof, provided, however, that no testing of such vehicle tanks shall be made by less than a 100-gallon test measure; for testing taxicab meters, $1; for adjusting weights when either light or heavy, not to exceed 10¢ each; for adjusting measures, wet or dry, when either large or small, not to exceed 10¢ each; for adjusting yardsticks, not to exceed 5¢ each; for adjusting any weight or measure not mentioned above, a fair and reasonable compensation.

No local sealer of weights and measures shall charge a fee provided by this section unless he has adequate equipment to test accurately and which equipment has been approved by the state sealer of weights and measures. He shall also not charge a fee for testing or calibrating weighing and measuring devices which have been calibrated or tested and approved by the state sealer of weights and measures or his duly appointed deputy within the period of 3 months immediately following such test or calibration and approval by the state sealer or his deputy. (R. S. c. 88, § 193. 1947, c. 294. 1951, c. 263, § 3.)

Sec. 220. Penalty. — Any person, firm or corporation for whom scales, weights and measures or any weighing or measuring devices have been tested by a local sealer of weights and measures, who shall neglect or refuse to pay for said services rendered, shall be punished by a fine of $3 and costs for the 1st offense, and by a fine of not less than $10 and costs nor more than $20 and costs for each subsequent offense. (R. S. c. 88, § 194.)

Sec. 221. Sealer paid salary; fees paid into treasury.—The city government of a city may by ordinance and a town may by by-law provide that the sealer of weights and measures for their city or town shall be paid by a salary, and that he shall account for and pay into the treasury of the city or town the fees received by him by virtue of his office; and where such salary is paid, no fees shall be charged for services rendered under the provisions of section 208. (R. S. c. 88, § 195.)

Sec. 222. No certificate until weighers, etc., qualified. — It shall be unlawful for any weigher of coal, hay, straw, junk or other articles offered to be weighed, or for any measurer of wood, bark or charcoal to give a certificate of weight or measure until said weigher or measurer shall have qualified by taking oath for the faithful performance of the duties of his office. Whoever violates any of the provisions of this section shall be punished by a fine of not less than $10 nor more than $25, for each offense. (R. S. c. 88, § 196.)

See c. 32, § 187, re pressed hay.

Sec. 223. Using weights, etc., not sealed.—Whoever sells by any other weights, measures, scales, beams or balances than those which have been sealed as before provided shall forfeit a sum not exceeding $20 for each offense, and when by the custom of trade such weights, measures, scales, beams or balances are provided by the buyer, he shall, if he purchases by any other, be subject to a like penalty to be recovered by an action of tort to the use of the complainant. (R. S. c. 88, § 197.)

See c. 32, § 101, re sealing of cans, etc., used for milk or cream.

Sec. 224. Jurisdiction. — Trial justices within their county shall have

original jurisdiction, concurrent with municipal courts and the superior court, of prosecutions for all offenses against the laws pertaining to weights and measures. (R. S. c. 88, § 198.)

See § 219, re fees of sealers of weights and measures; c. 32, § 101, re annually sealing all measures used for sale of milk.

Measurers of Salt, Corn and Grain.

Sec. 225. Appointment and fees of measurers.—The municipal officers of towns annually may appoint measurers of salt, corn and grain therein, who shall receive such fees from the purchaser as said officers establish; and in every contract made in the state for the sale of salt by the hogshead, such hogshead shall consist of 8 bushels; and when the buyer or seller requests, salt, corn or grain bought or sold in places where such measurers live shall be measured by them. (R. S. c. 88, § 199.)

Standard Weights and Measures.

Sec. 226. Standard weight fixed. — The standard weight of a bushel of potatoes is 60 pounds; of apples, 44 pounds; of dried apples, 25 pounds; of wheat, 60 pounds; of corn or rye, 56 pounds; of cracked corn, feed or meal of any kind except oatmeal, 50 pounds; of barley or buckwheat, 48 pounds; of carrots or English turnips, 50 pounds; or onions, 52 pounds; of rutabaga, turnip, sugar beets, mangel-wurzel and other beets, 60 pounds; of parsnips, 45 pounds; of beans, 60 pounds; of Lima beans, 56 pounds; of shell beans, 28 pounds; of soy beans, 58 pounds; of scarlet or white runner pole beans, 50 pounds; of string beans, 24 pounds; of Windsor (broad) beans, 47 pounds; of beet greens, dandelions, kale or spinach, 12 pounds; of parsley, 8 pounds; of peas, 60 pounds; of unshelled green peas, 28 pounds; of wrinkled peas, 56 pounds; of rough rice, 44 pounds; of oats, 32 pounds; of green peanuts, 22 pounds; of roasted peanuts, 20 pounds; of Turk's Island or other coarse grades of salt, 70 pounds; of Liverpool or other fine grades of salt, 60 pounds; of lime, 70 pounds; of hair used in masonry, well dried and cleaned, 11 pounds; of strawberries, raspberries or blackberries, 40 pounds; of blueberries, 42 pounds; of currants, 40 pounds; of cranberries, 32 pounds; of peaches, 48 pounds; of pears, 58 pounds; of dried peaches, 33 pounds; of sweet potatoes, 54 pounds; of quinces, 48 pounds; of tomatoes, 56 pounds; all to be in good order and fit for shipping or for market; the measure of each of these articles shall be determined as aforesaid at the request of the vendor or vendee; and if either party refuses to do so he forfeits 20¢ for each bushel, to the person prosecuting therefor within 30 days.

