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

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

Chapter 184.

Unfair Sales Act.

Sec. 1. Definitions.

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

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

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

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

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

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

It is most important that the language of the statute inform the businessman of ordinary intelligence whether his particular business operations are covered by the statute, and if so, what conduct on his part is specifically prohibited. If the statute is so vague and uncertain with respect to these matters as to leave him to guess as to its application, it is unenforceable as to him. This basic rule applies alike to criminal prosecution and injunctive relief. Farmington Dowel Products Co. v. Forster Mfg. Co., 153 Me. 265, 136 A. (2d) 542.

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

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

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

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

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

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

Sec. 2. Penalty.—Any retailer who, with intent to injure competitors or destroy competition, advertises, offers to sell or sells at retail any item of merchandise at less than cost to the retailer, or any wholesaler who, with intent as aforesaid, advertises, offers to sell or sells at wholesale any item of merchandise at less than cost to the wholesaler shall be punished by a fine of not more than $500. In all prosecutions under this section, proof of consistent and repeated advertisements, offers to sell or sales of any items of merchandise by any retailer or wholesaler at less than cost to them as defined in this chapter, said advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. (R. S. c. 170, § 2. 1957, c. 429, § 90. 1959, c. 275, § 1.)

Effect of amendments. — The 1957 amendment, which became effective on its approval, October 31, 1957, deleted the former last sentence of this section, relating to prima facie evidence of intent to injure competitors.

The 1959 amendment added the present last sentence to this section.

The selling below cost, alone, is not a violation of any part of the Unfair Sales Act and is only effective when done "with intent to injure competitors or destroy competition." Wiley v Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289.

The purpose of defendant in selling coffee at less than cost price for a period of three days in order to make friends and to create good will was legitimate and was not covered by the Unfair Sales Law. Wiley v. Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289.

Prima facie provisions of this section unconstitutional.—While the Unfair Sales Act is constitutional insofar as it seeks to prevent unfair competition and to that extent comes within the police powers of the state, the prima facie provisions of this section are unconstitutional. The prima facie rule established by this section lifts from the shoulders of the state the burden of proving the crime, and has, in fact, the practical effect of removing the presumption of innocence and creating a presumption of guilt which the defendant must rebut or disprove in order to escape conviction. Wiley v. Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289, decided prior to the 1957 and 1959 amendments.

Effect of proposed removal of intent clauses of §§ 2 and 4. — See Opinion of the Justices, 152 Me. 458, 132 A. (2d) 47.

Sec. 3. Exceptions.

Cited in Wiley v. Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289.

Sec. 4. Person injured may bring bill in equity.—

I. Injunctive relief; damages and costs. Any person damaged or who is threatened with loss or injury by reason of a violation or threatened violation of this chapter may bring a civil action in the superior court in the county where he resides, to prevent, restrain or enjoin such violation or threatened violation. If in such action a violation or threatened violation of this chapter shall be established, the court may enjoin and restrain or otherwise prohibit such violation or threatened violation. In such action it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in said action shall be entitled to recover from the defendant 3 times the amount of actual damages by him sustained and the costs of the action including reasonable attorneys' fees.

III. In all proceedings under this section, proof of consistent and repeated advertisements, offers to sell or sales of any items of merchandise by any retailer or wholesaler at less than cost to them as defined in this chapter, said advertisements, offers to sell and sales thereby forming a pattern of sales below cost, shall be prima facie evidence of intent to injure competitors and destroy competition. (R. S. c. 170, § 4. 1957, c. 429, § 91. 1959, c. 275, § 2. 1961, c. 317, § 627.)

Cross reference.—See note to § 1.

Effect of amendments. — The 1957 amendment repealed former subsection III.

The 1959 amendment added the present subsection III to this section.

The 1961 amendment, which amended subsection I, substituted "a civil action in the superior court" for "a bill in equity in the supreme judicial court or the superior court in term time or vacation", substituted "the action" for "suit" in the last sentence thereof and deleted "the provisions of" preceding "this chapter" in two places.

As the rest of the section was not affected by the amendments, it is not set out.

Effective date.—The 1957 act repealing former subdivision III became effective on its approval, October 31, 1957.

Part of this section unconstitutional.—While the Unfair Sales Act is constitutional insofar as it seeks to prevent unfair competition and to that extent comes within the police powers of the state, the provisions of this section with regard to injunctive relief and subsection III of this section with regard to prima facie evidence, in civil actions, of intent to injure competitors and destroy competition are unconstitutional. The prima facie rule established by this section lifts from the shoulders of the state the burden of proving the crime, and has, in fact, the practical effect of removing the presumption of innocence and creating a presumption of guilt which the defendant must rebut or disprove in order to escape conviction. Wiley v. Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289, decided prior to the 1957 and 1959 amendments.

The proceedings for injunctive relief or for recovery of damages create a presumption of violation of the statute by merely showing the evidence of a conduct, the sale below cost, which is legal, proper and common practice. Wiley v. Sampson-Ripley Co., 151 Me. 400, 120 A. (2d) 289.

Chapter 185.

Uniform Sales Act.

Formation of Contract.

Sec. 2. Capacity; liabilities for necessaries.

Quoted in Spaulding v. New England Furniture Co., 154 Me. 330, 147 A. (2d) 916.

Cited in Uhl v. Oakdale Auto Co., 157 Me. 263, 170 A. (2d) 914.

Sec. 4. Statute of frauds.

IV. THE ACCEPTANCE.

Delivery of and payment for four carloads of potatoes satisfied the statute of frauds under all oral contract for sale of ten carloads of potatoes and contract was properly treated as single and entire. Maine Potato Growers, Inc. v. H. Sacks & Sons, 152 Me. 204, 126 A. (2d) 919.

Sec. 12. Definition of express warranty.

Cited in McNally v. Ray, 151 Me. 277, 117 A. (2d) 342.

Sec. 14. Implied warranty in sale by description.

Cited in McNally v. Ray, 151 Me. 277, 117 A. (2d) 342.

Sec. 15. Implied warranties of quality.

Section ends "sealed container" rule.—The Uniform Sales Act, in establishing implied warranties under this section, ended the "sealed container" rule at common law, and the rule of Bigelow v. Maine Central R. Co., 110 Me. 105, 85 A. 396, is not sound under the act. Sams v. Ezy-Way Foodliner Co., 157 Me. 10, 170 A. (2d) 160.

"Reasonably fit for such purpose" and "merchantable quality." — "Reasonably fit for such purpose," under subsection I and "merchantable quality," under subsection II, are equivalent with respect to food for human consumption. The test is whether the food is fit to eat. Sams v. Ezy-Way Foodliner Co., 157 Me. 10, 170 A. (2d) 160.

The difference between the warranties of subsection I and subsection II lies in the factor of reliance, present in subsection