The standard weight of a bushel of herd's-grass seed when well cleaned and in good condition is 45 pounds; of clover seed, 60 pounds; of alfalfa seed, 60 pounds; of flaxseed, 56 pounds; of hemp seed, 44 pounds; of Hungarian grass seed, 48 pounds; of orchard grass seed, 14 pounds; of redtop seed, 14 pounds; of sorghum seed, 50 pounds; of timothy seed, 45 pounds; of millet seed, 50 pounds; of Japanese millet seed, 35 pounds; of bran, 20 pounds; of Sea Island cotton seed, 44 pounds; of upland cotton seed, 30 pounds.

The standard weight of a barrel of flour is 196 pounds; of a barrel of potatoes in good order and fit for shipping is 165 pounds; of a barrel of sweet potatoes in like condition, 150 pounds. (R. S. c. 88, § 200.)

Sec. 227. Sale of fruit, nuts and vegetables, by measure.—All fruits, nuts and vegetables, if sold by measure, shall be sold by dry measure, United States standard, and shall be measured by level measure. Baskets or other receptacles holding 1 quart or less which are to be used in the sale of strawberries, blackberries, cherries, currants, blueberries, huckleberries, raspberries or goose-

berries shall be of the capacity of 1 quart, 1 pint or ½ pint, United States standard, dry measure. Whoever sells or offers for sale or has in possession with intent to sell, any of the aforesaid fruits in any basket or other receptacle holding 1 quart or less, which does not conform to said standard or conforming to said standard is not level measure, shall be punished by a fine of $10 for each offense. Said baskets or other receptacles shall not be required to be tested and sealed as provided under the provisions of sections 202 to 228, inclusive, but any sealer or health officer may test the capacity of any basket or other receptacle in which any of the aforesaid fruit is sold or intended to be sold; and, if the same is found to contain less than the standard measure or if the quantity of such fruit is otherwise less than as herein provided, he shall seize the same and make complaint against the vendor. (R. S. c. 88, § 201.)

Ice.

Sec. 228. Sale of ice by weight. — A dealer in ice who on request of the purchaser of ice refuses or neglects to weigh the same when delivered or gives false weight shall for each offense be punished as provided in section 218. Whoever, having charge of the delivery of ice from a wagon, not being a dealer in ice, refuses on the request of the purchaser of ice to weigh the same when it is delivered or gives false weight, shall be punished by a fine of not more than $10. (R. S. c. 88, § 202.)

Syphons, Bottles and Cans.

Sec. 229. Protection of marks on containers used for soda water and similar beverages. — All persons or corporations engaged in the manufacture or sale of soda water, mineral and aerated waters, ginger ale, small beer, spruce beer, white beer or other similar beverages, in syphons, boxes, cans, bottles, kegs or other vessels, with their names or other marks or devices branded, stamped, engraved, etched, blown, impressed or otherwise produced upon such syphons, boxes, cans, bottles, kegs or anything connected therewith and appertaining thereto, may file in the office of the town or city clerk in which their principal place of business is situated, a description of the names and marks aforesaid used by them, and cause the same to be published once a week for 3 successive weeks in any newspaper published in the county in which said notice may have been filed as aforesaid. (R. S. c. 88, § 203.)

Sec. 230. Unlawful use or defacing of containers marked as provided in §§ 190 and 229.—Whoever knowingly and willfully, without the written consent of an owner who has complied with the provisions of the preceding section or of section 190, uses, buys, sells, fills or traffics in any such syphon, box, can, bottle, keg or other vessel, or any such can of a capacity of not less than 5 gallons used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, so marked as aforesaid, or defaces, covers up or obliterates the names, marks or devices thereon with intent to use, fill, buy, sell, dispose of or traffic therein or to convert the same to his own use, shall, on complaint, be punished by imprisonment for not more than 30 days or by a fine of not more than $20, and 50¢ additional for each such syphon, box, can, bottle, keg or other vessel or such can of a capacity of not less than 5 gallons, so used, bought, sold, filled, trafficked in or disposed of, or by both such imprisonment and fine; and the said magistrate on finding such person or persons guilty shall award possession of the property taken to the owner thereof. (R. S. c. 88, § 204.)

Sec. 231. Search warrant to search for such containers.—Whenever any person in his own behalf or in behalf of any corporation shall make complaint on oath to any magistrate or court auhorized to issue warrants in criminal

cases, that he has reason to believe and does believe that any of his or said corporation's syphons, boxes, cans, bottles, kegs or other vessels, or any of his or said corporation's cans of a capacity of not less than 5 gallons used in the sale of kerosene, refined petroleum, gasoline or other burning or illuminating oils or fluids, a description of the names, marks or devices whereon has been so filed and published as aforesaid, are being unlawfully used, filled, bought, sold, disposed of or trafficked in, or unlawfully had by any person or corporation manufacturing or selling said beverages, oils, fluids, or liquids, or by any junk dealer or dealer in secondhand articles, or by any vendor of such syphons, boxes, cans, bottles, kegs or other vessels or cans of a capacity of not less than 5 gallons, used for the purposes aforesaid, the said magistrate shall thereupon issue a search warrant to search therefor. (R. S. c. 88, § 205.)

Old Home Week.

Sec. 232. Old Home Week.—The week commencing with the 2nd Sunday in August of each year, or any week a town may designate at its annual town meeting, is designated and set apart as Old Home Week. (R. S. c. 88, § 206.)